

Tribal Transportation Program Delivery Guide -2011*

A Manual for FHWA and BIA
Program Agreement Tribes

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*An update of Indian Reservation Roads Program Delivery Guide of 2008

Notice

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Acronyms

AASHTO	American Association of State Highway and Transportation Officials
ACH	Automated Clearing House
ADA	Americans with Disabilities Act
ADT	Average Daily Traffic
BIA	Bureau of Indian Affairs
BIADOT	Bureau of Indian Affairs Division of Transportation
CE	Categorical Exclusion
CEQ	Council on Environmental Quality
CFLHD	Central Federal Lands Highway Division
CFR	Code of Federal Regulations
CM	Contract Modification
DOI	Department of Interior
DOT	Department of Transportation
EA	Environmental Assessment
EFLHD	Eastern Federal Lands Highway Division
EIS	Environmental Impact Statement
ERFO	Emergency Relief for Federally Owned Roads
FHWA	Federal Highway Administration
FLH	Federal Lands Highway
FONSI	Finding of No Significant Impact
FPOC	Federal Point of Contact (BIA)
GPRA	Government Performance and Results Act
HBP	Highway Bridge Program
HQTS	Headquarters
HRRRP	High Risk Rural Roads Program
HSIP	Highway Safety Improvement Program
IRR	Indian Reservation Roads
IRRBP	Indian Reservation Roads Bridge Program
IRRHPP	Indian Reservation Roads High Priority Project
IRRTIP	Indian Reservation Roads Transportation Improvement Program
ISDEAA	Indian Self-Determination and Education Assistance Act
L RTP	Long Range Transportation Plan
MPO	Metropolitan Planning Organization
MSHA	Mine Safety and Health Administration
MUTCD	Manual on Uniform Traffic Control Devices
NACE	National Association of County Engineers
NEPA	National Environmental Policy Act
NHTSA	National Highway Traffic Safety Administration
OMB	Office of Management and Budget
OSG	Office of Self-Governance
OSHA	Occupational Safety and Health Administration
PAF	Population Adjustment Factor
PDDM	Project Development and Design Manual
PFSA	Program, Functions, Services, and Activities
PM&O	Program Management and Oversight
PRAE	Project Related Administrative Expenses
PS&E	Plans, Specifications, and Estimates
RFA	Referenced Funding Agreement

RIFDS	Road Inventory Field Data System
RNDF	Relative Need Distribution Factor
ROW	Right-of-Way
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users
SHSP	Strategic Highway Safety Plan
SRTS	Safe Routes to School
STIP	State Transportation Improvement Program
STP	Surface Transportation Program
TCP	Traffic Control Plan
TERO	Tribal Employment Rights Ordinance
TFMMS	Transportation Facilities Maintenance Management System
TOSR	Tribal On-Site Representative
TSR	Title Status Reports
TTAM	Tribal Transportation Allocation Methodology
TTAP	Tribal Technical Assistance Program
TTIP	Tribal Transportation Improvement Program
US DOT	United States Department of Transportation
WFLHD	Western Federal Lands Highway Division

Foreword

The Indian Reservation Roads (IRR) Program was established by the Surface Transportation Assistance Act of 1982, and addresses transportation needs of over 560 Indian Tribes and Alaska Native Villages by providing funds for planning, designing, construction, and maintenance activities. The program is jointly administered by the Federal Highway Administration's Office of Federal Lands Highway (FLH) and the Bureau of Indian Affairs (BIA) in accordance with a memorandum of understanding.

The IRR system provides safe and adequate transportation and public access to, within, and through Indian reservations for Native Americans, visitors, recreational users, resource users, and others, while contributing to the health and safety and economic development of Native American communities. The IRR Program is an important resource of a Tribe's overall infrastructure investment strategy. It is a nationally based Federal program, with a number of requirements and responsibilities that each Tribe needs to fully understand as a partner in the process.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Public Law 109-59 (2005), allows Tribes the option of working directly with the Federal Highway Administration (FHWA) in the administration of their IRR program. This is accomplished through a Program Funding Agreement between a Tribal government and FHWA. The BIA has also starting using a Program Funding Agreement approach as an additional option for a Tribe in administering the IRR program.

In administering its IRR Program, a Tribal government is required to comply with the provisions of Title 23 of the United States Code, 25 CFR Part 170, SAFETEA-LU and subsequent authorizations, and the terms of the executed IRR Program Funding Agreement between the Tribe and the FHWA or the BIA.

This *IRR Program Delivery Guide* was first developed in 2008 to assist Tribes in the management of their IRR program. Its intent was to explain the IRR Program Funding Agreements while providing relevant technical assistance on the various aspects needed to successfully carry out the program. The *Tribal Transportation Program Delivery Guide – 2011* is an update to the 2008 version. The new version includes references to other aspects of transportation besides roads as well as to the BIA Program Agreement Tribes.

A key message reinforced in this Program Delivery Guide is that coordination and communication with respective Federal, State, and local agencies are critical to the successful delivery of the IRR program.

Roads and bridges are vital transportation links, and are of particular importance in Indian Country. The FHWA and BIA look forward to working with Tribes in the successful delivery of this important program.

John R. Baxter
Associate Administrator
Office of Federal Lands Highway
Federal Highway Administration

I. Purpose of the Program Delivery Guide

The fundamental purpose of this document is to provide procedural guidelines to eligible Tribes entering into a Program Agreement with the FHWA or the BIA.

The Guide expands on the terms, roles and responsibilities, and provisions for the Tribes, FHWA, and BIA as outlined in the Program Agreement. It assists Tribal governments in the administration of the IRR Program, and sets out the required process and procedures used by the FHWA and the BIA to carry out its oversight and stewardship responsibilities for the IRR Program.

In addition, this Program Delivery Guide may serve as a technical resource for Tribal governments, Federal agencies, and State and local governments.

II. Introduction

Overview. The IRR Program is a part of the FHWA's Federal Lands Highway (FLH) Program established in 23 U.S.C. 204 to address transportation needs of Tribes. The program is jointly administered by the FLH and the BIA in accordance with an interagency agreement.

SAFETEA-LU Tribal governments may enter into IRR Program Agreements directly with the FHWA to administer the IRR Program. (See section 1119(g)(4) of the SAFETEA-LU, Pub. L. 109-59, 119 Stat. 1144, August 10, 2005 (codified at 23 U.S.C. § 202(d)(5))).

To carry out the requirements of SAFETEA-LU many agencies must work cooperatively together in a government-to-government relationship. Below is a short description of the various agencies and terms used to implement the IRR Program.

Federal Highway Administration's Office (FHWA). The FHWA is charged with the broad responsibility of ensuring that America's roads and highways continue to be the safest and most technologically up-to-date. Although State, local, and Tribal governments own most of the Nation's highways, FHWA provides financial and technical support to them for constructing, improving, and preserving the highway system. The FHWA's annual budget is funded by fuel and motor vehicle excise taxes. The budget is primarily divided between two programs: (1) Federal-aid funding to State and local governments; and (2) Federal Lands Highways (FLH) funding for national parks, national forests, Indian lands, and other land under Federal stewardship.

(1) Federal-aid Program. There are 52 Federal-aid division offices (one in each State, the District of Columbia, and Puerto Rico). These division offices are located in the same city as the State Department of Transportation, which is usually the State capital. Federal-aid division offices provide Federal-aid program delivery and technical assistance to partners and customers in the highway transportation industry.

(2) Federal Lands Highways (FLH). The Office of FLH is a division of FHWA. The FLH divisions, which report to the Headquarters FLH Office, administer FLH programs (Forest Highways, Park Roads and Parkways, Public Lands, Refuge Roads, and Indian Reservation Roads); the Defense Access Roads Program; and the Emergency Relief Program on federally owned roads; provide engineering related services to other Federal agencies, FHWA offices, and foreign countries as directed; and carry out technology and training activities related to FLH projects. There are three FLH divisions (Eastern, Central, and Western) located in Sterling, Virginia; Lakewood, Colorado; and Vancouver, Washington; respectively. (See map)

(a) Eastern Federal Lands Highway Division (EFLHD).

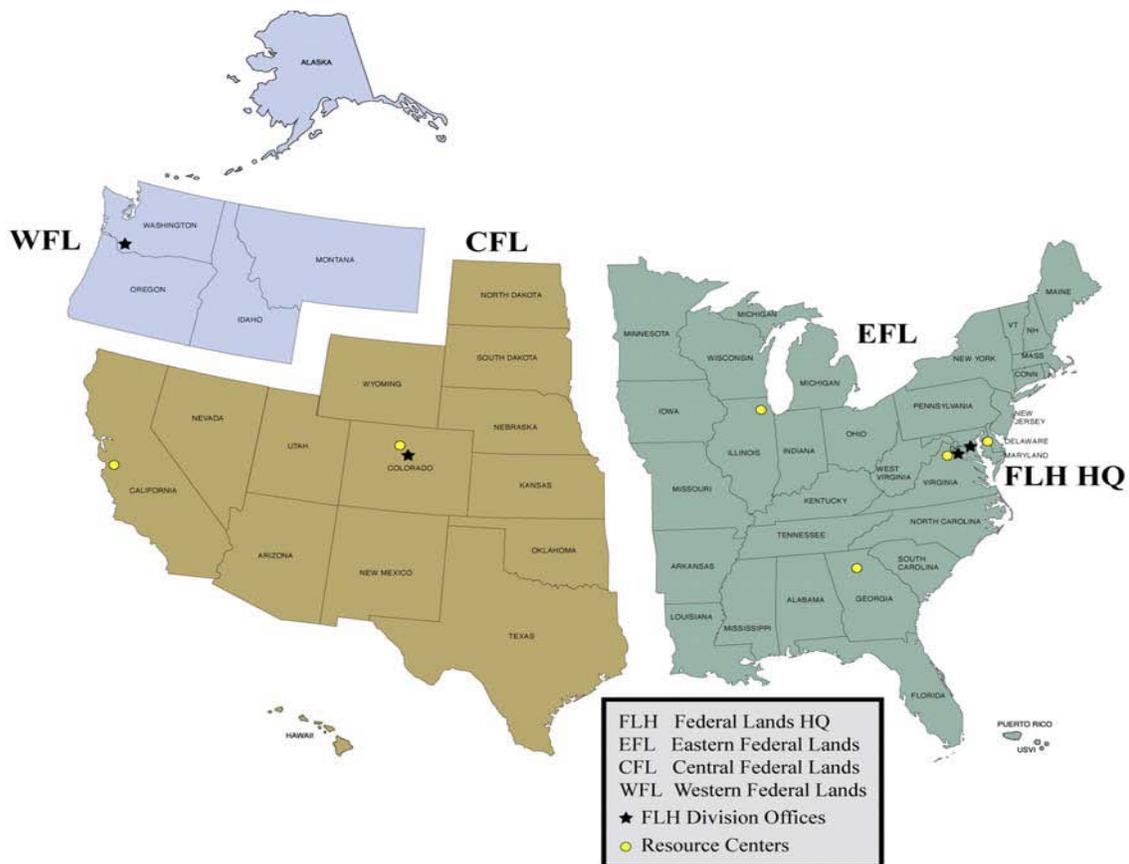
The EFLHD operates as part of the FLH Program, serving the transportation planning and engineering needs of eastern United States, Puerto Rico, and the Virgin Islands.

(b) Central Federal Lands Highway Division (CFLHD).

The CFLHD operates as part of the FLH, serving the transportation planning and engineering needs of the central United States, Hawaii, and American Samoa.

(c) Western Federal Lands Highway Division (WFLHD).

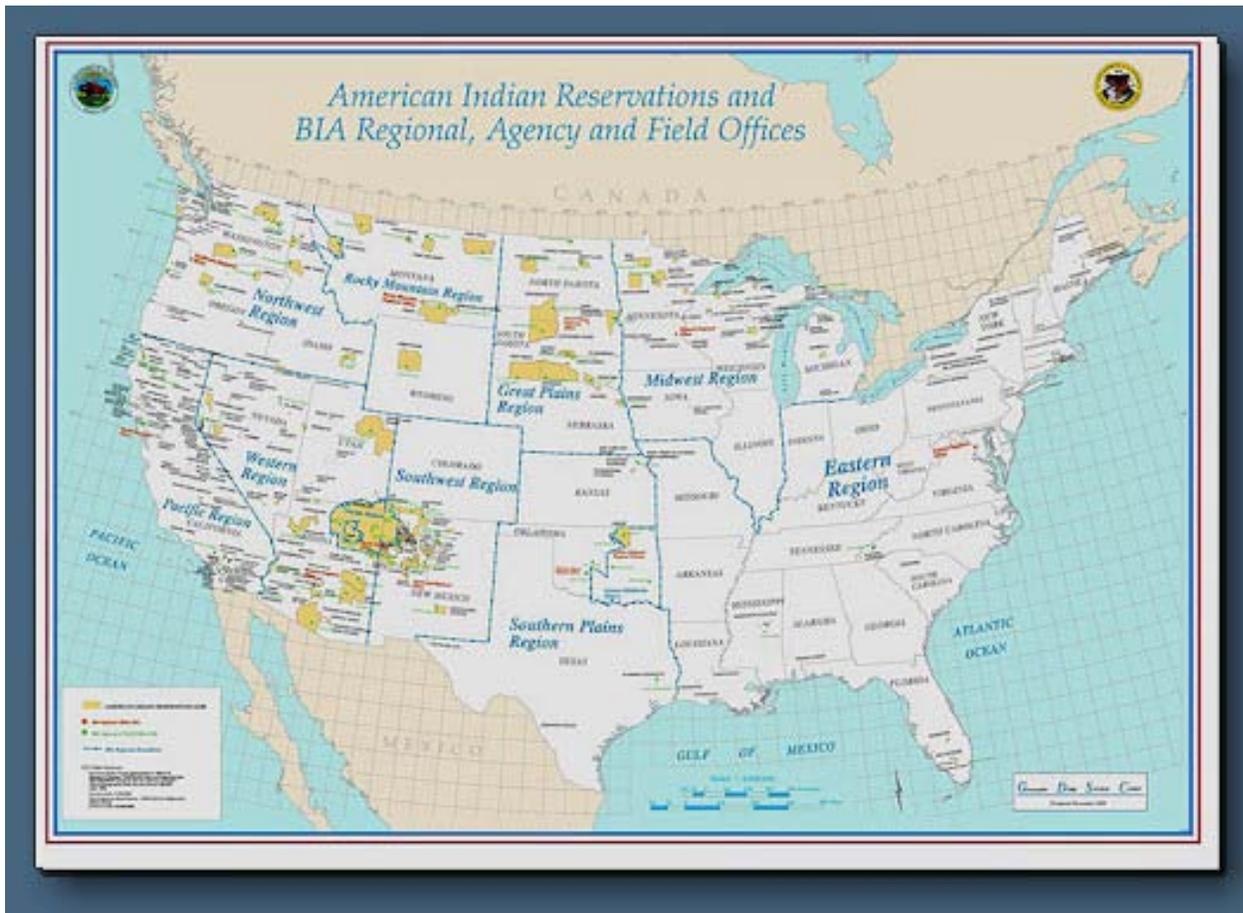
The WFLHD operates as part of the FLH Program, serving the transportation planning and engineering needs of the northwestern United States and Alaska.



Map 2.1: The different territories assigned to each of three FLH divisions

Bureau of Indian Affairs (BIA). The BIA is an agency of the United States Department of the Interior (DOI), under the Assistant Secretary of Indian Affairs, with the primary responsibility for the administration and management of approximately 66 million acres of land held in trust by the United States for American Indians, Indian Tribes, and Alaska Natives. It provides services (directly or through contracts, grants, or compacts) to approximately 1.9 million American Indians and Alaska Natives from the 564 federally recognized Tribes. The BIA is organized by 12 Regions and each Region has an IRR component which provides engineering, construction, and road maintenance services for roads on or leading to Reservations and Tribal lands.

Office of Self Governance (OSG). The OSG is also a part of the DOI and is under the Assistant Secretary of Indian Affairs. The office is responsible for implementing the Tribal Self-Governance Act, the Indian Self-Determination and Education Assistance Act (P.L. 93-638), and Joint Funding Simplification Act (P.L. 95-510) as it pertains to Indian Self-Determination. The Office develops and implements regulations, policies, and guidance in support of the Self-Governance initiatives; facilitate the negotiation of annual funding agreements with eligible Tribes and consortia; coordinates the collection of budget and performance data from Self-Governance Tribes; and resolves issues that are identified in financial and program audits of Self-Governance operations.



Map 2.2: The location of Indian Reservations, BIA Regional Office, boundaries, and field office sites.

Tribal Government. A Tribal Government is the local governing body of a Tribe, band, pueblo, community, village, or group of Native American Indians, or Alaska Natives that carry out sovereign governmental functions.

Tribal Lands. It is important to determine the status of all impacted land ownership to understand the roles and responsibilities of all parties. This understanding will also help in knowing which Federal, and State laws and regulations may apply. Although there are many classifications of Tribal land, the following are some of the most common:

- **Trust land** - The federal government holds legal title but the beneficial interest remains with the Tribe. Indian people and Tribes have use of the land, but the ultimate control over the land remains with the federal government.
- **Restricted fee land** - The Tribe holds legal title but with legal specific government-imposed restrictions on use and/or disposition.
- **Fee land purchased by Tribes** - The Tribe acquires legal title under specific statutory authority. Fee land owned by a Tribe outside the boundaries of a reservation is not subject to legal restrictions against alienation or encumbrance, absent any special circumstances.
- **Off-Reservation Trust Land** – Land that is protected by the federal government for Indian use. After reservations were created, some Tribes and individual Indians were given land to use outside of the reservation boundaries. For example, these pieces of land could be religious sites or pieces of land allotted to individual Indians.

FHWA Contact Information. A Tribe can find the FHWA contact information and other information pertaining to the IRR Program at the following FHWA website:

<http://flh.fhwa.dot.gov/programs/irr/>

BIA Contact Information. A Tribe can find the BIA FHWA contact information and other information pertaining to the IRR Program at the following BIA website:

<http://www.bia.gov/WhoWeAre/BIA/OIS/Transportation/IRR/index.htm>

III. Program Agreements (PA)

Overview. Prior to SAFETEA-LU, Indian Tribal governments work directly with the BIA or the DOI, Assistant Secretary of Indian Affairs in implementing the IRR program.

Since SAFETEA-LU, Indian Tribal governments have a choice in administration of the IRR program. As a result, under 23 U.S.C. 202(d), the Secretary of Transportation is authorized to enter into agreements with an Indian Tribal government to carry out a highway, road, bridge, parkway, or transit program or projects. This allows Tribes the option of working directly with the FHWA in the administration of their IRR program. In addition, the BIA can also enter into an agreement with a Tribal government to carry out their transportation program. (See chart below)

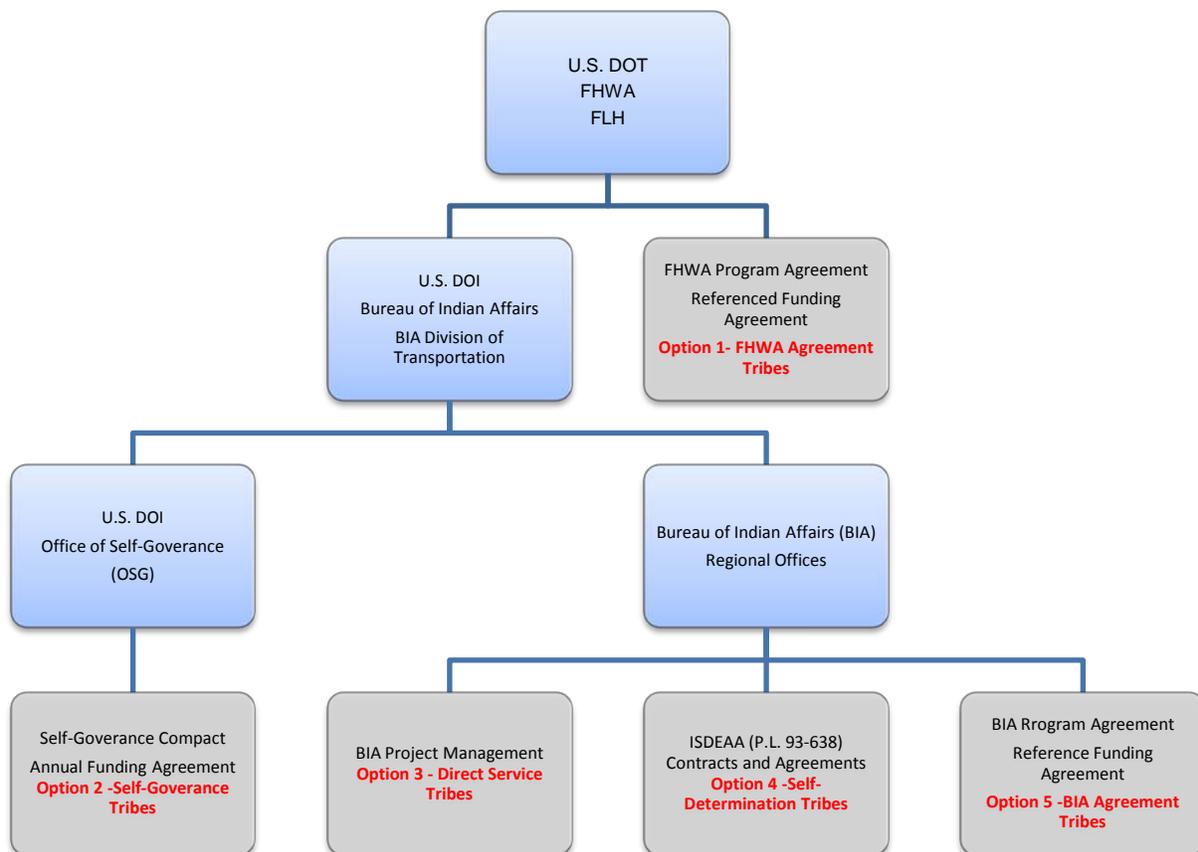


Chart 3.1: The five options the Indian Tribal governments have in administration of the IRR Program.

Tribes that intend to work directly with the FHWA or the BIA in the administration of their transportation program must enter into a Program Agreement. Tribes must demonstrate to the satisfaction of the Secretary of Transportation “financial stability and financial management capability during the three fiscal years immediately preceding the fiscal year for which the request is being made.”

Under 23 U.S.C. 202(d)(5)(f), “an Indian Tribal government that had no uncorrected significant and material audit exceptions in the required annual audit of the Indian Tribal government self-determination contracts or self-governance funding agreements with any Federal agency during the three fiscal year period . . . shall be conclusive evidence of the financial stability and financial management capability.”

Federal law, the standard FHWA Program Agreement, and the BIA Program Agreement, gives hiring and training preferences, to the greatest extent feasible, to Indians for all work performed under the IRR Program. Under 25 U.S.C. 450e(b) and 23 U.S.C. 204(e), 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 IRR Program. In addition, under the standard FHWA Program Agreement or the BIA Program Agreement, the Tribe’s employment rights and contracting preference laws, including Tribal preference laws, apply to work performed under the particular Agreement.

Finally, in exercising responsibility for carrying out the eligible programs and projects, the Tribe, through assurances to the FHWA or the BIA, will certify they will meet all applicable health, safety, and labor standards related to the administration, planning, engineering, and construction activities performed.

Below is a list of some respective regulations related to the implementation and oversight of the program:

- 23 CFR 625 – Design Standards for Highways
- 23 CFR 630 – Preconstruction Procedures
- 23 CFR 650 – Bridges, Structures, and Hydraulics
- 23 CFR 661 – Indian Reservation Road Bridge Program
- 23 CFR 710 – Right-of-Way
- 23 CFR 771 – Environmental Impact and Related Procedures
- 25 CFR 170 – Indian Reservation Roads Program
- 29 CFR 1910 – Occupational Safety and Health Standards
- BIA NEPA
- Government Performance and Results Act

A. Definitions:

Program Agreement (PA) – A standardized document between the FHWA or the BIA and a Tribe which 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 a Tribe or a community of the Tribe and are eligible for funding pursuant to 25 CFR Part 170. (See **Example 3.1 – Program Agreement**)

FHWA Tribal Coordinator – The main FHWA point of contact located near Tribes which leads the coordination between Tribal Government and FHWA Headquarters for the Program Agreement and Reference Funding Agreement. This person also has the primary function to provide technical assistance, management, and coordination required for improving tribal transportation system, including planning, design, and construction functions, and overall tribal transportation system safety.

BIA Federal Point of Contact (FPOC) – The main BIA Regional Road Engineer located in the nearest field office or region to a Tribe leading the coordination between a Tribal government and a BIA Region for the Program Agreement and Reference Funding Agreement. This person also

has the primary function to provide technical assistance, management, and coordination required for improving tribal transportation system, including planning, design, and construction functions, and overall tribal transportation system safety.

Tribal Resolution or Authorizing Document – A document provided to the FHWA or the BIA by a Tribe stating the Tribe’s intent to enter into a “Program Agreement” with the FHWA or the BIA. (See **Example 3.2 –Tribal Resolution**)

Financial Management Documentation. A letter submitted to the FHWA or the BIA by a Tribe attesting to the lack of material audit exceptions for the prior three fiscal year period.

Assurances - A positive declaration from a Tribe intended to give confidence to the FHWA or the BIA that projects and/or other program areas implemented by the Tribe are being carried out in accordance with all Federal requirements.

B. Statutory/Regulatory Requirements

- 23 U.S.C. 202(d)

C. Guidelines, Procedures, and Process

Intent to Enter into a Program Agreement. The Tribal government will contact FHWA or the BIA in the form of a letter or e-mail, their desire to exercise the option of working directly with the FHWA or the BIA and enter into a contract agreement with the FHWA or the BIA in the administration of their program.

For the Tribes wishing to work with FHWA, the FHWA Tribal Coordinator will e-mail to the Tribe the process as outlined below including all forms:

The following is the process for contracting with FHWA:

1. *Provide the FHWA Tribal Coordinator with a Tribal Resolution or Authorizing Document (see example Tribal Resolution).*

The FHWA Tribal Coordinator will send the document to FHWA-FLH-HQTS for approval.

The FHWA Tribal Coordinator will notify the BIA Regional Road Engineer of the Tribe’s intent to enter into a “Program Agreement” with FHWA. For a Tribe currently participating in a self-governance compact (either individually or as part of a consortium) the FHWA Tribal Coordinator will notify the Office of Self-Governance (OSG), Department of the Interior, that it has received a letter of intent from the Tribe.

2. *Once the Tribal Resolution or Authorizing Document is received and reviewed by FHWA, the FHWA Tribal Coordinator, will request the Tribe to ask their auditors to prepare a letter attesting to the lack of material audit exceptions for the prior three fiscal year period and a copy of the audit. FHWA doesn’t necessarily need the full report, but any findings and discussions related to their DOT program, as well as for All-Federal programs in which the DOT is included.*

The audit information will be sent to the FHWA Tribal Coordinator who will forward it to FHWA-FLH-HQTS for review.

- 3. FHWA-FLH-HQTS will review the audits and make a determination of their financial stability.*
- 4. Once the audit is reviewed and approved by FHWA, a Program Agreement will be sent by the FHWA Tribal Coordinator to the Tribal leadership for signature. (Please Note: Any major change to the PA will require a FHWA legal review.)*

In addition, an Automated Clearing House (ACH) Banking information form will be sent to the Tribe. The form can also be accessed at:

<http://www.eda.gov/PDF/FORM%20SF-3881%20ACH.pdf>

Both documents will be returned to the FHWA Tribal Coordinator. The FHWA Tribal Coordinator will forward the documents to FHWA-FLH-HQTS.

- 5. When FHWA and the Tribe have both signed the PA, a Referenced Funding Agreement (RFA) with appropriate year funding amount will be sent by the FHWA Tribal Coordinator to the Tribe for signature (attached).*

The signed RFA will be returned to the FHWA Tribal Coordinator who will forward the documents to FHWA-FLH-HQTS.

- 6. Once FHWA and the Tribe have both signed RFA, the funding will be sent by FHWA to the Tribe's established account.*

Attached files:

Example Tribal Resolution

Program Agreement

ACH Banking Form

Referenced Funding Agreement

For the Tribes wishing to work with the BIA, the BIA FPOC will e-mail to the Tribe the process as outlined below including all forms:

The following is the process for contracting with BIA:

- 1. Provide the FPOC with a Tribal Resolution or Authorizing Document (see example Tribal Resolution).*

The FPOC will send the document to appropriate BIA office for approval.

The FPOC will notify the BIA Regional Road Engineer of the Tribe's intent to enter into a "Program Agreement. For a Tribe currently participating in a self-governance compact (either individually or as part of a consortium) the FPOC will notify the Office of Self-Governance (OSG), Department of the Interior, that it has received a letter of intent from the Tribe.

2. *Once the Tribal Resolution or Authorizing Document is received and reviewed by BIA, the FPOC, will request the Tribe to ask their auditors to prepare a letter attesting to the lack of material audit exceptions for the prior three fiscal year period and a copy of the audit. BIA doesn't necessarily need the full report, but any findings and discussions related to their DOT program, as well as for All-Federal programs in which the DOT is included.*

The audit information will be sent to the BIA FPOC who will forward it to the appropriate BIA office for review.

3. *The appropriate BIA office will review the audits and make a determination of their financial stability.*
4. *Once the audit is reviewed and approved by the BIA, a Program Agreement will be sent by the BIA to the Tribal leadership for signature. (Please Note: Any major change to the PA will require a BIA legal review.)*

In addition, an Automated Clearing House (ACH) Banking information form will be sent to the Tribe. The form can also be accessed at:

<http://www.eda.gov/PDF/FORM%20SF-3881%20ACH.pdf>

Both documents will be returned to the BIA FPOC. The BIA FPOC will forward the documents to the appropriate BIA office.

5. *When BIA and the Tribe have both signed the PA, a Referenced Funding Agreement (RFA) with appropriate year funding amount will be sent by the BIA FPOC to the Tribe for signature (attached).*

The signed RFA will be returned to the BIA FPOC who will forward the documents to the appropriate BIA office..

6. *Once the BIA and the Tribe have both signed RFA, the funding will be sent by BIADOT to the Tribe's established account.*

Attached files:

Example Tribal Resolution

Program Agreement

ACH Banking Form

Referenced Funding Agreement

Example 3.1 – FHWA Program Agreement (NOTE: BIA Program Agreement is slightly different to reflex BIA references)

**INDIAN RESERVATION ROADS PROGRAM
AGREEMENT
BETWEEN
THE (INSERT NAME OF TRIBE)
AND THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
ARTICLE I – AUTHORITY AND PURPOSE**

Section 1. Authority. This Indian Reservation Roads 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 (INSERT OF TRIBE) (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 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 (August 10, 2005), and the Delegations of Authority set forth in 49 CFR § 1.48(b)(29). 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) and the DOT’s Order regarding Programs, Policies, and Procedures Affecting American Indians, Alaska Natives, and Tribes (DOT 5301.1, November 16, 1999), as amended by SAFETEA-LU. 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 (INSERT NAME OF TRIBE) Reservation (ALASKA NATIVE VILLAGE/CONSORTIUM) or a community of the Tribe and are eligible for funding pursuant to 25 CFR Part 170. This Agreement is made pursuant to 23 U.S.C. § 202(d)(5), as amended by section 1119(g)(4) of SAFETEA-LU, the Indian Reservation Roads (IRR) Program regulations (25 CFR Part 170), 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.).¹

Section 2. Purpose. The purpose of this Agreement is 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 SAFETEA-LU and the IRR Program regulations (25 CFR Part 170);

¹ 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.

(2) to carry out the Federal Highway Administration's (FHWA) statutory requirements pursuant to section 1119 of SAFETEA-LU and to maintain and improve its unique and continuing government-to-government relationship with and responsibility to the Tribe;

(3) to provide the Tribe or its designee, under the attached Referenced Funding Agreement (RFA), its formula share of IRR Program funds pursuant to 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 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). The **(INSERT BIA REGION)** Bureau of Indian Affairs (BIA) Regional Office shall continue to receive the funds identified in 23 U.S.C. § 202(d)(2)(F)(i) for certain program management and oversight (PM&O) activities and project-related administrative expenses as further identified in Article II, Section 2 and the attached RFA (Attachment A).

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 extend for the maximum period authorized by any statutory extensions to SAFETEA-LU. In the event SAFETEA-LU is reauthorized in whole or in part, this agreement shall continue to the extent authorized by law until a successive agreement is negotiated by the parties.

Section 2. Funding.

A. Subject to the availability of funding and in accordance with 23 U.S.C. § 202(d)(5)(E), as amended by section 1119(g)(4) of Pub. L. 109-59, 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 IRR program in accordance with the funding formula applicable to the IRR Program (25 CFR Part 170, Subpart C), and such additional amount, as determined by the Administrator that would have been withheld by the BIA for the administration of the Tribe's IRR Program 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(d)(5)(E) and further identified in Attachment A to this Agreement.

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 Relative Need Distribution Factor (RNDF) percentage, 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 (see Attachment B) to the Administrator and the Administrator 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. The Parties agree that the RFA will be renegotiated annually on a fiscal year basis.

C. Pursuant to section 1119(g)(5)(B) of SAFETEA-LU (23 U.S.C. § 202(d)(5)), 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 IRR 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 no additional IRR Program funds are available for Contract Support Costs.

E. Funds advanced to the Tribe under this Agreement shall be used by the Tribe as permitted under 23 U.S.C. § 202(d) and 25 CFR Part 170, as amended by SAFETEA-LU, 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 IRR Transportation Improvement Program (IRRTIP), 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 appropriate savings, checking or investment 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 identified on an FHWA approved IRRTIP (section 1119(c) of SAFETEA-LU).
- (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 IRR Program 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 (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.

G. 1. The Tribe may issue bonds or enter into other debt financing instruments under 23 U.S.C. §122 with the expectation of payment of IRR Program 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 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 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 there under.

- 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 § 170.301, the Tribe may use IRR Program 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-IRR Program funds, including Tribal funds; and

(b) was included in an FHWA-approved IRR TIP.

I. The Tribe may use IRR Program 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(d)(5), as amended by section 1119(g)(4) of SAFETEA-LU. 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.²

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(d), 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.

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 SAFETEA-LU, Pub. L. 109-59, 119 Stat. 1144 (August 10, 2005).

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 SAFETEA-LU section 1119(i) (not more than 25% of the funds allocated to a tribe may be expended for the purpose of maintenance, excluding road sealing which shall not be subject to any limitation);
- Development and negotiation of Tribal-State road maintenance agreements authorized under section 1119(k) of SAFETEA-LU;
- **(INSERT ANY ADDITIONAL ITEMS)**; and
- Other IRR Program-eligible activities authorized under Chapter 2 of Title 23 or 25 CFR Part 170, as each may be amended by SAFETEA-LU, 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 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.

² The language of footnote 1 is incorporated by reference herein.

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.³ 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. (INSERT ANY SPECIAL EQUIPMENT ISSUES) The Parties agree that the Tribe shall be permitted to utilize IRR Program and other Federal Lands Highway 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 IRR Program funds are used for this purpose.

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 SAFETEA-LU. 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 section 1119(e) of SAFETEA-LU (amending § 202(d)(2) of Chapter 2 of Title 23, United States Code), and provide a copy of said PS&E approval to the facility owner. 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 meet or exceed the applicable health and safety standards; and

³ The language of footnote 1 is incorporated by reference herein.

c) will 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 Federal Lands Highways Associate Administrator and 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)(23), 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.⁴

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 inventory of roads and bridges and to develop the annual IRR Transportation Improvement Program (IRRTIP).

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, the Tribe agrees to develop appropriate construction easements, maintenance and utility agreements needed for the construction of IRR facilities carried out under this Agreement. The Tribe agrees to perform all environmental and archeological review functions under this Agreement in accordance with 25 CFR Part 170, Section 6002 of SAFETEA-LU, codified at 23 U.S.C. § 139, and other applicable laws.

F. Construction.

1) In accordance with the FHWA-approved IRR-TIP, the Tribe agrees to initiate and complete IRR construction projects in accordance with the approved PS&E and any Tribally-approved change orders and shall periodically 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 IRR Program funds on:

(a) program and administrative expenses authorized under:

- (i) this Agreement;
- (ii) 25 CFR Part 170, as amended by SAFETEA-LU;
- (iii) OMB Circular A-87 (codified in 2 CFR); or
- (iv) other applicable law; and

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

⁴ 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.

3) Once an IRR 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 Part 170.

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 IRR Program 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 a courtesy copy of its annual single agency audit report; semi-annual progress reports which contain a narrative of the work accomplished; and semi-annual financial status reports using an SF425- Federal Financial or such similar form as is used by the DOT. The Tribe shall provide the Administrator 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 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 IRR TIP 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 IRR Program, to meet at least annually with a designee of the Tribe and the Administrator to review their respective duties and obligations under SAFETEA-LU, the IRR Program, 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
 (INSERT NAME OF TRIBE)
 (INSERT ADDRESS)

With a copy to:

Tribal Transportation Director
 (INSERT NAME OF TRIBE)
 (INSERT ADDRESS)

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:

Indian Reservation Roads Program Manager
 (HFPD-1)
 Federal Highway Administration
 U.S. Department of Transportation
 1200 New Jersey Ave, SE, Room E61-311
 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 (INSERT STATE LOCATION).

Section 7. Joint Inspection. The Administrator shall conduct the final project inspection jointly with the Tribe and facility owner and shall concur in the BIA's acceptance of the construction project or activity for the purpose of including the completed project in the BIA's IRR Program 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 IRR Program 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 IRR Program funds on the same basis as other Indian tribes according to the Tribal Transportation Allocation Methodology (TTAM) set forth in 25 CFR Part 170, as well as other funds of the DOT, not included in this Agreement, which are available to Tribe on a competitive, formula, or other basis, including non-recurring funding such as High Priority Project funding, and Congressional earmarks such as Public Lands Highways Discretionary grants. 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 a federal program under the authority of SAFETEA-LU, in accordance with the ISDEAA, 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 IRR Program. Under 25 U.S.C. § 450e(b) and 23 U.S.C. § 204(e), 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 IRR Program.

B. The Tribe's employment rights and contracting preference laws, including tribal preference laws, apply to this Agreement.

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. On the date of the termination of the Agreement by the Tribe as authorized under 23 U.S.C. § 202(d)(5), as amended by section 1119(g)(4) of SAFETEA-LU, or if the Administrator 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 section as authorized under section 1119(g)(4) of SAFETEA-LU, 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 however, 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 9. (INSERT ANY SPECIAL CONDITIONS/ISSUES, OTHERWISE DELETE)

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 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 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. Indian Reservation Roads Program Agreement. No later than six months prior to the expiration of this Agreement, the Parties shall commence negotiation of a successor Indian Reservation Roads 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 SAFETEA-LU.

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.

(INSERT NAME OF TRIBE)

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

By_____

By_____

**(INSERT NAME OF SIGNATORY)
(INSERT TITLE)**

John R. Baxter, P.E., Associate Administrator
Office of Federal Lands Highway

Date

Date

Example 3.2 - Tribal Resolution

XYX Tribe
P. O. Box 123
City, State Zip Code
Ph: (xxx) xxx-xxxx
Email: xyz@aol.com
www.xyz.org

RESOLUTION: 11-06

Approving the Tribe's Assumption of Transportation Functions under SAFETEA-LU and Approving the Issuance of a Notice of Intent to FHWA and BIA

WHEREAS, XYZ Council is the governing body of the XYZ Tribe, a federally recognized Native Tribe; and

WHEREAS, the XYZ Council is empowered, under Article V, Sections I, II, III of the Tribal Constitution, to negotiate with Federal, State, and local governments, and others on behalf of the Tribe, to advise and consult with the representatives of the Departments of federal agencies on all activities that may affect the Tribe; and

WHEREAS, the XYZ Council finds that transportation infrastructure is vital to the future economic prosperity of Tribal members living in or near the XYZ Tribe; and

WHEREAS, the XYZ Council finds that rebuilding roads and bridges on, or which provide access to XYZ Tribe improves the safety and security of Tribal members and nonmembers who live or work in the XYZ Tribe, and renews the sense of pride that all members have for our Tribe; and

WHEREAS, the Congress passed and the President signed the highway reauthorization SAFETEA-LU, the Safe, Affordable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users, Public Law No. 109-59, 119 Stat. 1144 (2005); and

WHEREAS, SAFETEA-LU increases Tribal opportunities in the administration and development of Tribal transportation programs and authorizes the Secretary of Transportation to contract directly with Native Tribes to assume the responsibilities of and the associated funding for the Indian Reservation Roads (IRR) Program serving a Tribe; and

WHEREAS, 23 U.S.C. § 202(d)(5), as amended by Section III9(g)(4) of SAFETEA-LU, provides that an Native tribal government may carry out any IRR Program or project through a contract or agreement with the Secretary of Transportation in accordance with the Native Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) and further provides that the Tribal government may assume "all functions and duties that the Secretary of the Interior would have performed" for the benefit of the Tribal government, with the exception of certain inherent federal functions; and

WHEREAS, the Tribe believes that establishing a comprehensive transportation program for the Tribe will further the long-term interests of the Tribe, afford the Tribe greater flexibility and control to prioritize transportation needs for the Tribe, and permit the Tribe to utilize flexible financing arrangements available by law to speed the development of transportation infrastructure in Native Village XYX; and

WHEREAS, the XYX Council desires to assume the Secretary of the Interior's duties and functions with respect to the IRR Program serving the Native Village of XYX and such other Tribal transportation programs as may be appropriate under 23 U.S.C. § 202(d)(S), as amended by Section 1119(g)(4) of SAFETEA-LU; and

WHEREAS, the Tribal Transportation Department possesses the financial stability and management capability required by section 1119(g)(4) of SAFETEA-LU, and possesses the expertise and experience to assume the Secretary of the Interior's responsibilities in the area of transportation planning, design, construction and maintenance;

NOW, THEREFORE BE IT RESOLVED, that the XYX Council does hereby approve the Tribe issuing a Notice of Intent to the Secretary of the Interior and the Administrator of the Federal Highways Administration to assume the transportation duties of the Secretary of the Interior under the IRR Program, together with transportation-related activities for the Native Village of XYZ, and instructs the Tribal President, the Tribal Transportation Services Consultant to take all necessary actions to develop with the Federal Highway Administration a mutually acceptable government-to-government agreement to administer the IRR Program serving the Village; and

BE IT FURTHER RESOLVED, that the Tribal President is hereby authorized and instructed to sign this Resolution and all necessary agreements and contracts for and on behalf of the Tribe in order to establish and assume the transportation duties of the Secretary of the Interior serving the Native Village XYZ.

CERTIFICATION

The XYZ Council adopted this resolution numbered 11-06 during a special meeting held on this day the 9th of March 2011 in the Tribal Office with a quorum present.

For 5; Against 0; Abstain 0

Present 5; Absent 0

Dated this 9th day of March 2011

XYX President

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)

V. Funding

Statutory/Regulatory Requirements

In reference to 23 U.S.C. 202(d)(5)(E) and subject to the availability of funding, the Administrator shall provide to the Tribe, or its designee, a funding amount equal to the amount that the Tribe would otherwise receive for the IRR program in accordance with the funding formula to the IRR Program (25 CFR 170, Subpart C). Further, the Tribe would receive additional funding as determined by the Administrator usually withheld by the BIA for the administration of the Tribe's IRR Program or projects.

Guidelines/Procedures

1. **ACH Banking Form.** The Tribe prepares an ACH banking form (**See Example 5.1 –ACH Banking Form**) and submits to the FHWA Tribal Coordinator or the BIA FPOC who e-mails the ACH Banking information to FHWA-FLH HQTS. The form can be accessed at:

<http://www.eda.gov/PDF/FORM%20SF-3881%20ACH.pdf>

- A. **Funds Transfer.** The FHWA-FLH-HQTS will transfer funds to the Tribe's account within the agreed upon time period in the Program Agreement and RFA. Once the FHWA-FLH-HQTS receives the signed RFA form, the FHWA-FLH-HQTS signs the RFA and allocates funds to the Tribes within 30 days.

Types of funds that can be transferred: Under the Program Agreement with the FHWA, the types of program funds that can be transferred to the Tribe are described in Chapter 2 of Title 23, U.S.C., program funds. Some funds in addition to the IRR program funds may be transferred to the Tribe. The Tribe should contact the FHWA Tribal Coordinator to determine which funds may be transferred.

Availability of funds: IRR funds are available for obligation in the fiscal year for which they are authorized plus three additional fiscal years. After that point, the funds lapse and are no longer available. When the funds are provided to the Tribe through the RFA, the funds are deemed obligated.

Example 5.1 – ACH Bank Form

ACH VENDOR/MISCELLANEOUS PAYMENT ENROLLMENT FORM

OMB No. 1510-0056

This form is used for Automated Clearing House (ACH) payments with an addendum record that contains payment-related information processed through the Vendor Express Program. Recipients of these payments should bring this information to the attention of their financial institution when presenting this form for completion. See reverse for additional instructions.

PRIVACY ACT STATEMENT
The following information is provided to comply with the Privacy Act of 1974 (P.L. 93-579). All information collected on this form is required under the provisions of 31 U.S.C. 3322 and 31 CFR 210. This information will be used by the Treasury Department to transmit payment data, by electronic means to vendor's financial institution. Failure to provide the requested information may delay or prevent the receipt of payments through the Automated Clearing House Payment System.

AGENCY INFORMATION		
FEDERAL PROGRAM AGENCY		
AGENCY IDENTIFIER:	AGENCY LOCATION CODE (ALC):	ACH FORMAT:
		<input type="checkbox"/> CCD+ <input type="checkbox"/> CTX
ADDRESS:		
CONTACT PERSON NAME:		TELEPHONE NUMBER:
		()
ADDITIONAL INFORMATION:		

PAYEE/COMPANY INFORMATION	
NAME	SSN NO. OR TAXPAYER ID NO.
ADDRESS	
CONTACT PERSON NAME:	TELEPHONE NUMBER:
	()

FINANCIAL INSTITUTION INFORMATION	
NAME:	
ADDRESS:	
ACH COORDINATOR NAME:	TELEPHONE NUMBER:
	()
NINE DIGIT ROUTING TRANSIT NUMBER:	
DEPOSITOR ACCOUNT TITLE:	
DEPOSITOR ACCOUNT NUMBER:	LOCKBOX NUMBER:
TYPE OF ACCOUNT:	
<input type="checkbox"/> CHECKING <input type="checkbox"/> SAVINGS <input type="checkbox"/> LOCKBOX	
SIGNATURE AND TITLE OF AUTHORIZED OFFICIAL: (Could be the same as ACH Coordinator)	TELEPHONE NUMBER:
	()

AUTHORIZED FOR LOCAL REPRODUCTION

SF 3881 (Rev. 2/2003)
Prescribed by Department of Treasury
31 U.S.C. 3322; 31 CFR 210

Instructions for Completing SF 3881 Form

1. Agency Information Section - Federal agency prints or types the name and address of the Federal program agency originating the vendor/miscellaneous payment, agency identifier, agency location code, contact person name and telephone number of the agency. Also, the appropriate box for ACH format is checked.
2. Payee/Company Information Section - Payee prints or types the name of the payee/company and address that will receive ACH vendor/miscellaneous payments, social security or taxpayer ID number, and contact person name and telephone number of the payee/company. Payee also verifies depositor account number, account title, and type of account entered by your financial institution in the Financial Institution Information Section.
3. Financial Institution Information Section - Financial institution prints or types the name and address of the payee/company's financial institution who will receive the ACH payment, ACH coordinator name and telephone number, nine-digit routing transit number, depositor (payee/company) account title and account number. Also, the box for type of account is checked, and the signature, title, and telephone number of the appropriate financial institution official are included.

Burden Estimate Statement

The estimated average burden associated with this collection of information is 15 minutes per respondent or record keeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Financial Management Service, Facilities Management Division, Property and Supply Branch, Room B-101, 3700 East West Highway, Hyattsville, MD 20782 and the Office of Management and Budget, Paperwork Reduction Project (1510-0056), Washington, DC 20503.

VI. Allowable Uses of Program Funds

Overview. Program funds are Federal funds that may only be expended on allowable expenditures. The program funds also come with conditions. The allowable expenditures are broken into two broad activity categories: (1) Planning and Design activities, and (2) Construction and Improvement activities. The Allowable Uses of IRR Program Funds are set out at Appendix A to Subpart B of 25 CFR 170. **The most common allowable expenditures are:**

1. Planning and Design activities –

- Transportation Planning, highway and transit safety planning, programming, studies and activities
- Indirect general and Administration costs, which includes a onetime start-up cost. Start-up cost includes, but is not limited to, computers, office furniture and equipment, and software. Costs should be reflected in a budget and must be reasonable and in accordance with OMB Circular A-87.
- Environmental studies, evaluations, and compliance activities
- Planning and design of mitigation of damage to wildlife, habitat and ecosystems caused by a transportation project
- Architectural and landscape engineering services including lighting
- Engineering design
- Inspection of bridges and structures
- Highway and transit safety planning, programming, studies and activities
- Public meetings and public involvement activities
- Tribal employment rights ordinance (TERO) fees
- See Appendix A to Subpart B of 25 CFR 170 for complete list of allowable uses of program funds

2. Construction and Improvement activities –

- Construction, reconstruction, rehabilitation, resurfacing, restoration, and operational improvements
- Highway bridges and structures under 20 feet in length
- Road sealing and chip seals
- ADA pedestrian facilities improvements , construction of pedestrian walkways and bicycle transportation facilities
- Seasonal transportation routes, including snowmobile trails, ice roads, overland winter roads
- Mitigation activities required by Tribal state or Federal regulatory agencies and 42 U.S.C. 4321 *et seq.*, The National Environmental Policy Act (NEPA) (see Appendix A to Subpart B of 25 CFR 170 for other environmental related allowable costs.
- Tribal employment rights ordinance (TERO) fees
- Road Maintenance, as authorized under SAFETEA-LU section 1119(i); (not more than 25 percent of the funds allocated to a Tribe may be expended for the purpose of maintenance, excluding road sealing, which shall not be subject to any limitation).
- Development and negotiation of Tribal-State road maintenance agreements authorized under section 1119(k) of SAFETEA-LU
- Equipment Purchase (requires a written notification to and approval by the FHWA or the BIA with justification and back-up documentation showing that it is more economical to purchase than to lease)

Conditions on IRR Funds. The amount of IRR allocation funds have certain conditions placed on them. They are:

- Planning – Up to 2% of total fiscal year IRR Program funds as shown on RFA (23 U.S.C. 204(j); Up to 100% of their IRR Program Funds (25 CFR 170.403) if identified as a priority on TTIP; Up to \$35,000 or 5% of IRR Program Construction funds, whichever is greater (25 CFR 170.404). Note: If a Tribe exceeds this threshold, then the amount over the threshold will be subtracted from the Tribe's cost to construct factor for the following year.
- Preliminary Engineering – Any amount of total fiscal year Tribes IRR allocation minus any amounts from other areas (25 CFR 170.454 to 463).
- Construction – Up to 100% of total fiscal year Tribes IRR allocation minus any amounts from other area (25 CFR 170.470 and Appendix A to subpart D).
- Construction Engineering – Up to 100% of total fiscal year Tribes IRR allocation year minus any amounts from other areas.
- Transit – Up to 100% of total fiscal year Tribes IRR allocation minus any amounts from other areas (25 CFR 170.148 to 152).
- Maintenance – Up to 25% of total fiscal year IRR Tribal allocation (23 U.S.C. 204(b)(c); 25 CFR 179 Subpart G).

VII. Transportation Planning

Overview. Transportation planning is a field involved with the evaluation, assessment, and design of transportation facilities (generally streets, highways, sidewalks (pathways), bike lanes and public transit). The transportation planning process defines goals and objectives, identifies problems, generates alternatives, evaluates alternatives, and develops plans. In addition, transportation planning assesses future funding requirements for the transportation system to meet projected travel demand.

The transportation planning process also includes data collection. Tribes collect data and provide this information to the BIA who maintains the updated inventory of roads and bridges, and calculates apportionment factors for funding.

Key products from the transportation planning process require the Tribe to develop a Long Range Transportation Plan (LRTP) and a Tribal Transportation Improvement Program (TTIP). As referenced in the Program Agreement, FHWA or BIA approves the TTIP developed by the Tribes, and the Tribes implement the activities from the approved TTIP.

The role of the FHWA or BIA Tribal Planner is to provide technical expertise and assistance throughout the transportation planning process.

A. Statutory/Regulatory Requirements (25 CFR 170.400-407)

As defined in 25 CFR 170, the purpose of transportation planning is to fulfill transportation goals by developing strategies to meet transportation needs. Transportation strategies should be developed in consideration of current and future land use, economic development, traffic demand, public safety, health, and social needs. In addition, the transportation strategies should consider all modes of transportation including vehicle, transit, pedestrian, bicycle, freight, and as appropriate, rail, air, and water.

The Tribe should consider coordinating with and must inform (25 CFR 170.108(a)(1)) the State DOT and as appropriate any Metropolitan Planning Organization (MPO) on their transportation planning process to ensure any programs and projects adjacent to Tribal lands are consistent and appropriate with Tribal needs and interests.

The following are the functions, duties, and responsibilities the Tribal government has assumed when implementing the transportation planning process:

1. Preparing IRR inventory data updates as needed;
2. Coordinating with States, their political subdivisions, and appropriate planning authorities on regionally significant projects;
3. Developing Program budgets including transportation planning cost estimates;
4. Facilitating public involvement;
5. Participating in transportation planning and other transportation related meetings;
6. Performing traffic studies;
7. Performing preliminary project planning;
8. Conducting special transportation studies;
9. Developing short and long-range transportation plans;
10. Developing the TTIP;
11. Mapping;
12. Performing transportation planning for operational and maintenance facilities; and
13. Researching rights-of-way documents for project planning.

The following are the functions, duties, and responsibilities the FHWA and BIA have assumed when implementing transportation planning process:

1. Reviewing LRTPs developed by the Tribe or other contractors;
2. Reviewing and approving TTIPs developed by the Tribes or other contractors;
3. Ensuring the TTIP is on the State TIP (STIP);
4. Providing technical assistance to Tribal governments;
5. Coordination with tribal, State, regional, local governments; and
6. Coordinating with other Federal agencies.

B. Tribal Long Range Transportation Plan (LRTP)

Under the guidance of 25 CFR 170, a LRTP provides the vision for meeting transportation needs. The LRTP identifies short and long-range transportation improvement strategies that will address current and future transportation needs consistent with Tribal, Federal, and State government policies. The LRTP addresses various capital investments and inventories current facilities necessary in preserving existing infrastructure and the transportation system as a whole. This process and the plan are prerequisites to the expenditure of Federal funds. The following chart references key items for a LRTP.

Long Range Transportation Plan	
Item	Reference
Plan development, updates, amendments, and adoption (approved and date by Tribal Policy body)	25 CFR 170 Subpart D.
Time horizon for long-range transportation planning should be 20-years to match State transportation planning horizons. The Tribal transportation planner should review and update the LRTP at least every 5 years.	25 CFR 170.410
Includes both long- and short-range <i>strategies</i> that address current and future land use, economic development, traffic demand, public safety, health, and social needs. Lead to an intermodal transportation system that facilitates the efficient movement of people and goods.	25 CFR 170.411
Identifies approach in addressing current and future transportation demand. (Trip generation reports, forecast, etc.)	25 CFR 170.400 25 CFR 170.410 25 CFR 170.411(b)
Identifies existing and future transportation network. (Official IRR Inventory, proposed routes, routes to be included in IRR inventory, transit, water, air, etc.)	Best Practice
Identifies pedestrian walkways and bicycle transportation facilities.	25 CFR 170.101(a)(1) 25 CFR 144
Describes proposed improvements in sufficient detail to develop cost estimates.	25 CFR 170.402(b)(10)
Sensitive environmental and archeological sites identified or noted.	25 CFR 170.450(b) 25 CFR 170.415
Includes an acceptable <i>financial plan</i> that demonstrates consistency of proposed transportation investments with available and projected resources.	25 CFR 170.411(j)
Estimates revenues identify both existing and proposed source (local, State, Federal, Tribal, and private).	
Provides early and continuing opportunity for public official and citizen involvement on the draft LRTP.	25 CFR 170.413, 25 CFR 170.435-411
Provides consultation and coordination with States and/or MPO's for regionally significant projects.	25 CFR 170.415
Includes a prioritized list of short- and long-term transportation needs.	25 CFR 170.411(i)

L RTP Approvals. The FHWA or the BIA does not approve the Tribal LRTP. The FHWA or the BIA Planning Specialist will be available for technical assistance during the plan development, update, or amendment prior to adoption by the Tribal Council. Once adopted, the FHWA or the BIA will review each plan and prepare a written record of the plan's adherence to applicable laws and regulations. Such reviews will be provided to the Tribal government for their information and will become part of the written record for the FHWA's and BIA's use in making a Federal planning finding on their Tribal transportation planning process.

LTRP Publication. A Tribe's LRTP shall be published in electronically accessible formats (to the maximum extent practicable in .doc, .txt, or .pdf files) and an electronic copy given to their respective Federal agency (FHWA; or BIA FPOC, and BIA DOT). A hard copy and/or electronic version must be given to other governmental entities and organizations that hold an interest in coordinating transportation projects with the Tribal government.

L RTP Resources. The following are resources that can assist in developing a short/long range transportation plan:

Web links:

- FHWA Tribal Transportation Planning – <http://www.fhwa.dot.gov/hep/Tribaltrans/index.htm>
- Bureau of Indian Affairs Indian Reservation Roads (IRR) Inventory Report - <https://www.itims.doi.gov/reports.shtml>
- National Tribal Technical Assistance Program (TTAP) - <http://www.ltapt2.org/centers/>
- Code of Federal Regulations – <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>
- Office of Federal Lands Highway – <http://www.fhwa.dot.gov/flh/>

Books/Manuals:

- *Manual on Uniform Traffic Control Devices.*
- *Trip Generation*, Institute of Transportation Engineers.
- *Parking Generation*, Institute of Transportation Engineers.
- *Transportation Decision-making Information Tools for Tribal Governments – Developing A Long Range Transportation Plan*, FHWA Office of Planning.
- *Practitioner's Handbook #10: Using the Transportation Planning Process to Support the NEPA Process*, American Association of State Highway and Transportation Officials.

C. Tribal Transportation Improvement Program (TTIP)

Definitions:

- **TTIP:** Tribal Transportation Improvement Program. A multiyear financially constrained list of proposed transportation projects developed by a Tribe using the Tribal Priority List from the LRTP. Note: The transportation facilities in the TTIP must be in the approved BIA IRR Inventory.
- **IRRTIP:** Indian Reservation Roads Program Transportation Improvement Program is a combination and complete list of all Tribal TIPs together.
- **Financially constrained:** In the broadest sense, financially constrained means a Tribe cannot show more projects/activities in their TTIP than they have funds available (23 CFR 450.104, 23 USC 204(2)).

The projects listed on the TTIP must be consistent with the LRTP (25 CFR 170.421(a)). For those projects funded under the IRR program, the route must be listed in the official IRR Inventory (25 CFR 170.442 (a)).

The TTIP documents anticipated or available funding source(s) used to implement the transportation project. Funded transportation projects must be listed on a FHWA approved TTIP.

The TTIP must adhere to all relevant provisions found in 25 CFR 170. The FHWA or BIA Transportation Planning Specialist will provide technical assistance to the Tribe to ensure that all Federal planning requirements have been met in the development of the proposed TTIP.

The TTIP must be financially constrained and contain all proposed projects and activities for construction programmed for four years. The year the project or activity will be implemented should be indicated in the TTIP.

Projects that are not financially constrained in the TTIP will be considered a part of an illustrative list, as long as they are listed in the LRTP. The unconstrained projects will not be considered for approval on the TTIP, nor will they be forwarded to be included into the State DOT STIP. Once funds become available for any project identified on the illustrative list, an amendment to the TTIP should be made showing the project as funded and programmed and forwarded to the Tribe's respective Federal agency, the FHWA or the BIA for approval.

All stake holders, as required by 25 CFR 170.424, prior to submitting the TTIP for approval, the public must be allowed the opportunity to review and comment on the TTIP. The TTIP is subject to approval by the FHWA and concurred by the BIADOT Regional Road Engineer.

Guidelines/Procedures

The following table shows the timeline for the development, delivery, and approval of the TTIP (25 CFR 170.425).

TTIP Timeline (Fiscal Year)			
Quarter	Month	Action Item	Responsible Party
1 st Quarter	Oct-Nov-Dec	(1) Notifies the Tribe of the annual update of the TTIP; (2) Organize with the Tribe a TTIP Coordinating meeting; (3) Provides the Tribe “Projected Program Amount” letter with funding amounts (see Example 7.1); (4) Sends a copy to the Tribe of the current TTIP; (5) Provide a Pre-Project Planning Scope worksheet to the Tribe; and (6) Provide the Tribe with a FHWA Approved TTIP Form (see Example 7.2); (7) Provide the Tribe a copy of the TIP Certification Statement (see Example 7.3).	FHWA Tribal Coordinator or BIA FPOC
2 nd through 4 th Quarter	Jan – on or before July 15	(1) Reviews any new transportation planning information, priority lists, and TTIP. (2) Completes and forwards an updated TTIP package (Transportation Planning Process and TTIP Development Certification; TTIP Checklist; Approved TTIP Forms) to FHWA Transportation Planning Specialist or BIA FPOC.	Tribe
4 th Quarter	July 16 through September	Reviews all submitted information with the Tribes	FHWA Tribal Coordinator or BIA FPOC
		Upon satisfactory submittal, the TTIP is approved.	FHWA Planning Specialist or FPOC

During the first quarter of the fiscal year, the Tribe will receive a Projected Program Amount letter (**see Example 7.1**). The IRR Program projected amount is used to assist in developing the TTIP. The IRR Program projected amount is not a guaranteed funding amount, nor is it to be used as leverage for other funding. The amount documented in the letter is for planning purposes only and to fulfill the requirements of 25 CFR 170.425.

Also, each Tribal transportation department will receive an electronic “FHWA Approved TTIP Form” or “BIA Approved TTIP Form” (**see Example 7.2**) or the Microsoft Access Data (**see Example 7.4**) base file to develop their TTIP. The Tribe will fill out one of these forms for each activity to be included in their TTIP. Activities will fall into seven categories:

1. Administration
2. Planning
3. Preliminary Engineering
4. Construction
5. Construction Engineering
6. Transit
7. Maintenance

A Pre-Project Planning Scope Worksheet (see **Example 7.5**) can be used to aid the Tribe in determining a rough estimate cost for pre-project activities to be included in the TTIP. During this phase of the TTIP development, the Tribe and FHWA or BIA should mutually determine what inherent and/or non-inherent functions the Federal Government will be perform (see Appendix A to Subpart E – IRR Program Functions that are not Otherwise Contractible).

Typically, “inherent Federal functions” are at no cost to the Tribe (e.g., National Environmental Policy Act (NEPA) Approval); where as non-inherent functions are a cost to Tribes (e.g., NEPA documentation, design, construction, and project management).

TTIP Development. The following defines the seven categories and provided basic guidance to aid Tribes in filling out the FHWA Approved TTIP Form or the BIA Approved TTIP form.

Category	Guidance
Administration	The Tribe’s administrative expenses which can be taken off the top of the IRR allocation for administrating the IRR program. Cost may be direct and/or indirect cost. Indirect cost should match line 11 of the Federal Financial Report, SF 425. (See Section XV - Reporting Requirements on Indirect Cost).
Planning	See Appendix A to Subpart B for a list of allowable uses of IRR Program funds that can be used for planning. Up to 2% of total fiscal year IRR Program funds as shown on the RFA (23 U.S.C. 204(j); Up to \$35,000 or 5% of IRR Program Construction funds, whichever is greater (25 CFR 170.404) and Population Adjustment Factor (PAF) funds may be used.
Preliminary Engineering	Costs associated with surveying, design, NEPA technical engineering, ROW acquisition, etc. Usually the anticipated cost is between 10-25% of the overall project costs. Funds include any amount of total fiscal year Tribes IRR allocation minus any amounts from other areas (25 CFR 170.450 to 460).
Construction	Costs associated with construction activities include but are not limited to roadway construction, utility relocation, bridge construction, culvert placement (not replacement of culverts), etc. Budgeted costs are usually between 60-90% of the overall project cost. Funds used for construction can be up to 100% of total fiscal year Tribes IRR allocation year minus any amounts from other area.
Construction Engineering	Costs associated with project management, inspection, material testing, etc. Budgeted costs are usually between 10-15% of overall the project costs. Funds used for construction engineering can be up to 100% of total fiscal year Tribes IRR allocation year minus any amounts from other area.
Transit	Costs associated for transit are any associated authorized transit projects. Costs should be coordinated with the Federal Transit Administration (FTA) if used as matching FTA projects. Funds used for transit can be up to 100% of total fiscal year Tribes IRR allocation minus any amounts from other area (25 CFR 170.148 to 152).
Maintenance	Activities identified as maintenance are located in 25 CFR 170 Appendix A to Subpart G. Funds used for maintenance can be up to 25% of total fiscal year IRR Tribal allocation (23 U.S.C. 204(b)(c); 25 CFR 179 Subpart G), except for road sealing, which is not subject to any limitation.

Submitting the TTIP Package. The Tribe should submit the following items as a package to the FHWA or BIA Transportation Planning Specialist for review in order for the TTIP to be approved:

1. A signed and dated “Tribal Transportation Planning Process and Transportation Improvement Program Development Certification Statement” (see **Example 7.3**).
2. FHWA or BIA Approved TTIP Forms for each project/activity.
3. Tribal Resolution or Tribally authorized government action.

The TTIP package may be mailed, e-mailed or faxed to the FHWA or BIA Transportation Planning Specialist.

Reviewing the TTIP:

The FHWA or BIA Transportation Planning Specialist will review the TTIP package.

Note: If the FHWA or BIA Transportation Planning Specialist does not receive a signed “Transportation Planning Process and Transportation Improvement Program Development Certification Statement”, as described above, then a manual and more time consuming review process will take place.

Approving the TTIP:

The FHWA and BIA has until September of the current fiscal year to approve the TTIP (BIA will concur). Once the TTIP is approved, the document becomes part of the official IRRTIP. The Tribe will then receive a signed copy of the TTIP and an approval letter (see **Example 7.6**). If some projects are not eligible, the Tribe will receive a “partial” TTIP approval.

A copy of the TTIP will be sent to the FHWA Division Office in the State where the Tribe is located, and to the BIA Region Office. The Division Office will send the TTIP to the State DOT for inclusion in the STIP. (Note: Having a project listed on the STIP does not guarantee State funding.)

Note: Currently the BIA is developing an Integrated Transportation Information Management System (ITIMS) where the TTIPs will be sent. Once implemented, the TTIP processing may change.

TTIP Resources.

The following are resources that can assist in developing a TTIP:

Books/Manual:

- Tribal Transportation Planning – This is a FHWA Tribal Transportation Planning website. This site provides information, training, and technical assistance to the transportation professionals responsible of planning for the capital, operating, and maintenance needs on Tribal lands. On this website, you will find planning news, regulations, policies, training information, technical resources, and contact information. Also on this site is a Tribal Transportation Module Training Series, which topics such as, Introduction to Planning; Developing a LRTP; Developing a TIP; Funding Resources; Public Involvement; Data Collection and Uses; Safety; and Project Prioritization.

<http://www.fhwa.dot.gov/hep/Tribaltrans/topics.htm>

Example 7.1 - Projected Program Amount Letter

The Honorable [insert Tribal chairperson name]
[insert name of Tribal Government]
[insert Tribal address]

[date]

Dear Chairperson [name]

In accordance with 25 CFR 170.425 the Federal Highway Administration (FHWA) Federal Land Highways (FLH) (or the BIA) is providing the [insert Tribe's name] with a *projected* Indian Reservation Roads (IRR) program amount to aid the [insert Tribe's name] in programming the [insert TTIP year] Tribal Transportation Improvement Program (TTIP).

The projected program amount is developed by averaging the last five years of the relative need distribution of the [insert Tribe's name].

The projected program amount is [insert projected \$ amount].

The amount is not to be construed as an official Federal allocation nor is it to be used as leverage for other funding. According to the Program Agreement between the [insert Tribe's name] and the FHWA (or the BIA), the Referenced Funding Agreement (RFA) provides the funding amount to be received for the program. The projected program amount is not the RFA amount. *The projected amount is to be used for planning purposes only for assisting the [insert Tribe's name] in developing the TTIP.*

Please contact me if you have any questions concerning this letter.

Sincerely,

[insert name]
Transportation Planning Specialist

Example 7.2 – FHWA or BIA Approved TIP Form

FHWA Approved TTIP Form

Example: Transportation Improvement Plan spreadsheet for IRR funds (four years financially constrained). Identify funding for core construction categories. Preliminary Engineering (PE), Construction Engineering (CE), Construction (CN), Transit, and Maintenance. If you are using IRR construction funds for general planning or maintenance, include as an individual project.

FLHIRRTIP SUBMITTAL DOCUMENT

Date:

TRIBE:

Current FY:

FUNDING SOURCE: (examples: IRR, IRRBP, 2% Planning, PLH-D)

PROJECT INFORMATION:

PROJECT NAME

PROJECT NUMBER

LOCATION

TYPE OF WORK

LENGTH (miles) COUNTY (name)

STATE (name) CONSTRUCTION YEAR (fiscal year)

COMMENTS:

Activity	CURRENT FY	CURRENT FY+1	CURRENT FY+2	CURRENT FY+3	CURRENT FY+4	TOTAL
Administration						\$0
Planning						\$0
Preliminary Engineering						\$0
Construction						\$0
Construction Engineering						\$0
Transit						\$0
Maintenance						\$0
TOTAL	\$0	\$0	\$0	\$0	\$0	\$0

Example 7.3 - TTIP Certification)

Transportation Planning Process and Tribal Transportation Improvement Program (TTIP) Certification Statement

As agreed upon in the Indian Reservation Roads Program Agreement with the United State Department of Transportation for the [insert reservation name, Alaska native village, or service area], the [Tribe] hereby certifies that it has fulfilled the functions and duties of the Secretary of the Interior in accordance with the requirements of 25 CFR 170 in carrying out a planning process and in developing the Tribal Transportation Improvement Program including:

1. Facilitating Public Involvement on the TTIP with all stakeholders,
2. All projects in the TTIP are consistent with the Tribal Long Range Transportation Plan,
3. All projects listed in TTIP are on the Official BIA IRR Inventory,
4. TTIP contain all IRR program funded projects programmed for construction in the next 4 years,
5. TTIP contains uncompleted project(s) from previous TTIP carried-over,
6. Consultation and coordination with State DOT and/or MPO's for regionally significant projects, and
7. TTIP is financially constrained.

[Name and title]

[Entity]

[Date]

Example 7.4 - Microsoft Access Data Base File

 Office of Federal Lands Highway US Department of Transportation - Federal Highway Administration		Indian Reservation Roads Program Transportation Improvement Program				
Consortium: _____ Tribe: _____		Date: _____				
Funding Source: _____ (examples: IRR, IRRBP, 2% Planning, PLH-D)		Current FY: <input type="text" value="0"/>				
PROJECT INFORMATION:		Include In STIP <input type="checkbox"/>				
		STIP Amount <input type="text" value="\$0"/>				
Project Name: _____ Location: _____ Type of Work: _____ Route Number: _____ Project Number: _____ Length: <input type="text" value="0"/> Miles County: _____ State: _____ Construction Year: _____ Comments: _____						
Activity	CURRENT FY	CURRENT FY+1	CURRENT FY+2	CURRENT FY+3	CURRENT FY+4	TOTAL
Administration	\$0	\$0	\$0	\$0	\$0	
Planning	\$0	\$0	\$0	\$0	\$0	
Preliminary Engineering	\$0	\$0	\$0	\$0	\$0	
Construction	\$0	\$0	\$0	\$0	\$0	
Construction Engineering	\$0	\$0	\$0	\$0	\$0	
Transit	\$0	\$0	\$0	\$0	\$0	
Maintenance	\$0	\$0	\$0	\$0	\$0	
TOTAL	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
APPROVED _____ IRR Program Manager, FHWA FLH		DATE _____				
CONCURRED _____ Bureau of Indian Affairs		DATE _____				

Example 7.5 - Pre-Project Planning Score Worksheet

Pre-Project Planning Score Worksheet

I. General Project Information

1. Project name: _____

2. IRR route number: _____

3. Type of work: _____
(Resurfacing, signalization, reconstruction, etc.)

4. Beginning termini: _____

5. Ending termini: _____

6. Length or area: _____

7. Historical cost for type of work: _____

8. Cooperation with other government agencies needed? Yes No

Agency name: _____

9. Is project regionally significant? Yes No

Note: Regionally significant projects are typically projects anywhere in the State that have direct impact on a regional transportation system or those projects that serve regional transportation needs (e.g., major activity centers, major planned developments such as major retail malls, sport complexes, or employment centers, or transportation terminals) and are normally part of the metropolitan or regional transportation network model.

II. Purpose and need of project: (Answer these two questions: (1) What is the condition requiring relief? (2) What are the consequences of not addressing the condition?)

III. Existing Facility: Will these facilities be impacted? If so, what will be the cost?

Type	Yes	No	Estimate Cost (\$)
Culverts			
Guard Rail			
Fence			
Waterline			
Power line - Buried			
Power line - Overhead			
Telephone - Buried			
Telephone - Overhead			
Intersections			
Approaches			
Other Utilities			

IV. Socioeconomic/Environmental: Are any impacted?

Type	Yes	No
Endangered Species		
Historical/Archeological		
Wet Lands		
Cultural		
Public hearing needed		
Other?		

V. Proposed Project Development: (place a check mark next to the proposed entity to perform the work)

Type	Tribes	BIA Region/Agency	FLH	Estimate Cost (\$)
Survey				
NEPA*				
Preparing NEPA Documents				
Archeological/Historical				
Design				
Safety Audit				
Power line – Overhead				
Right-of-Way Relocation				
Type of ROW	Fee _____	Non-Fee _____		

* FLH and BIA are Lead Federal agencies responsible for writing NEPA decision

Example 7.6 - TTIP Approval Letter

The Honorable [insert Tribal chairperson name]
[insert name of Tribal Government]
[insert Tribal address]

[date]

Dear Chairperson [name]

The Federal Highway Administration (FHWA) Federal Land Highways (FLH) received the [date of TTIP] Tribal Transportation Improvement Program (TTIP) and supporting documents from [Tribe] requesting approval.

In accordance with 25 CFR 170.426, the FHWA and the Bureau of Indian Affairs (BIA) have reviewed the [date of TTIP] TTIP, as transmitted by your email dated [date].

Accordingly, the FHWA (or BIA), based on your certification of the transportation planning process, review of self-certification supporting documentation, and our involvement in the your Tribal planning processes, hereby find that the TTIP is based on a transportation planning process that substantially meets the requirements of 25 CFR 170, and is therefore approved.

Approval of the TTIP is not to be construed as an eligibility determination. Each project must satisfy the specific requirements of the program from which Federal funds are solicited as well as other Federal requirements before funds are expended.

If you have any questions concerning our action of the transportation planning finding and the TTIP approval, please contact me at [insert phone number]

Sincerely,

[insert name]
Transportation Planning Specialist

D. IRR Inventory Update

Definition:

- **IRR Inventory.** A comprehensive database of all transportation facilities eligible for IRR Program funding by Tribe, reservation, BIA agency and region, Congressional district, State, and county. Other specific information collected and maintained under the IRR Program includes classification, route number, bridge number, current and future traffic volumes, maintenance responsibility, and ownership.

Overview. The IRR Inventory is developed through the LRTP process, as described in 25 CFR 170.410 through 170.415. The Tribes can use the inventory to assist in transportation and project planning, justify expenditures, identify transportation needs, maintain existing IRR transportation facilities, and develop management systems.

The BIA Regional offices maintain, certify, and review the data for their region's portion of the IRR Inventory database. Tribes now can receive training from BIADOT to enter their own data updates.

An important use of the inventory is funding disbursement. The BIA uses elements of the IRR road inventory in the Relative Need Distribution Factor (RNDF), the formula to determine tribal shares of transportation funds. Therefore, it is imperative that Tribes maintain their IRR road inventory to maximize their share of those funds.

A. Statutory/Regulatory Requirements

- 25 CFR 170.225 - 170.228 and 25 CFR 170.442 - 170.445.

B. Guidelines / Procedures

BIA maintains the official IRR Inventory. Periodic updating of inventory information is important to ensure Tribal shares of IRR funding are properly calculated and to determine eligibility of facilities for IRR funding of improvements. Inventory updates should be submitted through the BIA Regional Office. Following is an annual process for inventory updates:

Tribal actions:

1. Review the LRTP to determine if there will be additions to or deletions from the official IRR Inventory and amend the LRTP accordingly. This includes updating the inventory due to completion of construction activities.
2. Review the TTIP to determine if adjustments to the sectioning of a route are necessary to properly include an upcoming project in the IRRTIP.
3. Review data fields to determine the need for updates, particularly the fields that are used in the Relative Need Distribution Factor (RNDF) such as current and future average daily traffic (ADT), class, terrain, roadbed condition, and surface condition index.
4. Assemble all attachments required by the BIA to justify/verify the updates.

5. Enter the updated information into the Road Inventory Field Data System (RIFDS) and electronically submit the updates to the BIA Region Office by March 15 with courtesy copies to the FHWA Tribal Coordinator.
6. Correct or complete submissions returned by the BIA Regional Office due to errors or omissions, and submit them electronically to the BIA Regional Office by June 15, with courtesy copies to the FHWA Tribal Coordinator.

BIA Regional Office actions:

1. Provide the Tribe with a copy of the IRR Inventory by November 1.
2. Review phase to include:
 - a. Initial submissions and return errors or omissions to the Tribe by May 15.
 - b. Updated submissions.
3. Certify and submit the data electronically to the Bureau of Indian Affairs Department of Transportation (BIADOT) by July 15.
4. Provide the Tribe a copy of its RNDF distribution percentage by August 15.

The Importance of the Inventory. Inventory is an important factor affecting two of the three elements in the Tribal Transportation Allocation Methodology. Because each Tribe's share of IRR Program funds is determined in part by the transportation facilities, the Tribe should update its IRR Inventory annually. To ensure that the Tribe receives its Tribal share as distributed by the formula found in 25 CFR Part 170 the BIA and FHWA need accurate and complete information about the overall state of transportation facilities that serve Tribal communities.

Resources

- BIA Coding Guide and Instructions
https://www.itims.doi.gov/guides/irr_coding_guide.pdf
- Policy on Minimum Attachments for Acceptance of Indian Reservation Roads/Facilities into the National Road Inventory, Director, Bureau of Indian Affairs, June 15, 2006
<http://www.ttap.mtu.edu/IRR/MinimumAttachmentsPolicy6-15-06.pdf>
- RIFDS Public User Manual
<http://www.ttap.mtu.edu/bia/inventory%20files/RIFDS-PUBLIC-USERSMANUAL.pdf>
- Draft Coding Guide,
<http://www.ttap.mtu.edu/bia/inventory%20files/IRR-CodingGuide-DRAFT.doc>
- BIADOT RIFDS training workshops - by BIADOT or the Tribal Technical Assistance Programs (TTAP)

VIII. Project Charters

Overview. Sometimes referred to as a “Project Charter” or “Memorandum of Understanding,” a Project Charter is a formal document that clearly defines the roles and responsibilities of each entity involved in the coordinated development of a project, as well as the cost and schedule for producing the work required to develop the project. It describes who, what, when, where and how through to a project completion date. For example:

- Who: Who is doing what and under what circumstances? Who retains ownership rights over the product or service? Who is completing the project?
- What: What will happen in every step of the project? If problems arise, what should be done?
- How: How will the project be completed? In a day, week or in a month? How many due dates? One due date or a couple in an effort to break the project down into manageable parts. How will disputes be settled if any should arise?
- When: When and under what situation should different portions of the project occur? Where: Where and in what way will communication take place between the parties? By email, phone or in person?

In conclusion: A Project Charter is just the map to complete a project.

Federal agencies, State agencies, local governments, and Tribal governments may need to coordinate performance of specific tasks in order to efficiently develop and deliver an IRR project in a timely manner. If it is decided that formal documentation is needed to clearly define the roles and responsibilities of each entity involved in the coordinated development of an IRR project, as well as the cost and schedule for producing the work required to develop the project, it is recommended that a Project Charter be executed between the various agencies.

Project Charters should be authorized, approved, and signed by agency management and government leaders, and distributed to all personnel contributing to project development work. In this way, the Project Charter acts as an authoritative agreement to guide project development team members in work tasks and coordination requirements (see **Example 8.1**).

A. Statutory/Regulatory Requirements

Though not required by law, the FLH strongly recommends that Tribal governments enter into Project Charter whenever the Tribe decides that Federal agencies, State agencies, or local governments will be performing specific project development activities in order to deliver a project.

The FLH also recommends that Tribal governments enter into Project Charter whenever State or local government holds rights-of-way (ROWs) or will have some or all of the maintenance responsibilities for the completed project.

B. Guidelines/ Procedures

If the Tribe determines that a Project Charter is needed to cooperatively advance project development of a project, the Tribe should draft the charter to ensure that their perspective of other agency or government contributions and coordination is adequately represented.

The Project Charters should be drafted well in advance of starting any project development activities and circulated to the cooperating agencies or governments for review and comment. The Tribe may consider hosting a project development review meeting to discuss the proposed project and the coordination required.

Roles and Responsibilities. The following outline provides examples of potential agency or governmental roles and responsibilities when establishing a charter for IRR projects advanced by a Tribe under a Program Agreement.

Roles of the Tribe (any route on the IRR system):

- Develops and maintains Tribal policies, procedures, program guidelines which meet or exceed federal standards to facilitate operations or administration of any aspect of the programs assumed by or delegated to the Tribe. These procedures should include contracting procedures (advertising bids, award, and contract), acquisition/procurement procedures (for equipment purchasing including cost and price analysis), attainment of services (architectural/engineering services), etc.
- Drafts Project Charter, provides review copies for cooperating agencies, and executes the Charter with cooperating agencies.
- Identifies project needs and provides resources and other supporting information for project development tasks and products.
- Establishes a Project Development Team to develop project Purpose and Need, study project alternatives, and perform necessary environmental studies/evaluations to obtain project environmental clearances, pursuant to 23 CFR 771 regulations.
- Designs the project and produces the Plans, Specifications, and Engineering Estimate (PS&E).
- Provides reviews and certification of project PS&E, standards, and design exceptions.
- Advertises, awards, and administers the construction contract.
- Inspects and approves the final construction project, or equipment purchase, reports on accomplishments for transit or road maintenance program.
- Invites representatives from facility owned systems (BIA, State, County Local, etc) to attend key decision points in the process and project inspections.

Roles of the BIA Regional Office (BIA-owned routes on the IRR system):

- Can provide project development services such as archeological reports, ROW appraisal and negotiation, surveys, designs, utility relocation, and construction monitoring. These activities would be undertaken at the request of the Tribe and through a Project Agreement and would be a project cost requiring the Tribe to provide adequate funding to the BIA to complete the tasks.
- Have federally inherent ROW responsibilities that include providing Title Status Reports (TSRs), Grants of Easement, and filing ROW documents. These activities are funded by BIA PRAE funds.
- Has the primary responsibility for maintenance of the completed project after construction.
- Reviews preliminary and final plans as the facility owner. Provides review and approval of NEPA documents when the Tribe requests BIA to act as the lead Federal agency using PRAE funds.
- Attends project inspections, final inspection, and concurs in Tribal acceptance of completed construction project.

Roles of FHWA (FLH or FHWA Division for any route on the IRR system):

- Appoints a member to the Project Development Team and assists in developing the project Purpose and Need, studying project alternatives, and approving project environmental clearance.
- Acts in the capacity of lead agency or co-lead agency on Environmental Impact Statement (EIS) NEPA documents, and may be lead agency on other NEPA documents at Tribe's request.
- Reviews and executes a Project Agreement with the Tribe and cooperating agencies.
- Provides resources and other supporting information for project development tasks and products as requested by the Tribe through the Project Agreement. Each FLH Division can provide project development services such as environmental documents, archeological, wetlands, and topographic surveys, design at the request of the Tribe. These activities would be undertaken by request, only through the Project Agreement, and would be a project cost requiring the Tribe to leave adequate funding with the FHWA to complete the tasks.
- Reviews NEPA documentation, and approves the final NEPA document, PS&E contract documents, standards, and design exceptions.
- Reviews construction contract modifications.
- Provides final inspection and approval concurrence of completed construction project.

Roles of the State DOT (State-owned routes on the IRR system):

- Provides resources and other supporting information for project development tasks and products, as requested by the Tribe, through a Project Agreement.
- Appoints a member to the Project Development Team and assists in developing the project Purpose and Need, studying project alternatives, and obtaining project environmental clearance.
- Obtains necessary ROW and ensures utility relocation (both at State's expense).
- Maintains the completed project after construction.
- Reviews and executes a Project Agreement with the Tribe and cooperating agencies.
- Reviews NEPA documentation, PS&E contract documents, standards, and design exceptions.
- Provides final inspection and approval concurrence of completed construction project.
- May contribute cooperative funds to assist in the construction of an IRR Project.

Roles of the County (or other local agency-owned routes on the IRR system):

- Provides resources and other supporting information for project development tasks and products as requested by the Tribe through the Project Agreement.
- Appoints a member to the Project Development Team and assists in developing the project Purpose and Need, studying project alternatives, and obtaining project environmental clearance.
- Obtains necessary ROW and ensures utility relocation (both at County's expense).
- Maintains the completed project after construction.
- Reviews and executes a Project Agreement with the Tribe and cooperating agencies.

- Reviews NEPA documentation, PS&E contract documents, standards, and design exceptions.
- Provides final inspection and approval concurrence of completed construction project.
- May contribute cooperative funds to assist in the construction of an IRR Project.

Example 8.1 – Project Charter

PROJECT CHARTER					
This Project Charter is entered into between the undersigned parties.					
Tribal Government:			Project No:		
State:			IRR Route No. & Section:		
County:			Project Length (miles):		
			Surface Type:		
Project Background Information					
Project Location(s):					
Road Ownership:					
Inventory Data:					
Proposed project Purpose and Need:					
Design Standards					
Design speed:		Design ADT:		Terrain:	
Design loading:		Percent Trucks		Maximum Superelevation:	
Bridge width:		Accident data:			
NEPA					
Documents			Lead Agency		
NEPA Studies:					
NEPA Document compilation:					
NEPA Document approval:					
Roles & Responsibilities					
Work Tasks	Reviews	Approvals	POC contact	Milestone Date	Estimate Cost
Survey & Mapping					
Geotechnical-Sampling, Testing, Reporting					
Design and PS&E					
Contract Documents					
Right-of-Way					
Utility Relocation					
Advertise & Award Project					

Administer Construction Contract					
Construction Inspections					
Engineering Services					
Permits-monitoring & termination					
Maintenance Activities					
Compliance w/environmental commitments					
Final Inspections					
Project Close out					

Amendments

This Project Charter may be modified by mutual agreement of the parties. The Charter shall be effective as of **xx** day of (**insert month, year**).

Tribal Government:

By:
Title:

County:

By:
Title:

BIA Region:

By:
Title:

FHWA Division:

By:
Title:

State:

By:
Title:

IX. NEPA and Other Environmental Requirements

Overview. The National Environmental Policy Act of 1969 (NEPA) was signed into law on January 1, 1970. NEPA established the basic framework for integrating environmental consideration into decision making. NEPA requires the identification and consideration of potential impacts to the social and natural environment when considering approval of proposed transportation projects. The overall goal of the NEPA process is to engage in a sound process by which agency decisions are made. The NEPA document is the record of those decisions and how they are to be carried out through the design, construction, and future maintenance of the project.

Section 2 of NEPA states that its purposes are to:

- declare a national policy which will encourage productive and enjoyable harmony between man and his environment;
- to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man;
- to enrich the understanding of the ecological systems and natural resources important to the Nation; and
- to establish a Council on Environmental Quality.”

***NOTE:** A Tribe has several options in the development of NEPA documents. A Tribe can develop NEPA documents in house or subcontract the service out to a consultant, BIA, or FLH. In any option, the FLH will be the lead Federal agency and will approve the NEPA documents.*

Under the authority prescribed in 23 U.S.C. 204, FLH can perform any or all phases of IRR project development and construction, if requested by a Tribal government. If so requested, each of the FLH Divisions (Eastern, Central, and Western) may execute individual Project Agreements with Tribal governments to perform any or all project development activities if IRR funds are used (see example 9.4- Agency Request for New Services form).

A. Statutory/Regulatory Requirements

Regulations for implementing NEPA for IRR projects are found in the Council on Environmental Quality (CEQ) regulations (40 CFR 100-1508) and the FHWA implementing regulations (23 CFR 771). The cultural resource and environmental requirements for the IRR Program are listed in 25 CFR 170, Subpart D, Appendix A and includes the following:

- 16 U.S.C. 1531-1544, Endangered Species Act;
- 16 U.S.C. 4601, Land and Water Conservation Fund Act (Section 6(f));
- 16 U.S.C. 661-667d, Fish and Wildlife Coordination Act;
- 16 U.S.C. 470-470x-6 National Preservation Act;
- 16 U.S.C. 470aa-470mm, Archaeological Resource Protection Act;
- 16 U.S.C. 1451-1466 Coastal Zone Management Act;
- 23 U.S.C. 138, Preservation of Parklands (Section (4f));
- 25 U.S.C. 3001-1013, Native American Graves Protection and Repatriation Act;
- 33 U.S.C. 1251-1387, Federal Water Pollution Control Act;
- 42 U.S.C. 6901-6992k, Resource Conservation and Recovery Act;

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- 42 U.S.C. 7401-7671q, Clean Air Act;
- 42 U.S.C. 4321-4347, National Environmental Policy Act;
- 49 U.S.C. 303, Preservation of Parklands (Section (4f));
- 7 U.S.C. 4201-4209, Farmland Protection Policy Act;
- 7 CFR part 658, Farmland Protection Policy Act regulations;
- 23 CFR part 774, Parks, Recreations Areas, Wildlife and Water-fowl Refuges and Historic Sites (Section 4(f));
- 23 CFR part 771, Environmental Impact and Related Procedures;
- 23 CFR part 772, Procedures for Abatement of Highway Traffic Noises and Construction Noises;
- 23 CFR part 777, Mitigation of Impacts to Wetlands and Natural Habitat;
- 36 CFR part 800, Protection of Historic Properties;
- 40 CFR part 93, Air Quality Conformity and Priority Procedures for use in Federal-aid Highway and Federally Funded Transit Programs;
- 40 CFR parts 260-271, Resource Conservation and Recovery Act;
- 50 CFR part 402, Endangered Species Act regulations;
- Applicable Tribal/State laws; and
- Other applicable Federal laws and regulations.

NOTES:

- 1. FHWA Agreement Tribes must follow 23 CFR Part 771.**
- 2. NEPA is a government inherited function and cannot be delegated.**

B. Guidelines/Procedures

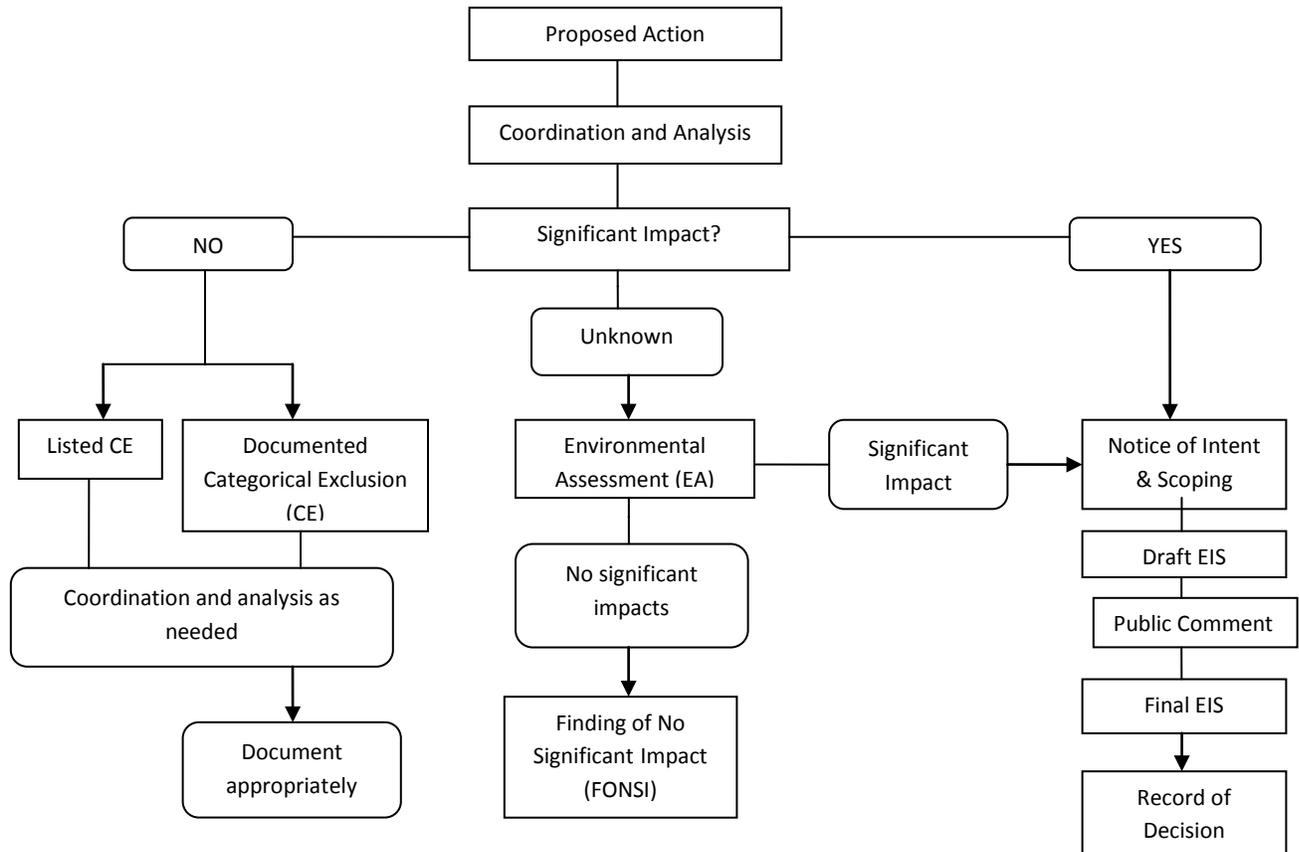
Early in the project development process a tentative NEPA classification should be selected in accordance with 23 CFR 771.115 – Classes of Actions.

There are three levels of environmental documents under NEPA to carry out the regulations; Categorical Exclusions (CE), Environmental Assessments (EA), and Environmental Impact Statements (EIS).

When it is determined that the project fits within an established categorical exclusion (see 23 CFR 771.117) and there are no unusual circumstances as defined therein, a CE document can be prepared. If it has been determined that project actions will cause significant impacts, an EIS will need to be prepared. If the level of significance of impact is unknown or uncertain, an EA may be prepared. If in the preparation of the EA it is determined that there will be significant impacts, an EIS document will need to be prepared.

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The general NEPA process is depicted in the following flow chart below.



Definitions

- **Categorical Exclusion (CE)** – Action, based on past experience that does not involve individually or cumulatively significant environmental impacts (23 CFR 771.117).
- **Environmental Assessment (EA)** – Documentation prepared for an action that is not a CE but does not clearly require the preparation of an environmental impact statement (EIS) or when it will assist in determining the need for an EIS (23 CFR 771.119).
- **Finding of No Significant Impact (FONSI)** – A concise document presenting the basis for the decision, prepared at the conclusion of the EA, when it is determined that an action will not have significant environmental impacts and will not require preparation of an EIS (23 CFR 771.121)
- **Environmental Impact Statement (EIS)** – Documentation that is a detailed written statement prepared for an action that will likely cause significant environmental impacts (23 CFR 771.123)
- **Record of Decision (ROD)** – Documentation prepared after the final EIS that presents the basis for the decision and, summarizing any mitigation measures that will be incorporated into the project. (23 CFR 771.127)
- **Section 4(f) Evaluation** – Documentation presenting the basis for use of Section 4(f) property and the determination that there is no feasible and prudent alternative to the use of such property

and that the proposed action includes all possible planning to minimize harm to the property resulting from that use. (23 CFR 774)

The NEPA process is completed when the action has been classified with appropriate documentation, as appropriate, as a CE, or a FONSI has been approved after an EA, or a ROD has been signed and published in the Federal Register after an EIS.

There should be no approval of right-of-way (ROW) acquisition, final design, purchase of construction materials, or construction prior to completion of the NEPA process.

If a CE or an EA is the appropriate classification, the FLH will be the NEPA lead Federal agency responsible for approving the NEPA documentation.

NOTE: The FLH will be available upon request to facilitate discussions between the Tribal governments and the FHWA Federal-Aid Division to help the Tribe make a well informed designation. To avoid delays in the approval process, the lead agency (FLH) should be consulted throughout development of the NEPA document.

Categorical Exclusion. CEs are actions that do not individually or cumulatively have a significant effect on the environment. 23 CFR 771.117 (a) defines CEs as actions which meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not involve significant environmental impacts. They are actions which: do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

There are two types or levels of CEs: “C list” and Documented CEs or “D list”.

C list:

23 CFR 771.117(c) contains a list of actions that meet the criteria for CEs; these are sometimes referred to as “C list.”

- These actions normally require no further NEPA approvals.
- These actions may require other environmental consultations or approvals, such as Endangered Species Act consultation or a Clean Water Act permit.
- This list is all-inclusive
- The FHWA remains responsible for compliance under NEPA and related laws.

There should be a decision memo in the FHWA project file that documents that (1) the action is on the C list, (2) an explanation why no unusual circumstances apply, and (3) demonstrate compliance with applicable environmental laws and regulations.

D list:

- 23 CFR 771.117(d) contains a list of examples of actions that may be designated as CEs after FHWA approval. These are sometimes referred to as “D list.”
- Types of documentation that may be needed:
 - Definition of the extent of impacts
 - Identification of mitigation and commitments
 - Addressing known or foreseeable public and agency concerns
 - Addressing Federal or other actions required

- Individual project approval requires submitted documentation. That is why these are referred to as Documented CEs.
- Actions other than those listed at 23 CFR 771.117(d) may meet the criteria for a CE. Therefore, unlike the C list CE's, the D list is not all-inclusive.

There should be a decision memo in the FHWA project file that documents that (1) the action is a CE, (2) significant environmental effects will not result, (3) there is compliance with applicable environmental laws and regulations, (4) a list of any environmental commitments is created and, (5) there has been individual project approval.

Process – Determining appropriate classification. Early discussions between the Tribe and FHWA on the scope of work proposed for a project can help determine the appropriate classification of NEPA documentation (CE, EA, or EIS). The “*Environmental Documentation Checklist for CE and EA Projects*” is provided for Tribes to complete (see **Example 9.1 – Environmental Documentation Checklist for CE and EA Projects**). The information provided in this checklist will aid in ensuring all information and supporting documentation has been assembled in order to properly determine the appropriate classification (CE or EA). Based on the record and recent outcomes in determining appropriate classification of NEPA documentation, it is expected that most projects will be appropriately classified as a CE.

NOTE: Depending on the scope of the project, portions or the entire checklist may be needed to determine the classification. Early coordination with FHWA can help determine the amount of effort needed in completing the checklist.

See Example 9.2 – Outline for a Documented Categorical Exclusion (CE) for documenting a CE.

See Example 9.3 – Outline for an Environmental Assessment (EA) formats for documenting an EA.

CE Process - Before the CE is approved by FHWA, adequate documentation and supporting information will need to be reviewed by the FHWA Environmental Specialist. Major comments will need to be revised to the satisfaction of the Environmental Specialist and the recommending official (FHWA Tribal Coordinator).

To avoid delays in CE approval, the Tribe should develop an environmental compliance schedule for each project showing major environmental compliance milestones and submit the schedule to FHWA shortly after approval of the TTIP. The FHWA may provide comments on the schedule to ensure adequate review time by FHWA.

EA Process - Before the EA approved by FHWA, adequate documentation and supporting information will need to be submitted by the Tribe for review by the FHWA Environmental Specialist. Major comments will need to be revised to the satisfaction of the Environmental Specialist and recommending official (FHWA Tribal Coordinator). Approval of an EA is documented by a signature of the approving official on the title page of the EA. After the Tribe submits the CE documentation and FHWA finds the documentation satisfactory, FHWA will approve the CE. The Tribe will then submit the EA for a 30 day public comment period.

After the EA is approved, the Tribe will then submit the EA for a public comment period. If the EA receives relatively few or no comments or changes are not required, and no significant impact have been identified, and the EA also identified a preferred alternative, then a Finding of No Significant Impact (FONSI) can be prepared and signed. However, if there are substantial comments to the EA, or changes are required, or a preferred alternative was not identified, then an amended EA will need to be prepared.

After the amended EA is approved by FHWA, the EA will then be released for public comment. If the amended EA receives relatively few or no comments or changes are not required, and no significant impact have been identified, and the EA also identified a preferred alternative, then a Finding of No Significant Impact (FONSI) can be prepared and signed.

To avoid delays in EA approval, the Tribe should develop an environmental compliance schedule for each project showing major environmental compliance milestones and submit the schedule to FHWA shortly after approval of the TTIP. The FHWA may provide comments on the schedule to ensure adequate review time by FHWA.

Environmental Impact Statements (EIS). In accordance with SAFETEA-LU Section 6002, FHWA shall be the lead agency or joint-lead agency for projects when an EIS is prepared. In accordance with the Council on Environmental Quality (CEQ) and FHWA regulations and guidance, the lead agency determines the NEPA class of action and the purpose and need for the project, and is responsible for ensuring that NEPA requirements and other environmental requirements are met. Section 6002 also specifies changes from current NEPA procedures, including new obligations for a public comment process for project purpose and need and for project alternatives, and requires the development of a coordination plan and schedule that must be provided to all participating agencies and made available to the public. All Title 23 funded projects, for which the Notice of Intent was published in the Federal Register after August 11, 2005, must designate FHWA as lead agency or joint-lead agency and follow the specified process.

NOTE: It is expected that few if any IRR projects will be appropriately classified as an EIS. Therefore, the Guide will not provide any further information on an EIS. However, if an EIS is required, FHWA will work closely with the Tribe to address all requirements.

Resources.

- Guidance for preparing NEPA documents in accordance with CEQ and FHWA implementing regulations is provided in the “FLH Project Development and Design Manual” (PDDM) at the following website address: [FLH > Resources > Manuals > PDDM > Archives > 2008 Edition](#)
- Chapter 3 of the PDDM includes a flow chart of the environmental process used by FLH to develop projects. Chapter 3 also includes guidance for compliance with other environmental laws that typically apply to transportation projects.
- FHWA recommends that Tribes and Tribes consultants refer to the FLD PDDM for guidance on environmental compliance requirements and activities. The FLH Environmental Specialists are also available to provide technical assistance and guidance to Tribes.

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Example 9.1 - Environmental Documentation Checklist for CE and EA Projects

Please complete the following form. The information provided in this form will help FHWA obtain most of the information necessary to approve a NEPA project, and will subsequently reduce the number of questions and information requests. Following a YES or NO response or where indicated, provide a description of the potential impact. Document all consultation with resource agencies. Attach all supporting documentation including descriptions of resources, type of impact expected, what measures were taken to avoid or minimize the impact, why the impact is not significant, **and the source of information used to make these determinations.** Use additional sheets to respond to questions, as needed.

Block 1. Project Description and Design Information		
Date: _____		
Project Name: _____		
Project Number: _____		
IRR Route/Section Number(s): _____ (attach map)		
BIA Route/Section Number(s): _____ (attach map)		
Project Contact (include name, phone number, street address and email address): _____		
Project Name and Location (include county, township, municipality, etc.). Please attach Project Vicinity map and photos of the project area: _____		
Latitude: _____	Longitude: _____	
Section: _____	Township: _____	Range: _____
Limits of Work:		
Start: _____	End: _____	Total Length: _____

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Project Description Include narrative to describe project scope of work - include type of construction, logical termini, setting, and distinct project features. Please include in your project description any culverts/bridges or other project features being replaced or repaired, if applicable. Please compare the proposed changes to what currently exists. If developed, please provide current plans showing construction limits and right-of-way (ROW) boundaries:

Purpose and Need for Project Include narrative on why the project is needed, what is to be achieved, and what would happen if the project was not constructed:

Design Criteria for Roadway:

Functional Classification: _____
Current ADT: _____ vpd ()
Design Year ADT: _____ vpd ()
DHV: _____ Trucks: _____ % Directional Distribution _____ %
Design Speed: _____
Posted Speed: _____
Setting: Urban Suburban Rural
Topography: Flat Rolling Other Explain:

Roadway Character (Existing and Proposed):		
	Existing	Proposed
Number of Lanes:	_____	_____
Surface Type:	_____	_____
Travel Lane Width (ft):	_____	_____
Shoulder Width (ft):	_____	_____
Median Width (ft):	_____	_____
Clear zone (ft):	_____	_____
Average ROW Width (ft):	_____	_____

Design Criteria for Bridges / Culverts (if known):		
	Existing	Proposed
Bridge Number:	_____	_____
Sufficiency Rating:	_____	_____
Estimated Remaining Life:	_____	_____
Bridge Type:	_____	_____
Number of Spans:	_____	_____
Structure Length:	_____	_____
<p>Are any substructure elements (e.g., piers, abutments, wingwalls, footers, etc.) below the Ordinary High Water Mark (OHWM)? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
<p>Will additional rip-rap be added? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
1a). TTIP		
Is the project in the Tribal Transportation Improvement Plan (TTIP)?		<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes: Phase:	_____	Date: _____

<p>3a) Will the proposed action require new right-of-way (ROW) or easement or temporary construction easement?</p> <p>If YES, provide the following information:</p> <p>Approximate area of temporary ROW/easement: _____ acre(s)</p> <p>Approximate area of permanent ROW/easement: _____acre(s)</p> <p>Reason for ROW/easement:</p> <p>Current Land Use:</p> <p>Will any tribal trust, individual trust or individual restricted land be involved in this project?</p> <p>Will the project use any Public Park ROW?</p> <p>Is it anticipated that construction will require a borrow site, construction staging area for batch plant or equipment, or a waste site outside the project area?</p> <p>Provide additional information for questions answered yes:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>3b) Will the proposed action cause relocation of any residential homes, businesses, farms, or public institutions?</p> <p>NOTE: If relocations are anticipated, relocation services will need to be provided per the Uniform Relocation Assistance Act.</p> <p>If YES, indicate the following:</p> <p>Number of displacements:</p> <p>Residential: _____ Businesses: _____ Farms: _____ Public Institutions: _____</p> <p>Discuss displacements:</p> <p>Are there properties within the local area available for relocation?</p> <p>If YES, describe:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

<p>3c) Will the proposed action need to accommodate for utilities in the study area?</p> <p>If YES, state type of utilities and anticipated work involved (e.g., relocation, temporary disruption of service). Note if utility providers have been consulted.</p> <p>If known, indicate if utility crossing(s) will have the potential to impact stream, open water, or wetlands, or if the proposed action will require clearing and grubbing by utilities:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>3d) Describe the involvement with any railroad (active or inactive) including all rail lines, crossing, bridges, or signals.</p>	
<p>Block 4. Socio-Economic</p>	
<p>4a) Environmental Justice: Are the anticipated environmental impacts resulting from the proposed action likely to fall disproportionately on the minority and/or low income populations, including populations with Limited English Proficiency (LEP)?</p> <p>If YES, describe any potential adverse effects and the affected population (e.g., minority, low-income, elderly, or disabled), and describe proposed measures to mitigate for any adverse impacts:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>4b) Will the proposed action require temporary and/or permanent access changes?</p> <p>If YES, describe the access changes (temporary or permanent) and impacts to businesses (disruption, loss or restricted parking), residential neighborhoods, or individual residents:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>4c) Will the proposed action have an impact on travel patterns (e.g., does the action include a bypass or convert a local street into a higher order roadway)?</p> <p>If YES, describe any permanent traffic diversion or change of traffic patterns that would occur:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>4d) Is the proposed action consistent with local land use plans?</p> <p>If YES, identify area plans and assess consistency:</p> <p>If NO, provide details of coordination with local government:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>4e) Will the proposed action cause economic impacts (temporary or permanent, positive or negative) to the local economy (e.g., adjacent highway-related and other businesses, employment gains or losses, etc.), local tax base or property values?</p> <p>If YES, describe impacts and any proposed measures to minimize economic impacts:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>4f) Will the proposed action result in impacts on fire, police, emergency services, health and educational facilities, school bus route, religious institutions, public transportation,</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

<p>or pedestrian and bicycle facilities? If YES, describe impacts and any proposed measures to minimize impacts:</p>	
<p>4g) Will the proposed action result in impacts to community cohesion (e.g., separation from community facilities or isolated portions of a neighborhood)? If YES, describe impacts and any proposed measures to minimize community division or separation:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>4h) Will the proposed action induce secondary growth? If Yes, explain:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>4i) Does the project incorporate bicycle or pedestrian facilities into the overall design or operations. If Yes, explain:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Block 5. Historic and Cultural Resources (Section 106) (SHPO/THPO CONCURRENCE REQUIRED)</p>	
<p>5) Describe the Area of Potential Effect (APE) and attach a figure showing the APE. (The Area of Potential Effect for highway projects is typically the limit of highway construction where there could be surface disturbance extending out to the clear zone. The APE may extend further in some instances due to visual or noise impacts.) Will there be any new ground disturbance associated with the project? If so, the SHPO/THPO (THPO with formal assumption of SHPO responsibilities) must be consulted under Section 106. An archaeological survey will likely be necessary. Are there any historic, cultural, Traditional Cultural, burial, or archaeological resources, <u>including historic bridges or roads</u>, that are/or may be eligible for or listed in the National Register of Historic Places (NRHP) (i.e., older than 50 years old)? If so, the SHPO/THPO must concur with eligibility determination. If no, please provide a summary of how this was determined. For any resources listed in or eligible for listing in the NRHP, will the proposed action have an effect on these resources?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>NOTE: FHWA, in coordination with the Tribe, will need to complete Section 106 consultation & documentation <u>separately</u> from the CE Process. Please contact FHWA to initiate the Section 106 process.</p>	

Process.

Block 8. Farmland

<p>8) Does the proposed action involve acquisition of prime, unique, statewide or local important farmland that would be converted to non-agricultural use?</p> <p>If YES, Indicate the size of area impacted: Farmland: _____ acres</p> <p>Describe or attach:</p> <ul style="list-style-type: none"> • Farmland conversion impacts or coordination with the Natural Resources Conservation Service (NRCS) • Farmland Conversion Impact Rating Sheet (Form AD-1006). 	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
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Block 9. Wetlands / Waters of the U.S.				
9a) If there are no wetlands or waters of the U.S. located within the study area, check "N/A": Individual/Organization that made the determination: _____ Date of Field Visit: _____ Please provide FHWA with a memo documenting the absence of waters of the U.S. Are wetlands/waters of the U.S. <u>present</u> within the study area <u>but will be avoided</u> by construction? Discussion:				<input type="checkbox"/> N/A <input type="checkbox"/> Yes <input type="checkbox"/> No
9b) Does the proposed action involve impacts to wetlands? If YES, what is the total wetland area impacted: _____ acre(s)				<input type="checkbox"/> Yes <input type="checkbox"/> No
	Presence		Impacts	
	Not Present	Present	No	Yes
Wetlands	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Open Water	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vegetated				
Emergent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scrub Shrub	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Forested	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rain Water Basin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Saline	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Western Alkaline	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Discussion:				

<p>9d) Will the proposed action require the following permits under the Clean Water Act?</p> <ul style="list-style-type: none"> • Section 404 Nationwide Permit (USACE) • Section 404 Individual Permit (USACE) • Section 401 Individual Water Quality Certification <p>Has coordination with USACE been initiated?</p> <p>If YES, attach any coordination with USACE or other applicable resource agency.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Water related permits such as Section 404 and 401 are typically acquired after approval of the CE during final design. This is typically handled by the Tribe. Tribes would be responsible for determining appropriate mitigation and developing a mitigation and monitoring plan if necessary.</p>	

<p>Block 10. Floodplains</p>	
<p>10a) Is the proposed action located within the 100-year base floodplain?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>10b) Will the proposed action cause an encroachment or impacts to the 100-year Zone A floodplain?</p> <p>If YES, describe potential impacts and include the Federal Emergency Management map with the project location identified. Include any consultation with the floodplain a project area:</p> <p>If there is encroachment to the 100-year floodplain, FHWA should be contacted to determine appropriate level of documentation.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Block 11. Regulated Materials</p>	
<p>11a) Is there any known or potential contamination at the project site (e.g., previous land uses with possible hazardous waste involvement), or additional remediation work that has to be done regarding hazardous or contaminated material?</p> <p>Will a building (age) or insulated pipe possibly containing asbestos or lead based paint be removed as part of this project?</p> <p>If a bridge replacement is part of the proposed action, is there the potential that lead paint</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

<p>was used on the structure?</p> <p>Discussion:</p> <p>NOTE: If YES, and there is the potential for CERCLA, SARA, RCRA, TSCA, UST/LUST, lead, or asbestos issues on the project, notify and coordinate with FHWA.</p>	
<p>11b) Will the project action impact any registered or known groundwater monitoring wells?</p> <p>If Yes, identify any groundwater monitoring wells in the right of way, in the adjacent right of way, and the owner of said wells.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Block 12. Air Quality / Noise</p>	
<p>12a) Is the proposed action in an air quality non-attainment or maintenance area?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>12b) Will the project involve the addition of one or more through lanes?</p> <p>Will the project involve a change in vehicle mix or speed?</p> <p>Will the project involve a change in vertical or horizontal alignment?</p> <p>Will the project involve new roadways or change the shielding effect of existing roadways?</p> <p>If YES to any of the questions above, then a noise analysis is warranted, provided there are noise sensitive land uses in the project area. Attach Noise Analysis to CE Form.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>12c) If yes to any of the questions in 12b, are there possible sensitive noise receptors present?</p> <p>If Yes, how many noise sensitive receptors are within the proposed action area? _____</p> <p>If Yes, what type(s) of noise sensitive receptors are present? List below:</p> <p>Attach a map of the sensitive noise receptors.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>12d) If a noise analysis was performed, are the predicted noise levels approaching or exceeding noise abatement criteria stated in 23 CFR 772 Table 1 for the appropriate land use activity category?</p> <p>Will there be a substantial increase in decibels over existing level?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

<p>If YES, describe impacts and mitigation measures, if applicable.</p>	
<p>NOTE: Mitigation for noise impacts has a public information component.</p>	
<p>Block 13. Water Quality</p>	
<p>13a) Indicate if any of the groundwater resources, drinking and/or non-drinking water resources listed below are present in the project area:</p> <p><u>Groundwater Resources:</u></p> <p style="padding-left: 20px;">Well Head Protection Area</p> <p style="padding-left: 20px;">Community Wells</p> <p style="padding-left: 20px;">Residential Wells</p> <p style="padding-left: 20px;">Sole Source Aquifer(s)</p> <p><u>Drinking Water:</u></p> <p style="padding-left: 20px;">Surface water intake structures</p> <p><u>Non-Drinking water:</u></p> <p style="padding-left: 20px;">Agricultural groundwater wells and surface water intake structures</p> <p style="padding-left: 20px;">Irrigation re-use pit; Irrigation canal;</p> <p style="padding-left: 20px;">Storm water detention impoundments;</p> <p style="padding-left: 20px;">Agricultural waste impoundments;</p> <p style="padding-left: 20px;">Ground water connected wetlands & surface water</p> <p><u>Water Quality Impacts:</u></p> <p>For the resources marked Yes above, discuss the following.</p> <p style="padding-left: 20px;">If the resource is present but will not be impacted, state how the impact will be avoided.</p> <p style="padding-left: 20px;">If an impact to water quality will occur, indicate which water resource will be impacted and list any mitigation measures proposed to minimize impacts.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

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13b) Does the proposed action require a NPDES storm water permit?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Note: Water related permits such as NPDES can be acquired by the Tribe after approval of the CE during final design.	
Block 14. Wild and Scenic Rivers / Nationwide Rivers Inventory	
14a) Will the project involve construction in, across, or adjacent to a river designated as a component of, or proposed for inclusion in the Wild and Scenic River System? (i.e. Is the project is within 1/2 mile of a protected river area) If YES, discuss or attach record of consultation with the responsible agency for managing the listed or study river:	<input type="checkbox"/> Yes <input type="checkbox"/> No
14b) Will the project cross over a river or portion of river that is listed on the Nationwide Rivers Inventory (NRI)? If Yes, list in Block 18b the Best Management Practices or recommendations by NPS to be implemented to reduce impacts to these rivers.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Block 15. Construction Impacts	
15a) Will the proposed action involve construction-related impacts such as detours, lane/road closures, loss of parking, air quality impacts (dust), etc.? If YES, provide details of proposed measures to minimize impacts (erosion control, Best Management Practices, dust abatement).	<input type="checkbox"/> Yes <input type="checkbox"/> No
15b) Will the proposed action require temporary channel crossing structures such as shoofly, work platform, causeway, or crossing? If YES, provide details on temporary structure alternatives (type of structure, temporary impacts involved, how long needed, etc): Are impacts caused by the: Installation before or during active aquatic life migration periods? Impacts to streambed or width of channel? Flow characteristics of the stream – frequency and duration of flow? If impacts are YES, provide mapping and photos showing following information: • Identify maximum limits of impacts below the ordinary high water	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No

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<p>mark. Identify ordinary high water mark on photos.</p> <ul style="list-style-type: none"> • Identify maximum limits of impacts within the floodway. • Identify any fringe or adjacent wetlands. <p>Discussion:</p>	
<p>15c) Maintenance of Traffic During Construction (if applicable)</p> <p>Is a temporary bridge proposed? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Is a temporary roadway proposed? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Will the project involve the use of a detour or require a ramp closure? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Will provisions be made for access by emergency services? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Will provisions be made for access by local traffic and so posted? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Will provisions be made for through-traffic dependent of businesses? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Will provisions be made to accommodate any local special events or festivals? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Will the proposed Maintenance of Traffic substantially change the environmental consequences of the action? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Is there controversy associated with the proposed method for maintenance of traffic? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Are there impacts to bicycles or pedestrian routes? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES to any of the above questions, provide additional discussion.</p> <p>List in Block 18b the commitments or recommendations for maintenance of traffic to be implemented to reduce impacts.</p>	
<p>15d) Detours Attach a detour map.</p> <p>Approximate length of detour: _____</p> <p>Select the best description of the planned detour:</p>	

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<p><input type="checkbox"/> Detour will use local roads with no improvements.</p> <p><input type="checkbox"/> Detour will involve improvements to local roads with no resulting impacts on safety or the environment.</p> <p><input type="checkbox"/> Detour will involve improvements to local roads and will impact safety and/or the environment.</p> <p><input type="checkbox"/> Detour will use only state owned road</p> <p>Describe impacts:</p>	
<p>Block 16. Public Involvement</p>	
<p><i>16a) Will the project involve controversy concerning community and /or natural resource impacts?</i></p> <p>Discussion:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p><i>16b) Is a public information meeting held or tentatively planned?</i></p> <p>If YES, give Date & Location:</p> <p>Discussion:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Block 17. Aesthetics and other values</p>	
<p>17a) Will the project be visually intrusive to the surrounding environment?</p> <p>If Yes, discuss.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>17b) Will the project provide multiple use opportunities?</p> <p>If Yes, discuss.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Block 18. Permitting and Environmental Commitments</p>	
<p>18a) Indicate whether the proposed action is likely to require actions by agencies listed above or by other Agencies (e.g., permits, approval) and attach correspondence.</p>	
<p>USACE Section 404 Permit</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

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Floodplain Development Permit	<input type="checkbox"/> Yes <input type="checkbox"/> No
Section 401 Water Quality Certificate	<input type="checkbox"/> Yes <input type="checkbox"/> No
NPDES / SWPPP	<input type="checkbox"/> Yes <input type="checkbox"/> No
Section 106 – Historic and Culturally Significant Properties	<input type="checkbox"/> Yes <input type="checkbox"/> No
Section 4(f) – Parklands, Recreation Areas, Refuges, Historic	<input type="checkbox"/> Yes <input type="checkbox"/> No
Section 6(f) – Land & Water Conservation Funds	<input type="checkbox"/> Yes <input type="checkbox"/> No
Coast Guard Permit	<input type="checkbox"/> Yes <input type="checkbox"/> No
Local Building or Site Development Permits	<input type="checkbox"/> Yes <input type="checkbox"/> No
Local Clearing and Grubbing Permit	<input type="checkbox"/> Yes <input type="checkbox"/> No
Erosion and Sediment Control Plan	<input type="checkbox"/> Yes <input type="checkbox"/> No
Others (list below):	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><i>18b) Environmental Commitments: Describe any measures, including Best Management Practices, recommended by resource agencies through informal consultation or those measures to be taken to mitigate project impacts. Include any environmental commitments agreed upon or those resources to be avoided. All commitments made and documented in this form are to be listed here.</i></p>	

19. Environmental Documentation Recommendation

19a. The Project is listed as a CE, per FHWA 23 CFR 771.117(c), and is recommended for FHWA approval.

Yes No N/A

The Project is listed as a documented CE, per FHWA 23 CFR 771.117(d), and is recommended for FHWA approval.

Yes No N/A

The Project is listed as an EA, per FHWA 23 CFR 771.119 and 771.123, and is recommended for FHWA approval.

Yes No N/A

<p>Prepared by: _____ (print) _____ (sign)</p> <p>Date: _____</p> <p>Title & Organization*: _____</p> <p>Phone & email: _____</p> <p>Reviewed by**: _____ (print) _____ (sign)</p> <p>Date: _____</p> <p>Title & Organization*: _____</p> <p>Phone & email: _____</p>
<p><u>Tribe Review/Concurrence** of Environmental Documentation Recommendation:</u></p> <p>Reviewed by: _____ (print) _____ (sign)</p> <p>Date: _____</p> <p>Title and Organization*: _____</p> <p>Phone and email: _____</p> <p>Concurred by: _____ (print) _____ (sign)</p> <p>Date: _____</p> <p>Title and Organization*: _____</p> <p>Phone and email: _____</p>

*Organization refers to either the Contractor or the Tribe, depending on who prepared the Form.

**Add additional "Reviewed by" and "Concurred by" as necessary, per Tribal processes.

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Enclosed Attachments

- Project Vicinity Map (State, local, and project maps)
- State Historic Preservation Office (SHPO) letter(s) of concurrence
- FHWA Section 4(f) approval documentation
- U.S. Fish and Wildlife Service letter(s) of concurrence
- Wetland Determination Memorandum
- U.S. Army Corps of Engineers / Clean Water Act correspondence
- Natural Resource Conservation Service Farmland Conversion Form AD1006
- Tribal consultation letter(s)
- Other Agencies (e.g., USEPA, NPS, BIA, USCG)

Example 9.2 - OUTLINE FOR A DOCUMENTED CATEGORICAL EXCLUSION (CE)

The following format generally complies with requirements for documented categorical exclusions (CEs) (23 CFR 771.117 (d)).

INTRODUCTION - The CE begins with an introduction with a brief description of the:

- proposed project,
- project location,
- project sponsors, and
- project funding.

PURPOSE AND NEED - This section briefly describes the condition or conditions that require relief and the purpose in taking action.

PROPOSED ACTION - In this section of the CE, the project details are identified. This includes the actions for the entire footprint of the project that will be awarded under contract, including but not limited to:

- type of work,
- corridor location,
- length,
- road width,
- number of lanes,
- design speed,
- surface type,
- major structures,
- material sources,
- staging areas,
- waste areas,
- mitigation areas, and
- any other major features.

It should be clear to the reader how the proposed action will address the problem identified in the purpose and need.

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ENVIRONMENTAL ACTIVITIES - To demonstrate that a federally-funded action is categorically excluded under the National Environmental Policy Act (NEPA), the project must demonstrate compliance with the following related environmental laws and Executive Orders. In analyzing the project impacts for compliance with these laws, you must consider the effects of the entire area of the proposed action described above. Please note that this is not a comprehensive list of all environmental laws but a list of those that are typically addressed)

Clean Water Act and Executive Order 11990- Wetlands Finding – The Clean Water Act regulates any discharge of a pollutant into waters of the United States. The most common type of discharge from road construction projects is fill material into wetland areas and waters of the U.S. If wetlands are determined to be in the area, a wetland delineation must be completed following the methods in the 1987 Army Corps of Engineers Wetland Delineation Manual. Executive Order (EO) 11990 requires a finding must demonstrate that there is no practical alternative to the proposed construction in wetlands, and the proposed action includes all practicable measures to minimize harm to wetlands that may result from such use.

For this requirement, the CE must identify the number of wetlands identified from the delineation that will be impacted by the proposed action and any mitigation, if applicable, Furthermore, FHWA must demonstrate compliance with EO 11990 by providing a finding that there is no practicable alternative to construction in wetlands.

Coastal Zone Management Act- If the project is within an area with an approved coastal zone management plan, the CE must have a consistency determination to demonstrate that the project is consistent to the maximum extent practicable with the enforceable policies of the plan. Coordination with the agency responsible for the State's Coastal Zone Management Plan must occur. If possible, the CE should show the date of responsible agency's concurrence with the consistency determination.

Endangered Species Act- The Endangered Species Act (ESA) provides for the conservation of endangered and threatened species and the ecosystems upon which they depend. Section 7 of the act requires federal agencies to consult with the U.S. Fish and Wildlife Service (USFWS) and National Oceanic Atmospheric Administration (NOAA) -Fisheries, as appropriate, to insure that actions they authorize, fund or carry out are not likely to jeopardize the continued existence of threatened or endangered (T&E) species or result in the destruction or adverse modification of critical habitat for these species. A Biological Assessment may need to be prepared if there are known listed species in the project area. Contact USFWS and NOAA for a listing of these species in your area.

The CE should document what T&E species are in the project area and the project's effect to these species. The CE should use the effect determinations as provided in the ESA and document when the consulting agency (NOAA Fisheries or USFWS) concurred with FHWA's effect determination if the project was determined to have a potential effect to T&E species. The CE should describe any commitments and mitigation if applicable.

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National Historic Preservation Act- The National Historic Preservation Act (NHPA) applies to all properties on or eligible for inclusion on the National Register of Historic Places (NRHP). A cultural resources survey must be completed to identify potentially eligible properties. Consultation with the State Historic Preservation Officer (SHPO), and/or the Tribal Historic Preservation Officer (THPO) as appropriate will result in concurrence on the identification and assessment of these properties.

The CE needs to document compliance with Section 106 of the NHPA by documenting what the project's effects are to properties on or eligible to NRHP and the date SHPO/THPO concurred with the effect determinations. The CE should describe any mitigation, if applicable.

Section 4(f)- A Section 4(f) analysis is needed only when an alternative uses a resource protected under Section 4(f) of the US DOT ACT 1966. These resources include publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from a historic site of national, state, or local significance as determined by such officials. A use is defined as permanently incorporating the 4(f) resource into a transportation facility. A 4(f) analysis must document that (1) there is no prudent and feasible alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreation area, wildlife and waterfowl refuge, or historic site resulting from such use.

The CE should demonstrate compliance with Section 4(f). If it was a full or programmatic Section 4(f), it should briefly describe the activities conducted and how the conclusions were reached. If a *de-minimis* 4(f) applied to the project, this Section should document how the requirements of the *de-minimis* were met.

Public Involvement - In this section of the CE, there should be a brief discussion of the agency coordination and public involvement activities.

Permits - The section should list all permits and any stipulations known at this time. This could include, but is not limited to:

- 404 authorization from the U.S. Army Corps of Engineers for dredge or fill materials into waters of the U.S.
- Water quality certification may be required from the appropriate Regional Water Quality Control Board (Section 401).

CONCLUSION - On a separate and last page of the CE, provide the conclusion that project qualifies as a categorical exclusion. The CE should reference categorical exclusion justifications in 40 CFR 1508 and 23 CFR 771.117. The language normally used is:

Based on the information listed above, FHWA has determined this project; (1) will not have a significant effect on the human environment, and (2) falls within the category of actions covered by FHWA's categorical exclusion regulations. Therefore, this work

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meets the definition of a Categorical Exclusion (CE) contained in 40 CFR 1508.4. FHWA finds this work constitutes an action covered under the National Listing of Categorical Exclusions, 23 CFR 771.117 (a) because: 1) the action will not induce significant impacts to planned growth or land use for the area; 2) the action will not require the relocation of any people; 3) the action will not have a significant impact on any natural, cultural, recreational, historic, or other resource; 4) the action will not involve significant air, noise, or water quality impacts; 5) the action will not have significant impacts on travel; and 6) the action will not otherwise, either individually or cumulatively, have any significant environmental impacts. Furthermore, FHWA finds this work constitutes an action within the National Listing of Categorical Exclusions, 23 CFR 771.117 (d)(1), because it is a modernization of a highway by rehabilitation. The proposed rehabilitation does not include any unusual circumstances as listed in 23 CFR 771.117(b) that would make the CE classification improper.

In the yellow-highlighted section, the CE should reference which category the project qualifies, in this example it is 23 CFR 771.117 (d) (1).

SIGNATURES – Following the **CONCLUSION**, the CE should have two signature blocks. The first is by the appropriate Tribe representative recommending approval of the CE, which is under **RECOMMENDED BY:**. The last signature is the approval, which is titled, **APPROVED BY:** which is for the approving official (FHWA Environmental Protection Specialist). Both need to be dated.

EXAMPLE 9.3 - OUTLINE FOR AN ENVIRONMENTAL ASSESSMENT

The following format generally complies with requirements for environmental assessments for environmental assessments (EAs) and finding of no significant impacts (FONSI) as specified in 23 CFR 771.119 and 771.123.

The following outline is generally used for chapters when preparing an EA.

1. Cover Sheet
2. Signatory Sheet
3. Table of Contents
4. List of Abbreviations
5. Description of the Proposed Action
6. Purpose of and Need for the Project
7. Alternatives
8. Affected Environment or Environmental Setting
9. Environmental Consequences ¹
10. Section 4(f) (if applicable)
11. Coordination
12. Appendices

1. **COVER SHEET**- The cover sheet lists the title of the project, the type of NEPA document (Environmental Assessment), the location, the project sponsor, and the date (month & year).
2. **SIGNATORY SHEET** - The signatory sheet contains the following:
 - a. The title, *Environmental Assessment*
 - b. The information, *Submitted Pursuant to Public Law 91-190, National Environmental Policy Act*
 - c. *Our full title, U.S. Department of Transportation, Federal Highway Administration*
 - d. The list of cooperating agencies
 - e. A signature block, including the date, for the IRR Field Team Leader.
 - f. The contact person, including address and phone number.
3. **TABLE OF CONTENTS**
4. **LIST OF ABBREVIATIONS** – Provides a list of abbreviations one would find listed in the EA for the reader to easily reference.
5. **DESCRIPTION OF THE PROPOSED ACTION** – This is the opening chapter of the EA that contains introductory information such as a brief project description, lead, cooperating, and partner agencies, funding and a description of the following items:

¹ The Chapters on *Affected Environment* and *Environmental Consequences* can be combined.

- a. **Location of the Proposed Project** – This text is often accompanied by maps and figures.
 - b. **Scope and Nature of the Proposed Work**
 - i. **Funding**
 - ii. **Planning by Others**
6. **PURPOSE OF AND NEED FOR THE PROJECT** - This chapter of the EA describes the condition or conditions requiring relief and purpose in taking action. Often the EA describes the problems and the consequences of not taking action. This section should clearly demonstrate that a need exists and should define the need terms understandable to the general public. It is critically important to provide sufficient data to convince the reader that the need exists. Therefore, it is recommended that each need be discussed in turn, with accompanying data. The purpose and need will be the basis for development of the alternatives, including the identification of the preferred alternative. Charts, tables, maps, and other illustrations are encouraged as useful presentation techniques.
7. **ALTERNATIVES** – This chapter identifies the alternatives developed throughout the scoping and NEPA process. In it, it describes the:
- a. **No Action Alternative** – The no action alternative provides the baseline and the consequences should nothing be done to address the conditions requiring relief. It is preferable to give an estimated cost for the *no action* alternative.
 - b. **All Reasonable Alternatives** – All reasonable alternatives should be developed to a comparable level of detail. If a preferred alternative has been identified, this should be documented in this chapter, and the reasons should be stated why it is preferred. It is preferable to give estimated costs.
 - c. **Other Alternatives - Alternatives** that were considered but rejected should be briefly discussed with the reasons why they were eliminated or rejected.
 - d. **Entire Action** – As stated for CEs, the alternatives should take into account the entire action, not just the road project itself. This would include, but would not be limited, to the following:
 - i. **Type of work**
 - ii. **Corridor location**
 - iii. **Length**
 - iv. **Road width**
 - v. **Number of lanes**
 - vi. **Design speed**
 - vii. **Surface type**
 - viii. **Major structures**
 - ix. **Material sources**
 - x. **Staging areas**
 - xi. **Waste areas**
 - xii. **Mitigation areas**
 - xiii. **Other major features**

- 8. AFFECTED ENVIRONMENT OR ENVIRONMENTAL SETTING.** In this chapter of the EA, there needs to be a description of the environmental conditions in the study area. For this chapter, the study area needs to be defined, and it may need to be defined differently depending on the resource described. The setting topic areas usually covered are (only topics applicable to the particular project should be covered):
- a. **Geology**
 - b. **Soils**
 - c. **Climate**
 - d. **Air Quality**
 - e. **Noise**
 - f. **Waters and Water Quality**
 - g. **Wetlands**
 - h. **Vegetation, including T&E species**
 - i. **Wildlife and Fish, including T&E species**
 - j. **Land Use**
 - k. **Socioeconomics**
 - l. **Transportation**
 - m. **Historic and Archaeological Resources**
 - n. **Hazardous Materials**
 - o. **Public Services and Utilities**
 - p. **Recreation**
 - q. **Aesthetics**
- 9. ENVIRONMENTAL CONSEQUENCES** – In this chapter, the EA describes how the environmental topic areas listed in the chapter above will be affected by all the reasonable alternatives. The discussion should be limited to information and issues that have a bearing on potential important impacts, including the mitigation. Impacts may be adverse or beneficial, and the data and analyses should be commensurate with the importance of the impacts. Cumulative and secondary impacts need to be summarized for each alternative. In this chapter of the EA, the text must show how all applicable executive orders and environmental laws and regulations were met (some are listed in the text on CEs). Photographs, illustrations, tables, figures, and other graphics should be used with the text.
- 10. SECTION 4(F)** – In the EA, insert a section for 4(f) analysis if needed. Some of the 4(f) discussion may be pertinent to both the *Environmental Setting* and *Environmental Consequences* chapters also.
- 11. COORDINATION** – Comments received from public involvement efforts should be described in this chapter. Usually a chronology of coordination and consultation efforts is provided.
- 12. APPENDICES** – Usually pertinent coordination results are provided in the appendices such as concurrence letters under Section 7 of the ESA, Section 106 of the NHPA, Consistency Concurrence for the Coastal Zone Management Act, etc.

EXAMPLE 9.4 - TRIBAL REQUEST FOR SERVICES FROM THE WESTERN FEDERAL LANDS HIGHWAY DIVISION

NOTE: Please check with the agency from which you are requesting services before using this form.

Please provide the information requested below. **Be as detailed and specific as possible.** Your answers will help determine whether we have the ability to meet your needs.

Name of Project: _____

Location of Project: (Please attach a map.)

State: _____

County/Borough/Tribal Lands: _____

GPS Coordinates: Latitude _____ Longitude _____

Purpose, Need, and Major Objectives of Project:

What transportation need does the existing road serve?

What transportation need will the new project solve?

What type of vehicles will use this transportation project?

What is the population base or traffic volume that it will serve?

What is the desired season of use? (e.g. year round all weather, seasonal use only, etc.)

Why is this project so important?

What would result if the project does not get delivered?

Is this project adjacent to or associated with other anticipated work?

Existing Conditions: (Please attach photos.)

What does the existing road template look like? Width, road surface type, road surface condition, drainage conditions, culvert condition, slope condition, bridge condition:

Scope of Project: (Attach any scope defining documents.)

Starting point of project: _____

Ending point of project: _____

Length of project: _____

Major items of work anticipated: Check all that apply.

- | | |
|--|---|
| <input type="checkbox"/> reconstruct new roadway | <input type="checkbox"/> recondition existing roadway |
| <input type="checkbox"/> spot alignment improvements | <input type="checkbox"/> bridges |
| <input type="checkbox"/> large culverts | <input type="checkbox"/> fish passage culverts |
| <input type="checkbox"/> slope stabilization | <input type="checkbox"/> retaining walls |
| <input type="checkbox"/> repairing frost heaves/soft spots | <input type="checkbox"/> aggregate surface |
| <input type="checkbox"/> paved surface | <input type="checkbox"/> Other: _____ |

Is a current Right-of-Way or are Easements in place for construction and maintenance of the entire new project?

- Yes No

Who are the underlying landowners?

Do the landowners support the project?

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Are utilities located within the roadway template that would be affected when constructing the new project?

Where are the closest material sources and disposal sites?

When are the typical construction months?

Work accomplished to date either by you, or work to have been known performed by others: (Please attach work documents. Check all that apply.)

- | | | |
|--|---|--|
| <input type="checkbox"/> scoping reports | <input type="checkbox"/> conceptual studies | <input type="checkbox"/> technical reports |
| <input type="checkbox"/> alternative analysis clearances | <input type="checkbox"/> environmental studies | <input type="checkbox"/> environmental |
| <input type="checkbox"/> construction permits clearance | <input type="checkbox"/> plan sets | <input type="checkbox"/> right-of-way |
| <input type="checkbox"/> utility relocation | <input type="checkbox"/> construction procurement | <input type="checkbox"/> construction |

Requested development activities and deliverables: (Specify activities and objectives you want Western Federal Lands (WFLHD) to perform. Check all that apply.)

- | | | |
|--|---|--|
| <input type="checkbox"/> scoping reports | <input type="checkbox"/> conceptual studies | <input type="checkbox"/> technical reports |
| <input type="checkbox"/> alternative analysis clearances | <input type="checkbox"/> environmental studies | <input type="checkbox"/> environmental |
| <input type="checkbox"/> construction permits clearance | <input type="checkbox"/> design plan sets | <input type="checkbox"/> right-of-way |
| <input type="checkbox"/> utility relocation | <input type="checkbox"/> construction procurement | <input type="checkbox"/> construction |
| <input type="checkbox"/> Other: _____ | | |

Critical delivery dates of major deliverables listed above:

<u>Major Deliverable</u>	<u>Critical Date</u>	<u>Reason for criticality</u>
<i>Design plans completed</i>		
<i>Construction end</i>		
<i>Construction start</i>		

Funding Information:

Is the project approved through federal/state/local/tribal planning committee? (Attach supporting STIP, Tribal Transportation Improvement Program, or approval document.)

What specific type and amount of the funds are to be used for this work?

Who has the funds at the current time?

Is there any time criteria or expiration date limit associated with the funding?

How will you compensate WFLHD for this service (transfer funds, check, etc.)?

Requestor Information

Contact for technical questions:

Name: _____

Phone Number: _____

E-mail Address: _____

Authorized person to enter into agreement:

Name: _____

Phone Number: _____

E-mail address: _____

Date submitted: _____

Attach Additional Pages for Comments or to provide more information.

Please return completed form to an FHWA Tribal Coordinator or IRR_FIELD@dot.gov, 360- 619-7957.

X. Right-of-Way (ROW)

Definition:

- **Right-of-way** means real property and rights therein used for the construction, operation, or maintenance of a transportation or related facility.
- **Right-Of-Way Phase** – This effort includes the revision of existing plans or the preparation of new plans detailing the need for new Right of Way defined during the design phase. It also includes the appraisal, negotiation, and purchase of new Right of Way. The right-of-way phase can begin during scoping, after design completion, or anytime in between. The phase end is when the ROW is certified, but this may not have a direct relationship to the construction phase. Construction cannot begin unless the ROW is certified. Except under rare circumstances, all new Right-of-Way must be acquired before the project can go to advertizing.

Program Overview. The Right of Way program conducts acquisitions of property rights necessary for the construction and improvement of IRR roads. Some rights of way are for a specific use such as repair of telephone lines. The program also coordinates the relocations of businesses and families displaced by highway projects. In addition, the program tracks the management and disposition of residue parcels and surplus right of way.

The Right-of-Way program is responsible for ensuring that land acquired and people relocated for highway projects are accomplished according to the Uniform Act. Requirements provide for fair market value to be paid for real estate, and reimbursements paid for relocating homeowners/tenants and business owners. Program responsibilities also cover other programs such as Federal land transfers, outdoor advertising, encroachment permits, and junkyard control.

Statutory/Regulatory Requirements.

- 42 U.S.C. 4601 – Uniform Relocation and Real Property Acquisitions Policy Act

Roles and Responsibilities. The following outline provides examples of potential agency or governmental roles and responsibilities when establishing a project agreement for IRR projects advanced by a Tribe under a Program Agreement.

Land	Roles and Responsibilities
Trust Land	<p>Tribe: Drafts Project Agreement, provides review copies for cooperating agencies, and executes the Project Agreement with cooperating agencies.</p> <p>BIA Regional Office: Processing right-of-way: reviewing right-of-way applications and certifications; approving right-of-way documents; processing grants and acquisitions of rights-of-way requests for allocated lands; responding to information requests; filing Affidavit of Completion Forms; Performing custodial functions related to storing rights-of-way documents; ROW appraisal and negotiation; providing Title Status Reports (TSRs), Grants of Easement, and filing ROW documents; reviews and approval.</p>

Land	Roles and Responsibilities
	<p>FHWA: Ensure ROW process is complete.</p>
<p>Restricted Fee Land</p>	<p>Tribe: Drafts Project Agreement, provides review copies for cooperating agencies, and executes the Project Agreement with cooperating agencies.</p> <p>BIA Regional Office: Processing right-of-way: reviewing right-of-way applications and certifications; approving right-of-way documents; processing grants and acquisitions of rights-of-way requests for allocated lands; responding to information requests; filing Affidavit of Completion Forms; Performing custodial functions related to storing rights-of-way documents; ROW appraisal and negotiation; providing Title Status Reports (TSRs), Grants of Easement, and filing ROW documents; reviews and approval.</p> <p>FHWA: Ensure ROW process is complete.</p>
<p>Fee Land</p>	<p>Tribe: Drafts Project Agreement, provides review copies for cooperating agencies, and executes the Project Agreement with cooperating agencies.</p> <p>FHWA: Ensure ROW process is complete.</p>
<p>State Owned</p>	<p>State DOT: Obtains necessary ROW and ensures utility relocation (both at State’s expense).</p> <p>Tribe: Drafts Project Agreement, provides review copies for cooperating agencies, and executes the Project Agreement with cooperating agencies.</p> <p>FHWA: Ensure ROW process is complete.</p>
<p>County or local agency owned roads</p>	<p>Tribe: Drafts Project Agreement, provides review copies for cooperating agencies, and executes the Project Agreement with cooperating agencies.</p> <p>County/Local Agency: Obtains necessary ROW and ensures utility relocation (both at County’s expense).</p> <p>FHWA: Ensure ROW process is complete.</p>

XI. Plans, Specifications, and Estimates (PS&E) Development

Overview. Construction management includes several major steps with sub-stages in each major step, including pre-planning, conceptual design, PS&E development, bidding and awarding contracts, project execution and construction, project monitoring, and project completion.

In the PS&E Development, also referred to as Project Development, the process takes a transportation improvement from concept through design. The primary function of design is to designate those standards, policies, and standard specifications that are acceptable for application in the geometric and structural features of highways, road, bridges, and walkways. Key objectives for design and should include:

- Improving safety for all users,
- Promoting project design choices that are consistent with Tribal transportation plan and policies,
- Providing facility designed to meet the functional and operational goals established by the project purpose and need in the NEPA process,
- Providing accessibility for people with disabilities,
- Compatibility with other transportation modes, facilities and land uses,
- Cost effectiveness to ensure value returned, and
- The project is sensitive to the local context and meets the needs of the people it serves.

The need for early identification of issues and alternatives is important. In addition, community values, natural, historic, and cultural resources should be fully considered throughout the design process. The role of the Tribe is to ensure the key objectives for design are met.

***NOTE:** A Tribe has several options in the developing PS&E package. A Tribe can develop the PS&E package in house or subcontract the service out to a consultant, BIA, or FLH.*

*Under the authority prescribed in 23 U.S.C. 204, FLH can perform any or all phases of IRR project development and construction, if requested by a Tribal government. If so requested, each of the FLH Divisions (Eastern, Central, and Western) may execute individual Project Agreements with Tribal governments to perform any or all project development activities if IRR funds are used (see **Example 9.4 - Tribal Request for Services form**).*

Statutory/Regulatory Requirements.

23 U.S.C. 202(d)(2)(F)(ii) allows an Indian Tribal government to approve plans, specifications, and estimates (PS&Es).

The following requirements must be met by the Tribal government when approving a PS&E package:

1. **Assurances.** The Tribe will provide assurances that the construction will meet or exceed applicable health and safety standards. This can be accomplished by:
 - a. A State-licensed civil engineer must certify (seal) on the plans that the PS&E meets applicable health and safety standard; and
 - b. The Tribe must provide a copy of the certification letter by the State-licensed civil engineer to the Deputy Assistant Secretary for Tribal Government Affairs or the Assistant Secretary for Indian Affairs (see **Example 11.1 - PS&E Certification Letter**).

2. **Public Hearing.** (a) Criteria to determine if a public hearing will be held are listed in 25 CFR 170.435. (b) Requirements for a “Notice of No Public Hearing” are listed in 25 CFR 170.437. (c) Public hearing process is in 25 CFR 170.438 to 170.441.
3. **Environmental and Archeological.** Requirements for archeological and environmental are in 25 CFR 170.450, 25 CFR 170.451, and Appendix A to Subpart D - Cultural Resource and Environmental Requirements for the IRR Program.
4. **Design Standards.** Design standards are directed by 25 CFR 170.454 - 170.456. Specifically:
 - a. Standards listed in 25 CFR 170, Appendix B to Subpart D – Design Standards for the IRR Program.
 - b. FHWA-approved State design standards.
 - c. FHWA-approved Tribal road and bridge design standards that are consistent with or exceed applicable Federal standards.
 - d. MUTCD Manual of Uniform Traffic Safety Devices, latest edition
 - e. Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, latest edition.
 - f. Design standards used must be applied for each construction project consistent with a minimum 20-year design life for highway projects and 75-year design life for highway bridges. The design of IRR projects must take into consideration:
 - i. The existing and planned future use of the IRR transportation facility in a manner that is conducive to safety, durability, and economy of maintenance;
 - ii. The particular needs of each locality, and the environmental, scenic, historic, aesthetic, community, and other cultural values and mobility needs in a cost-effective manner; and
 - iii. Access and accommodation for other modes of transportation.
5. **Design Exception.** Design exception requests must be submitted to the FHWA Tribal Coordinator by the Tribe. The State registered Civil Engineer must submit written documentation with appropriate supporting data, sketches, details, and justification based on engineering analysis (see **Example 11.2 - Highway Design Standards Certification**). The FHWA may grant design exceptions for:
 - a. Experimental features on projects, and
 - b. Projects where conditions warrant that exceptions be made.

The FHWA can approve a project design exception only after giving due consideration to all project conditions such as:

- a. Maximum service and safety benefits for the dollar invested;
- b. Compatibility with adjacent features; and
- c. Probable time before reconstruction of the project due to changed conditions or transportation demands.

The FHWA has 30 days from receiving the request to approve or decline the design exception (for BIA ownership, the BIA will review, recommend, and concur).

6. **Review, Content, and Approval of PS&E Package.** Criteria governing review and approval of PS&E packages are in 25 CFR 170.460 through 25 CFR 170.463. The content of the PS&E package includes, at a minimum, the following:

- a. Certified stamped plans by a State licensed professional engineer that the plan meet or exceed design, health, and safety standards.
- b. A copy of the PS&E certification letter (**see Example 11.1 – PS&E Certification Letter**) by an additional the State-licensed civil engineer that the PS&E meets applicable health and safety standards as outlined in 25 CFR 107 Appendix B to subpart D.
- c. Specifications that ensure that materials and construction techniques will meet acceptable standards.
- d. Estimates that reasonably anticipate the project cost.
- e. A Tribal resolution or other authorized document supporting the project.
- f. Certification that right-of-way clearances have been obtained.
- g. Certification that required environmental, archeological, and cultural clearances have been obtained.
- h. Design exceptions have been identified and approved (if used in the plans).
- i. Public hearing requirements have been met.
- j. Any utility agreements.

Guidelines / Procedures.

1. PS&E Development Process for a BIA or Tribally Owned Facility.

- a) Engage the services of a licensed professional engineer to supervise design and approval of the PS&E package.
- b) Ensure that the licensed professional engineer has certified that the PS&E meets or exceeds the design, health, and safety standards in Appendix B to subpart D of 25 CFR 170.
- c) Before soliciting bids for the project, provide a copy of the certification and approved PS&E package to the Deputy Assistant Secretary for Tribal Government Affairs with a copy to the BIA Regional Director and the FLH Associate Administrator.

2. PS&E Development Process for a Facility Maintained by a Public Authority Other Than the BIA or a Tribe.

- a) Engage the services of a licensed professional engineer to supervise design and approval of the PS&E package.
- b) Ensure that the licensed professional engineer has certified that the PS&E meets or exceeds the design, health, and safety standards in Appendix B to subpart D of 25 CFR 170.
- c) Before soliciting bids for the project, provide a copy of the certification and approved PS&E package to the Deputy Assistant Secretary for Tribal Government Affairs with a copy to the BIA Regional Director and the FLH Associate Administrator.
- d) Develop an agreement between the public authority (see example Project Agreement) and the Tribe that delineates the roles and responsibilities of the two entities for the development, construction, and continued maintenance of the project after construction.
- e) Provide the public authority the 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.
- f) Allow the public authority at least 30 days for review and comment unless the Tribe and the public authority agree upon a longer period of time.

- g) Before soliciting bids for the project, certify in writing to the FHWA Administrator that it afforded the public authority an opportunity to review and comment on the PS&E package, addressed all comments, and received no written comments from the public authority that prevent the Tribe from proceeding with the project.
3. **Utility Coordination.** If utility adjustments are necessary to construct a project, it is essential that utility companies be advised well in advance and every step of the process of any developments that will affect their facilities. Therefore, utility companies should be advised on the following schedule:
- **30% Design Stage.** When plans for a project are at the 30 percent design stage, it is recommended that copies be sent to the utility companies.
 - **50% Design Stage.** When plans are at the 50 percent design stage a second set of plans, including cross-sections, is sent to the utilities companies for utility conflict identification and design purposes.
 - **90% Design Stage.** At the 90 percent design stage, a third set of plans is sent to the utility companies for final design of utility relocations. During this time the utility company and the owner agency should draft agreements which outline areas of responsibility, estimates and division of costs, and utility plans approval.
4. **Permits and Clearances.** All required permits must be obtained prior to advertising the project for construction bids. Requirement permits include, but are not limited to:
- wetlands,
 - railroads,
 - airports, and
 - utilities.
- Permits and clearances are obtained during the final design of the project.
5. **Project Development Milestones (Targets).** The following outlines a traditional approach to highway design process and identifies milestones needed in order to ensure the PS&E package is complete:
- a) **30 Percent Plans (Preliminary Plans).**
- Generally contain complete base map information and roadway information.
 - Preliminary alignment is set and this information is used to identify whether additional field survey data is needed for utility delineation, subsurface exploration, and hydraulic and environmental surveys.
 - An on-site meeting is generally held at this stage with all project development disciplines, and stakeholders to discuss the progress of the project.
 - The NEPA documentation should be completed with information developed at this stage, before further design is completed, in order to ensure that all environmental considerations can be incorporated into the final design.
- b) **90 Percent Plan Review (Detailed Plans).**
- Detailed project design is complete at this stage.
 - A meeting is held to review the final plans. The meeting provides stakeholders a last opportunity to comment on the plans and specifications.
6. **Indian Tribal Government Approval.** The Tribe reviews and approves the PS&E package.

7. **Submittal of the Approved PS&E Package.** Upon completion of the approved plans, the Tribe should provide FHWA and the facility owner with a complete PS&E package. The attached PS&E Certification Checklist (see **Example 11.3 – PS&E Certification Checklist**) should be included with the PS&E package.
8. **Public Authority Review Certification Letter.** (For a facility maintained or operated by a public authority other than the BIA or Tribe) Before soliciting bids for the project(s) the Tribe must certify in writing to the Administrator that they 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.

Resources.

- FLHP's Project Development and Design Manual (PDDM):

<http://www.wfl.fhwa.dot.gov/design/manual/>

Example 11.1 - PS&E Certification Letter

The Honorable [insert Tribal chairperson name]
[insert name of Tribal Government]
[insert Tribal address]

[date]

Dear Chairperson [name]

The purpose of this letter is to provide a certification of the Plans, Specifications and Engineer's Estimate (PS&E) for the [insert project name] project.

I certify that the PS&E:

- Meets or exceeds all the design, health, and safety standards in accordance with 25 CFR 170.454, 455, 456, 462 and Appendix B to Subpart D – Design Standards for the IRR Program;
- Meets or exceeds all the design, health, and safety standards in accordance with USC 23 Chapter 1, 109(a);
- Meets or exceeds all the design, health, and safety standards in accordance and in compliance with all the [insert State name] design standards; and

Please contact me if you have any questions concerning this letter.

Sincerely,

[Insert name], P.E.
Project Engineer

State of Registration:
Expiration Date:
Registration Number:

GEOMETRIC AND BRIDGE CRITERIA - Show Station Range			
GEOMETRIC AND BRIDGE CRITERIA	STANDARD	AS DESIGNED	EXCEPTION
	facility	?	
2. Traveled Way Width			Example: Yes - see (2) below
3. Shoulder Width			Example: No
4. Crown	? %	? %	Example: N/A
5. Horizontal Curvature			
6. Superelevation	e(max) = ?% Δ = 0.??%	e(max) = ?% Δ = 0.??%	
7. Grades	?%	?%	
8. Vertical Curvature	K (crest) = K (sag) =	K (crest) = K (sag) =	
9. Stopping Sight Distance			
10. Horizontal Clearance (not clear zone)			
11. Vertical Clearance to Structure			
12. Bridge Width			
13. Bridge Loading			
14. Clear Zone			Example: Yes - see (3) below
15. Barrier Crashworthiness	NCHRP 350		Example: Yes - see (4) below
16. Design Flood	FLH Project Development and Design Manual Exhibit 7.1-A	Example: No	

GEOMETRIC AND BRIDGE CRITERIA - Show Station Range			
GEOMETRIC AND BRIDGE CRITERIA	STANDARD	AS DESIGNED	EXCEPTION
17. Pavement Design Service Life	?-year	?-year	Example: N/A

Descriptions of and reasons for exceptions to standards (list separately):
(1)

Analysis of risks and design features proposed to mitigate exceptions (list separately):

Approval of Design Exceptions:

- There are no exceptions to applicable standards.
- The exceptions to the design standards as noted and their related risks have been reviewed with the appropriate agencies and parties and are considered acceptable for this project.

PREPARED BY: _____
Lead Designer, Consultant Firm

Stamp and Date

APPROVAL IS RECOMMENDED: _____
Design Manager or Project Manager, Consultant Firm

Stamp and Date

Tribal Road Department: _____ Date: _____
I CONCUR WITH THE ABOVE RECOMMENDATIONS (optional):

Owning Agency: _____ Date: _____

Maintaining Agency: _____ Date: _____
(if different from above)

THE ABOVE RECOMMENDATIONS ARE APPROVED:

IRR Program, Federal Lands Highway Office

Date:

PS&E Certification Checklist

Tribe:

Agency with Jurisdiction over Facility:

Project Name:

Project Location:

Type of Work:

State:

County:

Action Item	v
1. The project facility is included in the IRR program inventory.	
2. The project is on a FHWA approved TIP.	
3. Public involvement has been completed in accordance with 25 CFR 170.435 through 170.441.	
4. Appropriate construction easements, maintenance and utility agreements have been obtained in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 for fee lands and 25 CFR 169 for trust lands.	
5. Cultural resources and environmental requirements listed in Appendix A to Subpart D of 25 CFR 170 have been met.	
6. This PE&E package meets or exceeds applicable design, health and safety standards listed in Appendix B to Subpart D of 25 CFR 170.	
7. For other than facilities under Tribal and BIA jurisdiction, the owner public authority was provided an opportunity to review and comment on the Tribe's PS&E package when it was between 75 and 95 percent complete.	
8. All applicable federal, state, and local permits (environmental, land use, etc.) have been obtained, and the resulting relevant conditions/commitments have been incorporated into the PS&E as appropriate.	

Tribal Signature:

Date:

XII. Advertising for Bids, Award*, and Contracting

Overview. Advertising for bids, award of a contract, and contracting is another step in construction management. The object of the bidding process is to provide competition and to secure the performance at the lowest cost to the governing body and yet provide assurance that the completed project will meet all of the standards specified. The underlying philosophy of the formal bid process is to obtain maximum competition from a much broader group of potential bidders. As a result, it is intended that contracts be awarded to the lowest, qualified, responsive and responsible bidder*. The role of the Tribe is to advertise, award, and administer the construction contract on any route on the IRR system.

***NOTE:** A Tribe has several options in the advertizing and administering a contract. The Tribe can advertise and administer the contract in house or subcontract out to a consultant, BIA, or FHWA. The Tribe maintains the option of completing the project under Force Account using its own forces and equipment. If doing the project in this manner the Tribe should complete an independent in house cost analysis to compare to the engineers estimate to the PS&E to ensure the reasonability of the anticipated cost and accuracy of the engineers estimate.*

*Under the authority prescribed in 23 U.S.C. 204, FLH can perform any or all phases of IRR project development and construction, if requested by a Tribal government. If so requested, each of the FLH Divisions (Eastern, Central, and Western) may execute individual Project Agreements with Tribal governments to perform any or all project development activities if IRR funds are used (See **Example 9.4 – Tribal Request for Services form**).*

However, awarding the contract should be by the Tribe. A contract to perform highway construction work is between a contractor and a Tribe – not the FHWA. For the purposes of highway construction, the Tribe is an extension of the FHWA and gives money directly to the Tribe for highway construction.

Statutory/Regulatory Requirements

- *Under 25 U.S.C. Section 450e(b) and 23 U.S.C. Section 204 (e), Indian organizations and Indian-owned economic enterprises are entitles to a preference, to the greatest extent feasible, in the award of contracts, subcontracts, and sub-grants for all work performed under the IRR Program.
- Before soliciting bids for projects(s), Tribes must certify in writing (**see Example 12.1 - Tribe Certification Letter for Soliciting Bids**) to the FHWA Administrator that it afforded the public authority an opportunity to review and comment on the PS&E package, address any issues, and received no written comments from the public authority that prevent the Tribe from proceeding with the project (Program Agreement - Article III, Section 1C(2)(c)).
- The Tribe agrees to initiate and complete IRR construction projects in accordance with the approved PS&E (Program Agreement - Article III, Section 1B).
- Each Tribe needs Contracting Procedures (advertize bids, award, and contracts) documented and in place in order to perform the contracted programs and projects in accordance with the requirements of 25 CFR Part 170, as amended by SAFETEA-LU (Program Agreement – Article III, Section 1B).

Guidelines / Procedures. The Tribe may at its sole option, adopt applicable State DOT, FHWA or BIA policies, procedures, program guidelines and memoranda, or develop tribal policies, procedures, program guidelines and memoranda which meets or exceeds federal standards to facilitate operation or administration of any aspect of the programs assumed by or delegated to the Tribe under the FHWA and Tribe Agreement.

Attached is a PS&E Advertising Checklist the Tribe may wish to use to help ensure all items have been complete prior to advertising for bids (**see Example 12.2 – IRR PS&E Advertisement Checklist**).

Under the authority prescribed in 23 U.S.C. 204, FLH can perform any or all phases of IRR project development and construction, if requested by a Tribal government. If so requested, each of the FLH Divisions (Eastern, Central, and Western) may execute individual Project Agreements with Tribal governments to perform any or all project development activities if IRR funds are used.

Resources.

- Contract Administration Core Curricular Participants' Manual and Reference Guide 2006 – Provides guidance to State DOT on Advertising for Bids, Bid Analysis, Award of Contract

<http://www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm>

Example 12.1 - Tribe Certification Letter for Soliciting Bids)

Victor M. Mendez
FHWA Administrator

[date]

Dear Mr. Mendez,

I certify that we afforded the public authority an opportunity to review and comment on the PS&E package for at least 30 days and received no written comments from the public authority that prevent the Tribe from proceeding with the project (Program Agreement - Article III, Section 1C(2)(c)).

In addition, we agree to initiate and complete IRR construction projects in accordance with the approved PS&E (Program Agreement - Article III, Section 1B).

Further, we confirm that we have Contracting Procedures (advertize bids, award, and contracts) documented and in place in order to perform the contracted programs and projects in accordance with the requirements of 25 CFR Part 170, as amended by SAFETEA-LU (Program Agreement – Article III, Section 1B).

Please contact me if you have any questions concerning this letter.

Sincerely,

[Insert name],
[Tribe Name]

Tribal Representative

Example 12.2 – IRR PS&E Advertisement Checklist

IRR PS&E ADVERTISEMENT CHECKLIST

Project Name: Project Number:

IRR Inventory Route No.: IRR Inventory Sections:

DOCUMENT or MILESTONE

DATE

Project Agreement (with Owner for Maintenance)

IRR Design Standards Certification Form signed

Environmental Clearance (CE___ EA___ or EIS___)

Environmental Commitment Review by: _____

(Verified all commitments incorporated into the PS&E)

Permits (if applicable):

404 Permit (Individual No._____, or Nationwide No._____)

401 Permit

NPDES Permit (Notice of Intent).....

SWPPP filed

Encroachment Permit (State DOT, County, Municipality).....

Special Use Permit (for USFS projects).....

Other: (Any additional items to be included in SCRs)

Right-of-Way and Utility Certification (Certification Level ___)

Right-of-Way Agreements w/landowners or others

Right-of-Entry/Letter of Consent (if applicable).....

Utility Data Quality Level Certification

Utility Agreements.....

Fire Plan (USFS Projects).....

External Review Distribution (Agency: _____)

External PS&E Review comments reviewed/incorporated

Revised 11-17-11

Approvals (attach Standards Certification Form):

State.....

County.....

Other

Internal PS&E Review comments reviewed/incorporated.....

PS&E QA/QC Completed by:_____

Engineer Estimate (EE) Check by: _____

Unit Price Analysis performed by: _____

IF DEVELOPED BY A/E FIRM:

All Plan Sheets Stamped, Sealed and Signed.....

Front Page of SCRs Stamped, Sealed and Signed

Instrument in place for A/E design support during construction.....

Name, phone #, and e-mail address of A/E Firm Contact:

Anticipated Advertisement Date.....

Recommended for Approval by Tribal Official

Signature: _____

Date:_____

Title:_____

XIII. Construction

Overview. Construction of a project is another step in construction management. The construction step generally covers the monitoring of the construction activities from the first day of construction through final acceptance. Tribes have authority over construction contractors working on their land. The FHWA does not employ anyone working on a highway construction project. Construction contracts are between the Tribe and the contractor. However, FHWA has a principal role in encouraging Indian employment in highway construction. The role of the Tribe is to ensure the construction activities are built according to the PS&E.

***NOTE:** A Tribe has several options in the implementing and overseeing construction activities. A Tribe can manage construction in house or subcontract the service out to a consultant, BIA, or FLH.*

Under the authority prescribed in 23 U.S.C. 204, FLH can perform any or all phases of IRR project development and construction, if requested by a Tribal government. If so requested, each of the FLH Divisions (Eastern, Central, and Western) may execute individual Project Agreements with Tribal governments to perform any or all project development activities if IRR funds are used (See Example 9.4 – Tribal Request for Services form).

Statutory/Regulatory Requirements

- All construction and construction monitoring is governed under 25 CFR 170.470 - 170.474.
- The Tribe must meet applicable labor standards in accordance with Mine Safety and Health Administration (MSHA) regulations found in 30 CFR 1 - 199, Mineral Resources, developed pursuant to the Federal Mine Safety and Health Act of 1977 (PL 91-173) as amended, and in accordance with the Occupational Safety and Health Administration (OSHA) regulations found in 29 CFR 1900, Labor - Construction Standards, developed pursuant to the Occupational Safety and Health Act of 1970 (PL 91-596) as amended.
- With respect to Indian Employment Preference/Tribal Preference/TERO, please see 25 CFR 170.910 - 25 CFR 170.917 for further information in these areas.

Guidelines / Procedures.

Documentation. The need for an accurate and detailed documentation and monitoring of construction project cannot be over emphasized. Documentation plays a major role in every construction project. Information must be collected and stored to serve as a reference or evidential material.

Documentation may take place differently depending on the option the Tribe chooses in implementing and overseeing the construction activities. For example, if the Tribe chooses have a consultant, BIA, or FHWA implement and oversee the construction activities, these agencies may have their own tested documentation processes already in place. Whereas if the Tribe chooses to implement and oversee the construction activities in house, the Tribe may need assistance what and how to in document all the activities taking place on a construction project. Below is a site where a Tribe can obtain forms used by WFL. These forms can be modify and simplify depending on the complexity of the construction project to aid in project documentation.

<http://www.wfl.fhwa.dot.gov/resources/construction/forms/#construction>

Documentation covers the collection of information from the pre-construction stage to through the construction stage. It must be intended to be used for looking up facts, definitions or other information relating to activities or work sections in a construction project.

Documentation should serve in resolving disputes and supporting contractual claims. This calls for a detailed and accurate collection and recording of construction information. The documents contained in a file will almost certainly make or break its case. When the construction documents are complete, they are subject to code and legal reviews. Documentation also establishes the validity of a contractual claim. Depending on the quality of documentation, good or bad claim is produced.

Documentation is necessary to record construction activities and results in order to provide adequate evidence of compliance with laws, regulations, codes, PS&E requirements, and supports funding used in constructing the project.

Below are some suggested basic rules for good documentation for the construction procedures.

Rules for Data Entry

- Signature and Initials logs, that list the printed name, title, and the written signature and initials used by each person who is authorized to make or authenticate entries, will be prepared and maintained in the construction field book, when used, or in the file cabinet for that construction activity. Copies of this log, along with original signatures and initials added, are acceptable.
- Entries must be legible, clear, and reproducible.
- Errors will be corrected by lining through the incorrect entry with a single line, making the correction, and initialing and dating the correction. The erroneous information must not be obliterated or erased.
- When entries for a given subject are made on two or more pages or separate records that are not consecutive, each page or record must be cross-referenced to the previous and the following entries.
- When a page has entries from more than one day, each entry shall be signed or initialed and dated.
- The balance of that section of the document shall be crossed out immediately below the last entry.
- Pages to documents shall not be left completely blank. If a page must be left blank, it must be ruled across, signed, and dated.

Completeness and Correction of Incorrect Information

- The person who monitored or recorded the activity must identify the construction site, provide the date the activity was monitored or observed, and sign (or initial if the initials are identified on a signature/initials log) each page of the document recording a construction activity.
- Record accurately and concisely all data as required by procedures for the activity being performed.
- Record all significant and relevant field activity on the construction field inspection log; account for each work day, noting any work suspension and restarts.
- Describe the activity with enough detail to enable someone of equivalent skill and experience to understand and be informed as to what occurred or was recorded.
- All documentation shall be kept intact; no page is to be partially removed.
- Documents requiring replacement because of illegible handwriting, incompleteness, or inaccuracies will be voided and a replacement prepared. A notation will be made on the

voided document indicating that a replacement document was completed along with the initials and date of the person making the void notation. The voided document will be filed immediately following the replacement document.

- When a document contains information on more than one activity or project, reproducible copies may be designated and controlled as records for the other activities.

Recording Construction Activities

- Use still or digital photographic images and narrated video camera recording to enhance all written documentation from preexisting site conditions to final inspections.
- The Construction Field Inspection Log or other line management approved form should provide a documented factual record of the work performed each day, as well as
 - All changes that might affect cost and schedule.
 - Major project status changes.
 - All directions or clarifications.
 - Personnel accidents or injuries, safety infractions, and corrections.
 - Safety meetings held on site.
 - Names of visitors to the site.
 - Conditions and actions in response to Subcontractor violations.
 - Potentially reportable occurrences in accordance with the occurrence reporting process.
 - Significant events, such as unexpected power outages, severe weather occurrences, or spills of hazardous materials (residual radioactive material, hazardous waste, hazardous substance).
 - Construction inspections and quality control tests performed. Include time of tests and inspections and results.
 - Implementation of the applicable emergency plan.
 - Security incidents.
 - Applicable equipment parameters, including out-of-tolerance readings.
 - Nonconformance reports.
 - Signatures that acknowledge notifications or changes in construction activities.
 - Positive actions that resulted in significant savings, quality improvements, lessons learned, etc.
 - Hours worked.
 - Equipment on-site and used.
 - Weather.
 - Other pertinent information as determined by the project manager.
- The Site Supervisor should:
 - Document events as completely as possible and communicate information as clearly as possible to maximize understanding by individuals reading the Construction Field Inspection Log.
 - Record information promptly to avoid inaccuracy or incompleteness that often results from delayed entries.
 - Enter unusual, abnormal, or unexpected conditions in the appropriate record, and resolve these conditions in accordance with project management's guidance.

The following are recommended procedures for a Tribe to follow when the Tribe chooses to implement and oversee the construction activities in house. These same procedures should also be used by a consultant, BIA, and FHWA when the Tribe subcontracts a project out to them.

1. **Pre-Construction Conference/Walk Through/Photographs.** Prior to beginning any construction project, the Tribe should hold a pre-construction conference with the contractor, FHWA Tribal Coordinator, and other key stakeholders. The purpose of the conference is to discuss, review, and reinforce the plans and specifications for the project, any unusual conditions, the contractor's plan and schedule of operation, type and adequacy of equipment, labor requirements, equal employment opportunity requirement, Tribal Employment Rights Ordinance (TERO), maintenance of traffic, requirements for traffic control, the contractor's responsibilities for accident prevention, material sources and testing requirements, subcontracting requirements, required submissions, and any other pertinent items which would result in a better job understanding.

It is recommended that the Tribe and the contractor walk through the project and take photographs prior to beginning construction. Additional photographs of the project should be taken during construction to document the progress of the project until completion and final inspection.

2. **Submittal Review.** Prior to beginning work on a construction project, the contractor should begin submitting documentation for materials that are intended for use on the project. A log of all of the contractor's submittals should be maintained through the duration of the project including:
 - payrolls,
 - material certifications,
 - test reports, and
 - other routine items.
3. **Construction Project File Set-up.** Key to any construction is to establish and maintain an organized filing system. Documentation is important for proper accountability purposes.
 - a. **Tribal On-site Representative's (TOSR) Daily Diaries.** The TOSR should maintain project diaries documenting construction operations, progress, meetings, telephone conversations, and problems encountered. Daily entries, with signature should be made. If the TOSR is absent from the project, the daily entries should be made and signed by the person left in charge during their absence.
 - b. **Inspector's Daily Reports.** The project inspector should prepare a daily report that fully documents the contractor's construction operations and pay quantities. The TOSR should review and sign the daily report. The TOSR should establish a process for reviewing, endorsing, and providing feedback as necessary, on contractor produced records.
 - c. **Contractor's Daily Reports.** It is recommended that the Tribe require the contractor to maintain daily records of equipment, personnel, and construction operations.
 - d. **Project Files.** The TOSR should establish a uniform filing system for use in construction field offices. Establishing and maintaining this system will ensure compliance with 25 CFR 472, which states that project records have to be maintained properly and be readily available when needed.
4. **Inspection.** An important part of construction monitoring is completing project-level inspections. An on-site review is required to evaluate project activities and the quality and progress of the work. The following are several types of inspections.

- a. **Work Site Safety, Worker Safety, and Work Zone Traffic Control.** The TOSR is responsible for ensuring that day-to-day project inspections are carried out during construction. The inspections should include a review of project safety.

As part of the daily inspections, the Tribe should complete a Work Zone Traffic Control inspection to assure compliance with the approved project standards. The WFL has an example of a Traffic Control Report (see link below) for these inspections and may be modified to meet project requirements.

<http://www.wfl.fhwa.dot.gov/resources/construction/forms/#construction>

A Safety Checklist (see **Example 13.1 – Safety Checklist**) is also included for reference to assist the TOSR. This checklist identifies critical elements of work zone traffic safety and OSHA conditions that should be checked during an inspection. The checklist should be completed by the Tribe at least once during each construction season for that particular project. The checklist was developed to minimize subjective reporting and to help determine if the contractor's safety plan and policy, plus the approved traffic control plan are being followed throughout the duration of the project. Upon request of the Tribe, an FLH representative may be available to take part in the safety review.

If the TOSR becomes aware of any unsafe condition resulting from the contractor's action or inaction or a possible violation of either OSHA standards or reasonable standards of construction safety practice, the contractor must be immediately notified in writing. The Tribe should be involved in this process and should be copied on any correspondence regarding safety issues.

Construction Standards. Quality Assurance/Quality Control (QA/QC) must be performed on all projects. The TOSR should oversee the activities of the construction contractors and monitor their work to ensure compliance with plans and specifications. The WFL has examples of forms to aid in monitoring and documenting contractors work (see link below).

<http://www.wfl.fhwa.dot.gov/resources/construction/forms/#construction>

- b. **Materials.** Construction administration and QC by the contractor and quality assurance by the Tribe should include continuous on-site inspections throughout construction, by competent, technically qualified, and experienced inspectors.

The TOSR should ensure that all materials being incorporated into the project conform to contract requirements. At a minimum, this work should include:

- (i) Confirming that contractor sampling/testing is performed in accordance with the sampling/testing frequencies stipulated in the contract and project specifications.
- (ii) Ensuring that the contractor's testing company maintains properly calibrated equipment and qualified personnel to perform the required work.

(iii) Maintaining all materials test results and documents for project records. It is recommended that records of all failing test results be supplemented with a follow-up passing test result. Any reporting discrepancies; i.e., errors, omissions, or conflicts, should be corrected and documented properly.

(iv) Receiving and maintaining materials certifications for all manufactured/non-tested materials incorporated into the project.

(v) Sampling and Testing – Ensuring that all test samples are taken in accordance with the approved project standards and contract requirements, and that they are sent to the testing company for verification testing and analysis. The tribe should have independent testing done in addition to what the contractor is performing to verify the contractor's results. The contractor's testing is for quality control and should be reviewed and overseen by the Tribe or their agent.

- c. The WFL has examples of forms to aid the Tribe in continuous on-site inspections and documentation throughout construction project (see link below).

<http://www.wfl.fhwa.dot.gov/resources/construction/forms/#construction>

- d. **Quantity Measurements.** Before any measurements are taken on a project, the TOSR should study the plans, specifications, and special contract requirements to determine what is to be measured and how the measurement will be completed.

- e. **Sediment and Erosion Control Inspections.** The TOSR should ensure that the contractor provides permanent and temporary erosion control measures in accordance with the approved erosion control plan, so as to minimize erosion and sedimentation during and after construction. It is recommended that inspections be carried out at least weekly and/or after significant rain events.

5. **Construction Schedule Review.** If specified in the contract, a contractor must submit a construction schedule to the TOSR. This construction schedule represents the sequence in which the contractor plans to perform the contract work. The TOSR should review the schedule and work with the contractor to verify that the construction schedule generally represents the activities that logically occur during the completion of the construction project. Updates to the construction schedule should be submitted according to requirements set out in the Tribal policy.

6. **Progress Payments.** The payment and invoice process, as well as the contractor's obligations, should be emphasized at the preconstruction conference. The contractor should understand the negative impacts that could result from failure to provide required materials and documentation, test reports, and/or certifications. The requirements for the processing of progress payments that are included in the contract should be reviewed in detail as well.

7. **Contract Modifications.** Only the Professional Engineer of record may change an IRR project's PS&E during construction. Substantial changes to a construction contract should only be completed in coordination with the Tribe and the facility owner. Records of the approved change orders, along with documentation of the work involved, such as photographs, diaries, daily reports, costs, and time must be maintained by the TOSR to assist in determining final costs and liability.

8. **Project Progress Meetings.** The TOSR should hold regularly scheduled meetings with the contractor's superintendent or representative to discuss the contractor's work progress, future plan, schedule of work, and any problems arising on the project. The frequency of the meetings should be determined by the complexity of the project.
9. **Weekly/Monthly Status Reports.** The TOSR should keep the Tribe and facility owner aware of the current state of the project by submitting a project status report to them on a regular basis.
10. **Construction Project Reviews.** In accordance with Section 1(F)(4) of Article III in the Program Agreement, FHWA Tribal Coordinator has the opportunity to visit project sites on a monthly basis or at critical project milestones. This visit may also be carried out by a mutually agreed upon delegated representative as well. FHWA Tribal Coordinator will give the Tribe reasonable advance written notice of inspection. For BIA lands, the BIA will be invited to attend. These visits are intended to allow FHWA Tribal Coordinator to carry out its oversight and stewardship responsibilities for the IRR Program or project(s) assumed by the Tribe.

A Construction Project Review will be completed during the visit and discussed/reviewed with the TOSR (see **Example 13.2 - Construction Inspection Report**). FHWA Tribal Coordinator will not provide direction or instruction to the Tribe's contractor or any subcontractor at any time. If a problem is discovered during an on-site monitoring visit, FHWA Tribal Coordinator will promptly notify the TOSR and, if asked, provide technical assistance.

For a BIA facility ownership, the FHWA Tribal Coordinator will invite a BIA representative to attend interim project reviews if not already invited.

11. Final Inspection, Project Acceptance, and Project Closeout and Report.

a. Final Inspection. A final inspection is conducted to determine whether the project has been completed in reasonable conformity with the PS&E.

It is recommended that a final inspection be completed within 30 days of the submittal completion of all contract activities.

It is recommended that the TOSR schedule the final inspection so that officials from the Tribe, facility owner (i.e., BIA), and FHWA are able to participate, as well as the contractor and maintenance personnel. For BIA owned land, the BIA will also attend the final inspection.

The Tribe should provide a construction report that accounts for the funds expended to date on the project, as well as the as-built plans to the facility owner and the FHWA Tribal Coordinator for final inspection. In addition, all project information must be made available during the final inspection. Examples of project information include:

- Daily diaries
- Weekly progress reports
- Monthly Narrative progress reports
- Subcontracts
- Subcontract expenditures
- Salaries
- Equipment expenditures
- As-built drawings

- Material Certifications/ testing reports
- Contract modifications
- Etc.

A final inspection review form (see **Example 13.2 - Construction Inspection Report**) will be completed by an FHWA Tribal Coordinator representative in company with the TOSR. If a BIA owned facility, the BIA representative will also participate in completing the Construction Inspection Report.

Once completed, the Construction Inspection Report will be forwarded to the Tribe for review and consideration.

b. Project Acceptance. Before the project can be closed out, certain documents and processes must be completed. The items must be included as completed in the close-out report. Items in support of the final project acceptance may include:

- Final Contract Modification (CM) – Actual final item quantities often vary from the original contract item quantities and as a result, a final CM may be required in order to close out the contract. The final CM will change the item quantities to match the actual amounts incorporated into the project. This work should be carried out by the TOSR.
- The Final Estimate – The final estimate should account for all final quantities, a time count, and any assessment of liquidated damages. The final amount of the contract should also be identified.
- Claims – It is recommended that the Tribe, the facility owner (BIA if owner of the facility), and the contractor address and resolve any pending claims, which pertain to the contract as part of the close-out process.
- The Tribe should receive and maintain all project records. The records should include certifications indicating that all of the materials used on the project were in conformance with project specifications. The U.S. Department of Transportation recommends that project records be maintained for at least 10 years.
- Verify completion and/or status of environmental commitments.

Once the final inspection is documented and any issues completed and documentation which supports all activities of the project is completed, a Letter of Acceptance (see **Example 13.3 – Final Letter of Acceptance**) is developed by the Tribe. (For a BIA owned facility, the BIA will write a Letter of Acceptance to the Tribe, with a cc to FHWA, once accepted by the BIA (see **Example 13.4 – Final Letter of Acceptance for BIA Owned Facility**). The Tribe will then send a Letter of Acceptance to the Contractor, if applicable). This letter is a formal acceptance document that captures the concurrence of all stakeholders of the project they accept and acknowledge that the project has been developed as requested or in accordance with the contract document. This releases the contractor of any further responsibilities of the project.

The Letter of Acceptance is provided to the contractor and a courtesy copy is also given to the facility owner and the FHWA Tribal Coordinator.

c. Project Close Out and Report. After final inspection, the completion of any required corrections, and project final acceptance by the Tribe and the facility owner, the Tribe must submit a final project closeout report to FHWA Tribal Coordinator and the facility owner (BIA if facility owner).

The project closeout report is the final accounting of all construction project expenditures and is the closing of the financial books for the construction project.

The closeout documents and report are typically generated by the TOSR.

The report should be completed within 120 calendar days (4-months) of the date of project acceptance.

The final close out report should consist of:

- A summary the construction project records to ensure compliance requirement have been met,
- Review the bid item quantities and expenditures to ensure reasonable conformance with the PS&E and contract modifications,
- Final as-built plans, and
- Photographs.
- Change orders
- FHWA Final Inspection
- Acceptance letter

All project information made available during final inspection per 25 CFR 472-474 can also be used to develop the IRR construction project closeout report.

Once the project is complete the Tribe must update the IRR inventory to reflect any changes and submit cost to construct detail sheets to the BIADOT.

Resources.

- <http://www.fhwa.dot.gov/construction/>
- FLF Construction Manual
<http://flh.fhwa.dot.gov/resources/manuals/cm/>

Example 13.1 – Safety Checklist

SAFETY CHECKLIST for Construction Projects	
Date of Review:	Conducted by:
General	
Is the project constructible using the construction Traffic Control Plan (TCP) as shown in the PS&E?	Y/N
Does the traffic control affect the design, such as material requirements from roadways used for public use during the construction?	Y/N
Are there traffic restrictions?	Y/N
Is there enough work area and staging areas for the Contractor to do the necessary construction operations?	Y/N
Does the construction traffic control allow for Contractor access?	Y/N
Is the speed based on the existing posted speed?	Y/N
Is the work site safe for both traffic and workers?	Y/N
Comments:	
Signing	
Are the signs being used per the new MUTCD?	Y/N
Do the sign messages convey the intended actions that are required to be taken?	Y/N
Do the signs have the proper legends, sizes, color combinations, and reflectivity?	Y/N
Do the signs have the proper legends, sizes, color combinations, and reflectivity?	Y/N
Is the location of the sign per the MUTCD?	Y/N
Are the signs properly spaced?	Y/N
Are the layout measurements tied to a physical feature so the Contractor can do the layout in the field?	Y/N
Is there proper sight distance to the sign?	Y/N
Is it physically possible to place the sign where indicated?	Y/N
Is there sufficient horizontal clearance?	Y/N
Any existing signing that needs to be replaced to be in accordance with the MUTCD?	Y/N
Any conflicting existing signing?	Y/N
Markings	
Have passing zones been verified?	Y/N
Matching existing?	Y/N
Handicap parking meets ADA requirements?	Y/N
Striping requirements per the new MUTCD?	Y/N
Meets Centerline warrants?	Y/N
Meets edge line warrants?	Y/N
Comments:	
Construction Signing	
Are the signs being used per the MUTCD?	Y/N
If the situation calls for a standard traffic control scheme, do the advance warning signs match those shown in the standard layouts in the MUTCD?	Y/N

SAFETY CHECKLIST for Construction Projects	
Do the sign messages convey the intended actions that are required to be taken?	Y/N
Do the signs have the proper legends, sizes, color combinations, and reflectivity? (The MUTCD provides that the minimum letter size for signs should not be less than five inches for low volume traffic.)	Y/N
Is the location of the sign per the MUTCD?	Y/N
Are the signs properly spaced?	Y/N
Are the layout measurements tied to a physical feature so the Contractor can do the layout in the field?	Y/N
Are there existing signs within the construction zone that may conflict with the Traffic Control Plan?	Y/N
Do any of the existing signs obscure the view of advance warning signs?	Y/N
If stage construction is used, is the signing from stage to stage consistent (sign types and locations)?	Y/N
If a numbered route, are the numbered routes used for the detour?	Y/N
If a detour is not provided could a detour work?	Y/N
Are all access points properly signed?	Y/N
Is it physically possible to place the sign where indicated?	Y/N
Is there sufficient horizontal clearance?	Y/N
Is there a need for any pedestrian or bicycle signing?	Y/N
Comments:	
Channelizing Devices	
Are the correct devices used for a particular operation? (Drums should be used instead of barricades, type II; Temporary concrete barriers should not be used as a channelizing device.)	Y/N
Are channelizing tapers located correctly?	Y/N
Are channelizing tapers the correct length?	Y/N
Are devices spaced correctly in the taper?	Y/N
Are devices spaced correctly in the work area?	Y/N
Do the devices meet MUTCD requirements for size, type, color, and reflectivity?	Y/N
Are the devices properly ballasted (weighted down)?	Y/N
Comments:	
Pavement Markings	
If short-term markings required, do they coincide with MUTCD 6D and Federal Lands Highway policy?	Y/N
Is marking consistent, especially during stage construction?	Y/N
Do existing pavement markings conflict with the proposed temporary markings?	Y/N
Comments:	
Lighting Devices	
Are warning lights used correctly? (Warning lights, type A should be used on drums or barricades to mark point hazards, or on the first two devices in a taper: Warning lights, type B, if used, should be used on signs and the batteries should be placed no higher than 12	Y/N

SAFETY CHECKLIST for Construction Projects	
inches off the ground: Warning lights, type C should be used on drums or barricades used in a series for delineation.)	
Are arrow panels placed on the shoulder adjacent to the beginning of the taper? (If there is limited shoulder, the arrow board should be placed in the closed lane towards the beginning of the taper.)	Y/N
Is there adequate sight distance for the arrow board?	Y/N
Is the arrow panel being used correctly? (Arrow panels should not be used in "passing arrow" mode on two-lane two-way roadways, shoulder closures, or lanes shifts: For the cases listed above the arrow board can be used in the "caution" mode.)	Y/N
Comments:	
Barriers	
Are untreated temporary barrier ends exposed to traffic?	Y/N
Is the area between the barrier and the travel lanes relatively flat (approximately 10:1)?	Y/N
Are temporary barriers required due to drop-off close to the travel lanes?	Y/N
Are existing barriers being removed such that the hazards they were protecting are now a hazard during the construction?	Y/N
Is temporary barrier properly accounted for? (For stage construction, use the greatest amount of barrier required for a particular stage as the barrier quantity, and remember to account for storing barrier during stages with less than the greatest amount for moving barrier.)	Y/N
Are construction areas properly shielded?	Y/N
Should temporary barrier be bolted to the pavement or bridge deck do to their deflection?	Y/N
Are barriers flared away from the roadway in accordance with AASHTO Roadside Design Guide?	Y/N
Comments:	
Flaggers	
If flaggers are being used are the proper warning signs displayed?	Y/N
Is the flagging station visible to oncoming traffic?	Y/N
When the flagger is not on station, is the flagger sign covered or removed?	Y/N
Comments:	
Miscellaneous	
Does the Project Engineer have names and phone numbers of persons to contact in case of emergencies?	Y/N
If there are special construction events (i.e., roadway closures) are there provisions for the Contractor to notify the Project Engineer in advance so the Engineer can notify authorities?	Y/N
Are roadway drop-offs excessive?	Y/N
Does the Contract identify time restrictions placed so that the Contractor can only perform work during certain times?	Y/N
Is there a possibility of pedestrians and cyclists in the project area?	Y/N
For projects with stage construction, when the traffic control is switched from one stage to the next, are there provisions in the Contract to accomplish that operation?	Y/N
Can the traffic control switching be accomplished under traffic?	Y/N

Example 13.2 – Construction Inspection Report

 U.S. Department of Transportation Federal Highway Administration		<h2 style="color: #0070C0; margin: 0;">CONSTRUCTION INSPECTION REPORT</h2>		
TRIBE	REPORT NO.	DATE OF INSPECTION [M / D / YY]	DATE OF REPORT [M / D / YY]	PROJECT NO.
INSPECTION MADE BY [Name, Title]	QUALITY OF WORK <input type="checkbox"/> Unsatisfactory <input type="checkbox"/> Satisfactory	PROGRESS OF WORK <input type="checkbox"/> Unsatisfactory <input type="checkbox"/> Satisfactory	TIME ELAPSED: days used / total days = _____ %	WORK COMPLETED: amount earned / amount of contract = _____ %
IN COMPANY WITH TRIBAL ON-SITE REPRESENTATIVE (TOSR) [Name, Title]				
Site Review purpose: [select one] : <input type="checkbox"/> Preliminary <input type="checkbox"/> Inspection-In-Depth <input type="checkbox"/> mid- Project review <input type="checkbox"/> Final				
PROJECT NAME AND LOCATION: [fill in the blank]				
PROJECT DESCRIPTION / WORK TYPE: [fill in the blank]				
CONTRACTOR: [Name] [Address] [City / ZIP] [Phone] ()				
CONTRACT AMOUNT: \$ _____				
CONTRACT TIME SUMMARY: [Attach a copy of <i>Weekly Statement of Working Days and Progress Payment Voucher</i> after each construction inspection]				

SAFETY	
Item	Checked
Are general alignment, typical section, overall geometries, sight distance, etc., in close conformity with the plans?	__yes __ no
Are the following items adequately provided for?	
<ul style="list-style-type: none"> • Proper guardrail end treatment and length-of-need 	__yes __ no
<ul style="list-style-type: none"> • Safe slopes and ditch configurations 	__yes __ no
<ul style="list-style-type: none"> • Signs and pavement markings (permanent and temporary) in accordance with MUTCD 	__yes __ no
<ul style="list-style-type: none"> • Clear zone free of hazardous obstacles 	__yes __ no
ROADWAY- DRAINAGE-STRUCTURES	
Item	Checked
Rideability - If the project involves new pavement, resurfacing, bridge replacement, or a bridge overlay, it must be checked to see if it meets the applicable contract surface tolerance requirements. [If the surface tolerances do not meet the contract requirements, the project must not be accepted.]	
Drainage - The pavements, a random selection of under drains, ditches, conduits, catch basins, and other items must have positive drainage and be free of obstructions.	
Structures - Bridges must be checked for all items which constitute the completed structure, both above and below the deck.	
Erosion Control - Roadside items must be checked to see that all erosion control items have been placed or established.	
MATERIALS	
Item	Checked
Are materials testing reports on file? (Compaction, Concrete, bituminous density, etc.)	__yes __ no
Is material testing being performed? By whom: Location where testing is performed:	__yes __ no
Are test reports available or on file?	__yes __ no
Is assurance testing being performed? By whom:	__yes __ no

Is the project diary current and on hand? Who fills it out:	__yes __ no
PROJECT RECORDS	
Item	Checked
Are project records up to date?	__yes __ no
Select the overall quality of work/workmanship: __ outstanding __ acceptable __ poor __ unacceptable	
Who performs field inspections? [print name]	
Who are the subcontractors and what work (including percentage) are they performing?	
Are reports on file for Initials, Intermediates, and Finals?	
FIELD ISSUES	
Item	Checked
Is construction signing adequate?	__yes __ no
Are labor employment provisions posted?	__yes __ no
Are daily reports available on file?	__yes __ no
What is the job site general condition? [housekeeping]	
Who is performing construction supervision (Tribe Agency, consultant)?	
Who performs 2nd level inspection and how often?	
Observation about contractor's staff, equipment, workmanship:	
Observation about operations (concrete, asphalt, drainage, grading):	
Observations about quality of work, safety, traffic& erosion control, compliance w ith Plans etc.):	

OTHER PROJECT RECORDS	
Item	Checked
Is monthly narrative and work progress report submitted to the Tribe?	__yes __ no
Are there photos taken before, during and after construction?	__yes __ no
Are all material sources certified/approved?	__yes __ no
Are all material source records kept on file?	__yes __ no
Other Remarks:	
CONTRACT MODIFICATIONS (CM)	
How many?	
Were CMs made and approved by appropriate responsible party?	
List CM's by number and summarize the reason(s) for CM:	
RESOLVING ISSUES AND OFFERING TECHNICAL ASSISTANCE	
1.List any problems discovered: (identify problem)	
2.TOSR notified of problem: (date, time, w ho)	
3.Provide and offer technical assistance: (type)	

MISCELLANEOUS
Cleanup - The project is not acceptable if cleanup is not complete. All borrow and waste areas must be restored.
Other items:
Other items:
FINAL INSPECTION
Date: _____ / _____ / _____
Who attended:
Written report:
Final construction report: (final voucher, as built plans, etc.)

Example 13.3 - Final Letter of Acceptance

XY&Z Construction Company
[Insert address]
[Insert address]

[date]

RE: DPW Project No. [Insert project number]

Dear [name],

This letter is an acceptance to your work and acknowledges that all work on the project has been completed in accordance with the terms and conditions of the contract documents dated [Insert date]. This releases you on any further responsibilities. Further, the due to work performed is included as requested in your final request for payment.

Please contact me if you have any questions concerning this letter.

Sincerely,

[insert name]
Tribal Representative

cc: FHWA

Example 13.4 - Final Letter of Acceptance For BIA Owned Facility

[Insert Tribe]
[Insert Tribal address]
[Insert Tribal address]

[date]

RE: DPW Project No. [Insert project number]

Dear [name],

This letter is an acceptance of all work on the referenced project. This acceptance is based on our review of daily and weekly status reports; participation in interim project construction reviews and final inspection; our review of progress reports, subcontracts, as-built-drawings, contract modifications, material certifications/testing reports; completion of contract modifications, final estimates, and no pending claims; and verification of environmental commits.

In summary, we find that all work on the project has been completed with the terms and conditions of the contract documents dated [Insert date]. Further, this releases you on any further responsibilities.

As a reminder, forward us the final as-built plans when completed.

Please contact me if you have any questions concerning this letter.

Sincerely,

[insert name]
BIA Representative

cc: FHWA

XIV. Maintenance

Overview: Maintenance is any action required to preserve and maintain current facilities in such condition that it may be safely and effectively utilized for its designated or designed purpose. There are many types of maintenance, such as Preventive Maintenance (regularly scheduled inspection, minor repair), Scheduled Maintenance (planned maintenance resulting from preventive maintenance inspections), Unscheduled Maintenance (maintenance requiring immediate attention which, if not corrected, shall have a serious effect in the safety and efficiency of operations), and Normal Maintenance (recurrent day-to-day systematic care).

There are two types of funds which can be used for maintenance:

1. BIA Transportation Facility Maintenance Program, and
2. Program Funds (not more than 25%, except road sealing)

A. Statutory / Regulatory Requirements

- IRR funds may be used for maintenance in accordance with 23 U.S.C. 204(c).
- BIA road maintenance requirements are in 25 CFR 170.800 - 170.813.
- Eligible maintenance activities are listed in 25 CFR 170 Appendix A to Subpart G.
- Notwithstanding 25 CFR 170.116, in accordance with 23 U.S.C. 204(c), not more than 25 percent of the IRR Program funds allocated to a Tribe may be expended for the purpose of maintenance, excludes road sealing, which is not subject to any limitation.

B. Guidelines / Procedures

- The Tribe is responsible for making the determination of what can be considered a cost-effective means of extending the service life of a transportation system.
- Maintenance should be included on the FHWA approved TIP, if using IRR funds, before funds are expended, although each activity does not need to be listed as a separate line item. One line item can be used and should be labeled as “routine maintenance.”
- Maintenance Equipment can be leased, rented, or purchased using these funds after the Tribe provides the FLH Associate Administrator with written notice and a “cost analysis” (49 CFR 18.36) showing that it is more economical to purchase than lease (see **Example 14.1 - Equipment Acquisition Request Form**).
- Additional maintenance funds are available through the Bureau of Indian Affairs using Self-Determination or Self-Governance contracting or compacting procedures.

C. Resources

- American Association of State Highway and Transportation Officials (AASHTO) road and bridge maintenance manuals and maintenance management system manuals,
- National Association of County Engineers (NACE) action guides, and other Federal, State, Tribal, or local government maintenance standards.
- The BIA, with input from the IRR Program Coordinating Committee, will develop an IRR Transportation Facilities Maintenance Management System (TFMMS) for budgeting, prioritizing, and scheduling maintenance activities.

Example 14.1 - Equipment Acquisition Request Form

This form is to be utilized for all construction/maintenance equipment acquisition by Tribal Governments who have an Indian Reservation Road Program Agreement with the Federal Highway Administration.

1. How will this equipment be utilized for the IRR program? (If more space is needed, provide attachment)

2. Cost Comparison:

Item	Purchase	Lease/Rent
	\$	\$

3. What is the Tribes 25% IRR maintenance amount? \$ _____
4. What is the amount of IRR funds to be utilized for this acquisition? \$ _____
5. Attach cost analysis of all equipment both purchase and lease/rent. (Attach vendor quotes. Quotes may be provided in email and/or letter on company letter head)

Requestor: _____ Date: _____
Name/Title

FHWA Approved By: _____ Date: _____
Name/Title

XV. Reporting Requirements

Overview. There are several categories of required report which need to be submitted.

Financial reports are the documents and records put together to track and review how much funds a Tribes is expending.

Progress Reports (also called Performance Reports or Accomplishment Reports) as a measure of progress achieved on a project(s) and help identify programmatic and administrative problems that may need to be resolved.

There are many reasons for the reporting requirements. Information from these reports helps in the oversight by FHWA. In addition, information from these report are used to collectively provide information and support for the Administrator's when reporting to Congress.

A. Statutory Requirements

- Tribal/FHWA Program Agreement – Reports must be developed in accordance with Section 202(d)(5) of Title 23 U.S.C.
- 2 CFR

B. Guidelines/ Procedures

Report	Reporting Period	Due	Submit Through
Single Agency Audit Report	Annual	When completed	FHWA Tribal Coordinator
Progress Report (see format - Example 15.1 or narrative - Example 15.2)	Semi-annual: October 1 through March 31	Within 90 days of conclusion of reporting period reporting period (NLT June 30)	FHWA Tribal Coordinator
	April 1 through September 30	Within 90 days of conclusion of reporting period reporting period (NLT December 30)	FHWA Tribal Coordinator
Financial Status Report* (see Example 15.3 - SF 425)	Semi-annual October 1 through March 31	Within 90 days of conclusion of reporting period reporting period (NLT June 30)	FHWA Tribal Coordinator
	April 1 through September 30	Within 90 days of conclusion of reporting period reporting period (NLT December 30)	FHWA Tribal Coordinator

*** SF 425 requires Indirect Cost information:** Indirect costs represent the expenses of doing business that are not readily identified with a particular grant, contract, project function or activity, but are necessary for the general operation of the organization and the conduct of activities it performs. In theory, costs like heat, light, accounting, and personnel might be charged directly if little meters could record minutes in a cross-cutting manner. Practical difficulties preclude such an approach. Therefore, cost allocation plans or indirect cost rates are used to distribute those costs to benefiting revenue sources.

Indirect costs are those costs that are not classified as direct. Direct costs can be identified specifically with particular cost objectives such as a grant, contract, project, function, or activity. Direct costs generally include:

1. Salaries are wages (including vacations, holidays, sick leave, and other excused absences of employees working specifically on objectives of a grant or contract – i.e., direct labor costs).
2. Other employee fringe benefits allocable on direct labor employees.
3. Consultant services contracted to accomplish specific grant/contract objectives.
4. Travel of (direct labor) employees.
5. Materials, supplies, and equipment purchased directly for use on a specific grant or contract.
6. Communication costs such as long distance telephone calls or telegrams identifiable with a specific award or activity.

An indirect cost rate is simply a mechanism for determining fairly and conveniently within the boundaries of sound administrative principle, what proportions of Departmental/organization administration costs each program should bear. An indirect cost rate represents the ratio between the total indirect costs and benefiting direct costs, after excluding and or reclassifying unallowable costs, and extraordinary or distorting expenditures (i.e., capital expenditures and major contracts and sub-grants). The indirect costs in the numerator of the equation should bear a reasonable relationship to the direct costs from the denominator. This will allow for each program or activity represented in the direct costs base to assume their fair share of indirect costs when the rate is applied.

Guidance on the application of tribal indirect costs to the

Indian Reservation Roads (IRR) Program

Background:

Each federally recognized Tribe has an Indirect Cost Rate (ICR) that is negotiated on behalf of the Federal government by the Department of the Interior's National Business Center (NBC). This ICR is then applied to grants, contracts, and other agreements that the Tribe receives from the Federal government to which P.L. 93-638 and OMB Circular A-87 apply, subject to the limitations contained in 25 CFR 900. However, how a Tribe applies indirect costs to the IRR Program funds it receives through agreements/contracts/compacts from the Federal Highway Administration (FHWA), Bureau of Indian Affairs (BIA), or the Office of Self-Governance (OSG) has become an issue that requires resolution from a national level. Some tribes have insisted on applying their Tribe's ICR to the entire amount of IRR Program funding it receives, thus removing a significant portion of those funds from their primary purpose of improving the transportation facilities serving the Tribe.

IRR Program funds that a Tribe receives can be broken into two categories; program administration and pass-through/project. For purposes of this determination, pass-through funds are defined as all project related costs including major contracts or subcontracts, payments to participants, sub-grants that a Tribe enters into as well as all direct labor, equipment, and materials costs for projects carried out by the Tribe. The NBC has stated in their reports that the determination of whether or not a Tribe's ICR is applicable to pass-through funds is up to the discretion of the awarding agency but generally it is not permitted.

Guidance:

ICRs will be incorporated into the IRR Program as shown below:

- Two distinct and separate ICRs will be allowed per Tribe:
 - o The NBC negotiated ICR is allowed to be applied only to the IRR Program funds that are used by a Tribe for program administration activities (non pass-through);
 - o An ICR of not more than 3% is allowed to be applied to pass-through funds as identified above.

Both FHWA and BIA will carry out this guidance uniformly with all Tribes nationwide. In addition, they will provide technical assistance to the Tribes to ensure that it is understood with respect to requirements of the IRR Program.

NOTE: The Tribe will enter the indirect cost information on line 11 of the SF 425 prior to submitting to the FHWA Tribal Coordinator.

Example 15.1 – Progress Report

[Name of Tribe]

Progress Report

Reporting Period: October 1 – March 31 or April 1 –September 30	Total Program Fund Received:	Date Submitted:
Design Projects		
Project Number: Location: Type of Work/Description: Consultant/Contractor: % Complete: Estimated Completion Date: On Time: Y/N Estimated Cost: Work Completed/In Progress/Status: Critical Issues/Problems:		
Construction Projects		
Project Number: Location: Type of Work/Description: Contractor: % Complete: Estimated Completion Date: On Time: Y/N Amount Awarded: Work Completed/In Progress/Status: Critical Issues/Problems:		
Planning Activities		
Funds Programmed: Funds Utilized: Activities Undertaken & Status (IRR Inventory; LRTP, TIP, Studies, etc): <ul style="list-style-type: none"> • • • 		

Critical Issues/Problems:		
Maintenance Activities		
Funds Programmed: Funds Utilized: Activities Undertaken & Status (Mowing, Patching, Snow Removal, New Equipment, etc): <ul style="list-style-type: none"> • • • Critical Issues/Problems:		
Transportation Department Operations		
Funds Programmed: Funds Utilized: Activities Undertaken & Status Utilities, Salaries, Computers, etc): <ul style="list-style-type: none"> • • • Critical Issues/Problems: Funding Status:		
Other Items		
<ul style="list-style-type: none"> • • 		
Technical Assistance		
Identify any Technical Assistance (Financial, Planning ROW, Design, Construction, etc.) needed: <ul style="list-style-type: none"> • (Type and identify POC, phone and email address) • • 		
Submitted By		
Submitted by:	Signature:	Date:

Example 15.2 – Narrative Progress Report



All Nations Tribal Transportation Consortium, LLC FY2010 Yearend Contract Narrative Report Indian Reservation Roads Program

**Submitted to the Federal Lands Highway, Federal Highway Administration
Copies to: Alaska Region Bureau of Indian Affairs
Bureau of Indian Affairs, Department of Transportation
Hoonah Indian Association
Wrangell Cooperative Association
Yakutat Tlingit Tribe**

This is the Fifth report of the All Nations Tribal Transportation Consortium, LLC. Significant progress continues to be made on projects during FY2010.

Members of the ANTTC in 2008:

1. Hoonah Indian Association (HIA)
2. Organized Village of Saxman (OVS)
3. Wrangell Cooperative Association (WCA)
4. Yakutat Tlingit Tribe (YTT)

Members of the ANTTC in 2009:

1. Hoonah Indian Association (HIA)
2. King Island Native Community (KINC)
3. Wrangell Cooperative Association (WCA)
4. Yakutat Tlingit Tribe (YTT)

Members of the ANTTC in 2010:

1. Hoonah Indian Association (HIA)
2. Wrangell Cooperative Association (WCA)
3. Yakutat Tlingit Tribe (YTT)*

* Withdrawal Resolution Received April 2010

As of September 30, 2010 payments received by the ANTTTC from the FHWA are shown below:

Date	Payments	Total
4/3/08	RFA #1 FY2008	\$322,876.01
6/12/08	RFA #2 FY2008	\$249,500.00
9/30/08	RFA #3 FY2008	\$594,329.96
10/1/08	RFA #4 advance on FY2009	\$435,000.00
5/14/09	RFA #1 FY2009	\$1,248,342.56
8/13/09	KINC Repayment RFA #1 2009	\$81,745.44
12/3/10	RFA #1 FY2010	\$322,871.00
6/15/10	ARRA RFA FY2009	\$1,182,361.00
7/29/10	RFA Amendment 1 FY2010	\$1,581,427.00
9/9/10	RFA Amendment 2 FY2010	\$122,022.66
9/30/10	Duplicate Pmt: Advance on FY2011	\$122,022.66
Total		\$6,262,498.29

In 2010 the ANTTTC members signed the negotiated agreement with Central Council Tlingit and Haida Indian Tribes of Alaska. The return of ANTTTC member funds held by the Central Council Tlingit and Haida Indian Tribes of Alaska were received in June of 2010. These funds have been distributed as follows to approve IRR TIP projects:

TRIBE NAME	RNDF Construction Funds - distribution
King Island Native Community	\$0.00
Hoonah Indian Association	\$395,195.00
Saxman, Organized Village of	0.00
Wrangell Cooperative Association	\$236,093.00
Yakutat Tlingit Tribe	\$70,811.80
Organization PM&O	\$123,900.20
Totals	\$826,000.00

Redistribution of Saxman Funds held by ANTTTC (CCTHITA Agreement)

TRIBE NAME	RNDF Construction Funds - distribution
King Island Native Community	\$0.00
Hoonah Indian Association	\$0.00
Saxman, Organized Village of	-\$52,906.00
Wrangell Cooperative Association	\$0.00
Yakutat Tlingit Tribe	\$0.00
Organization PM&O	\$52,906.00
Totals	\$0.00

FHWA FY2008 IRR Fund Distribution by Member

TRIBE NAME	Construction Funds	Population Adjustment Factor	2% Transportation Planning	IRRHPP	Total IRR 2008
Hoonah Indian Association	\$265,363	\$24,522	\$6,610		\$296,495.00
Saxman, Organized Village of	\$41,422	\$24,522	\$1,032		\$66,976.00
Wrangell Cooperative Association	\$274,459	\$24,522	\$6,836	\$249,500	\$555,317.00
Yakutat Tlingit Tribe	\$209,324	\$24,522	\$5,214		\$239,060.00
Organization PM&O					\$8,858.00
Totals	\$790,568	\$98,088	\$19,692		\$1,166,706.00

FHWA FY2009 IRR Fund Distribution by Member

TRIBE NAME	Construction Funds	Population Adjustment Factor	2% Transportation Planning	IRRHPP	Total IRR 2008
King Island Native Community		\$32,428.00	\$12,433.00		\$44,861.00
Hoonah Indian Association	\$457,486.00	\$32,428.00	\$11,514.00		\$501,428.00
Wrangell Cooperative Association	\$732,451.00	\$32,428.00	\$18,434.00		\$783,313.00
Yakutat Tlingit Tribe	\$210,266.00	\$32,428.00	\$5,292.00	\$187,500.00	\$435,486.00
Organization PM&O					
Totals	\$1,400,203.00	\$129,712.00	\$47,673.00	\$187,500.00	\$1,765,088

FY2009 IRR American Recovery and Reinvestment Act

TRIBE NAME	ARRA	ARRA PAF	Total ARRA
Hoonah Indian Association	\$379,119.00	\$7,337.00	\$386,456.00
Wrangell Cooperative Association	\$606,983.00	\$7,337.00	\$614,320.00
Yakutat Tlingit Tribe	\$174,248.00	\$7,337.00	\$181,585.00
Organization PM&O			\$0.00
Totals	\$1,160,350.00	\$22,011.00	\$1,182,361.00

FY2010 Funding Shares

Member Tribe	RNDF Construction Funds	PAF	Total Construction	2% Planning	Total IRR
King Island Native Community			\$0.00		\$0.00
Hoonah Indian Association	\$400,966.34	\$32,104.00	\$433,070.34	\$10,081.72	\$443,152.06
Saxman, Organized Village of			\$0.00		\$0.00
Wrangell Cooperative Association	\$641,518.57	\$32,104.00	\$673,622.57	\$16,130.06	\$689,752.63
Yakutat Tlingit Tribe	\$45,510.00	\$0.00	\$45,510.00	\$1,145.00	\$46,655.00
Organization PM&O	\$20,761.00		\$20,761.00		\$20,761.00
Totals	\$1,108,755.91	\$64,208.00	\$1,172,963.91	\$27,356.78	\$1,200,320.69

FHWA FY2008-2010 IRR Funding for IRR TIP

<i>TRIBE NAME</i>	RNDF + PAF Construction Funds	IRR 2% Planning	IRRHPP	IRR Construction ARRA	2010 Advance on 2011	Accumulated Funding Received To Date
King Island Native Community	\$32,428	\$12,433	\$0	\$0		\$44,861
Hoonah Indian Association	\$1,608,064	\$28,206	\$0	\$386,456		\$2,022,726
Organized Village of Saxman	\$13,038	\$1,032	\$0	\$0		\$14,070
Wrangell Cooperative Association	\$1,973,576	\$41,400	\$249,500	\$614,320		\$2,878,796
Yakutat Tlingit Tribe	\$592,862	\$11,651	\$187,500	\$181,585		\$973,598
Organization PM&O	\$206,425	\$0	\$0	\$0	\$122,023	\$328,448
Totals	\$4,426,393	\$94,722	\$437,000	\$1,182,361		\$6,262,498

Expenditure Report:**September 30, 2010 Project Expenses to Date by Tribe**

Tribe/Project I.D.	Total	Expenditures	Balance
King Island Native Community			
KINC Transportation Planning E0425320	12,433	27,446	-15,013
KINC PM&C E0425330	32,428	17,479	14,949
KINC Woolley Crete Creek Road E0425321*	0	7,551	-7,551
KINC Totals	44,861	52,476	-7,615
Hoonah Indian Association			
HIA TP E0919820	105,000	62,446	42,554
HIA Transit E0919821	152,000	0	152,000
HIA Cannery Sidewalk Imp E0919824	109,000	0	109,000
HIA Community Safety E0919825	757,320	7,351	749,969
HIA Planning Study Access Road to Pelican E0919826	30,000	0	30,000
HIA Safety Enhancement E0919827	25,000	0	25,000
HIA Front Street Retaining Wall E0919828	276,381	0	276,381
HIA Sidewalk and Street Light Extension E0919829	75,724	0	75,724
HIA PM&C E0919830	187,109	163,109	24,000
HIA Ferry E0919840	10,000	0	10,000
HIA Maintenance E09RM198 ANTTC	295,192	35,502	259,690
HIA Totals	2,022,726	268,407	1,754,318
Organized Village of Saxman (Subject to ANTTC CCTHITA Agreement)			
OVS Transportation Planning E0942720	3,674	3,674	0
OVS PM&C E0942730	10,396	10,396	0
OVS Totals	14,070	14,070	0
Wrangell Cooperative Association			
WCA TP E0953220	105,000	43,868	61,132
WCA Rd Rehab E0953222	2,262,665	424,493	1,838,172
WCA Cassiar-Webber Recon E0953223	5,000	0	5,000
WCA Transit E0953225	10,000	0	10,000
WCA PM&C E0953230	251,370	215,370	36,000
WCA Maintenance E09RM532 ANTTC	244,760	4,700	240,060
WCA Totals	2,878,795	688,431	2,190,364

Tribe/Project I.D.	Total	Expenditures	Balance
Yakutat Tlingit Tribe			
YTT TP E0953320	71,145	13,811	57,334
YTT Rd Rehab E0953321	675,111	238,854	436,256
YTT Transit E0953325	5,000	0	5,000
YTT PM&C E0953330	103,208	103,208	0
YTT Maintenance E09RM533 ANTTC	119,136	20,000	99,136
YTT Totals	973,600	375,873	597,726
Program Management and Oversight			
Total ANTTC PM&O E0999930	206,425	75,114	131,311
ANTTC Advance on FY2011 E0999950	122,023	0	122,023
ANTTC Totals	328,448	75,114	253,334
Total	6,262,498	1,474,371	4,788,127

Project Narratives (does not include projects where no work was performed):

E0425321 King Island Native Community Project

KINC had been paying the ANTTC contractor for the ongoing work of developing the plans and specification. This has been done without notification to the ANTTC and without a contract with the engineering firm.

The ANTTC contract for the archaeology work was completed, and the ANTTC has submitted an invoice to KINC for payment.

The FHWA issued a categorical exclusion, and all PS&E package work was completed for KINC to take the project forward to construction.

E0919820 Hoonah Transportation Planning including 2%

A change has occurred in the makeup of the HIA tribal council and they have hired a tribal administrator. We are still pending a meeting to review and confirm their highest priority transportation projects before moving potential projects to the PS&E development stage.

The Tribal Administrator attended the Q-10 Consultation Meeting held in Anchorage in September.

E09RM198 Hoonah Indian Association Maintenance

We entered into a 3-way agreement with the City and Tribe for the performance of road maintenance activities.

The Tribe also worked with the City to address a safety issue associated with access along the piers. The ANTTC provided reimbursement to the Tribe for the work performed.

E0919825 Hoonah Indian Association Community Safety

A proposal for development of the PS&E was acquired, but all action has been postponed pending action by the HIA.

E0953220 Wrangell Transportation Planning including 2%

Worked with the BIA to finalize the addition of Shakes Island Bridge into the IRR Inventory. Action by BIADOT still pending.

E0953222 Wrangell Cooperative Association's Community Street Rehabilitation and Paving

Construction work began in July. We hired a project liaison and a project liaison trainee. In addition, the AN TTC took over the traffic control plan development. AN TTC hired 2 flaggers. All other work is being performed by the Southeast Road Builders, under contract. We also have a construction management contract with Bristol Environmental and Engineering Services.



Excavation on Etohin Street

The project has run into a number of issues which have caused delays including water and sewer lines shallower than shown on the as-built plans. All effort is underway to complete the project, but winter weather may cause us to enter into winter shutdown.

E0953321 Yakutat Road Rehabilitation

The PS&E development is in progress.

E0999930, E0425330, E0919830, E0953230, and E0953330 Program Administration and Compliance

All administrative costs are identified as direct costs under a project identified as Program Management and Compliance (PM&C). In the ANTTC IRR TIP, these are identified as projects. The member tribes share the cost of Management and Program Administration through a simple percentage calculation based on what each member tribe generates in the construction and 2% transportation planning portion of the Relative Need Distribution Formula plus the Population Adjustment Factor, and then divided by the members' sum of these same numbers to calculate the percentage to be applied to administrative expenditures.

ANTTC Administrative Costs include but are not limited to:

1. Salary and Benefit Package of Manager
2. Board Operational Costs
3. Board Travel Costs
4. Board Meeting Stipend
5. Manager Travel for non-project specific meetings
6. Office Supplies
7. Postage and Shipping Costs
8. Administrative Equipment purchase or lease
9. Financial Services
10. Legal Services for non-project specific activities
11. Memberships, licenses, and fees

Under ongoing implementation, the ANTTC negotiated a number of Memorandums of Agreements, and either amended its existing Indefinite Delivery Contract for Services, or entered into new contracts for services for project development work that needs to be performed to implement our numerous construction projects.

Meetings attended by the ANTTC Board and staff included:

1. IRRPCC meetings
2. Q-10 Consultation Meetings in Anchorage

ISSUES

Loss of Yakutat Tlingit Tribe as a member caused additional challenges to the ANTTC, when the resolution to withdraw was received the first week in April. The ANTTC contacted YTT in an effort to determine how they wanted to proceed. The ANTTC policy has always been to complete work for withdrawing tribes for existing sub-contracts, but to provide no additional work unless requested.

When notice of an upcoming June RFA was issued by FHWA, we contacted YTT and asked if they had begun the process of entering into an IRR Agreement. When we learned that they had, we asked if they would like us to have FHWA hold their portion of the RFA. Upon affirmation from YTT, we contacted FHWA and requested they withhold YTT's funds from the RFA.

We believe the least liability risk for the AN TTC is to return funds of withdrawing tribes to the FHWA.

FINAL OBSERVATION

We continue to be very pleased with the technical assistance provided by FHWA.

Report Submitted by:

/s/

Julianne E. Baltar, CEO AN TTC
December 31, 2010

Example 15.3 – Standard Form 425, Federal Financial Report

Reset Form

FEDERAL FINANCIAL REPORT

(Follow form instructions)

1. Federal Agency and Organizational Element to Which Report is Submitted		2. Federal Grant or Other Identifying Number Assigned by Federal Agency (To report multiple grants, use FFR Attachment)			Page 1	of pages		
3. Recipient Organization (Name and complete address including Zip code)								
4a. DUNS Number	4b. EIN	5. Recipient Account Number or Identifying Number (To report multiple grants, use FFR Attachment)		6. Report Type <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi-Annual <input type="checkbox"/> Annual <input type="checkbox"/> Final	7. Basis of Accounting <input checked="" type="checkbox"/> Cash <input type="checkbox"/> Accrual			
8. Project/Grant Period From: (Month, Day, Year) To: (Month, Day, Year)				9. Reporting Period End Date (Month, Day, Year)				
10. Transactions					Cumulative			
<i>(Use lines a-c for single or multiple grant reporting)</i>								
Federal Cash (To report multiple grants, also use FFR Attachment):								
a. Cash Receipts								
b. Cash Disbursements								
c. Cash on Hand (line a minus b)								
<i>(Use lines d-o for single grant reporting)</i>								
Federal Expenditures and Unobligated Balance:								
d. Total Federal funds authorized								
e. Federal share of expenditures								
f. Federal share of unliquidated obligations								
g. Total Federal share (sum of lines e and f)								
h. Unobligated balance of Federal funds (line d minus g)								
Recipient Share:								
i. Total recipient share required								
j. Recipient share of expenditures								
k. Remaining recipient share to be provided (line i minus j)								
Program Income:								
l. Total Federal program income earned								
m. Program income expended in accordance with the deduction alternative								
n. Program income expended in accordance with the addition alternative								
o. Unexpended program income (line l minus line m or line n)								
11. Indirect Expense		a. Type	b. Rate	c. Period From	Period To	d. Base	e. Amount Charged	f. Federal Share
		g. Totals:						
12. Remarks: Attach any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation:								
13. Certification: By signing this report, I certify that it is true, complete, and accurate to the best of my knowledge. I am aware that any false, fictitious, or fraudulent information may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 18, Section 1001)								
a. Typed or Printed Name and Title of Authorized Certifying Official						c. Telephone (Area code, number and extension)		
b. Signature of Authorized Certifying Official						d. Email address		
						e. Date Report Submitted (Month, Day, Year)		
14. Agency use only:								

Standard Form 425
OMB Approval Number: 0348-0061
Expiration Date: 10/31/2011

Paperwork Burden Statement
According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is 0348-0061. Public reporting burden for this collection of information is estimated to average 1.5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0060), Washington, DC 20503.

Federal Financial Report Instructions

Report Submissions

- 1) Recipients will be instructed by Federal agencies to submit the *Federal Financial Report (FFR)* to a single location, except when an automated payment management reporting system is utilized. In this case, a second submission location may be required by the agency.
- 2) If recipients need more space to support their *FFRs*, or *FFR Attachments*, they should provide supplemental pages. These additional pages must indicate the following information at the top of each page: Federal grant or other identifying number (if reporting on a single award), recipient organization, Data Universal Numbering System (DUNS) number, Employer Identification Number (EIN), and period covered by the report.

Reporting Requirements

- 1) The submission of interim *FFRs* will be on a quarterly, semi-annual, or annual basis, as directed by the Federal agency. A final *FFR* shall be submitted at the completion of the award agreement. The following reporting period end dates shall be used for interim reports: 3/31, 6/30, 9/30, or 12/31. For final *FFRs*, the reporting period end date shall be the end date of the project or grant period.
- 2) Quarterly and semi-annual interim reports shall be submitted no later than 30 days after the end of each reporting period. Annual reports shall be submitted no later than 90 days after the end of each reporting period. Final reports shall be submitted no later than 90 days after the project or grant period end date.

Note: For single award reporting:

- 1) Federal agencies may require both cash management information on lines 10(a) through 10(c) and financial status information lines 10(d) through 10(o).
- 2) 10(b) and 10(e) may not be the same until the final report.

Line Item Instructions for the Federal Financial Report

FFR Number	Reporting Item	Instructions
Cover Information		
1	Federal Agency and Organizational Element to Which Report is Submitted	Enter the name of the Federal agency and organizational element identified in the award document or as instructed by the agency.
2	Federal Grant or Other Identifying Number Assigned by Federal Agency	For a single award, enter the grant number assigned to the award by the Federal agency. For multiple awards, report this information on the <i>FFR Attachment</i> . <i>Do not complete this box if reporting on multiple awards.</i>
3	Recipient Organization	Enter the name and complete address of the recipient organization including zip code.
4a	DUNS Number	Enter the recipient organization's Data Universal Numbering System (DUNS) number or Central Contract Registry extended DUNS number.
4b	EIN	Enter the recipient organization's Employer Identification Number (EIN).
5	Recipient Account Number or Identifying Number	Enter the account number or any other identifying number assigned by the recipient to the award. This number is for the recipient's use only and is not required by the Federal agency. For multiple awards, report this

FFR Number	Reporting Item	Instructions
		information on the <i>FFR</i> Attachment. <i>Do not complete this box if reporting on multiple awards.</i>
6	Report Type	Mark appropriate box. <i>Do not complete this box if reporting on multiple awards.</i>
7	Basis of Accounting (Cash/Accrual)	Specify whether a cash or accrual basis was used for recording transactions related to the award(s) and for preparing this <i>FFR</i> . Accrual basis of accounting refers to the accounting method in which expenses are recorded when incurred. For cash basis accounting, expenses are recorded when they are paid.
8	Project/Grant Period, From: (Month, Day, Year)	Indicate the period established in the award document during which Federal sponsorship begins and ends. Note: Some agencies award multi-year grants for a project period that is funded in increments or budget periods (typically annual increments). Throughout the project period, agencies often require cumulative reporting for consecutive budget periods. Under these circumstances, enter the beginning and ending dates of the project period not the budget period. <i>Do not complete this line if reporting on multiple awards.</i>
	Project/Grant Period, To: (Month, Day, Year)	See the above instructions for "Project/Grant Period, From: (Month, Day, Year)."
9	Reporting Period End Date: (Month, Day, Year)	Enter the ending date of the reporting period. For quarterly, semi-annual, and annual interim reports, use the following reporting period end dates: 3/31, 6/30, 9/30, or 12/31. For final <i>FFRs</i> , the reporting period end date shall be the end date of the project or grant period.
10	Transactions Enter cumulative amounts from date of the inception of the award through the end date of the reporting period specified in line 9. Use Lines 10a through 10c, Lines 10d through 10o, or Lines 10a through 10o, as specified by the Federal agency, when reporting on single grants. Use Line 12, Remarks, to provide any information deemed necessary to support or explain <i>FFR</i> data.	
Federal Cash (To report multiple grants, also use <i>FFR</i> Attachment)		
10a	Cash Receipts	Enter the cumulative amount of actual cash received from the Federal agency as of the reporting period end date.
10b	Cash Disbursements	Enter the cumulative amount of Federal fund disbursements (such as cash or checks) as of the reporting period end date. Disbursements are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expenses charged to the award, and the amount of cash advances and payments made to subrecipients and contractors. For multiple grants, report each grant separately on the <i>FFR</i> Attachment. The sum of the cumulative cash disbursements on the <i>FFR</i> Attachment must equal the amount entered on Line 10b, <i>FFR</i> .
10c	Cash On Hand (Line 10a Minus Line 10b)	Enter the amount of Line 10a minus Line 10b. This amount represents immediate cash needs. If more than three business days of cash are on hand, the Federal agency may require an explanation

FFR Number	Reporting Item	Instructions
		on Line 12, Remarks, explaining why the drawdown was made prematurely or other reasons for the excess cash.
Federal Expenditures and Unobligated Balance: Do not complete this section if reporting on multiple awards.		
10d	Total Federal Funds Authorized	Enter the total Federal funds authorized as of the reporting period end date.
10e	Federal Share of Expenditures	Enter the amount of Federal fund expenditures. For reports prepared on a cash basis, expenditures are the sum of cash disbursements for direct charges for property and services; the amount of indirect expense charged; and the amount of cash advance payments and payments made to subrecipients. For reports prepared on an accrual basis, expenditures are the sum of cash disbursements for direct charges for property and services; the amount of indirect expense incurred; and the net increase or decrease in the amounts owed by the recipient for (1) goods and other property received; (2) services performed by employees, contractors, subrecipients, and other payees; and (3) programs for which no current services or performance are required. Do not include program income expended in accordance with the deduction alternative, rebates, refunds, or other credits. (Program income expended in accordance with the deduction alternative should be reported separately on Line 10o.)
10f	Federal Share of Unliquidated Obligations	Unliquidated obligations on a cash basis are obligations incurred, but not yet paid. On an accrual basis, they are obligations incurred, but for which an expenditure has not yet been recorded. Enter the Federal portion of unliquidated obligations. Those obligations include direct and indirect expenses incurred but not yet paid or charged to the award, including amounts due to subrecipients and contractors. On the final report, this line should be zero unless the awarding agency has provided other instructions. <i>Do not include any amount in Line 10f that has been reported in Line 10e. Do not include any amount in Line 10f for a future commitment of funds (such as a long-term contract) for which an obligation or expense has not been incurred.</i>
10g	Total Federal Share (Sum of Lines 10e and 10f)	Enter the sum of Lines 10e and 10f.
10h	Unobligated Balance of Federal Funds (Line 10d Minus Line 10g)	Enter the amount of Line 10d minus Line 10g.
Recipient Share: Do not complete this section if reporting on multiple awards.		
10i	Total Recipient Share Required	Enter the total required recipient share for reporting period specified in line 9. The required recipient share should include all matching and cost sharing provided by recipients and third-party providers to meet the level required by the Federal agency. This amount should not include cost sharing and match amounts in excess of the amount required by the Federal agency (for example, cost overruns for which the recipient incurs additional expenses and, therefore, contributes a greater level of cost

FFR Number	Reporting Item	Instructions
		sharing or match than the level required by the Federal agency).
10j	Recipient Share of Expenditures	Enter the recipient share of actual cash disbursements or outlays (less any rebates, refunds, or other credits) including payments to subrecipients and contractors. This amount may include the value of allowable third party in-kind contributions and recipient share of program income used to finance the non-Federal share of the project or program. Note: On the final report this line should be equal to or greater than the amount of Line 10i.
10k	Remaining Recipient Share to be Provided (Line 10i Minus Line 10j)	Enter the amount of Line 10i minus Line 10j. If recipient share in Line 10j is greater than the required match amount in Line 10i, enter zero.
Program Income: Do not complete this section if reporting on multiple awards.		
10l	Total Federal Program Income Earned	Enter the amount of Federal program income earned. Do not report any program income here that is being allocated as part of the recipient's cost sharing amount included in Line 10j.
10m	Program Income Expended in Accordance With the Deduction Alternative	Enter the amount of program income that was used to reduce the Federal share of the total project costs.
10n	Program Income Expended in Accordance With the Addition Alternative	Enter the amount of program income that was added to funds committed to the total project costs and expended to further eligible project or program activities.
10o	Unexpended Program Income (Line 10l Minus Line 10m or Line 10n)	Enter the amount of Line 10l minus Line 10m or Line 10n. This amount equals the program income that has been earned but not expended, as of the reporting period end date.
11	Indirect Expense: Complete this information only if required by the awarding agency. Enter cumulative amounts from date of the inception of the award through the end date of the reporting period specified in line 9.	
11a	Type of Rate(s)	State whether indirect cost rate(s) is Provisional, Predetermined, Final, or Fixed.
11b	Rate	Enter the indirect cost rate(s) in effect during the reporting period.
11c	Period From; Period To	Enter the beginning and ending effective dates for the rate(s).
11d	Base	Enter the amount of the base against which the rate(s) was applied.
11e	Amount Charged	Enter the amount of indirect costs charged during the time period specified. (Multiply 11b. x 11d.)
11f	Federal Share	Enter the Federal share of the amount in 11e.
11g	Totals	Enter the totals for columns 11d, 11e, and 11f.
Remarks, Certification, and Agency Use Only		
12	Remarks	Enter any explanations or additional information required by the Federal sponsoring agency including excess cash as stated in line 10c.
13a	Typed or Printed Name and Title of Authorized Certifying Official	Enter the name and title of the authorized certifying official.
13b	Signature of Authorized Certifying Official	The authorized certifying official must sign here.
13c	Telephone (Area Code, Number and Extension)	Enter the telephone number (including area code and extension) of the individual listed in Line 13a.
13d	E-mail Address	Enter the e-mail address of the individual listed in Line 13a.

FFR Number	Reporting Item	Instructions
13e	Date Report Submitted (Month, Day, Year)	Enter the date the <i>FFR</i> is submitted to the Federal agency using the month, day, year format.
14	Agency Use Only	This section is reserved for Federal agency use.

XVI. IRR Bridge Program (IRRBP)

Overview. The IRRBP is a nationwide priority program for improving structurally deficient and functionally obsolete IRR bridges. IRRBP funds can be used to carry out preliminary engineering (PE), construction, and construction engineering (CE) activities of projects to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate or other environmentally acceptable, minimally corrosive anti-icing and deicing compositions, or install scour countermeasures for structurally deficient or functionally obsolete IRR bridges, including multiple pipe culverts. IRRBP funds can be transferred to the Tribe under the FHWA/Tribal program agreement.

Definitions.

- **Construction engineering (CE)** is the supervision, inspection, and other activities required to ensure the project construction meets the project's approved acceptance specifications, including but not limited to: additional survey staking functions considered necessary for effective control of the construction operations; testing materials incorporated into construction; checking shop drawings; and measurements needed for the preparation of pay estimates.
- **Functionally obsolete (FO)** is the state in which the deck geometry, load carrying capacity (comparison of the original design load to the State legal load), clearance, or approach roadway alignment no longer meets the usual criteria for the system of which it is an integral part.
- **Indian reservation road bridge** means a structure located on an IRR, including supports, erected over a depression or an obstruction, such as water, a highway, or a railway, and having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of the openings for multiple boxes; it may also include multiple pipes, where the clear distance between openings is less than half of the smaller contiguous opening.
- **National Bridge Inventory (NBI)** means the aggregation of structure inventory and appraisal data collected to fulfill the requirements of the National Bridge Inspection Standards (NBIS).
- **Plans, specifications and estimates (PS&E)** means construction drawings, compilation of provisions, and construction project cost estimates for the performance of the prescribed scope of work.
- **Preliminary engineering (PE)** means planning, survey, design, engineering, and preconstruction activities (including archaeological, environmental, and right-of-way activities) related to a specific bridge project.
- **Structurally deficient (SD)** means a bridge becomes structurally deficient when it reaches the set threshold of one of the six criteria from the FHWA NBI.
- **Structure Inventory and Appraisal (SI&A) Sheet** means the graphic representation of the data recorded and stored for each NBI record in accordance with the Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges (Report No. FHWA-PD-96-001).
- **Sufficiency rating (SR)** means the numerical rating of a bridge based on its structural adequacy and safety, essentiality for public use, and its serviceability and functional obsolescence.

Statutory/Regulatory Requirements.

- Section 1119 of SAFETEA-LU - Authorizes \$14 million of distinct and separate funds per year for the replacement or rehabilitation of structurally deficient or functionally obsolete bridges located on IRR.
- 23 CFR 661- Indian Reservation Road Bridge Program (**see attached**).

Guidelines/Procedures.

Eligible activities for IRRBP funds (23 CFR 661.15):

- a) IRRBP funds can be used to carry out PE, construction, and CE activities of projects to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate or other environmentally acceptable, minimally corrosive anti-icing and deicing compositions, or install scour countermeasures for structurally deficient or functionally obsolete IRR bridges, including multiple pipe culverts.
- b) If a bridge is replaced under the IRRBP, IRRBP funds can also be used for the demolition of the old bridge.

Criteria for bridge eligibility (23 CFR 661.17):

- a) Bridge eligibility requires the following:
 - (i) Have an opening of 20 feet or more.
 - (ii) Be located on an IRR that is included in the IRR Inventory.
 - (iii) Be structurally deficient or functionally obsolete.
 - (iv) Be recorded in the National Bridge Inventory (NBI) maintained by the FHWA.
- b) Bridges that were constructed, rehabilitated, or replaced in the last 10 years, are only eligible for seismic retrofit or installation of scour countermeasures.

Funding limitations on individual IRRBP project (23 CFR 661.37):

- a) An IRRBP eligible BIA and Tribally owned IRR bridge is eligible for 100 percent IRRBP funding, with a \$150,000 maximum limit for PE.
- b) An IRRBP eligible non-BIA owned IRR bridge is eligible for up to 80 percent IRRBP funding, with a \$150,000 maximum limit for PE and \$1,000,000 maximum limit for construction. The minimum 20 percent local match will need to be identified in the application package. IRR Program construction funds received by a Tribe may be used as the local match.
- c) Requests for additional funds above the referenced thresholds may be submitted along with proper justification to FLH for consideration. The request will be considered on a case-by-case basis. There is no guarantee for the approval of the request for additional funds.
- d) All applications will be ranked and prioritized based on the bridge sufficiency rating and funding for successful IRRBP applications will be distributed on a quarterly basis.

Application Package for Preliminary Engineering

Any time during the year, in accordance with 23 CFR 661.25, the Tribe will submit the application package for preliminary engineering (PE) request to the Tribal Coordinator, who will review the submittal and resolve any issues with the Tribe, before submitting the package to FHWA-FLH Headquarters (Russell Garcia, IRR Bridge Program Coordinator).

The application package should contain the following:

1. An IRRBP PS&E Certification Checklist (see attached),
2. IRRBP TIP,
3. Project scope of work,
4. Detailed cost for PE, and
5. Structure Inventory and Appraised (SI&A) sheet (see attached).

NOTE: For **non-BIA IRR bridges**, the application package must also include:

- (1) A Tribal resolution supporting the project, and
- (2) Identification of the required minimum 20 percent local funding match.

FHWA-FLH will determine the IRRBP project eligibility for funding and will place these projects in the queue after receipt of a complete application package.

Incomplete application packages will not be eligible and will be returned for revision and resubmission along with a notation providing the reason for return.

Funding for the approved eligible projects in the queue will be made available to the Tribe under the FHWA/Tribal agreement.

Application Package for Construction

Any time during the year, in accordance with 23 CFR 661.27, the Tribe will submit the application package for construction request to the Tribal Coordinator, who will review the submittal and resolve any issues with the Tribe, before submitting the package to FHWA-FLH Headquarters (Russell Garcia, IRR Bridge Program Coordinator).

A complete application package for construction consisting of:

1. Approved PS&E,
2. IRRBP PS&E Certification Checklist,
3. Structure Inventory and Appraised (SI&A) sheet, and
4. The IRRBP TIP.

NOTE: For **non-BIA IRR bridges**, the application package must also include:

- (1) A copy of a letter from the bridge's owner approving the project and its PS&E,
- (2) A Tribal resolution supporting the project, and
- (3) Identification of the required minimum 20 percent local funding match.

All environmental and archeological clearances and complete grants of public rights-of-way must be acquired prior to submittal of the construction application package.

FHWA-FLH will determine the IRRBP project eligibility for funding and will place these projects in the queue after receipt of a complete application package.

Incomplete application packages will not be eligible and will be returned for revision and resubmission along with a notation providing the reason for return.

Funding for the approved eligible projects in the queue will be made available to the Tribe under the FHWA/Tribal agreement.

Bridge Inspection:

Tribally Owned Bridges. Procedures for a tribally owned bridge inspection data to be included in the FHWA National Bridge Inventory (NBI):

1. The Tribe hires a consultant to perform the bridge inspection.
2. Provide FHWA Office of Federal Lands Highway (FLH) the 432 character text file of the bridge inspected.
3. FLH will forward the data to Eastern Federal Lands Highway Division (EFLHD) to review the text file.
4. Once it is approved, the data is sent to FHWA Office of Bridge Technology and the bridge is recorded in the FHWA NBI.

Note: A tribally owned bridge does not need to be recorded in the BIA's Bridge Management System (BMS).

BIA Owned Bridges. Procedures when FHWA Agreement Tribe performs BIA-owned bridge inspection on behalf of the BIA:

1. The Tribe hires a consultant to perform the bridge inspection.
2. Provide FLH the bridge inspection report using BIA's pre-filled inspection report form and the 432 character text file of the bridge.
3. FLH will forward the data to EFLHD to review the inspection report and the text file.
4. Once it is approved, FLH will submit the final bridge inspection report with the Professional Engineer's stamp and the 432 character text file to the BIA for inclusion in the BIA's Bridge Management System (BMS).
5. BIA will submit the data to FHWA Office of Bridge Technology and the bridge is recorded in the FHWA NBI.

Authority: 23 U.S.C. 120(j) and (k), 202, and 315; Section 1119 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144); and 49 CFR 1.48.

Source: 73 FR 15664, Mar. 25, 2008, unless otherwise noted.

§ 661.1 What is the purpose of this regulation?

The purpose of this regulation is to prescribe policies for project selection and fund allocation procedures for administering the Indian Reservation Road Bridge Program (IRRBP).

§ 661.3 Who must comply with this regulation? ↑

Public authorities must comply to participate in the IRRBP by applying for preliminary engineering (PE), construction, and construction engineering (CE) activities for the replacement or rehabilitation of structurally deficient and functionally obsolete Indian Reservation Road (IRR) bridges.

§ 661.5 What definitions apply to this regulation?

The following definitions apply to this regulation:

Approach roadway means the portion of the highway immediately adjacent to the bridge that affects the geometrics of the bridge, including the horizontal and vertical curves and grades required to connect the existing highway alignment to the new bridge alignment using accepted engineering practices and ensuring that all safety standards are met.

Construction engineering (CE) is the supervision, inspection, and other activities required to ensure the project construction meets the project's approved acceptance specifications, including but not limited to: additional survey staking functions considered necessary for effective control of the construction operations; testing materials incorporated into construction; checking shop drawings; and measurements needed for the preparation of pay estimates.

Functionally obsolete (FO) is the state in which the deck geometry, load carrying capacity (comparison of the original design load to the State legal load), clearance, or approach roadway alignment no longer meets the usual criteria for the system of which it is an integral part.

Indian Reservation Road (IRR) means a public road that is located within or provides access to an Indian reservation or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal government, or Indian and Alaska Native villages, groups, or communities in which Indians and Alaska Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians.

Indian reservation road bridge means a structure located on an IRR, including supports, erected over a depression or an obstruction, such as water, a highway, or a railway, and having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of the openings for multiple boxes; it may also include multiple pipes, where the clear distance between openings is less than half of the smaller contiguous opening.

Life cycle cost analysis (LCCA) means a process for evaluating the total economic worth of a usable project segment by analyzing initial costs and discounted future costs, such as maintenance, user costs, reconstruction, rehabilitation, restoring, and resurfacing costs, over the life of the project segment.

National Bridge Inventory (NBI) means the aggregation of structure inventory and appraisal data collected to fulfill the requirements of the National Bridge Inspection Standards (NBIS).

Plans, specifications and estimates (PS&E) means construction drawings, compilation of provisions, and construction project cost estimates for the performance of the prescribed scope of work.

Preliminary engineering (PE) means planning, survey, design, engineering, and preconstruction activities (including archaeological, environmental, and right-of-way activities) related to a specific bridge project.

Public authority means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities.

Public road means any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

Structurally deficient (SD) means a bridge becomes structurally deficient when it reaches the set threshold of one of the six criteria from the FHWA NBI.

Structure Inventory and Appraisal (SI&A) Sheet means the graphic representation of the data recorded and stored for each NBI record in accordance with the Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges (Report No. FHWA-PD-96-001).

Sufficiency rating (SR) means the numerical rating of a bridge based on its structural adequacy and safety, essentiality for public use, and its serviceability and functional obsolescence.

§ 661.7 What is the IRRBP?

The IRRBP, as established under 23 U.S.C. 202(d)(4), is a nationwide priority program for improving structurally deficient and functionally obsolete IRR bridges.

§ 661.9 What is the total funding available for the IRRBP?

The statute authorizes \$14 million to be appropriated from the Highway Trust Fund in Fiscal Years 2005 through 2009.

§ 661.11 When do IRRBP funds become available?

IRRBP funds are authorized at the start of each fiscal year but are subject to Office of Management and Budget apportionment before they become available to FHWA for further distribution.

§ 661.13 How long are these funds available?

IRRBP funds for each fiscal year are available for obligation for the year authorized plus three years (a total of four years).

§ 661.15 What are the eligible activities for IRRBP funds?

(a) IRRBP funds can be used to carry out PE, construction, and CE activities of projects to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate or other environmentally acceptable, minimally corrosive anti-icing and deicing compositions, or install scour countermeasures for structurally deficient or functionally obsolete IRR bridges, including multiple pipe culverts.

(b) If a bridge is replaced under the IRRBP, IRRBP funds can be also used for the demolition of the old bridge.

§ 661.17 What are the criteria for bridge eligibility?

(a) Bridge eligibility requires the following:

- (1) Have an opening of 20 feet or more;
- (2) Be located on an IRR that is included in the IRR Inventory;
- (3) Be structurally deficient or functionally obsolete, and
- (4) Be recorded in the NBI maintained by the FHWA.

(b) Bridges that were constructed, rehabilitated or replaced in the last 10 years, will be eligible only for seismic retrofit or installation of scour countermeasures.

§ 661.19 When is a bridge eligible for replacement?

To be eligible for replacement, the bridge must be considered structurally deficient or functionally obsolete and must be in accordance with 23 CFR part 650.409(a) for bridge replacement. After an existing bridge is replaced under the IRRBP, it must be taken completely out of service and removed from the inventory. If the original bridge is considered historic, it must still be removed from the inventory, however the Tribe is allowed to request an exemption from the BIA Division of Transportation (BIADOT) to allow the bridge to remain in place.

§ 661.21 When is a bridge eligible for rehabilitation?

To be eligible for rehabilitation, the bridge must be considered structurally deficient or functionally obsolete and must be in accordance with 23 CFR part 650.409(a) for bridge rehabilitation. A bridge eligible for rehabilitation may be replaced if the life cycle cost analysis is conducted which shows the cost for bridge rehabilitation exceeds the replacement cost.

§ 661.23 How will a bridge project be programmed for funding once eligibility has been determined?

(a) All projects will be programmed for funding after a completed application package is received and accepted by the FHWA. At that time, the project will be acknowledged as either BIA and Tribally owned, or non-BIA owned and placed in either a PE or a construction queue.

(b) All projects will be ranked and prioritized based on the following criteria:

(1) Bridge sufficiency rating (SR);

(2) Bridge status with structurally deficient (SD) having precedence over functionally obsolete (FO);

(3) Bridges on school bus routes;

(4) Detour length;

(5) Average daily traffic; and

(6) Truck average daily traffic.

(c) Queues will carryover from fiscal year to fiscal year as made necessary by the amount of annual funding made available.

§ 661.25 What does a complete application package for PE consist of and how does the project receive funding?

(a) A complete application package for PE consists of the following: the certification checklist, IRRBP transportation improvement program (TIP), project scope of work, detailed cost for PE, and SI&A sheet.

(b) For non-BIA IRR bridges, the application package must also include a tribal resolution supporting the project and identification of the required minimum 20 percent local funding match.

(c) The IRRBP projects for PE will be placed in queue and determined as eligible for funding after receipt by FHWA of a complete application package. Incomplete application packages will be disapproved and returned for revision and resubmission along with a notation providing the reason for disapproval.

(d) Funding for the approved eligible projects on the queues will be made available to the Tribes, under an FHWA/Tribal agreement, or the Secretary of the Interior upon availability of program funding at FHWA.

§ 661.27 What does a complete application package for construction consist of and how does the project receive funding?

(a) A complete application package for construction consists of the following: a copy of the approved PS&E, the certification checklist, SI&A sheet, and IRRBP TIP. For non-BIA IRR bridges, the application package must also include a copy of a letter from the bridge's owner approving the project and its PS&E, a tribal resolution supporting the project, and identification of the required minimum 20 percent local funding match. All environmental and archeological clearances and complete grants of public rights-of-way must be acquired prior to submittal of the construction application package.

(b) The IRRBP projects for construction will be placed in queue and determined as eligible for funding after receipt by FHWA of a complete application package. Incomplete application packages will be disapproved and returned for revision and resubmission along with a notation providing the reason for disapproval.

(c) Funding for the approved eligible projects on the queues will be made available to the Tribes, under an FHWA/Tribal agreement, or the Secretary of the Interior upon availability of program funding at FHWA.

§ 661.29 How does ownership impact project selection?

Since the Federal government has both a trust responsibility and owns the BIA bridges on Indian reservations, primary consideration will be given to eligible projects on BIA and Tribally owned IRR bridges. A smaller percentage of available funds will be set aside for non-BIA IRR bridges, since States and counties have access to Federal-aid and other funding to design, replace and rehabilitate their bridges and that 23 U.S.C. 204(c) requires that IRR funds be supplemental to and not in lieu of other funds apportioned to the State. The program policy will be to maximize the number of IRR bridges participating in the IRRBP in a given fiscal year regardless of ownership.

§ 661.31 Do IRRBP projects have to be listed on an approved IRR TIP?

Yes. All IRRBP projects must be listed on an approved IRR TIP. The approved IRR TIP will be forwarded by FHWA to the respective State for inclusion into its State TIP.

§ 661.33 What percentage of IRRBP funding is available for PE and construction?

Up to 15 percent of the funding made available in any fiscal year will be eligible for PE. The remaining funding in any fiscal year will be available for construction.

§ 661.35 What percentage of IRRBP funding is available for use on BIA and Tribally owned IRR bridges, and non-BIA owned IRR bridges?

(a) Up to 80 percent of the available funding made available for PE and construction in any fiscal year will be eligible for use on BIA and Tribally owned IRR bridges. The remaining funding in any fiscal year will be made available for PE and construction for use on non-BIA owned IRR bridges.

(b) At various times during the fiscal year, FHWA will review the projects awaiting funding and may shift funds between BIA and Tribally owned, and non-BIA owned bridge projects so as to maximize the number of projects funded and the overall effectiveness of the program.

§ 661.37 What are the funding limitations on individual IRRBP projects?

The following funding provisions apply in administration of the IRRBP:

(a) An IRRBP eligible BIA and Tribally owned IRR bridge is eligible for 100 percent IRRBP funding, with a \$150,000 maximum limit for PE.

(b) An IRRBP eligible non-BIA owned IRR bridge is eligible for up to 80 percent IRRBP funding, with a \$150,000 maximum limit for PE and \$1,000,000 maximum limit for construction. The minimum 20 percent local match will need to be identified in the application package. IRR Program construction funds received by a Tribe may be used as the local match.

(c) Requests for additional funds above the referenced thresholds may be submitted along with proper justification to FHWA for consideration. The request will be considered on a case-by-case basis. There is no guarantee for the approval of the request for additional funds.

§ 661.39 How are project cost overruns funded?

(a) A request for additional IRRBP funds for cost overruns on a specific bridge project must be submitted to BIADOT and FHWA for approval. The written submission must include a justification, an explanation as to why the overrun occurred, and the amount of additional funding required with supporting cost data. If approved by FHWA, the request will be placed at the top of the appropriate queue (with a contract modification request having a higher priority than a request for additional funds for a project award) and funding may be provided if available.

(b) Project cost overruns may also be funded out of the Tribe's regular IRR Program construction funding.

§ 661.41 After a bridge project has been completed (either PE or construction) what happens with the excess or surplus funding?

Since the funding is project specific, once a bridge design or construction project has been completed under this program, any excess or surplus funding is returned to FHWA for use on additional approved deficient IRRBP projects.

§ 661.43 Can other sources of funds be used to finance a queued project in advance of receipt of IRRBP funds?

Yes. A Tribe can use other sources of funds, including IRR Program construction funds, on a project that has been approved for funding and placed on the queue and then be reimbursed when IRRBP funds become available. If IRR Program construction funds are used for this purpose, the funds must be identified on an FHWA approved IRR TIP prior to their expenditure.

§ 661.45 What happens when IRRBP funds cannot be obligated by the end of the fiscal year?

IRRBP funds provided to a project that cannot be obligated by the end of the fiscal year are to be returned to FHWA during August redistribution. The returned funds will be re-allocated to the BIA the following fiscal year after receipt and acceptance at FHWA from BIA of a formal request for the funds, which includes a justification for the amounts requested and the reason for the failure of the prior year obligation.

§ 661.47 Can bridge maintenance be performed with IRRBP funds?

No. Bridge maintenance repairs, e.g., guard rail repair, deck repairs, repair of traffic control devices, striping, cleaning scuppers, deck sweeping, snow and debris removal, etc., are not eligible uses of IRRBP funding. The Department of the Interior annual allocation for maintenance and IRR Program construction funds are eligible funding sources for bridge maintenance.

§ 661.49 Can IRRBP funds be spent on Interstate, State Highway, and Toll Road IRR bridges?

Yes. Interstate, State Highway, and Toll Road IRR bridges are eligible for funding as described in §661.37(b).

§ 661.51 Can IRRBP funds be used for the approach roadway to a bridge?

(a) Yes, costs associated with approach roadway work, as defined in §661.5 are eligible.

(b) Long approach fills, causeways, connecting roadways, interchanges, ramps, and other extensive earth structures, when constructed beyond an attainable touchdown point, are not eligible uses of IRRBP funds.

§ 661.53 What standards should be used for bridge design?

(a) Replacement—A replacement structure must meet the current geometric, construction and structural standards required for the types and volumes of projected traffic on the facility over its design life consistent with 25 CFR part 170, Subpart D, Appendix B and 23 CFR part 625.

(b) Rehabilitation—Bridges to be rehabilitated, as a minimum, should conform to the standards of 23 CFR part 625, Design Standards for Federal-aid Highways, for the class of highway on which the bridge is a part.

§ 661.55 How are BIA and Tribal owned IRR bridges inspected?

BIA and Tribally owned IRR bridges are inspected in accordance with 25 CFR part 170.504–170.507.

§ 661.57 How is a list of deficient bridges to be generated?

(a) In consultation with the BIA, a list of deficient BIA IRR bridges will be developed each fiscal year by the FHWA based on the annual April update of the NBI. The NBI is based on data from the inspection of all bridges. Likewise, a list of non-BIA IRR bridges will be obtained from the NBI. These lists would form the basis for identifying bridges that would be considered potentially eligible for participation in the IRRBP. Two separate master bridge lists (one each for BIA and non-BIA IRR bridges) will be developed and will include, at a minimum, the following:

- (1) Sufficiency rating (SR);
- (2) Status (structurally deficient or functionally obsolete);
- (3) Average daily traffic (NBI item 29);
- (4) Detour length (NBI item 19); and
- (5) Truck average daily traffic (NBI item 109).

(b) These lists would be provided by the FHWA to the BIADOT for publication and notification of affected BIA regional offices, Indian Tribal governments (ITGs), and State and local governments.

(c) BIA regional offices, in consultation with ITGs, are encouraged to prioritize the design for bridges that are structurally deficient over bridges that are simply functionally obsolete, since the former is more critical structurally than the latter. Bridges that have higher average daily traffic (ADT) should be considered before those that have lower ADT. Detour length should also be a factor in selection and submittal of bridges, with those having a higher detour length being of greater concern. Lastly, bridges with higher truck ADT should take precedence over those which have lower truck ADT. Other items of note should be whether school buses use the bridge and the types of trucks that may cross the bridge and the loads imposed.

§ 661.59 What should be done with a deficient BIA owned IRR bridge if the Indian Tribe does not support the project?

The BIA should notify the Tribe and encourage the Tribe to develop and submit an application package to FHWA for the rehabilitation or replacement of the bridge. For safety of the motoring public, if the Tribe decides not to pursue the bridge project, the BIA shall work with the Tribe to either reduce the bridge's load rating or close the bridge, and remove it from the IRR inventory in accordance with 25 CFR part 170 (170.813).

Year: State: Structure: Federal Agency:

USE OF THIS DOCUMENT IS SUBJECT TO 23 USC SEC 409.

*****IDENTIFICATION*****				*****CLASSIFICATION*****		CODE
(1) STATE NAME:	CODE:			SUFFICIENCY RATING:		
(8) STRUCTURE NUMBER:				STATUS:		
(5) INVENTORY ROUTE (ON/UNDER):				(112) NBIS BRIDGE LENGTH:		
(2) HIGHWAY AGENCY DISTRICT:				(104) HIGHWAY SYSTEM:		
(3) COUNTY CODE:	(4) PLACE CODE:			(26) FUNCTIONAL CLASS:		
(6) FEATURES INTERSECTED:				(100) STRAHNET HIGHWAY:		
(7) FACILITY CARRIED:				(101) PARALLEL STRUCTURE:		
(9) LOCATION:				(102) DIRECTION OF TRAFFIC:		
(11) KILOMETERPOINT:				(103) TEMPORARY STRUCTURE:		
(12) BASE HIGHWAY NETWORK:	CODE			(105) FEDERAL LANDS HIGHWAYS:		
(13) LRS INVENTORY ROUTE & SUBROUTE:				(110) DESIGNATED NATIONAL NETWORK:		
(16) LATITUDE:	DEG	MIN	SEC	(20) TOLL:		
(17) LONGITUDE:	DEG	MIN	SEC	(21) MAINTAIN:		
(98) BORDER BRIDGE STATE CODE:		% SHARE:		(22) OWNER:		
(99) BORDER BRIDGE STRUCTURE NUMBER:				(37) HISTORICAL SIGNIFICANCE:		
*****STRUCTURE TYPE AND MATERIAL*****				*****CONDITION*****		CODE
(43) STRUCTURE TYPE MAIN - MATERIAL:				(58) DECK:		
	CODE			(59) SUPERSTRUCTURE:		
(44) STRUCTURE TYPE APPR - MATERIAL:				(60) SUBSTRUCTURE:		
	CODE			(61) CHANNEL AND CHANNEL PROTECTION:		
(45) NUMBER OF SPANS IN MAIN UNIT:				(62) CULVERTS:		
(46) NUMBER OF APPROACH SPANS:				*****LOAD RATING AND POSTING*****		CODE
(107) DECK STRUCTURE TYPE:	CODE:			(31) DESIGN LOAD:		
(108) WEARING SURFACE / PROTECTIVE SYSTEM:				(63) OPERATING RATING METHOD:		
(A) TYPE OF WEARING SURFACE:	CODE:			(64) OPERATING RATING:		
(B) TYPE OF MEMBRANE:	CODE:			(65) INVENTORY RATING METHOD:		
				(66) INVENTORY RATING:		

(C) TYPE OF DECK PROTECTION:	CODE:	(70) BRIDGE POSTING:	
*****AGE AND SERVICE*****		(41) STRUCTURE OPEN, POSTED OR CLOSED:	
(27) YEAR BUILT:		DESCRIPTION:	
(106) YEAR RECONSTRUCTED:		*****APPRAISAL*****	CODE
(42) TYPE OF SERVICE - ON:		(67) STRUCTURAL EVALUATION:	
- UNDER:	CODE:	(68) DECK GEOMETRY:	
(28) LANES - ON STRUCTURE:	UNDER STRUCTURE:	(69) UNDERCLEARANCES, VERTICAL & HORIZONTAL:	
(29) AVERAGE DAILY TRAFFIC:		(71) WATERWAY ADEQUACY:	
(30) YEAR OF ADT:	(109) TRUCK ADT %:	(72) APPROACH ROADWAY ALIGNMENT:	
(19) BYPASS, DETOUR LENGTH:		(36) TRAFFIC SAFETY FEATURES:	
*****GEOMETRIC DATA*****		(113) SCOUR CRITICAL BRIDGES:	KM
(48) LENGTH OF MAXIMUM SPAN:		*****PROPOSED IMPROVEMENTS*****	M
(49) STRUCTURE LENGTH:		(75) TYPE OF WORK:	CODE:
(50) CURB OR SIDEWALK - LEFT:	M RIGHT:	(76) LENGTH OF STRUCTURE IMPROVEMENT:	M
(51) BRIDGE ROADWAY WIDTH CURB TO CURB:		(94) BRIDGE IMPROVEMENT COST:	M
(52) DECK WIDTH OUT TO OUT:		(95) ROADWAY IMPROVEMENT COST:	M
(32) APPROACH ROADWAY WIDTH (W/SHOULDERS):		(96) TOTAL PROJECT COST:	M
(33) BRIDGE MEDIAN:	CODE:	(97) YEAR OF IMPROVEMENT COST ESTIMATE:	
(34) SKEW:	(35) STRUCTURE FLARED:	(114) FUTURE ADT:	
(10) INVENTORY ROUTE MIN VERT CLEAR:		(115) YEAR OF FUTURE ADT:	M
(47) INVENTORY ROUTE TOTAL HORIZ CLEAR:		*****INSPECTIONS*****	M
(53) MIN VERT CLEAROVER BRIDGE RDWY:		(90) INSPECTION DATE:	(91) FREQUENCY:
(54) MIN VER UNDERCLEAR REF:		(92) CRITICAL FEATURE INSPECTION:	(93) CFI DATE
(55) MIN LAT UNDERCLEAR RT REF:		(A) FRACTURE CRITICAL DETAIL:	A) /
(56) MIN LAT UNDERCLEAR LEFT:		(B) UNDERWATER INSP: Yes	B) /
*****NAVIGATION DATA*****		(C) OTHER SPECIAL INSP: Yes	C) /
(38) NAVIGATION CONTROL:	CODE:	*****WASHINGTON OFFICE FIELDS*****	
(111) PIER PROTECTION:	CODE:	(DT) DEDUCT CODE:	M
(39) NAVIGATION VERTICAL CLEARANCE:		(RC) SPECIAL CODE:	M
(116) VERT-LIFT BRIDGE NAV MIN VERT CLEARANCE:		(DLU) DATE LAST UPDATE (MM/DD/YYYY):	M
(40) NAVIGATION HORIZONTAL CLEARANCE:		(TLU) TYPE LAST UPDATE:	M
		PROGRAM CODE:	
		PROJECT NUMBER:	

FHWA-37 PROJECTS ASSOCIATED WITH THIS
BRIDGE
APPR/PROJECT FEDERAL FUNDS

STRUCTURE #	PROJ.	PROJ. SUFFIX	PROG. CODE	DATE LAST ACT.	FUNDS

PROJECT SUFFIX:

BRIDGE TYPE IMPROVEMENT:

DETAIL TYPE IMPROVEMENT:

(SC) STEP CODE:

XVII. IRR High Priority Program (IRRHPP)

Overview. The intent of the IRR High Priority Project (IRRHPP) program is to provide funding to Tribal governments whose annual IRR allocation is insufficient to complete its highest priority projects and for emergency/disaster projects as defined in 25 CFR 170.206.

Statutory/Regulatory Requirements. The IRRHPP is a special funding pool that can be used:

- (1) By a Tribe whose annual allocation is insufficient to complete its highest priority project;
- (2) By a governmental subdivision of a Tribe that is authorized to administer the Tribe's IRR Program funding and whose annual allocation is insufficient to complete its highest priority project; or
- (3) By any Tribe for an emergency/disaster on any IRR transportation facility.

Eligible applicants may have only one IRRHPP application pending at any time. This includes emergency/disaster applications.

IRRHPP funds cannot be used for transportation planning, research, routine maintenance activities, and items listed in 25 CFR 170.116.

Guidelines/ Procedures.

- A Tribe may apply for IRRHPP funds by submitting a complete application for a non-emergency disaster project (**see Example 17.1**) to the FLH HPP Coordinator by November 30 for first level review.
- However, an emergency/disaster application (**see Example 17.2**) may be submitted at any time during the fiscal year.
- Applications are forwarded to the BIA by December 31.
- Eligible applicants may have only one IRRHPP application pending at any time. This includes emergency/disaster applications.
- Projects will be ranked and funded based on criteria identified in 25 CFR 170.209. IRRHPP funds cannot be used for transportation planning, research, routine maintenance activities, and items listed in 25 CFR, 170.116.

Non-Emergency Disaster Project Application Timeline:

By...	
November 30	Tribe submits complete application to the FLH HPP Coordinator for first level review
December 31	HPP Review Committee forward applications to BIA
By...	BIA will...
January 31	Notify all applicants and Regions in writing of acceptance of applications.

March 31	Coordinate with FLH to rank all accepted applications in accordance with Appendix A to Subpart C, develop the FPL, and return unaccepted applications to the applicant with an explanation of the deficiencies.
April 15	Notify all accepted applicants of the projects included on the FPL.
May 15	Distribute funds to BIA Regions or in accordance with procedures of the Office of Self-Governance for selected IRRHPP.

Appendix A to Subpart C—IRR High Priority Project Scoring Matrix

Score	10	5	3	1	0
Accident and fatality rate for candidate route¹	Severe	N/A	Moderate	minimal	No accidents
Years since last IRR construction project completed.	Never	Last project more than 10 years ago	Last project 5-9 years ago	Last project within last 1 to 4 years	Currently has project
Readiness to Proceed to Construction or IRRBP Design Need	PS&E Complete and approved	Bridge Replacement PS&E development Project	Bridge Rehabilitation PS&E development Project	Non-bridge PS&E development Project	
Percentage of Project matched by other funds	N/A	80 percent or more by other funds	20 – 79 percent by other funds	1 – 19 percent	No other funds
Amount of funds requested²	N/A	250,000 or less	250,001 – 500,000	500,001-750,000	Over 750,000
Geographic isolation	No external access to community	Substandard Primary access to community	Substandard Secondary access to community	Substandard access to tribal facility	
All weather access for: -employment -commerce -health -safety -educational resources -housing	Addresses all 6 elements	Addresses 4 or 5 elements	Addresses 3 Elements	Addresses 2 elements	Addresses 1 element

¹ National Highway Traffic Safety Board standards

² Total funds requested, including preliminary engineering, construction, and construction engineering.

Example 17.1

IRR High Priority Project Application (non-emergency / disaster)		
Tribal / Applicant Information		Scoring Information
1	Name _____	18 ACCIDENT DATA (last 5 years)
2	Address _____	19 AADT _____
	line 1: _____	20 # of Fatality Accidents _____
	line 2: _____	21 # of Injury Accidents _____
3	County/State _____	22 # of Property Damage Accidents _____
4	BIA Region _____	23 Years Since Last IRR Project _____
5	Tribal Representative _____	24 Total Project Amount \$ _____
6	Title _____	25 Matching Funds Available \$ _____
7	Phone # _____	26 HPP Funds Requested \$ _____
8	Fax # _____	27 GEOGRAPHICAL ISOLATION
9	Tribal Authorization/ Resolution Date _____	28 Route Functional Classification _____
		29 Construction Need _____
		30 ALL WEATHER ACCESS
		31 Number of all weather access elements _____
Project Information		
10	Project Name _____	
11	Project Description _____	
12	Project Type _____	
13	Route Number _____	
14	Section Number _____	
15	Project I.D. # _____	
16	Project Length _____	
17	NBIS # (if applicable) _____	
32	Submitted By: _____ (name & title)	
	Signature: _____	Date: _____
33	Reviewed By: _____ (name & title)	
	Signature: _____	Date: _____



IRR HPP Regional Checklist Non-Emergency / Disaster	
<input type="checkbox"/>	Tribal Annual IRR Allocation Verification Appropriate BIA Documentation Provided by Region
<input type="checkbox"/>	Eligible IRR HPP Activity (supporting documentation) IRR Inventory verification - (5704 summary sheet RIFDS) Tribal resolution - Priority
<input type="checkbox"/>	PS&E Verification Signed / Stamped Plan Cover Sheet & Engineers Estimate or PS&E Approval requirements per Title 23, Chapter 2, sec 202 (d) (2) (F) (ii).
<input type="checkbox"/>	Application Form Completed
<input type="checkbox"/>	Accident & Fatality Rate Data (if applicable) ADT Data for Candidate Route Certifiable source of data from law enforcement or governmental agency indicating the location and type of the accident.
<input type="checkbox"/>	Years since Last IRR Project BIA Federal Finance System Documentation
<input type="checkbox"/>	Percent Match Verification MOU of responsible agency or matching entity with contact information.
<input type="checkbox"/>	All Weather Access Verification Strip Map - Indicating project proximity to elements.
<input type="checkbox"/>	Other Attachments (not required) Complete Plans Photos
Regional Certification	
Prepared By:	_____
Date:	_____
Regional Roads Engineer:	_____
Date:	_____

Instructions to IRR HPP Application Form (non-emergency / disaster)	
Item #	Description
Tribal / Applicant Information	
1	Name Input the name of the applicable Reservation / Tribal community / Native Alaskan Village / Rancheria.
2	Address Input the Mailing Address of the applicable Reservation / Tribal community / Native Alaskan Village / Rancheria.
3	County / State Input the county and state in which is applicable to the project
4	BIA Region Input the appropriate BIA Region
5	Tribal Representative Input the appropriate tribal contact representative.
6	Title Title of appropriate tribal contact representative.
7	Phone # Phone number of tribal contact.
8	Fax # Fax number of tribal contact.
* 9	Tribal Authorization / Resolution Tribal Authorization by resolution required for HPP program according to Sec. 170.210 (f) 'Documentation from the tribe providing authority for BIA to place the project on an IRRHPP TIP if the project is selected and approved.' In addition the resolution must identify proposed HPP project as the highest priority. Attach to application.
Project Information	
10	Project Name Input name of proposed HPP project.
11	Project Description Input as much information as necessary to adequately describe the overall proposed project, scope and location. For example: <i>Earthwork, Grading, Drainage, Aggregate, Pavement, Erosion Control etc.</i> Any other information regarding the up-grade or route enhancements.
12	Project Type Choose from the following: Construction, Non-Bridge PS&E Development, Bridge Replacement PS&E Development, Bridge Rehabilitation PS&E Development.
13	Route Number Input IRR Inventory Route Number(s)
14	Section Number Input IRR Inventory Section Number(s)
15	Project I.D. # Input BIA Project ID number if available.
16	Project Length Input over-all length of project.
17	NBIS # Input the National Bridge Inventory System number if appropriate to proposed project.

* Items that require
verification/attachments
per IRR HPP Checklist

Scoring Information

- 18 Accident Data (last 5 years)**
The following data is required for the Weighted Highway Index (WHI).
- * **19 AADT - Annual Average Daily Traffic**
AADT is ADT multiplied by 365. Input this number for route.
- * **20 # of Fatality Accidents**
Input the number of accidents on specified route and section in which there have been fatalities.
- * **21 # of Injury Accidents**
Input the number of accidents on specified route and section in which there have been injuries.
- * **22 # of Property Damage Accidents**
Input the number of accidents on specified route and section in which there have been property damage.
- 23 Years Since Last IRR Project**
Input the number of years since the last COMPLETED IRR Project.
- 24 Total Project Amount**
Input total project dollar amount
- * **25 Matching Funds Available**
Input the amount of applicable matching funds available. Match indicate dollars from a Non-IRR source to be utilized in the project. Will require certification. Utilized for percent match element of scoring matrix - evaluated against TOTAL project amount.
- 26 HPP Funds Requested**
Include the amount of HPP dollars requested to include preliminary engineering, construction, and construction engineering.
- 27 Geographical Isolation**
The following data is required in order to determine geographical isolation criteria.
- 28 Route Functional Classification**
Input the IRR Inventory Functional Classification for route and section.
- 29 Construction Need**
Input the IRR Inventory Construction Need for route and section.
- * **30 All Weather Access**
The following information is utilized to determine the number of all weather access elements per scoring matrix. Each element is required to directly access proposed project. (directly access means that element 'touches' project within the proposed project limits) Will require mapping information for certification.
- * **31 Number of All Weather Access Elements**
Input the number of all weather access elements:
Employment - Jobs or Employment
Commerce - Business or Trade
Health - Hospital, Clinic, Pharmacy, Dental etc.
Safety - Fire, Police, Law Enforcement etc.
Educational Resources - Elementary Schools, High Schools, Colleges, Library, Technical or Trade School etc.
Housing - Residential Housing
- 32 Submitted By**
Name and title of person submitting application.
- 33 Reviewed By**
Name and title of BIA Regional Reviewing Official.

* Items that require
verification/attachments
per IRR HPP Checklist

Example 17.2

IRR High Priority Project Application Emergency/Disaster	
Tribal / Applicant Information	Project Information
1 Name _____	14 Project Name _____
2 Address _____ line 1: _____ line 2: _____	15 Route Number _____
3 County/State _____	16 Section Number _____
4 BIA Region _____	17 Project I.D. # _____
5 Tribal Representative _____	18 Project Length _____
6 Title _____	19 NBIS # (if applicable) _____
7 Phone # _____	20 Ownership of Route _____
8 Fax # _____	21 Terrain _____
9 Tribal Authorization/ Resolution Date _____	22 Surface Width _____
10 Pending IRRHPP Application? _____	23 Surface Type _____
11 Contacted Regional ERFO Coordinator? _____	24 Amount Requested \$ _____
	25 Date of Event _____
	
Emergency/Disaster Information	
12 Description and Cause of Damage	
13 Scope/Description of Proposed Repairs	
26 Submitted By: (name & title) _____	
Signature: _____	Date: _____
27 Reviewed By: (name & title) _____	
Signature: _____	Date: _____

IRR HPP Regional Checklist - Emergency / Disaster	
<input type="checkbox"/>	Tribal Annual IRR Allocation Verification Appropriate BIA Documentation Provided by Region
<input type="checkbox"/>	Eligible IRR HPP Activity (supporting documentation) IRR Inventory verification - (5704 summary sheet RIFDS) Tribal resolution - Priority
<input type="checkbox"/>	Application Form Completed
<input type="checkbox"/>	Other Attachments Photos Location Map Preliminary sketches or drawings illustrating the damage or proposed repairs. Any official ERFO related documentation available
Regional Certification	
Prepared By:	_____
Date:	_____
Regional Roads Engineer:	_____
Date:	_____

Instructions to IRR HPP Application Form - Emergency / Disaster	
Item #	Description
Tribal / Applicant Information	
1	Name Input the name of the applicable Reservation / Tribal community / Native Alaskan Village / Rancheria.
2	Address Input the Mailing Address of the applicable Reservation / Tribal community / Native Alaskan Village / Rancheria.
3	County / State Input the county and state in which is applicable to the project
4	BIA Region Input the appropriate BIA Region
5	Tribal Representative Input the appropriate tribal contact representative.
6	Title Title of appropriate tribal contact representative.
7	Phone # Phone number of tribal contact.
8	Fax # Fax number of tribal contact.
* 9	Tribal Authorization / Resolution Tribal Authorization by resolution required for HPP program according to Sec. 170.210 (f) 'Documentation from the tribe providing authority for BIA to place the project on an IRRHPP TIP if the project is selected and approved.' In addition the resolution must identify proposed HPP project as the highest priority. Attach to application.
10	Pending IRR Application Indicate yes or no. Eligibility per 170.205 (3) (b) 'Eligible applicants may have only one HPP application pending at any time. This includes emergency / disaster applications.
11	Contacted Regional ERFO Coordinator? Indicate yes or no. per 170.207 applicants are encouraged to apply for FHWA/ERFO Program funding if the project meets the requirements of the program.
Emergency / Disaster Information	
12	Description and Cause of Damage Input as much information as necessary to adequately describe event which occurred and subsequent damage to the route. Per 170.206. Declare major disaster declaration if known.
13	Scope / Description of Proposed Repairs Input as much information as necessary to adequately describe the overall proposed project, scope and location. For example: Earthwork, Grading, Drainage, Aggregate, Pavement, Erosion Control etc.

* Items that require verification/attachments per IRR HPP Checklist

Project Information

- 14 **Project Name**
Name of project.
- 15 **Route Number**
Input IRR Inventory Route Number(s)
- 16 **Section Number**
Input IRR Inventory Section Number(s)
- 17 **Project I.D. #**
Input BIA Project ID number if available.
- 18 **Project Length**
Input over-all length of project.
- 19 **NBIS #**
Input the National Bridge Inventory System number if appropriate to proposed project.
- 20 **Ownership of Route(s)**
Indicate who owns (responsible for) route(s).
- 21 **Terrain**
Indicate terrain type - Flat, Rolling, Mountainous etc.
- 22 **Surface Width**
Width of travel-way surface
- 23 **Surface Type**
Surface type of route(s) - Aggregate, Pavement etc.
- 24 **Amount Requested**
Dollar amount estimated for repairs described.
- 25 **Date of Event**
Specify the date event occurred
- 26 **Submitted By**
Name and title of person submitting application.
- 27 **Reviewed By**
Name and title of BIA Regional Reviewing Official.

* Items that require
verification/attachments
per IRR HPP Checklist

Project Information

- 14 Project Name**
Name of project.
- 15 Route Number**
Input IRR Inventory Route Number(s)
- 16 Section Number**
Input IRR Inventory Section Number(s)
- 17 Project I.D. #**
Input BIA Project ID number if available.
- 18 Project Length**
Input over-all length of project.
- 19 NBIS #**
Input the National Bridge Inventory System number if appropriate to proposed project.
- 20 Ownership of Route(s)**
Indicate who owns (responsible for) route(s).
- 21 Terrain**
Indicate terrain type - Flat, Rolling, Mountainous etc.
- 22 Surface Width**
Width of travel-way surface
- 23 Surface Type**
Surface type of route(s) - Aggregate, Pavement etc.
- 24 Amount Requested**
Dollar amount estimated for repairs described.
- 25 Date of Event**
Specify the date event occurred
- 26 Submitted By**
Name and title of person submitting application.
- 27 Reviewed By**
Name and title of BIA Regional Reviewing Official.

* Items that require
verification/attachments
per IRR HPP Checklist

XVIII. Safety Programs

Overview. Every year, more than 40,000 motorists die and almost 3,000,000 are injured on roadways in the United States. Fatalities and injuries resulting from motor vehicle crashes are a particular concern within Indian Country. Between 1975 and 2002, the number of fatal crashes on Indian reservations increased more than 50 percent, while the number of fatal crashes in the Nation declined 2 percent.

American Indians suffer far more from motor vehicle related deaths and injuries than would be expected, given their proportion of the population. In general, Native Americans have the highest risk of motor vehicle related deaths of all ethnic groups. Motor vehicle crashes are the leading cause of death for Native Americans ages 4 to 44.

This section includes various safety programs that are administered by (1) the FHWA and (2) the National Highway Traffic Safety Administration (NHTSA). The programs represent multiple strategies—engineering, education, and enforcement—that collectively help reduce the number of motor vehicle related crash fatalities and injuries.

State needs may be a higher priority when compared to competing projects or roads in Indian Country. Tribes are encouraged to solicit information about these programs from state partners. However, the principals guiding these programs may help to develop higher Safety projects regardless of the funding source used.

To address the dire safety needs in Indian Country, FHWA and BIA have developed a Tribal Safety Management System with assistance from the Tribes. This is documented in two separate plans, the Strategic Highway Safety Plan for Indian Lands and the Tribal SMS Implementation Plan. These plans, particularly the Implementation Plan identify strategies that the federal government is undertaking with the Tribes to improve safety for travelers on Indian Lands. These plans can be found at the FWA website at:

<http://flh.fhwa.dot.gov/programs/irr/safety/sms.htm>

FHWA Administered Program Highway Safety Improvement Program – HSIP

Overview. This is a Federal-aid funding program which began in fiscal year 2006 to achieve a significant reduction in traffic fatalities and serious injuries on all public roads. The HSIP emphasizes a data-driven, strategic approach to improving highway safety that focuses on results.

Statutory/Regulatory Requirements.

- Section 1401 of SAFETEA-LU – This section includes the program and policy language for implementing the new “core” Highway Safety Improvement Program (HSIP)
- Section 148 of Title 23 of the United State Code (23 U.S.C. 148)
- Section 924 of Title 23 of the Code of Federal Regulations (23 CFR 924)

Guidelines/Procedures. The SHSPs should be developed by State DOTs after consultation with safety stakeholders such as Tribal Governments. To obligate funds under the new 23 U.S.C. 148, a State must:

1. Use available crash data to develop and implement a strategic highway safety plan (SHSP);
2. Produce a program of projects or strategies that is optimized to reduce fatalities and incapacitating injuries on public roadways;
3. Evaluate and revise the plan on a regular basis; and
4. Submit an annual report to the Secretary.

The SHSPs are required to be based on crash data analysis. SHSP should address all safety disciplines including: engineering, education, enforcement, and emergency medical services (the four E's) on all public roads. In addition, the SHSPs should describe a program of projects or strategies to reduce the occurrence of fatalities and serious injuries on public roads, and be approved by the State Governor or the responsible State agencies.

Role of Tribal Governments. Tribal Governments are encouraged to work with State DOTs and/or the FHWA Division Offices in the development of the State's SHSPs because funds can only be obligated on projects or strategies included in the SHSP.

References/Resources.

http://safety.fhwa.dot.gov/safetealu/fact_sheets/ftsht1401.cfm

http://safety.fhwa.dot.gov/hsip/shsp/state_links.cfm

FHWA Administered Program High Risk Rural Roads Program (HRRRP)

Statutory/Regulatory Requirements.

- 23 U.S.C. 148. The purpose of this program is to achieve a significant reduction in traffic fatalities and incapacitating injuries on rural major or minor collectors, and/or rural local roads.

Guidelines/Procedures.

- Approximately 60 percent of roadway fatalities in the United States occur on rural roads.
- HRRRP funds construction and operational safety improvements on roadways that have crash rates for fatalities and incapacitating injuries that exceed the statewide average on rural major or minor collectors, or a rural local road that will likely have increases in traffic

volume likely to create an accident rate above the statewide average for the respective roadway functional classes.

- Implementation requires comprehensive crash data for all public roads.

References/Resources.

<http://safety.fhwa.dot.gov/safetealu/memos/memo051906.cfm>

FHWA Administered Program

Elimination of Hazards Relating to Railway-Highway Crossings

Statutory/Regulatory Requirements.

- 23 U.S.C. 130
- 23 CFR 924

Guidelines/Procedures.

- This program sets aside funds from the HSIP
- Funds are for the elimination of hazards and the installation of protective devices at railway-highway crossings.
- All public rail-highway crossing safety improvement projects meeting the eligibility description in 23 U.S.C. 130 are eligible for funding, including, but not limited to, elimination of hazards, installation of protective devices, and grade crossing separation.

References/Resources.

<http://safety.fhwa.dot.gov/xings>

FHWA Administered Program

Safe Routes to School - SRTS

Statutory/Regulatory Requirements

- SAFETEA-LU Sections: 1101(a)(17), 1404 - The purpose of the program is to enable and encourage children to walk and bicycle to school; to make walking and bicycling to school safe and more appealing; and to facilitate the planning, development, and implementation of projects that will improve safety, and reduce traffic, fuel consumption, and air pollution in the vicinity of schools.

Guidelines/Procedures

- Each State administers its own program and develops its own procedures to solicit and select projects for funding.
- Funded at \$612 million over 5 Federal fiscal years (FY 2005-2009).
- The SRTS Program is funded for infrastructure and non-infrastructure projects and to administer SRTS programs that benefit elementary and middle school children in grades K - 8.
- Funds are administered by State DOTs to provide financial assistance to Tribal, State, regional, and local agencies; including non-profit organizations that demonstrate the ability to meet the requirements of the program.

Role of Tribal Governments. Tribal governments are encouraged to work with State DOTs and/or the FHWA Division office in the State to apply for SRTS funding.

A. Infrastructure - Eligible infrastructure-related projects include the planning, design, and construction of infrastructure-related projects that will substantially improve the ability of students to walk and bicycle to school, including:

1. Sidewalk improvements.
2. Traffic calming improvements.
3. Pedestrian and bicycle crossing improvements.
4. On-street bicycle facilities.
5. Off-street bicycle and pedestrian facilities.
6. Secure bicycle parking facilities.
7. Traffic diversion improvements in the vicinity of schools.

Public funds must be spent on projects within the public ROW. This may include projects on private land that have public access easements. Public property includes lands that are owned by a public entity, including those lands owned by public school districts.

Construction and capital improvement projects also must be located within approximately two miles of a primary or middle school (grades K – 8).

Schools with grades that extend higher than grade 8, but which include grades that fall within the eligible range, are eligible to receive infrastructure improvements.

The State SRTS Coordinator position in each State is funded from the infrastructure portion of the State's SRTS Program apportionment.

References/Resources.

- FHWA's SRTS Program Guidance issued on January 3, 2006 (see link below)

<http://safety.fhwa.dot.gov/saferoutes/guidance/memo060306.cfm>

B. Non-infrastructure – Each State must set aside from its SRTS annual apportionment not less than 10 percent and not more than 30 percent of the funds for non-infrastructure related activities, including:

1. Public awareness campaigns and outreach to press and community leaders.
2. Traffic education and enforcement in the vicinity of schools (within approximately two miles).
3. Student sessions on bicycle and pedestrian safety, health, and environment.
4. Funding for training, volunteers, and managers of safe routes to school programs.

References/Resources

- <http://safety.fhwa.dot.gov/saferoutes>
- www.saferoutesinfo.org

NHTSA Administered Program State and Community Highway Safety Grant Program

Statutory/Regulatory Requirements

- Sections 2001 and 2002 of SAFETEA-LU. This authorized the State and Community Highway Safety formula grant program (Section 402 of chapter 4 of Title 23, U.S.C.) to support State highway safety programs, designed to reduce traffic crashes and resulting deaths, injuries, and property damage.

Guidelines/Procedures

- Funds are administered by the BIA Office of Indian Highway Safety Program.
- BIA receives approximately \$4.3 million for highway safety under the SAFETEA-LU Authorization.
- The BIA may use these grant funds only for highway safety purposes.
- For States receiving these highway safety funds, at least 40 percent of the funds must be expended by political subdivisions of the State (which can include Tribes).
- 95 percent of the funds apportioned to the Secretary of the Interior under this section will be expended by Tribes to carry out highway safety programs within their jurisdictions.

Role of Tribal Governments. Tribes can only apply for these funds through the BIA's Office of Indian Highway Safety Program.

References/Resources.

http://www.nhtsa.gov/nhtsa/whatsup/Tea21/GrantMan/HTML/07_Sect402Leg23USC_Chap4.html

NHTSA Administered Program

State Traffic Safety Information System Improvement Grants Program

Statutory/Regulatory Requirements

- Section 2006 of SAFETEA-LU. Authorizes the State Traffic Safety Information System Improvement Grants Program (Section 408 of Title 23, U.S.C.) to encourage States to adopt and implement effective programs to improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of State data that is needed to identify priorities for national, State, and local highway and traffic safety programs; to evaluate the effectiveness of efforts to make such improvements; to link these State data systems, including traffic records, with other data systems within the State; and to improve the compatibility of the State data system with national data systems and data systems of other States to enhance the ability to observe and analyze national trends in crash occurrences, rates, outcomes, and circumstances.

Guidelines/Procedures

- These grant funds can only be used to implement data improvement programs.
- Section 408 funds received by the BIA on behalf of the Tribes are administered by the Office of Indian Highway Safety Program.

Role of Tribal Governments. Tribes can only apply for these funds through the BIA's Office of Indian Highway Safety Program.

NHTSA Administered Program Alcohol-Impaired Driving Countermeasures Incentive Program

Note: A Tribe is not directly eligible for these funds. State Highway Safety Offices can write a grant to the Tribe utilizing these funds. Tribes would be subject to all funding rules and regulations if approved.

Statutory/Regulatory Requirements

- SAFETEA-LU Section 1113, 1122, 2007, 6003;
- 23 U.S.C. 410;
- 49 CFR 1.5

Guidelines/Procedures. The purpose of this program is to reduce collisions resulting from driving while under the influence of alcohol or other controlled substances.

NHTSA Administered Program Occupant Protection Incentive Grant Program

Note: A Tribe is not directly eligible for these funds. State Highway Safety Offices can write a grant to the Tribe utilizing these funds. Tribes would be subject to all funding rules and regulations if approved.

Statutory/Regulatory Requirements

- SAFETEA-LU Section 2004;
- 23 U.S.C. 405

Guidelines/Procedures

- The purpose of this program is to reduce roadway deaths and injuries resulting from unrestrained or improperly restrained occupancy within a motor vehicle.
- A State may use the grant funds only to implement and enforce occupant protection programs.

NHTSA Administered Program Child Safety and Child Booster Seat Incentive Program

Note: A Tribe is not directly eligible for these funds. State Highway Safety Offices can write a grant to the Tribe utilizing these funds. Tribes would be subject to all funding rules and regulations if approved.

Statutory/Regulatory Requirements

- SAFETEA-LU Section 2011;
- 23 U.S.C. 405(f)

Guidelines/Procedures

- This new incentive program was established by SAFETEA-LU for the enactment and enforcement of child restraint laws requiring children up to 65 pounds and under 8 years of age to be properly restrained in a child safety or booster seat.

XIX. Other Federal-Aid Programs

Overview. The statutes governing the Federal-aid Highway Program are found in Title 23, United States Code (23 U.S.C.). This section highlights a few of the Federal-aid programs found in the Guide to Federal-aid Programs and Projects <http://www.fhwa.dot.gov/federalaid/projects.cfm>.

CMAQ Congestion Mitigation and Air Quality Improvement Program (CMAQ)

Statutory/Regulatory Requirements.

- Title 23, Section 149 of the United States Code. This program is to reduce transportation-related emissions in air quality non-attainment and maintenance areas.

Guidelines/Procedures

- CMAQ funds are apportioned to States by formula based on population and the severity of ozone and carbon monoxide pollution in their non-attainment or maintenance areas.

Role of Tribal Governments. Tribes should contact their State DOTs or FHWA division offices in the State when considering applying for funding this program.

References/Resources

<http://www.fhwa.dot.gov/environment/cmaqpgs/>.
<http://www.fhwa.dot.gov/federalaid/projects.cfm>.

National Scenic Byways Program

Statutory/Regulatory Requirements

- Title 23, Section 162 of the United States Code

Guidelines/Procedures

- Administered by the Federal Highway Administration.
- The program is a grass-roots collaborative effort established to help recognize, preserve, and enhance selected roads throughout the United States.

Role of Tribal Governments. Indian Tribes may nominate a road as a National Scenic Byway, an All-American Road, or one of America's Byways, and may pursue grants directly through the FHWA or through a State DOT for eligible projects associated with the development of an Indian Tribe's scenic byway program.

References/Resources

<http://www.fhwa.dot.gov/hep/byways/index.htm>.

Highway Bridge Program (HBP)

Statutory/Regulatory Requirements

- Title 23, Section 144 of the United States Code.

Guidelines/Procedures

- The purpose of the Highway Bridge program is to improve the condition of the Nation's highway bridges through replacement, rehabilitation, and preventive maintenance.
- This program provides funds to assist States in improving the condition of their bridges through replacement, rehabilitation, and systematic preventative maintenance.

Role of Tribal Governments. Tribes should contact their State DOTs or FHWA Division Office in the State when considering applying for funding this program.

References/Resources

<http://www.fhwa.dot.gov/federalaid/projects.cfm>.

Surface Transportation Program (STP)

Statutory/Regulatory Requirements

- Title 23, Section 133 of the United States Code.

Guidelines/Procedures

- This program provides flexible funding options for a broad array of transportation projects.

Role of Tribal Governments. Tribes should contact their State DOTs or FHWA Division Offices in the States when considering applying for funding this program.

References/Resources

<http://www.fhwa.dot.gov/safetealu/factsheets/stp.htm>.
<http://www.fhwa.dot.gov/federalaid/projects.cfm>.

XX. Summary of Applicable Forms and Certifications Required for Documentation

Overview. The Program Agreement signed between a Tribe and FHWA or BIA highlights several assurances either directly or by reference. Assurances are a positive declaration from a Tribe intended to give confidence to FHWA and BIA that projects and/or other program areas implemented by the Tribe are being carried out in accordance with all Federal requirements. Assurances come in many forms (agreements, certifications, etc) but are usually documents signed by Tribes. These assurances are provided to FHWA or the BIA by the Tribe. Summary of the key assurances are:

Program Agreement (PA) – A standardized document between FHWA or BIA and a Tribe which 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 Tribe or a community of the Tribe and are eligible for funding pursuant to 25 CFR Part 170.

Referenced Funding Agreement (RFA) – A document between FHWA 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.

Tribe Single Audits - The Single Audit, also known as the OMB A-133 audit, is a rigorous, organization-wide audit or examination of an entity that expends \$500,000 or more of Federal assistance (Federal funds or Federal grants, or Federal awards) received for its operations. Usually performed annually, the Single Audit's objective is to provide **assurance** to the Federal government as to the management and use of such funds by recipients such as states, cities, universities, and non-profit organizations. The audit is typically performed by an independent certified public accountant (CPA) and encompasses both financial and compliance components. The Single Audits must be submitted to the Federal Audit Clearing house along with a data collection form, Form SF-SAC.

SF-415, Financial Status Reports (Semi-annual) - Documents and records data to track and review how much funds a Tribes is expending.

Indirect Cost Agreement – A written agreement between the cognizant agency (DOI/BIA) and the Tribe describing the results of negotiated and approval of the allowable indirect cost rates for their incurred by their program.

Progress Performance reports (semi-annual) - Serve as a measure of progress achieved on a project and help identify programmatic and administrative problems that may need to be resolved.

Tribal Long Range Transportation Plan (LRTP) – Documentation from the Tribe that under the guidance of 25 CFR 170, the Tribes provides the vision for meeting transportation needs; plans identify short and long-range transportation improvement strategies that will address current and future transportation needs that should be consistent with Tribal, Federal, and State government policies; plans address various capital investments and inventory current facilities necessary in preserving existing infrastructure and the transportation system as a whole. This is a prerequisite to the expenditure of Federal funds.

Tribal TTIP Certification Statement - An assurance to FHWA or the BIA that the planning requirements of 25 CFR 170 have been met which includes public involvement, financially constrained, consultation and coordination, consistent with the LRTP.

Tribal Transportation Improvement Program (TTIP) – Documentation of a multiyear financially constrained list of proposed transportation projects developed by a tribe from the tribal priority list from the long-range transportation plan (LRTP). The purpose of the TTIP is to document where reasonably anticipated or available funding source(s) will be used to implement the transportation project, thus ensuring the completion of that project. Transportation projects that are funded must be listed on an FHWA approved TTIP.

Tribe Environmental Checklist – A signed document with recommendation by the Tribe providing key environmental information for the proper determination of environmental documentation.

PS&E Package – Provides a mixture of assurances to FHWA or the BIA: Certified stamp on the plans by a State licensed professional engineer that the plans meet or exceed design, health, and safety standards; a copy of a PS&E certification letter by a State licensed civil engineer that the PS&E meets applicable health and safety standards as outlines in 25 CFR 107 Appendix to subpart D; specification that ensure materials and construction techniques will meet acceptable standards; estimates that reasonably anticipate the project cost; certification of ROW clearances; certification that required environmental, archeological, and cultural clearance have been obtained; approved design exceptions; public hearing requirements met; utility agreements.

Tribes Certification on Public Authority Review - (Required only if the facility is owned or maintained by a public authority other than the Tribe or the BIA). A statement in writing certifying that the Tribe 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 prevents the Tribe from proceeding with the project.

Procurement - Some type of “written” procedures are needed to describe how the Tribe makes (a) small purchases; (b) sealed bids; (c) competitive proposals; (d) non-competitive proposals. A Tribe may adopt applicable FHWA or BIA procedures, or develop Tribal procedures which meet or exceed federal standards. These procedures will be used for equipment purchasing (cost or price analysis), construction (advertising for bids, award, and contraction), architectural/engineering services, etc. These procedures will be reviewed by the FHWA Financial Manager to ensure they meet federal policies and regulations. Two types are:

a. Highway Construction Projects - For contracts for highway construction, direct recipients or sub-recipients must use bidding methods that are effective in securing competition. Example bidding methods may be found in 23 CFR part 635 subpart A. A cost analysis will be necessary when adequate price completion is lacking in contract modifications or change orders unless price reasonableness can be established on the basis of a catalog or market price (49 CFR 18.36).

b. Non-Highway Construction Projects: For contract for goods and services (engineering and design), must comply with and be in accordance with procurement requirements in 49 CFR 18.36(b) through (i) (goods and services); A cost analysis must be performed when an offer or is required to submit the elements of estimates cost, e.g., under professional, consulting, and architectural engineering services contracts (49 CFR 18.36)

Construction – Documentation and records are an important part of assurances role which provides an account of the construction activity, quality of work, and accountability of federal funds. An important part of construction process is monitoring and evaluating project activities. The types of monitoring documentation include: (a) Pre-construction conference; (b) Project Review and monitoring (inspection); (c) Final Inspection; (d) Project Acceptance; (e) Close out and Final Report.

XXI. List of Forms

Overview. Below are fill-able forms Tribes may wish to use that are highlighted in the Program Delivery Guide. These forms are available online at: <http://flh.fhwa.dot.gov/programs/irr/guide/>

- **SF-3881 Form - ACH Vendor/Miscellaneous Payment Enrollment Form**
- **Project Charter**
- **Highway Design Standards Certification**
- **Environmental Documentation Checklist for CE and EA Projects**
- **Equipment Acquisition Request Form**
- **PS&E Certification Checklist**
- **SF-425 Form - Federal Financial Report**
- **Tribal Request for Services**
- **IRR High Priority Project Application (non-emergency / disaster)**
- **IRR High Priority Project Application Emergency/Disaster**
- **Indian Reservation Road Bridge Program (IRRBP) - Plans, Specification, and Estimates Certification Checklist**