

III. Tribal Transportation Program Agreement (TTPA)

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

Since SAFETEA-LU, Indian Tribal governments have a choice in administration of the TTP program. As a result, under 23 U.S.C. § 202(a)(2), the Secretary of Transportation is authorized to enter into a Tribal Transportation Program Agreement (TTPA) with an Indian Tribal government to carry out a transportation program and projects. This allows Tribes the option of working directly with the FHWA in the administration of their Tribal Transportation Program. See **Figure 3.1** below.

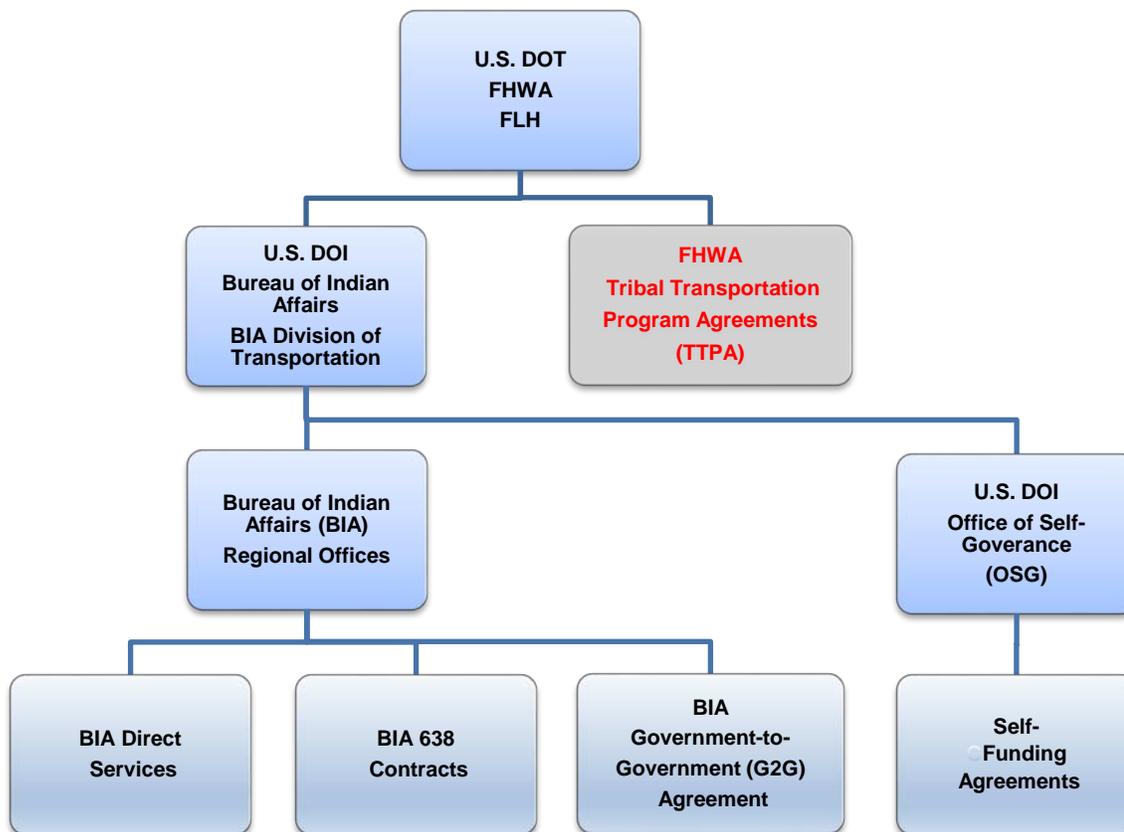


Figure 3.1: TTP Delivery Options available to Tribal Governments

A Tribe with a TTPA administers its own Tribal Transportation Program (TTP), as authorized by Chapter 2 of Title 23, as amended by: Public Law 114-94, *Fixing America’s Surface Transportation Act* (FAST Act); and, Public Law 109-59, *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA-LU).

The purpose of a Tribal Transportation Program Agreement (TTPA) is to:

- Transfer to the Tribe all 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, other than those that cannot be legally transferred.
- To carry out the statutory requirements pursuant to the FAST Act.
- To provide the Tribe or its designee, under a Referenced Funding Agreement (RFA), its share of TTP funds pursuant to the FAST Act and 25 CFR 170.

TTP activities transferred to a Tribe through a TTPA may include:

- Transportation Planning
- Construction Management
- Program Administration
- Design
- Construction
- Road Maintenance (25% of TTP funds or \$500,000, whichever is greater)
- Develop Tribal-State Maintenance Agreements
- Other TTP-eligible activities (including TTP Safety and Bridge)

B. Beginning and ending dates of the TTPA. The TTPA is put into effect on the date that it is approved and executed by the authorized representatives of the Tribe and FHWA.

When a new Highway Bill (that replaces the current Highway Bill) is passed and enacted by the Government, then FHWA will begin negotiations with a Tribe for a new TTPA to replace the Tribe's existing TTPA.

Until that occurs, a Tribe's TTPA remains in effect unless:

- **The TTPA is amended in writing** and signed by authorized representatives of the Tribe and FHWA. See Article V, Section 11 of the TTPA. After the TTPA with a Tribe is approved and executed, it may be amended later by FHWA to address changed program conditions or other factors. A TTPA amendment goes through the same review, signature by the Tribe and agency, and approval process as a full TTPA.
- **The TTPA is terminated** by the Tribe or FHWA. See Article V, Section 9 of the TTPA. Upon termination of a TTPA, FHWA will allocate the funds to the Secretary of the Interior.

The two ways a TTPA may be terminated are:

- **Voluntary termination.** A Tribe which already has a TTPA with FHWA may voluntarily terminate its TTPA (23 U.S.C. § 202 (b)(7)(J)). The Tribe submits to its TC a request contained in a letter signed by the Tribal Signatory or a Tribal Resolution, to terminate the Tribe's TTPA with FHWA. FHWA uses the "Off-boarding" letter template shown in [Appendix C – Exhibit 3.8](#) to acknowledge receipt of the Tribe's letter/tribal resolution.
- **Involuntary termination.** FHWA may terminate a TTPA if FHWA determines a Tribe is no longer eligible to receive TTP funds (Article V, Section 9 of the TTPA). Termination of a TTPA may be one outcome of the Remedial Action Process described in [Chapter IV – TTP Reporting Responsibilities](#). Generally, a Tribe that has a TTPA involuntarily terminated would not be eligible for a TTPA with another agency at that time.

C. Funding. TTP funding provided through a TTPA is sent to the Tribe as a single annual lump sum payment, subject to the availability of funding and as identified in the Referenced Funding Agreement (RFA). See [Chapter 3.2 - Referenced Funding Agreements \(RFAs\)](#).

TTP funds obtained by a Tribe through a TTPA are subject to the following requirements:

- Funds shall be used by the Tribe as permitted under 23 U.S.C. § 202(a)(1), the FAST Act, 25 CFR 170, other applicable laws, and as authorized under the TTPA. See [Chapter 2.2 – Allowable Uses of Tribal Transportation Program \(TTP\) Funds](#).
- The Tribe may reallocate funds among eligible projects identified on the FHWA approved Tribal Transportation Improvement Program (TTIP) (see 25 CFR § 170.204).

- Funds may not be reprogrammed for other purposes. Funds shall be placed in a savings, checking or investment account containing only funds transferred under the TTPA, which is separated from, and tracked independently of, all other tribal accounts (see TTPA–Article II, Section 2).
- Savings and checking accounts must be insured by an agency or instrumentality of the U.S., or fully collateralized to ensure protection of the funds, even in the event of a bank failure (see TTPA–Article II, Section 2).
- If the Tribe invests these funds, they shall be invested only in the following types of accounts: obligations of the U.S; obligations or securities guaranteed or insured by the U.S.; or mutual (or other) funds (see TTPA–Article II, Section 2).
- The Tribe may accumulate multiple allocations of funds, and shall deposit these in savings, checking, or investment accounts subject to the above requirements. Funds not expended by the Tribe within the fiscal year in which they were allocated shall remain in the custody of the Tribe and used for the purposes authorized under the TTPA (see TTPA–Article II, Section 2).
- Interest and investment income that accrue on the funds become the property of the Tribe in accordance with the provisions of 25 U.S.C. § 5324(b) and may be used on projects identified on the FHWA approved TTIP (see TTPA–Article II, Section 2).
- A Tribe can use flexible financing for TTP projects according to 25 CFR §§ 170.227 through 170.230. These include:
 - Issue bonds or enter into other debt financing instruments (see 25 CFR § 170.227(a) and TTPA–Article II, Section 2).
 - Obtain agreement of the Secretary of Transportation for secured loans or lines of credit for TTP projects meeting the requirements in 23 USC (see 25 § CFR 170.227(b))
 - Use TTP funds as collateral for loans or bonds to finance TTP projects (see 25 CFR § 170.227(c)).
 - Use TTP funds to leverage other funds (see 25 CFR §§ 170.228(a))
 - Pay back loans or other finance instruments for a project (see 25 CFR § 170.228(b) and TTPA–Article II, Section 2).
- The Tribe may use TTP funds to meet matching or cost participation requirements for any Federal or non-Federal transit grant or program (see 25 CFR § 170.133, and TTPA–Article II, Section 2).

D. Powers / Dispute Resolution / Construction of Agreement.

- Tribes shall have all the powers the Secretary of the Interior would have in administering the TTP funds provided to the Tribe under a TTPA, except for powers that cannot be legally transferred (see TTPA–Article II, Section 3).
- In the event of a dispute, the Tribe and FHWA agree to use mediation, conciliation, arbitration, and other dispute resolution procedures authorized under 25 CFR § 170.934 (see TTPA–Article II, Section 4).
- The TTPA shall be construed to facilitate and enable the transfer of programs authorized by 23 USC § 202, as amended by the FAST Act (see TTPA–Article II, Section 5).

E. Limitation of Costs (see TTPA–Article II, Section 7).

- A Tribe will not be required to continue performance under the TTPA if it requires an expenditure of funds greater than that awarded under the TTPA or RFA.
- If the Tribe believes this to be the case, the Tribe shall provide reasonable notice to FHWA.
- If FHWA does not increase the amount of funds, the Tribe may suspend performance under the TTPA until such time as additional funds are made available.

3.1 Tribal On-Boarding Process for TTPAs

- A. Overview.** The Tribal On-Boarding Process is the formally established procedure for a Tribe to first consider, then apply for and gain approval of a Tribal Transportation Program Agreement (TTPA) with FHWA.

If a Consortium of Tribes is interested in a TTPA for the Consortium, the Consortium of Tribes will be addressed the same way as if working with one Tribe; with one Tribal Resolution, one TTPA, one Retained Services Addendum (RSA), and one Reference Fund Agreement (RFA).

- B. Steps in the On-Boarding process.** The following are the steps that a Tribe and FHWA follow during the On-Boarding process:

Step 1. Tribe learns about the Tribal Transportation Program Agreement (TTPA): FHWA provides information to help a Tribe answer these questions: "What is a Tribal Transportation Program Agreement (TTPA)?" and "Is a TTPA the right program delivery method for my Tribe's Tribal Transportation Program?"

Step 2. Tribe submits a Notice of Intent. After reviewing the information it has from FHWA, the Tribe may decide to pursue a TTPA for the administration of its Tribal Transportation Program. If so, then the Tribe submits a **Notice of Intent** to FHWA, which is an official letter or Tribal resolution from the Tribal government notifying FHWA of its desire to enter into a TTPA with FHWA. It can be either a Letter of Interest or a Tribal resolution. See [Appendix C – Exhibit 3.2](#) for a tribal resolution template that a Tribe may choose to use. Tribes submit the Notice of Intent to FHWA by submitting it to an FHWA TC or by emailing it to tp_hq@dot.gov. FHWA then assigns a Tribal Coordinator (TC) to work through the on-boarding process with the Tribe. The designated FHWA TC notifies the BIA Regional Road Engineer of the Tribe's intent to enter into a TTPA with FHWA

Step 3. FHWA sends to the Tribal Government an e-mail response or letter (copied to the Tribe's Transportation Director or similar position), containing the following information:

- **Confirmation of receipt of the Notice of Intent.** The letter may be in the format shown in [Appendix C, Exhibit 3.7](#).
- A description of the On-Boarding process steps.
- A copy of the TTPA template (see Appendix C - [Exhibit 3.1](#)).
- A copy of the Referenced Funding Agreement template (see Appendix C - [Exhibit 3.3](#)).
- A copy of the FHWA TTPA Orientation presentation.
- A copy of the FHWA on-boarding orientation checklist, included in letter from FHWA only (see [Appendix C - Exhibit 3.9](#)).
- The internet link to the *Tribal Transportation Program Delivery Guide - 2019*.

Step 4. Tribe provides additional material (see 23 U.S.C. § 202(b)(7)(F)). If the Tribe wishes to continue to pursue a TTPA, FHWA requests documentation that the Tribe must provide including:

- **Notice of Intent**, if not previously submitted by the Tribe. FHWA may provide the Tribe with a Sample Tribal Resolution which expresses the desire of a Tribe to enter into a TTPA (see [Appendix C, Exhibit 3.2](#)).

- The Tribe’s organizational charts for their Transportation and Financial Departments;
- Copies of the Tribe’s written Financial, Procurement, and Property Management Procedures, if available; and
- **Audits:**
 - o Copies of the Tribe’s Single Audits covering the past three fiscal years, if the Tribe expended \$500,000 (\$750,000 effective December 26, 2014) or more of Federal funding during each of those years (see [Chapter IV – TTP Reporting Responsibilities, Section C](#)). Although FHWA doesn’t necessarily need the full audit report, any findings and discussions related to the Tribe’s DOT program, as well as for its other Federal programs should be included. Copies of auditor’s letters attesting to any internal controls or compliance findings or lack thereof should also be included. The tribe should also include corrective action plans/implementation schedules that were developed for any material findings identified in the Single Audits.
 - o If the Tribe expended less than \$500,000 of Federal funding during a Tribal fiscal year (or less than \$750,000 effective December 26, 2014), the Single Audit requirement does not apply. In these cases, FHWA asks the Tribe to provide copies of any internal or external financial review/audits that may have taken place over the past three fiscal years as well as any corrective action plans and implementation schedules that were developed. If audits were not carried out, the Tribe should provide copies of the “Certification of Non-Audit Requirements letter” that was previously provided to the BIA for the past three fiscal years.

Step 5. FHWA reviews the material submitted in Step 4, to determine if there are any issues related to:

- financial and procurement management;
- reporting;
- program administration;
- contract deliverables or sanctions; and
- historic construction project performance.

Step 6. FHWA performs a Risk Assessment. The purpose of the Risk Assessment is to determine a Tribe's eligibility to enter into the TTPA. See 23 USC § 202(b)(7)(F).

Step 7. FHWA determines Tribe’s eligibility for a TTPA.

- **If the Tribe is disapproved** by FHWA for a TTPA, then FHWA sends a letter to the Tribe describing the reasons for denial, and recommended actions for future approval to enter into a TTPA.
- **If the Tribe is approved** by FHWA for a TTPA, the Tribe is notified. The approval may include stipulations that may include alternative reporting schedules, additional monitoring activities, limits on distribution of funding, or other stipulations.

Step 8. If the Tribe has been approved to be eligible for a TTPA, then FHWA conducts a webinar/conference call with the Tribe’s representatives The intent of this contact will be to discuss with the Tribe the orientation presentation; review the language of the TTPA template (including each party’s roles and responsibilities, and remedial actions for non-performance); establish a primary POC for future correspondence; and answer any questions that the Tribe may have regarding the On-boarding process or the Tribal Transportation Program. If the

webinar/conference call is conducted by FHWA, the FHWA representative completes the On-Boarding orientation checklist (see [Appendix C - Exhibit 3.9](#)) to document this discussion.

Step 9. The Tribal Transportation Program Agreement (TTPA) document is prepared.

FHWA prepares the TTPA (see Appendix C –[Exhibit 3.1](#)). The TTPA is the official record of the programmatic agreement between the Tribe and the U.S. Government.

Changes to the standard TTPA template should only be made to address issues identified during the Risk Assessment process, or for other circumstances of the Tribe that need to be addressed.

When the TTPA is completed, FHWA emails it, and an **Automated Clearing House (ACH) Banking Form (SF 3881)**, to the Tribe for completion and signature by the Tribal Leadership. The **ACH Banking Form (SF 3881)** includes the Tribe's bank account information for its Tribal Transportation Program Agreement (TTPA) account (See Appendix C - [Exhibit 3.5 –ACH Banking Form](#)). The ACH form can be obtained at <http://www.gsa.gov/portal/forms/download/116290>.

The Tribe must have an active Data Universal Numbering System (DUNS) number. The Tribe should verify that its DUNS number is active when completing the ACH Form.

Step 10. The Tribe returns the signed TTPA and completed ACH Form to FHWA.

Step 11. If the TTPA is acceptable to FHWA, it is approved and a copy of the signed and approved TTPA is provided to the Tribe.

Step 12. A TC is assigned by FHWA as the primary point of contact for future TTP coordination with the Tribe.

Step 13. If the Tribe's TTPA is with FHWA, the newly assigned TC coordinates with the Tribe, the BIA Regional Office (or OSG), and the Operations Team Supervisor to determine:

- What are the prior years and current year TTP funds currently held by the Tribe; and
- What are the prior years and current year TTP funds that are currently held by the BIA (e.g. through 638 contracts or direct service agreements)?

If 638 contracts exist, the Tribe (in coordination with the FHWA TC and BIA) decides whether to continue through completion or close out the contracts. The information gathered in this Step will be used to develop the first RFA under the TTPA. See [Chapter 3.2 - Referenced Funding Agreements \(RFAs\)](#).

3.2 Referenced Funding Agreements (RFAs)

A. Payment Process. This section describes the steps for obligation and payment of TTP (and other) funds to Tribes that have been granted an approved TTPA.

Step 1. FHWA Prepares a Referenced Funding Agreement (RFA). The RFA sets forth specific conditions for Fiscal Year funding under the TTPA, and identifies 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 Tribe and the agency agree. See RFA templates in Appendix C - [Exhibit 3.3](#).

Each fiscal year (FY) FHWA prepares a new RFA for each Tribe that has a TTPA. FHWA may also need to prepare RFA Amendments (see Appendix C - [Exhibit 3.4](#)). These amendments will be needed as portions of TTP funding become available during the FY, or to convey to the Tribe funding from other allowable sources (see **Section B** below).

A Consortium of Tribes will be addressed the same way as if working with one Tribe: one Reference Fund Agreement (RFA) is used for the Consortium. The Tribes in the Consortium do not have individual RFAs

Step 2. The TC forwards the RFA to the Tribe for their signature. The Tribe should have already completed and submitted the ACH Form. It is recommended that the Tribe also check that the account and the DUNS number are active when it signs the RFA. FHWA cannot obligate funding to the Tribe until it has completed these activities.

Prior to approval of the RFA, the Tribe must have an FHWA-approved TTIP. Tribes recently on-boarded with FHWA may still have TTIP(s) approved while they were with BIA that remain valid until a new TTIP is approved by FHWA.

Step 3. The Tribe returns a signed copy of the RFA to the TC.

Step 4. FHWA approves (“executes”) the RFA. The RFA (or RFA Amendment), previously signed by the Tribe, is signed and approved by the Associate Administrator of the Office of Federal Lands Highway.

The RFA may not be approved if the Tribe does not have an up-to-date FHWA-approved Tribal Transportation Improvement Program (TTIP) (see [Chapter VI-Transportation Planning](#)). If the Tribe currently has an FHWA-approved TTIP that addresses the upcoming fiscal year, then the Tribe is not required to submit an updated TTIP with their signed RFA. However, if the Tribe's current TTIP does not include projects or activities covered by the new RFA, then the Tribe is required to submit a new FHWA-approved TTIP along with its signed RFA. If a Tribe is unsure about whether it should include a new TTIP, the Tribe should contact its TC for guidance. Also, the RFA also may not be approved due to a Remedial Action Process in effect (see [Section F of Chapter IV – TTP Reporting Responsibilities](#)).

Step 5. The funds shown on the RFA are paid. The Government electronically direct-deposits the funds shown on the approved RFA into the Tribe's bank account. The Tribe can now fund projects in its FHWA-approved TTIP(s) using the funding provided through the RFA.

B. Types of Funding that may be Included in an RFA.

1. **TTP funding.** This amount includes TTP Funds and TTP Transportation Planning Funds (2%), and is based on the current FY Tribal shares. TTP funding from previous FYs not yet conveyed to the Tribe may also be included on the RFA.

TTP funding is available for obligation in the FY for which it is authorized plus three additional FYs. 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.

2. **Tribal Transportation Facility Bridge Funds.**

3. **TTP Tribal Safety Funds.**

4. **202(a)(9) Fund Transfers.**

Overview. State, county, or local transportation-related funds may be transferred from the State to FHWA, and then from FHWA to a Tribe through an RFA. Funds from counties or local governments must first be transferred to the State before the funds are transferred to FHWA. See 23 USC § 202(a)(9), 23 USC § 104(f)(3)(A), and 25 CFR § 170.627. For additional information, see the FHWA information sheet at [https://flh.fhwa.dot.gov/programs/ttp/documents/Funds-Transfer-Procedures-Pursuant-to-23-U.S.C.202\(a\)\(9\).pdf](https://flh.fhwa.dot.gov/programs/ttp/documents/Funds-Transfer-Procedures-Pursuant-to-23-U.S.C.202(a)(9).pdf)

Requirements for the 202(a)(9) fund transfer:

- **Funds to be transferred must be for a specific project.**
- **The project must be eligible under the initial source of funding.** The transferred funds must be used for the purpose originally agreed to between the State and the Tribe.
- **Funds shall retain their match requirements.** The transferred funds keep the match requirements from the original funding source or program.
- **The State is relieved of oversight responsibilities.** FHWA assumes oversight. The Tribe administers the project in accordance with TTP provisions.
- An **Intergovernmental Fund Transfer Agreement** shall be drawn up by the Tribe, in coordination with the State and the FHWA TC. When finalized to the satisfaction of all the signatories, the **Agreement** shall be signed by the Tribe, the State, and FHWA. See Appendix C – [Exhibit 3.10](#) for the required template to use for the **Agreement**. Portions of this document will need to be modified further by FHWA if non-Federal funds are being transferred.
- The **Addendum to the Intergovernmental Fund Transfer Agreement** shall be drawn up by the Tribe in coordination with the State and the FHWA TC. This identifies the project, funding, expectations, roles and responsibilities, etc. The **Addendum** shall be attached to the **Intergovernmental Fund Transfer Agreement**. See Appendix C - [Exhibit 3.11](#) for the required template to use for the **Addendum**. Portions of this document will need to be modified further by FHWA if non-Federal funds are being transferred.
- **Complete Form FHWA-1576.** The State DOT shall complete and submit this form to the FHWA Division Office in the respective State, in order to transfer the funds to Federal Lands Highway Headquarters (FHWA-FLH-HQ). The information entered on **Form FHWA-1576** shall include the following:
 - Clearly define the type of funds being transferred;

- Specify that the funds are transferred to FHWA-FLH-HQ for the TTP in accordance with 23 U.S.C. § 202(a)(9);
- Identify the purpose (a specific project) for which the funds are being transferred, the name of the receiving Tribe; the specific project.

Attach supporting Agreements with the Tribe, or other related documentation.

Form FHWA-1576 is available for download at

<https://www.fhwa.dot.gov/legregs/directives/policy/att1c.xls>

- **The transferred funds must be obligated in same Federal fiscal year (FY) as the transfer.** The transferred funding (and associated obligation limitation) will be obligated through the same process as TTP funding. The TTP formula obligation limitation is available for a single FY. Therefore, if the transfer is of apportioned funds and formula obligation limitation, the funds and formula obligation limitation must be obligated within the FY of the transfer. If allocated funding is transferred, any associated allocated obligation limitation that FHWA does not obligate by the end of the FY is subject to August redistribution and, in the following FY, FHWA will make available obligation limitation equal to any amount so redistributed for the project.
- **Funds tracked separate from TTP funds.** FHWA-FLH-HQ should track the transferred funds received by the Tribe separately from the Tribe's TTP funds, to ensure that obligation deadlines are met.
- **Unused funds returned to the State.** When the project is complete, any remaining balance of the transferred funds must be returned from the Tribe to the State that originated the transfer, unless further agreements are reached for eligible projects.

5. Other Chapter 2 (FLH Program) Funds, as described.

6. Tribe's share of Program/Project-related administrative funds as authorized by section 202(b)(7)(E) of title 23.

C. Statutory/Regulatory Requirements for funding provided through an RFA:

- 23 U.S.C. § 202(b) and 25 CFR 170, Subpart C regulate distribution of TTP funds;
- 23 USC § 104(f)(3)(A), 23 USC § 202(a)(9), and 25 CFR § 170.627;
- 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. § 5301 et seq.;
- 49 C.F.R. § 1.48(b)(29).