Tribal Transportation Program Delivery Guide - 2017

A Guide for Tribes having a TTP Program Agreement (TTPA) with FHWA or the BIA

January 19, 2017

Table of Contents

Chapter Number & Name	Page
Forward	1
I. Purpose of the Tribal Transportation Program Delivery Guide	2
II. Tribal Transportation Program (TTP)	3
2.1 Overview	3
2.2 Allowable Uses of TTP Funds	7
III. Tribal Transportation Program Agreement (TTPA)	9
3.1 Tribal On-Boarding Process for TTPAs	13
3.2 Retained Services Addendum - for BIA G2G Agreements	16
3.3 Referenced Funding Agreements (RFAs)	17
IV. TTP Reporting Responsibilities	20
V. Request for Services and Project Agreements	28
VI. Transportation Planning	30
VII. Preliminary Engineering - NEPA and Other Environmental Requirements	43
VIII. Preliminary Engineering - Project Package	51
IX. Preliminary Engineering - Right-of-Way (ROW) & Utilities	59
X. Procurement, Construction Bid Advertisement and Award	64
XI. Construction and Construction Engineering	67
XII. Maintenance of Transportation Facilities	79
XIII. Tribal Transportation Program (TTP) - Bridge Program	83
XIV. Safety Programs	88
XV. Other Federal Transportation Grants and Programs	97
Appendix A – Acronyms	103
Appendix B – Glossary	106
Appendix C – Exhibits for the Chapters	112

Forward

The Tribal Transportation Program (TTP), originally known as the Indian Reservation Roads (IRR) Program, was established by the Surface Transportation Assistance Act of 1982, and addresses transportation needs of the 567 federally recognized 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 regulations for carrying out the TTP can be found at 25 CFR Part 170.

Under the FAST Act, the TTP is funded at $465 million in FY16 with annual increases of $10 million/FY through 2020. Other than a 5% set aside for BIA and FHWA to carry out stewardship and oversight of the program, all other funding is made available to tribes either as tribal shares or as special set-aside funding to address transportation planning, and safety and bridge projects and activities. The tribal shares are determined via a statutory funding formula that can be found at 23 USC 202(b). The TTP is an important resource of a Tribe's overall infrastructure investment strategy.

Any facility that provides access to or is located within tribal lands is eligible to be included in the National Tribal Transportation Facility Inventory (NTTFI). These roads, trails and other facilities provide safe and adequate transportation and public access to, within, and through Indian reservations and native communities for Native Americans, visitors, recreational users, resource users, and others, while contributing to the health and safety and economic development of Native American communities. There are currently more than 161,000 miles of roads on the NTTFI. Approximately 31,500 miles are deemed as BIA routes and another 27,000 as tribal routes. All of the remaining mileage is owned by others including states, counties, townships, boroughs, or other federal agencies.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Public Law 109-59 (2005), for the first time allowed Tribes the option of working directly with the Federal Highway Administration (FHWA) in the administration of their IRR program. This option has continued through subsequent Highway Authorizations.

The *IRR Program Delivery Guide* was first developed in 2008 to assist Tribes in the management of their IRR program. It was intended to explain the IRR Program Agreements while providing relevant technical assistance. This new version of the *Tribal Transportation Program Delivery Guide - 2017* is an update to the 2013 version, and is intended for use by Tribes having BIA G2G Program Agreements as well as Tribes having FHWA Program Agreements. The *Tribal Transportation Program Delivery Guide -2017* is an important reference and assistance in delivering the overall Tribal Transportation Program.

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

Timothy Hess
Associate Administrator
Office of Federal Lands Highway
Federal Highway Administration

Weldon "Bruce" Loudermilk
Director
Bureau of Indian Affairs

I. Purpose of the Tribal Transportation Program Delivery Guide

The fundamental purpose of this document is to provide procedural guidelines to eligible Tribes [1] entering into, or already having, a Tribal Transportation Program Agreement (TTPA) with the FWHA or the BIA.

The *Tribal Transportation Program Delivery Guide - 2017* expands on the terms, roles and responsibilities, and provisions for the Tribes, FHWA, and BIA as outlined in the Tribal Transportation Program Agreement (TTPA). It assists Tribal governments in the administration of the Tribal Transportation Program, and sets out the required process and procedures used by the FHWA and the BIA to carry out its oversight and stewardship responsibilities.

In addition, the *Tribal Transportation Program Delivery Guide - 2017 may* serve as a technical resource for Tribal governments, Federal agencies, and State and local governments.

Additional information on the TTP can be obtained from these websites:

- Office of Federal Lands Highway's Tribal Transportation Program at http://flh.fhwa.dot.gov/programs/ttp/
- The BIA Division of Transportation at http://www.bia.gov/WhoWeAre/BIA/OIS/Transportation/

[1] Wherever "**Tribe**" appears in this document, "**Consortium**" also applies. A Consortium is a group of Tribes who have formally agreed to pool their TTP funding and resources. The BIA and FHWA will work with a Tribal Consortium the same as a Tribe.

II. Tribal Transportation Program (TTP)

2.1 Overview

The Tribal Transportation Program (TTP) 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.

A. Statutory/Regulatory Requirements. In administering its Tribal Transportation Program, a Tribal government is required to comply with the provisions of Title 23 of the United States Code, 25 CFR 170, and Public Law 114-94, *Fixing America's Surface Transportation Act* (FAST Act). A Tribal government is also required to comply with the terms of its most current executed TTP Program Agreements with FHWA and G2G Agreements with the BIA.

Federal law gives hiring and training preferences, to the greatest extent feasible, to Indians for all work performed under the Tribal transportation program (25 CFR §§ 170.911-170.914). Under 25 U.S.C. § 5307(b), Indian organizations and Indian-owned economic enterprises are entitled to a preference, to the greatest extent feasible, in the award of contracts, subcontracts, and sub-grants for all work performed under the TTP.

The following is a list of regulations related to the implementation and oversight of the Tribal Transportation Program:

- 23 U.S.C. § 202 – Tribal Transportation Program
- 25 CFR § 170 – Tribal Transportation 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
- 29 CFR § 1910 – Occupational Safety and Health Standards
- 25 U.S.C. § 5307(b)
- BIA NEPA policy (applicable to TTPAs with BIA)
- Government Performance and Results Act

B. Federal Agencies which carry out the TTP. Federal agencies must work cooperatively together in a government-to-government relationship with Tribes in order to carry out the requirements of the Tribal Transportation Program (TTP). Below is a short description of the Federal agencies which carry out the TTP with Tribes.

1. **Federal Highway Administration (FHWA).** The FHWA has 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 the Tribal Transportation Program (TTP) and for transportation systems in National Parks, National Forests, Indian lands, and other land under Federal stewardship.

a. 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.

b. Federal Lands Highways (FLH). The FHWA Tribal Transportation Program (TTP) is operated by FLH Headquarters (FHWA-FLH-HQ) in Washington DC, and includes TTP Teams located in Vancouver, WA, Lakewood, CO, and Washington DC. Each TTP Team includes Tribal Coordinators (TCs) assigned to work with Tribes who have a FHWA Tribal Transportation Program Agreement (TTPA). The FHWA TCs also coordinate with BIA TTP personnel in the BIA Regions to consolidate field visits to Tribes and other functions of the TTP program.

Another part of FLH includes the three FLH Divisions: Eastern, Central, and Western. These three FLH Divisions provide engineering related services (design, environmental, contract advertisement and award, and construction management), and engineering technology information to Federal, state, and local agencies/governments, and Tribes. The three FLH Divisions also manage the Emergency Relief for Federally Owned Roads (ERFO) program for roads on the National Tribal Transportation Facility Inventory (NTTFI) as well as federally owned roads. The three FLH Divisions are:

- **Eastern Federal Lands Highway Division (EFLHD)** located in Sterling, Virginia serves the eastern United States, Puerto Rico, and the Virgin Islands.

- **Central Federal Lands Highway Division (CFLHD) located in** Lakewood, Colorado serves the central United States, Hawaii, and American Samoa.

- **Western Federal Lands Highway Division (WFLHD)** located in Vancouver, Washington serves the northwestern United States and Alaska.

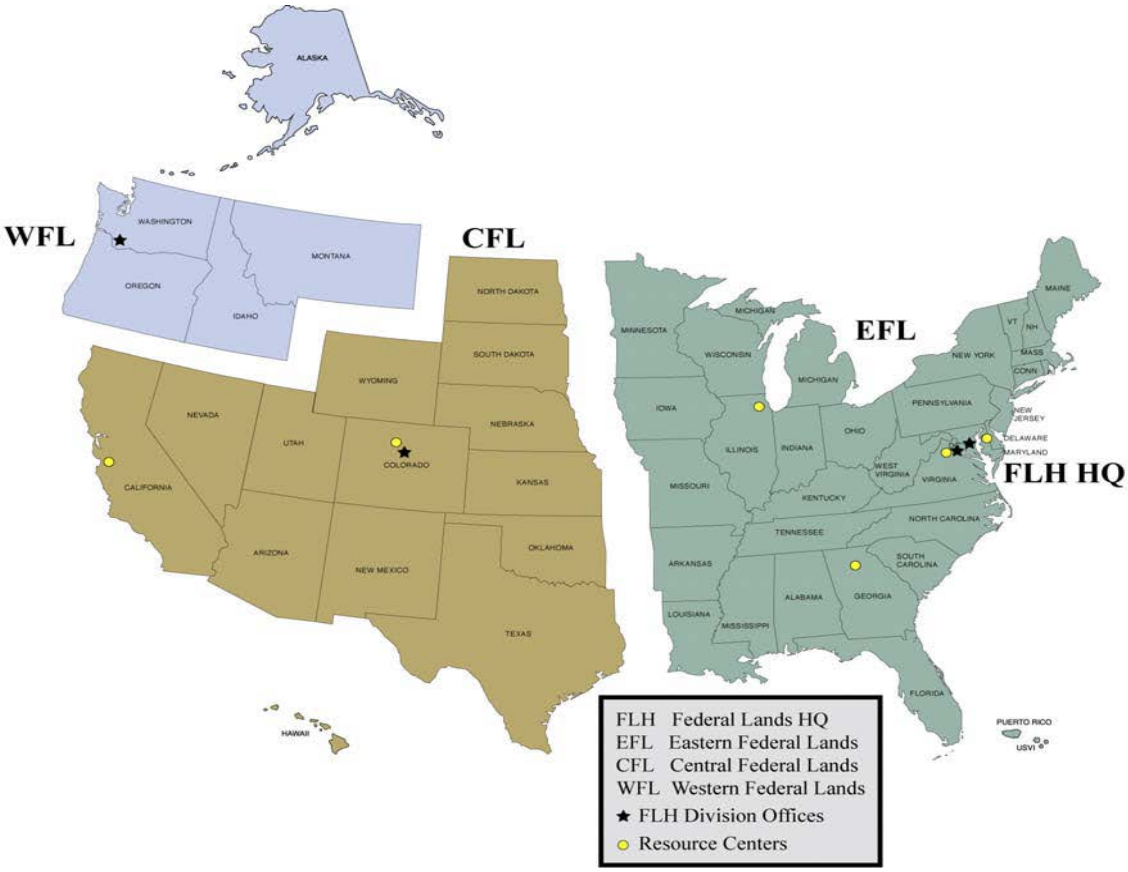


Figure 2.1: Locations of the three FLH Divisions' service areas

2. **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. The BIA provides services (directly or through contracts, cooperative agreements, and grants) to approximately 1.9 million American Indians and Alaska Natives from the 564 federally recognized Tribes. The BIA is organized into 12 Regions, each with a TTP component that provides engineering, construction, and road maintenance services for roads on or leading to Reservations and Tribal lands or villages. See **Figure 2.2** for a map of the BIA Regions.

   The BIA Division of Transportation (BIADOT) is the Division of BIA overseeing the road maintenance and road construction programs for the Tribal Transportation Program (TTP). BIADOT has two central offices (Washington, DC and Albuquerque, NM) that are responsible for policy coordination and budgeting. Staff members at BIADOT support the BIA Tribal Transportation Program.

   Descriptions of BIA organizational positions and divisions are included in **Appendix B – Glossary**.

Figure 2.2: Locations of BIA Regional Offices and boundaries

C. Agency Contact Information :

The following websites contain agency contact information and other TTP related information:

FHWA:
http://flh.fhwa.dot.gov/programs/ttp/contact.htm

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

2.2. Allowable Uses of Tribal Transportation Program (TTP) Funds

Tribal Transportation Program (TTP) funds are Federal funds that Tribes and others can spend only on certain allowable activities. Also, the allowable activities are subject to spending limits.

Allowable activities that Tribes can use TTP funds for are broken into two broad categories: (1) planning and design activities, and (2) construction and maintenance activities. A complete list of allowable uses of TTP funds is located in 25 CFR 170 Appendix A to Subpart B, 25 CFR 170 Subpart G, and 25 CFR Part 170 Appendix to Subpart G.

A. The most common allowable activities for Tribes to spend TTP funds on are:

1. Planning and Design Activities:

- Indirect general and administrative costs include, but are not limited to, computers, software, office furniture, and other equipment needed to administer the TTP. See the section on **Indirect Costs** in Chapter IV - TTP Reporting Responsibilities.
- Transportation-related planning and programming activities (including but not limited to roadway, trails, transit, and safety planning and programming, and planning for tourism and recreational travel).
- Identification and evaluation of accident prone locations.
- Planning and design of Tribal Transportation Facilities.
- Engineering support studies (i.e. geotechnical, hydraulic, etc.)
- Environmental studies, evaluations, and compliance activities.
- Planning and design of mitigation for impacts to environmental resources (i.e. wildlife and their habitat, wetlands, cultural resources, water quality, air quality, etc.).
- Architectural and landscape engineering services including lighting.
- Inspection of bridges and structures.
- Public meetings and public involvement activities.
- Tribal employment rights ordinance (TERO) fees.

2. Construction and Maintenance activities:

- Construction, reconstruction, rehabilitation, resurfacing, restoration, and operational improvements of TTP facilities (i.e. roads, trails, bridges, structures, pedestrian and bicycle facilities, transit facilities, ferry facilities, rest areas, parking areas, etc.).
- Road sealing and chip sealing.
- Americans with Disabilities Act (ADA) improvements.
- Seasonal transportation routes including, but not limited to, snowmobile trails, ice roads, and 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 25 CFR Part 170 Appendix A to Subpart B for other environmental related allowable costs).
- Tribal employment rights ordinance (TERO) fees.
- Maintenance of TTP facilities identified in the National Tribal Transportation Facility Inventory (NTTFI) (25 CFR § 170.805). Not more than 25% or $500,000, whichever is greater, of the TTP funds allocated to a Tribe may be expended for the purpose of maintenance. This funding limit does not apply to road sealing (25 CFR § 170.800(c)). See **Chapter XII - Maintenance of Transportation Facilities**.

- Development and negotiation of Tribal-State road maintenance agreements.
- Purchasing, leasing or rental of construction and/or maintenance equipment. Purchasing of construction or maintenance equipment requires submittal of written notification to, and approval by FHWA, with justification and back-up documentation showing that it is more economical to purchase than to lease (25 CFR 170 Appendix A to Subpart B (b)(49), and 2 CFR § 200.318(d)). See **Chapter XI - Construction and Construction Engineering** and **Chapter XII - Maintenance of Transportation Facilities** .

B. Spending Limits on TTP Funds. The amounts of TTP funds that Tribes can spend on particular TTP activities have limits placed on them. The spending limits are:

- Planning – Up to 100% of Tribe's TTP funds (25 CFR § 170.403) if identified as a priority on the FHWA-approved TTIP.

- Preliminary Engineering – Up to 100% of Tribe's total fiscal year TTP allocation minus any amounts from other areas.

- Construction – Up to 100% of Tribe's total fiscal year TTP allocation minus any amounts from other areas.

- Construction Engineering – Up to 100% of Tribe's total fiscal year TTP allocation minus any amounts from other areas.

- Transit – Up to 100% of Tribe's total fiscal year TTP allocation minus any amounts from other areas.

- Maintenance (including purchase of maintenance equipment) – Up to 25% or $500,000, whichever is greater, of Tribe's total fiscal year TTP Tribal allocation (23 U.S.C. § (a)(8), and 25 CFR § 170.800). See **Chapter XII - Maintenance of Transportation Facilities**.

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), the Secretary of Transportation is authorized to enter into a Tribal Transportation Program Agreement (TTPA) 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 Tribal Transportation Program. In addition, the BIA can also enter into a TTPA with a Tribal government to carry out their transportation program. (See **Figure 3.1** below)

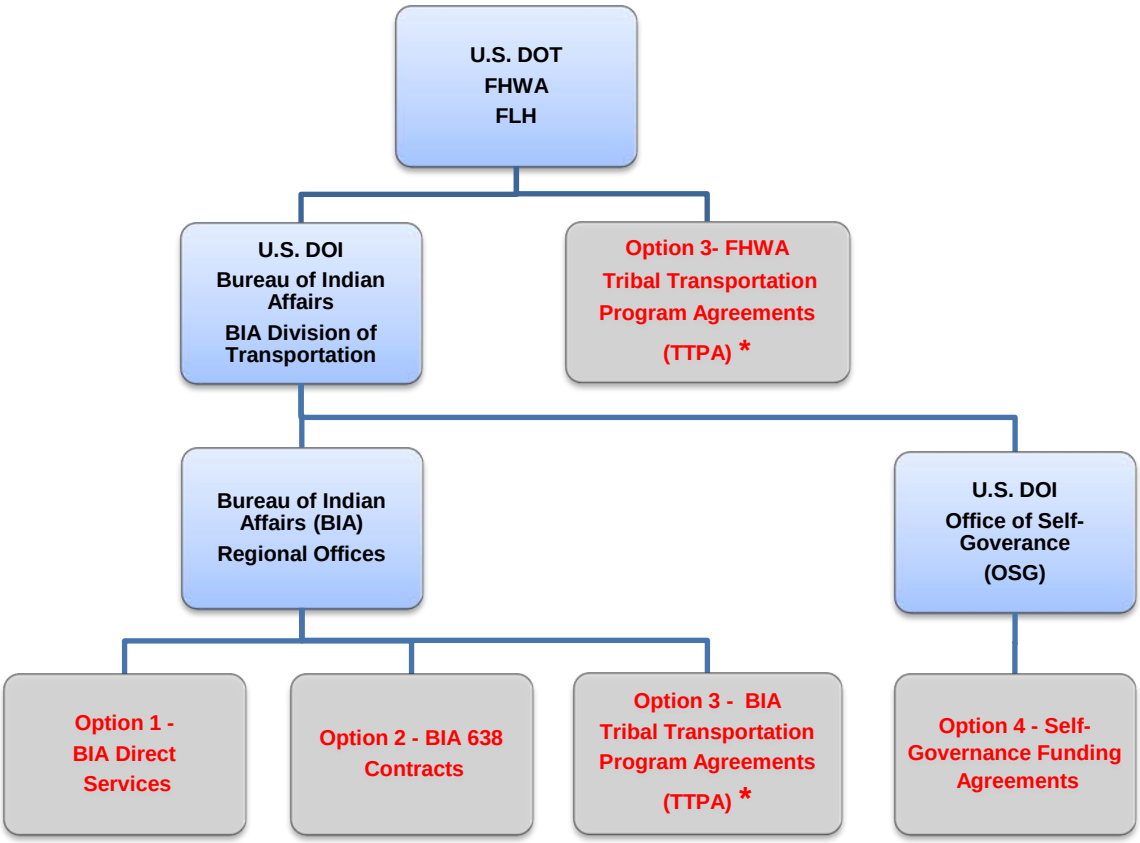


Figure 3.1: The Four TTP Delivery Options available to Tribal Governments

* **Note:** Option 3 - Tribal Transportation Program Agreement; a Tribe can enter into a Tribal Transportation Program Agreement (TTPA) with either BIA or FHWA.

A TTPA with the BIA is also called a "G2G" Agreement, and a TTPA with FHWA is also called a "Program Agreement". For purposes of this Guide, the term "TTPA" is used for this type of agreement with either agency, BIA or FHWA.

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: the BIA if the TTPA is with BIA; or, FHWA if the TTPA is with FHWA.

When a new Highway Bill (that replaces the current Highway Bill) is passed and enacted by the Government, then the BIA or 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 the agency (BIA or FHWA as applicable). See Article V, Section 10 of the TTPA. After the TTPA with a Tribe is approved and executed, it may be amended later by BIA or 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 BIA or FHWA. See Article V, Section 8 of the TTPA. Upon termination of a TTPA that is with FHWA, 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 BIA or FHWA may voluntarily terminate its TTPA. 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

BIA or FHWA. For TTPAs with FHWA, FHWA uses the "Off-boarding" letter template shown in **Appendix C – Exhibit 3.9** to acknowledge receipt of the Tribe's letter/tribal resolution.

- **Involuntary termination.** BIA or FHWA may terminate a TTPA if BIA or FHWA determines a Tribe is no longer eligible to receive TTP funds. 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 3.3 - 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).
- Funds may not be reprogrammed for other purposes and therefore 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.
- 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.
- 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.
- 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.
- The Tribe may issue bonds or enter into other debt financing instruments.
- The Tribe may pay back loans or other finance instruments for a project.
- The Tribe may use TTP funds to meet matching or cost participation requirements for any Federal or non-Federal transit grant or program.

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.

- In the event of a dispute, the Tribe and BIA/FHWA agree to use mediation, conciliation, arbitration, and other dispute resolution procedures authorized under 25 CFR § 170.934.
- The TTPA shall be construed to facilitate and enable the transfer of programs authorized by 23 USC § 202, as amended by the FAST Act.

E. Limitation of Costs.

- 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 BIA or FHWA do 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 either the BIA or FHWA. A TTPA with the BIA is also called a G2G Agreement.

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 the BIA or FHWA follow during the On-Boarding process:

Step 1. Tribe learns about the Tribal Transportation Program Agreement (TTPA): The BIA or 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 the BIA or 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 the BIA or FHWA. The **Notice of Intent** is an official letter or Tribal resolution from the Tribal government notifying the BIA or FHWA of its desire to enter into a TTPA with that respective agency. It can be either a Letter of Interest or a Tribal resolution. See **Appendix C – Exhibit 3.2** for a tribal resolution template that may be used if contacting FHWA. The Tribe submits the Notice of Intent to the BIA or to the FHWA, depending on which agency the Tribe is working with on the TTPA. Tribes sending the Notice of Intent to FHWA may submit it to an FHWA TC or email it to ttp_hq@dot.gov, and then FHWA assigns a Tribal Coordinator to work through the on-boarding process with the Tribe.

Step 3. The BIA or 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.** If FHWA is the agency responding to the Tribe, then the letter may be in the format shown in **Appendix C, Exhibit 3.8**.
- A description of the On-Boarding process steps.
- A copy of the TTPA template (see Appendix C - **Exhibit 3.1a** or **Exhibit 3.1b**).
- A copy of the BIA or FHWA Referenced Funding Agreement template (see Appendix C - **Exhibit 3.3a** or **Exhibit 3.3b**.).
- A copy of the BIA or FHWA TTPA Orientation presentation.
- A copy of the FHWA on-boarding orientation checklist, included in letter from FHWA only (see **Appendix C - Exhibit 3.10).**
- The internet link to the *Tribal Transportation Program Delivery Guide - 2017*, included in letter from FHWA only.

Step 4. Tribe provides additional material. If the Tribe wishes to continue to pursue a TTPA, the BIA or FHWA requests documentation that the Tribe must provide including:

- **Notice of Intent**, if not previously submitted by the Tribe**.** The BIA or 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:**
  - 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 BIA/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.
  - 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, the BIA or 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 BIA for the past three fiscal years.

Step 5. The BIA or 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. The BIA or FHWA performs a Risk Assessment. The purpose of the Risk Assessment is to determine a Tribe's eligibility to enter into the TTPA.

Step 7. The BIA or FHWA determines Tribe's eligibility for a TTPA.

- **If the Tribe is disapproved** by the BIA or FHWA for a TTPA, then the BIA or 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 the BIA or 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 the BIA or 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 3.10)** to document this discussion.

Step 9. The Tribal Transportation Program Agreement (TTPA) document is prepared. The BIA or FHWA prepares the TTPA (see Appendix C – **Exhibit 3.1a** or **Exhibit 3.1b**). 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, the BIA or 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 3.6 –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. If the Tribe's TTPA is with BIA, then the Tribe must also be registered in the Treasury Department's Automated Standard Payment System (ASAP) to receive TTPA payments to the account identified on its ACH Banking Form. The Tribe should verify that its DUNS number and ASAP registration (for BIA TTPAs only) are active when completing the ACH Form.

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

Step 11. If the TTPA is acceptable to the BIA or 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 the BIA or 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 FHWA 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 3.3 - Referenced Funding Agreements (RFAs)**.

3.2 Retained Services Addendum – for BIA G2G Agreements

A. Overview. When a Tribe is entering into a Tribal Transportation Program Agreement (TTPA) with the BIA (also known as a G2G Agreement), the Tribe may prefer that the BIA still perform some of the Tribe's TTP activities. The Tribe may want this because it does not have the capacity to carry out certain TTP activities. If a Tribe adds a **Retained Services Addendum (RSA)** onto its BIA TTPA, the Tribe enables the BIA to complete a defined set of TTP activities for the Tribe. See Appendix C - **Exhibit 3.5 – Retained Services Addendum**.

To set up an RSA, see section **B. Steps in the RSA Process,** on this page.

A Tribe can also add or modify a Retained Services Addendum to an existing TTPA, or remove it from the TTPA. The Tribe should notify its BIA TC that it would like to pursue a change, and the BIA TC will work with the Tribe to determine how to carry out the change

A Tribe does not need to complete an RSA if the Tribe intends to carry out its TTP responsibilities:

- with its own employees;
- by contracting the TTP responsibility(s) out to a consultant or contractor, or;
- by entering into a Project Agreement with a (non BIA) Federal, State or local agency or government for them to perform designated TTP duties or projects (see **Chapter V – Request for Services and Project Agreements**).

B. Steps in the RSA Process. The section below provides a step-by-step narrative for the process of completing an RSA.

Step 1. Tribe confirms need for retained service. If a Tribe is interested in adding a Retained Services Addendum onto its TTPA, the Tribe contacts the BIA TC to inform him / her of the Tribe's intention.

Step 2. Tribe negotiates activities and costs for Retained Services with the BIA TC. Based on the Tribe's request, the BIA TC should determine if the BIA Region will provide TTP services requested by the Tribe (transportation planning, preliminary engineering, and / or construction engineering). The BIA will fund the Retained Services by retaining that portion of the Tribe's TTP Tribal shares. The Tribe and BIA TC must negotiate the costs for the Retained Services that the BIA will provide, based on Tribal shares.

Step 3. BIA TC coordinates completion of RSA. Once the Tribe and BIA TC agree on what the Retained Services will be, then the BIA TC assists the Tribe to include the negotiated costs and activities into the RSA. Once the document is complete, the Tribe submits the RSA to the BIA TC.

Step 4. BIA TC notifies the Tribe if updates are required. If the funding or resources listed in the RSA are not available to the BIA, the BIA TC communicates this information to the Tribe, coordinates the necessary updates to the RSA, and renegotiates with the Tribe the funding amounts to be retained for the Retained Services and the final list of Retained Services.

Step 5. BIA TC forwards a copy of the final version of the RSA to the Tribe. The BIA Region can now begin providing the services to the Tribe described in the RSA.

The Tribe monitors its TTP funding, and the BIA Region is responsible for monitoring and managing the Retained Services funding.

3.3 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. The BIA or FHWA Prepares a Referenced Funding Agreement (RFA). The RFA is a document that a Tribe (with an approved TTPA) has with the agency that approved the TTPA (BIA or FHWA). 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 3.3a** or **Exhibit 3.3b**.

Each fiscal year (FY) the BIA or FHWA prepares a new RFA for each Tribe that has a TTPA. The BIA or FHWA may also need to prepare RFA Amendments (see Appendix C - **Exhibit 3.4a** or **Exhibit 3.4b**). 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, DUNS number, and ASAP registration (for BIA RFA's only) are active when it signs the RFA. BIADOT or 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. BIA or FHWA approves ("executes") the RFA. The RFA (or RFA Amendment), previously signed by the Tribe, is signed and approved by the Deputy Bureau Director (for BIA RFAs), and by the Associate Administrator of the Office of Federal Lands Highway (for FHWA RFAs).

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.

- **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.

- **Tribal Transportation Facility Bridge Funds**.

- **TTP Tribal Safety Funds.**

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

- **Funds transferred according to 23 USC § 202(a)(9) and 23 USC §104(f)(3)(A).** These are funds apportioned or allocated under title 23 that a Tribe receives from a State, county, or local government**.**

  To initiate a transfer of these funds to a Tribe through an RFA, the State DOT or the Tribe needs to provide to the TC a description of the proposed work to be completed and the type of funding to be transferred. An Intergovernmental Fund Transfer Agreement must be drawn up and approved by the Tribe, the State, and either FHWA or BIA as applicable. See Appendix C – **Exhibit 3.11** for a template of the Agreement. Also required is the addendum to the Intergovernmental Fund Transfer Agreement that identifies the project, funding, expectations, roles and responsibilities, etc. The template for this is shown in Appendix C - **Exhibit 3.12** .

  General Requirements.

  The transferred fund's original matching requirements stay in effect, in accordance with the initial funding source (31 U.S.C. §1532). Also, the transferred funds must be used for the purpose originally agreed to between the State, county or local government and the Tribe.

  The Tribe administers the project or activity in accordance with TTP provisions. Upon transfer, the funds are credited to the TTP and the project is carried out in accordance with 23 U.S.C. 202(a)(9). Additionally, the State is relieved of oversight for the transferred funds and FHWA or BIA (as applicable) assumes oversight.

  Obligation of funding.

  The BIA or FHWA-FLH-HQ, as applicable, should track the transferred funds received by the Tribe separately from the Tribe's TTP funds, to ensure that obligation deadlines are met. When the project is complete, any remaining balance must be returned to the State that originated the transfer, unless further agreements are reached for eligible projects.

- Any funding (and associated obligation limitation) transferred through this process is obligated through the same process as the TTP funding. Formula obligation limitation is available for a single fiscal year. Therefore, if the transfer is of apportioned funds and formula obligation limitation, the funds and formula obligation limitation must be obligated within the fiscal year of transfer. If allocated funding is transferred, any associated allocated obligation limitation that FHWA or BIA does not obligate by the end of the fiscal year is subject to August redistribution and, in the following fiscal year, FHWA will make available obligation limitation equal to any amount so redistributed for the project. **Tribe's share of Program/Project-related administrative funds** as authorized by section 202(b)(7)(E) of title 23.

- **Transportation related funds from programs outside of the U.S. DOT.** For RFAs with BIA only, a Tribe has the option to request BIA to add to the Tribe's RFA the funding amounts the

Tribe is authorized to receive from other programs outside of the U.S. Department of Transportation, for example: USDA, ACOE, HUD, IHS, State and local governments, and others. To be included on the RFA, the funds need to be related to transportation projects that are on the Tribe's TTIP.

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) and 23 USC § 202(a)(9) regulate distribution of Title 23 funds that the Federal Government "apportioned" to a State, county, or local government**.**
- 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)

IV. TTP Reporting Responsibilities

A. Overview. Tribes that have a Tribal Transportation Program Agreement (TTPA) with FHWA or the BIA are required to provide reports and documents, which describe the Tribe's TTP activities, income and expenditures. The reporting process is a cooperative effort between the Tribe and the BIA or FHWA, and enables Tribes and the agencies to work together for the success of the Tribe's TTP.

Tribes report their TTP activities by submitting to either BIA or FHWA the following reports and documents:

- TTP reports on a set schedule (see Section **D** below).
- The Tribe's TTIP (see **Chapter VI - Transportation Planning**).
- The final stamped Plans, Specifications and Estimate (PS&E) prior to project construction (see **Chapter VIII - Preliminary Engineering – Project Package**).
- The project construction closeout report (see **Chapter XI – Construction and Construction Engineering**).

In addition, single audits may be required (see Section **C** below).

BIA and FHWA personnel also perform the following activities to provide technical support to the Tribes, and to perform stewardship and oversight of the Tribes' TTP activities and projects:

- The TC performs on-site visits to Tribes for TTP stewardship and oversight, technical assistance and project review (see Section **B** below).
- BIA and FHWA perform Program Reviews of Tribes (see Section **E** below).

A Remedial Action Process (see **Section F** below for details) will be initiated by BIA or FHWA if a Tribe is late in submitting required reports and documents, or is non-responsive to information requests or fails to undertake remedial actions related to audit findings or unfavorable Program Reviews.

B. On-Site Visits to Tribes. The TC make periodic visits to Tribes in order to provide:

- Stewardship and oversight of a Tribe's TTP, including the Tribe's management of their TTP budget and TTP projects.
- Technical assistance to the Tribe on elements the TTP (planning, design, environmental processes, construction functions, transportation safety, maintenance, and transportation funding opportunities).
- Project construction reviews (see **Chapter XI – Construction and Construction Engineering**).

The FHWA TC needs to complete the **Project Monitoring Checklist** (see **Appendix C - Exhibit 11.1**) for all on-site visits to Tribes. The BIA TC's should use a similar form, which may vary by BIA Region. The Project Monitoring Checklist (or BIA equivalent form) identifies the items and activities that will be reviewed and documented during each Tribal site visit.

During all on-site visits to Tribes, the TC should review with the Tribe the Tribe's records and documents relating to these areas:

- Semi-Annual Reports are current and on file;
- Tribal TIP (TTIP) is current, on file, and approved by FHWA; and
- TTP financial accounting records in the office are current, and using acceptable accounting procedures

TC evaluates the Internal Tribal office cooperation and communications (i.e., Finance and Transportation).

For all on-site visits to Tribes, the TC will also complete a trip report, using the format specified by their agency, BIA or FHWA, and provide a courtesy copy to the Tribe.

C. Single Audits. A Tribe must perform a single audit if it expends, in a Tribal fiscal year, more than $750,000 total of Federal financial funds it has received from various Federal programs. This dollar threshold is lower (at $500,000) for fiscal years that started before January 1, 2015.

The Single Audit must be performed according to 2 CFR 200, Subpart F - Audit Requirements. The single audit is typically performed by an independent certified public accountant (CPA) and encompasses both financial and compliance operations of the Tribe. The Single Audit submittal shall include:

- A copy of the Tribe's Single Audit for that year;
- Form SF-SAC;
- All the findings and discussions related to the Tribe's DOT program and the Tribe's other Federal programs; and
- The corrective action plans and implementation schedules that were developed for the material findings identified in the Audit.

The Tribe shall submit the above documents to the Federal Audit Clearing House (FAC), two copies to the Office of Audit & Evaluation, Office of the Asst. Secretary, Indian Affairs, DOI, one copy to each Federal funding agency that has an audit finding, and a copy to the TC. The TC can obtain copies of a Tribe's single audit reports from the BIA Office of Internal Evaluation and Assessment (OIEA).

The TC may request from Tribes documentation required by BIA or FHWA to demonstrate that a Tribe is carrying out the corrective actions plans and implementation schedules developed for the TTP related material findings in the Audit.

Links and resources:

- 2 CFR 200, Subpart F - Audit Requirements located at http://www.ecfr.gov/cgi-bin/text-idx?SID=97ebca48d0b9d506d9420348fe2f0ab1&node=pt2.1.200&rgn=div5#sp2.1.200.f
- Federal Audit Clearinghouse (FAC) at https://harvester.census.gov/facweb/default.aspx/

D. TTP Reports to be Submitted by Tribes. Tribes develop and submit the following reports to the TC:

1. **Single Audits,** as applicable. See **Section C** above.
2. **Financial Report.**

   a. **Tribes with an FHWA TTP Program Agreement.** These Tribes must use the Tribal Transportation Program Online Reporting Tool (PORT) online reporting system to submit their Financial Report (see Article III, Section 1. G of the FHWA Tribal Transportation Program Agreement). The website explaining how PORT works is at https://flh.fhwa.dot.gov/programs/ttp/port/

   The FHWA TC will provide Tribes with the internet links ("keychains") to complete their Financial Report online using PORT. The Tribe must complete all the required fields of the online Financial Report. A copy of an online Financial Report is shown in Appendix C – **Exhibit 4.1**.

b. Tribes with a BIA G2G Agreement. For semi-annual TTP Financial Reports, **t**hese Tribes use the SF 425 form and submit it to the BIA TC. See Appendix C - **Exhibit 4.4** and **Exhibit 4.5** for the SF 425 Form and instructions.

In addition, at the end of the Federal Fiscal Year (FY), Tribes use the Tribal Transportation Program Online Reporting Tool (PORT) online reporting system to submit a Financial Report (see Article III, Section 7.C of the BIA Tribal Transportation Program Agreement). Only question 2.b needs to be answered on the PORT financial report (see page 2 of **Exhibit 4.1** in Appendix C). This PORT online report will cover the entire Fiscal Year. The website explaining how PORT works is at https://flh.fhwa.dot.gov/programs/ttp/port/

The BIA TC will provide Tribes with the internet links ("keychains") to complete their Financial Report online using PORT.

See Section **G** below in this chapter for explanation on how Tribes should calculate indirect costs.

3. Progress Reports.

These reports document the TTP work accomplished by the Tribe during a specified time period, any issues identified, and work to be accomplished.

a. Tribes with FHWA TTPAs (Program Agreements). These Tribes must use the PORT online reporting system to submit their Progress Reports (see Article III, Section 1. G of the FHWA Tribal Transportation Program Agreement).

The FHWA TC will provide Tribes with the internet links ("keychains") to complete their Progress Reports online using the PORT online reporting system. The Tribe must complete the online "**Report on Non-Construction Activities**" (see blank copy in Appendix C – **Exhibit 4.2**). The Tribe must also use PORT to complete a separate online "**Report on Each Project**" for each one of the Tribe's active TTP funded projects (see copy of report in Appendix C –**Exhibit 4.3**).

Tribes with BIA G2G Agreements. For semi-annual TTP progress Reports, these Tribes submit a narrative of the work accomplished during the six-month period. The Tribe must include information related to project planning, implementation, and relative performance (i.e., whether the Tribe met planned accomplishments for program projects) in the narrative. The format for this report varies by BIA Region.

In addition, at the end of the Federal Fiscal Year (FY), Tribes must use the PORT online reporting system to submit online the "**Report on Non-Construction Activities**" (see copy in Appendix C – **Exhibit 4.2**). The Tribe must also use PORT to complete a separate online "**Report on Each Project**" for each one of the Tribe's active TTP funded projects (see blank copy of report in Appendix C –**Exhibit 4.3**).

The BIA TC will provide Tribes with the internet links ("keychains") to complete these end of FY Progress Reports online.

4. Reporting Schedule.

Tribes must submit the above audits and reports by the required due dates shown in the following tables. The Tribe and BIA/FHWA may establish additional monitoring and reporting requirements while discussing the terms of the TTPA during the On-Boarding process (see **Chapter 3.3 - Tribal On-Boarding Process for TTPAs**) or as the result of an unfavorable Program Review.

Reporting Schedule – for Tribes with FHWA TTP Program Agreements		
Report	**Reporting Period**	**Due Date**
Single Audit Report	Annual	When completed
Financial Report and Progress Reports (using the PORT online reporting system)	Oct 1 through March 31	Within 90 days of conclusion of reporting period (NLT June 30)
	Oct 1 through Sept 30	Within 90 days of conclusion of reporting period (NLT December 30)

Reporting Schedule – for Tribes with BIA TTP G2G Agreements		
Report	**Reporting Period**	**Due Date**
Single Audit Report	Annual	When completed
• Financial Report using the SF 425 • Narrative Report	Semi-annual Oct 1 through March 31	Within 90 days of conclusion of reporting period (NLT June 30)
	April 1 through Sept 30	Within 90 days of conclusion of reporting period (NLT December 30)
Financial Report and Progress Reports (using the PORT online reporting system)	Oct 1 through Sept 30	Within 90 days of conclusion of reporting period (NLT December 30)

E. Program Reviews. The BIA or FHWA conducts formal Program Reviews of a Tribe's Tribal Transportation Program (TTP) as needed based on risk management, in accordance with BIA and FHWA Program Review procedures. The BIA or FHWA must also conduct Program Reviews of a Tribe as requested by external sources. For example, BIA and FHWA are responsible for conducting Program Reviews as requested by the Office of the Inspector General (OIG).

Currently, BIA and FHWA perform Program Reviews of Tribes' TTP using procedures and checklists unique to each agency. BIA and FHWA should develop and adopt a standard Program Review procedure and checklist jointly agreed to and used by both agencies.

During a Program Review, the BIA or FHWA focuses on the Tribe's (1) financial tracking processes, (2) procurement processes, and (3) staffing. Tribes should be able to explain slips in project schedules and provide accurate records of program expenditures upon request. In addition to helping BIA or FHWA to monitor compliance with program requirements, these reviews allow the BIA or FHWA to identify effective practices among Tribes, which they can share with other Tribes in the Tribal Transportation Program, and also their counterparts in FHWA and BIA.

The BIA or FHWA should generally conclude that the Program Review was favorable if the Tribe was able to answer project-related questions adequately, provide valid reasoning for project delays, and confirm that it used program funds properly. The BIA or FHWA should conclude that the Program Review was unfavorable if there are unexplained project delays, discrepancies in funding information, or evidence that the Tribe is using program funding improperly (regardless of cause).

The BIA or FHWA documents the Program Review in the Program Review Summary Report and submit it to the Tribe for its records. It is recommended that the Tribe file the Program Review Summary Report in its system of record. This documentation will assist the Tribe in preparing for its upcoming TTP reports submittal or its next Program Review.

F. Remedial Action Process. Tribes who have a TTPA with BIA should consult with BIA for details on the remedial action process.

The following remedial action process described in this section applies only to Tribes who have a TTPA with FHWA.

The following remedial actions will be undertaken by FHWA only after the TC or other TTP staff have exhausted less formal attempts (e.g. e-mails, phone calls, other communications) to resolve non-compliances, and only after approval from the FHWA Program Delivery Manager.

The actions are broken into two non-compliance categories: non-emergency and emergency.

1. ***Non-emergency*** remedial actions will be carried out when a Tribe is found to be non-compliant or non-responsive to the following required activities or program/project findings:

- Reporting on or providing to FHWA:
  - Annual Single Audit reports, including any single audit findings of material weaknesses or significant deficiencies as they relate to the TTP, or Semi-annual accomplishment and financial reports as required by Article III, Section 1.G of the TTPA;
  - Tribal approved project packages, including PS&Es and assurances that the construction will meet or exceed applicable health and safety standards per Article III, Section 1.C of the TTPA;
  - Final construction reports and as-built plans for final inspection in accordance with 25 CFR 170;
- Program Review findings that require the development and execution of corrective action plans; or
- Other FHWA TTP action requests regarding non-compliance with the TTPA including statutory or regulatory requirements.

For these cases, the TC shall draft and send a written notification to the Tribe (by certified mail if available). The TC will also scan the letter and e-mail it to the Tribe, with a cc to the FHWA Program Delivery Manager. The written notification will include:

- Identification of the deficiencies that have been found to be non-compliant;
- A request that a corrective action take place and that a certification of completion be provided back to FHWA within 60 days; and
- An offer to provide, if requested, technical assistance and advice to assist the Tribe in overcoming the identified deficiencies.

If the Tribe fails to correct the non-compliant deficiency identified in the initial notice, the TC shall draft and send a second written notice (signed by the FHWA Program Delivery Manager) to the Tribe, by certified mail if available. The TC will also scan the letter and e-mail it to the Tribe, with a cc to the FHWA Program Delivery Manager and the FHWA TTP Director. The notice will also:

- Remind the Tribe of its responsibility to address the deficiencies

- State all future TTP and other transportation related funding will be withheld from the Tribe until the deficiencies are remedied by the Tribe and accepted by FHWA; and
- State that if the deficiencies are not remedied within 30 days, the Tribe's TTPA will be reviewed for termination, in whole or in part in accordance with Article V, Section 8 of the TTPA.

If the deficiencies are not remedied within 30 days, the TC will collect all available evidence regarding the deficiencies. The TC, the FHWA Program Delivery Manager, and FHWA TTP Director and appropriate BIA representatives will review the evidence to help determine if the TTPA will be terminated. The FHWA TTP Director makes the final determination.

If termination is enacted, the TC will draft and send a third written notice (signed by the FHWA AA) to the Tribe, by certified mail if available, specifying termination of the TTPA. The TC will also scan the letter and e-mail it to the Tribe, with a cc to the FHWA Program Delivery Manager and FHWA TTP Director. The third notice will include:

- The date of termination and reassignment of the program stewardship and oversight to the BIA;
- The details and facts supporting the termination; and
- Instructions that explain the Tribe's right to dispute FHWA's determination, along with a reference to the dispute remedies available under Article II, Section 4 of the TTPA. If this occurs, FHWA shall suspend any decision to transfer funds to the Secretary of the Interior pending the outcome of the dispute.

2. ***Emergency*** remedial actions are those that FHWA will undertake when a Tribe fails to fulfill the requirements of the TTPA and this failure poses:

- Imminent jeopardy to public health and safety, including those identified as workzone/construction site safety threats; or
- Imminent jeopardy to trust funds, trust lands, or interest in such lands.

For these cases, the TC shall draft and send a written notification to the Tribe, by certified mail if available. The TC will also scan the letter and e-mail it to the Tribe, with a cc to the FHWA Program Delivery Manager and FHWA TTP Director. The written notification will include:

- Identification of the imminent jeopardy deficiency that was found to be non-compliant;
- To the extent practicable, the specific corrective actions/measures that must be taken by the Tribe to eliminate the imminent jeopardy;
- A statement that the action be completed immediately and that within 5 days the Tribe must respond to the notice by a signed letter. The Tribe's letter must be delivered to the TC either by certified mail, telefax, or electronic mail. If sent by certified mail, the postmark date will be considered the date of response.
- A request that documentation certifying completion of the action be submitted back to the TC within 60 days; and
- An offer to provide technical assistance and advice to assist the Tribe in overcoming the identified deficiency.

If the Tribe fails to immediately correct the emergency deficiency identified in the initial notice or does not respond within 5 days, the TC shall draft and send a second written notice (signed by the FHWA Program Delivery Manager), by certified mail if available, reminding the Tribe of its responsibility to address the deficiency. The TC will also scan the letter and e-mail it to the Tribe, with a cc to the FHWA Program Delivery Manager and FHWA TTP Director. The notice will also state that:

- The corrective action must be carried out immediately;
- Within 5 days the Tribe must respond to the notice by a signed letter. The letter must be delivered to the TC either by certified mail, telefax, or electronic mail. If sent by certified mail, the postmark date will be considered the date of response; and
- All future TTP and other transportation related funding will be withheld from the Tribe until the deficiency is remedied by the Tribe and accepted by FHWA.

If the Tribe then continues its inaction, FHWA and BIA will reassume the program and carryout the actions required to mitigate the imminent jeopardy. The TC drafts and sends a Notice of Reassumption (signed by the FHWA TTP Director) to the Tribe, by certified mail if available. The TC will also scan the letter and e-mail it to the Tribe, with a cc to the FHWA Program Delivery Manager and FHWA TTP Director. The Notice will include:

- A statement of the reasons supporting the Reassumption;
- To the extent practical, a description of specific measures that FHWA and/or BIA will take to eliminate the imminent jeopardy;
- A statement that the Government's cost to mitigate the imminent jeopardy will be repaid by taking an equivalent amount from the Tribe's tribal share of TTP funds; and
- A statement that the Tribe's TTPA will be reviewed for termination, in whole or in part in accordance with Article V, Section 8 of the TTPA.

Upon satisfaction of the emergency and elimination of the imminent jeopardy, the TC will collect all available evidence regarding the deficiency. The TC, FHWA Program FHWA Delivery Manager, FHWA TTP Director and appropriate BIA representatives will review the evidence to help determine if the TTPA will be terminated. The FHWA TTP Director makes the final determination.

If termination is enacted, the TC will draft and send a <u>third</u> written notice (signed by the FHWA AA) to the Tribe, by certified mail if available, specifying termination of the TTPA. The TC will also scan the letter and e-mail it to the Tribe with a cc to the FHWA Program Delivery Manager and FHWA TTP Director. The third notice will include:

- The date of termination and reassignment of the program stewardship and oversight to the BIA;
- The details and facts supporting the termination; and
- Instructions that explain the Tribe's right to dispute FHWA's determination, along with a reference to the dispute remedies available under Article II, Section 4 of the TTPA. If this occurs, FHWA shall suspend any decision to transfer funds to the Secretary of the Interior pending the outcome of the dispute.

Note: In both non-emergency and emergency cases, the appropriate BIA Regional Office and the BIA Division of Transportation shall be copied on all correspondence relating to remedial actions.

G. Indirect Cost.

1. Definitions.

"Indirect cost" is the cost of Tribal operations that cannot be tied directly to a particular grant, program, contract, project function or activity. In theory, indirect costs like heat, light, accounting, and personnel could be charged directly if little meters could record the time spent on each individual funding source or program, such as the TTP. However, it is not possible or

desirable to perform that kind of measurement. Therefore, indirect cost rates are used to fairly distribute those costs among the various programs that a Tribe administers.

"**Program Administration costs"** consist of:

- The TTP funded portion of the salaries and fringe benefits of Tribal Employees who perform administration, planning, maintenance, or construction work; and
- Travel and miscellaneous supplies directly related to the Tribal Transportation Program.

"Pass-through costs" consist of:

- TTP funds that the Tribe paid to contractors or subcontractors (through a contract);
- TTP funds that the Tribe paid to a City, County, State or Borough through an MOU or MOA that the Tribe has with that entity; and
- Cost of equipment and materials, paid directly by the Tribe, for construction or maintenance projects carried out by the Tribe.

2. Calculation of the Indirect Cost for the Tribal Transpiration Program (TTP).

A Tribe calculates its TTP indirect cost by taking the sum of the following two items:

1) The Tribe's "**Program Administration costs**" multiplied by the Interior Business Center (IBC) negotiated Indirect Cost Rate (ICR); and

2) The Tribe's "**Pass-through costs**" multiplied by an ICR of not more than 3%.

3. Reporting the TTP Indirect Cost. A Tribe shall enter its TTP indirect cost when submitting its TTP financial report.

4. Use of Indirect Cost Funds. The portion of its annual TTP funds that a Tribe calculates and sets aside as "indirect cost" should be used by the Tribe to help pay for the overall operation of the Tribal government, including costs such as utilities and other operating costs that can't be tied directly to the Tribal Transportation Program (TTP).

V. Request for Services and Project Agreements

A. Overview. A Tribe can make a request to, and reach an agreement with, a Federal, State or local agency or government for these agencies/governments to perform all or parts of the Tribe's TTP project planning, preliminary engineering, and construction management.

A Tribe may use one or more of the following processes to enable a Federal, State or local government or agency to perform all or parts of the Tribe's TTP activities:

1. **Direct Services** with BIA. A Tribe negotiates a Memorandum of Understanding (MOU) with the BIA Region.

2. **Retained Services** with BIA or FHWA. Tribes with a TTPA with BIA or FHWA may choose to arrange for the BIA or FHWA to perform some of the Tribe's TTP activities as "Retained Services".

3. **A Project Agreement** is a mutually negotiated written document between a Tribe and a Federal, State or local government or agency, usually put together for a specific project. The remainder of this chapter focuses on the Project Agreement process. The first step in this process is for the Tribe to request an agency or government to perform the project-specific services.

B. Request for Services. If a Tribe is considering initiating a Project Agreement with a Federal agency (BIA, FHWA Federal Lands Highway (FLH), US Army Corps, etc.), the Tribe should fill out and submit a Tribal Request for Services form to the agency (See Appendix C - **Exhibit 5.1**).

C. Project Agreement. After a Tribe has requested TTP related work from a Federal, State or local government agency or government, and the agency or government has agreed to perform the work, it is recommended that the Tribe enter into a formal Project Agreement with the agency(s) or government that will perform the work. A Project Agreement is not required by law, but is strongly recommended.

Also, if a State or local government owns a road, trail or other transportation facility that is in a Tribe's TTP project, or the Tribe will be performing maintenance on such a facility, it is recommended that the Tribe enter into a Project Agreement with the State or local government that owns the facility.

The Project Agreement includes a list of project tasks, roles and responsibilities, costs, and a schedule to accomplish the tasks. Along with the Tribal Government, the partner agencies for a project may include FHWA, the BIA, State agencies, County or borough governments, and Federal land management agencies (NPS, BLM, USFWS, etc.) that are in the project area. A Project Agreement may also be called a "Memorandum of Understanding".

The Project Agreement describes who, what, when, where and how to perform a set of TTP related tasks. 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? When: When and under what schedule should different portions of the project be developed?

- Where: Where and in what way will communication take place between the parties? By email, phone or in person?
- 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? What will be the costs paid by the Tribe to the agencies or governments performing the work?

Project Agreements should be authorized, approved, and signed by the Tribal Government and authorized signators of the partner agencies involved in the project, and then distributed by the Tribe to those parties. In this way, the Project Agreement acts as an authoritative agreement to guide all the parties in work tasks and coordination requirements. A template for a Project Agreement to perform project design, construction, or construction administration work is in Appendix C - **Exhibit 5.2**.

When a Project Agreement is drawn up and signed, a Memorandum of Agreement (MOA) or Memorandum of Understanding (MOU) should also be drawn up which summarizes the content of the Project Agreement, and which is signed by the same parties who are signing the Project Agreement.

The TC is responsible for assisting the Tribe in the development of the Project Agreement, and the MOA or MOU.

D. Statutory/Regulatory Requirements. Under the authority prescribed in 23 U.S.C. § 202, a Tribal government may request a Federal agency to perform to perform all or parts of TTP project planning, preliminary engineering, and construction management.

A Tribe may also request state and local agencies to perform all or parts of those TTP responsibilities, subject to the limitations and requirements in the other agreements, contracts, MOUs, etc. that the Tribe may have with the BIA and/or FHWA.

E. Guidelines/ Procedures. The Tribe will determine if a Project Agreement is needed. It is recommended that the Tribe prepare the first draft of the Project Agreement to insure that the Tribe's perspective on partner agency/government responsibilities is adequately represented. The Tribe should provide copies of the draft Project Agreement for review and comment to the agencies who have a significant role in development of the project.

The Project Agreement should be drafted well before any project activities are started, and it should be circulated to the project's partner agencies for review and comment. The Tribe may consider hosting a project review meeting of the partner agencies to discuss the proposed project, the draft Project Agreement, and the project coordination that will be required.

The agencies will perform the activities (listed for them in the approved Project Agreement) at the request of the Tribe. This will be a project cost requiring the Tribe to provide the funding, agreed to in the Project Agreement, to the agencies as they perform the designated work.

VI. Transportation Planning

A. Overview (See 25 CFR §§ 170.400-447).

The Tribe performs "transportation planning" in order to evaluate and assess the transportation facilities serving the Tribe, including both the existing facilities and future facilities. Transportation facilities generally include streets, highways, sidewalks, trails, boardroads, bike lanes, public transit systems, buildings for vehicle storage/repair, and ferry systems.

B. Roles and Responsibilities of Transportation Planning.

1. **Tribes.** Tribes participating in the Tribal Transportation Program (TTP) are responsible for completing the following transportation planning activities:

   - Develop the Tribe's Long Range Transportation Plans (LRTP),), which includes short and long range transportation plans;
   - Facilitate public involvement;
   - Perform traffic studies;
   - Conduct special transportation studies;
   - Data collection. Prepare National Tribal Transportation Facility Inventory (NTTFI) data updates as needed. Tribes collect data and provide this information to the BIA who maintains the NTTFI;
   - Mapping;
   - Perform Pre-Project Planning;
   - Participate in transportation planning and other transportation related meetings;
   - Develop Program budgets including transportation planning cost estimates;
   - Perform transportation planning for operational and maintenance facilities;
   - Research rights-of-way documents for project planning;
   - Develop the Tribe's Tribal Transportation Improvement Plan (TTIP). FHWA approves the TTIP developed by the Tribes, and the Tribes implement the activities and projects from the approved TTIP; and
   - Coordinate with States, their political subdivisions, appropriate planning authorities, and local governments on regionally and locally significant projects.

2. **FHWA.** Reviews and approves TTIPs developed by the Tribe.

3. **BIA and FHWA.** Depending on which TTP Delivery Option(s) a Tribe has, either BIA or FHWA is responsible for completing the following transportation planning activities:

   - Review LRTPs developed by the Tribe;
   - Reviews TTIPs developed by the Tribe;
   - Ensure the TTIP is on the State TIP (STIP);
   - Provide technical assistance to Tribal governments;
   - Coordinate with Tribal, state, regional, local governments, as requested by the Tribe; and
   - Coordinate with other Federal agencies, as requested by the Tribe.

C. Tribal Long Range Transportation Plan (LRTP)

1. **Overview.** The Tribe develops the LRTP, which is a long-range (20+ year) strategy and capital improvement program developed to guide the effective investment of TTP funds in multimodal transportation facilities. The Tribe reviews and updates its LRTP every 5 years. The Tribe may

amend its LRTP as a result of changes in projected Federal, State, and Tribal funding, major improvement studies, major changes in Tribal goals, vision and mission for their transportation facilities, projects or corridor justification studies, and environmental impact studies. The LRTP provides the foundation on which the Tribe develops its TTIP.

A Tribe must complete the LRTP, as well as the Tribal TIP (TTIP), before it can spend TTP funds.

LRTP development, updates, amendments, and adoption are described in (25 CFR §§ 170.409-414).

2. **Steps to develop or update an LRTP.** The following Figure 6.1 shows the steps for a Tribe to develop or update an LRTP.

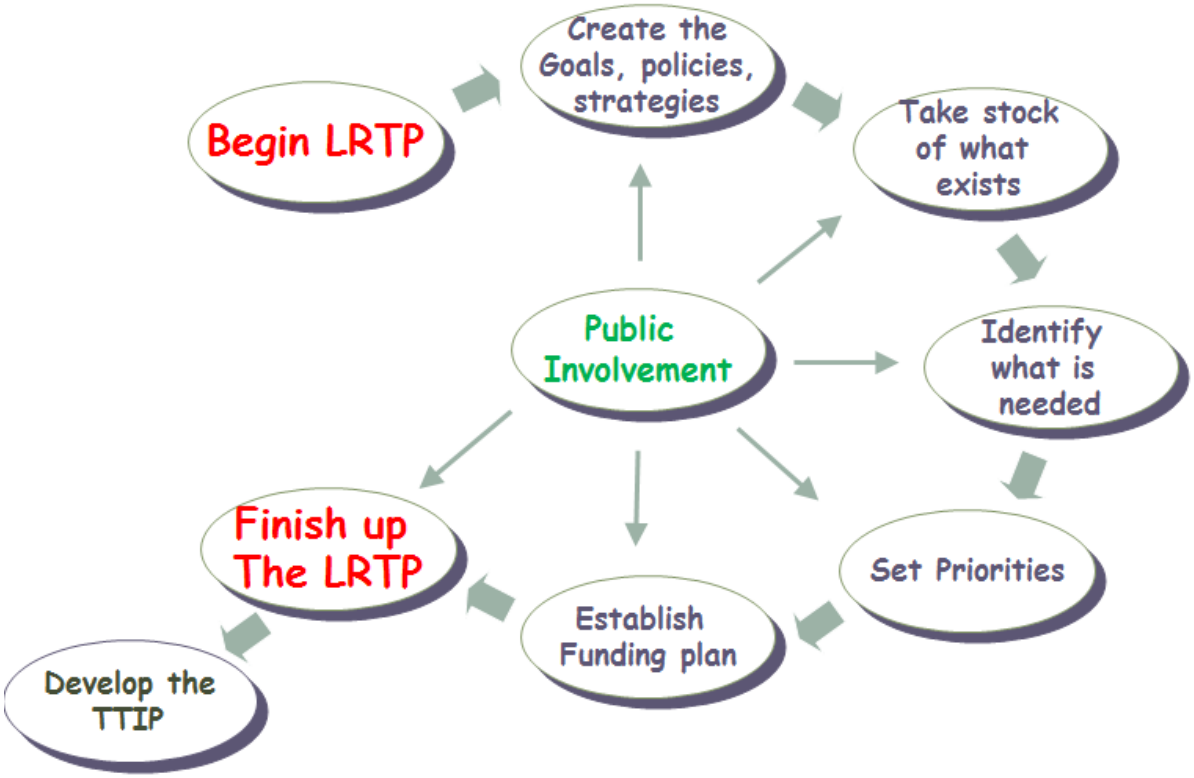


Figure 6.1 - Steps to develop or update an LRTP

The Tribe needs to provide early and continuing public involvement when developing or updating an LRTP. See 25 CFR §§ 170.413 and 170.435-441 for details.

The steps for a Tribe to develop or update an LRTP are listed as follows:

Step 1. Create the goals, policies, and strategies.

- First create a vision for the future of the Tribe's community. Involve the community in this discussion, before any public meeting for the LRTP occurs.
- List transportation related **Goals** based on the vision, using community input. Examples of goals are:
  - Improved access to lands and uses;

- Housing development (new subdivision);
- Economic development (barge access, jobs);
- Access for Law Enforcement;
- Safe routes to school;
- A healthy environment (correcting situations impacting community health, such as dust from dirt or gravel roads);
- Access to healthcare; and
- Environmental improvement.

- **Develop short and long-range transportation improvement strategies (**25 CFR § 170.411). These should:
  - Address current and future transportation needs;
  - Be consistent with applicable Tribal, Federal, and State government policies;
  - Consider the existing and future land uses, economic development, traffic demand, public safety, health, and social needs; and
  - Consider all modes of transportation including vehicle, transit, pedestrian, bicycle, freight, and as appropriate, rail, air, and water.

Step 2. Take stock of what of what exists.

- Look at the existing transportation system serving the Tribal community. This involves performing the following:
- Examine the condition, location, and adequacy of the existing transportation facilities including roads, boardroads, bridges, trails, barge facilities, etc.;
- Use community input to gain information about the condition and performance issues of the facilities;
- Note the modes of travel on each facility: foot travel, ATV's, snow machines, boats, bicycles, school buses;
- Research and document reservation, Tribal and community history;
  - Assemble the safety and accident data, using both interviews and records (25 CFR §§ 170.101(a)(1) and 170.128);
- Identify existing routes needing to be added or changed on the National Tribal Transportation Facility Inventory (NTTFI) (25 CFR § 170.442-447);
- Access needs for land users; and
- Existing material sources; ownership, types.
- Organize and analyze the information using mapping, graphs, charts and tables.

Step 3. Identify Transportation Needs (what is needed).

- Identify the Gap between your vision/goals and what exists now = **NEEDS.**
  - **Community input** on transportation needs is very important. Discussion with the community should begin before the public meeting.
- When identifying transportation needs:
  - Consider all 4 seasons (Fall/Winter/Spring/Summer). Each season may have different transportation needs;
  - Consider safer routes to school or public facilities; employment opportunities; public health/safety facilities; subsistence or cultural access;
  - Perform trip generation studies, including determination of traffic generators (25 CFR § 170.411(b)); and
  - Consider land uses.

- Identify projects or activities for each transportation need. Examples are:
  - Roads and boardroads: construction or reconstruction;
  - Trail construction or reconstruction;
  - Trail marking projects (for safety);
  - Trail wayside shelters;
  - Trail hardening (plastic grid, boardwalks, gravel);
  - Bridge repair/replacement;
  - Transit: vehicles, shelters, storage building;
  - Water, barge access roads;
  - Ice roads;
  - Road and trail maintenance, dust control; and
  - Training for Tribe's people to work on "force account" construction projects or maintenance.
- For each **project or activity,** identify the following:
  - Preliminary cost estimate (25 CFR §§ 170.402(b)(10) and 170.415(a));
  - Funding sources, existing or potential (25 CFR §§ 170.411(j) and 170.415(a));
  - Who will maintain the facility;
  - Environmental, archeological sites affected (25 CFR § 170.415(a)(5));
  - Right-of-way difficulty and other risks; and
  - Agencies (BLM, USFWS, USFS, NPS, State) on or near project. You will need to contact these.
- Identify existing and future transportation routes to be added or changed on the National Tribal Transportation Facility Inventory (NTTFI) (25 CFR § 170.442-447).

Step 4. Set Priorities. Identify which projects or activities are most important. When prioritizing, use the same criteria to see how projects measure up against each other. Prioritizing is an important step because:

- The cost of all the projects and activities added up may be more than the available funding; and
- Prioritizing projects makes the LRTP a do-able and visionary document, not just a "wish list".

Examples of criteria to use when prioritizing projects/activities include:

- The needs, goals and ideas expressed by members of the community;
- The "Bang" for the buck; that is, how much good does a project do for the cost;
- Availability of funding for a project;
- Degree of community support for a project; and
- Risk items that could stop a project: Right-of-way problems, environmental issues, etc.

Performing this process should result in a prioritized list of do-able and fundable projects and activities for:

- Short range: 3 - 5 years;
- Medium range: 5 – 10 years; and
- Long range: 10 – 20 years.

Step 5. Establish a funding plan. Perform an analysis of funding alternatives to carry out the LRTP recommendations.

Identify the existing and proposed funding sources (local, State, Federal, Tribal, and private), and the funding expected from each source (25 CFR §§ 170.411(j) and 170.415(a)).

Perform a reality check by comparing the project cost to the expected funding. Identify any shortages in funding needed to implement the projects/activities in the LRTP.

Step 6. Finish up the LRTP. The following steps are needed before the LRTP is complete:

- **Public involvement.** Tribe performs public involvement according to 25 CFR § 170.413.
- **Tribe makes Draft LRTP available to the public and agencies.** The Tribe will make the draft LRTP available to the public (stakeholders, private citizens, major public and private entities, etc.) through appropriate methods (public meetings and/or public notice). The Tribe should send an electronic copy of the draft LRTP to FHWA, BIA, and any other state or local organizations interested in coordinating transportation projects with the Tribal Government. The Tribe should further refine the LRTP to address any issues identified during the public review process. The Tribe then finalizes and approves the LRTP and submits a copy to the TC.
- **LRTP Approval.** The Tribal Government approves the LRTP per 25 CFR § 170.412(c). The BIA or FHWA do not approve a Tribe's LRTP. The BIA or FHWA Planning Specialist (whichever agency is working with the Tribe on their LRTP) will be available for technical assistance during the plan development, update, or amendment prior to adoption by the Tribal Council. Once adopted, the BIA or FHWA will review each plan and prepare a written record of the plan's adherence to applicable laws and regulations. The TC will provide the review to the Tribal Government for their information.

3. LRTP Resources. The following are resources that can assist a Tribe to develop or update their LRTP:

Web links:

- FHWA Tribal Transportation Planning –

  http://www.fhwa.dot.gov/hep/Tribaltrans/index.htm
- National Tribal Transportation Facility Inventory Report - https://www.itims.doi.gov/reports.shtml
- National Tribal Technical Assistance Program (TTAP) - http://www.ltap.org/

Books/Manuals:

- *Manual on Uniform Traffic Control Devices* - http://mutcd.fhwa.dot.gov/.
- *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 –

  http://www.tribalplanning.fhwa.dot.gov/training_lrtp_module.aspx.

- *Practitioner's Handbook #10: Using the Transportation Planning Process to Support the NEPA Process*, American Association of State Highway and Transportation Officials - http://environment.transportation.org/pdf/programs/practitioners_handbook10.pdf.

D. Pre-Project Planning (25 CFR § 170.415)

Pre-project planning is a necessary part of transportation planning. Pre-project planning needs to be performed by the Tribe before projects can be identified for the Tribe's TIP (TTIP). The pre-project planning process provides the Tribe with the information it needs to identify projects to go onto the TTIP.

Pre-project planning looks at the following items:

- The various alternatives to a project (for example, roundabout vs. intersection);
- The preliminary cost of a project;
- If the project warrants a public hearing;
- The regional significance of the project; and
- The project's need for preliminary environmental and archeological reviews.

The pre-project planning process is not the final determination on which projects end up on the TTIP. That determination is made only after the Tribe thoroughly analyzes all the relevant information, including the project's NEPA review. After the NEPA process is completed, then the Tribe can decide whether or not the project should be funded and built, and the extent (scope) of the project needed to satisfy the "purpose and need" that was stated in the NEPA document.

The Pre-Project Planning Score Worksheet (see **Appendix C - Exhibit 6.4**) can be used by the Tribe when performing pre-project planning.

Pre-project planning activities include:

- **Preliminary project cost estimates**. This looks at alternative concepts for the project, and the approximate cost associated with each concept. Examples of alternative concepts would be a roundabout versus a normal intersection, or a two-lane road versus a one lane road with turnouts. When doing a cost estimate for the alternative concepts, it is important to identify and estimate all the known items of work that would occur during construction. Not all projects will have each and every item listed on the worksheet (see **Appendix C - Exhibit 6.4**). In many cases, it is not possible to list all of the items at this preliminary stage, so it is recommended that an appropriate contingency factor (from 5% to25%) be added to the cost estimates to reflect other possible items.

- **Consultation and coordination with States and/or MPOs for a regionally significant projects.** A "regionally significant project" is one that occurs on a facility serving regional transportation needs, and that would normally be included in the modeling of a metropolitan area's transportation network. This type of project includes work on principal arterial highways and all fixed guideway transit facilities that offer a significant alternative to regional highway travel. ("Regional transportation needs" includes access to and from the area outside of the region; major planned developments such as new retail malls, sports complexes, etc.; or transportation terminations, as well as most terminals themselves). The State DOT can assist in modeling or providing clarification on regionally significant projects for your area.

- **Preliminary needs assessments.** Two questions should be asked: (1) What is the problem you are trying to solve with this project? (2) What are the consequences of not addressing the problem?
  - The statements should be specific enough to be measurable. The discussion should set the stage to conclude that the project is needed. How many fatalities (supported by data)? How much flooding (supported by data)? How much maintenance effort is needed? How much congestion? The discussion should make a convincing case that a solution to a problem is needed and that the purpose of the proposed project is to provide a solution that best solves the transportation problem.
  - For example, "As Maple Street's ADT has increase by 15% in last two years, a need to widen road for left hand turn lane is warranted according to applicable standards. If project is not addressed, safety issues will increase."
  - Statements that are not supported by data and facts such as "dangerous", "hazardous", or "this curve caused six accidents" should not be stated. These are opinions and should not be used.

- **Concepts of possible alternative strategies** that could satisfy the identified deficiencies and purpose and need. This should not an all-inclusive list, but a list to be used for programming a project. A complete list of all reasonable alternatives will be identified in the NEPA process.

- **Preliminary environmental and archeological reviews.** Document what and where your environmental and archeological resources are related to your project prior to construction. This can be done by working with your Tribal Natural Resource Department, Tribal Historical Preservation Office or the Federal/State agencies in your area. (See 23 CFR § 450.322(g) for further details)

  The process provides a sound basis for commitment of resources necessary to conduct environmental studies and other activities with respect to the proposed project.
  See **Chapter VII - Preliminary Engineering - NEPA and Other Environmental Requirements** to determine the level of NEPA analysis that will be needed for the proposed project.

E. Tribal Transportation Improvement Program (TTIP)

1. **Overview.** The TTP transportation planning process requires the Tribe to develop a **Tribal Transportation Improvement Program (TTIP)**. The **TTIP** is a list of transportation projects and activities eligible for TTP funding covering a period of 4 years. The approval of the **TTIP** is required before the Tribe can spend any TTP funds. The **TTIP** lists the projects and activities that the Tribe can spend TTP funds on. As described in the Tribal Transportation Program Agreement, FHWA approves the **TTIP** developed by the Tribe, and the Tribe implements the activities from the FHWA-approved **TTIP**.

2. **Process for Development and Approval of the TTIP**

   Step 1. The Tribe develops the TTIP from the tribal priority list or the Tribe's Long Range Transportation Plan (LRTP).

   The Tribe prepares its TTIP using the following forms:

   - Tribes who have a Tribal Transportation Program Agreement with **FHWA** develop a TTIP using the Microsoft Access FHWA **TIP Template,** and the **FHWA TIP Template**

User Guide, available at **http://flh.fhwa.dot.gov/programs/ttp/planning/ttip.htm**. **S**ee Appendix C - **Exhibit 6.1** for a printout of the blank FHWA **TIP Template.**

- Tribes who have a G2G Agreement with the **BIA** develop a TTIP using the BIA TTIP Control Schedule Form (see Appendix C - **Exhibit 6.6).**

Step 2. Tribe submits the Tribally approved **TTIP Package** to the BIA or FHWA, depending on which agency the Tribe has a TTPA with. See section **4** below for what needs to be included in the TTIP package.

Step 3. BIA or FHWA reviews the TTIP, as applicable.

Step 4. FHWA approves the TTIP.

3. Guidelines/Procedures

- **The TTIP must be "financially constrained"** (also called "**fiscally constrained**"). This means that a Tribe cannot show projects and activities in their TTIP that will cost more than the funds available or "reasonably expected to be available" (see 23 CFR §§ 450.104 and 170.421(a)) to cover the cost of design and construction, as well as the cost of future operation and maintenance of the proposed project (see 23 U.S.C. 134 and 135). Financial constraint/fiscal constraint applies to each program year. Please refer to the "Financial Planning and Fiscal Constraint for Transportation Plans and Programs Questions & Answers" from FHWA Office of Planning, Environment and Realty located at http://www.fhwa.dot.gov/planning/fsclcntrntques.cfm

- **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, the Tribe should prepare an amendment to the TTIP showing the project as funded and programmed, and submit it to their FHWA or BIA TC, who will then forward it for agency review and approval.

- **The TTIP needs to be consistent with the LRTP and the Inventory.** The projects listed on the TTIP must be consistent with the LRTP (25 CFR § 170.421(a)(1)). For those projects funded under the TTP, the route must be listed in the National Tribal Transportation Facility Inventory (25 CFR § 170.442).

- **Project Funding.** The TTIP needs to document the anticipated or available funding source(s) to be used to implement each transportation project and other activities shown on the TTIP. All of the funded transportation projects must be listed on an FHWA-approved TTIP.

- **Coordination.** The Tribe should coordinate with and inform the State DOT, and as appropriate any Metropolitan Planning Organization (MPO), on all regionally significant projects when developing their TTIP (25 CFR § 170.107(a)(1)). This is needed to ensure that the State DOT's and MPO's programs and projects that are near Tribal lands are consistent with Tribal needs and interests.

- **Planning Requirements for Development of the TTIP.** The TTIP must comply with all the relevant provisions in 25 CFR § 170. The BIA or FHWA 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 TTIP.

- **Public Involvement.** The public must be allowed the opportunity to review and comment on the TTIP, according to 25 CFR § 170.422.

  A public hearing must be held if a project:
  (a) Is a new route or facility;
  (b) Would significantly change the layout or function of connecting or related roads;
  (c) Would cause a substantial adverse effect on adjacent property; or
  (d) Is controversial or expected to be controversial in nature (25 CFR § 170.435).

  The Tribe should keep in their files the following documents related to public involvement for the TTIP: Announcement of meeting, notice, or hearing; the meeting sign-in sheet; minutes, or recording of hearing; and other documentations that provide records of public involvement.

- **Inherent/Non-inherent Determination:** During development of the TTIP, the Tribe and FHWA or BIA should mutually determine what inherent and/or non-inherent functions the Federal Government will be performing. 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).

- **Categories the Tribe needs to include in the TTIP.** The following table shows the seven categories to include in the TTIP.

Categories in a TTIP	
Category	**Guidance**
Administration	Costs associated with Administration may be direct and/or indirect cost related to tribal transportation department operating costs. Indirect costs should match the indirect costs reported by the Tribe in the semi-annual financial report, and follow the indirect cost policy (25 CFR § 170.931, and 25 CFR Part 170 Appendix A to Subpart B). See **Indirect Costs** in Chapter IV - TTP Reporting Responsibilities.
Planning	Costs associated with Planning are those activities conducted during the Long Range Transportation Planning process (see 25 CFR §§ 170.400-447) i.e. 20 year LRTP, transportation improvement plan development, pre-project planning, etc. Up to 2% of total fiscal year TTP funds as shown on RFA (23 U.S.C. § 202(c)), and up to 100% of TTP funds, if identified as a priority on the FHWA-approved TTIP (25 CFR § 170.403).
Preliminary Engineering	Costs associated with developing a project package (see 25 CDR § 170.460) i.e. surveying, design, NEPA, technical engineering, ROW acquisition, etc. Budgeted costs are usually between 10-25% of the overall project costs. Funds used for preliminary engineering can be up to 100% of Tribes' total fiscal year allocation minus any amounts from other areas.
Construction	Costs associated with construction activities include but not limited to roadway construction, utility relocation, bridge construction, drainage improvements, etc. Budgeted costs are usually between 60-90% of the overall project cost. Funds used for construction can be up to 100% of Tribes' total fiscal year allocation minus any amounts from other areas.

Categories in a TTIP (cont'd.)	
Category	**Guidance**
Construction Engineering	Costs associated with construction engineering include but not limited to, managing the project on/off site, inspection, material testing, etc. Budgeted costs are usually between 10-15% of the overall project costs. Funds used for construction engineering can be up to 100% of Tribes' total fiscal year allocation minus any amounts from other areas.
Transit	Costs associated with transit are documented in the LRTP and include but not limited to, administration, operations, personnel, etc. 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 Tribes' total fiscal year allocation minus any amounts from other areas
Maintenance	Activities identified as maintenance are located in 25 CFR § 170.805. Funds used for maintenance can be up to 25% of total fiscal year TTP Tribal allocation or $500,000, whichever is greater (23 U.S.C. § 202(a)(8); 25 CFR § 170.800), except for road sealing, which is not subject to any limitation.

- **TTIP Timeline.** The following table shows the timeline for the development, delivery, and approval of a TTIP (25 CFR § 170.423).

TTIP Timeline (Fiscal Year)			
Action Item	**Authority / Reference**	**Frequency / Due Date**	**Responsible Party**
Draft TTIP - Public Review – Tribe puts TTIP out for public review	25 CFR § 170.422	FY Annually - 3rd Quarter (April through June)	Tribe (unless delegated to BIA through a Direct Services MOU, or to BIA through an RSA)
Review any new transportation planning information, priority lists, and the TTIP. Complete and forward an updated TTIP package consisting of: 1) TTIP forms for each project/activity, 2) Tribal resolution or tribally authorized government action, or a signed and dated TTIP Certification Statement to the FHWA TC or Transportation Planning Specialist, or BIA TC.	Internal agency process	FY Annually - 2nd through 4th Quarter (Jan through July 15)	Tribe (unless delegated to BIA through a Direct Services MOU, or to BIA through an RSA)

4. **Submitting the TTIP Package.** The Tribe should submit the following items as a package to the TC so that the agency's Transportation Planning Specialist can review the TTIP for approval:

   - A **TTIP Certification,** signed and dated by the Tribe's Chief, Chairperson, or President, or designated acting (see Appendix C - **Exhibit 6.3**). This document is an assurance to FHWA or the BIA that the Tribe developed the TTIP according to the planning regulations in 25 CFR Part 170, which require the following: public involvement for the TTIP has been done; the TTIP is financially constrained; consultation and coordination has been done with States and/or MPOs for a regionally significant project; the TTIP is consistent with the LRTP; and, transportation facilities in the TTIP are on the National Tribal Transportation Facility Inventory.
   - **The completed TTIP Forms for each project/activity**. For Tribes who have a TTPA with FHWA, The FHWA TC provided the Tribe with the Microsoft Access Microsoft Access FHWA TIP Template (see Appendix C - **Exhibit 6.1**). For Tribes who have a G2G Agreement with the BIA, the BIA TC provided the Tribe a Control Schedule form like the one shown in Appendix C – **Exhibit 6.6**.
   - A supporting **Tribal Resolution or Tribally authorized government action** (see example Tribal resolution template in Appendix C - **Exhibit 6.2**). This is optional if the TTIP Certification form (see Appendix C - **Exhibit 6.3**) is signed and dated by the Tribe's Chief, Chairperson, or President, or designated acting.

   The Tribe may mail, e-mail or fax the TTIP package to the TC, or to the BIA or FHWA Transportation Planning Specialist.

5. **TTIP Record Keeping.** The Tribe should keep in their files the following documents related to public involvement for the TTIP: Announcement of meeting, notice, or hearing; the meeting sign-in sheet; minutes, or recording of hearing; and other documentations that provide records of public involvement.

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

7. **Approving the TTIP.** FHWA approves the TTIP. Once approved by FHWA the TTIP becomes part of the official TTPTIP. The Tribe will then receive a signed copy of the approved TTIP, along with a TTIP Approval Letter (see Appendix C - **Exhibit 6.5**). If some projects on the TTIP are determined by FHWA to not be eligible, the Tribe will receive a "partial" TTIP approval by FHWA.

   FHWA provides copies of the FHWA-approved TTPTIP to the FHWA division office for transmittal to the State transportation agency for inclusion in the State Transportation Improvement Program (STIP). Note: Having a project listed on the STIP does not guarantee State funding.

8. **The Tribal Transportation Program Transportation Improvement Program (TTPTIP)** is put together by FHWA, and contains the information from all of the FHWA-approved TTIPs. The TTPTIP information is provided to each respective State to be included in their State Transportation Improvement Program (STIP).

9. TTIP Resources.

- The **FHWA Tribal Transportation Program (TTP) Planning** website is located at http://flh.fhwa.dot.gov/programs/ttp/planning/. This site provides resources and technical information on long-range transportation planning, which includes pre-project planning, and TTIP development for Tribal Governments administering the Tribal Transportation Program.
- The **FHWA Tribal Transportation** website is located at http://www.fhwa.dot.gov/planning/processes/tribal/ It includes a Tribal Transportation Module Training Series, with topics such as: *Introduction to Planning; Developing a LRTP; Developing a TIP; Funding Resources; Public Involvement; Data Collection and Uses; Safety; and Project Prioritization.*

F. National Tribal Transportation Facility Inventory Update

1. Overview. The National Tribal Transportation Facility Inventory (NTTFI) is a comprehensive database of all transportation facilities eligible for TTP funding by Tribe, reservation, BIA agency and region, Congressional district, State, and county (or borough). Other specific information collected and maintained under the TTP Program includes classification, route number, bridge number, current and future traffic volumes, maintenance responsibility, and ownership.

The National Tribal Transportation Facility Inventory (NTTFI) is developed through the LRTP process, as described in 25 CFR §§ 170.409 - 170.414. The Tribes can use the inventory to assist in transportation and project planning, justify expenditures, identify transportation needs, maintain existing TTP transportation facilities, and develop management systems.

BIA Regional offices maintain, certify, and review the data for their Region's portion of the National Tribal Transportation Facility Inventory database. Tribes can receive training from BIADOT to enter their own data updates.

2. Statutory/Regulatory Requirements.

25 CFR §§ 170.410 and 170.442 - 170.447.

3. Guidelines / Procedures. BIA maintains the National Tribal Transportation Facility Inventory (NTTFI). It is important for Tribes to periodically update their inventory information to determine eligibility of facilities for TTP funding of improvements. Tribes should submit their inventory updates through the BIA Regional Office.

The following table shows the dates, roles, and responsibilities for updates to the NTTFI

Updates to the NTTFI			
Program Activity / Process	**Authority / Reference**	**Frequency / Due Date**	**Responsible Party**
Provide Tribe within its Region copy of the Tribe's own NTTFI data.	25 CFR § 170.444(a)(1)	Annually – By November 1	BIA Regional Office

Updates to the NTTFI (cont'd.)			
Review the provided data and enter all changes/updates into the NTTFI database. The submissions must include, at a minimum, all required minimum attachments (see 25 CFR § 170.446) and authorizing resolutions or similar official authorizations.	25 CFR § 170.444(a)(2)	Annually – Prior to March 15	Tribe (unless this activity has been delegated to BIA through a Direct Services MOU, or to BIA through an RSA)
Review Tribe initial submission; return errors or omissions to Tribe; update submission. If no errors or omissions are found, the BIA Regional Office validates the data and forwards it to BIADOT for review and approval.	25 CFR § 170.444(a)(3)	Annually – Prior to May 15	BIA Regional Office
Correct or complete submissions from BIA; submit corrected submission electronically to BIA Regional Office; cc TC	25 CFR § 170.444(a)(4)	Annually – By June 15	Tribe (unless this activity has been delegated to BIA through a Direct Services MOU, or to BIA through an RSA)
Certify and submit Tribal NTTFI data electronically to BIADOT	25 CFR § 170.444(a)(5)	Annually – By July 15	BIA Regional Office

G. Resources

- BIA Coding Guide and Instructions https://www.itims.doi.gov/guides/irr_coding_guide.pdf
- Policy on Minimum Attachments for Acceptance of TTP Roads/Facilities into the National Tribal Transportation Facility Inventory, by the Director of the BIA, June 15, 2006 http://www.ttap.mtu.edu/IRRPCC/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)

VII. Preliminary Engineering - NEPA and Other Environmental Requirements

A. Overview. TTP projects, like all federally-funded projects, must comply with applicable Federal, Tribal, state, and local environmental laws, regulations, and policies. Preliminary Engineering for a project, including completion of environmental documentation and review, begins after the project has been identified in the Tribe's Long Range Transportation Plan (LRTP) and the FHWA-approved Tribal Transportation Improvement Program (TTIP) (see **Chapter VI - Transportation Planning**).

B. Authority for Environmental Requirements of TTP. As outlined in 25 CFR § 170.450, all BIA, FHWA, and Tribal work for the TTP must comply with cultural resource and environmental requirements under applicable Federal laws and regulations, including, but not limited to the following:

- 16 U.S.C. § 1531, 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.
- 23 U.S.C. § 138, Preservation of Parklands, commonly referred to as 4(f).
- 25 U.S.C. §§ 3001-3013, Native American Graves Protection and Repatriation Act.
- 33 U.S.C. § 1251, Federal Water Pollution Control Act and Clean Water Act.
- 42 U.S.C. § 7401, Clean Air Act.
- 42 U.S.C. § 4321, National Environmental Policy Act.
- 49 U.S.C. § 303, Preservation of Parklands.
- 7 U.S.C. § 4201, Farmland Protection Policy Act.
- 50 CFR § 402, Endangered Species Act regulations.
- 7 CFR § 658, Farmland Protection Policy Act regulations.
- 40 CFR § 93, Air Quality Conformity and Priority Procedures for use in Federal-aid Highway and Federally-Funded Transit Programs.
- 23 CFR § 771, Environmental Impact and Related Procedures.
- 23 CFR § 772, Procedures for Abatement of Highway Traffic Noises and Construction Noises.
- 23 CFR § 777, Mitigation of Impacts To Wetlands and Natural Habitat.
- 36 CFR § 800, Protection of Historic Properties.
- 40 CFR §§ 260-271, Resource Conservation and Recovery Act.
- Applicable tribal/State laws.
- Other applicable Federal laws and regulations.

B. National Environmental Policy Act (NEPA). To assist Federal agencies in effectively implementing the environmental policy and "action-forcing" provisions of NEPA, the Council on Environmental Quality (CEQ) issued 40 CFR §§ 1500-1508 *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act*. The CEQ regulations address the basic decisionmaking framework and action-forcing provisions established in NEPA. NEPA decisionmaking includes:

- Use of a systematic and interdisciplinary approach.
- Appropriate consideration given to environmental, economic, and technical issues.
- For major Federal actions significantly affecting the environment, inclusion of a detailed statement on:
  - Environmental impacts of the proposed action.
  - Adverse impacts that cannot be avoided.

  - Alternatives to the proposed action.
  - Consequences of taking the proposed action.
- Consultation with other Federal, state, and local agencies.
- Public involvement.

To fulfill NEPA responsibilities established by the Council on Environmental Quality (CEQ), FHWA and the Department of the Interior (DOI) issued regulations (23 CFR § 771 and 43 CFR § 46, respectively) prescribing the policies and procedures for implementing NEPA. Additional NEPA requirements and guidance established by FHWA and BIA can be accessed at the FHWA Environment webpage, the DOI's Departmental Manual Part 516 Chapter 10, and BIA's NEPA Guidebook. These requirements/guidance help to ensure possible adverse economic, social, and environmental effects are fully considered during project development. All TTP projects must adhere to environmental regulations prescribed in 25 CFR § 170.450. However, Tribes will be further directed by the applicable regulations/guidance of the Agency with which they are working.

Each TTP project requires a NEPA document that must be completed and approved before the Plans, Specifications, and Estimates (PS&E) can be approved, before ROW acquisition can occur, and before project construction can start. The NEPA document should ideally be completed and approved at approximately 30% - 50% completion of a project's design (see **Chapter VIII - Preliminary Engineering – Project Package**). This is a guideline only and is intended to help ensure appropriate environmental commitments are incorporated into a project's final design.

C. Development of the NEPA Document and Approval Authority. The development of the NEPA document is undertaken by the Tribe, unless otherwise arranged with the BIA or FHWA.

Because the TTP is jointly administered by BIA and FHWA, either BIA or FHWA must be the lead (or at least a co-lead) Federal agency for the NEPA process on all TTP-funded projects. Therefore, all TTP NEPA documents must be reviewed and approved by the appropriate BIA or FHWA authority. Even when a Tribe develops a NEPA document, it does not have approval authority for the document, only the lead or co-lead federal agency(ies) have approval authority.

When a Tribe with an FHWA TTPA is developing a NEPA document, it is recommended that the Tribe prepare and submit to the FHWA TC the **TTP Environmental Checklist** (see Appendix C – **Exhibit 7.1**).

D. Documentation and Processing. NEPA requires that Federal agencies disclose the results of their analysis and the effects of project implementation on the environment. The purpose of documenting the NEPA process is to provide for complete disclosure to the public; to allow others an opportunity to provide input and to comment on proposals, alternatives, and environmental impacts; and to make the appropriate information available to decisionmakers to ensure a reasoned choice among alternatives. As NEPA is a procedural law, the administrative record provides evidence that the process was appropriately followed.

There are three classes of actions under NEPA, which determine how compliance with NEPA is carried out and documented depending on the significance of the environmental impacts of the project under study. The CEQ regulation at 40 CFR § 1508.27 states that "significantly" requires consideration of both context and intensity. Context means that the significance must be analyzed in several contexts such as society as a whole, national, affected region, affected interests, and the locality. Significance varies with the setting of the proposed action. Both short- and long-term effects are relevant.

Intensity refers to the severity of the impact. Impacts may be both beneficial and adverse. Among other considerations, the following should be considered in evaluating intensity:

- proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas,
- if effects on the quality of the human environment are likely to be highly controversial
- whether the action is related to other actions with individually insignificant but cumulatively significant impacts
- degree to which the action may adversely affect historical resources or endangered or threatened species

The three classes of actions under NEPA are categorical exclusions, environmental assessments, and environmental impact statements. Below is a flow chart for the NEPA process (Figure 9-1) followed by a description of each class of NEPA action.

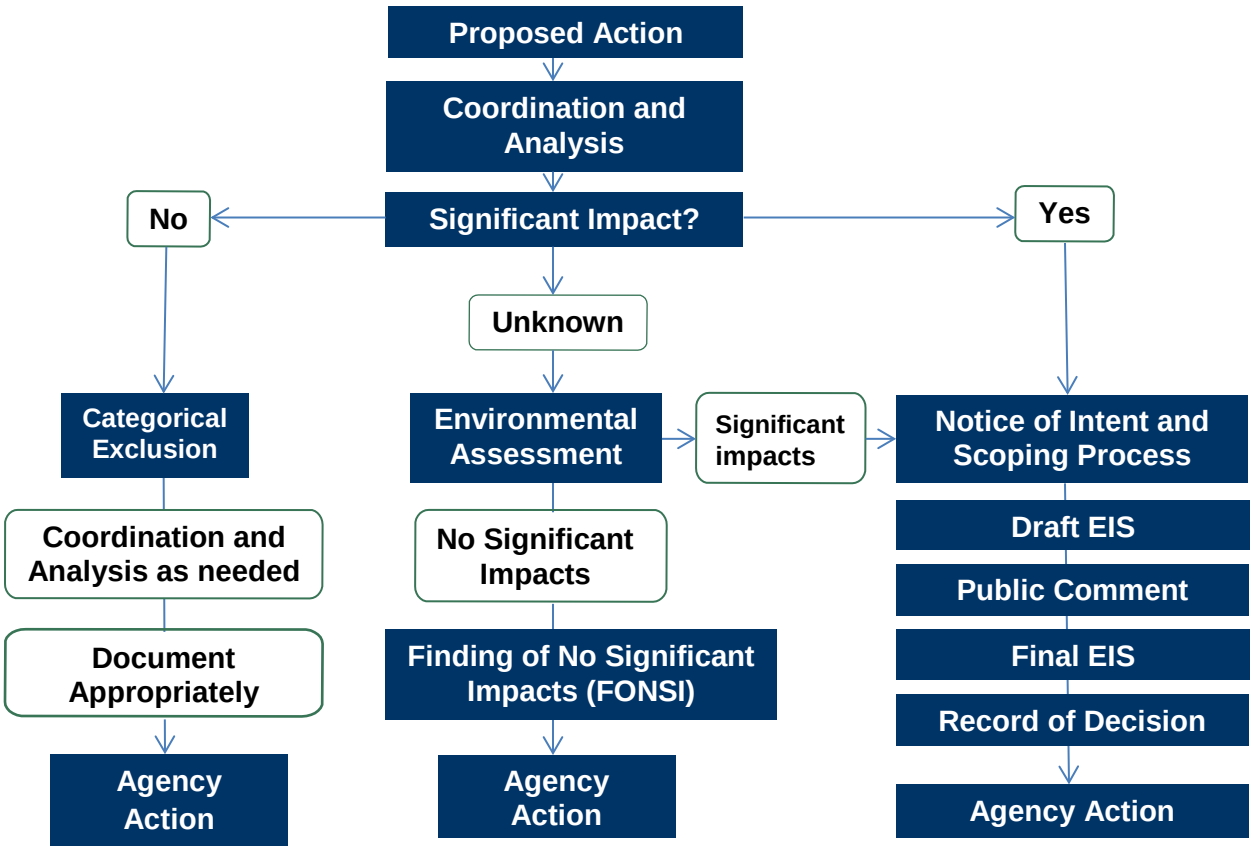


Figure 9-1: NEPA process flowchart

1. **Categorical Exclusions.** Categorical exclusions are actions which meet the definition contained in 40 CFR § 1508.4. These actions are "excluded" from the requirements to prepare either an environmental assessment or an environmental impact statement based on experience that the actions do not normally individually or cumulatively result in significant impacts. The vast majority of TTP funded projects fall under this class of action; however, it is not an exemption of NEPA or other environmental requirements.

The BIA and FHWA each have their own lists of CEs that may apply to a particular proposed project. The BIA's lists are available at 43 CFR § 46.210 and at 516 DM 10.5. FHWA's lists are available at 23 CFR § 771.117(c) and (d). Based on past experience, these actions have normally been shown to result in no significant impacts, however, a record must be established that demonstrates that the action has no unusual circumstances as set forth in 43 CFR § 46.215 for BIA and in 23 CFR § 771.117(b) for FHWA.

Regardless of whether BIA or FHWA is responsible for the oversight of a Tribe's TTP activities, the Categorical Exclusions under NEPA at 23 CFR 771.117 governing the use of funds made available through title 23 shall apply to all qualifying TTP projects involving the construction or maintenance of roads. See 25 CFR § 170.453.

Resources:

- CEQ - Regulations for Implementing NEPA: http://www.whitehouse.gov/files/ceq/epa_comments_-_ceq_draft_nepa_efficiencies_guidance.pdf
- Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations: http://energy.gov/nepa/downloads/forty-most-asked-questions-concerning-ceqs-national-environmental-policy-act

2. **Environmental Assessments.** When the significance of the environmental, social, and economic impacts of an action is not clearly established, an EA should be undertaken (40 CFR § 1508.9). Some larger and more complicated TTP funded projects may require an EA. Based on the results of the EA, either a finding of no significant impacts (FONSI) is issued by the lead federal agency(ies) if it is determined that the preferred alternative will not result in significant impacts (40 CFR § 1508.13). If it is determined that the preferred alternative will result in significant impacts, then and EIS would be developed. The BIA's procedures for EAs/FONSIs are described in 43 CFR § 46 Subpart D and the BIA NEPA Guidebook. FHWA's procedures are in 23 CFR §§ 771.119 and 121, and Chapter 3 of the Federal Lands Highway (FLH) Project Development and Design Manual (PDDM).

   The general EA procedures between the two agencies are very similar. However, one substantial difference is the timing of presenting an EA and/or FONSI for public review. The BIA issues a notice of availability of the EA and FONSI simultaneously for a 30 day public review before moving forward with the project. Conversely, the FHWA releases the EA for a 30 day public review, and if appropriate, subsequently releases the FONSI. In instances where the BIA and the FHWA both have an approval decision for an EA/FONSI, the BIA and FHWA environmental specialists will coordinate to ensure the public review period meets both agencies' requirements while eliminating/minimizing any extensions of the approval timeline.

   Some TTP projects require a NEPA decision by both FHWA and BIA, and there are instances where the project would meet one or more of the requirements of FHWA's CEs yet not meet any of the requirements of BIA's CEs. This case usually arises when there is a right-of-way action involving small amounts of trust lands. Under this scenario, an EA would have to be developed to satisfy BIA's NEPA requirements. Normally this would add substantial additional time, funding, and effort. To help streamline the NEPA process in a case such as this, the BIA will write a "short form" EA that would incorporate FHWA's CE, which will include sufficient assessment of the trust land right-of-way action.

   Resources:

- CEQ - Regulations for Implementing NEPA: http://www.whitehouse.gov/files/ceq/epa_comments_-_ceq_draft_nepa_efficiencies_guidance.pdf
- Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations: http://energy.gov/nepa/downloads/forty-most-asked-questions-concerning-ceqs-national-environmental-policy-act
- Outline for an Environmental Assessment (EA): see Appendix C - **Exhibit 7.2**
- Example Notice of Availability & Solicitation of Public Comment: see Appendix C - **Exhibit 7.3**

3. **Environmental Impact Statements.** NEPA requires Federal agencies to prepare an EIS for major Federal actions that significantly affect the quality of the human environment (40 CFR § 1502). An EIS is a full-disclosure document and includes consideration of a range of reasonable alternatives (one of which must be the no-build alternative), analyzes the potential impacts resulting from the alternatives, and demonstrates compliance with other applicable environmental laws and Executive Orders. Few TTP funded projects are anticipated to require an EIS. However, the BIA's procedures for EISs is at 43 CFR § 46 Subpart E and BIA's NEPA Guidebook, and FHWA's are at 23 CFR §§ 123-130 and Chapter 3 of FLH's PDDM.

   Resources:

   - CEQ - Regulations for Implementing NEPA: http://www.whitehouse.gov/files/ceq/epa_comments_-_ceq_draft_nepa_efficiencies_guidance.pdf
   - Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations: http://energy.gov/nepa/downloads/forty-most-asked-questions-concerning-ceqs-national-environmental-policy-act

4. **Administrative Record.** The administrative record is a fundamental component of the NEPA project decisionmaking and documentation process. It is intended to provide evidence that the agency's decision was derived in accordance with NEPA and is in compliance with other requirements. The administrative record consists of the NEPA documents and other documentation that supports or is referenced in them, such as public-hearing transcripts, correspondence, and studies/evaluations/technical reports. It includes e-mail, meeting minutes, and information that support the facts and decisions made during the NEPA process, such as purpose and need, alternatives development, impact analysis, public involvement, and interagency coordination. The administrative record should fully reflect the deliberative process that the agency took to reach its decision.

   The Tribe shall retain project records and design documents for a minimum of 3 years following completion of the project construction (25 CFR § 900.130).

   Resources:

   - AASHTO Practitioner Handbook - Maintaining a Project File and Preparing an Administrative Record for a NEPA Study: http://environment.transportation.org/pdf/programs/PG01.pdf
   - PDDM Chapter 3: http://flh.fhwa.dot.gov/resources/manuals/pddm/archives/2008.htm

E. Other Environmental Laws and Requirements. The Tribe, in coordination with FHWA/BIA, manages the NEPA project-development and decisionmaking process as an "umbrella" under which

all applicable environmental laws, Executive Orders, and regulations are considered and addressed prior to the final project decision and document approval. The cultural resource and environmental requirements for the TTP are listed in 25 CFR § 170.450 and depicted below in Figure 9-2. These are environmental laws that are commonly applicable during the NEPA process, but others may be applicable as well. Depending on the nature of the action, it is best to plan all levels of NEPA documentation to run parallel with requirements of other applicable environmental laws, regulations, and requirements. To the extent possible, these other compliance actions should be completed by the end of the NEPA process (CE, FONSI, or ROD). Information, conclusions and commitments of the agency related to these compliance actions will be discussed in the NEPA document.

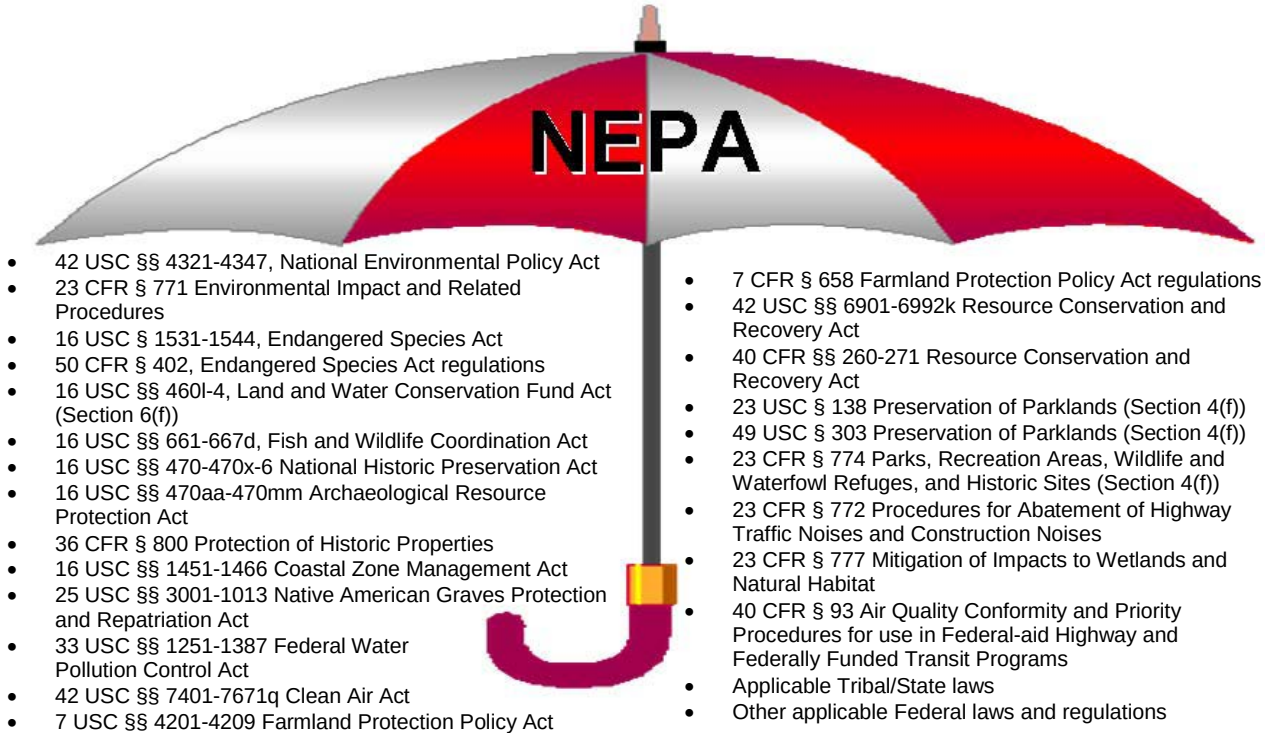


Figure 9-2: Applicable environmental laws for TTP-funded actions.

As noted above, the NEPA process involves compliance with a number of additional environmental laws, regulations, and requirements. The following highlights some of the environmental laws and requirements that regularly come into play in transportation projects. For a more detailed discussion on other additional environmental laws and requirements, see the PDDM Chapter 3: http://flh.fhwa.dot.gov/resources/manuals/pddm/archives/2008.htm

1. **Section 4(f).** Section 4(f) refers to the original section in the U.S. Department of Transportation Act of 1966 that provides protection for publicly owned parks, recreational areas, wildlife and waterfowl refuges, and public or private historical sites from use by transportation projects. The law, now codified in 49 USC § 303 and 23 USC § 138, is implemented by FHWA/FTA through regulation (23 CFR § 774).

   If a project proposes to use a property protected by Section 4(f), FHWA must either determine that impacts are *de minimis* or prepare a Programmatic or Individual Section 4(f) evaluation to

determine that no feasible and prudent avoidance alternatives exist. FHWA, with assistance from the Tribe/BIA, is ultimately responsible for making all decisions related to Section 4(f) compliance. These decisions include whether Section 4(f) applies to a property, whether a use would occur, whether a *de minimis* impact determination may be made, what each alternative's impacts will be on Section 4(f) properties, and whether the law allows the selection of a particular alternative that uses 4(f) property after the appropriate officials with jurisdiction have been consulted.

Currently, the BIA cannot make Section 4(f) determinations for their TTP projects, only an agency of the U.S. Department of Transportation can. However, in an effort to streamline compliance with Section 4(f) within BIA's TTP projects, both agencies are working together to identify possible avenues for the BIA to independently make Section 4(f) determinations.

Resources:

- FHWA Section 4(f) Program Overview: http://environment.fhwa.dot.gov/4f/index.asp
- FHWA Section 4(f) Policy Paper: http://environment.fhwa.dot.gov/4f/4fpolicy.asp
- PDDM Chapter 3: http://flh.fhwa.dot.gov/resources/manuals/pddm/archives/2008.htm

2. **Section 106 of the National Historic Preservation Act.** Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended, requires Federal agencies to take into account the effects of their actions on historic properties and to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment. The historical preservation review process mandated by Section 106 is outlined in 36 CFR § 800. Section 106 requires Federal agencies to consult with the State Historic Preservation Office (SHPO) and/or Tribal Historic Preservation Office (THPO), property owners, local governments, and other parties when a Federal undertaking may affect historic properties that are on or are eligible for inclusion in the National Register of Historic Places. In certain cases, the ACHP may be invited to participate in the consultation process.

   The Tribe is responsible for ensuring appropriate surveys and reports are completed in compliance with the NHPA. Early coordination with the FHWA/BIA Environmental Specialist is recommended to ensure the appropriate level of study and any appropriate consultation by the lead federal agency is undertaken. Also, any reports should be reviewed by the lead federal agency prior to being finalized. The lead federal agency is typically responsible for consultation with the SHPO and/or THPO.

   Resources:

   - FHWA Historic Preservation Website: http://environment.fhwa.dot.gov/histpres/index.asp
   - Section 106 Users Guide: http://www.achp.gov/usersguide.html
   - PDDM Chapter 3: http://flh.fhwa.dot.gov/resources/manuals/pddm/archives/2008.htm

3. **Section 7 of the Endangered Species Act of 1973.** The Endangered Species Act (ESA), codified in 16 USC § 1531 and implemented in 50 CFR § 402, provides for the conservation of ecosystems upon which threatened and endangered species of fish, wildlife, and plants depend. US Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS), referred to here as the Services, share responsibility for administration of the ESA. Section 7 of the ESA requires Federal agencies to ensure that any action authorized, funded, or carried out by them is not likely to jeopardize the continued existence of listed species or to adversely modify their critical habitat.

If the lead federal agency (or joint lead agencies) finds that the project will have "no effect" on listed species or designated critical habitat, consultation with the Service(s) is not required. If they find that the project "may affect, but not likely to adversely affect" listed species or modify designated critical habitat, they must conduct informal consultation with the appropriate Service(s). The Service(s) must concur with this finding in writing to conclude the informal consultation process. Formal consultation is initiated by the federal lead agency(ies) when a project "may affect, likely to adversely affect" listed species or modify designated critical habitat. At the conclusion of the formal consultation process, the Service(s) will issue a biological opinion.

The Tribe is responsible for ensuring appropriate surveys and reports (a Biological Assessment is required for informal and formal consultation) are completed in compliance with the ESA. Early coordination with the FHWA/BIA Environmental Specialist is recommended to ensure the appropriate level of study and any appropriate consultation by the lead federal agency is undertaken. Also, any reports should be reviewed by the lead federal agency prior to being finalized. The lead federal agency is typically responsible for consultation with the Services on "may affect…" determinations.

Resources:

- FHWA ESA Webtool: http://www.environment.fhwa.dot.gov/esawebtool
- Endangered Species Section 7 Handbook: http://www.nmfs.noaa.gov/pr/pdfs/laws/esa_section7_handbook.pdf

4. Permits.

Acquisition of a number of potential federal, tribal, state, and local permits may be needed before construction of a proposed project can be initiated. Examples include Section 401, 402, and 404 permits of the Clean Water Act, floodplain permit, fish habitat permits, Coastal Zone Management Act permit, US Coast Guard Section 9 permit, etc. The Tribe is responsible for ensuring permit acquisition.

Resources:

- Wetlands and Section 401 Certification Fact Sheet: http://www.epa.gov/owow/wetlands/facts/fact24.html
- NPDES Website: http://cfpub.epa.gov/npdes
- Overview of Section 404 Permitting: http://water.epa.gov/lawsregs/guidance/cwa/dredgdis

VIII. Preliminary Engineering – Project Package

A. Overview. Preliminary Engineering begins after the project has been identified in the Tribe's Long Range Transportation Plan (LRTP) and the FHWA-approved Tribal Transportation Improvement Program (TTIP) (see **Chapter VI - Transportation Planning**).

Preliminary Engineering for a project includes completion of the NEPA document. environmental review, and environmental permits (see **Chapter VII - Preliminary Engineering - NEPA and Other Environmental Requirements**), development of the **project package**, acquisition of right-of-way (see **Chapter IX - Preliminary Engineering - Right-of-Way (ROW)**, and advertisement and procurement of the project's construction contract (see **Chapter X- Procurement, Construction Bid Advertisement and Award**).

The Tribe is responsible for developing and compiling **project packages**. A project package includes all the construction details, provisions, permits, agreements, conditions, and certifications required to administer a construction project. Included in the project package are the **Plans, Specifications, and Estimate (PS&E)**, approved by the Tribe, and any FHWA-approved design exceptions. Approval of design exceptions and ensuring complete project packages are part of BIA's and FHWA's stewardship and oversight responsibilities under the TTP. Additionally, Tribes may request BIA's or FHWA's technical assistance during development of the project package.

B. Plans, Specifications, and Estimate (PS&E). Development of the PS&E includes design of the facility, and may also include performing a topographic and right-of-way (land ownership) survey of the project corridor, geotechnical and hydraulic field reconnaissance and analysis, coordination with utility companies, and acquiring right-of-way. The PS&E is also called the "PS&E package" in 25 CFR Part 170 and the TTPA.

1. **Resources to develop the PS&E.** A Tribe can develop the PS&E in-house, or contract the service out to an engineering consultant, use BIA Direct Services (if available), use a Retained Services Addendum with a BIA G2G Agreement, or use the services of a Federal, State or local agency or governments through a Project Agreement (see **Chapter V – Request for Services and Project Agreements**).

   The TC should provide information to the Tribe to help the Tribe decide which resources are available and appropriate to use for developing the PS&E.

   If the Tribe decides to contract a consultant to develop the PS&E, it is important that the Tribe writes a good Statement of Work (SOW) which defines in detail what the consultant must design and submit to the Tribe, including deliverables, due dates and period of performance. The SOW is written prior to solicitation in hiring a consultant, and becomes an important part of the contract with the consultant. A well written, specific SOW will help save the Tribe time and money.

1. **Mandatory Design Standards.** TTP funded projects are required to follow certain design standards, as directed by 25 CFR § 170.454, and 25 CFR Part 170 Appendix B to Subpart D.

   A list of applicable design standards are:

   - AASHTO Policy on Geometric Design of Highways and Streets.
   - AASHTO A Guide for Transportation Landscape and Environmental Design.
   - AASHTO Roadside Design Guide.
   - AASHTO Guide for Selecting, Locating and Designing Traffic Barriers.

- AASHTO Standard Specifications for Highway Bridges.
- AASHTO Guidelines of Geometric Design of Very Low-Volume Local Roads (ADT less than or equal to 400).
- FHWA Federal Lands Highway, Project Development and Design Manual.
- FHWA Flexibility in Highway Design.
- FHWA Roadside Improvements for Local Road and Streets.
- FHWA Improving Guardrail Installations and Local Roads and Streets.
- 23 CFR part 625, Design Standards for Highways.
- 23 CFR part 630, Preconstruction Procedures.
- 23 CFR part 633, Required Contract Provisions.
- 23 CFR part 635, Construction and Maintenance.
- 23 CFR part 645, Utilities.
- 23 CFR part 646, Railroads.
- 23 U.S.C. 106, PS&E.
- 23 U.S.C. 109, Standards.
- DOT Metric Conversion Plan, October 31, 1991.
- MUTCD Manual of Uniform Traffic Safety Devices.
- Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects.
- FHWA-approved State standards.
- FHWA-approved Tribal design standards.

2. **Conformance with the project scope and the TTIP**. Development of the PS&E for a transportation project should be based on the project scope defined in pre-project planning, and as shown on the FHWA-approved TTIP (see **Chapter VI - Transportation Planning**).

3. **Recommended best practices for project design**. The project design that goes into the PS&E should address these key objectives:

   - Improve safety for all users,
   - Promote project design choices that are consistent with Tribal transportation plan and policies,
   - Compatible with the NEPA analysis, environmental consultations and permits for the project,
   - Provide facility designs that meet the functional and operational goals established by the project purpose and need in the NEPA process,
   - Provide accessibility for people with disabilities,
   - Compatible with other transportation modes, facilities and land uses,
   - Cost effective 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. Before design begins, the Tribe and all stakeholders need to identify and agree on what type of facility is desired and what work will be included in the project. In addition, community values, natural, historic, and cultural resources should be fully considered throughout the design process. The Tribe is responsible for making sure that the key objectives for design, as listed above, are met.

4. **Recommended PS&E design phases.** There is nothing in regulations or law requiring a Tribe to develop the PS&E at intermediate design phases (for example, 30%, 75%), or to submit intermediate PS&Es for review or approval. A Tribe is only required to submit a final PS&E

prior to project construction. However, development of, and review of, a PS&E at certain design phases is a good practice that the TC should encourage Tribes to implement.

A good guideline for development and review submittal of PSE packages is at 30/75/100% design phases, but these should remain flexible and negotiable.

The following are the recommended optional design phases.

a. 30% (Preliminary) Design Phase includes the following:

- Conduct research as necessary to identify existing property boundaries and current ownership of all right of way, and all private, native, native corporation and other lands in the proposed project corridor.
- Prior to performing topographical (ground) survey for the project design, request the utility companies to mark on the ground the locations of their existing utilities, so that the topographical survey can pick up these ground markings, and the locations displayed on the project plans and cross-sections.
- Complete the electronic base mapping and topographic survey files prior to beginning roadway line and grade design. Include in the mapping boundary and ownership information, existing utility locations, and environmental features (wetlands, archeological or historical features, etc.).
- Plan and profile design sheets, typical sections, cross-sections (showing existing ground and proposed roadway, and an approximate construction cost estimate.
- A Design narrative highlighting the significant engineering, right-of-way, geotechnical, hydraulic, utility relocation, and environmental issues.
- Send copies of the plans and cross-sections be sent to the utility companies, showing locations of existing utilities, to make them aware of any conflicts with their facilities.
- An on-site meeting with all project development disciplines, and stakeholders to discuss the progress of the project.
- A completed and signed project NEPA document, addressing the design and other information at this phase.

b. 75% (Plan-in-Hand) Design Phase includes the following:

- Revisions to the 35% Intermediate Design based on review comments, environmental requirements from the project NEPA document, environmental consultations and permits, and new information.
- If the NEPA document for the project is completed and signed at this point, the acquisition of right-of-way can begin, including mapping (platting) of the proposed right-of-way, contact and negotiations with the affected landowners, and purchase of the new right-of-way. Project plans including a cover letter with cross sections are at the 75% design phase should be sent to the utilities companies for their input and coordination. The cover letter should list locations where utilities may need to be relocated due to the proposed project design.
- Design details such as major drainage structures, walls, guardrails, subexcavation, temporary erosion control, intersection layouts, and revegetation.
- Complete set of plans representing a draft of all the plan sheets that will be in the 100% plans. Included are complete detail drawings with dimensions.
- Complete quantity tables for all work, including pay items and the non-pay items (information only items).

- The footprint of the designed cuts and fills, to determine right-of-way acquisition needs and environmental effects needed to apply for permits. Ensure that the designed fill and cut banks, and other design features, fall inside the planned ROW boundary.
- Detailed quantity estimate and project pay item listing, and engineer's estimate for all project pay items.
- Standard and supplemental specifications, including anticipated environmental work windows, work shutdowns, and impacts to public traffic.
- After design revisions are made, check to ensure the designed facility is still within the ROW limits.
- Conduct an on-site "plan-in-hand" field review after the 70% PS&E is completed. The field review should be attended by the Tribe, personnel from the consultant or agency performing the design, the stakeholders (any Federal or state land management agencies and local governments in the project area), and others as appropriate.
- Draft NPDES Stormwater Pollution Prevention Plan.
- Apply for environmental and other required permits (once NEPA documents are approved).
- Brief design narrative highlighting the significant engineering and environmental issues identified to date.

c. 100% (Final) Design Phase includes the following:

- Revisions to the Plan-in-Hand (75%) Design based on review comments, the 70% field review, and the requirements of environmental permits and environmental consultations.
- Detailed project design, plans, cross-sections and engineer's estimate.
- All right-of-way needed for the project should be acquired and certified. Send the 100% (final) set of plans to the utility companies for final resolution of utility relocations. The utility companies, the Tribe and the owner agency (if different than the Tribe) of the road or trail should draft agreements which describe who will be responsible for the utility relocation, estimate of utility relocation cost, the cost share of each party involved, and utility plans approval.
- Conduct a meeting with the project stakeholders to review the final plans. The meeting provides stakeholders an opportunity to insure that their comments on the previous phases of the PS&E have been addressed in this Final PS&E.

C. Design Exceptions. A design exception is any deviation from the approved design standards for a project. The design exception process is addressed by 25 CFR §§ 170.456 and 170.457.

A Tribe should submit design exception requests early on in the development of the PS&E. All design exceptions must be submitted by the Tribe before the licensed civil engineer certifies (seals) the project plans.

For Tribal projects under a BIA TTPA, the Tribe submits a design exception request to the BIA TC. The BIA Region sends the design exception request to BIADOT for information only, and to FHWA Federal Aid Division Office for review and approval. BIA Regional Business plans vary by Region in extent of design exception approval.

For TTP projects under a FHWA TTPA, the Tribe submits request to FHWA TC. The FHWA Program Delivery Manager reviews the design exception and recommends approval/denial to the FHWA Program Director. The Program Director approves or denies the design exception within 30 days of the TC's receipt of the design exception request. If the road with the requested design

exception is under BIA ownership, BIA will review, recommend, and concur with as appropriate, the design exception request.

Design exception requests submitted by a Tribe shall include the following written documentation from a State registered Civil Engineer: supporting data, sketches, details, and justification based on engineering analysis. The form used by FHWA is shown in Appendix C - **Exhibit 8.2 - Highway Design Standards Certification**. BIA Regions may have similar forms that would be appropriate to use.

When deciding whether or not to approve a design exception for a project, BIA or FHWA will consider the following project factors:

- The effect the design exception will have on the project's service and safety benefits;
- Any cost savings created by the design exception;
- The compatibility of the design exception with adjacent features on the project; and
- The effect the design exception will have on the time before reconstruction of the project is necessary due to changed conditions or transportation demands.

Design exceptions may be granted for:

- Experimental features on projects, and
- Projects where conditions warrant that exceptions be made.

The BIA or 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).

D. Review of PS&Es by FHWA and/or BIA. BIA or FHWA do not approve the PS&E. The TC reviews the project package for completeness and only in enough detail to be sufficiently familiar with the project to conduct meaningful construction reviews during and at completion of construction. The TC informs the Tribe whether the project package is complete or not. If not complete, the TC identifies missing components and Tribe resubmits package.

Although the TC does not conduct a detailed review of the project package, if a design deficiency that may jeopardize public health and safety is identified, the TC will discuss the deficiency with the FHWA Program Delivery Manager (for projects under a FHWA TTPA), or with the BIA RRE (for projects under a BIA TTPA), then notify the Tribe of the design deficiency, and request that the Tribe promptly resolve the deficiency.

If a Tribe requests FHWA or the BIA to perform a complete review of a PS&E, the FHWA and BIA reserve the right to decline the request, or establish a way for the Tribe to provide payment for this service through a contract or project agreement with the BIA or FHWA.

E. Preparation and Submittal of the Final Project Package

1. **Tribal certification of the PS&E.** 23 U.S.C. § 202(b)(5) allows an Indian Tribal government to certify (approve) plans, specifications, and estimates (PS&Es). The following requirements must be met by the Tribal government when approving a PS&E.

   - A licensed civil engineer (licensed in the State where the project is located) must certify (seal) on the project plans that the PS&E meets applicable health and safety standards as outlined in 25 CFR § 170.454; and

- 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 to the Assistant Secretary for Indian Affairs, as appropriate. See optional template in Appendix C - **Exhibit 8.1 - PS&E Certification Letter**. Tribes with an FHWA TTPA must also provide a copy of the certification letter to the Federal Lands Highway Associate Administrator.

A Tribe should work directly with their BIA Region if they want the BIA to certify their PS&Es, to ensure the BIA has the available resources.

2. **Submittal of the Final Project Package.** The required content of the final project package to be submitted by the Tribe is described in 25 CFR §§ 170.460 and 170.461. The Tribe shall submit the project package to the TC before the solicitation of the project construction contract or the issuance of a notice to proceed. The TC shall verify that the content of the final project package includes, at a minimum, the following:

- Approved PS&E (Approval means stamped by a professional engineer registered in the state where the project is located.)
- Assurance that the construction will meet or exceed applicable health and safety standards
- A tribal resolution or other authorized document supporting the project.
- Certification of the required right-of-way, easement, or public taking documentation clearances.
- Required environmental, archeological, and cultural clearances.
- FHWA-approved Design Exceptions, if used in the plans.
- **Tribe's Certification on Public Authority Review.** The Tribe must certify in writing to BIADOT or the FHWA Administrator, prior to soliciting bids for a projects, that the Tribe gave the public authority an opportunity for a 30 day review and comment on the PS&E (when the PS&E was between 75% and 95% complete), the Tribe addressed all comments, and the Tribe did not receive any written comments from the public authority that prevent the Tribe from proceeding with the project (see the TTPA - Article III). This is required on those facilities owned or maintained by a public authority other than the Tribe or the BIA. A template of the letter that Tribes may use is shown in Appendix C - **Exhibit 10.1 - Tribe Certification Letter for Soliciting Bids.**

Recommended additional items include:

- A copy of the PS&E certification letter (See Appendix C - **Exhibit 8.1 – PS&E Certification Letter**) by a State-licensed civil engineer that certifies the PS&E meets applicable health and safety standards, as required in 25 CFR § 170.454.
- The PS&E Certification Checklist (See Appendix C - **Exhibit 8.3**)
- Utility agreements.
- If the project includes a facility maintained by a Public Authority other than the BIA or a Tribe, then the Tribe should include an agreement between the public authority 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.

F. PS&E Resources.

- Federal Lands Highway's *"Project Development and Design Manual"* (PDDM) at (http://flh.fhwa.dot.gov/resources/manuals/pddm/archives/2008.htm
- FHWA standard specifications "*U.S. Customary Units version of the Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-03* (FP-03) at http://flh.fhwa.dot.gov/resources/pse/specs/fp-03/
- FLH supplemental specifications at http://www.wfl.fhwa.dot.gov/resources/design/specs/ , or http://www.cflhd.gov/resources/design/constructspecs/scr/
- *A Policy on Geometric Design of Highways and Streets, 6th Edition 2011 AASHTO* (the "Green Book").
- *Guidelines for Geometric Design of Very Low-Volume Roads (ADT ≤ 400), 2001 AASHTO.*
- *AASHTO Roadside Design Guide, 4th Edition, 2011.*
- AASHTO *A Guide for Transportation Landscape and Environmental Design*.
- AASHTO *Guide for Selecting, Locating and Designing Traffic Barriers*, latest edition.
- AASHTO *Standard Specifications for Highway Bridges*, latest edition.
- *Manual on Uniform Traffic Control Devices (MUTCD) 2009 Edition*, DOT, FHWA, 2009 at http://mutcd.fhwa.dot.gov/
- FHWA Utilities Guidelines at http://www.fhwa.dot.gov/realestate/rowutil1.htm
- FHWA Right-Of-Way Guidelines at http://www.fhwa.dot.gov/realestate/index.htm
- WFL Right-Of-Way and Utilities web site at http://www.wfl.fhwa.dot.gov/design/row
- FHWA *Flexibility in Highway Design* at http://www.fhwa.dot.gov/environment/publications/flexibility/flexibility.pdf
- FHWA *Roadside Improvements for Local Roads and Streets* at http://www.fhwa.dot.gov/publications/research/safety/00002/00002.pdf
- 23 CFR § 625, Design Standards for Highways at http://www.fhwa.dot.gov/legsregs/directives/fapg/cfr0625.htm
- 23 CFR § 630, Preconstruction Procedures at http://www.fhwa.dot.gov/legsregs/directives/fapg/cfr0630c.htm
- 23 CFR § 633, Required Contract Provisions at http://www.fhwa.dot.gov/legsregs/directives/fapg/cfr0633a.htm
- 23 CFR § 635, Construction and Maintenance at http://www.fhwa.dot.gov/construction/contracts/930721.cfm

- 23 CFR § 645, Utilities at http://www.fhwa.dot.gov/legsregs/directives/fapg/cfr0645a.htm
- 23 CFR § 646, Railroads at http://www.fhwa.dot.gov/legsregs/directives/fapg/cfr0646a.htm
- 23 U.S.C. § 106, PS&E at http://www.fhwa.dot.gov/map21/docs/title23usc.pdf
- 23 U.S.C. § 109, Standards at http://www.fhwa.dot.gov/map21/docs/title23usc.pdf
- *FHWA Hydraulic Design Series (HDS-5), "Hydraulic Design of Highway Culverts, 3rd Edition"* at http://www.fhwa.dot.gov/engineering/hydraulics/library_arc.cfm?pub_number=7&id=13
- FLH Standard Drawings and Detail Drawings at http://flh.fhwa.dot.gov/resources/pse/standard/ and http://www.wfl.fhwa.dot.gov/resources/design/details/
- Geopak and Microstation information at http://www.wfl.fhwa.dot.gov/resources/cadd/
- BIA or FHWA-approved State standards.

IX. Preliminary Engineering - Right-of-Way (ROW) & Utilities

A. Overview. Preliminary Engineering for a project includes completion of the NEPA document. environmental review, and environmental permits (see **Chapter VII - Preliminary Engineering - NEPA and Other Environmental Requirements**), development of the Plans, Specifications, and Estimates (PS&E) (see **Chapter VIII - Preliminary Engineering – Project Package**), acquisition of right-of-way, utility relocations, and advertisement and procurement of the project's construction contract (see **Chapter X - Procurement, Construction Bid Advertisement and Award**).

B. Acquisition of Right-of-Way (ROW) for projects. "Right-of-way" means real property, and rights therein, that is used for the construction, operation, or maintenance of a transportation or related facility. The public right-of-way must be wide enough and in the proper location for the proposed transportation project. Acquisition of new right-of-way may be necessary.

Right-of-way acquisition can occur only after the project's NEPA document is completed and approved.

Right-of-way must be obtained and certified before construction of a project can begin. The Tribe must include a copy of the Certification of right-of-way clearances as part of the project package submitted by the Tribe, according to 25 CFR §§ 170.460(c). The Tribe must submit this project package to the TC before solicitation of the project construction contract or the issuance of a notice to proceed.

Routine maintenance activities like blading and plowing snow do not require certification of ROW.

Tribes are responsible for acquiring ROW, including cost appraisals and negotiations with landowners, except when a Tribe/Consortium has transferred this responsibility to BIA through a Direct Services MOU, to the BIA through an RSA, or to an agency through a Project Agreement. Also, on projects occurring on transportation facilities owned by the state, county, borough or local agency, the facility owner may be responsible for acquiring right-of-way and utility relocation needed for the project. This will depend on memorandum of understandings or other agreements between the Tribe and the facility owner.

Right-of-way must be obtained and certified before construction of a project can begin. The Tribe must provide a copy of the Certification of right-of-way clearances to the TC (depending on which agency the Tribe is working with) before construction of the project can begin. The TC shall file the copy of the Certification of right-of-way into the Tribe's folder in the agency's TTP database

It is recommended that the Tribe perform the right-of-way research, mapping and acquisition early in the project design phase to allow the project development and construction to proceed efficiently. .

Acquisition of right-of-way or easements may be needed for a proposed project. The need for acquiring permanent right-of-way, as well as temporary or specialized easements for driveway approaches, runoff ditches, utility relocations, etc., typically depends on:

- The width and location of the existing public right-of-way.
- The width and location of the proposed right-of-way needed for the project.
- The types of land ownership that will be affected by acquisition of the proposed project right-of-way.
- Temporary or specialized encroachments that will be needed onto land outside the proposed right-of way.

If right-of-way or easements need to be acquired for the project, then it will be necessary for the Tribe to accomplish the following: plat (map) onto plan sheets the existing and proposed right-of-way and easement limits, perform a cost appraisal of the land or rights to be acquired, negotiate the acquisition

cost and conditions of use with the landowners, and finally acquire the new right-of-way and easements from the landowners.

C. Cost Appraisal Requirement Waiver. Pursuant to 25 CFR § 1, Section 1.2, the Secretary (of the Interior) has the authority to waive or make exceptions to the regulations contained in 25 CFR § 169.12, where the waiver or exception is permitted by law and in the best interest of Indians. The Statutory authority underlying 25 CFR § 169.12 is 25 USC § 325, which provided the "No grant of right of way shall be made without the payment of such compensation as the Secretary (of the Interior) shall determine to be just." The statutory authority permits the Secretary (of the Interior) to exercise his discretion to determine what compensation is just.

1. **Cost Appraisal Requirement Waiver on Trust lands**. A Tribe has a right to waive the consideration of compensation at the fair market value. The Tribe's request for waiver of the consideration must be in the form of a tribal resolution.
2. **Cost Appraisal Requirement Waiver on Allotted Trust lands**. The BIA Solicitor's Office opinion on cost appraisal requirement waivers on Allotted Trust lands is needed on a case-by-case basis.

D. Types of land ownership. It is important for the Tribe to determine the type of all land ownership when attempting to acquire right-of-way from those lands. The type of land ownership determines the roles and responsibilities of the parties involved, and the Federal and State laws and regulations that apply. Although there are many classifications of Tribal and non-Tribal land, the following are the most common:

- **Trust lands -** The Federal government holds legal title, has ultimate control over the land, and holds the land in trust for the use of a Tribe. The Tribe holds the "beneficial use", which is the right to benefit from (live on, use, profit from) a parcel of land, the legal title to which is held by the trustee, in this case the Federal government. Tribal Trust lands are held communally by the Tribe, are managed by the tribal government, and Tribal members share in the enjoyment of the entire property without laying claim to individual parcels. The Tribe may not convey or sell Trust lands without the consent of the Federal government. Tribes may acquire additional land and have it placed in trust, so that it becomes "Trust lands", with the approval of the Federal government.

  "**Allotted Trust lands**" are Trust lands that are held in trust for the use of individual Tribal people (or their heirs). As with Trust lands, the Federal government holds the title, and the individual (or heirs) holds the beneficial interest.

  All ROW actions involving Trust Lands are required to comply with 25 CFR § 169.

- **Off-Reservation Trust lands –** 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.
- **"Fee-to-Trust Conversion" lands –**These are lands that were originally, historically allotted as Tribal Trust lands, but were transferred to fee simple status in the past. Tribes or individual Indians can convert fee lands they own or acquire back to Trust lands status by initiating the "Fee-to-Trust Conversion" process.
- **Fee (or "Fee Simple") lands** - Fee lands are held by any owner, whether Tribal or non-Tribal. The owner may make decisions about land use or sell the land without Government permission, except when the land is inside the boundaries of an Indian Reservation.

- **Fee lands purchased by Tribes -** The Tribe acquires legal title under specific statutory authority. Fee lands owned by a Tribe outside the boundaries of an Indian Reservation are not subject to legal restrictions against alienation or encumbrance, absent any special circumstances.
- **"Fee Restricted" lands –** This is a type of fee lands that a Tribe holds legal title to, but there are specific Government-imposed restrictions on use and/or disposition of the land.
- **Native Allotments and "Townsite" lots –** These exist only in Alaska. Generally, Native Allotments have been acquired by Alaska Natives under the 1906 Native Allotment Act, and townsite lots acquired by Alaska Natives under the 1926 Townsite Act. These are the Acts that specifically include Alaska Natives who were not included in earlier legislation. The Alaska Native Claims Settlement Act (ANCSA) repealed the 1906 Native Allotment Act. Only those Alaska Natives who had applied for their Native Allotment before December 18, 1971, would be considered for receiving Native Allotment land. Many people with Native allotments and/or townsite lots are uncertain what their ownership really means and what limitations and restrictions come as part of that ownership. Natives who acquire allotment land or restricted townsite lots from the government have "restricted" land. Owners of these restricted lands cannot sell, lease, or otherwise convey their land, or inherited interest in the restricted land, without the approval of BIA. Right-of-way acquisition on native allotment lands and restricted townsite lots lands requires processing and approval by BIA.

E. Statutory/Regulatory Requirements.

- Rights of way over Indian lands: 25 CFR § 169 at http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title25/25cfr169_main_02.tpl
- Rights of way over fee lands: 42 U.S.C. § 4601 - Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the "Uniform Act") at http://www.fhwa.dot.gov/real_estate/practitioners/uniform_act/
- Right-of-way clearance must be included in the project package: 25 CFR § 170.460(c).
- 25 CFR § 1 at http://www.bia.gov/cs/groups/mywcsp/documents/document/idc-018737.pdf

F. Compliance with the Uniform Act (42 U.S.C. § 4601). Any right-of-way work involving land acquisition and/or relocation of businesses or people for development of transportation projects must conform to the Uniform Act. Requirements of the Uniform Act provide for fair market value to be paid for real estate, and reimbursements paid for relocating homeowners/tenants and business owners. When acquiring right-of-way, the Uniform Act requires the coordination of any relocation of businesses and families required to build the project. In addition, the management and disposition of residue parcels and surplus right of way should be tracked and coordinated.

Right-of-way work needed to develop a TTP project may also include Federal land transfers, control of outdoor advertising, acquisition of encroachment permits and temporary construction easements, and junkyard control.

G. Roles, Responsibilities and regulations. Tribes/Consortiums are responsible for acquiring ROW, including cost appraisals and negotiations with landowners, and ensuring that utilities are relocated as needed for a project, unless indicated otherwise in the following table, or if a Tribe/Consortium has transferred this responsibility to BIA through a Direct Services MOU, to the BIA through an RSA, or to an agency through a Project Agreement.

The following table outlines the Regulations governing acquisition or ROW on the various land types, and the roles and responsibilities of Federal and State agencies working with the Tribes/Consortiums to accomplish the ROW acquisition.

Land Type / Road Ownership	ROW Acquisition Regulations, and Agency Roles and Responsibilities
Trust Land	All ROW actions involving Trust Lands are required to comply with 25 CFR § 169. **FHWA/BIA:** When a Tribe with an FHWA TTPA is in the early stages of developing a PS&E for a project needing ROW on Trust lands, the FHWA TC needs to provide a list of the National Tribal Transportation Facility Inventory (NTTFI) routes in the project to the BIA Road Engineer and the BIA Realty Office. The BIA Region will develop the grant of easement and provide a copy of it to the FHWA TC. **BIA Regional Office:** Process right-of-way: review right-of-way applications and certifications; approve right-of-way documents; process grants and acquisitions of rights-of-way requests for allocated lands; responding to information requests; file Affidavit of Completion Forms; Perform custodial functions related to storing rights-of-way documents; Conduct ROW appraisal and negotiation; provide Title Status Reports (TSRs), Grants of Easement, and filing ROW documents; reviews and approval. If the Tribes decide to conduct an appraisal without utilizing the Office of the Special Trustee Appraisal Department, they must follow Uniform Standards of Professional Appraisal Practice (USPAP).
Restricted Fee Land	All ROW actions involving fee Lands are required to comply with 42 U.S.C. § 4601 - Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the "Uniform Act"). **FHWA/BIA:** When a Tribe with an FHWA TTPA is in the early stages of developing a PS&E for a project needing ROW on Restricted Fee lands, the FHWA TC needs to provide a list of the National Tribal Transportation Facility Inventory (NTTFI) routes in the project to the BIA Road Engineer and the BIA Realty Office. The BIA Region will develop the grant of easement and provide a copy of it to the FHWA TC. **BIA Regional Office:** Process right-of-way: review right-of-way applications and certifications; approve right-of-way documents; process grants and acquisitions of rights-of-way requests for allocated lands; respond to information requests; file Affidavit of Completion Forms; Perform custodial functions related to storing rights-of-way documents; Conduct ROW appraisal and negotiation; providing Title Status Reports (TSRs), Grants of Easement, and file ROW documents; reviews and approval.

Land Type / Road Ownership	ROW Acquisition Regulations, and Agency Roles and Responsibilities (cont'd.)
Fee Land	All ROW actions involving fee Lands are required to comply with 42 U.S.C. § 4601 - Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the "Uniform Act").
BIA owned transportation facilities	**FHWA/BIA:** The BIA Region will develop the grant of easement and provide a copy of it to the TC, who will provide it to the Tribe. When a Tribe with an FHWA TTPA is in the early stages of developing a PS&E for a project that has BIA owned roads, the FHWA TC needs to provide a list of the National Tribal Transportation Facility Inventory (NTTFI) routes in the project to the BIA Regional Road Engineer and the BIA Realty Office.
State Owned transportation facilities	**State DOT:** The state may be responsible for acquiring right-of-way and utility relocation needed for the project. This will depend on memorandum of understandings or other agreements between the Tribe and the owner of the transportation facility.
County, borough or local agency owned transportation facilities	**County, borough or local agency:** The County, borough or local agency may be responsible for acquiring right-of-way and utility relocation needed for the project. This will depend on memorandum of understandings or other agreements between the Tribe and the owner of the transportation facility.

H. Resources.

- FHWA right-of-way and real estate website at http://www.fhwa.dot.gov/real_estate/
- FHWA Right-Of-Way Acquisition Guidelines located at http://www.fhwa.dot.gov/real_estate/practitioners/uniform_act/acquisition/real_property.cfm
- WFL Right-Of-Way and Utilities web site http://www.wfl.fhwa.dot.gov/design/row
  Chapter 12, Right of Way and Utilities, of the FLH *"Project Development and Design Manual"* (PDDM), at (http://flh.fhwa.dot.gov/resources/manuals/pddm/archives/2008.htm

X. Procurement, Construction Bid Advertisement and Award

A. Construction Contracts. For TTP funded projects, a Tribe may construct the project using a construction contractor, or may construct the project by "force account," also known as "in-house," using its own forces and equipment. The "force account" process is described in greater detail in **Chapter XI - Construction and Construction Engineering.**

The objectives of a Tribe's construction contract advertisement and bidding process are: to provide competition among bidders; to award the contract to the bidder who best meets cost and other criteria contained in the Tribe's Contracting Procedures; and, to provide assurance that the completed project will meet all of the standards specified in the contract.

A contract to perform construction work is between a contractor and the Tribe – not the FHWA, BIA or other agency. The Tribe pays the contractor or consultant directly for successful completion of contracted services.

B. Statutory/Regulatory Requirements.

- Under 25 U.S.C. § 5307(b), Indian organizations and Indian-owned economic enterprises are entitled to a preference, to the greatest extent feasible, in the award of contracts, subcontracts, and sub-grants for all work performed under the TTP Program.
- For projects covered under a Tribe's TTPA, the Tribe must certify in writing to the BIADOT or the FHWA Administrator, prior to soliciting bids for a projects, that the Tribe gave the public authority an opportunity to review and comment on the PS&E, the Tribe addressed any issues, and the Tribe received no written comments from the public authority that prevent the Tribe from proceeding with the project (TTPA - Article III). NOTE: This is required on those facilities owned or maintained by a public authority other than the Tribe or the BIA.
- For projects covered under a Tribe's TTPA, the Tribe agrees to initiate and complete TTP construction projects in accordance with the approved PS&E (TTPA - Article III).
- Procurement requirements in 25 CFR § 170.606 and 2 CFR §§ 200.318 – 200.326.
- TTP construction projects: Competitive bidding is required by Chapter 2 of title 23 USC, Section 202(a)(10), and 2 CFR § 200.319.

C. Guidelines / Procedures.

1. **Procurement.** Each Tribe must have in their files "written" Contracting Procedures that describe how the Tribe makes (a) small purchases; (b) sealed bids; (c) competitive proposals; and (d) non-competitive proposals (see 2 CFR .318(a)), so that the Tribe can perform the contracted programs and projects in accordance with the requirements of 25 CFR Part 170. A Tribe may adopt applicable BIA or FHWA procedures, or develop Tribal procedures which meet or exceed federal standards. These procedures are 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 BIA or FHWA Financial Manager to ensure they meet federal policies and regulations.

2. TTP Transportation Facility Construction Projects.

a. Competitive bidding. Transportation facility construction contracts funded by the TTP require direct recipients or sub-recipients to use bidding methods that ensure effective competition. See 2 CFR § 200.319.

23 USC § 202 Tribal Transportation Program, paragraph (a)(10) COMPETITIVE BIDDING states the following:
"(A) CONSTRUCTION.— (i) IN GENERAL.—Subject to clause (ii) and subparagraph (B), construction of each project shall be performed by contract awarded by competitive bidding.
(ii) EXCEPTION.—Clause (i) shall not apply if the Secretary (of Transportation) or the Secretary of the Interior affirmatively finds that, under the circumstances relating to the project, a different method is in the public interest.
(B) APPLICABILITY.—Notwithstanding subparagraph (A), section 23 of the Act of June 25, 1910 (25 U.S.C. § 47) and section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 5307(b)) shall apply to all funds administered by the Secretary of the Interior that are appropriated for the construction and improvement of tribal transportation facilities."

Example bidding methods may be found in 23 CFR § 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 (2 CFR § 200.323(a)).

b. Other requirements. 25 CFR § 170.606 lists other legislation and procurement requirements that apply to TTP procurement practices. Federal Acquisition Regulation (FAR) clauses are not required in contracts for TTP projects, unless the contract is being advertised and awarded by a Federal agency, or the activities are to be performed by the Secretary of the Interior.

c. Pre-Advertisement Checklist. The Tribe shall submit documentation to the TC showing that all necessary items have been accomplished before advertisement of the project construction contract. The FHWA version is included in Appendix C - **Exhibit 10.2 – TTP Pre-Advertisement Checklist**. The BIA Regions have similar forms.

3. Goods and Services Contracts. Contracts for goods and services (engineering and design) must comply with, and be in accordance with, procurement requirements in 2 CFR §§ 200.318 – 200.326). A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts 2 CFR § 200.323(a).

D. Roles and Responsibilities for Procurement, Construction Bid Advertisement and Award. The following table summarizes the roles and responsibilities of the Tribe, the BIA TC (if BIA is working with the Tribe on a project), the FHWA TC (if the Tribe has a TTPA with FHWA), and others as applicable.

Roles and Responsibilities for Procurement, Construction Bid Advertisement and Award		
Program Activity / Process	**Authority / Reference**	**Responsible Party**
Certification of public authority: Before soliciting bids for the project, the Tribe must certify in writing to BIADOT or the FHWA Administrator that it gave the public authority an opportunity to review and comment on the PS&E, addressed all comments, and received no written comments from the public authority that prevent the Tribe from proceeding with the project. (NOTE: This is required on those facilities owned or maintained by a public authority other than the Tribe or the BIA).	TTPA–Article III.	Tribe (unless this activity has been delegated to an agency through a Project Agreement, to BIA through a Direct Services MOU, or to BIA through an RSA).
Completion of Construction Project: Agreed to complete TTP construction project.	TTPA–Article III.	Tribe (unless this activity has been delegated to an agency through a Project Agreement, to BIA through a Direct Services MOU, or to BIA through an RSA).
Tribe has Documented Contracting Procedures: (for advertising, bidding, awarding and contracting).	2 CFR § 318(a)	Tribe

E. Resources

- Contract Administration Core Curricular Participants' Manual and Reference Guide 2006, located at http://www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm
  This document provides guidance to State DOTs on advertising for bids, bid analysis, and awarding of contracts.
- 2 CFR § 200 at http://www.gpo.gov/fdsys/pkg/FR-2013-12-26/pdf/2013-30465.pdf
- 23 CFR § 635 Subpart A at http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title23/23cfr635_main_02.tpl

XI. Construction and Construction Engineering

A. Overview. **"**Construction" is the building of a project. "Construction Engineering" is the managing and monitoring of the project's construction as it proceeds, including construction inspection.

1. **Construction.** Tribes have the following options for the construction of a project:

   a. **Force Account construction.** The Tribe builds the construction project using employees of the Tribe. This is also known as "in-house" construction. When building a project with this method, the Tribe should complete an independent in-house cost analysis and compare it to the engineers estimate that accompanies the PS&E. This will ensure the fair and reasonableness of the anticipated cost and the accuracy of the engineers estimate.

   Part of the purpose of the Tribal Transportation Program (TTP) is to contribute to "…employment of Indians and Alaska Natives." BIA and FHWA, therefore, encourage Indian and Alaska Native employment in any and all aspects of project construction. The management and monitoring (construction engineering) of the construction work may also be done by qualified employees of the Tribe.

   b. **Contracted construction.** The Tribe contracts out the construction of the project (see **Chapter X - Procurement, Construction Bid Advertisement and Award**).

2. **Construction Engineering.** The Tribe is responsible for ensuring that the construction project is built in substantial conformance with the approved plans, specifications, and engineer's estimate (PS&E), whether the project is being built by a contractor or force account crew.

   The Tribe can accomplish the construction engineering, including construction inspection and project management, by using qualified in-house employees, or by: contracting the service out to an engineering consultant; using BIA Direct Services; or by entering into a Retained Services Addendum; or by using the services of a Federal, State or local agency or governments through a Project Agreement (see **Chapter V – Request for Services and Project Agreements**).

B. Statutory/Regulatory Requirements.

- All TTP project construction and construction engineering is regulated under 25 CFR §§ 170.470 - 170.474.
- For Self-Governance Tribes with the TTP negotiated into a Funding Agreement: 25 CFR § 1000.
- Tribes 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.
- Indian Employment Preference/Tribal Preference/TERO, see 25 CFR §§ 170.910 - 170.917 for further information.

C. Construction Equipment for Force Account Projects.

1. **Purchase Request Process.** With prior approval from FHWA or the BIA, Tribes may purchase construction equipment with TTP funds, to be used for constructing TTP funded projects on the NTTFI with Force Account crews (25 CFR Part 170 Appendix A to Subpart B (b)(49)(i)).

To purchase the equipment with TTP funds, a Tribe must first provide the BIA TC or the FHWA TC with written notice and a written "cost analysis" showing that it is more economical to purchase than lease (25 CFR Part 170 Appendix A to Subpart B (b)(49)(i), and 2 CFR § 200.318(d)). Use the form shown in **Exhibit 12.1 - Equipment Acquisition Request Form** to document the cost analysis. The cost limit shown in Item 3 of this form does not apply to equipment to be purchased for force account construction of a TTP project. A Tribe can then purchase construction equipment with TTP funds only after specific approval is granted in writing by the FLH Director of the Office of Tribal Transportation Program, or delegated official.

2. **Program Income**. Tribes may also use the construction equipment (purchased with TTP funds) for non-TTP related activities as long as appropriate rates are charged the user for the purpose of recovering costs to maintain, replace and operate the construction equipment. Payments or reimbursements collected for the use of this construction equipment are considered restricted program income, and must be used only to maintain, replace and operate the construction equipment.

   This principle would also apply to construction equipment purchased with TTP funds that the Tribe later sells. The income from such sales is considered restricted program income. This does not apply to government equipment donated to the Tribe outside of the TTP Program.

D. Construction Meetings and Reviews

1. **Pre-Construction Conference (also known as a "Construction Kickoff Meeting").** Prior to beginning a construction project, the Tribe should hold a pre-construction conference with the contractor (if project constructed by a contractor), Tribe's project construction manager (if project constructed by force account crew), and the TOSR. The Tribe should invite the TC and other key stakeholders, as appropriate. If available, TC participates to provide technical assistance as requested by Tribe, and ensures sufficient understanding of the project for future construction reviews.

   The purpose of the pre-construction conference is to discuss and review, as applicable, the following:
   - PS&Es
   - Unusual site conditions
   - Contractor's plan and schedule of operation
   - Types and adequacy of equipment
   - Labor requirements
   - Equal employment opportunity requirements
   - TERO
   - Maintenance of traffic and requirements for traffic control
   - Contractor's responsibilities for accident prevention
   - Material sources and testing requirements
   - Subcontracting requirements
   - Required contractor submittals
   - Other pertinent items that would result in a better understanding of the job

   The Tribe should document the meeting, keep minutes, and provide a copy to all key stakeholders whether or not they attended the conference.

2. **Construction Project Review.** These are formal reviews, usually held at the project construction site, with a supplemental meeting as needed at the Tribal and/or construction contractor's field

office for review of project construction documents. The on-site part of the review is required to evaluate project activities and the quality and progress of the project's construction work.

The TC should perform an on-site visit of a Tribal construction project at least once during its construction, or more often as appropriate, such as at critical project milestones. Low cost, non-complex projects may not warrant an on-site visit by the TC at intermediate points in the project construction, but the TC is expected to conduct a final inspection for all TTP funded projects.

The TC will give the Tribe reasonable advance notice of planned attendance at construction project reviews. For projects involving BIA owned facilities, the TC will ensure that the BIA is also invited to attend. Other parties that should attend project construction reviews are the construction contractor, the Tribal On-site Representative (TOSR), the Tribal employee or consultant or government agency personnel serving as construction manager, and other key stakeholders.

The TC will give the Tribe reasonable advance written notice of planned attendance at construction project reviews. For projects involving BIA owned facilities, the TC will ensure that the BIA is also invited to attend.

The TC will not provide direction or instruction to the Tribe's construction contractor or any subcontractor, or Tribal force account crews, at any time during project construction or during the life of the construction contract. If a problem is discovered during an on-site review, The TC will promptly notify the Tribal On-site Representative's (TOSR) and, if asked, provide technical assistance.

If a design exception is discovered during a construction review, and the design exception was not already approved by FHWA, then the Tribe must submit a design exception request for the design exception. The design exception process is described in **Chapter VIII - Preliminary Engineering – Project Package**,

The FHWA TC will complete a Construction **Project Monitoring Checklist** (see **Appendix C - Exhibit 11.1**) during the project site visit and discuss and review it with the TOSR. The BIA TC's should use a similar form, which may vary by BIA Region. The TC will not provide direction or instruction to the Tribe's contractor or subcontractors at any time. If a problem is discovered during an on-site monitoring visit, the TC will promptly notify the TOSR and provide technical assistance if requested by the TOSR. The TC documents any identified issues on the Project Monitoring Report as necessary. The TC shall also complete a trip report, using the format specified by their agency, BIA or FHWA.

The goal of the Project Monitoring Checklist (or BIA equivalent form) is to monitor the key risk areas of a Tribe. The Project Monitoring Checklist (or BIA equivalent form) identifies the items and activities that will be reviewed and documented during each Tribal site visit. The completion of the Project Monitoring Checklist accomplishes the following objectives:

- Develops consistency in our project monitoring reviews, including the areas of project status, workmanship, as well as documentation and record keeping including change orders and continuation of Health and Safety Certifications;
- Helps ensure the Tribe is preparing to generate and submit a project closeout report in accordance with 25 CFR §§ 170.473 and 170.474; and
- Documents a "mini program review" to assess the general health of the Tribe's administration

of the program and inform the annual risk assessment process.

The TC shall also complete a trip report, using the format specified by their agency, BIA or FHWA, and provide a courtesy copy to the Tribe.
The TC files the Project Monitoring Report and Trip Report in the respective Tribe's folder on their agency's TTP server, in the respective tribal folder server.

3. **Final Inspection.** The TC performs a final inspection of the construction project (see 25 CFR § 170.473). The purpose of the final inspection is to determine if a project has been completed in reasonable conformity with the PS&E. To ensure issues are addressed appropriately by the responsible party, the final inspection should occur before the construction contractor is released from project responsibility (or before force account crews are no longer available).

   The TC participates with the TOSR in the final inspection for all FHWA TTP funded projects, at the 95% or within a reasonable time of construction completion.

   Attendees at the final inspection should include appropriate Tribal officials, public authorities who are owners or maintainers of project facilities, project construction contractors and maintenance personnel. For projects under a FHWA TTPA, the appropriate representative from the BIA should always attend the final inspection if there is a BIA owned facility in the project.

   The FHWA TC will complete a Construction **Project Monitoring Checklist** (see **Appendix C - Exhibit 11.1**) in coordination with the TOSR (and also with the BIA representative if the project facility is BIA owned). The BIA TC's should use a similar form, which may vary by BIA Region.

   The TC will promptly notify the TOSR of any issues identified during the final inspection, and provide technical assistance to address the issues, as requested by the TOSR. The TC documents any identified issues on the Project Monitoring Report and completes a Trip Report for the site visit.

E. Construction Management. Construction Management (also called Construction Engineering) is the ongoing managing/monitoring of a project's construction work. . The Tribe is responsible for ensuring that proper construction management of the project takes place throughout the life of the construction project.

The following are recommended Construction Management procedures, regardless of whether the construction project is being built by a construction contractor or by the Tribe's own force account crews. These Construction management procedures should also be used by Tribal employees, consultants or Federal agencies (BIA, FHWA or others) if they are managing or monitoring the construction. The Tribe should establish the Tribal On-site Representative (TOSR) position for each construction project, whether the project is being constructed by Tribal force account crews or by a contractor. The duties of the TOSR are described throughout this chapter.

1. **Construction Project Files.** The TOSR needs to establish and maintain an organized filing system for the construction project files. The construction project files must include the collection of information from the pre-construction stage through the final inspection and project closeout. The construction project files are intended to be used as a record for looking up facts, definitions or other information relating to activities or work performed in a construction project. Information must be collected and stored to serve as a reference or evidential material.

Well organized and complete construction project files are necessary to effectively record construction activities and results, to provide evidence of compliance with laws, regulations, codes, and PS&E requirements, and to evidence that Government funding is being used properly in the project.

Good construction project files will help resolve Contractor disputes and contractual claims. This calls for a detailed and accurate collection and recording of construction information. The documents contained in a file will almost certainly affect the outcome of a dispute. When the construction documents are complete, they are subject to code and legal reviews.

2. **Construction Project Filing System.** The Tribal On-site Representative (TOSR) should establish and maintain a uniform filing system for use in the project's construction field office. The filing setup may be different depending on the option the Tribe chooses in implementing and overseeing the construction project. For example, if the Tribe chooses to have a consultant, BIA, FHWA or another agency perform Construction Management of a project, these entities may have their own tested documentation processes already in place. If the Tribe chooses to perform Construction Management in-house (with the Tribe's own employees), then the Tribe may need technical assistance from the TC on how to document the work taking place on a construction project. Tribes can obtain construction management forms used by FHWA at http://www.wfl.fhwa.dot.gov/resources/construction/forms/contractor-forms.htm. The BIA also has construction management forms, which may vary between BIA Regions.

   Establishing and maintaining this filing system will ensure compliance with 25 CFR § 472, which states that project records have to be maintained properly and be readily available when needed.

   a. **Tribal On-site Representative (TOSR) project file responsibilities.** It is recommended that the TOSR organize and maintain the following project files throughout the life of the project construction activity:

      i. **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.

      ii. **Inspector's Daily Reports.** The project inspector(s) should prepare a daily report that fully documents the construction contractor's (or force account crew'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 construction contractor produced records.

      iii. **Construction Daily Reports.** It is recommended that the TOSR require the construction contractor (or force account crews, if being used) to maintain daily records of equipment, personnel, and construction operations. If required by the contract, the construction contractor's daily reports should be contractually required to be furnished to the TOSR within 24 hours following the reporting period.

      iv. **Records of payrolls, material certifications, test reports, and other routine items.** Prior to beginning work on a construction project, the construction contractor (or the project manager of force account construction) should begin submitting documentation to the TOSR for materials that are intended for use on the project.

Records of all construction contractor's submittals, or force account work records, should be maintained by the TOSR through the duration of the project.

b. Basic guidelines of construction project documentation. Below are some suggested basic guidelines for good documentation.

i. Guidelines for Data Entry

- **Signature and Initials logs.** These list the printed name, title, and the written signature and initials used by each person who is authorized to make or authenticate entries, and is 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. 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.

ii. 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.

iii. 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.
  - 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.

3. **Construction Inspection.** An important part of Construction Engineering is performing on-site construction inspection throughout the life of the construction project. Construction inspection is necessary for the on-going evaluation of project activities and the quality and progress of the construction work.

   The Tribe is responsible for ensuring that adequate construction inspection occurs throughout the life of the construction project. Construction inspection should be performed by competent, technically qualified, and experienced inspectors.

Tribes can obtain construction inspection forms used by FHWA at http://www.wfl.fhwa.dot.gov/resources/construction/forms/contractor-forms.htm. BIA also has construction management forms, which may vary between BIA Regions.
Construction inspection includes the following activities.

a. Quality Assurance/Quality Control (QA/QC) must be performed on all projects. The TOSR should oversee the activities of the construction contractor and monitor their work to ensure compliance with the project PS&E.

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

- Confirming that construction contractor sampling/testing is performed in accordance with the sampling/testing frequencies stipulated in the contract and project specifications.
- Ensuring that the construction contractor's testing company maintains properly calibrated equipment and qualified personnel to perform the required work.
- 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.
- Receiving and maintaining materials certifications for all manufactured/non-tested materials incorporated into the project.
- 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 contactor is performing to verify the construction contractor's results. The construction contractor's testing is for quality control and should be reviewed and overseen by the Tribe or their agent.

c. 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.

d. Sediment and Erosion Control Inspections. The TOSR should ensure that the construction contractor provides permanent and temporary erosion control measures in accordance with the approved erosion control plan, 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. Some permits required for construction may specify certain inspection, monitoring, and reporting requirements. It is the Tribe's responsibility to ensure that these permit requirements are met.

e. 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. Construction 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. An example of a Traffic Control Report (see link below) for these inspections that may be modified to meet project requirements is located at
http://www.wfl.fhwa.dot.gov/resources/construction/forms/contractor-forms.htm

A Safety Checklist (see **Exhibit 11.2 – 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 construction 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, a BIA or FHWA representative may be available to take part in the safety review, as resources allow.

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

4. **The Construction Schedule.** If specified in the construction contract, a construction contractor must submit a construction schedule to the TOSR. This construction schedule represents the sequence in which the construction contractor plans to perform the contract work. The TOSR should review the schedule and work with the construction 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. It is recommended that a construction schedule should also be prepared by the Tribe (or consultant/Federal agency used by the Tribe) for projects being constructed with Tribal force account crews.

5. **Progress Payments.** The payment and invoice process, as well as the construction contractor's obligations, should be emphasized at the preconstruction conference. The construction 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.

6. **Contract Modifications (also called Change Orders).** The Tribe is responsible for ensuring that construction engineering on Tribally-approved change orders is performed according to applicable FHWA, BIA, or Tribal standards that meet or exceed federal standards.

   Only the Professional Engineer of record may change a TTP project's PS&E during construction. This requirement applies regardless of whether the project is being built by a construction contractor or by Tribal force account crews. 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.

7. **Project Progress Meetings.** The TOSR should hold regularly scheduled meetings with the construction contractor's superintendent or representative to discuss the construction 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.

8. **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.

9. **Final Acceptance of the Project, the Project Closeout Report, and Closeout of the Project.** After the final inspection has been completed, the following actions are needed before the project can be closed out.

   a. **Final Acceptance of the project.** After the final inspection is documented and any issues completed, and documentation which supports all activities of the project is completed, the facility owner makes final acceptance of the project. The Tribe develops a Letter of Acceptance addressed to the construction contractor (See Appendix C - **Exhibit 11.3– Final Letter of Acceptance**). In addition, for a BIA owned facility, the BIA will write a Letter of Acceptance to the Tribe, with a copy to FHWA if the project is under an FHWA TTPA (see Appendix C - **Exhibit 11.4 – Final Letter of Acceptance for BIA Owned Facility**). For a facility owned by a city, county, borough or others, a similar Letter of Acceptance document from the facility owner needs to be obtained by the Tribe. The Letter of Acceptance is a formal acceptance document in which the Tribe, the BIA (if BIA owns the facility), or other owners of the facility accept and acknowledges that the project has been developed as requested or in accordance with the contract document. This releases the construction contractor of any further responsibilities of the project.

      The Tribe provides the Letter of Acceptance to the construction contractor, and provides copies to the facility owner and the TC.

   b. **Project Closeout Report** (25 CFR §§ 170 473 and 170.474)**.** The Tribe submits a final project closeout report to the TC and the facility owner. The report is submitted after completion of the final inspection and any required construction corrections, and within 120 calendar days (4-months) of the final acceptance of the project by the Tribe and the facility owner. The closeout documents and report are typically generated by the Tribe's TOSR.

      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 final project closeout report shall include:

      - A summary of the construction project records to ensure compliance requirement have been met,
      - A review of the bid item quantities and expenditures to ensure reasonable conformance with the PS&E and contract modifications,
      - A listing of the construction and construction engineering funds expended to date for the project
      - Final as-built plans (as-built drawings),
      - Photographs,
      - Change orders,
      - Final Inspection report,
      - Letter of Acceptance.

      Project information made available during final inspection per 25 CFR §§ 170.472-474 can also be used to develop the project closeout report.

      Once the project is complete, the Tribe must update the National Tribal Transportation Facility Inventory to reflect any changes, and submit cost to construct detail sheets to BIADOT.

The TC ensures final close out report is complete and files it in the respective Tribe's folder on their agency's TTP server, in the respective tribal folder server.

c. **Project Closeout.** The Tribe is responsible for ensuring, and the TC is responsible for verifying, that the following items are completed:

- 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 construction 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 showing 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.

F. **Roles and Responsibilities for Construction and Construction Engineering.** The following table summarizes the roles and responsibilities of the BIA TC (if BIA is working with the Tribe on a project), the FHWA TC (if FHWA is working with the Tribe on a project), the Tribe and others as applicable.

Roles and Responsibilities for Construction and Construction Engineering		
Program Activity / Process	**Authority / Reference**	**Responsible Party**
Ensure the project is constructed according to the plans, specifications and estimates (PS&E)	25 CFR §§ 170.470-474	Tribe (unless this activity has been delegated to an agency through a Project Agreement, to BIA through a Direct Services MOU, or to BIA through an RSA).
Project construction documentation: Ensure it is current and complete.	25 CFR § 170.472	
Facility Owner and Project Acceptance: It is expected that the facility owner was informed of any issues during construction; the Tribe should request an "Acceptance" written document or letter for the project.	25 CFR § 170.473	Tribe and Facility Owner

Roles and Responsibilities for Construction and Construction Engineering (cont'd.)		
Program Activity / Process	**Authority / Reference**	**Responsible Party**
Tribal Project Acceptance: Provide "Letter of Acceptance" to contractor if project is accepted; provide a copy to the TC. The TC will keep and file a copy of the acceptance letter in the Tribe folder on the agency's TTP database.	25 CFR § 170.473	Tribe (unless this activity has been delegated to an agency through a Project Agreement, to BIA through a Direct Services MOU, or to BIA through an RSA).
Project closeout report: Tribe finalizes project paperwork. Tribe provides a final project closeout report to the TC, and to the facility owner (or to the BIA if BIA is the facility owner).	25 CFR § 170.473	

G. Resources.

- FHWA Construction website at http://www.fhwa.dot.gov/construction/
- FLH Construction Manual at http://flh.fhwa.dot.gov/resources/manuals/cm/

XII. Maintenance of Transportation Facilities

A. Overview: Maintenance is any action required to preserve and maintain a current transportation facility within its right-of-way, so that the facility may be used safely and effectively for its designated purpose. The main categories of maintenance are listed here:

- **Preventive Maintenance** includes regularly scheduled inspections, and minor repairs.
- **Scheduled Maintenance** is planned, and results from preventive maintenance inspections.
- **Unscheduled Maintenance** is immediate action needed to correct unexpected occurrences which impact safety and efficiency of operations.
- **Normal Maintenance** is the planned, recurring day-to-day care of the facility.

The intent of maintenance is to bring a current facility as close as possible to its original condition, when it was first constructed or improved. The amount of necessary maintenance performed depends primarily on the level of funding provided. Unfortunately, all government funding is decreasing, not only for State and Local agencies but also for the Tribal Transportation Program, which has historically been Federally funded at less than 55% of typical local agency levels.

Available maintenance funding can be used most effectively by accurately identifying the Tribe's maintenance needs, and then prioritizing those maintenance needs to fit the available funding. Maintenance is one of the key building blocks of an effective Asset Management program required for public agencies by the FAST Act.

Transportation facilities and assets include travelways with approaches, parking facilities, drainage structures, roadside slopes, sidewalks, pathways, rest areas and visitor centers, traffic control devices, transit vehicles and road maintenance equipment.

Public safety and the safety of maintenance employees must also be a high priority when carrying out maintenance, whether it is routine scheduled maintenance or unscheduled emergency response maintenance. It is essential to plan, budget and carry out safety measures in the maintenance work zone for the safety of the public and employees.

B. Types of Tribal Maintenance Funding. There are two types of federal funds available to Tribes for Tribal transportation facility maintenance:

1. **TTP funding**. This is funding from a Tribe's annual TTP funds (received as tribal shares) that the Tribe uses for transportation facility maintenance. TTP funds can be used for maintenance only on facilities identified in the National Tribal Transportation Facility Inventory (NTTFI).

2. **BIA Transportation Facility Maintenance Program**. This is funding in addition to the Tribes' TTP funds. Congress provides this separate funding for the BIA Transportation Facility Maintenance Program in the annual Department of the Interior appropriations acts. Tribes may use these funds for maintaining BIA Road System and BIA transportation facilities, and also other facilities identified in the National Tribal Transportation Facility Inventory (NTTFI) if permitted by the BIA on a case-by-case basis.

C. Relationship of Maintenance activities to ERFO repairs. Serious damage by a natural disaster over a wide area, or by a catastrophic failure, can possibly be reimbursed from the Emergency Relief for Federally Owned (ERFO) program. A Tribe's road maintenance program may perform repairs to restore essential traffic, protect remaining facilities and prevent additional damages. See Emergency Relief for Federally Owned (ERFO) in **Chapter XV - Other Federal Transportation Grants and Programs.**

D. Statutory / Regulatory Requirements.

- TTP funds may be used for maintenance in accordance with 23 U.S.C. § 202(a), 25 CFR §§ 170.111-112 and 170.805, and 25 CFR Part 170 Appendix to Subpart G.
- TTP road maintenance requirements are in 25 CFR §§ 170.800 - 170.805.
- TTP funds can be used for the maintenance of TTP facilities identified in the National Tribal Transportation Facility Inventory (NTTFI) (25 CFR § 170.800(b)).
- TTP road maintenance standards according to 25 CFR § 170.803.
- According to 23 U.S.C. § 202(a)(8) and 25 CFR § 170.800(a), not more than 25 percent of the TTP funds allocated to a Tribe or $500,000, whichever is greater, may be expended for the purpose of maintenance, including purchase of maintenance equipment. Road sealing is not subject to this limitation.
- BIA Transportation Facility Maintenance Program in 25 FR 170.800(d).
- 25 CFR § 170.802 authorizes a Tribe to perform tribal transportation facility maintenance.

E. Guidelines / Procedures

1. **Tribal responsibility.** The Tribe is responsible for identifying cost-effective maintenance actions that will extend the service life of their transportation system. The TC is available for technical support in this process.

2. **TTIP.** Maintenance should be included on the FHWA-approved TTIP, if using TTP funds, before funds are expended.

3. **Maintenance activities eligible for TTP funding.** TTP funding can be used for the following list of activities, on facilities identified in the NTTFI. The list is not all-inclusive:

   - Cleaning and repairing ditches and culverts.
   - Stabilizing, removing, and controlling slides, drift sand, mud, ice, snow, and other impediments.
   - Adding additional culverts to prevent roadway and adjoining property damage.
   - Repairing, replacing or installing traffic control devices, guardrails and other features necessary to control traffic and protect the road and the traveling public.
   - Removing roadway hazards.
   - Repairing or developing stable road embankments.
   - Repairing parking facilities and appurtenances such as striping, lights, curbs, etc.
   - Repairing transit facilities and appurtenances such as bus shelters, striping, sidewalks, etc.
   - Training maintenance personnel.
   - Administering the BIA transportation facility maintenance program.
   - Performing environmental/archeological mitigation associated with transportation facility maintenance.
   - Leasing, renting, or purchasing of maintenance equipment.
   - Paying utilities cost for roadway lighting and traffic signals.

- Purchasing maintenance materials.
- Developing, implementing, and maintaining a BIA Transportation Facility Maintenance Management System (TFMMS).
- Performing pavement maintenance such as pot hole patching, crack sealing, chip sealing, surface rejuvenation, and thin overlays (less than 1 inch).
- Performing erosion control.
- Controlling roadway dust.
- Re-graveling roads.
- Controlling vegetation through mowing, noxious weed control, trimming, etc.
- Making bridge repairs.
- Paying the cost of closing of transportation facilities due to safety or other concerns.
- Maintaining airport runways, heliport pads, and their public access roads.
- Maintaining and operating BIA public ferry boats.
- Making highway alignment changes for safety reasons. These changes require prior notice to the Secretary.
- Making temporary highway alignment or relocation changes for emergency reasons.
- Maintaining other TTP intermodal transportation facilities provided that there is a properly executed agreement with the owning public authority within available funding.

4. **Maintenance Standards** (see 25 CFR § 170.803). Subject to availability of funding, TTP transportation facilities must be maintained in accordance with an applicable standard that meets or exceeds any of the following:

- Appropriate National Association of County Engineers maintenance standards;
- AASHTO road and bridge maintenance manuals, latest edition; or
- Another tribal, Federal, State, or local government maintenance standard negotiated in an ISDEAA road maintenance self- determination contract or self-governance agreement.

5. **Maintenance Equipment.**

a. **Purchase Request Process.** With prior approval from FHWA or the BIA, Tribes may purchase maintenance equipment with TTP funds, to be used for performing TTP funded maintenance on transportation facilities on the NTTFI. To purchase the equipment with TTP funds, a Tribe must first provide the BIA TC or the FHWA TC with written notice and a written "cost analysis" showing that it is more economical to purchase than lease (25 CFR Part 170 Appendix A to Subpart B (b)(49), and 2 CFR § 200.318(d)). Use the form shown in **Exhibit 12.1 - Equipment Acquisition Request Form** to document the cost analysis. A Tribe cannot purchase maintenance equipment with TTP funds unless specific approval is granted by the FLH Director of the Office of Tribal Transportation Program, or delegated official. If the maintenance equipment purchase is approved, then the Tribe needs to show the approved cost of the maintenance equipment purchase separately on the Tribe's TTIP. This may require the Tribe to update or amend its TTIP, and submit the updated/amended TTIP to FHWA or BIA for approval according to **Chapter VI - Transportation Planning**.

The cost of the purchase needs to be less than the Tribe's total TTP maintenance spending limit, which is not more than 25 percent of the TTP funds allocated to a Tribe or $500,000, whichever is greater (23 U.S.C. § 202(a)(8) and 25 CFR § 170.800(a)).

b. **Program Income.** Tribes may also use the maintenance equipment (purchased with TTP funds) for non-TTP related activities as long as appropriate rates are charged the user for the purpose of recovering costs to maintain, replace and operate the maintenance equipment.

Payments or reimbursements collected for the use of this maintenance equipment are considered restricted program income, and must be used only to maintain, replace and operate the maintenance equipment.

This principle would also apply to maintenance equipment purchased with TTP funds that the Tribe later sells. The income from such sales is considered restricted program income. This does not apply to government equipment donated to the Tribe outside of the TTP Program.

F. 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 and operations manuals.
- Maintenance related publications of the Transportation Research Board (TRB) and other international Transportation Organization located on the internet.

XIII. Tribal Transportation Program (TTP) - Bridge Program

A. Overview. The Tribal Transportation Facility Bridge Program (TTFBP) is a nationwide priority program for improving structurally deficient and functionally obsolete TTP bridges. Funds provided to Tribes from the TTFBP, also called the TTP Bridge Program, can be used by a Tribe 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 de-icing compositions, or install scour countermeasures for structurally deficient or functionally obsolete TTP bridges, including multiple pipe culverts. If a Tribe has a TTPA with FHWA or the BIA, the approved TTP Bridge Program funds are transferred to a Tribe through a Referenced Funding Agreement (RFA).

The TTP Bridge Program website is at http://flh.fhwa.dot.gov/programs/ttp/bridges/ttbp.htm

B. 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.

- ***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.

- ***Tribal transportation facility*** means a public highway, road, bridge, trail, or transit system that is located on or provides access to tribal land and appears on the National Tribal Transportation Facility Inventory described in 23 U.S.C.

- ***Tribal Transportation Program (TTP) bridge*** means a structure located on a designated tribal transportation facility, 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.

C. Statutory/Regulatory Requirements.

- The FAST Act authorized almost $14 million in FY 2017 (and more in later years) of distinct and separate funds for the replacement or rehabilitation of structurally deficient or functionally obsolete bridges.

- The Tribal Transportation Facility Bridge Program is authorized and defined under 23 U.S.C. § 202(d) and set forth in 23 CFR § 661.

- 23 CFR § 661- Tribal Transportation Program (TTP) - Bridge Program at http://www.gpo.gov/fdsys/pkg/CFR-2011-title23-vol1/pdf/CFR-2011-title23-vol1-part661.pdf

D. Guidelines/Procedures.

1. **Eligible activities for TTP Bridge Program funds (23 CFR § 661.15).** TTP Bridge Program funds can be used by Tribes for the following activities:

   a. Planning, design, engineering, preconstruction, construction, and inspection of a project to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and deicing composition.

   b. Implement any countermeasure for deficient TTP bridges, including multiple-pipe culverts.

   c. Demolish the old bridge that is being replaced by a new bridge under the TTP Bridge Program.

2. **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 classified as a tribal transportation facility.
      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.

3. **Funding limitations on an individual TTP bridge project (23 CFR § 661.37):**

   a. BIA and Tribally owned TTP bridges are eligible for 100 percent TTP Bridge Program funding, with a $150,000 maximum limit for PE.

   b. Non-BIA owned TTP bridges are eligible for up to 80 percent TTP Bridge Program 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. TTP Program construction funds received by a Tribe may be used as the local match.

   c. Requests for additional funds above the referenced funding limitations 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: (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.

   e. An existing bridge must have a sufficiency rating of less than or equal to 80 to be eligible for rehabilitation, and a sufficiency rating of less than 50 to be eligible for replacement.

   f. Funding for successful TTP bridge applications will be distributed on a quarterly basis.

4. **Roles and Responsibilities for Submitting the Application Package.** Any time during the year a Tribe may prepare and submit to their TC an application package to request funding for bridge preliminary engineering (see 23 CFR § 661.25) or bridge construction (see 23 CFR § 661.27). The TC will assist the Tribe in preparing the application package, review the Tribe's submittal and resolve any issues with the Tribe.

   If the Tribe is working with BIA on the application, then the BIA TC will then submit the completed bridge application package to their Regional Director, before submitting the application package to the TTP Bridge Program Coordinator at FHWA-FLH Headquarters. If the Tribe is working with FHWA, then the FHWA TC will submit it directly to the TTP Bridge Program Coordinator at FHWA-FLH Headquarters.

5. **Application Package for Preliminary Engineering Funding.** The application package should contain the following:

   - TTP Bridge Program Certification Checklist (see Appendix C - **Exhibit 13.2**).
   - An FHWA-approved TTP bridge TIP with the candidate project shown thereon.
   - A detailed Project scope of work (SOW).
   - Detailed cost itemization for PE tasks.
   - Structure Inventory and Appraisal (SI&A) sheet (see Appendix C - **Exhibit 13.1**).
   - If Preliminary Engineering funds are being applied for to replace an existing structure that is only eligible for rehabilitation due to its Sufficiency Rating, a Life Cycle Cost Analysis (LCCA) must be submitted with the application showing that it is more cost effective to replace the structure than to rehabilitate it.

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

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

6. **Application Package for Construction funding.** A candidate bridge rehabilitation or replacement project must be "shovel ready"; i.e., ready for solicitation of bids. All environmental and archeological clearances (approved NEPA document) and complete grants of public rights-of-way must be acquired prior to submittal of the construction application package.

   A complete application package for construction of such a project will consist of the following documents:

   - An approved PS&E, with Professional Engineer (PE) stamp and signature. The PE must be registered in the same state as the project.
   - TTP Bridge Program Certification Checklist (see **Exhibit 13.2**).
   - Structure Inventory and Appraised (SI&A) sheet (see **Exhibit 13.1**).
   - An FHWA-approved TTP bridge TIP with the candidate project shown thereon.

   NOTE: For **non-BIA TTP 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.

   If timely construction of a bridge project is required prior to availability of bridge program funds, other sources of funds (such as the Tribe's TTP Tribal shares, local funds, etc.) may be used for the project and an application submitted for reimbursement of those funds up to the prescribed funding limitations. Such an application MUST be submitted prior to completion of construction of the aforementioned bridge project for the project to be considered eligible.

7. **Project Application Review and Selection Process.** The TTP Bridge Program Coordinator at FHWA-FLH Headquarters will review only complete TTP bridge project application packages and place eligible projects in a queue based upon the ranking factors.

   Incomplete application packages will not be eligible and will be returned to the TC, along with a notation providing the reason for return. The TC will provide technical assistance to the Tribe to help the Tribe correct and resubmit the application package.

   Funding for the approved eligible projects in the queue will be made available to the Tribe based upon their ranking until all the TTP Bridge Program funds are exhausted. Projects not funded due to unavailability of funds will remain in the queue for potential funding from future TTP Bridge Program funding appropriations.

8. **Bridge Inspection:**

   a. **Tribally Owned Bridges.** Tribes shall follow the following procedure:

      i. The Tribe hires a consultant to perform the bridge inspection.
      ii. The Tribe provides to the FHWA Office of Federal Lands Highway (FLH) the 432 character text file of the bridge inspected.

iii. FLH will forward the data to the Federal Lands Bridge Office (FLBO) to review the text file.
iv. 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).

b. BIA Owned Bridges. Tribes shall follow the following procedure:

i. The Tribe hires a consultant to perform the bridge inspection.
ii. The Tribe provides to the FHWA Office of Federal Lands Highway (FLH) the bridge inspection report using BIA's pre-filled inspection report form and the 432 character text file of the bridge.
iii. FLH will forward the data to the Federal Lands Bridge Office (FLBO) to review the inspection report and the text file.
iv. 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).
v. BIA will submit the data to FHWA Office of Bridge Technology and the bridge is recorded in the FHWA NBI.

XIV. Safety Programs

A. Overview. Every year, more than 30,000 motorists die[1] 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.[2] Motor vehicle crashes are the leading cause of death for Native Americans ages 4 to 44. Beyond motor vehicle deaths, other transportation modes such as maritime travel or snow machine use contribute significantly to the transportation safety problem in many tribal communities.

This chapter has two main sections: Section **B - Tools and Resources** contains a number of proven safety strategies; and, Section **C - Safety Funding Programs** provides an overview of available funding programs.

B. Tools and Resources available to Tribes. Tribes use **s**everal successful safety tools and resources to evaluate and address their transportation safety issues. The following is a brief description of the available tools and resources.

1. Transportation Safety Plans

Tribal Transportation Safety Plans are a tool intended to identify and address transportation risk factors within a geographical area that have the potential of leading to serious injury or death. Safety Plans also organize the efforts of a variety of entities to more effectively reduce risk. Safety Plans can cover multiple transportation modes (roads, maritime, trails, air travel, and others). Safety plans may lead to implementation of a project or program, renewed efforts in an existing program, or further study of a roadway section (such as an engineering study or Road Safety Audit).

A Safety Plan should not be developed with a focus on one particular funding source. Rather, a plan should demonstrate the safety concerns in a community and the strategies that could effectively address those concerns. To the greatest extent possible the concerns demonstrated by a safety plan should be selected based on incident history (data). This allows funding entities to understand the needs and may even compel the funding of the community's needs.

The following six step process is one method Tribes can use to develop a comprehensive and strategic Tribal Transportation Safety Plan.

---

[1] Source: NHTSA Fatality Analysis Reporting System, http://www-fars.nhtsa.dot.gov/Main/index.aspx
[2] Fatal Motor Vehicle Crashes on Indian Reservation 1975-2002 NCSA, April 2004

Step 1. Identify the Author

The plan author needs to have the ability to obtain the participation of a wide array of safety partners, assign tasks, and document the outcomes. In many situations the author of a Transportation Safety Plan may be the Tribe's Transportation Director. In some cases a private consultant, the Tribal Technical Assistance Program, or a federal agency may act as a co-author.

Step 2. Identify Safety Partners

Approaching safety using a collaborative approach across many disciplines is proven as an effective strategy for safety planning. Some initial safety partnerships to consider are with administration (such as Tribal Council), enforcement, emergency medical services (fire, search and rescue, clinics), educators, behavioral specialists, engineers, planners, community special interest groups, and in some cases the public. Where appropriate, partnerships should seek to include the Tribe, City, County, Borough, State, and/or federal agencies. When making initial contact on the topic of developing safety plans, the following topics may be discussed:

- Is the partner interested in a comprehensive transportation safety plan?
- What data sources does the partner know about or maintain?
- Are there additional agencies that this partner would recommend which you have not identified?
- Would this partner commit to attending a community safety summit?

Step 3. Public Involvement

Public Input can be a critical element of identifying safety needs. Often the traveling public can point to near misses or unreported incidents that would never show up in traditional data sets. Public input is an especially critical tool in communities where formal data sets are known to be incomplete or missing.

Step 4. Data Collection and Summarization

Communities that have successfully used transportation safety plans in the past usually point to data based decision making as the key to success. Preparing a summary of the available data prior to a safety planning meeting with the partners allows the summit to be fact based more than opinion based. A summary of incident data should consider both behavioral factors (speeding, impairment, age, etc.) and tangible factors (location, road feature, weather conditions, crash type, etc.)

Incident data always exists. In some communities incident data may look very different than in others. Some potential sources of incident data include:

- Formal police crash reports or incident reports
- Ambulance run reports, clinic records, or search & rescue logs
- City/county/borough complaint registers
- Public input

Step 5. Safety Planning Forum

A Safety Planning Forum gives identified partners a chance to collaboratively develop a safety plan. The forum should include the following topics:

- Review Existing Efforts
- Summary of Available Data
- Identify top risks

- Assign champion to each top risk. Task champion with researching countermeasures and leading implementation.
- Discuss the establishment of a regular safety management system committee to discuss progress and update the plan as needed.

Step 6. Writing the Safety Plan

The final safety plan document should include a summary of the safety plan development process used, a list of the top risks identified and priority initiatives to address the top risks. The document length should be between 2 to 4 pages plus addendums. The following is a sample outline of topics that may be included in the safety plan.

A. Introduction describing the intent of the plan
B. List of partners
C. Brief summary of data analysis
D. Existing Activities
E. Top Risk Areas (a.k.a. Emphasis Areas)
    a. Description of Risk
    b. Strategies to address risk
    c. Safety Champion overseeing implementation
    d. Next step(s) in implementation

References and Resources

- FHWA-FLH website for the Tribal Transportation Program Safety Funds (TTPSF), http://flh.fhwa.dot.gov/programs/ttp/safety/
- Developing a Transportation Safety Plan, Planning Modules for Tribes, FHWA Office of Planning, http://www.fhwa.dot.gov/planning/processes/tribal/planning_modules/safety/summary.cfm
- Toolkit to help Tribes develop Strategic Transportation Safety Plans, http://flh.fhwa.dot.gov/programs/ttp/safety/stsp-toolkit.htm
- Developing Safety Plans – A Manual for Local Rural Road Owners, FHWA, March 2012, http://safety.fhwa.dot.gov/local_rural/training/fhwasa12017/
- TTAP Centers, http://www.ltap.org/centers/

2. Road Safety Audits or Reviews (RSA/RSARs)

a. Overview. A Road Safety Audit is a formal evaluation of a roadway section by an independent, multi-disciplinary team to identify specific recommendations for a section of roadway. The RSA team should be independent from everyday operations of the facility being studied to avoid biases. The most effective RSA teams will consist of a variety of professional disciplines, including engineering, enforcement, and emergency medical services. An RSA team identifies risks using many different information sources such as crash data, maintenance logs, interviews of roadway authorities, public testimony, and multiple field observations before making recommendations. Many Tribal Governments have utilized the RSA program to assist them in determining roadway deficiencies, maintenance issues and to help in the planning for future work and needs. Assistance in coordinating and setting up an RSA is available from the TTAP Centers, Federal Lands, and consultants, and may be available through the state department of transportation.

b. References and Resources

- FHWA Office of Safety - RSA webpage, http://safety.fhwa.dot.gov/rsa/
- Road Safety Audits Peer to Peer Program, http://safety.fhwa.dot.gov/rsa/resources/p2p/brochure/
- Road Safety Audits video, http://safety.fhwa.dot.gov/rsa/video2009/
- Federal and Tribal Lands Road Safety Audits: Case Studies, http://safety.fhwa.dot.gov/rsa/resources/casestudiesflh/

3. Traffic Engineering Safety Study

When a safety problem is known to be related to the engineering of a facility, a traffic engineering safety study may be effective. An engineering study involves an in depth review of a facility by a tribal, municipal, or private engineer with knowledge of traffic engineering to determine roadway features that are contributing to poor safety performance on a facility. Engineering studies may include a review of items such as sight distance, traffic control device operation and placement, posted speed limits, or roadway alignment.

4. Safety Data Collection

A key component to effective transportation safety efforts is an incident database. The first step to improving transportation safety in your community may be the establishment of incident databases or developing partnerships with agencies that are already collecting data (such as the State DOT).

5. Sign Maintenance and Nighttime Visibility Assessments (Retroreflectivity)

a. Overview. About half of traffic fatalities occur at night, although only about one quarter of travel occurs after dark. Although intoxication and fatigue contribute to the high rate of nighttime crashes, nighttime driving is inherently hazardous because of decreased driver visibility.

Adequately maintained retroreflective signs and pavement markings improve highway safety and prevent roadway departure crashes by making the signs and markings appear brighter and easier to see and read. Because the retroreflective properties of traffic control devices deteriorate over time, highway agencies need to actively manage the maintenance of signs and pavement markings in order to ensure that they are clearly visible at night.

Roadway lighting is another means to increase visibility for drivers and other roadway users. Properly designed roadway lighting allows road users to quickly assess roadway conditions and creates a safe environment within the roadway vicinity.

More information is available on the FHWA retroreflectivity links below in the areas of:

- **Regulations / Standards**
- **Technical Guidance**
- **Implementation Tools**
- **Frequently Asked Questions**
- **Funding Assistance**
- **Research**

The current edition of the Manual on Uniform Traffic Control Devices (MUTCD) contains a standard that requires agencies to implement a method to maintain sign retroreflectivity above prescribed minimum levels. In addition, several methods were identified that agencies can use to meet that requirement.

b. References and Resources

- FHWA Retroreflectivity, http://www.fhwa.dot.gov/retro/
- 2009 MUTCD Section 2A.08, http://MUTCD.fhwa.dot.gov/

6. Model HSIP project

The Office of Federal Lands Highways has funded a pilot initiative to improve transportation safety on Tribal lands. Their contractor, VHB Inc., is currently working with three Tribes to model the best way for Tribes to improve safety. From the Native Village of Louden located in Galena, Alaska, to the Lummi Tribe located near Mt. Baker Washington, to the Wind River Indian Reservation in Wyoming, these diverse settings are assisting the project team to develop safety management training toolkits for Tribes.

After the pilots are complete, training toolkits will be available to Tribes to create their own unique Transportation Safety Management Plan. The training toolkits will be multidisciplinary and involve internal and external safety stakeholders who are involved in education, enforcement, engineering and emergency medical services ("the 4-Es") to target high concentrations of death and injury. The training toolkits will assist Tribes and their partners to be locally-focused and prioritize programs and specific countermeasures to address local Tribal safety needs.

7. Safety Management System

a. Overview. To address the dire safety needs in Indian Country, FHWA and BIA have developed a Tribal Safety Management System (SMS) 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 FHWA FLH TTP website.

b. References and Resources

- Tribal Transportation Safety Management System Steering Committee Website, http://www.tribalsafety.org/

8. Other Safety Resources

Numerous other written resources are available. Some of the additional documents that may be of interest include:

- Tribal Transportation Safety, http://www.tribalsafety.org/
- The Highway Safety Manual, AASHTO, http://www.highwaysafetymanual.org
- NCHRP 500 Reports, TRB, http://www.trb.org/Main/Blurbs/152868.aspx
- Crash Modification Factors Clearinghouse, http://www.cmfclearinghouse.org/
- Various resources available from the FHWA Office of Safety, http://safety.fhwa.dot.gov/

- TTAP Centers, http://www.ltap.org/centers/
- Email the FHWA Tribal Transportation Safety Engineers, TTPSF@dot.gov

C. Safety Funding Programs

This section includes a brief description of various safety programs that are administered by the FHWA and the National Highway Traffic Safety Administration (NHTSA). Additional funding programs may be available from state governments or other federal agencies. The programs represent multiple strategies—engineering, education, and enforcement—that collectively help reduce the number of motor vehicle related crash fatalities and injuries.

The principals guiding these programs may help to develop higher Safety projects regardless of the funding source used. Tribal Governments are encouraged to use a Tribal Transportation Safety Plan to initiate conversations with State Governments.

1. Tribal Transportation Program Safety Funding (TTPSF)

a. Overview. The FAST Act provides a 2% set aside from the Tribal Transportation Program for Tribal Safety Efforts. This program is administered by the FHWA.

b. References and Resources

- The FAST Act
- 23 USC § 202(e)
- FHWA-FLH website for the Tribal Transportation Program Safety Funds (TTPSF), http://flh.fhwa.dot.gov/programs/ttp/safety/ttpsf.htm
- Contact the FHWA TTPSF Team, TTPSF@dot.gov

2. Indian Highway Safety Program at the Bureau of Indian Affairs (BIA)

a. Overview. This is a competitive grant program to fund primarily safety enforcement.

b. References and resources

- USC Title 23, Section 402
- 49 CFR 18.40
- BIA Indian Highway Safety Program, http://www.bia.gov/WhoWeAre/BIA/OJS/who/fieldops/ojs-dhs/index.htm

3. Highway Safety Improvement Program (HSIP)

a. Overview. This program is delivered through the FHWA by each state Department of Transportation. The HSIP emphasizes a data-driven, strategic approach to improving highway safety that focuses on results. Each state is required to develop and continually update a Strategic Highway Safety Plan (SHSP) as a part of implementing the HSIP. The SHSPs are to be developed based on data analysis and in consultation with safety stakeholders including Tribal Governments (23 U.S.C. § 148). Tribal Governments are encouraged to work with State Governments when the State SHSP is being developed since only projects and activities in the SHSP are eligible for HSIP funds.

b. References and Resources

- The FAST Act § 1113
- 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)
- FHWA Office of Safety, HSIP Program, http://safety.fhwa.dot.gov/hsip/
- State Strategic Highway Safety Plans, http://safety.fhwa.dot.gov/hsip/shsp/state_links.cfm

4. High Risk Rural Roads Program (HRRRP)

a. Overview. 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. The HRRR Program is a special set-aside that is only implemented in states that had an increase in rural fatalities during the most recent two-years of data. The states where HRRR set asides will be implemented are re-assessed each year. This program is delivered through the Federal Highway Administration by each state Department of Transportation.

b. References and Resources

- 23 U.S.C. § 148.
- FHWA HRRRP Memorandum, http://safety.fhwa.dot.gov/safetealu/memos/memo051906.cfm

5. Elimination of Hazards Relating to Railway-Highway Crossings

a. Overview. This program is a set aside 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. This program is delivered through the Federal Highway Administration by each state Department of Transportation.

b. References and Resources

- 23 USC § 130
- 23 CFR § 924
- FHWA Railway-Highway Crossing Program, http://safety.fhwa.dot.gov/xings

6. Transportation Alternatives Program

a. Overview. Under the FAST Act, states have the option to fund Safe Routes to School (SRTS) projects and other transportation enhancements (like sidewalks) from a list of options for the Transportation Alternatives Program. The purpose of the Safe Routes To School option 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.

b. References and Resources

- The FAST Act § 1109
- 23 USC § 101, 206, 213
- SAFETEA-LU Section 1404 (This section is applicable if a State chooses to implement SRTS)
- FHWA Safe Routes to Schools Program, http://safety.fhwa.dot.gov/safetealu/fact_sheets/ftsht1404.cfm
- National Center for Safe Routes to School, www.saferoutesinfo.org

7. NHTSA Administered Program: State and Community Highway Safety Grant Program

a. Statutory/Regulatory Requirements

- Chapter 4 of 23 U.S.C § 402 as amended by the FAST Act authorizes the State and Community Highway Safety formula grant program. The program is designed to reduce traffic crashes and resulting deaths, injuries, and property damage through State Highway Safety Programs.
- 23 CFR § 1200.3 Definitions - *Governor's Representative for Highway Safety*…provides that an official appointed by the Governor will implement the State's highway safety program or, for the application of this part to Indian Country as provided in 23 U.S.C. § 402(h), an official of the BIA or other DOI official who is duly designated by the Secretary of the Interior will implement the Indian highway safety program.
- 23 CFR § 1200.3 Definitions – State … for the application of this part to Indian Country as provided in 23 U.S.C. § 402(h), the Secretary of the Interior.

b. Guidelines/Procedures

- Funds specifically for Indian Country are administered by the DOI-BIA, Office of Justice Services, and the Indian Highway Safety Program (IHSP). Tribal Governments are also eligible for State and Community highway safety funds as provided for through the planning processes of various State Highway Safety Agencies.
- 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.
- Traffic safety grants are awarded on an annual fiscal year basis. The deadline for submission of proposals each year is May 1st.
- Only federally recognized Tribes can apply for these funds through the BIA's Indian Highway Safety Program.

c. References and Resources

- Uniform Procedures for State Highway Safety Grant Programs, https://www.federalregister.gov/articles/2013/01/23/2013-00682/uniform-procedures-for-state-highway-safety-grant-programs

8. NHTSA Administered Program: State Traffic Safety Information System Improvement Grants Program

a. Statutory/Regulatory Requirements

- Chapter 4 of 23 U.S.C § 408 of SAFETEA-LU authorized the State Traffic Safety Information System Improvement Grants Program to encourage States to adopt and implement effective programs to improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of State data 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.
- Section 408 was rescinded under MAP-21. Funds will continue to be governed by the applicable implementing regulations at the time of grant award until all funds are expended.

b. 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.
- Tribes can only apply for these funds through the BIA's Office of Indian Highway Safety Program.

XV. Other Federal Transportation Grants and Programs

A. Overview. In addition to the programs available under the Tribal Transportation Program, there are other transportation programs from FHWA and the U.S. Department of Transportation (DOT) that Tribes can apply to for funding. This chapter highlights some of these programs.

B. Federal Lands Access Program (FLAP). This program improves access to Federal Lands on infrastructure. Proposed projects must be located on a public highway, road, bridge, or trail system that is located on, or adjacent to, or provides access to Federal lands and is owned or maintained by States, counties, boroughs, local governments, or Tribes. Activities and projects eligible for funding include:

- Construction and reconstruction of public highways, roads, bridges, trails;
- Transportation planning, research, engineering (design), preventive maintenance, rehabilitation, restoration, construction, and reconstruction of an eligible facility located on, adjacent to, or provides access to, Federal land;
- Adjacent vehicular parking areas;
- Acquisition of necessary scenic easements and scenic or historic sites;
- Provisions for pedestrians and bicycles;
- Environmental mitigation in or adjacent to Federal land to improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity;
- Construction and reconstruction of roadside rest areas, including sanitary and water facilities;
- Other appropriate public transportation facilities, as determined by the Secretary;
- Operation and maintenance of transit facilities; and
- Any eligible transportation project that is on, adjacent to, or provides access to, Federal land.

1. Statutory/Regulatory Requirements.

- 23 U.S. Code § 204 - Federal lands access program
- Program Match Requirements **(**23 USC § 120)
  - Non-Federal funds
  - Tribal Transportation Program (TTP) Funds
  - In kind services (labor), right-of-way, construction materials, or labor/equipment time valued at fair market value.
  - Toll Credits (23 USC § 120(i))

- FLAP funds cannot be used as non-Federal match for other programs.

2. Guidelines/Procedures.

a. Funding: FLAP funds are apportioned to States by formula based on:

- Recreational visitation (30%)
- Federal land area (5%)
- Federal public road mileage (55%)
- Federal public bridges (10%)

b. How to Apply: Tribes should contact their TC when considering applying for funding from this program. When a Tribe is developing their application for FLAP funding for a project, they should work closely with the appropriate Federal Land Management Agency (FLMA) that the proposed project provides access to.

c. **Project Selection:** A Project Selection Team will evaluate and prioritize the applications for FLAP projects according to following areas: Safety, Preservation, Recreation, Economic, Mobility, and environmental. In addition, preference shall be given to projects that provide access to, are adjacent to, or are located within high-use Federal recreation sites or Federal economic generators, as identified by the FLMA.

The Project Selection Team will include representatives from the Federal Highway Administration, Alaska Department of Transportation, Alaska Municipal League, U.S. Forest Service, National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management, and the U.S Army Corp of Engineers.

d. **References/Resources.**

- FLAP Fact Sheet at http://www.fhwa.dot.gov/fastact/factsheets/fedlandsaccessfs.cfm

C. TIGER Discretionary Grants. The "Transportation Investment Generating Economic Recovery" (TIGER) Discretionary Grant program is administered by the U.S. Department of Transportation (DOT). Tribes are eligible to apply to this Grant program. TIGER Grants may fund preliminary engineering, construction, and construction engineering of transportation projects. TIGER Grants are awarded for road, transit, port and rail projects that contribute to certain national objectives. Since 2009, Congress has dedicated more than $4.1 billion for six TIGER Grant rounds to fund projects that have a significant impact on the Nation, a region or a metropolitan area.

Tribes are eligible to submit applications for a TIGER Grant, to compete with others also applying for a TIGER Grant. The U.S. DOT then competitively selects and funds TIGER Grants based on those applications. The TIGER Grant program may or may not be available for applications every year. Whether or not a new "round" of TIGER Grants will be made available in any year depends on enactment and funding of the TIGER program that year by the Government.

In each new round of TIGER Grants, DOT receives many applications from Tribes and others. Applicants must describe in their application detailed information about the project, including the benefits their project would provide for five long-term outcomes: safety, economic competitiveness, state of good repair, livability and environmental sustainability.

1. **Statutory/Regulatory Requirements.**

- Title XII of the American Recovery and Reinvestment Act of 2009 (the "Recovery Act")
- The Consolidated Appropriations Act, 2014 (Pub. L. 113-76, January 17, 2014)

2. **Guidelines/Procedures.** Funding from other sources, such as the TTP, Federal-Aid programs, State, and local sources, should be combined with TIGER Grant funding to fund a project. A TIGER Grant alone will not fund a project. The Tiger Grant funding is reimbursable; that is, the Tribe will need to have other funds available to spend on the project before the TIGER Grant program reimburses the Tribe for those moneys spent.

3. **References and Resources.**

- http://www.dot.gov/tiger
- http://www.dot.gov/tiger/resources

D. Federal Transit Administration (FTA) Programs. The FTA provides funding to Tribes for public transit systems. Examples of eligible activities include: capital projects; operating costs of equipment and facilities for use in public transportation; and the acquisition of public transportation services, including service agreements with private providers of public transportation services.

1. **Tribal Transit Program funding.** Tribes may receive funding from the Tribal Transit Program in the following ways:

   a. **Discretionary Program**. Tribes may apply for these funds in response to a Notice of Federal Funding (NOFA) issued by the Government. Grants are available annually on a competitive basis. A 10 percent local match is required under the Discretionary Program, unless a tribe can demonstrate financial hardship. A Tribe may use its TTP tribal shares towards the required local match. However, there is no local match required for planning grants awarded under this program.

   Tribes interested in applying should respond to the requirements and information in the Notice of Federal Funding (NOFA) that is issued by the Government. The TC is available to provide guidance and assistance in the application process.

   The following is the list of eligible projects:

   - Planning projects— there is a $25,000 cap.
   - Capital projects—this includes start-up, replacement or expansion services.
   - Operating assistance— this includes start-up and new systems. It also includes systems that can prove they operate public transportation and either did not receive any formula funding or only Tier 3 funding in FY2013. General operating assistance is no longer eligible (except in limited circumstances in FY 2013).

   b. **Formula Allocation Program.** Under the FAST Act, the Tribal Transit Program (TTP) distributes annual funding by a formula to eligible Tribes to provide public transportation on tribal lands. There is no local match required under the formula program. Formula factors include vehicle revenue miles and the number of low-income individuals residing on tribal lands.

2. **Rural Transit Formula ("5311") Program.** This program provides federal funds for rural transit systems, including tribal transit systems in rural areas.

   - Program is administered by each State;
   - However, the option is available for Tribe to have FTA manage the Grant after it is awarded to a Tribe by the State;
   - Who manages the Grant (the State or FTA) will be designated on the State TIP (the "STIP**").**

3. **Statutory/Regulatory Requirements.**

   - 49 USC § 5311, formula grants for rural areas at: http://www.law.cornell.edu/uscode/text/49/5311
   - Public Law 114-94, *Fixing America's Surface Transportation Act* (FAST Act) § 3007

4. References and Resources.

- Federal Transit Administration, Tribal Transit Program at: http://www.fta.dot.gov/grants/15926_3553.html
- List of FTA Regional Tribal Liaisons at http://www.fta.dot.gov/12305_15845.html
- Federal Transit Administration (FTA) list of Regional Offices and the States they serve at: http://www.fta.dot.gov/12317_1119.html
- How to apply for an FTA Discretionary Grant at http://www.fta.dot.gov/grants/13070.html
- Notices of FTA Funding Availability (NOFA) on the FTA website at http://www.fta.dot.gov/grants/13077.html
- Formula Grants for Rural Areas: Program Guidance and Application Instructions at http://www.fta.dot.gov/documents/FTA_Circular_9040_1Gwith_index_-_Final_Revised_-_vm_10-15-14(1).pdf
- How to Apply for a Reporting ID in the National Transit Database at: http://www.ntdprogram.gov/ntdprogram/ntdid.htm
- NTD Helpdesk Information at http://www.ntdprogram.gov/ntdprogram/feedback.jsp
- *"Developing, Enhancing, and Sustaining Tribal Transit Services: A Guidebook" (TCRP Report 154)* at: http://www.trb.org/main/blurbs/166797.aspx
- *FHWA Tribal Transportation Best Practices Guidebook* at: http://www.tribalplanning.fhwa.dot.gov/bestPractices_guidebk.aspx
- Rural Transit Assistance Program at: http://webbuilder.nationalrtap.org/Home.aspx

E. FASTLANE Program, also known as the **Nationally Significant Freight and Highways Program (NSFHP).**

1. Overview. The **FASTLANE** program is authorized by the FAST Act at $4.5 billion total for Fiscal Years (FY) 2016 through 2020, including $800 million for FY 2016. $76 million in FY 2016 was reserved for small projects.

FASTLANE projects are nationally and regionally significant highway, rail, port, and intermodal freight projects, classified as "Small" or "Large":

- **Small projects**. Minimum project size is $8.33 million. The FASTLANE grant is $5 million minimum.
- **Large projects**. Minimum project size is $100 million. The FASTLANE grant is $25 million minimum. In some States, the minimum project size may be smaller than $100 million. The Notice of Funding Opportunity (NOFO) will provide a list of those States and their minimum project size.

A grant under the **FASTLANE** program provides up to 60% maximum of the total eligible project costs. An additional 20% of eligible project costs may be funded with other Federal assistance. The remaining 20% of eligible project costs may be funded with TTP Tribal shares and non-Federal funding.

2. Statutory/Regulatory Requirements.

- FAST Act §1105
- 23 U.S.C. §117

3. Guidelines/ Procedures.

- See the FASTLANE Fact Sheet at http://www.fhwa.dot.gov/fastact/factsheets/fastlanegrantsfs.cfm
- A Notice of Funding (NOFO) will be published annually in the Federal Register.
- A Tribe applies directly for a FASTLANE grant to http://www.Grants.gov in response to the NOFO.
- **Eligible Projects:**
  - A highway freight project on the National Highway Freight Network;
  - A highway or bridge project on the National Highway System, including:
  - A project to add capacity to the Interstate system to improve mobility; or
  - A project in a national scenic area;
  - A freight intermodal or freight rail project;
  - A project within the boundaries of a public or private freight rail, water (including ports),or intermodal facility and that is a surface transportation infrastructure project necessary to facilitate direct intermodal interchange, transfer, or access into or out of the facility;
  - A project that will make a significant improvement to freight movements on the National Highway Freight Network and that the Federal share of the project funds only elements of the project that provide public benefits, and that the total assistance for these projects does not exceed $500 million over the period 2016-2020; or
  - A railway-highway grade crossing or grade separation project.
- **Eligible Project Costs.** Funding received under a FASTLANE grant may be used for these costs associated with the approved project:
  - Development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering and design work, and other preconstruction activities; and
  - Construction, reconstruction, rehabilitation, acquisition of real property (including land related to the project and improvements to the land), environmental mitigation, construction contingencies, acquisition of equipment, and operational improvements directly related to improving system performance.
- **The Transportation Infrastructure Finance and Innovation Act (TIFIA) Program.**
  - At the request of an eligible FASTLANE grantee, the USDOT may offer credit assistance to the grantee, to be provided under the TIFIA program. The credit assistance may pay the subsidy and administrative costs associated with the FASTLANE grant.

.

F. Federal-aid Programs. 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

The statutes governing the Federal-aid Highway Program are found in Title 23, United States Code (23 U.S.C.).

1. Emergency Relief for Federally Owned (ERFO). Serious damage by a natural disaster over a wide area, or by a catastrophic failure, can possibly be reimbursed by the Emergency Relief for Federally Owned (ERFO) program. This program is applicable to federally owned roads, and also to roads that are on the National Tribal Transportation Facility Inventory (NTTFI), even if they are not federally owned. Reimbursement for expenses will require documentation of time sheets and equipment hours, positive findings that procedures have been followed in a timely manner, documentation of damaged site inspection, and the Program of Projects (POP) approval by FHWA.

The Federal share for the repair of Tribal Transportation Facilities, Federal Lands Transportation Facilities, and Public Roads on Federal Lands is 100 percent under the ERFO Program. ERFO funds are not to duplicate assistance under another Federal program or compensation from insurance, cost share, or any other source.

a. Statutory/Regulatory Requirements. 23 USC §§ 120 and 125.

b. Role of Tribal Governments. See the Applicant responsibilities in chapter 5 of the ERFO Disaster Assistance Manual at http://flh.fhwa.dot.gov/resources/

c. References/Resources.

- FLH ERFO website at http://flh.fhwa.dot.gov/programs/erfo/
- ERFO Disaster Assistance Manual at http://flh.fhwa.dot.gov/resources/
- For questions on the administration of the nationwide ERFO Program, contact Mr. Sergio Mayorga, ERFO Program Manager at (202) 366-9491.

2. Additional Federal-aid Programs. Information on additional Federal-aid programs is located at http://www.fhwa.dot.gov/fastact/factsheets/

These programs include:

- **Congestion Mitigation and Air Quality Improvement Program**
- **Highway Safety Improvement Program**
- **Metropolitan Planning**
- **National Highway Freight Program**
- **National Highway Performance Program**
- **Railway-Highway Crossings Program**
- **Surface Transportation Block Grant Program**
- **Transportation Alternatives**

Appendix A – Acronyms

AA	FHWA Associate Administrator
AASHTO	American Association of State Highway and Transportation Officials
ACH	Automated Clearing House
ACOE	Army Corps of Engineers
ADA	Americans with Disabilities Act
ADL	Alternative Duty Location
ADT	Average Daily Traffic
ASAP	Automated Standard Payment System
BIA	Bureau of Indian Affairs
BIADOT	Bureau of Indian Affairs Division of Transportation
BLM	Bureau of Land Management
CE	Categorical Exclusion
CEQ	Council on Environmental Quality
CFLHD	Central Federal Lands Highway Division
CFR	Code of Federal Regulations
CM	Contract Modification
CSTIPS	Control Schedule/Transportation Improvement Program System
DOI	Department of Interior
DOT	Department of Transportation
EA	Environmental Assessment
EFLHD	Eastern Federal Lands Highway Division
EIS	Environmental Impact Statement
EPS	Environmental Protection Specialist
ERFO	Emergency Relief for Federally Owned Roads
ESC	Enterprise Services Center
FAST Act	Fixing America's Surface Transportation Act
FHWA	Federal Highway Administration
FHWA-FLH-HQ	FHWA Federal Land Highway Headquarters
FLH	FHWA Office of Federal Lands Highway
FONSI	Finding of No Significant Impact
G2G	Government to Government agreement; also known as a TTPA or PA
GPRA	Government Performance and Results Act
HBP	Highway Bridge Program
HRRRP	High Risk Rural Roads Program
HSIP	Highway Safety Improvement Program
IBC	Interior Business Center of the U.S. Department of Interior
HUD	United States Department of Housing and Urban Development
IHS	Indian Health Service
IRR	Indian Reservation Roads
ISDEAA	Indian Self-Determination an Education Assistance Act
ITEMS	Integrated Transportation Information Management System
LRTP	Long Range Transportation Plan

MAP-21	Moving Ahead for Progress in the 21st Century Act
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
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
NOI	Notice of Intent
NTTFI	National Tribal Transportation Facility Inventory
OMB	Office of Management and Budget
OIG	Office of Inspector General
OIS	Office of Indian Services
OMB	Office of Management and Budget
OSG	Office of Self Governance
OSHA	Occupational Safety and Health Administration
PA	Program Agreement; also known as a G2G or TTPA
PAF	Population Adjustment Factor
PDDM	Project Development and Design Manual
PFSA	Program, Functions, Services, and Activities
PM&O	Program Management and Oversight
POC	Point of contact
PORT	Program Online Reporting Tool
PRAE	Project Related Administrative Expenses
PS&E	Plans, Specifications, and Estimates
RD	BIA Regional Director
RFA	Referenced Funding Agreement
RIFDS	Road Inventory Field Data System
RNDF	Relative Need Distribution Factor
ROD	Record of Decision
ROW	Right-of-Way
RRE	BIA Regional Road Engineer
SHSP	Strategic Highway Safety Plan
SRTS	Safe Routes to School
STIP	State Transportation Improvement Program
STP	Surface Transportation Program
TARTS	FHWA's Tribal Audit Resolution Tracking Spreadsheet
TC	Tribal Coordinator
TCP	Traffic Control Plan
TERO	Tribal Employment Rights Ordinance
TFMMS	Transportation Facilities Maintenance Management System
THPP	Tribal High Priority Projects
TOSR	Tribal On-Site Representative

TRB	Transportation Research Board
TSR	Title Status Reports
TTAM	Tribal Transportation Allocation Methodology
TTAP	Tribal Technical Assistance Program
TTFBP	Tribal Transportation Facility Bridge Program
TTIP	Tribal Transportation Improvement Program
TTPTIP	Tribal Transportation Program Transportation Improvement Program
TTP	Tribal Transportation Program
TTPA	Tribal Transportation Program Agreement; also known as a G2G or PA
THPP	Tribal High Priority Projects (THPP) Program
TTPSF	Tribal Transportation Program Safety Funding
USC or U.S.C.	The Code of Laws of the United States of America
USDA	United States Department of Agriculture
USDOT	United States Department of Transportation
USFWS	United States Fish and Wildlife Service
WFLHD	Western Federal Lands Highway Division

Appendix B – Glossary

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

As-built Drawings – Revised set of drawings submitted upon completion of a project that reflects all changes made to the PS&E. As-built Drawings are also called as-built plans.

Automated Clearing House (ACH) Form – Form SF 3881, which is used to document the necessary financial information (e.g., bank account number, DUNS number) for BIA and FHWA personnel to obligate funding to a Tribe's bank account.

Automated Standard Payment System (ASAP) – Treasury Department's vendor registration system. In order to receive most TTP related payments from BIA, a Tribe must be registered in ASAP. Tribes with TTPA's through FHWA are not required to be registered in ASAP.

BIA Director: The BIA Director oversees BIA's programs.

BIA Division of Fiscal Services – The Division of Fiscal Services (Fiscal Services) has access to BIA's financial system, and is responsible for technical aspects of moving BIA TTP funds (for example, issuance of BIA TTPA funds to Tribe's bank account). This group works with and communicates primarily with BIADOT.

BIA Division of Transportation (BIADOT) – The division of BIA that oversees the road maintenance, the National Tribal Transportation Facility Inventory (NTTFI), and road construction programs for the Tribal Transportation Program (TTP). BIADOT has two central offices (Washington, DC and Albuquerque, NM) that are responsible for policy coordination and budgeting.

BIA Office of Budget Management – The Office of Budget Management has access to BIA's financial system, and allocates / sub-allocates transportation funding to BIADOT and / or Regional offices. This group works / communicates primarily with BIADOT.

BIA Region – The BIA's twelve Regional offices (i.e., Alaska, Eastern, Eastern Oklahoma, Great Plains, Midwest, Navajo, Northwest, Pacific, Rocky Mountain, Southern Plains, Southwest, Western), which administer the delivery of program services to the Federally-recognized Tribes and individual Indians and Alaska Natives, directly or through contracts, agreements, grants or compacts.

BIA Regional Director – The Regional Director (RD) is the supervisor of the Regional office; he / she oversees the programs in the Region (e.g., TTP, Housing Improvement Program) to which he / she is assigned.

BIA Regional Road Engineer (RRE) – Primary BIA contact working with a Tribe on its road projects. The level of interaction varies depending on the Tribe's needs and the TTP Delivery Option.

BIA Solicitor's Office – DOI office that acts as a legal advisor for BIA, performs BIA's legal work, manages DOI's Ethics Office, resolves FOIA Appeals, and reviews BIA TTPAs to verify that are within the confines of the applicable regulations.

Categorical Exclusion – Actions, based on past experience, that do not involve individual or cumulative significant environmental impacts and are excluded from the requirement to prepare an EA or EIS. (23 CFR 771.117).

Consortium – A group of Tribes who have formally agreed to pool their TTP funding and resources. A Tribal Consortium will be handled by the BIA and FHWA the same way as if dealing with one Tribe. There is usually only one Tribal POC, one TTPA, one Retained Services Addendum (RSA), and one Reference Fund Agreement (RFA) for a Tribal Consortium.

Contractible Service – A function or activity that is not inherently Federal and can be achieved via contract.

Design Exception – Any deviation from approved design standards.

Data Universal Numbering System (DUNS) – A unique nine-digit identifier used by businesses and the Federal Government to keep track of more than 70 million businesses world-wide.

Department of the Interior (DOI) – The Federal Agency responsible for protecting America's natural resources and heritage, honoring America's cultures and Tribal communities, and supplying the energy to power America's future. BIA is a Bureau within DOI; BIA reports to DOI on its transportation program.

Emergency remedial actions – Actions that FHWA or BIA will undertake when a Tribe fails to fulfill the requirements of the TTPA and this failure poses:

- Imminent jeopardy to public health and safety, including those identified as workzone/construction site safety threats; or
- Imminent jeopardy to trust funds, trust land, or interest in such lands.

Environmental Assessment – Actions in which the significance of the environmental impact is not clearly established, and all actions that are not CEs or EISs. Actions in this class require the preparation of an EA to determine the appropriate environmental document required (from 23 CFR 771.115).

Environmental Impact Statement – Actions that are determined to significantly affect the environment require an EIS (23 CFR 771.115).

Financially Constrained – A plan (metropolitan transportation plan, TIP, or STIP) that includes financial information demonstrating that projects can be implemented using committed, available, or reasonably available revenue sources, with reasonable assurance that the federally supported transportation system is adequately operated and maintained. (See 23 U.S.C. 134 and 135.) For the TIP and the STIP, financial constraint/fiscal constraint applies to each program year. Projects in air quality nonattainment and maintenance areas can be included in the first two years of the TIP and STIP only if funds are "available" or "committed." See 23 CFR 450.104.

Financial Report –The mechanism used by the Tribe to submit summary information on expenditures, program income, and indirect expenditures in order for FHWA to monitor the status of funds awarded to a Tribe.

Finding of No Significant Impact – A concise document prepared at the conclusion of the EA presenting the reasons 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).

Force Account – Project construction using employees of the Tribe.

FHWA TTP Team – FHWA TTP Teams are located in Vancouver, WA, Lakewood, CO, and Washington DC. Each TTP Team includes Tribal Coordinators (TCs) assigned to work with Tribes who have an FHWA Tribal Transportation Program Agreement (TTPA). The FHWA TCs also coordinate with BIA TTP personnel in the BIA Regions to consolidate field visits to Tribes and other functions of the TTP program.

Imminent jeopardy to public health and safety – An immediate and significant threat of serious harm to human well-being, including conditions that may result in serious injury, or death, caused by Tribal action or inaction or as otherwise noted in the TTPA.

Imminent jeopardy to trust funds, trust land, or interest in such lands – An immediate threat and likelihood of significant devaluation, degradation, damage, or loss of a trust asset, or the intended benefit from the asset caused by the actions or inactions of the Tribe in performing trust functions. This includes disregarding Federal trust standards and/or Federal law while performing trust functions if the disregard creates such an immediate threat.

Long-Range Transportation Plan (LRTP) – The official Tribal, multimodal, transportation document covering a period of no less than 20 years developed through the tribal transportation planning process which identifies the transportation needs and priorities of the Tribe.

National Tribal Transportation Facility Inventory (NTTFI) – A list of transportation facilities eligible for assistance under the TTP. The NTTFI is managed by the BIA.

Non-compliant – When submissions and/or actions as required by statutory/regulatory requirements, or responsibilities as identified in the TTPA, are not met.

Non-emergency remedial actions – Actions carried out when a Tribe is found to be non-compliant or non-responsive to the following required activities or program/project findings:

- Reporting on or providing to BIA/FHWA:
  - Annual Single Audit reports, including any single audit findings of material weaknesses or significant deficiencies as they relate to the TTP, or Semi-annual accomplishment and financial reports as required by Article III of the TTPA;
  - Tribal approved project packages, including PS&Es and assurances that the construction will meet or exceed applicable health and safety standards per Article III, Section 1.C of the TTPA, and according to 25 CDR § 170.460;
  - Final construction reports and as-built plans for final inspection in accordance with 25 CFR Part 170;
- Program review findings that require the development and execution of corrective action plans; or
- Other FHWA TTP action requests regarding non-compliance with the TTPA including statutory or regulatory requirements.

Non-responsive – When attempts by e-mail, phone, or other communication by the TC or other TTP Team staff are repeatedly unanswered.

Notice of Intent – Official letter or Tribal resolution from a Tribal government notifying FHWA of its desire to work directly with FHWA and enter into a TTPA with FHWA for the administration of its Tribal Transportation Program.

Office of Indian Services (OIS) – A branch of BIA which facilitates support for Tribal people and Tribal governments by promoting safe and quality living environments, strong communities, self-sufficient and

individual rights, while enhancing protection of the lives, prosperity, and well-being of American Indians and Alaska Natives. OIS programs include the Divisions of Human Services, Self-Determination, Transportation, and Tribal Governmental Services.

Office of Indian Services Director – The Office of Indian Services (OIS) Director oversees OIS programs at the national level.

P1 (Action) Audits – These are action memos that are issued/distributed via email from the OIG to the TTP. They outline single audit findings that require action by the TTP. A response that includes written documentation of corrective action taken and supporting documentation must be sent to the OIG by the Target Action Date (6 months from the date of the OIG Action Memo).

P2 (Informational) Audits – Audits that are issued/distributed via email from the OIG to the TTP. They outline single audit findings that require action by the TTP. No response is required to be sent to the OIG. However, written documentation of corrective action taken and the supporting documentation are required by the TTP and must be kept on file.

Plans, Specifications, and Estimates (PS&E) – A package made up of plans, specifications, and engineers estimates on the location, design features, and the construction requirements in sufficient detail to facilitate the construction of a project.

Project Package – Consists of a number of documents including the Plans, Specifications, and Estimate (PS&E), the approved design exceptions, and all the construction details, provisions, permits, agreements, conditions, and certifications required to administer a construction project.

Progress Report – A description or account submitted by a Tribe of TTP work accomplished during a specified time period, any issues identified, and work to be accomplished. These reports are submitted by a Tribe on the schedule required in the TTPA.

Public Authority – As defined in 23 U.S.C. 101(a)(20), 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.

Reassumption – An instance where FHWA/BIA temporarily takes on the Tribe's responsibilities under the TTP to carry out actions required to mitigate an imminent jeopardy.

Record of Decision – Documentation prepared after the final EIS that presents the basis for the decision, summarizing any mitigation measures that will be incorporated into the project. (23 CFR 771.127).

Referenced Funding Agreement (RFA) – A document between the BIA or FHWA and a Tribe which sets forth specific conditions for Fiscal Year funding under the Tribal Transportation 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.

Regionally Significant Project – A project (other than projects that may be grouped in the STIP/TIP under 23 CFR 450) that:

(1) Is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as

new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves); and

(2) Would normally be included in the modeling of a metropolitan area's transportation network, including, as a minimum, all principal arterial highways and all fixed guideway transit facilities that offer a significant alternative to regional highway travel.

Retained Services Addendum (RSA) – Document establishing the type of services BIA will perform for the Tribe under a TTPA, if the Tribe decides to include Retained Services in its TTPA (also known as a G2G Agreement) with the BIA.

Risk Assessment – BIA or FHWA review of a Tribe's TTP and / or other programs to determine and document whether the Tribe is eligible to enter into a TTPA with the Federal Government.

Risk Assessment Matrix – Table with a set of questions used by BIA or FHWA to consistently assess whether a Tribe is eligible to enter into a TTPA with the Federal Government.

Risk Score – General rating determined from the Risk Assessment Matrix, and is used to rate level of risk (i.e., low, moderate, high) to the Federal Government associated with entering into a TTPA with a Tribe.

Section 4(f) Evaluation – Documentation prepared to support the granting of the Section 4(f) approval and determination that there is no feasible and prudent alternative to the use of Section 4(f) property and that the proposed action includes all possible planning to minimize harm to the property resulting from that use (23 CFR 774).

Single Audit – 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 ($750,000 effective December 26, 2014) or more of Federal assistance (Federal funds, grants, or awards) received for its operations in any one fiscal year. 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 Tribes, states, cities, universities, and non-profit organizations. The audit is typically performed by an independent certified public accountant and encompasses both financial and compliance components. Single Audits are submitted to the Federal Audit Clearing house along with a data collection form, Form SF-SAC.

Technical Assistance –Those activities which provide advice, education, support, knowledge, skills and opportunities to address specific current and future situations in implementing the policies and procedures governing the Tribal Transportation Program. Technical assistance may be through training, outreach, peer and expert review, and expert assistance.

Tribal Employment Rights Ordinance – Ordinances requiring that employers who are engaged in operating a business on reservations give preference to qualified Indians in all aspects of employment, contracting and other business activities.

Tribal Coordinator (TC) – An employee of BIA or FHWA who is the Federal point of contact leading the coordination between a Tribal government and the BIA or FHWA for the Tribal Transportation Program. The TCs are located in the BIA field office or Region office, or in the FHWA TTP Team offices. The TC provides stewardship and oversight of a Tribe's TTP, and provides technical assistance to the Tribe on elements of administering the TTP, and on items related to improving the tribal transportation system such as planning, design, environmental processes, construction functions, transportation safety, maintenance, and transportation funding opportunities.

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 POC – An employee and/or member of a Tribe who is designated by the Tribe as the official point of contact with BIA or FHWA for all matters related to the Tribal Transportation Program (TTP). The BIA TC and/or the FHWA TC coordinate and interact on an ongoing basis with the Tribal POC.

Tribal Resolution – A tribal government's formal expression of opinion, will, or intent.

Tribal Signatory – Official designee recognized by the Federal Government as qualified to enter a Tribe into binding agreements.

Tribal Transportation Allocation Methodology (TTAM) – Methodology for distributing funding under the TTP.

Tribal Transportation Improvement Program (TTIP) – A multiyear financially constrained list of proposed transportation projects developed by a Tribe using the Tribal Priority List from the LRTP, and approved by FHWA.

The Tribal Transportation Program Transportation Improvement Program (**TTPTIP) –** A compilation of the data from all of the FHWA-approved TTIPs.

Tribal Transportation Program (TTP) – Program addressing transportation needs of Tribes by providing funds for planning, design, construction, and maintenance activities. The program is jointly administered by FHWA and BIA in accordance with an interagency agreement.

Tribal Transportation Program Agreement (TTPA) – An agreement between a Tribe and the BIA or FHWA, that transfers all but the inherently federal program functions, services and activities of the Tribal Transportation Program to the Tribe. It is one of five program delivery options for the Tribal Transportation Program. TTPAs are also known as "Government to Government" (G2G) agreements in the BIA and "Program Agreements" (PAs) in FHWA.

Tribe – The term "Tribe" refers to the Tribes and Villages listed in the Federal Register as *Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs*.

TTPA Template – The standard format that a Tribe and the TC use as a basis to create the official Tribal Transportation Program Agreement (TTPA) between a Tribe and the U.S. Government.

Appendix C – Exhibits for the Chapters

Exhibit number and name		Page
Chapter III - Tribal Transportation Program Agreement (TTPA)		
Exhibit 3.1a	BIA Tribal Transportation Program Agreement (TTPA) Template	114
Exhibit 3.1b	FHWA Tribal Transportation Program Agreement (TTPA) Template	131
Exhibit 3.2	Example Tribal Resolution for Intent to Enter into a TTPA w/ FHWA	152
Exhibit 3.3a	BIA Referenced Funding Agreement (RFA) Template	154
Exhibit 3.3b	FHWA Referenced Funding Agreement (RFA) Template	158
Exhibit 3.4a	BIA Referenced Funding Agreement (RFA) Amendment Template	163
Exhibit 3.4b	FHWA Referenced Funding Agreement (RFA) Amendment Template	165
Exhibit 3.5	Retained Services Addendum	167
Exhibit 3.6	ACH Bank Form (SF 3881) and Instructions	169
Exhibit 3.7	Projected Program Amount Letter	171
Exhibit 3.8	Formal On-Boarding Letter from FHWA to Tribe	172
Exhibit 3.9	Formal Off-boarding Letter from FHWA to Tribe	174
Exhibit 3.10	FHWA On-Boarding Orientation Checklist	175
Exhibit 3.11	Intergovernmental Fund Transfer Agreement Template	178
Exhibit 3.12	Addendum to the Intergovernmental Fund Transfer Agreement	184
Chapter IV – TTP Reporting Responsibilities		
Exhibit 4.1	TTP Online Reporting Tool - Financial Report	187
Exhibit 4.2	TTP Online Reporting Tool - Report on Non-Construction Activities	191
Exhibit 4.3	TTP Online Reporting Tool - Report on Each Project	198
Exhibit 4.4	Standard Form 425, Federal Financial Report	203
Exhibit 4.5	Instructions for SF 425	204
Chapter V - Request for Services and Project Agreements		
Exhibit 5.1	Tribal Request for Services	209
Exhibit 5.2	Project Agreement Form	214
Chapter VI - Transportation Planning		
Exhibit 6.1	Microsoft Access FHWA TIP Template	216
Exhibit 6.2	Tribal Resolution Template to Accept/Approve the TTIP	219
Exhibit 6.3	TTIP Certification	220
Exhibit 6.4	Pre-Project Planning Score Worksheet	221
Exhibit 6.5	TTIP Approval Letter	223
Exhibit 6.6	BIA TTIP Control Schedule Form	224
Chapter VII - Preliminary Engineering - NEPA and Other Environmental Requirements		
Exhibit 7.1	TTP Environmental Checklist	225
Exhibit 7.2	Outline for an Environmental Assessment (EA)	234
Exhibit 7.3	Example Notice of Availability	238

Appendix C – Exhibits for the Chapters (cont'd.)

Exhibit number and name		Page
Chapter VIII - Preliminary Engineering - Project Package		
Exhibit 8.1	PS&E Certification Letter	239
Exhibit 8.2	Highway Design Standards Certification	240
Exhibit 8.3	PS&E Certification Checklist	243
Chapter X - Procurement, Construction Bid Advertisement and Award		
Exhibit 10.1	Tribe Certification Letter for Soliciting Bids	244
Exhibit 10.2	TTP Pre-Advertisement Checklist	245
Chapter XI - Construction and Construction Engineering		
Exhibit 11.1	Project Monitoring Checklist	247
Exhibit 11.2	Safety Checklist	251
Exhibit 11.3	Final Letter of Acceptance	254
Exhibit 11.4	Final Letter of Acceptance for BIA Owned Facility	255
Chapter XII - Maintenance of Transportation Facilities		
Exhibit 12.1	Equipment Acquisition Request Form	256
Chapter XIII - Tribal Transportation Program (TTP) - Bridge Program		
Exhibit 13.1	National Bridge Inventory -Structure Inventory and Appraisal Sheet	257
Exhibit 13.2	TTP Bridge Program Certification Checklist	259

Exhibit 3.1a – BIA Tribal Transportation Program Agreement (TTPA) Template

TRIBAL TRANSPORTATION PROGRAM AGREEMENT

BETWEEN THE

INSERT OFFICIAL NAME OF TRIBE

AND THE

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

ARTICLE I – AUTHORITY AND PURPOSE

Section 1. Authority. This Tribal Transportation Program Agreement (hereinafter "the Agreement") is entered into by the Director of the Bureau of Indian Affairs, (hereinafter "Director," which term shall mean the Director or his designee, as appropriate), for and on behalf of the United States Department of the Interior, Bureau of Indian Affairs (hereinafter "BIA") and by the INSERT OFFICIAL NAME 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 Chapter 2 of Title 23, United States Code, as amended by the Fixing America's Surface Transportation Act (FAST Act), Pub. L. 114-94 (December 4, 2015), and the Delegations of Authority set forth in 25 U.S.C. §§ 1, 1a, and 2. This agreement will be implemented in a manner consistent with Executive Order 13175 (Nov. 6, 2000, 65 Fed. Reg. 67249) (Consultation and Coordination with Indian Tribal Governments), the Presidential Memorandum on Tribal Consultation dated November 5, 2009, and 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 OFFICIAL NAME OF TRIBE AND THEIR LAND (RESERVATION, VILLAGE, ETC) or a community of the Tribe that are eligible for funding

pursuant to 25 CFR Part 170 (TTP regulations), as amended by the FAST Act. This Agreement is made pursuant to 23 U.S.C. § 202 (a)(2)(B), the TTP regulations, and as authorized by the Indian Self-Determination and Education Assistance Act (hereinafter "the ISDEAA"), Pub. L. 93-638, as amended (25 U.S.C. §§ 450, et seq.), for purposes of Federal Tort Claims Act coverage.

Section 2. Purpose. The purpose of this Agreement is as follows:

A. 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 23 U.S.C. §§ 202 (b)(6)(A) and (B), together with such additional activities as the Tribe may perform under the FAST Act and the TTP Regulations;

B. to carry out the statutory requirements pursuant to section 1118 of the FAST Act and to maintain and improve its unique and continuing government-to-government relationship with and responsibility to the Tribe;

C. to provide the Tribe or its designee, under this Agreement, its formula share of TTP funds pursuant to the FAST Act and the TTP regulations, 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, as well any other state-aid funds under Chapter 1 of Title 23, United States Code, or funds from other sources that may be made available to the Tribe under an agreement to transfer such funds approved the Director or his designee.

D. to provide the Tribe or its designee, under this Agreement, such available prior year funds remaining under the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141 (July 6, 2012), or the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59 (August 10, 2005), as the Tribe wishes to receive, provided that:

(i) MAP-21 funds transferred to the Tribe under this Agreement shall be administered in accordance with this Agreement;

(ii) SAFETEA-LU funds transferred to the Tribe under this Agreement shall be administered in accordance with the provisions of SAFETEA-LU including, but not limited to, the restriction that only 25% of such funds may be used for eligible road

maintenance activities, 25 C.F.R. Part 170 and other applicable laws. Upon the request of the Tribe, the Director shall provide technical assistance regarding, but not limited to, the administration of the SAFETEA-LU funds transferred under this Agreement;

(iii) MAP-21, SAFETEA-LU or other funds previously transferred to the Tribe shall continue to be administered in accordance with the Tribe's MAP-21 and/or SAFETEA-LU Program Agreement approved by the Director on INSERT DATE(S), which the Parties now mutually agree shall amended to add the reporting requirements in Article III, Section 7., herein, and extended until such funds are expended or returned to the Director.

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 Director and shall automatically extend for the maximum period authorized by any statutory extensions to the FAST Act or until all funds transferred to the Tribe under this Agreement have been expended or returned to the Director, whichever occurs last.

Section 2. Funding.

A. Subject to the availability of funding and in accordance with 23 U.S.C. § 202 (b)(4), the Director shall provide to the Tribe or its designee, through an electronic transfer, a single annual lump sum funding amount equal to the amount that the Tribe would otherwise receive for the TTP as described in 23 U.S.C. § 202 (b)(3). Not later than 30 days after the date on which funds are made available to the Director, the funds shall be distributed to, and made available for immediate use.

B. Upon the execution of this Agreement and a Referenced Funding Agreement (RFA) by both Parties**,** and subject to the availability of funds and the determination of the Tribe's annual funding percentage under 23 U.S.C. § 202 (b)(3), the Director shall notify the Tribe or its designee, in accordance with Article IV, Section 1 of this Agreement, that the funds identified in the RFA are available. The Tribe shall submit electronic banking information as required by the ACH Vendor/Miscellaneous Payment Enrollment Form (see Attachment B) and register in the Treasury Department's Automated Standard Payment System (ASAP) to receive the funds into

its account. The Director shall provide to the Tribe a single advance payment in the amount identified in an RFA within thirty (30) calendar days of his receipt of the Payment Enrollment Form and notification of the Tribe's enrollment in ASAP. The Parties agree that the RFA will be renegotiated annually on a fiscal year basis.

C. Pursuant to 25 CFR §§ 170.607 – 170.608, Contract Support Costs (CSCs) are an eligible cost and the Tribe may use their TTP allocation to pay such costs. The Tribe shall include a line item for CSCs in the Tribe's project construction budgets. The Tribe may also include, as eligible CSCs, one-time start-up costs and pre-award costs incurred by the Tribe in the initial year of this Agreement similar to 25 U.S.C. §§ 450j-1(a)(5) and (6). The Parties acknowledge that TTP funds are distributed pursuant to a statutory formula to the federally-recognized tribes participating in the TTP and that the Tribe's total share of TTP funds includes all direct and indirect costs associated with the TTP. The parties also acknowledge there are no additional TTP or other funds from the Department of the Interior are available for any additional CSCs which are incurred.

D. Funds advanced to the Tribe under this Agreement shall be used by the Tribe as permitted under 23 U.S.C. § 202 (a)(1) and the TTP regulations, as amended by the FAST Act, other applicable laws, and as authorized under this Agreement. The Tribe reserves the right to reallocate funds among the eligible projects identified on an FHWA-approved TTP Transportation Improvement Program (TTPTIP), so long as such funds are used in accordance with Federal appropriations law. Funds advanced to the Tribe pending disbursement for a purpose authorized under the Agreement may not be reprogrammed for other purposes and therefore shall be placed in a savings, checking or investment account containing only funds transferred under this Agreement, which is separated from, and tracked independently of, all other Tribal accounts. For purposes of this Agreement, such funds when invested or deposited by the Tribe shall be subject to the following:

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

(ii) If not invested, advanced funds must be deposited into accounts that are insured by an agency or instrumentality of the United States or must be fully collateralized to ensure protection of the funds, even in the event of a bank failure;

(iii) Interest and investment income that accrue on any funds provided for by this agreement become the property of the Tribe in accordance with the provisions of 25 U.S.C. § 450j (b) and may be used on projects and activities identified on a FHWA approved TTPTIP; and

(iv) Upon the receipt of funds under this Agreement, the Tribe shall expend the funds for the purposes set forth in this Agreement and as authorized by law; provided however that the Tribe may accumulate multiple annual allocations of TTP funds when necessary to fund an eligible project which requires more than one fiscal year of funding and is identified on a tribal TIP or a tribal priority list.

E. The Tribe may use funds provided under this agreement for flexible financing as provided in 23 U.S.C. § 122, 25 CFR §§ 170.227 – 230**,** and other applicable laws, as amended by the FAST Act.

F. The Tribe may issue bonds or enter into other debt financing instruments under 23 U.S.C. §122, as amended by the FAST Act, with the expectation of payment of TTP funds to satisfy the instruments, including, but not limited to, the repayment of loan principal and interest on such debt instruments. When the Tribe elects to use flexible financing to advance construct an eligible project or projects under this Agreement, the Director agrees (i) to maintain the project(s) on the FHWA-approved TTPTIP 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 and notice that the Tribe has enrolled in ASAP by the Director), 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 Director thereunder.

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

(i) 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

(ii) create any right of a third party against the United States for payment under the eligible debt financing instrument.

I. As authorized by 25 CFR § 170.228, the Tribe may use TTP funds to:

(i) leverage other funds; and

(ii) pay back loans or other finance instruments for a project that:

(a) the Tribe paid for in advance of the current year using non-TTP funds, including Tribal funds; and

(b) was included in an FHWA-approved TTP-TIP; and

(c) was included in the National Tribal Transportation Facility Inventory (NTTFI) before commencement of construction.

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

K. The Parties agree that this Agreement is entered into and funds are made available to the Tribe pursuant to 23 U.S.C. §§ 202 (a)(2)(B), and as authorized by the ISDEAA for purposes of Federal Tort Claims Act coverage. Payments 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.

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 the TTP under 23 U.S.C. § 202 (b)(6), except to the extent that such powers are inherently Federal and cannot be transferred. Such powers shall include, but are not limited to, the Secretary of the Interior's (Secretary) powers under the TTP regulations, together with such duties and responsibilities as may be performed by the Secretary or an Indian tribe under the TTP 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 Director 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 Director

agrees to attempt to resolve disputes at the lowest possible staff level and by consent whenever possible.

Section 5. Construction of this Agreement. This Agreement shall be construed in a manner to facilitate and enable the transfer of programs authorized by 23 U.S.C. § 202, as amended by the FAST Act, and Chapter 1 of Title 23, as amended.

Section 6. Activities to be Performed. Consistent with the provisions of 23 U.S.C. § 202 (a)(1), the activities to be performed by the Tribe under this Agreement may include:

- Transportation Planning;
- Program Administration;
- Preliminary Engineering (including the use of Tribal Environmental Policy Act (TEPA) processes and procedures to satisfy compliance with the National Environmental Policy Act (NEPA) and other environmental and cultural resource requirements);
- Construction;
- Construction Engineering;
- Construction Management;
- Road Maintenance as authorized under 23 U.S.C. § 202 (a)(8)(A), (the greater of 25% of the funds allocated to the Tribe through the TTP funding formula under 23 U.S.C. § 202 (b) or $500,000 may be expended for the purpose of eligible road maintenance activities, excluding road sealing which shall not be subject to any limitation);
- Development and negotiation of Tribal-State road maintenance agreements authorized under 23 U.S.C. § 202 (a)(8)(C);
- Other TTP-eligible activities authorized under Chapter 1 or 2 of Title 23 or the TTP regulations, as each may be amended by FAST Act, or other applicable law including activities funded under agreements developed under 23 U.S.C. § 202 (a)(9); and
- (INSERT ANY ADDITIONAL ELIGIBLE TTP ACTIVITIES).

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 Director. If the Director

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

Section 8. Carry-over. 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. The TTP regulations as modified by the FAST Act and any amendments thereto apply to this Agreement. The Tribe may seek a waiver of these regulations to the extent permitted by law and as set forth in 25 CFR §§ 170.625 and 170.626.

Section 10. Use of Tribal Facilities and Equipment. The Parties agree that the Tribe shall be permitted to utilize TTP, other Federal Lands Highway funds, and additional TTP-eligible funds awarded under this Agreement to pay such lease/rental rates, as well as to maintain such facilities and equipment when performing PFSAs under this Agreement. For purposes of this Agreement, in those cases where the Tribe reasonably determines, and provides written notice and analysis documentation to the Director 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 Appendix A to Subpart G of the TTP regulations, provided that not more than 25% or a maximum of $500,000 of the Tribe's TTP funds may used for this purpose.

ARTICLE III – RESPONSIBILITIES OF THE TRIBE

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

Section 2. Program Standards and Regulations. The Tribe agrees to initiate and perform the contracted programs and projects in accordance with the requirements of the TTP regulations, as amended by the FAST Act. Additionally, the Tribe may, at its sole option, adopt applicable FHWA or BIA policies, procedures, program guidelines and memoranda, or develop tribal policies, procedures, program guidelines and memoranda which meet or exceed federal standards to facilitate operation or administration of any aspect of the programs assumed by or delegated to the Tribe under this Agreement.

Section 3. Plans, Specifications and Estimates Approval Authority.

A. Tribal and BIA-owned facilities. The Tribe is authorized to review and approve plans, specifications and estimates ("PS&E") project packages in accordance with the requirements of 25 CFR §§ 170.460 through 170.463, as amended by 23 U.S.C § 202 (b)(5), and will provide a copy of said PS&E approval to the facility owner and BIA. The Tribe shall:

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

(ii) obtain the advance review of the PS&E from a civil engineer licensed by the State in which the project is located who has certified that the PS&E meets or exceeds the applicable health and safety standards; and

(iii) provide a copy of the State-licensed civil engineer's certification to the Director with a copy to the BIA and the Federal Lands Highways Program administrator.

B. Facilities owned or maintained by a public authority other than the Tribe or the BIA. In the interest of building stronger government-to-government relations in transportation planning and coordination, the Tribe voluntarily agrees to perform its PS&E review and approval function as to facilities owned or maintained by a public authority, as that term is defined in 23 U.S.C. § 101 (a)(20). 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 (A)(i) of this Section, above, the Tribe further agrees to:

(i) 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;

(ii) 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;

(iii) prior to soliciting bids for the project(s), certify in writing to the Director 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. [1]

Section 4. Transportation Planning and Inventory. Within available funding, the Tribe further agrees to carry out a transportation planning process and provide this information to the BIA, with courtesy copies to FHWA, as may be reasonably necessary for the BIA to maintain an updated NTTFI of TTP-eligible transportation facilities as required by 23 U.S.C. § 202 (b)(1) and to develop the annual TTPTIP. **Section 5. Easements, Maintenance/Utility Agreements, Environmental Assessments.** In coordination with local jurisdictions and to the extent required by Federal law, the TTP regulations, and 25 C.F.R. Part 169, if applicable, the Tribe agrees to develop appropriate construction easements or right-of-ways, maintenance and utility agreements needed for the construction of TTP facilities carried out under this Agreement. The Tribe agrees to perform all environmental and archeological review functions under this Agreement, except those functions which are inherently Federal and cannot be transferred, in accordance with the 23 U.S.C. § 139, the TTP regulations, and other applicable laws, as amended by the FAST Act.

Section 6. Construction.

A. In accordance with the FHWA-approved TTPTIP, the Tribe agrees to initiate and complete TTP construction projects in accordance with the approved PS&E and any Tribally-approved change orders and shall ensure that adequate management of the TTP construction project is performed according to applicable BIA, FHWA or Tribal standards which meet or exceed federal standards.

B. The Tribe agrees to expend TTP funds on:

(i) program and administrative expenses authorized under**:**

(a) this Agreement;

(b) the TTP regulations, as amended by the FAST Act;

---

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

(c) 2 CFR Part 200; or

(d) other applicable law; and

(ii) construction activities on projects that are listed on a FHWA approved TTPTIP.

C. Once a TTP construction project is completed, the Tribe shall prepare for the Director a final construction report and as-built plans for final inspection in accordance with the TTP regulations at 25 CFR §§ 170.472 through 170.474 and 25 CFR Part 169, if applicable.

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

Section 7. Reporting Requirements.

A. The Tribe shall provide the Director with a courtesy copy of its annual single agency audit report within 30 days of its submission to the Federal Audit Clearinghouse. If the Tribe is not required to carry out a single agency audit, then the Tribe shall provide the Director with an annual review in accordance with its approved financial management systems or procedures.

B. The Tribe shall also provide the Director with its annual and semi-annual financial status reports for the TTP and other funds awarded under this Agreement using a Federal Financial Report, SF-425, within sixty (60) days following the conclusion of each reporting period, which shall run from October 1 to March 31 and from April 1 to September 30.

C. Additionally, in order to assist the Tribe with fulfilling the requirements of 23 U.S.C. § 201 (c)(6)(C), the BIA will establish an electronic data reporting system, the Tribe shall be responsible for inputting its data into that system, and the Tribe shall provide its reports to the Director no later than December 30 of each year. From that data, a report will be generated by BIA and FHWA for the Secretaries. The Tribe acknowledges its understanding that the submittal of its data is mandated by statute, and that non-compliance with this requirement may be a sole basis for termination of this Agreement by the Director.

ARTICLE IV – RESPONSIBILITIES OF THE DIRECTOR

Section 1. Provision of Funds. The Director shall provide funds to the Tribe in accordance with Article II, Section 2 of this Agreement.

Section 2. Authorize Project Work. The Director authorizes the Tribe to carry out preliminary engineering, construction engineering, development of management systems, construction, and maintenance of the programs and projects that are otherwise contractible under this Agreement for PFSAs related to projects/facilities included on an FHWA-approved TTPTIP in accordance with the approved PS&E packages, this Agreement and applicable laws and regulations.

Section 3. Coordination with Public Authorities. The Director, 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 4. Designated Officials. All notices, proposed amendments, and other written correspondence between the Parties shall be submitted to the following officials:

To the Tribe:

TITLE OF TRIBAL OFFICIAL
OFFICIAL NAME OF TRIBE
ADDRESS
CITY, STATE ZIP

With a copy to:

TITLE
NAME OF ORGANIZATION
ADDRESS
CITY, STATE ZIP

To the BIA:

Director
Bureau of Indian Affairs
United States Department of the Interior
1849 C Street, N.W., MS 4606 MIB
Washington, D.C. 20240

With a copy to:

Chief, Division of Transportation
Bureau of Indian Affairs
United States Department of the Interior
1849 C Street, N.W., MS 4512 MIB
Washington, D.C. 20240

Section 5. Federal Construction Standards. The Director 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 Director may also accept commonly used industry

construction standards, including design and construction standards adopted by the State of (INSERT STATE).

Section 6. Joint Inspection. The Director shall conduct the final project inspection jointly with the Tribe and facility owner for the purpose of BIA's acceptance of the construction project or activity and for the purpose of including the updating the NTTFI.

Section 7. Technical Assistance and Retained Services.

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

B. Retained Services. Upon the request of the Tribe, the Director may provide planning, preliminary engineering and construction engineering services to the Tribe under the terms of a Retained Services Addendum (RSA). The RSA shall be negotiated and agreed upon before any direct services are commenced by the Director or his designees, and any funds associated with the RSA shall remain with the Regional TTP office. Any funds remaining after the direct services are completed shall be returned to the Tribe.

Section 8. Reporting. The Director shall provide the Tribe with semi-annual reports on program matters of common concern to the parties.

Section 9. Notice of Availability of Additional Funds. If the Director receives notice of the availability of additional funding for any purpose authorized under this Agreement, including the availability of unspent TTP funds, the Director shall promptly notify the Tribe regarding such funding so that the Tribe may apply for any funds they may be eligible to receive on the same basis as any other Indian tribe.

ARTICLE V – OTHER PROVISIONS

Section 1. Eligibility for Additional Funding and Services. The Tribe shall be eligible, under this Agreement, to receive additional TTP funds on the same basis as other Indian tribes according to statutory formula as provided by 23 U.S.C. § 202 (b)(3), as well as other funds not included in this Agreement which are available to Tribe on a competitive, formula, or other basis, including non-recurring funding such as Tribal High Priority Project Program funding, Tribal Transportation Bridge Program Funds, Congressional earmarks, and other discretionary grants programs such as, but not limited to, Public Lands Highways Discretionary grants;

additionally, any state-aid funds under Chapter 1 of Title 23, United States Code, or funds from other sources that may be credited to the TTP as provided by 23 U.S.C. § 202 (a)(9) and made available to the Tribe, but only under the terms of an agreement to transfer such funds that is acceptable to, and approved by, the Director or his designee. Whenever there are errors in calculations or other mistakes regarding estimates of available funding which may need to be renegotiated, both Parties agree to take action as necessary to correct such errors.

Section 2. Access to Data Available to the Director to Administer the Program. The Tribe is administering a federal program under the authority of the FAST Act and by resolution of the Tribal government. In order for the Tribe to carry out this program effectively and without diminishment of federal services to program beneficiaries, and consistent with this Agreement, the Director 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:

A. affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by the Tribe; or

B. authorizing or requiring the termination of any existing trust responsibility of the United States to Indians.

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 by 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, general liability insurance and bond coverage consistent with statutory minimums and local construction industry standards. The Parties understand and agree that this insurance requirement does not apply to the Tribe itself.

Section 6. Indian and Tribal Preference.

A. Federal law gives hiring and training preferences, to the greatest extent feasible, to Indians for all work performed under the TTP. Under 25 U.S.C. § 450e (b), Indian organizations and Indian-owned economic enterprises are entitled to a preference, to the greatest extent feasible, in the award of contracts, subcontracts, and sub-grants for all work performed under the TTP.

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

C. In accordance with 23 U.S.C. §§ 202 (a)(3) and (a)(10), the Tribe shall establish and follow procurement management standards regarding competition.

Section 7. Program Review. The Tribe agrees to allow BIA and/or FHWA officials to perform an annual review of the Tribe's TTP. The review is intended to allow BIA to carry out its oversight and stewardship responsibilities for the TTP assumed by the Tribe under this Agreement. The BIA will provide a written report to the Tribe within 45 days of the review.

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

Section 9. Termination of the Agreement. In the event the Tribe wishes to terminate this Agreement, the Tribe shall notify the Director in writing of its intention to do so, including specifying the effective date of termination, and thereafter the Director shall continue to provide transportation services in accordance with applicable law. In the event the Director makes a specific written finding that the Tribe has failed to comply with the terms of this Agreement and provides notice to the Tribe that it is no longer eligible to receive funding under this Agreement, at the Tribe's election, the Tribe may perform such PFSAs 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. If the Tribe disputes the Director's eligibility determination, the Parties may utilize the dispute remedies available under Article II, Section 4 herein, and the Director shall suspend any decision to transfer funds pending the outcome of the dispute.

Section 10. (INSERT ANY SPECIAL CONDITIONS/ISSUES, OTHERWISE DELETE)

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

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

Section 13. Successor Agreements.

A. Tribal Transportation Program Agreement. No later than six months prior to the expiration of this Agreement, the Parties shall commence negotiation of a successor Tribal Transportation Program Agreement. It is the intent of the Parties to have a successor Agreement in place to run concurrent with the highway reauthorization legislation which succeeds the FAST Act.

B. Referenced Funding Agreement. Ninety (90) days before the expiration of each year's RFA, the Parties shall commence negotiation of the subsequent year's RFA.

Section 14. Electronic Signature Election and Authorization.

A. The Parties are not required to execute, electronically scan, and transmit this Agreement, the RFA, RSA (if applicable), or any Amendments of each, by electronic means but the Tribe may choose to do so, and only in such event shall the following Paragraphs (i), (ii) and (iii) be applicable:

(i) the Parties agree that an electronically scanned exact counterpart of this Agreement, the RFA, RSA (if applicable), and any Amendments of each, in its entirety bearing their respective authorized signatures shall act as their legally binding execution of this Agreement; and

(ii) that the Tribe shall include an electronically scanned copy of its tribal government resolution or other official action authorizing its representative to enter into this Agreement, the RFA, RSA (if applicable), and Amendments of each, on the Tribe's behalf as an attachment to the counterpart it sends to the Director; and

(iii) that execution of this Agreement in such a manner shall have the same effect as an original handwritten signature and the electronic counterparts shall together constitute one and the same instrument.

Section 15. Counterparts and Facsimiles. This Agreement may be executed in exact counterparts and transmitted via facsimile to the other Party, each of which shall be deemed the original, and all of which together shall constitute one and the same instrument.

INSERT OFFICIAL NAME OF TRIBE	**United States Department of the Interior Bureau of Indian Affairs**
By_____	By_____
INSERT NAME OF SIGNATORY INSERT TITLE	Michael Black Director
_____	_____
Date	Date

Exhibit 3.1b – FHWA Tribal Transportation Program Agreement (TTPA) Template

TRIBAL TRANSPORTATION PROGRAM AGREEMENT BETWEEN THE (INSERT NAME OF TRIBE) AND THE UNITED STATES DEPARTMENT OF TRANSPORTATION

ARTICLE I – AUTHORITY AND PURPOSE

Section 1. Authority. This Tribal Transportation Program Agreement (hereinafter "the Agreement") is entered into by the Administrator, Federal Highway Administration, (hereinafter "Administrator"), for and on behalf of the United States Department of Transportation (hereinafter "DOT") and by the (INSERT NAME 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 Chapter 2 of Title 23, United States Code, as amended by the Fixing America's Surface Transportation Act (FAST Act), Pub. L. 114-94, (Dec. 4, 2015) and the Delegations of Authority set forth in 49 CFR § 1.85. This agreement will be implemented in a manner consistent with Executive Order 13175 (Nov. 6, 2000, 65 Fed. Reg. 67249) (Consultation and Coordination with Indian Tribal Governments); the Presidential Memorandum on Tribal Consultation dated November 5, 2009; the DOT's Order regarding Programs, Policies, and Procedures Affecting American Indians, Alaska Natives, and Tribes (DOT 5301.1, November 16, 1999); and the U.S. DOT Tribal Consultation Plan found at

http://www.fhwa.dot.gov/tribal/news/consultation.html; all as amended by the FAST Act. This Agreement authorizes the Tribe to perform the planning, research, design, engineering, construction, and maintenance of highway, road, bridge, parkway, or transit facility programs or projects that are located on or which provide access to the (INSERT NAME OF TRIBE) Reservation (ALASKA NATIVE VILLAGE/CONSORTIUM) or a community of the Tribe and are eligible for funding pursuant to the Tribal Transportation Program (TTP) regulations (25 CFR Part 170). This Agreement is made pursuant to 23 U.S.C. § 202 (b)(7) and 25 CFR Part 170, as amended by the FAST Act, and in accordance with the Indian Self-Determination and

Education Assistance Act (hereinafter "the ISDEAA"), Pub. L. 93-638, as amended (25 U.S.C. **§** 450 et seq.). [1]

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

(1) to transfer to the Tribe all of the functions and duties that the Secretary of the Interior would have performed with respect to a program or project under Chapter 2 of Title 23, United States Code, other than those functions and duties that cannot be legally transferred under the ISDEAA, together with such additional activities as the Tribe may perform under the FAST Act and 25 CFR Part 170;

(2) to carry out the Federal Highway Administration's (FHWA) statutory requirements pursuant to the FAST Act and to maintain and improve its

[1] The Tribe and FHWA have recognized that each Party has a different understanding as to the application of the ISDEAA (Act) and it's 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.

unique and continuing government-to-government relationship with and responsibility to the Tribe; and

(3) to provide the Tribe or its designee, under a Referenced Funding Agreement (RFA), its formula share of TTP funds pursuant to the FAST Act and 25 CFR Part 170, and those additional amounts as the Administrator determines equal the amounts that would have been withheld for the costs of the Bureau of Indian Affairs for administration of the program or project, together with such additional Federal Lands Highways funds as the Tribe may receive or otherwise be entitled to through a formula or competitive grant, award, earmark or other appropriation to the Department of Transportation (DOT), as well any other federal-aid funds under Chapter 1 of Title 23, United States Code, or funds from other sources that may be made available to the Tribe under an agreement to transfer such funds approved by the Administrator or his designee. The Bureau of Indian Affairs (INSERT REGION NAME) Regional Office shall continue to receive the funds identified in 23 U.S.C. § 202 (a)(6) for certain program management and oversight (PM&O) activities and project-related administrative expenses as further identified in Article II, Section 2 and in approved RFAs.

ARTICLE II – TERMS, PROVISIONS, and CONDITIONS

Section 1. Effective Date and Term. This agreement shall become effective upon the date of its approval and execution by authorized representatives of the Tribe and the Administrator and shall remain in effect and be automatically extended for the maximum period authorized by any statutory extensions to the FAST Act until amended pursuant to Article V, Section 11, or terminated pursuant to Article V, Section 9.

Section 2. Funding.

A. Subject to the availability of funding and in accordance with 23 U.S.C. § 202 (b)(7), the Administrator shall provide to the Tribe or its designee, through an electronic transfer, a single annual lump sum funding amount equal to the amount that the Tribe would otherwise receive for the TTP formula in accordance with 23 U.S.C § 202 (b)(3), and such additional amount, as determined by the Administrator that would have been withheld by the BIA for the administration of the Tribe's TTP or projects. The Parties agree to annually provide the Tribe the amounts that would have been withheld for the costs of the BIA for administration of the Tribe's program or projects as provided in 23 U.S.C.§ 202 (b)(7)(E) and further identified on the an approved RFA.

B. Upon the execution of this Agreement and the RFA by both Parties**,** and subject to the availability of funds and the determination of the Tribe's annual funding percentage per 23 U.S.C § 202(b)(3), the Administrator shall notify the Tribe or its designee, in accordance with Article IV, section 5, that the funds identified in the RFA are available. The Tribe shall submit electronic banking information under an ACH Vendor/Miscellaneous Payment Enrollment Form to the Administrator and the Administrator shall provide to the Tribe a single advance payment in the amount identified in the RFA within thirty (30) calendar days of his receipt of the Payment Enrollment Form. The Parties agree that the RFA will be renegotiated annually on a Federal fiscal year basis.

C. Pursuant to 23 U.S.C.§ 202(b)(7)(B), all funds shall be paid to the Tribe without regard to the organizational level at which the Department of the Interior or the DOT has previously carried out under the Federal Lands Highways Program, the programs, functions, services, or activities (PFSAs) involved.

D. Pursuant to 25 CFR §§ 170.607 – 170.608, Contract Support Costs are an eligible cost and the Tribe may use their TTP Program allocation to pay such costs. The Tribe shall include a line item for Contract Support Costs in the Tribe's project construction budgets. The

Tribe may also include, as eligible Contract Support Costs, one-time start-up costs and preaward costs incurred by the Tribe in the initial year of this Agreement in accordance with 25 U.S.C. §§ 450j-1(a)(5) and (6). The parties acknowledge that TTP funds are distributed pursuant to a statutory formula to the federally recognized Tribes in the United States. A Tribe's total share of TTP funds includes all direct and indirect costs associated with the TTP. The Parties expressly acknowledge there are no additional TTP funds available for any additional indirect costs which are incurred.

E. Funds advanced to the Tribe under this Agreement shall be used by the Tribe as permitted under 23 U.S.C. § 202(a)(1) and 25 CFR Part 170, as amended by the FAST Act, other applicable laws, and as authorized under this Agreement. The Tribe reserves the right to reallocate funds among the eligible projects identified on an FHWA-approved Tribal Transportation Improvement Program (TTIP), so long as such funds are used in accordance with Federal appropriations law. Funds advanced to the Tribe pending disbursement for a purpose authorized under the Agreement may not be reprogrammed for other purposes and therefore shall be placed in a savings, checking or investment account containing only funds transferred under this Agreement, which is separated from, and tracked independently of, all other tribal accounts. For purposes of this Agreement, such funds when invested or deposited by the Tribe shall be subject to the following:

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

(ii) If not invested, advanced funds must be deposited into accounts that are insured by an agency or instrumentality of the United States or must be fully collateralized to ensure protection of the funds, even in the event of a bank failure;

(iii) Interest and investment income that accrue on any funds provided for by agreement become the property of the Tribe in accordance with the provisions of 25 U.S.C. § 450j(b) and may be used on projects and activities identified on an FHWA approved TTIP; and

(iv) Upon the receipt of funds under this Agreement, the Tribe shall expend the funds for the purposes set forth in this Agreement and as authorized by law; provided however that the Tribe may accumulate multiple annual allocations of TTP funds when necessary to fund an eligible project which requires more than one fiscal year of funding and is identified on an FHWA approved TTIP or a tribal priority list (25 CFR Part 170).

F. The Tribe may use funds provided under this agreement for flexible financing as provided in 23 U.S.C. § 122; 25 CFR §§ 170.300 – 303**,** and other applicable laws, as amended by the FAST Act.

G. 1**.** The Tribe may issue bonds or enter into other debt financing instruments under 23 U.S.C. § 122, as amended by the FAST Act, with the expectation of payment of TTP funds to satisfy the instruments, including, but not limited to, the repayment of loan principal and interest on such debt instruments. When the Tribe elects to use flexible financing to advance construct an eligible project or projects under this Agreement, the Administrator agrees (i) to maintain the project(s) on the FHWA-approved TTIP until all debt instruments, including interest thereon, are repaid in full by the Tribe, and (ii) at the option and direction of the Tribe (after receipt of electronic banking information on the Payment Enrollment Form by the Administrator), to provide all or a portion of the funds the Tribe is eligible to receive under this Agreement directly to a trustee or other depository so designated by the Tribe pursuant to the provisions of any RFA received by the Administrator thereunder.

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

a) constitute a commitment, guarantee, or obligation on the part of the United States to provide for payment of principle or interest on the eligible debt financing instrument entered into by the Tribe; or

b) create any right of a third party against the United States for payment under the eligible debt financing instrument.

H. As authorized by 25 CFR § 170.228, the Tribe may use TTP funds to:

(i) leverage other funds; and

(ii) pay back loans or other finance instruments for a project that:

(a) the Tribe paid for in advance of the current year using non-TTP funds, including tribal funds;

(b) was included in an FHWA-approved TTIP; and

(c) was included in the National Tribal Transportation Facility Inventory (NTTFI) before commencement of construction.

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

J. The Parties agree that this Agreement is entered into, and that funds are made available to the Tribe, in accordance with the ISDEAA pursuant to 23 U.S.C. § 202 (b)(7), as amended by the FAST Act. Payments made by the Administrator under this Agreement shall be made in accordance with Article II, Section 2.B. herein. In the event funds due the Tribe under this Agreement are not paid to the Tribe in accordance with the requirements of Article II,

Section 2.B., the Parties shall rely upon the dispute resolution provisions set forth in Article II, Section 4 of this Agreement.[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 (b)(7)(H), except to the extent that such powers are powers that inherently cannot be legally transferred under the ISDEAA. Such powers shall include, but are not limited to the Secretary of the Interior's powers under 25 CFR Part 170, together with such duties and responsibilities as may be performed by an Indian Tribe under the 25 CFR Part 170 regulations or as are otherwise permitted by law.

Section 4. Dispute Resolution. In the event of a dispute arising under this Agreement, the Tribe and the Administrator agree to use mediation, conciliation, arbitration, and other dispute resolution procedures authorized under 25 CFR § 170.934. The goal of these dispute resolution procedures is to provide an inexpensive and expeditious forum to resolve disputes. The Administrator agrees to resolve disputes at the lowest possible staff level and by consent whenever possible.

Section 5. Construction of this Agreement. This Agreement shall be construed in a manner to facilitate and enable the transfer of programs authorized by 23 U.S.C. § 202, as amended by the FAST Act.

Section 6. Activities to be Performed. The activities covered by this Agreement are:

- Transportation Planning;
- Construction Management;
- Program Administration;

---

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

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

Section 7. Limitation of Costs. The Tribe shall not be obligated to continue performance under this Agreement that requires an expenditure of funds in excess of the amount of funds awarded under this Agreement or the RFA. If, at any time, the Tribe has reason to believe that the total amount required for performance of this Agreement, or a specific activity conducted under this Agreement or the RFA would be greater than the amount of funds provided under this Agreement or the RFA, the Tribe shall provide reasonable notice to the Administrator. If the Administrator does not increase the amount of funds allocated under this Agreement or the RFA, the Tribe may suspend performance of the Agreement until such time as additional funds are made available.

Section 8. Carryover. Any funds provided to the Tribe under this Agreement or the RFA which have not been expended at the conclusion of the fiscal year in which such funds were allocated shall remain in the custody of the Tribe and be used for the purposes authorized under this Agreement. Determination of the priority and amount of funds to be used for each program, function, service or activity shall be the responsibility of the Tribe, except as limited by law or otherwise proscribed by this Agreement.

Section 9. Applicable Regulations. 25 CFR Part 170, and any amendments thereto apply to this Agreement. [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 TTP, other Federal Lands Highway funds, and additional TTP-eligible funds awarded under this Agreement to pay such lease/rental rates as well as to maintain such facilities and equipment when performing PFSAs under this Agreement. For purposes of this Agreement, in those cases where the Tribe reasonably determines, and provides written notice and analysis documentation to the Administrator that the purchase of equipment is more cost effective than the leasing of equipment, the Parties agree that the purchase of construction equipment shall be an allowable [3] cost to the Tribe, as permitted under 25 CFR Part 170, Appendix A to Subpart G, so long as not more than 25% of the Tribe's TTP Program funds or a maximum of $500,000 are used for this purpose.

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).

---

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

B. Program Standards and Regulations. The Tribe agrees to initiate and perform the contracted programs and projects in accordance with the requirements of 25 CFR Part 170, as amended by the FAST Act. Additionally, the Tribe may, at its sole option, adopt applicable FHWA or BIA policies, procedures, program guidelines and memoranda, or develop tribal policies, procedures, program guidelines and memoranda which meet or exceed federal standards to facilitate operation or administration of any aspect of the programs assumed by or delegated to the Tribe under this Agreement.

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

(1) Tribal and BIA-owned facilities. The Tribe is authorized to review and approve plans, specifications and estimates ("PS&E") project packages in accordance with the requirements of 25 CFR §§ 170.460 through 170.463, as amended by 23 U.S.C. § 202 (b)(5), and will provide a copy of said PS&E approval to the facility owner and FHWA. The Tribe hereby:

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

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

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

(2) Facilities owned or maintained by a public authority other than the Tribe or the BIA. In the interest of building stronger government-to-government relations in transportation planning and coordination, the Tribe voluntarily agrees to perform its PS&E review and approval function as to facilities owned or maintained by a public

authority, as that term is defined in 23 U.S.C. § 101 (a)(20), as follows. For a facility owned or maintained by a public authority other than the BIA or the Tribe, in addition to satisfying the requirements of paragraph (C)(1) herein, the Tribe further agrees to:

(a) provide the public authority an opportunity to review and comment on the Tribe's PS&E package when it is between 75 and 95 percent complete, unless an agreement between the Tribe and the public authority states otherwise;

(b) allow the public authority at least 30 days for review and comment on the PS&E package, unless the Tribe and the public authority agree upon a longer period of time;

(c) before soliciting bids for the project(s), certify in writing to the Administrator that it afforded the public authority an opportunity to review and comment on the PS&E package and received no written comments from the public authority that prevent the Tribe from proceeding with the project. [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 NTTFI of TTP eligible facilities per 23 U.S.C. § 202(b)(1), and to develop the annual national TTP Transportation Improvement Program (TTPTIP).

[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.

E. Easements, Maintenance and Utility Agreements, Environmental Assessments. In coordination with local jurisdictions and to the extent required by Federal law and 25 CFR Part 170, and 25 CFR 169 if applicable, the Tribe agrees to develop appropriate construction easements or right-of-ways, maintenance and utility agreements needed for the construction of TTP facilities carried out under this Agreement. The Tribe agrees to perform all environmental and archeological review functions under this Agreement in accordance with 23 U.S.C. § 139, 25 CFR Part 170, and other applicable laws, as amended by the FAST Act.

F. Construction.

(1) In accordance with the FHWA-approved TTIP, the Tribe agrees to initiate and complete TTP construction projects in accordance with the approved PS&E and any tribally-approved change orders and shall ensure that construction engineering is performed according to applicable FHWA, BIA or tribal standards which meet or exceed federal standards.

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

(a) program and administrative expenses authorized under**:**

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

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

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

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

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

ARTICLE IV – RESPONSIBILITIES OF THE ADMINISTRATOR

Section 1. Provision of Funds. The Administrator shall provide funds pursuant to the RFA to the Tribe to carry out this Agreement in accordance with Article II, Section 2 of this Agreement.

Section 2. Authorize Project Work. The Administrator authorizes the Tribe to carry out preliminary engineering, construction engineering, development of management systems, construction, and maintenance of the programs and projects carried out by the Tribe under this Agreement for PFSAs and projects/facilities included on an FHWA-approved TTIP in

accordance with the approved PS&E packages, this Agreement, and applicable laws and regulations.

Section 3. Coordination with BIA.

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

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

Section 4. Coordination with Public Authorities. The Administrator, or his authorized FHWA representative, upon the Tribe's request, shall coordinate with representatives of a public authority to assist the Tribe during the public authority's review of a PS&E package or final inspection of a completed project to ensure that the public authority's input during the review and comment period, or during the final inspection does not interfere with the Tribe's efficient administration of projects performed under this Agreement.

Section 5. Designated Officials. All notices, proposed amendments, and other written correspondence between the Parties shall be submitted to the following officials:

To the Tribe:

Chairman/President
(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:

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

With a copy to:

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

Section 6. Federal Construction Standards. The Administrator may provide information about Federal construction standards as early as possible in the construction process. If tribal construction standards are consistent with or exceed applicable federal standards, the Tribe's proposed standards will be accepted. The Administrator may also accept commonly used industry construction standards, including design and construction standards adopted by the State of (INSERT STATE LOCATION).

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

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

Section 9. Reporting. The Administrator shall provide the Tribe with semi-annual reports on program matters of common concern to the parties. The times for these reports are identical to those set out in Article III, Section 1(G).

Section 10. Notice of Additional Funds. If the Administrator receives notice of the availability of additional funding for any purpose authorized under this Agreement, including the availability of unspent TTP funds, the Administrator shall promptly notify the Tribe regarding such funding so that the Tribe may apply for any funds they may be eligible to receive on the same basis as any other Indian Tribe.

ARTICLE V – OTHER PROVISIONS

Section 1. Eligibility for Additional Funding and Services. The Tribe shall be eligible, under this Agreement, to receive additional TTP funds on the same basis as other Indian Tribes according to statutory formula as provided by 23 U.S.C. § 202 (b)(3), as well as other funds which are available to Tribe on a competitive, formula, or other basis, including non-recurring funding such as any federal-aid funds under Chapter 1 of Title 23, United States Code, or funds from other sources that may be credited to the TTP as provided by 23 U.S.C. § 202 (a)(9) and made available to the Tribe, but only under the terms of an agreement to transfer such funds that is acceptable to, and approved by, the Administrator or his designee. Whenever there are errors in calculations or other mistakes regarding estimates of available funding which may need to be renegotiated, both Parties agree to take action as necessary to correct such errors.

Section 2. Access to Data Available to the Administrator to Administer the Program. The Tribe is administering its TTP under the authority of the FAST Act and by resolution of the tribal government. In order for the Tribe to carry out this program effectively and without diminishment of federal services to program beneficiaries, and consistent with this Agreement,

the Administrator shall provide the Tribe with all releasable data and information necessary to carry out the PFSAs assumed by the Tribe under this Agreement.

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

(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by the Tribe; or

(2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

Section 4. Trust Responsibility. Nothing in this Agreement shall absolve the United States from any responsibility to individual Indians and the Tribe, including responsibilities derived from the trust relationship and any treaty, executive order, or agreement between the United States and the Tribe.

Section 5. Federal Tort Claims Act/Insurance. In accordance with the provisions of Pub.L. 101-512, Title III, § 314, 104 Stat. 1959, as amended Pub.L. 103-138, Title III, § 308, 107 Stat. 1416 (25 U.S.C. § 450f, note), for purposes of Federal Tort Claims Act coverage under this Agreement, the Tribe and its employees are deemed to be employees of the Federal government while performing work under this Agreement. This status is not changed by the source of the funds used by the Tribe to pay the employee's salary and benefits unless the employee receives additional compensation for performing covered services from anyone other than the Tribe. The Tribe is also authorized to use the funds provided under this Agreement to purchase such insurance coverage as may be necessary and prudent, in the determination of the Tribe. In full recognition of and without undermining the federal tort claims protection provided in this section, the Parties understand and agree that prudent project management requires that tribal contractors purchase adequate workers compensation, auto and general liability insurance when completing construction projects funded under this Agreement. Accordingly, the Tribe shall include in any construction contracts entered into with funds provided under this Agreement a requirement that tribal contractors maintain workers compensation, auto and

general liability insurance coverage consistent with statutory minimums and local construction industry standards. The Parties understand and agree that this insurance requirement does not apply to the Tribe itself.

Section 6. Indian and Tribal Preference.

A. Federal law gives hiring and training preferences, to the greatest extent feasible, to Indians for all work performed under the TTP. Under 25 U.S.C. § 450e(b), Indian organizations and Indian-owned economic enterprises are entitled to a preference, to the greatest extent feasible, in the award of contracts, subcontracts, and sub-grants for all work performed under the TTP.

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

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

Section 7. Program Review. The Tribe agrees to allow FHWA officials or their designees/representatives to perform an annual review of the Tribe's TTP. The review is intended to allow FHWA to carry out its oversight and stewardship responsibilities for the TTP assumed by the Tribe under this Agreement. FHWA will provide a draft written report to the Tribe within 45 days of the completion of its review and comment. After receipt of comments

from the Tribe, or after an additional 45 days, the report will be put into final form and distributed accordingly.

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

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

Section 10. N/A (Insert any special conditions, if any, and delete "N/A")

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

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

Section 13. Successor Agreements.

A. Tribal Transportation Program Agreement. No later than six months prior to the expiration of this Agreement, the Parties shall commence negotiation of a successor Tribal Transportation Program Agreement. It is the intent of the Parties to have a successor Agreement in place to run concurrent with the highway reauthorization legislation which succeeds the FAST Act.

B. Referenced Funding Agreement. Ninety (90) days before the expiration of each year's RFA, the Parties shall commence negotiation of the subsequent year's RFA.

(INSERT NAME OF TRIBE)	**U.S. Department of Transportation** **Federal Highway Administration**
By_____ (INSERT NAME OF SIGNATORY) (INSERT TITLE)	By_____ Gregory G. Nadeau Administrator
_____ Date	_____ Date

Exhibit 3.2 – Example Tribal Resolution for Intent to Enter into a TTPA with FHWA

[Insert Tribe name]
[Insert address]
[Insert City, State Zip Code]
[Insert Ph: (xxx) xxx-xxxx]
[Insert Email: www.xyz.xxx]
RESOLUTION: [Insert Number]

Approving the [INSERT NAME OF TRIBE]'s Assumption of Transportation Functions under the "Fixing America's Surface Transportation Act" (the FAST Act), and Approving the Issuance of a Notice of Intent to Federal Highway Administration and Bureau of Indian Affairs.

WHEREAS, [INSERT NAME OF TRIBE] Council is the governing body of the [INSERT NAME OF TRIBE], a federally recognized Indian tribe; and

WHEREAS, the [INSERT NAME OF TRIBE] Council finds that transportation infrastructure and facilities provide access, services, and improves the safety and security of Tribal members and nonmembers; and

WHEREAS, the Unites States Congress passed and the President of the United States signed the FAST Act highway reauthorization; and

WHEREAS, the FAST Act authorizes the United States Secretary of Transportation to enter into a funding agreement with a federally recognized Indian tribal government to assume the responsibilities of and the associated funding for the Tribal Transportation Program (TTP) serving a Tribe; and

WHEREAS, the FAST Act provides that an Indian tribal government may carry out any TTP Program or project through a contract or agreement with the United States Secretary of Transportation in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 5301 et seq.) and further provides that the Indian tribal government may assume all functions and duties that the United States Secretary of the Interior would have performed other than those functions and duties that inherently cannot be legally transferred under the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 5301 et seq.).; and

WHEREAS, the [INSERT NAME OF TRIBE] government believes that establishing a comprehensive transportation program will further the long-term interests of the Tribe, afford greater flexibility and control to prioritize transportation needs, and permit our Government to utilize flexible financing arrangements available by law to speed the development of transportation infrastructure; and

WHEREAS, the [INSERT NAME OF TRIBE] Council desires to assume the United States Secretary of the Interior's duties and functions with respect to the TTP Program and such other Tribal transportation programs-as may be appropriate under 23 U.S.C, 25 CFR Part 170, and the FAST Act; and

WHEREAS, the [INSERT NAME OF TRIBE] tribal transportation department possesses the financial stability and management capability required by the FAST Act to assume the United States Secretary of the Interior's responsibilities in the area of transportation planning, design, construction and maintenance;

NOW, THEREFORE BE IT RESOLVED, that the [INSERT NAME OF TRIBE] Council does hereby approve the issuing of a Notice of Intent to the United States Department of Interior, Bureau of Indian Affairs and the United States Department of Transportation, Federal Highways Administration to assume the transportation duties of the Secretary of the Interior under the TTP Program, together with transportation-related activities, and instructs the Tribal President to take all necessary actions to develop with the Federal Highway Administration a mutually acceptable government-to-government agreement to administer the TTP Program; and

BE IT FURTHER RESOLVED, that the [INSERT TITLE] 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 [INSERT NAME OF TRIBE].

CERTIFICATION

This resolution was duly considered and adopted at a meeting of the [INSERT NAME OF TRIBE], on [insert date], 2015, at which a quorum of Council members were in attendance.

For: _____ Against: _____ Abstain: _____

Present: _____ Absent: _____

ATTEST:

_____ _____
First Name Last Name, Title Date

_____ _____
First Name Last Name, Title Date

Exhibit 3.3a – BIA Referenced Funding Agreement (RFA) Template

FY2016 FAST Act RFA

FY2016 REFERENCED FUNDING AGREEMENT

Pursuant to INSERT OFFICIAL NAME OF TRIBE'S Tribal Transportation Program Agreement (AGREEMENT NUMBER) With the Bureau of Indian Affairs

Section 1. Authority. This Referenced Funding Agreement (RFA) is entered into by the Director, Bureau of Indian Affairs (BIA), on behalf of the Secretary of the Interior, and by the INSERT NAME OF TRIBE/VILLAGE (Tribe) and together with the BIA (collectively "the Parties"), pursuant to the Tribal Transportation Program Agreement (Program Agreement) between the Parties for comprehensive transportation planning, research, design, engineering, construction, 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 along with related program administration activities and associated transportation services authorized by Chapter 2 of Title 23, United States Code, as amended by the Fixing America's Surface Transportation Act (FAST Act) Pub. L. 114-94 (December 4, 2015), 25 C.F.R. Part 170, and in accordance with the Indian Self-Determination and Education Assistance Act (hereinafter "the ISDEAA"), Pub. L. 93-638, as amended, for purposes of Federal Tort Claims Act coverage, and by resolution of the Tribe's governing body.

Section 2. Effective Date. If the Program Agreement is in effect, this RFA is effective upon its approval and execution by authorized representatives of the Tribe and BIA; alternatively, if the Program Agreement is not in effect, this RFA shall become effective only upon approval of the Program Agreement by authorized representatives of the Tribe and BIA.

Section 3. Purpose. The purpose of this RFA is to set forth specific conditions for Fiscal Year 2016 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, such other provisions to which the Parties agree including, but not limited to, amending the Program Agreement as provided in Section 13 of this RFA.

Section 4. Activities to be Performed. The activities covered by this RFA and as further detailed in the Tribe's current FHWA-approved Tribal Transportation Improvement Program (TTIP):

- Transportation Planning, including National Tribal Transportation Facility Inventory (NTTFI) updates;
- Program Administration;
- Preliminary Engineering;
- Construction;

- Construction Engineering;
- Construction Management;
- Road Maintenance as authorized by 23 U.S.C. § 202 (a)(8)(A);
- Repayment of Financing Instruments and Tribal Transportation Program (TTP) eligible costs as defined in the Tribe's Advance Construction Agreement;
- Development and negotiation of Tribal-State road maintenance agreements as authorized 23 U.S.C. § 202 (a)(8)(C);
- Other TTP-eligible activities authorized under Chapter 2 of Title 23 or 25 C.F.R. Part 170, as amended by the FAST Act.

Section 5. Summary of Funds. The total amount and sources of funding provided under this RFA are as follows:

Prior Year Funds (If Applicable)		
IRR Program Funds		
IRR Program Transportation Planning (2%)		
IRR Bridge Program Funds		
TTP Funds		
TTP Transportation Planning Funds (2%)		
TTP Safety Funds		
Tribal Transportation Facility Bridge Program Funds		
Other Prior Year Funding		
Total Prior Year Funding	***$***	**-**

FY 2016 Tribal Transportation Program Funds and Other FHWA Funds		
TTP Funds		
TTP Transportation Planning Funds (2%)		
TTP Safety Funds		
Tribal Transportation Facility Bridge Program Funds		
Other Federal Lands Highways Program Funds		
Funds Transferred Under Intergovernmental Fund Transfer Agreement		
Other Funds As Described in Attached Agreement		
Funds Retained Under Retained Services Addendum		
Total FY 2016 Funds:	***$***	**-**
Total Amount for this RFA:	**$**	**-**

Section 6. Eligibility for Additional Funding and Services. The Tribe shall be eligible for additional TTP funds on the same basis as other Indian tribes according to the statutory distribution in 23 U.S.C. § 202 (b), 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.

Section 7. Time and Method of Payment. Subject to the availability of funds, and the execution of this RFA by both Parties, the Director shall provide to the Tribe or its designee the funds identified in Section 5 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 share under Article II, Section 2.B of the TTP Program Agreement.

Section 8. Other Provisions.

A. Use of Funds Advanced. Funds advanced to the Tribe shall be used by the Tribe as permitted under 23 U.S.C. § 202 and 25 C.F.R. Part 170, both as amended by the FAST Act, 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 C.F.R. Part 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.
B. Prior Year Indian Reservation Roads Program Funds. Any prior year Indian Reservation Roads (IRR) Program Relative Need Distribution Formula funds, IRR Program Transportation Planning funds, IRR Bridge Program funds, IRR High Priority Project funds advanced to the Tribe that were made available under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59 (August 10, 2005), shall be administered in accordance with the provisions of SAFETEA-LU including, but not limited to, the restriction that only 25% of such funds may be used for eligible road maintenance activities, 25 C.F.R. Part 170 and other applicable laws. Upon the request of the Tribe, the Director shall provide technical assistance regarding, but not limited to, the administration of the SAFETEA-LU funds advanced under this RFA.
C. Carryover. As provided in Article II, Sec. 8 of the Program Agreement or unless otherwise noted, 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 not expire, shall remain in the custody of the Tribe and be used for the purposes authorized herein and under the Program Agreement.

Section 9. 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 signatures of the authorized representatives of the Tribe and the Director.

Section 10. Retained Services. In accordance with Article IV, Section 7.B., of the Program Agreement, and upon agreement of both parties, the Director will perform the activities identified in the attached "Retained Services Addendum" (RSA), if any. The funds identified in said addendum shall be retained by the Director. Any funds retained under this RSA that are not expended by the Director as of September 1st of the respective funding year shall be obligated to the Tribe's Program Agreement prior to September 30th of that funding year.

Section 11. Notice of Availability of Additional Funds - If the Bureau of Indian Affairs receives notice of the availability of additional FY2016 funding for any purpose authorized under the Program Agreement and RFA, including the availability of unspent TTP funds, the Director 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.

Section 12. 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

By_____
INSERT NAME
TITLE

_____
Date

United States Department of the Interior
Bureau of Indian Affairs

By_____
Hankie P. Ortiz
Deputy Bureau Director
Office of Indian Services

_____
Date

Exhibit 3.3b – FHWA Referenced Funding Agreement (RFA) Template

CFDA 20.205 ID# (insert BIA Tribe code) DTFH69-(insert FY)-H-000XX

REFERENCED FUNDING AGREEMENT

Pursuant to (INSERT NAME OF TRIBE)'s Tribal Transportation Program Agreement With the Department of Transportation for Fiscal Year 20XX

(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 Tribal Transportation Program Agreement (hereinafter "Program Agreement") between the parties for comprehensive transportation 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 (INSERT NAME OF TRIBE/Reservation/Alaska Native Village/Consortium) along with related program administration activities, and associated transportation services authorized by Chapter 2 of title 23, United States Code, as amended by Fixing America's Surface Transportation Act (FAST Act), Pub. L. 114-94 (Dec. 4, 2015) 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. 1.85, and by resolution of the Tribal Council.

(b) Effective Date.- This RFA shall be effective as of October 1, 20XX, 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 20XX 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 updates to the National Tribal Transportation Facility Inventory;
- Construction Management;

- Program Administration;
- Design;
- Construction;
- Road Maintenance as authorized by section 202(a)(8)(A) of title 23;
- 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 as authorized by section 202(a)(8)(C) of title 23.
- Other TTP-eligible activities authorized under Chapter 2 of Title 23 or 25 CFR. Part 170, as each may be amended by FAST Act, or other applicable law; and
- Funds as identified in Agreements developed under 23 U.S.C. 202(a)(9).

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

FY 20XX Tribal Transportation Program and other Funding:

TTP Funds	$	0.00
TTP Transportation Planning Funds (2%)	$	0.00
Tribal Transportation Facility Bridge Funds	$	0.00
TTP Tribal Safety Funds	$	0.00
Other Chapter 2 (FLH Program) Funds (as described)	$	0.00
_____		
_____		
Funds as identified in Agreements developed under 23 USC 202(a)(9) (attached)	$	0.00
Tribe's share of Program/Project-related administrative funds as authorized by section 202(b)(7)(E) of title 23	$	0.00
Total FY 20XX Funds [1] :	$	0.00_____
Total Amount for this RFA:	**$**	**0.00**

[1] The Parties acknowledge that the TTP funds identified on and made available through this RFA reflect the amount required in order to meet the full year FY 20XX TTP tribal shares made available as a result of the passage of Public Law 114-94.

Tribe_____ FHWA_____

SUMMARY

Amount of this RFA	$	0.00
Amount provided through prior FY 20XX RFAs	$	0.00
Total Amount provided to date through FY 20XX RFAs	$	0.00

(f) Eligibility for Additional Funding and Services.- The Tribe shall be eligible for additional TTP funds on the same basis as other Indian Tribes according to the statutory distribution set forth in section 202(b) of title 23, 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 share under Article II, Section 2.B of the TTP 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(a) and 25 CFR Part 170, both as amended by FAST Act, other applicable laws, and for the purposes authorized under the Program Agreement. With the exception of competitive or discretionary grant awards, the Tribe reserves the right to reallocate funds among the eligible projects identified on its FHWA-approved 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 containing only funds transferred under this Agreement, which is separated from, and tracked independently of, all other tribal 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. In order to determine the amount of funding that may be used to pay eligible contract support cost expenses associated with carrying out the TTP Agreement with FHWA, two distinct and separate indirect rates are allowed as follows:

(a) The Tribe may apply its most current negotiated Indirect Cost Rate to the funds received under this RFA that the Tribe will use for program administration activities (non pass-through).

(b) The Tribe may apply an ICR of not more than 3% to the funds received under this RFA that the Tribe will use for "pass-through" funds, which are defined as all project related costs including major contracts or subcontracts, payments to participants, subgrants that a Tribe enters into as well as all equipment, and materials costs for projects carried out by the Tribe.as identified above.

(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 20XX funding for any purpose authorized under the Program Agreement and RFA, including the availability of unspent TTP 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) Fund Availability. – Unless otherwise noted in this RFA, all funds provided by this RFA do not expire at the end of the fiscal year and are available until expended by the Tribe.

(l) Reporting. – In accordance with Section 1.G of Article III of the Program Agreement between the Tribe and FHWA as well as the requirements of 23 U.S.C. § 201 (c)(6)(C), the Tribe shall include the funds identified in this RFA in its semi-annual and annual reports. The Tribe acknowledges its understanding that these reports are mandated by statute and that timely reporting by the Tribe is an essential requirement of the Program Agreement.

Note:
- All references to the ISDEAA and Pub. L 93-638 contained in the Program Agreement formerly at 25 USC § 450 et seq. have beenreclassified at 25 USC § 5301 et seq.
- The language contained in footnote 1 on Page 2 of the Program Agreement is removed in its entirety and the footnote is no longer in force and effect.

Tribe_____ FHWA_____

(INSERT NAME OF TRIBE)

By_____
(INSERT NAME OF SIGNATORY),
(INSERT TITLE)

_____
Date

U.S. Department of Transportation
Federal Highway Administration

By_____
Timothy Hess, Associate Administrator,
for Office of Federal Lands Highway

_____
Date

LOA: Fund (15X0G60050); Budget Year (0000); BPAC (114G600500); Object Class Code (25304)

Exhibit 3.4a – BIA Referenced Funding Agreement (RFA) Amendment Template

REFERENCED FUNDING AGREEMENT

AMENDMENT # X

In accordance with **Section 9 – Amendments** of the Referenced Funding Agreement (RFA) for Fiscal Year 2016 dated (Insert RFA Date) , between the Insert Name of Tribe/Reservation/Alaska Native Village/Consortium and the United States, **Section 5 – Summary of Funds** is hereby amended as follows:

Section 5. Summary of Funds. The total amount and sources of funding provided under this RFA, as Amended herein, are as follows:

Balance of Prior Year Funds (If Applicable)	
IRR Program Funds:	
IRR Program Transportation Planning (2%)	
IRR Bridge Program Funds	
TTP Funds	
TTP Transportation Planning Funds (2%)	
TTP Safety Funds	
Tribal Transportation Facility Bridge Program Funds	
Other Prior Year Funding	
Total Prior Year Funding	***$ -***

FY 2016 Tribal Transportation Program Funds other FHWA funds:	
TTP Funds	
TTP Transportation Planning Funds (2%)	
TTP Safety Funds	
Tribal Transportation Facility Bridge Program Funds	
Other Federal Lands Highways Program Funds	
Funds Transferred Under Intergovernmental Fund Transfer Agreement	
Other Funds As Described in Attached Agreement	
Funds Retained Under Retained Services Addendum	
Total Amount for this Amendment:	***$ -***

SUMMARY

Amount Provided under FY16 RFA and Previous Amendments:	
Grand Total of All FY2016 Funds Provided	**$0.00**

Insert Name of Tribe

By_____
INSERT SIGNER'S NAME
INSERT TITLE

_____
Date

United States Department of the Interior
Bureau of Indian Affairs

By_____
Hankie P. Ortiz
Deputy Bureau Director
Office of Indian Services

_____
Date

Exhibit 3.4b – FHWA Referenced Funding Agreement (RFA) Amendment Template

CFDA 20.205 ID# Agreement Number: (insert BIA Tribe code) DTFH69-(insert FY)-H-000XX

REFERENCED FUNDING AGREEMENT

Pursuant to the (enter Tribe name)
Tribal Transportation Program Agreement
With the Department of Transportation
for Fiscal Year XXXX

Amendment # X

In accordance with **Section (i) Amendments** of the Referenced Funding Agreement, dated X/XX/20XX, pursuant to the Tribal Transportation Program Agreement between (enter Tribe name) and the United States, **Section (e) Summary of funds** is hereby amended, as follows:

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

FY 20XX Tribal Transportation Program Funding and other FLH funds:

TTP Funds		0.00
TTP Transportation Planning Funds (2%)	$	0.00
Total FY 2013 Funds:	$	0.00
Total Amount for this RFA:	**$**	**0.00**

SUMMARY

Amount of this RFA	$	0.00
Amount provided through prior FY 20XX RFAs	$	0.00
Total Amount provided to date through FY 20XX RFAs	$	0.00

Note:
- All references to the ISDEAA and Pub. L 93-638 contained in the Program Agreement formerly at 25 USC § 450 et seq. have beenreclassified at 25 USC § 5301 et seq.
- The language contained in footnote 1 on Page 2 of the Program Agreement is removed in its entirety and the footnote is no longer in force and effect.

Tribe_____ FHWA_____

(INSERT NAME OF TRIBE)

By_____
(INSERT NAME OF SIGNATORY),
(INSERT TITLE)

_____
Date

U.S. Department of Transportation
Federal Highway Administration

By_____
Timothy Hess, Associate Administrator,
for Office of Federal Lands Highway

_____
Date

Exhibit 3.5 – Retained Services Addendum

[(INSERT AGREEMENT #)]

RETAINED SERVICES ADDENDUM

Pursuant to (INSERT NAME OF TRIBE)'s Tribal Transportation Program Agreement With the Bureau of Indian Affairs for Fiscal Year (INSERT FY)

This Retained Services Addendum (RSA) sets forth those services and functions to be performed by the Director pursuant to **Section 10 – Retained Services** of the (INSERT NAME OF TRIBE)'s (INSERT FY) Referenced Funding Agreement (RFA). This RSA shall become effective upon approval by authorized representatives of the Secretary and the (INSERT NAME OF TRIBE).

1. The projects and activities identified below are part of an approved Transportation Improvement Program (TIP), as governed by federal law and regulations.
2. Each of the projects and activities identified below shall be funded in the amount estimated on the aforementioned TIP.
3. The estimated amounts listed below shall be used by the BIA in performance of the services designated herein for the Tribe.
4. The BIA agrees to use professionals qualified to perform the Retained Services work.
5. The Tribe agrees the estimated costs are fair and reasonable and consents to the BIA's use of qualified personnel to perform the designated services.
6. A summary description of the scope of work follows:

Project	Services	Estimated Cost
A. (INSERT PROJECT)	(INSERT type of SERVICE)	$(INSERT ESTIMATE)
	(INSERT type of SERVICE)	$(INSERT ESTIMATE)
B. (INSERT PROJECT)	(INSERT type of SERVICE)	$(INSERT ESTIMATE)
	(INSERT type of SERVICE)	$(INSERT ESTIMATE)
C. (INSERT PROJECT)	(INSERT type of SERVICE)	$(INSERT ESTIMATE)
	(INSERT type of SERVICE)	$(INSERT ESTIMATE)
	TOTAL ESTIMATED COSTS	$(INSERT ESTIMATE)

FY2016 FAST Act Retained Services Addendum

In accordance with Article IV, Section 7.B., of the Tribal Transportation Program Agreement, the funds identified in this RSA shall be retained by the Director.

The Parties agree that the amount identified above is an estimate, and that the Director shall have the authority to expend more or less on each project and/or activity identified, so long as the actual costs do not exceed the total estimated amount listed above.

In the event the Director requires additional funds beyond those identified above or the Tribe requests the Director to perform additional activities this RSA shall be amended accordingly.

Finally, the Parties agree that any funds retained under this RSA that are unexpended by the Director on September 1st of the respective funding year shall be obligated to the Tribe's Program Agreement by September 30th of that funding year.

Approved:

United States Department of the Interior
Bureau of Indian Affairs

_____ _____
(INSERT REGIONAL ENGINEER) Date
Regional Road Engineer, (INSERT REGION)

_____ _____
(INSERT REGIONAL DIRECTOR) Date
Regional Director, (INSERT REGION)

Approved:

(INSERT NAME OF TRIBE)

_____ _____
(INSERT TRIBAL LEADER) Date
(TITLE)

Exhibit 3.6 – ACH Bank Form (SF 3881) and Instructions

OMB No. 1510-0056

ACH VENDOR/MISCELLANEOUS PAYMENT ENROLLMENT FORM

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: ☐ CCD+ ☐ 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: ☐ CHECKING ☐ SAVINGS ☐ 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

Save Data Only | Clear Form | Save Data & Form

Instructions for Completing ACH Banking Form (SF 3881)

1. Obtain this form at http://www.gsa.gov/portal/forms/download/116290

2. 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.

3. 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.

4. 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.

Exhibit 3.7 - 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* Tribal Transportation Program (TTP) amount to aid the [insert Tribe's name] in programming the [insert TTIP year] Tribal Transportation Improvement Program (TTIP).

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 Tribal Transportation Program Agreement (TTPA) between the [insert Tribe's name] and the **(insert BIA or FHWA)**, 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 in 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

Exhibit 3.8 – Formal On-Boarding Letter from FHWA to Tribe

DATE

Tribal Chairman

Tribal address

Dear Mr. Chairman/President:

This letter is to inform you that FHWA has received your **(letter/tribal resolution)** indicating **(TRIBAL NAME)'s** request to enter into a Tribal Transportation Program Funding Agreement with the Federal Highway Administration (FHWA). For purposes of tribal assessment and satisfying our on-boarding process, please provide copies of the following information to FHWA as soon as possible: (TC TO MODIFY LIST ACCORDINGLY)

- Tribal resolution;
- Immediate past 3 years of Annual Single Audits. 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 provided, including;
    - Copies of auditor's letters attesting to any internal controls or compliance findings or lack thereof; and
    - Any corrective action plans/implementation schedules that were developed for any material findings identified in the Audits.
- If the Tribe received less than $500,000 of Federal funding during a fiscal year, the Single Audit requirement identified above does not apply. In these cases, please 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; or
    - If audits were not carried out, copies of the "Certification of Non-Audit Requirements letter" that was previously provided to BIA for the past three fiscal years.
- The Tribe's organizational chart for the Transportation and Financial Departments; and
- Copies of the Tribe's written Financial, Procurement, and Property Management Procedures, if available.

Enclosed with this letter, please find the following for your reference:

- A sample of the FHWA Program Agreement and Referenced Funding Agreement templates;
- A copy of the FHWA Program Agreement Orientation Presentation; and
- A copy of the FHWA on-boarding orientation checklist.

All of this information and much more can be found in the TTP Program Delivery Guide that was developed by FHWA and Tribes for our use in carrying out the program. The link to the Guide is

http://flh.fhwa.dot.gov/programs/ttp/guide/ .

A member of the FHWA Tribal Transportation Program (TTP) Team will be in contact with you in the very near future to review this material as well as to discuss the on-boarding process.

After review of the documentation and acceptance by FHWA, the primary stewardship and oversight of your Tribe's TTP operations will shift to FHWA, including the providing of TTP funding. In order to make the transition as efficient as possible, we will work with you and the BIA Regional Office to arrange a meeting to discuss the following:

- Prior year and current year TTP funding that (TRIBE NAME) received;
- The status of any outstanding/ongoing projects with regards to Stewardship and Oversight responsibilities;
- Outstanding and future reporting requirements; and
- Transportation Improvement Program (TIP) status.

FHWA appreciates the opportunity to work with you and we look forward to working together to make the (TRIBE'S) Transportation Program a success.

Respectfully,

Robert W. Sparrow, Jr.
Director – FHWA Tribal Transportation Program

CC: BIA Regional Road Engineer
BIADOT

Exhibit 3.9 – Formal Off-boarding Letter from FHWA to Tribe

DATE

Tribal Chairman

Tribal address

Dear Mr. Chairman/President:

This is to inform you that the Federal Highway Administration (FHWA) has received your **(letter/tribal resolution)** indicating **(TRIBAL NAME)'s** request to terminate the Tribal Transportation Program Funding Agreement between yourself and FHWA. This termination will become effective on the date of this letter and will shift the Tribe's Tribal Transportation Program operations to the Bureau of Indian Affairs (BIA). FHWA will provide all funding made available for **(TRIBE)** to the BIA from this point forward. In order to make the transition as efficient as possible, we request that you, with assistance from the BIA Regional Office, arrange a meeting with FHWA to discuss the following:

- Tribal shares that (TRIBE NAME) received under your previously signed Program Agreement with FHWA;
- The status of any outstanding/ongoing projects with regards to Stewardship and Oversight responsibilities;
- Outstanding and future reporting requirements; and
- Transportation Improvement Program (TIP) status.

FHWA appreciates the opportunity we had to work together and wish you success in the future.

Respectfully,

Robert W. Sparrow, Jr.
Director – FHWA Tribal Transportation Program

CC: BIA Regional Road Engineer
BIADOT

Exhibit 3.10 – FHWA On-Boarding Orientation Checklist

ON-BOARDING ORIENTATION CHECKLIST		
TRIBE:		**DATE:**
FHWA TTP FUNDING AGREEMENT FOR TTP		
ORIENTATION FORMAT: [ ] MEETING [ ] TELECONFERENCE (CHECK ONE)		
PARTICIPANTS: (Names of attendees from Tribe and FHWA)		
PURPOSE: To ensure all parties are acquainted with one another and understand the requirements of the TTP Funding Agreement before on boarding processis completed.		
AGREEMENT REVIEW	**DISCUSSED (X)**	**NOT APPLICABLE or DISCUSSED (X)**
ARTICLE I - AUTHORITY AND PURPOSE		
Brief Overview of Authority		
Review Purpose		
Review differences in ISDEAA and FHWA Agreement		
ARTICLE II - Terms, Provisions, and Conditions		
Effective Date and Terms		
Funding		
Powers		
Dispute Resolution		
Construction of the Agreement		
Activities to be Performed		
Limitation of Costs		
Carryover		
Applicable regulations		
Tribal Facilities and Equipment		
ARTICLE III - RESPONSIBILITIES OF THE TRIBE		
A. Health and Safety		
B. Program Standards and Regulations		
C. PS&E Approval		
D. Planning and Inventory		
E. Easements, Maintenance, and Utility Agreements, & Environmemtal Assessments		
F. Construction		
G. Reporting Requirements		

ARTICLE IV - RESPONSIBILITIES OF THE ADMINISTRATOR		
Providing funds		
Authorizing work		
Coordination with BIA		
Coordination with Public Authorities		
Designated Officials		
Federal Construction Standards		
Joint Inspection		
Technical Assistance		
Reporting		
Additional Fund Notification		
OTHER PROVISIONS		
Eligibility for Additional Funding and Services		
Access to Data		
Sovereign Immunity		
Trust Responsibility		
Federal Tort Claims Act/Insurance		
Indian and Tribal Preference		
Severability		
Termination of the Agreement		
Special Conditions		
Amendments		
Good Faith		
Successor Agreements		

OTHER ISSUES OR DISCUSSIONS:		

SIGNATURES	
We, the undersigned, do hereby agree that the items checked above were discussed.	
FHWA TTP Team Member: _____	Date: _____
Tribe: _____	Date: _____
Name/Position:_____	
Signature:_____	

Exhibit 3.11 – Intergovernmental Fund Transfer Agreement Template

INTERGOVERNMENTAL FUND
TRANSFER AGREEMENT
AMONG THE
[INSERT NAME OF STATE] STATE DEPARTMENT OF TRANSPORTATION
AND THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
AND THE
[INSERT NAME OF TRIBE]

This Intergovernmental Fund Transfer Agreement ("Agreement") is entered into by and among the [INSERT NAME OF STATE] State Department of Transportation ("State"), the United States of America, Department of Transportation, Federal Highway Administration – Office of Federal Lands Highway ("FHWA"), and the [INSERT NAME OF TRIBE] ("Tribe"), a federally recognized Indian Tribe.

WHEREAS, the Tribe, in cooperation with the State, are proposing improvements to INSERT NAME OF TRANSPORTATION FACILITY – HERE'S AN EXAMPLE: Marine Drive, a major arterial within the boundaries of the Tulalip Reservation; and

WHEREAS, INSERT OVERVIEW OF THE PROJECT, INCLUDING SOME DETAILS – HERE'S AN EXAMPLE: the Marine Drive Pedestrian Pathway ("Project") provides for a pedestrian and bicycle facilities along the Marine Drive corridor. Currently, Marine Drive has sidewalks and bicycle lanes from I-5 to 7th Drive NW, providing approximately 3.1 miles of pedestrian facilities. The Project will add a multi-use trail, connecting 7th Drive NW to 36th Avenue NW. Once constructed, the Project will provide approximately 2.4 miles of illuminated, multi-use trail for users and enhanced storm water management facilities. This Project includes design elements that provide pedestrian facilities that meet federal accessibility guidelines, establish new storm water management facilities, and adds new pedestrian illumination. These improvements are integrated with and are empowered by the Tribe's Long Range Transportation Plan. The Project will be constructed in accordance with the approved plans and specifications; and

WHEREAS, the Project will be carried out on a transportation facility that is listed on the National Tribal Transportation Facility Inventory ("NTTFI"); and

WHEREAS, in accordance with 23 U.S.C. §§ 104 (f)(3)(A) and 202 (a)(9), the State desires to transfer to the Tribe, via FHWA, contract and obligation authority in the sum of $INSERT ("Funds") so the Tribe may carry out the Project in accordance with Addendum A; and

WHEREAS, details of the Project are fully described in Addendum A to this Agreement; and

WHEREAS, under the Fixing America's Surface Transportation Act ("FAST Act"), P.L. 114-94 (December 4, 2015), the Congress of the United States appropriated Federal-aid funds to be apportioned or allocated to the State for use on State and local agency priorities throughout the State; and

WHEREAS, Section 1118 of the FAST Act, reauthorized the Tribal Transportation Program (TTP) under 23 U.S.C. § 202, which distributes on a tribal shares basis funds for eligible planning and construction activities on transportation facilities that are located within, or provide access to, tribal lands; and

WHEREAS, FHWA and the United States Department of the Interior, Bureau of Indian Affairs ("BIA") jointly administer the TTP pursuant to a Memorandum of Agreement between the BIA and FHWA; and

WHEREAS, the State and FHWA wish to support the Tribe's involvement in the improvement of road safety, planning and construction of infrastructure to facilitate and support economic development and other activities that are within, or provide access to, the Tribe's lands consistent with the purposes of the TTP; and

WHEREAS, the Project will be administered in accordance with all applicable Federal requirements including, but not limited to, the National Environmental Policy Act (NEPA) and the regulations governing the TTP at 25 C.F.R. Part 170; and

WHEREAS, 23 U.S.C. § 202 (a)(9) – Cooperation, provides that the cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement, and that any funds received from a State, county, or local subdivision shall be credited to appropriations available for the TTP; and

WHEREAS, the State and the Tribe have requested that FHWA accept the Funds from the State and transfer the Funds to the Tribe, that FHWA accept all stewardship and oversight responsibility involving the use of the Funds by the Tribe, and the Parties agree that any Federal-aid match requirements have been met.

NOW THEREFORE, the Parties agree as follows –

A. Project Identification and Source of Funding

1. As described in Addendum A, the Tribe and State have identified the need and agreed upon a plan to carry out the Project.
2. The State has agreed that the Project will be carried out by the Tribe under the terms of Addendum A.
3. As described above, Congress has appropriated the Funds to carry out the Project and the Funds were made available to the State.
4. The Funds are not part of any appropriations made available by the Congress for obligation by FHWA or the BIA for the TTP.

B. Authority for this Agreement

1. The authority for this Agreement is 23 U.S.C. §§ 104 (f)(3)(A) and 202 (a)(9).
2. This Agreement shall not constitute a contract, compact, annual funding agreement, or other agreement under the Indian Self Determination and Education Assistance Act (ISDEAA), P.L. 93-638, as amended, and no provisions of the ISDEAA are specifically adopted, incorporated by reference, or otherwise included in this Agreement.

C. State Responsibility

1. Pursuant to 23 U.S.C. § 104 (f)(3)(A), the State shall request that the FHWA Division Office transfer the Funds to the FHWA – Federal Lands Highway Headquarters in furtherance of implementation of 23 U.S.C. § 202 (a)(9)(B).
2. The State shall provide certain services or activities for the Project, if any, as described in Addendum A.
3. The State shall be relieved of all stewardship and oversight obligations involving the Funds upon transfer of the Funds to FHWA.

D. FHWA Responsibilities

1. FHWA shall accept the Funds from the State and upon receipt of the Funds FHWA shall become responsible for all stewardship and oversight obligations involving use of the Funds by the Tribe in accordance with Addendum A, the terms of which are incorporated by reference and fully made part of this Agreement.
2. Subject to the requirements described in Paragraph E.1, below, FHWA shall transfer the Funds to the Tribe.
3. FHWA shall continue carrying out program management and oversight of the Project in accordance with the TTP, its regulations at 25 C.F.R. Part 170 and any applicable Federal law, but this Agreement shall not bind FHWA or BIA to providing funds from other sources for designing, constructing, managing or supervising the Project.

E. INSERT NAME OF TRIBE's Responsibilities

1. The Tribe shall establish a separate bank account to receive the Funds from FHWA and transmit the bank, name, address, routing, and account numbers to FHWA within ten business days of full execution of this Agreement.
2. In accordance with Addendum A, the Tribe will undertake and perform only those eligible activities associated with the Project that are allowed under Title 23 of the United States Code and any applicable regulations at Parts 23 or 25 of the Code of Federal Regulations.
3. In the event that the Tribe does not carry out the Project or the total amount of Funds transferred pursuant to this Agreement are not expended, the Tribe agrees to return the remaining Funds to the State upon written demand of the State and agreement by the Tribe, whose agreement shall not be unreasonably withheld.

4. The Tribe shall invite State representatives to participate in the final inspection of the Project, as well as any other activities as provided under Addendum A.

F. Transfer of Funds from FHWA to the INSERT NAME OF TRIBE

FHWA shall notify the Tribe when the Funds are received from the State. If the Tribe has not already done so, the Tribe shall provide FHWA with its bank information described in Paragraph E.1, above. FHWA shall then transfer the Funds to the Tribe within ten business days of receipt of the Funds from the State or the Tribe's banking information, whichever FHWA receives last.

G. General Provisions

1. FHWA shall not act as a surety or guarantor of any Tribal or State private, commercial, or governmental financing instrument obtained for the planning, design or construction of the Project.
2. FHWA shall not be liable under any theory of law or equity to transfer to the Tribe under this Agreement any funds other than the Funds that are the subject of this Agreement.
3. Should any portion or provision of this Agreement be held invalid, the remaining portions or provisions shall continue in full force and effect.
4. This Agreement is binding upon the signatories hereto not as individuals but solely in their capacities as officials of their respective governments and each acknowledges that he or she is authorized to execute this Agreement on behalf of their respective government.
5. This Agreement contains all of the terms and conditions governing the transfer of Funds from the State to FHWA and on to the Tribe. No other terms or conditions apply. Any amendment or modification of the Agreement must be made in writing and signed by the authorized representative of the Tribe, the State, and FHWA.
6. Nothing in this Agreement shall be construed as a waiver of the Tribe's sovereign immunity regarding the activities undertaken by the Tribe as described generally herein or in Addendum A, including any contracts, grants or subcontracts entered into between the Tribe and third parties necessary for the Project. The Tribe does not, by entering into this Agreement, consent to the jurisdiction of a State court to hear any claims or disputes arising under this Agreement, whether arising as claims against the Tribe itself, its wholly owned entities, or any employee of the Tribe performing work hereunder. No Tribe employee shall be subject to the jurisdiction of the State's courts as a result of having performed work associated with the Project.
7. Nothing in this Agreement shall be construed as a waiver of the State's sovereign immunity or of any limitation of liability afforded to the State by its laws. The State does not, by entering into this Agreement, consent to the jurisdiction of a tribal court to hear any claims or disputes arising under this Agreement, whether arising as claims against the State itself or against any employee of the State performing work hereunder. No State employee shall be subject to the jurisdiction

of the Tribe's court as a result of having performed design, inspection, or other work associated with the Project.

H. Authorized Representatives. Each authorized representative below will have the responsibility to administer and, unless otherwise noted, serve as the main point of contact for the Project described in this Agreement and Addendum A.

For FHWA:

NAME
TITLE
STREET ADDRESS
CITY, STATE ZIP
Work Phone
Mobile Phone (OPTIONAL)
Email

For the Tribe:

NAME
TITLE
STREET ADDRESS
CITY, STATE ZIP
Work Phone
Mobile Phone (OPTIONAL)
Email

For the State:

NAME
TITLE
STREET ADDRESS
CITY, STATE ZIP
Work Phone
Mobile Phone (OPTIONAL)
Email

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Party's date last signed below.

STATE OF [INSERT NAME OF STATE]
DEPARTMENT OF TRANSPORTATION

_____ Date_____
NAME
TITLE

APPROVED AS TO FORM:

_____ Date_____
NAME
TITLE

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

_____ Date_____
Timothy Hess
Associate Administrator

APPROVED AS TO FORM:

_____ Date_____
Vivian Philbin
Assistant Chief Counsel – Federal Lands

INSERT NAME OF TRIBE

_____
NAME
TITLE

APPROVED AS TO FORM:

NAME OF TRIBAL LEGAL OFFICE

_____ Date_____
NAME
TITLE

Exhibit 3.12 – Addendum to the Intergovernmental Fund Transfer Agreement

ADDENDUM A
to the
INTERGOVERNMENTAL FUND
TRANSFER AGREEMENT
among the
[INSERT NAME OF STATE] STATE DEPARTMENT OF TRANSPORTATION
and the
UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
and the
[INSERT NAME OF TRIBE]

PROJECT:	**[INSERT SHORT TITLE]**
FUND AMOUNT:	$
TRIBAL MATCHING FUNDS:	$
TOTAL:	**$**
SOURCE OF FUNDING:	**[INSERT NAME OF FUNDING SOURCE]**

INTRODUCTION

The [INSERT NAME OF TRIBE] ("Tribe") has elected to enter into an Intergovernmental Fund Transfer Agreement ("Agreement") with the [INSERT NAME OF STATE] State Department of Transportation ("State") and the United States Department of Transportation, Federal Highway Administration, Office of Federal Lands Highway ("FHWA") in order to transfer funding through the Agreement pursuant to 23 U.S.C. § 202 (a)(9) for a [INSERT SHORT TITLE OF PROJECT] project. This statute permits the transfer of the State's contract and obligation authority ("Funds") for the project to the Tribe through FHWA. Upon receipt of the Funds from the State, FHWA shall be responsible for all stewardship and oversight responsibility associated with the Funds.

PROJECT

[INSERT OVERVIEW OF PROJECT INCLUDING SOME DETAILS – COPYING AND PASTING FROM THE SECOND "WHEREAS" CLAUSE IN THE IGFTA SHOULD BE ACCEPTABLE – HERE'S AN EXAMPLE FROM TULALIP'S 202 (a)(9)] he Marine Drive Pedestrian Pathway ("Project") provides for a pedestrian and bicycle facilities along the Marine Drive corridor. Currently, Marine Drive has sidewalks and bicycle lanes from I-5 to 7th Drive NW, providing approximately 3.1 miles of pedestrian facilities. The Project will add a multi-use trail, connecting 7th Drive NW to 36th Avenue NW. Once constructed, the Project will provide approximately 2.4 miles of illuminated, multi-use trail for users and enhanced storm water

management facilities. This Project includes design elements that provide pedestrian facilities that meet federal accessibility guidelines, establish new storm water management facilities, and adds new pedestrian illumination. These improvements are integrated with and are empowered by the Tribe's Long Range Transportation Plan.

SCOPE OF AGREEMENT

The parties agree to cooperate to ensure the implementation of the Project as follows

1. The State agrees to:

    a. Transfer the Funds to FHWA's Washington Division Office for transfer to Federal Lands Highway – Headquarters and final transfer to the Tribe through its FHWA Tribal Transportation Program Agreement ("FHWA TTP Agreement");
    b. Rely on FHWA for stewardship and oversight responsibility for the Funds and the Project; and
    c. Upon request, cooperate with the Tribe and FHWA in the implementation of the Project and cooperate in Project reviews deemed necessary by FHWA.

2. FHWA agrees to:

    a. Accept the transfer of the Funds from the State and credit the Funds to the TTP for use by the Tribe under the authority cited in the current TTP Agreement between the Tribe and FWHA;
    b. Provide oversight and ensure that the Funds are utilized in accordance with all applicable laws and regulations.
    c. Administer the funds and provide them to the Tribe, subject to normal procedures under the Tribe's FHWA TTP Agreement;
    d. Provide the State with copies of the Tribe's semi-annual Project reports required under the Tribe's FHWA TTP Agreement;
    e. Upon request provide records to [INSERT NAME OF STATE] DOT and cooperate in any type of Project reviews; and
    f. Provide final Project closeout report to the State for review and acceptance, as required under the Tribe's FHWA TTP Agreement.

3. Tribe agrees to:

    a. Receive the Funds in accordance with its current FHWA TTP Agreement, which authorizes the Tribe, as public authority under 23 U.S.C. § 101 (a)(20), to carry out all but the inherently Federal functions of the Tribal Transportation Program;
    b. Carry out the Project in accordance with all applicable Federal laws and regulations;
    c. Comply with all aspects of the Tribe's FHWA TTP Agreement

including project reporting, oversight, and closeout requirements; and

d. Notify FHWA and the State of Project completion and timely respond to inquiries regarding the Project prior to completion.

AUTHORIZED REPRESENTATIVES

Each authorized representative below will have the responsibility to administer and, unless otherwise noted, serve as the main point of contact for the Project described in this Addendum A and the Agreement:
For FHWA:

NAME
TITLE
STREET ADDRESS
CITY, STATE ZIP
Work Phone
Mobile Phone (OPTIONAL)
Email

For the Tribe:

NAME
TITLE
STREET ADDRESS
CITY, STATE ZIP
Work Phone
Mobile Phone (OPTIONAL)
Email

For the State:

NAME
TITLE
STREET ADDRESS
CITY, STATE ZIP
Work Phone
Mobile Phone (OPTIONAL)
Email

Exhibit 4.1 – TTP Online Reporting Tool - Financial Report

FINANCIAL REPORT PAGE 1

Tribal Transportation Program

Attributed Survey : TTP Online Reporting Tool

Basic Info

*Federal Fiscal Year for report
Note: The Federal Fiscal Year starts October 1.

Format: YYYY (Example: 2015 not 15)

Each answer must be between 2014 and 2099

Only integer value may be entered in this field.

2016

*Reporting Period

Choose one of the following answers

Mid-Year (October - March) FHWA Only

Mid-Year (October - March) FHWA Only
Fiscal Year (October - September) BIA & FHWA

Only Tribes with FHWA Program Agreements (PA) would report under the Mid-Year Reporting Period. FY report covers the full Oct-Sep period for both FHWA and BIA Agreement Tribes.

A confirmation email will be sent to these addresses:

transportationdirector@tribe.org; PointofContact@agency.gov

If an additional email address should receive a copy, please enter it here:

Emails should automatically be distributed to the agency's TTP contact list for the Tribe, as well as a copy to the Agency point of contact for the Tribe. If for some reason a confirmation email wasn't sent to one of the Tribal addresses listed, the link could be accessed, an email entered and the report resubmitted (all listed emails would receive a confirmation email again).

FINANCIAL REPORT PAGE 2

Tribal Transportation Program

Attributed Survey : TTP Online Reporting Tool

Financial Report

NOTE: ONLY TRIBES WITH FHWA PROGRAM AGREEMENTS WILL SEE ALL QUESTIONS SHOWN BELOW. TRIBES WORKING WITH BIA OR OSG WILL SEE **ONLY QUESTION 2.b** WHEN COMPLETING A FINANCIAL REPORT.

***1. Amount of Federal Transportation Funds RECEIVED during reporting period**

Enter the total amount of Federal transportation funds (TTP, ERFO, & other Highway Funds) routed to the Tribe during the reporting period through a Tribal Transportation funding mechanism. (Do not include FTA Transit funds.)

This includes all funds transmitted from FHWA through RFAs completed during the reporting period.

☒ 0

***2.a. Amount of Federal transportation funds EXPENDED during reporting period**

Enter the total amount of Federal transportation funds (TTP, ERFO, & other Highway Funds) expended during this reporting period, regardless of the year the funds were received through a Tribal Transportation funding mechanism. (Do not include FTA Transit funds.)

This includes all funds spent during the fiscal year of reporting out of all those transmitted from FHWA.

$ 0

***2.b. Amount of TTP Funds EXPENDED during reporting period**

Enter the total amount of only TTP Funds (TTP includes TTP tribal shares, TTP 2% Planning, TTP Safety Fund, and TTP Bridge Program) expended during this reporting period, regardless of the year TTP funds were received through a Tribal Transportation funding mechanism. (Do not include FTA Transit funds.)

This amount will equal the amount in 2a if the Tribe only expended TTP funds.

This includes only the TTP funds spent during the fiscal year of reporting out of all TTP funds transmitted from FHWA/BIA/OSG .

$ 0

***3. Amount of Federal Transportation Funds expended on INDIRECT COSTS during this reporting period (if any)**

Enter the amount of indirect costs collected from Federal transportation funds (TTP, ERFO, & other Highway Funds) expended this reporting period. This includes all indirect costs collected from expended funds transmitted from FHWA during the reporting period.

FINANCIAL REPORT PAGE 3

$ 0

*4. All Federal Transportation Funds received

Enter the total amount of Federal transportation funds (TTP, ERFO, & other Highway Funds) routed to the Tribe since signing your first FHWA Program Agreement or BIA Government-to-Government Agreement.

This includes all funds the Tribe received from FHWA since signing their initial Agreement.

0

*5. All Federal Transportation Funds spent

Enter the total amount of Federal transportation funds (TTP, ERFO, & other Highway Funds) spent by the Tribe since signing your first FHWA Program Agreement or BIA Government-to-Government Agreement. Include all transportation funds that were originally shown on a Federal funding agreement with FHWA or BIA.

This includes all funds the Tribe spent from those received from FHWA since signing their initial Program Agreement.

0

6. All Federal Transportation Funds Available

Enter the total unexpended amount of Federal transportation funds (TTP, ERFO, & other Highway Funds) routed to the Tribe by all Federal funding agreements since signing your first FHWA Program Agreement or BIA Government-to-Government Agreement.

This includes all remaining funds held by the Tribe of those received from FHWA since signing their initial Program Agreement. The amount should be the result of the above question 4 minus question 5.

$ 0

*7. Single Audit Qualification

During the 2015 Federal Fiscal Year did the Tribe meet the minimum requirements for a Single Audit to be performed?

Note: A non-Federal entity that expends $750,000 or more from all Federal programs during the non-Federal entity's fiscal year must have a single or program-specific audit conducted for that year. (2 CFR 200.501 (a))

- (●) Yes
- ( ) No

8. Single Audit Occurrence

List the last year that a single audit was completed.

If no single audit has ever been completed, please skip this question.

Each answer must be between 2000 and 2099

FINANCIAL REPORT PAGE 4

Only integer value may be entered in this field.

9. Single Audit Attachment
Please submit the most recently conducted Audit.

Please upload at most one file

Upload files

*10. **Single Audit Findings** Enter any outstanding Single Audit Findings the Tribe has yet to address.

*11. **Single Audit Finding Categories**
Select the category or categories that best describe any outstanding findings.

Check any that apply

- [ ] Allowable Costs
- [ ] Internal Control Deficiencies
- [ ] Reporting
- [ ] No Single Audit Findings

Other:

Exhibit 4.2 – TTP Online Reporting Tool - Report on Non-Construction Activities

NON-CONSTRUCTION ACTIVITY REPORT PAGE 1

Tribal Transportation Program

Attributed Survey : TTP Online Reporting Tool

This form serves as the financial status report and project/activity progress report for the Tribal Transportation Program.

Basic Info

*Federal Fiscal Year for report
Note: The Federal Fiscal Year starts October 1.

Format: YYYY (Example: 2015 not 15)

Each answer must be between 2014 and 2099

Only integer value may be entered in this field.

2016

*Reporting Period

Choose one of the following answers

Mid-Year (October - March) FHWA Only

Mid-Year (October - March) FHWA Only
Fiscal Year (October - September) BIA & FHWA

Only Tribes with FHWA Program Agreements would report under the Mid-Year Reporting Period. FY report covers the full Oct-Sep period for both FHWA and BIA Agreement Tribes.

Please check this information:

Tribe Name	Tribal Name
Tribe ID Code	BIA Six-Code
TTP Contracting Method	FHWA
Transportation Program Contact(s)	Name(s)
TTP Contact Email	Email addresses
TTP Contact Phone	Phone Numbers
Authorized Signatory	Name
Authorized Signatory Title	Title

Within non-construction activities report only, Tribe verifies existing Tribal data BIA/FHWA has on record. Changes can be made by checking this box.Note that changes will not be reflected in the reporting system until the next reporting period.

☑ Check Here if Changes are needed

NON-CONSTRUCTION ACTIVITY REPORT PAGE 2

Make the needed changes here:

Tribe Name: Tribe
Tribe ID Code: BIA Six-Code
Transportation Program Contact: Name
TTP Contact Email: transportationdirector@tribe.org
TTP Contact Phone: phone number

A confirmation email will be sent to these addresses:

transportationdirector@tribe.org;PointofContact@agency.gov

If an additional email address should recieve a copy, please enter it here:

Emails should automatically be distributed to the agency's TTP contact list for the Tribe, as well as a copy to the Agency point of contact for the Tribe. If for some reason a confirmation email wasn't sent to one of the Tribal addresses listed, the link could be accessed, an email entered and the report resubmitted (all listed emails would receive a confirmation email again).

NON-CONSTRUCTION ACTIVITY REPORT PAGE 3

Tribal Transportation Program

Attributed Survey : TTP Online Reporting Tool

Non-Construction Activities Report

*

1. Jobs

Tribes with FHWA Program Agreements reporting at Mid-Year will notice that this Jobs section does not appear. 1.Jobs will only be presented during the Annual Reporting Period.

1.1 Jobs retained

Enter the estimated number of permanent positions funded by TTP during this Fiscal Year.

A permanent position may be full-time or part-time.

Only integer value may be entered in this field.

*1.2. Jobs Created

Enter the estimated number of short-term positions used to carry out the listed projects and activities identified on both this report and the design-construction projects report.

Short-term positions have a limited duration, such as seasonal or tied to a construction project.

Only integer value may be entered in this field.

- A job retained cannot also be counted as a job created.
- Count jobs created by each project or activity even if the same contractor or force account crew works on multiple projects.

*

2. Administrative Expenses

Administrative expenses may include: Rent, Utilities, Salaries, Computer Equipment, etc.

Do not include administrative expenses paid for through indirect cost accounting (if applicable).

2.1 Funds Programmed for Administrative Activities

NON-CONSTRUCTION ACTIVITY REPORT PAGE 4

Enter amount shown on TIP

$ 0.00

A Tribe's indirect cost pool may include items like rent and utilities. If so, these items are covered under the indirect rate and not included here unless a Tribe chose to include payment of the indirect rate on expenditures as an administrative cost on their TTIP.

*2.2 Funds Expended for Administrative Activities

$ 0.00

*2.3 Describe Progress of Administrative Activities

N/A

*

3. Planning Activities

Planning activities may include: TTP Inventory, LRTP, TIP, Studies, etc.

3.1 Funds Programmed for Planning Activities

Enter amount shown on TIP

$ 0.00

*3.2 Funds Expended for Planning Activities

$ 0.00

*3.3 Describe Progress of Planning Activities

Planning activities may include: TTP Inventory, LRTP, TIP, Studies, etc.

N/A

NON-CONSTRUCTION ACTIVITY REPORT PAGE 5

*

4. Safety Activities

Non-construction Safety Activities may include: Coordinate with Transportation Safety Partners, Developing Transportation Safety Plans, Conducting Road Safety Assessments, or Transportation Safety Related Enforcement/EMS/Education activities.

Note: Safety construction projects are to be reported separately using the unique link for that project.

4.1 Funds Programmed for Safety Activities

Enter amount shown on TIP

Safety related construction projects should be included as a separate project on a TTIP and wouldn't fall within the non-construction activities report.

$ 0.00

***4.2 Funds Expended for Safety Activities**

$ 0.00

***4.3 Describe Progress of Safety Activities**

N/A

*

5. Maintenance Activities

5.1 Funds Programmed for Maintenance Activities

Enter Amount shown on TIP

$ 0.00

* **5.2 Funds Expended for Maintenance Activities**

$ 0.00

***5.3 Describe Progress of Maintenance Activities**

NON-CONSTRUCTION ACTIVITY REPORT PAGE 6

Please list the Maintenance Activities (Mowing, Patching, Snow Removal, New Equipment, Employees,etc.) and give a brief status of each activity.

N/A

*

6. Transit Activities

Transit activities may include: Rent, equipment, employees, fuel, transit planning, etc.

6.1 Funds Programmed for Transit Activities

Enter amount shown on TIP

Transit construction projects should be included as a separate project on a TTIP and wouldn't fall within the non-construction activities report.

$ 0.00

***6.2 Funds Expended for Transit Activities**

$ 0.00

***6.3 Describe Progress of Transit Activities**

N/A

*

7. Other Non-construction Activities

Use this section to report any non-construction activities not described above.

7.1 Funds Programmed for Other Non-construction Activities

Enter amount shown on TIP

Included to cover any non-construction activities that wouldn't be included under the Safety, Transit, Administrative, Maintenance or Planning categories.

$ 0.00

NON-CONSTRUCTION ACTIVITY REPORT PAGE 7

*7.2 Funds Expended for Other Non-Construction Activities

$ 0.00

*7.3 Describe Progress of Other Non-Construction Activities

N/A

8. Please provide any attachments related to any of the activities reported on above. (optional)

For example: safety plan, photos of special events, etc.

Please upload at most 10 files

Upload files Up to 10 attachments limited at up to 10MB each.

Exhibit 4.3 – TTP Online Reporting Tool - Report on Each Project

PROJECT REPORT PAGE 1

Tribal Transportation Program

Attributed Survey : TTP Online Reporting Tool

Basic Info

*Federal Fiscal Year for report
Note: The Federal Fiscal Year starts October 1.

Format: YYYY (Example: 2015 not 15)

Each answer must be between 2014 and 2099

Only integer value may be entered in this field.

2016

*Reporting Period

Choose one of the following answers

Mid-Year (October - March) FHWA Only
Mid-Year (October - March) FHWA Only
Fiscal Year (October - September) BIA & FHWA

Only Tribes with FHWA Program Agreements (PA) would report under the Mid-Year Reporting Period. FY report covers the full Oct-Sep period for both FHWA and BIA Agreement Tribes.

A confirmation email will be sent to these addresses:

transportationdirector@tribe.org;PointofContact@agency.gov

If an additional email address should receive a copy, please enter it here:

Emails should automatically be distributed to the agency's TTP contact list for the Tribe, as well as a copy to the Agency point of contact for the Tribe. If for some reason a confirmation email wasn't sent to one of the Tribal addresses listed, the link could be accessed, an email entered and the report resubmitted (all listed emails would receive a confirmation email again).

PROJECT REPORT PAGE 2

Tribal Transportation Program

Attributed Survey : TTP Online Reporting Tool

This form serves as the financial status report and project/activity progress report for the Tribal Transportation Program.

Design/Construction Project: Project Name

***1. Project Numbers**

Federal Agency Project Number [ ] Assigned by FHWA/BIA.

Tribe's Project Number (enter "none" if not used) [ ] Tribe's internal tracking number, if one is used. Not required.

***2. Project Name**

[ ]

Enter the name of this project as shown on the TIP.

***3. Project Description**

[ ]

Describe the improvement that this project aims to make. For example: This project will add sidewalks, improve drainage, and pave ABC Street.

*

4. Funding Source(s)

Check any that apply or enter funding source not listed under "Other".

PROJECT REPORT PAGE 3

Check any that apply

☐ TTP Formula Funds	☐ TTP Bridge Program
☐ TTP Safety Fund	Other:

Enter name of non-TTP funds designated for project.

***5. Project Location**

National Tribal Transportation Facility Inventory (NTTFI) Route and Section Numbers

Milepost, place name, or other reference

County / Borough

State(s)

***6. Project Length**

Only numbers may be entered in this field.

miles

***7.a. Project Status Narrative**

Please describe the progress to date on this project. Include any major highlights or changes related to the project.

***7.b. Project Status: Active Phases**

Please choose all phases that were active during the reporting period.

Check all phases that were active and/or were completed during the reporting period.

Check any that apply

☐ Preliminary Design (Pre-project Planning)

PROJECT REPORT PAGE 4

- [ ] Environmental Compliance (NEPA & Permits)
- [ ] Right of Way Acquisition
- [ ] PS&E Development

PS&E is the abbreviation for project plans, specifications and estimates.

- [ ] Construction
- [ ] PROJECT COMPLETE

Other:

***8. Project Funding**

These amounts should include all project costs (Preliminary Engineering (PE), Construction Need (CN), and Construction Engineering (CE)) and reflect the most current estimate. Enter the total amount of funds expended on this project during this reporting period, regardless of the year the funds were received through a Tribal Transportation funding mechanism.

TTP Funds Expended this Fiscal Year $

Total Funds Expended this FY $

Anticipated Total Project Cost (include all funding sources and all years) $

The anticipated total project cost is filled from the amount shown on the Tribe's approved TTIP .

***9. Estimated Percentage of Work Complete**

Each answer must be between 0 and 100

Only integer value may be entered in this field.

%

***10. Estimated Project Completion Date**

Only an estimate and not a commitment to any date.

PROJECT REPORT PAGE 5

Tribal Transportation Program

Attributed Survey : TTP Online Reporting Tool

Design/Construction Summary: Project Name

You must choose the "Next" button below to complete your report.

To make changes choose the "Previous" button below.

11. Please provide any attachments related to the reported on Project
For example: Completion report, photos, etc.

Please upload at most 10 files

Upload files Up to 10 attachments of up to 10MB each.

Exhibit 4.4– 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 ☐ Quarterly ☐ Semi-Annual ☐ Annual ☐ Final	7. Basis of Accounting ☐ Cash ☐ Accrual
8. Project/Grant Period From: (Month, Day, Year)	To: (Month, Day, Year)		9. Reporting Period End Date (Month, Day, Year)	

10. **Transactions**	Cumulative
(Use lines a-c for single or multiple grant reporting)	
Federal Cash (To report multiple grants, also use FFR Attachment):	
a. Cash Receipts	
b. Cash Disbursements	
c. Cash on Hand (line a minus b)	
(Use lines d-o for single grant reporting)	
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)	

	a. Type	b. Rate	c. Period From	Period To	d. Base	e. Amount Charged	f. Federal Share
11. Indirect Expense							
				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 penalities. (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)
	d. Email address
b. Signature of Authorized Certifying Official	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.

Exhibit 4.5 – Instructions for SF 425

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 *FFR*s, 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 *FFR*s 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 *FFR*s, 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 *FFR* Attachment. *Do not complete this box if reporting on multiple awards.*
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

Revised 6/28/2010

FFR Number	Reporting Item	Instructions
		information on the *FFR* Attachment. *Do not complete this box if reporting on multiple awards.*
6	Report Type	Mark appropriate box. *Do not complete this box if reporting on multiple awards.*
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 FFR. 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. *Do not complete this line if reporting on multiple awards.*
	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 *FFR*s, 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 *FFR* data.	
Federal Cash (To report multiple grants, also use FFR 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 *FFR* Attachment. The sum of the cumulative cash disbursements on the *FFR* Attachment must equal the amount entered on Line 10b, *FFR*.
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

Revised 6/28/2010

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. *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.*
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

Revised 6/28/2010

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 Line10j)	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 Line10j.
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.

Revised 6/28/2010

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

Revised 6/28/2010

EXHIBIT 5.1 - TRIBAL REQUEST FOR SERVICES

from: _____
(Insert Name of Federal agency you are requesting services from)

NOTE: Before using this form, please check with the Federal Agency you are requesting services from.

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.

- ☐ reconstruct new roadway
- ☐ spot alignment improvements
- ☐ large culverts
- ☐ slope stabilization
- ☐ repairing frost heaves/soft spots
- ☐ paved surface
- ☐ recondition existing roadway
- ☐ bridges
- ☐ fish passage culverts
- ☐ retaining walls
- ☐ aggregate surface
- ☐ 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?

_____

_____

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.)*

☐ scoping reports ☐ conceptual studies ☐ technical reports
☐ alternative analysis ☐ environmental studies ☐ environmental clearances
☐ construction permits ☐ plan sets ☐ right-of-way clearance
☐ utility relocation ☐ construction procurement ☐ construction

Requested development activities and deliverables: *(Specify activities and objectives you want the requested Federal Agency to perform. Check all that apply.)*

☐ scoping reports ☐ conceptual studies ☐ technical reports
☐ alternative analysis ☐ environmental studies ☐ environmental clearances
☐ construction permits ☐ design plan sets ☐ right-of-way clearance
☐ utility relocation ☐ construction procurement ☐ construction
☐ Other: _____

Critical delivery dates of major deliverables listed above:

Major Deliverable	***Critical Date***	***Reason for criticality***
Design plans completed		
Construction end		
Construction start		

What work will you perform: (Specify activities and objectives you will perform. Check all that apply.)

☐ *staff* ☐ *scoping reports* ☐ *conceptual studies*
☐ *technical reports* ☐ *alternative analysis* ☐ *environmental studies*
☐ *environmental clearances* ☐ *construction permits* ☐ *plan sets*
☐ *right-of-way clearance* ☐ *utility relocation* ☐ *construction procurement*
☐ *construction*

Current cost estimate for this project:

Engineering: _____

Construction: _____

Construction Administration: _____

What guidelines to be followed: Include requirements such as road standards, agency specific regulations, MOUs with regulatory agencies, etc. Please be specific: (e.g., 36 CFR NEPA, AASHTO Very Low Volume Local Roads Guidelines, etc.)

_____

_____

_____

_____

_____

Issues or unusual aspects of this project that we need to be aware of:
(Risks, environmental issues, public controversy, realty issues, etc.)

_____

_____

_____

_____

_____

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 the Federal Agency performing this work (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 the representative of the Federal agency you are requesting services from.

Exhibit 5.2 – Project Agreement Form

PROJECT AGREEMENT

This Project Agreement is entered into between the undersigned parties.

Tribal Government:	Project No:
State:	TTP 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 Agreement 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:

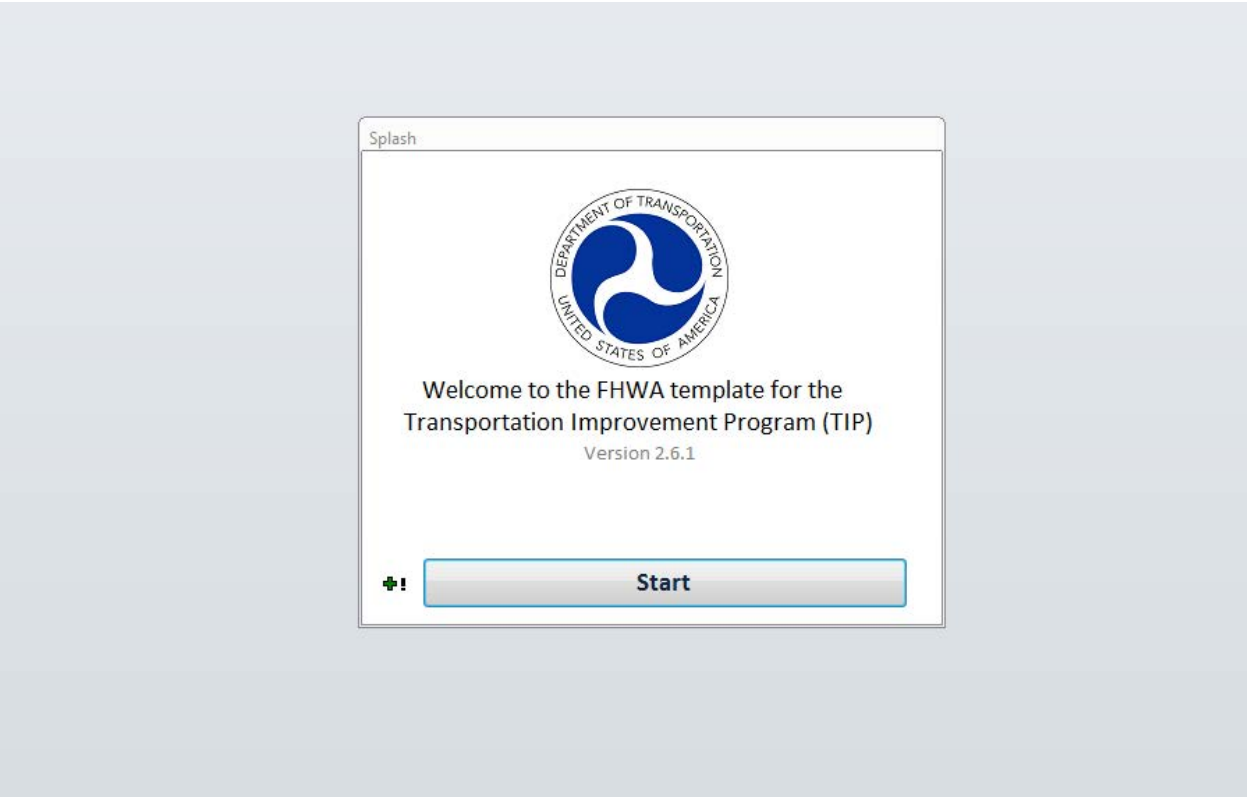
County:
By:
Title:

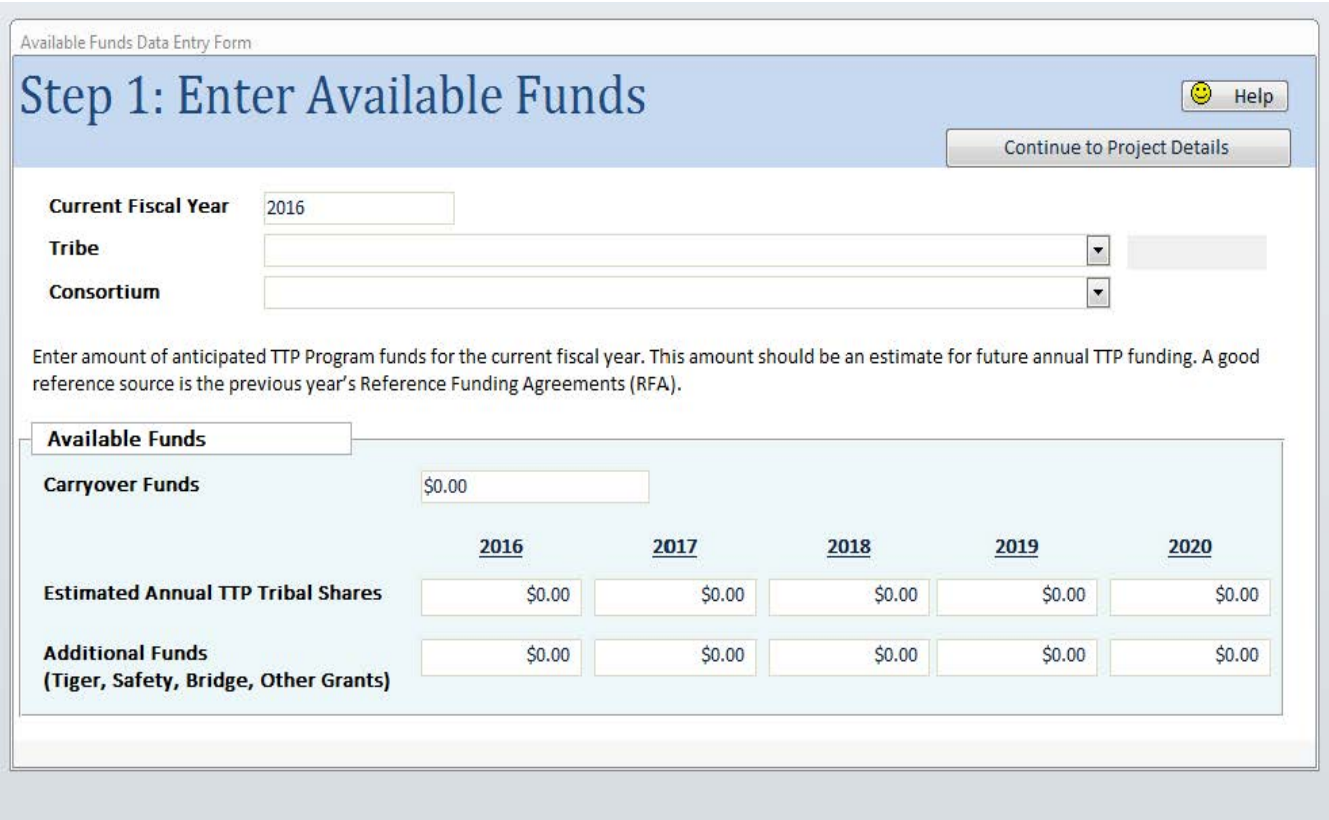
BIA Region:
By:
Title:

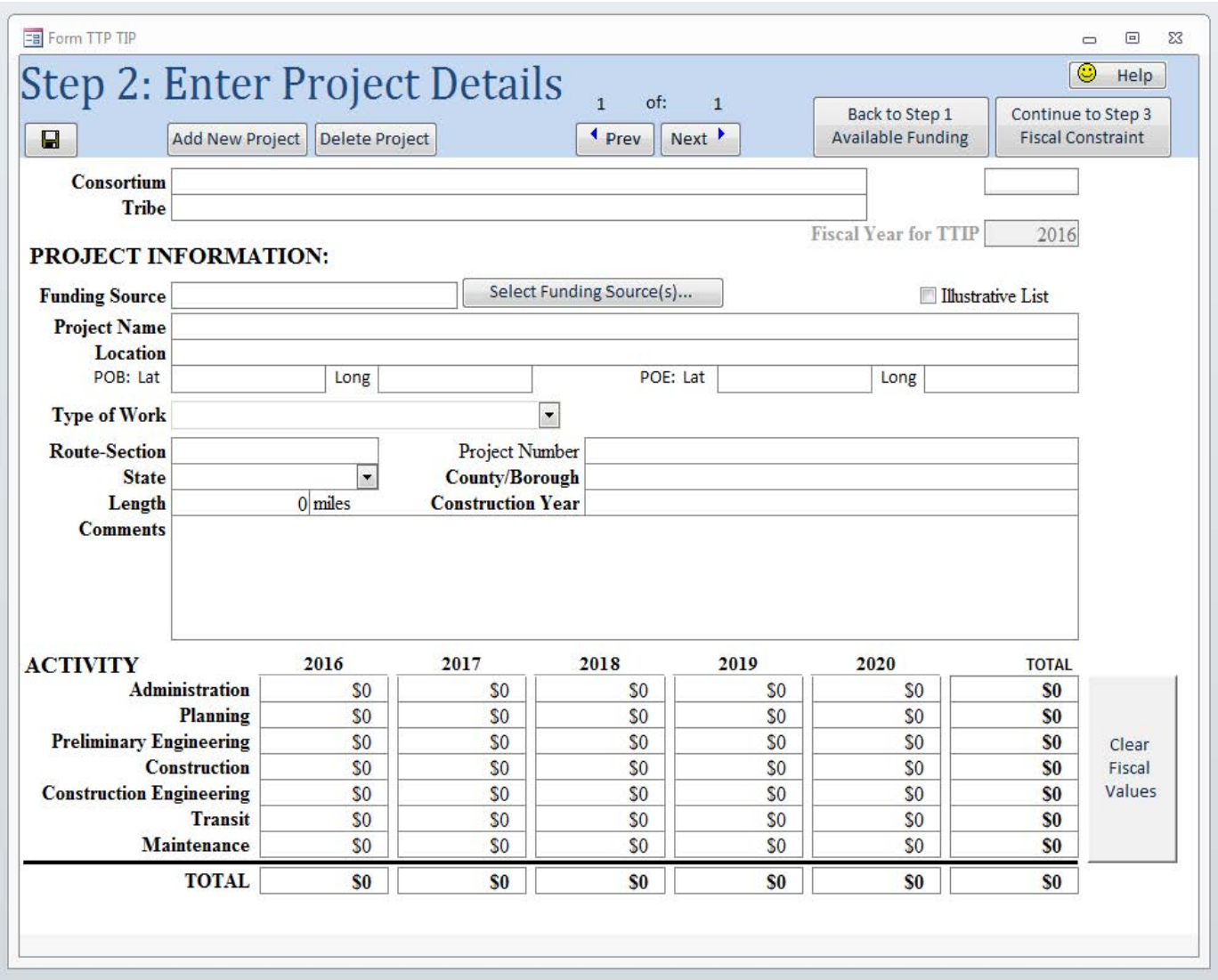
FHWA Division:
By:
Title

State:
By:
Title:

Exhibit 6.1 - Microsoft Access FHWA TIP Template






Form TTP TIP
Step 2: Enter Project Details
Help
1 of: 1
Add New Project
Delete Project
Prev
Next
Back to Step 1 Available Funding
Continue to Step 3 Fiscal Constraint
Consortium
Tribe
Fiscal Year for TTIP 2016
PROJECT INFORMATION:
Funding Source
Select Funding Source(s)...
Illustrative List
Project Name
Location
POB: Lat
Long
POE: Lat
Long
Type of Work
Route-Section
Project Number
State
County/Borough
Length 0 miles
Construction Year
Comments
ACTIVITY 2016 2017 2018 2019 2020 TOTAL
Administration $0 $0 $0 $0 $0 $0
Planning $0 $0 $0 $0 $0 $0
Preliminary Engineering $0 $0 $0 $0 $0 $0
Construction $0 $0 $0 $0 $0 $0
Construction Engineering $0 $0 $0 $0 $0 $0
Transit $0 $0 $0 $0 $0 $0
Maintenance $0 $0 $0 $0 $0 $0
TOTAL $0 $0 $0 $0 $0 $0
Clear Fiscal Values

Step 3. Check Fiscal Constraint

Step 3. Check Financial Constraint

Help

Back to Step 2: Project Details | Export PDF | Only check after review of PDF with FHWA

TIP is financially constrained. Please choose "Export to PDF" and review with the FHWA employee assigned to assist you.

	2016	2017	2018	2019	2020
Estimated Annual TTP Shares	$0.00	$0.00	$0.00	$0.00	$0.00
Additional funds (Tiger, Safety, Bridge, Other Grants)	$0.00	$0.00	$0.00	$0.00	$0.00
Carryover Funds (from previous FY)	$0.00	$0.00	$0.00	$0.00	$0.00
TOTAL AVAILABLE FUNDS for each year	$0.00	$0.00	$0.00	$0.00	$0.00
Project Totals	$0.00	$0.00	$0.00	$0.00	$0.00
Fiscal Year Remainder	$0.00	$0.00	$0.00	$0.00	$0.00

Summary

Total Estimated Available Funds	$0.00
Total of All Projects on TIP	$0.00

Exhibit 6.2 - Tribal Resolution Template to Accept/Approve the TTIP

[Insert Tribe name]
[Insert address]
[Insert City, State Zip Code]
[Insert Ph: [xxx] xxx-xxxx]
[Insert Email: xyz@xxx]

RESOLUTION [# 14-##]

A RESOLUTION AUTHORIZED BY THE [insert Tribal Council's name] TO ACCEPT AND APPROVE THE TRIBAL TRANSPORTATION PROGRAM [TTP] 2014 TIP

WHEREAS, [insert Tribal Council's name] is fully authorized to act on behalf of our members of the [insert Tribe's name] in matters arising from the Indian Self-Determination Act of 1975, P.L. 93-638, as amended, 25 U.S.C.§ 5301 etSeq,; and

WHEREAS, the governing body of [insert Tribal Council's name] is a [insert number of members that make up the Tribal Council] member council empowered to act for and on behalf of its Tribal members in adopting resolutions; and

WHEREAS, the TTP 2014 TIP is necessary to approve spending FHWA funds;

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

NOW, THEREFORE BE IT RESOLVED: The [insert Tribal Council's name] accepts and approves the TTP 2014 TIP, consistent with Title 23 USC Section 135 and 204 and the Tribe's Long Range Transportation Plan.

BE IT FURTHER RESOLVED, that the [insert title of leader of tribal government, such as 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 [insert Tribe name].

CERTIFICATION

This resolution was duly considered and adopted at a special meeting of the [insert Tribal Council's name] called and convened this ____day of _____, 2014, with a quorum present, by a vote of ___ in favor, ___against and ____abstaining.

_____ _____
[Insert name of leader of Tribal Government, Title] Date
[Insert Tribe name]

Exhibit 6.3 - TTIP Certification

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

As agreed upon in the Tribal Transportation Program (TTP) 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 National Tribal Transportation Facility Inventory (NTTFI),
4. TTIP contain all TTP program funded projects programmed for construction in the next 4 years,
5. TTIP is financially constrained,
6. TTIP contains uncompleted project(s) from previous TTIP carried-over,
7. Consultation and coordination with State DOT and/or MPO's for regionally significant projects are complete (if applicable).

_____
[Name and title]
[Entity]
[Date]

Exhibit 6.4 - Pre-Project Planning Score Worksheet

I. General Project Information

1. Project name: _____

2. TTP route number: _____

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

Length or area: _____
Historical cost for type of work: _____

PS&E (usually between 10-25% of the overall project costs) $_____

CE (usually between 10-15% of the overall project costs) $_____

Estimated Project Cost: $_____

(Use these estimates for documenting the project in the TTIP)

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

.

.

Cooperation with other government agencies needed? __ Yes __ No

Agency name: _____

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, employment centers, or transportation terminals) and are normally part of the metropolitan or regional transportation network model. For more information contact the State Department of Transportation or the Metropolitan Planning Organization in your area.

III. Existing Facility: Will facilities be impacted? Example: utilities, culverts, bridges, etc. If so, what will the cost be for removing / replacing?

Type	Estimate Cost ($)

IV. Socioeconomic/Environmental: Are any expected to be impacted?

Type	Yes	No
Endangered Species		
Historical/Archeological		
Wetlands		
Public hearing needed		
Other?		

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

Type	Tribe	BIA Region/Agency	FLH	Estimate Cost ($)
Survey				
NEPA*				
Preparing NEPA Documents				
Preparing environmental resource documents				
Design				
Safety Audit				
Power line – Overhead				
Other Cost				
Right-of-Way Relocation				
Type of ROW	Fee___	Non-Fee___		

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

Exhibit 6.5 - 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, FHWA has reviewed the [date of TTIP] TTIP, as transmitted by your email dated [date].

Based on your certification of the transportation planning process, review of self-certification supporting documentation, and our involvement in the your Tribal planning processes, the FHWA hereby finds 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 transportation planning finding and the TTIP approval, please contact me at [insert phone number]

Sincerely,

[insert name]
Transportation Planning Specialist

Exhibit 6.6 - BIA TTIP Control Schedule Form

Please fill out one sheet per project.

FY 2014-2017 CONTROL SCHEDULE - TRIBAL SHARES					
Date:		Tribe's Name:		Project ID (by BIA):	
Fill in the fields below with data from the Road Inventory Data Sheet for each route.					
PROJECT INFORMATION	Project Name:	Transportation Planning		Project Description/Remarks:	
	Termini From:				
	Termini To:				
	BIA Route(s) #:				
	Section From:				
	Section To:				
	Length (Miles):				
	Project Type:	PLANNING - 2% Planning and Projects Using IRR Construction Funds			
	Work Type:	P10 - Tribal Trans. Improvement Program			

Fill in the green fields below with estimated costs for each fiscal year.

DESCRIPTION	Activity CODE	PROJECT ESTIMATE 2014	PROJECT ESTIMATE 2015	PROJECT ESTIMATE 2016	PROJECT ESTIMATE 2017	PROJECT ESTIMATE 2018 (optional)
Survey	65104	$ -	$ -	$ -	$ -	$ -
Design	65105	$ -	$ -	$ -	$ -	$ -
Environmental	65106	$ -	$ -	$ -	$ -	$ -
Archeology	65107	$ -	$ -	$ -	$ -	$ -
Rights-of-Way	65108	$ -	$ -	$ -	$ -	$ -
Grade and Drain	65109	$ -	$ -	$ -	$ -	$ -
Gravel	65110	$ -	$ -	$ -	$ -	$ -
Pavement	65111	$ -	$ -	$ -	$ -	$ -
Bridge/Structures	65112	$ -	$ -	$ -	$ -	$ -
Incidental Construction	65113	$ -	$ -	$ -	$ -	$ -
Construction Monitoring	65114	$ -	$ -	$ -	$ -	$ -
Transit Facilities	65116	$ -	$ -	$ -	$ -	$ -
Project Management, Tribal	65117	$ -	$ -	$ -	$ -	$ -
651 for Maintenance	65118	$ -	$ -	$ -	$ -	$ -
651 for Planning	65103	$ -	$ -	$ -	$ -	$ -
TOTAL		$ -	$ -	$ -	$ -	$ -

Exhibit 7.1 – TTP ENVIRONMENTAL CHECKLIST

Environmental Documentation Form for TTP* 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.

*TTP- Tribal Transportation Program (formerly Indian Reservation Road (IRR) Program) **Tribe Name:**	
Project Name/Number:	**NTTFI Route No. and Section:**
SECTION 1: PROJECT DETAILS	
A. Purpose and Need: Briefly describe what the transportation problems are that need to be addressed and why.	

*TTP- Tribal Transportation Program (formerly Indian Reservation Road (IRR) Program) **Tribe Name:**	
Project Name/Number:	**NTTFI Route No. and Section:**

B. Project Description: Briefly describe project including location, limits, design elements, and construction activities. Describe how the proposed project will address the needs described above. Use Continuaton Sheet, if necessary. Attach maps, aerials, photos, etc. to help visualize the project.

C. Independent Utility and Logical Termini

☐ The project complies with NEPA requirements related to connected actions and segmentation (i.e. the project must have independent utility, connect logical termini when applicable, be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made and not restrict further consideration of alternatives for other reasonably foreseeable transportation improvements). [23 CFR 771.111(f)]

SECTION 2: ENVIRONMENTAL RESOURCE EVALUATIONS

During the environmental review process for which this Environmental Checklist was prepared, all applicable environmental requirements were evaluated. Outcomes for the following requirements are identified below and fully documented in the project file.

A. Right of Way

Will the project involve right of way acquisitions or easements? ☐ Yes ☐ No
If yes, will a right of way action by the BIA be required? ☐ Yes ☐ No
If yes, the BIA may have additional environmental requirements. Please contact the FHWA Environmental
Specialist for further guidance.

B. Cultural Resources

☐ Section 106 compliance is complete - select appropriate finding:
☐ No Potential to Affect Historic Properties ☐ No Historic Properties Affected
☐ No Historic Properties Adversely Affected ☐ Adverse Effect
Has consultation with SHPO and/or THPO been completed? ☐ Yes ☐ No
If yes, date(s) of concurrence _____, and attach the letter(s) to this document.

*TTP- Tribal Transportation Program (formerly Indian Reservation Road (IRR) Program) **Tribe Name:**	
Project Name/Number:	**NTTFI Route No. and Section:**

C. Wetlands

- Wetlands (Executive Order #11990)

Will construction activities take place in wetlands? ☐ Yes ☐ No

If yes:

- o What is the estimated permanent loss of wetlands, if any? _____ acres
- o Are there any practical alternatives to the proposed construction in wetlands (i.e. can the wetlands be avoided while still meeting the purpose and need of the project)? ☐ Yes ☐ No
- o Does the project include all practicable measures to minimize harm to the wetlands? ☐ Yes ☐ No

D. Floodplains

- Floodplains (Executive Order #11988)

☐ No Floodplain Encroachment ☐ No Significant Encroachment ☐ Significant Encroachment

E. Biology

- Section 7 (Federal Endangered Species Act) Consultation Findings (Effect determination)

☐ No Effect

☐ May Affect, Not Likely to Adversely Affect. If applicable, FWS Concurrence Date: _____
If applicable, NMFS Concurrence Date:_____

☐ May Affect, Likely to Adversely Affect. If so, FWS Biological Opinion Date: _____
NMFS Biological Opinion Date: _____

☐ Programmatic Biological Opinion held by Partner Agency; File Number _____ Date _____

- Essential Fish Habitat (Magnuson-Stevens Act) Findings (Effect determination):

☐ No Effect ☐ No Adverse Effect ☐ Adverse Effect and consultation with NMFS

F. Section 4(f) Transportation Act (23 CFR 774) and Section 6(f) Land and Water Conservation Act (36 CFR 59)

- Section 4(f) regulation was considered as a part of the review for this project and a determination was made:

☐ Section 4(f) does not apply (*Project does not use a Section 4(f) property, or that it meets one or more of the exceptions listed in 23 CFR 774.13.)*

☐ Section 4(f) applies

☐ De Minimis

☐ Programmatic: Type _____ (List one of the five appropriate categories as defined in 23 CFR 774.3)

☐ Individual: ☐ Legal Sufficiency Review complete ☐ HQ Coordinator Review Complete

- Section 6(f)—Does the project involve property purchased with grant funds from the Land and Water Conservation Fund?

☐ No, Section 6(f) does not apply. No additional documentation required.

☐ Yes ☐ Documentation of approval from National Park Service Director has been received for the conversion/and replacement of 6(f) property.

*TTP- Tribal Transportation Program (formerly Indian Reservation Road (IRR) Program) **Tribe Name:**	
Project Name/Number:	**NTTFI Route No. and Section:**

G. Farmland Protection Policy Act of 1981

Does prime or unique farmland, or land of statewide or local importance exist within the project area (check the Natural Resources Conservation Service (NRCS) link to search for prime or unique farmland in the project area; you also may need to contact the appropriate state/local soils agency to make this determination)?

☐ Yes ☐ No

If the project has the potential to convert important farmland to non-farm use, coordinate with your local NRCS office (a land evaluation and site assessment may be required). Attach relevant coordination documentation to this form.

H. Coastal Zone

Coastal Zone Management Act of 1972

☐ Not in Coastal Zone ☐ Coastal Permit Required

☐ Consistent with Federal, State, and Local Coastal Plans ☐ Federal Consistency Determination

I. Hazardous Waste and Materials

- Are hazardous materials or contamination exceeding regulatory thresholds (as set by U.S. EPA, Tribe, State County, etc.) present in the project area? ☐ Yes ☐ No
- If yes, is the nature and extent of the hazardous materials or contamination fully known? ☐ Yes ☐ No
  If no, briefly discuss the plan for securing information:

J. Wild & Scenic Rivers

- Are there Wild & Scenic River designations in the project area? ☐ Yes ☐ No
- Describe any impacts. (Attach the full evaluation if applicable).

K. Ancillary Sites (Materials, Disposal, Staging, Etc.)

- Will the project plans require the use of specific ancillary sites (e.g. materials sources, disposal sites, staging areas, etc.), or will these sites be left to the contractor to select?
  ☐ Required by Plans ☐ Selected by Contractor
- If required by project plans, have the ancillary sites been included in all assessments of environmental impacts and consultations with appropriate agencies? ☐ Yes ☐ No
  If no, please explain.

*TTP- Tribal Transportation Program (formerly Indian Reservation Road (IRR) Program) **Tribe Name:**	
Project Name/Number:	**NTTFI Route No. and Section:**

L. Air Quality

- Is the project in a "nonattainment" or "maintenance" area designated under the Clean Air Act? ☐ Yes ☐ No
  If yes, is the project consistent with air quality goals for the area? ☐ Yes ☐ No
- Even if the project is not in a "nonattainment" or "maintenance" area, how will general air quality concerns such as construction-related airborne dust be eliminated or reduced?

M. Socioeconomics and Environmental Justice

- Will the project result in disproportionately high and adverse human health or environmental effects on minority populations and/or low-income populations? ☐ Yes ☐ No
- Will construction activities substantially disrupt normal traffic patterns (including access to businesses, community facilities, and accessibility of emergency vehicles)? ☐ Yes ☐ No

If yes to either, please explain how these impacts will be mitigated.

N. Other Relevant Approvals/Processes

- Are there other relevant approvals or processes needed for this project? ☐ Yes ☐ No
  If yes, please describe.

O. Permits

1. Section 404 of the Clean Water Act
   Will there be impacts to Waters of the US: ☐ Yes ☐ No
   If yes, approval anticipated:
   ☐ Nationwide Permit ☐ Individual Permit
2. Section 401 of the Clean Water Act approval anticipated:
   ☐ Exemption ☐ Certification
3. Section 402 of the Clean Water Act
   Will the project involve 1 acre of ground disturbance or more? ☐ Yes ☐ No
   If yes, a National Pollutant Elimination System (NPDES) permit is required as well as the development of a Storm Water Pollution Prevention Plan (SWPPP) to be included in the final design.
4. Sections 9 and 10 of the Rivers and Harbors Improvement Act
   Will the project involve construction of a structure over a navigable waterway? ☐ Yes ☐ No
   If yes, a Bridge Permit from the U.S. Coast Guard will be required.
5. List below other permits required for the project.

*TTP- Tribal Transportation Program (formerly Indian Reservation Road (IRR) Program) **Tribe Name:**	
Project Name/Number:	**NTTFI Route No. and Section:**

SECTION 3: TYPE OF DOCUMENTATION: Use the information in this section to help determine the applicable documentation and clearance type for the project (CE, EA or EIS). Please note that this is used for planning purposes only. The final decision for level of documentation is made by FHWA after consultation and coordination.

A. Categorical Exclusions Defined (23 CFR 771.117[a]).

FHWA regulation 23 CFR 771.117(a) defines categorical exclusions as actions which:

- do not induced 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 resources;
- 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.

☐ Checking this box certifies that project meets the above definition for a Categorical Exclusion (if not, an EA or EIS will be required).

B. Unusual Circumstances (23 CFR 771.117[b]).

FHWA regulation 23 CFR 771.117(b) provides that any action which normally would be classified as a CE but could involve *unusual circumstances* requires the Department to conduct appropriate environmental studies to determine if the CE classification is proper. Unusual circumstances include actions that involve:

- Significant environmental impacts;
- Substantial controversy on environmental grounds;
- Significant impact on properties protected by section 4(f) of the DOT Act or section 106 of the National Historic Preservation Act; or
- Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

All of the above unusual circumstances have been considered in conjunction with this project. (Please select one.)

☐ Checking this box certifies that **none of the above conditions apply** and that the project qualifies for a Categorical Exclusion.

☐ Checking this box certifies that unusual circumstances **are involved**. However, the appropriate studies/analysis have been completed, and it has been determined that the CE classification is still appropriate.

C. Check applicable activity(ies) in one of the two tables below.

Table 1. Common TTP activities listed in 23 CFR 771.117(c). For the full list, click here.

3 ☐	Construction of bicycle and pedestrian lanes, paths, and facilities.
7 ☐	Landscaping.
8 ☐	Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.
19 ☐	Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.

*TTP- Tribal Transportation Program (formerly Indian Reservation Road (IRR) Program) **Tribe Name:**	
Project Name/Number:	**NTTFI Route No. and Section:**
22[1] ☐	"Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. Existing operational right-of-way refers to right-of-way that has been disturbed for an existing transportation facility or is maintained for a transportation purpose. This area includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways[2], mitigation areas, etc.) and other areas maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, areas maintained for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transit power substations, transit venting structures, and transit maintenance facilities. Portions of the right-of-way that have not been disturbed or that are not maintained for transportation purposes are not in the existing operational right-of-way." Existing operational right-of-way also does not include areas outside those areas necessary for existing transportation facilities such as uneconomic remnants, excess right-of-way that is secured by a fence to prevent trespassing, *or that are acquired and held for a future transportation project*. A transportation facility must already exist at the time of the review of the proposed project being considered for the CE. This precludes the acquisition of right-of-way and the subsequent use of this CE to build within that right-of-way.
23[3] ☐ ☐	Federally-funded projects: (i) That receive less than $5,000,000 of Federal funds; or (ii) With a total estimated cost of not more than $30,000,000 and Federal funds comprising less than 15 percent of the total estimated project cost. Enter total estimated project cost $ and total Federal funds to be expended $
26 ☐	Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes), if the action meets the constraints in Section 3, Subsection D below**.**
27 ☐	Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints in Section 3, Subsection D below**.**
28 ☐	Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, if the actions meet the constraints in Section 3, Subsection D below**.**
Table 2. Common TTP activities listed as <u>Examples</u> in 23 CFR 771.117(d). This list is not "all inclusive" and project activities that do not fit one of these CE examples, may still be cleared as a CE. For the full list, click <u>here</u>.	
4 ☐	Transportation corridor fringe parking facilities.
9 ☐	Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.
10 ☐	Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.
11 ☐	Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.

[1] On the CE form, identify in the project description that all work is within the existing operational right-of-way.
[2] "Fixed Guideway" means a public transportation facility using and occupying a separate right-of-way for the exclusive use of public transportation such as rail, a fixed catenary system (light rail, trolley, etc.) passenger ferry system, or for a bus rapid transit system.
[3] On the CE form, distinguish between c23i or c23ii.

*TTP- Tribal Transportation Program (formerly Indian Reservation Road (IRR) Program) **Tribe Name:**	
Project Name/Number:	**NTTFI Route No. and Section:**
13 ☐	Actions described in paragraphs (c)(26), (c)(27), and (c)(28) that do not meet the constraints in Section 3, Subsection D below.

D. Actions described in (c)(26), (c)(27), and (c)(28) in Table 1 above may not be processed as CEs under paragraph (c) if they involve:

(1) An acquisition of more than a minor amount of right-of-way or that would result in any residential or non-residential displacements;
(2) An action that needs a bridge permit from the U.S. Coast Guard, or an action that does not meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899;
(3) A finding of "adverse effect" to historic properties under the National Historic Preservation Act, the use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (section 4(f)) except for actions resulting in *de minimis* impacts, or a finding of "may affect, likely to adversely affect" threatened or endangered species or critical habitat under the Endangered Species Act;
(4) Construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions;
(5) Changes in access control;
(6) A floodplain encroachment other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths); or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.

*TTP- Tribal Transportation Program (formerly Indian Reservation Road (IRR) Program) **Tribe Name:**	
Project Name/Number:	**NTTFI Route No. and Section:**

SECTION 4: Environmental Commitments

List all environmental commitments for the project in this section.

SECTION 5: Certification

Based on the information obtained during the environmental review process and included in this checklist, the project is determined to be a Categorical Exclusion pursuant to the National Environmental Policy Act and is in compliance with all other applicable environmental laws, regulations, and Executive Orders.

Reviewed by (print name): _____

Title: _____

Signature: _____ Date: _____

Approved by (print name): _____

Title: TTP Environmental Protection Specialist

Signature: _____ Date: _____

For any questions, please contact:

Exhibit 7.2 - OUTLINE FOR AN ENVIRONMENTAL ASSESSMENT (EA)

The following format generally complies with requirements for EAs and finding of no significant impacts (FONSIs) as specified in 23 CFR 771.119 and 771.123 and in FHWA's Technical Advisory T6640.8A, "Guidance for Preparing and Processing Environmental and Section 4(f) Documents" at http://environment.fhwa.dot.gov/projdev/impta6640.asp

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 [12]
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 TTP 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.

---

[12] The Chapters on *Affected Environment* and *Environmental Consequences* can be combined.

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:

   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 in 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.

Exhibit 7.3 – EXAMPLE NOTICE OF AVAILABILITY

PUBLIC NOTICE OF AVAILABILITY & SOLICITATION OF PUBLIC COMMENT

For

Petty Creek Road Improvement Project
Missoula County, Montana

The Western Federal Lands Highway Division (WFLHD) of the Federal Highway Administration (FHWA), in partnership with the United States Forest Service (USFS), the Montana Department of Transportation (MDT), and Missoula County, MT is pleased to announce the availability of the Environmental Assessment (EA) for the Petty Creek Road Improvement Project. The proposed project involves improvements to an 11.8-mile segment of the Petty Creek Road.

The purpose of this public notice is to announce the availability of the Petty Creek Road Improvement Project EA for public review and comment.

The Amended EA and Section 4(f) de minimis evaluation will be available for review starting May **7th, 2010** at the following locations:

- Alberton, MT Town Hall/Library, 607 Railroad Ave, Alberton, MT 59820.
- Lolo National Forest, Fort Missoula Building 24, Missoula, MT, 59804.
- Missoula County Public Works Department, 60889 Training Dr, Missoula, MT 59808.
- Federal Highway Administration, 610 East 5th St, Vancouver, WA 98661.

The EA is also available online at **http://www.wfl.fhwa.dot.gov/projects/mt/**. A copy of the EA may also be requested by contacting the Federal Highway Administration at 360-619-7700. Send comments by email to pettycreek@mail.wfl.fhwa.dot.gov or by mail to the address below by **June 7th, 2010**.

A public meeting will be held on **May 11, 2010**. The public meeting will be located at Alberton School at 306 Railroad Ave., Alberton, MT at 7 pm. This meeting will be a question and answer format. FHWA representatives will do a brief presentation of the status of the project at 7 pm and then answer any project-related questions.

Contact Information

Western Federal Lands Highway Division
610 East 5th St • Vancouver, WA 98661

(360) 619-7700

Exhibit 8.1 - 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, and 456;
- 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:

Exhibit 8.2 - HIGHWAY DESIGN STANDARDS CERTIFICATION

Project Number and Name: _____

Route, Section Number(s) and Location: _____

Type of Project: ☐ New Construction ☐ Reconstruction ☐ RRR ☐ Other (describe)

Description of Work: _____

System: ☐ TTP BIA ☐ National Highway System (NHS)

☐ TTP Tribal ☐ State Transportation Plan Non NHS

☐ TTP County, Borough or Municipal ☐ Off State Transportation Plan

☐ TTP State ☐ Other (describe)

Functional Classification Description: _____

Owner Agency & Address: _____

Terrain: ...select... ***Design Vehicle***: _____

		ADT - Show Station Range				
TRAFFIC	**YEAR**	**AVERAGE**	**SEASONAL**	**DHV**	**PERCENT TRUCKS**	**D**
Current						
Design						

Design Standards: ☐ AASHTO (type)..select.. ☐ County/Borough ☐ State ☐ Other (describe)

GEOMETRIC AND BRIDGE CRITERIA - Show Station Range			
GEOMETRIC AND BRIDGE CRITERIA	**STANDARD**	**AS DESIGNED**	**EXCEPTION**
1. Design Speed	Minimum = Design Speed should equal or exceed Posted or Regulatory Speed of completed facility	Posted or Regulatory = ?	Example: Yes - see (1) below

GEOMETRIC AND BRIDGE CRITERIA - Show Station Range			
GEOMETRIC AND BRIDGE CRITERIA	**STANDARD**	**AS DESIGNED**	**EXCEPTION**
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 to structure (not clear zone)			
11. Vertical Clearance to Structure			
12. Bridge Width			
13. Bridge Loading			
14. Bridge Railing	NCHRP 350		
15. Design Flood	FLH Project Development and Design Manual Exhibit 3.7-A	Example: No	
16. 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)*:**

Describe guidelines used and any variances from recommended Roadside Design (clear zone, guardrail) guidelines:

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:

_____ Date: _____
Tribal Transportation Program, Federal Lands Highway Office

Exhibit 8.3 - PS&E CERTIFICATION CHECKLIST

PS&E Certification Checklist	
Tribe:	
Agency with Jurisdiction over Facility:	
Project Name:	
Project Location:	
Type of Work:	
State: County or Borough:	
Action Item	**√**
1. The project facility is included in the National Tribal Transportation Facility Inventory.	
2. The project is on a FHWA-approved TTIP.	
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 have been met, that are listed in the official Tribal Transportation Program guide on either the BIA transportation Web site at http://www.bia.gov/WhoWeAre/BIA/OIS/Transportation/index.htm or the Federal Lands Highway – Tribal Transportation Program Web site at http://flh.fhwa.dot.gov/programs/ttp/guide/.	
6. This PE&E package meets or exceeds applicable design, health and safety standards according to 25 CFR § 170.454.	
7. No design exceptions are required for the design or specifications in this PS&E.	
8. 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.	
9. 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:	

Exhibit 10.1 - 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 (Tribal Transportation Program Agreement - Article III, Section 1C(2)(c).

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

Further, we confirm that we have Contracting Procedures (advertise 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 the FAST Act (Tribal Transportation Program Agreement – Article III, Section 1B).

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

Sincerely,

[Insert name],
[Tribe Name]

Tribal Representative

Exhibit 10.2 – TTP Pre-Advertisement Checklist

TTP PRE-ADVERTISEMENT CHECKLIST

Project Name: **Project Number:**

National Tribal Transportation Facility Inventory Route No.:

National Tribal Transportation Facility Inventory Sections:

DOCUMENT or MILESTONE **DATE**

Project Agreement (with Facility Owner for Maintenance) .....

TTP 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 .....

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

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

Anticipated Advertisement Date……..

Recommended for Approval by Tribal Official

Signature: _____ Date:_____

Title:_____

Exhibit 11.1 – Project Monitoring Checklist

FHWA Tribal Transportation Program

PROJECT MONITORING CHECKLIST

Complete this checklist during every project monitoring visit to accomplish the following objectives:

1. *Develop consistency and appropriate depth in project monitoring reviews.*
2. *Help ensure the Tribe is preparing to generate and submit a construction closeout report in accordance with 25 CFR § 170.473.*
3. *Document a mini program review to assess the general health of the Tribe's administration of the program and inform the annual risk assessment process.*

Append this checklist to the respective trip report.

PROJECT STATUS DATA

Tribe	
Project Name and Number	
Date on Inspection	
Route Number, Section and/or Mileposts	
State/County/Borough/City	
Project Description	
Notice to Proceed Date	
Percent Work Completed	
Percent Time Elapsed	
Original Contract Completion Date	
Current Contract Completion Date	
Award Amount	
Current Contract Estimate	
Construction Delivery Mode	Force Account ____ Contractor ____

WORKMANSHIP

	Item	Yes	No	N/A
General				
	Quality control plan has been prepared for the project, and on file			
	Contractor is undertaking processes included in approved QC plan			
	Personnel performing inspection work are qualified per the approved qualification program, or otherwise suitably experienced to perform successfully			
	Tribe or owner's representative is conducting sampling and testing to verify contractor data as defined in the quality assurance program.			
	Materials are tested according to applicable specifications.			

Environmental				
	Erosion and sediment control devices are installed properly and are well maintained (erosion control plan being followed)			
	Contract specific environmental requirements are in compliance			
	Inspections are conducted in accordance with contract requirements			
	Environmental permits are available onsite (SWPPP, NPDES, 404, 401, etc.)			
Earthwork:				
	Contract requirements are being followed			
	Excavation, embankment and backfill placement complies with the project PS&E regarding preparation, material, construction, and reporting.			
	Compaction test being performed and documented			
	Sampling and testing (frequency/location) are conducted in accordance with contract requirements			
Structures				
	Contract requirements are being followed			
	Foundation construction/installation complies with the project PS&E regarding preparation, material, construction, documentation, and reporting (including welder certifications and procedures)			
	Placement, tying, and cover of reinforcing steel comply with contract requirements			
	Bolt certifications are on file along with test results			
	Curing process complies with specifications			
	Sampling and testing (frequency/location) are conducted in accordance with contract requirements			
Asphalt				
	Base is in good condition			
	Mix is delivered at proper temperature			
	Tacking complies with specifications			
	Mix is spread properly (thickness, crown, joints, uniform texture, continuous operation of paver)			
	Proper density is being obtained			
	Ride quality is in conformance with specifications			
	Sampling, testing and overall operations (frequency/location) are conducted in accordance with contract requirements			

PCC				
	Mix spread to correct thickness			
	Curing and tining applied in timely manner			
	Dowel baskets properly installed			
	Ride quality is in conformance with specifications			
	Sampling and testing (frequency/location) are conducted in accordance with contract requirements			
Work Zone Safety				
	Traffic control devices installed in accordance with Traffic Control Plan			
	Traffic control devices are clean and well maintained			
	Travel way is well delineated			
	Work zone inspections are completed, documented and on file in accordance with Contract Requirements			
	Flaggers certified and properly attired			

DOCUMENTATION AND RECORD KEEPING

	Item	Yes	No	N/A
	Project payments are fully supported and backed-up by field records that identify quantities and work completed.			
	Inspector Daily Reports and Project Diary are current, properly filed and adequately support work progress.			
	Contract modifications approved, documented, and on file			
	Acceptance sampling and testing reports are on file			
	Materials sampling and testing records are on file			
	Failed tests are documented with cross-references to re-tests			
	Materials Certifications are on file			
	Approved mix designs are on file			
	Project contract documentation contains all required provisions including identification of required close-out procedures and required documentation.			
	Requirements for the closeout report discussed.			

PROGRAMMATIC REVIEW

	Item	Yes	No	N/A
	Semi-Annual Reports are current and on file			
	TIP is current, on file, and approved			
	TTP financial accounting records in the office are current, and using acceptable accounting procedures			

	Single Audit Corrective Action Plans being followed and on schedule			
	Tribal contracting procedures being followed and documented			
	Communication between tribal offices meets needs for program success			

Comments/Photos:

	ACTION ITEM	RESPONSIBLE PARTY	DUE DATE	STATUS
1)				
2)				
3)				
4)				
5)				
6)				

Reported by:

Date:

Version 1.0, 2/7/2014

Exhibit 11.2 – 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 inches off the ground: Warning lights, type C should be used on drums or barricades used in a series for delineation.)	Y/N

SAFETY CHECKLIST for Construction Projects	
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

Exhibit 11.3- 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

Exhibit 11.4 - 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

Exhibit 12.1 - Equipment Acquisition Request Form

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

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

2. Cost Comparison:

Item	Purchase	Lease/Rent
	$	$

3. Enter 25 percent of the annual TTP funds to be allocated to the Tribe this fiscal year, or $500,000, whichever is greater. $_____
4. What is the amount of TTP 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

Exhibit 13.1 – National Bridge Inventory Structure Inventory and Appraisal Sheet

Year:	State:	Structure:	Federal Agency:

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

**********IDENTIFICATION**********

(1) STATE NAME: CODE:

(8) STRUCTURE NUMBER:

(5) INVENTORY ROUTE (ON/UNDER):

(2) HIGHWAY AGENCY DISTRICT:

(3) COUNTY CODE: (4) PLACE CODE:

(6) FEATURES INTERSECTED:

(7) FACILITY CARRIED:

(9) LOCATION:

(11) KILOMETERPOINT:

(12) BASE HIGHWAY NETWORK: CODE

(13) LRS INVENTORY ROUTE & SUBROUTE:

(16) LATITUDE: DEG MIN SEC

(17) LONGITUDE: DEG MIN SEC

(98) BORDER BRIDGE STATE CODE: % SHARE:

(99) BORDER BRIDGE STRUCTURE NUMBER:

**********STRUCTURE TYPE AND MATERIAL**********

(43) STRUCTURE TYPE MAIN - MATERIAL:

CODE

(44) STRUCTURE TYPE APPR - MATERIAL:

CODE

(45) NUMBER OF SPANS IN MAIN UNIT:

(46) NUMBER OF APPROACH SPANS:

(107) DECK STRUCTURE TYPE: CODE:

(108) WEARING SURFACE / PROTECTIVE SYSTEM:

(A) TYPE OF WEARING SURFACE: CODE:

(B) TYPE OF MEMBRANE: CODE:

****

SUFFICIENCY RATING:

STATUS:

**********CLASSIFICATION********** CODE

(112) NBIS BRIDGE LENGTH:

(104) HIGHWAY SYSTEM:

(26) FUNCTIONAL CLASS:

(100) STRAHNET HIGHWAY:

(101) PARALLEL STRUCTURE:

(102) DIRECTION OF TRAFFIC:

(103) TEMPORARY STRUCTURE:

(105) FEDERAL LANDS HIGHWAYS:

(110) DESIGNATED NATIONAL NETWORK:

(20) TOLL:

(21) MAINTAIN:

(22) OWNER:

(37) HISTORICAL SIGNFICANCE:

**********CONDITION********** CODE

(58) DECK:

(59) SUPERSTRUCTURE:

(60) SUBSTRUCTURE:

(61) CHANNEL AND CHANNEL PROTECTION:

(62) CULVERTS:

**********LOAD RATING AND POSTING********** CODE

(31) DESIGN LOAD:

(63) OPERATING RATING METHOD:

(64) OPERATING RATING:

(65) INVENTORY RATING METHOD:

(66) INVENTORY RATING:

(C) TYPE OF DECK PROTECTION: CODE:

**********AGE AND SERVICE**********

(27) YEAR BUILT:

(106) YEAR RECONSTRUCTED:

(42) TYPE OF SERVICE - ON:

- UNDER: CODE:

(28) LANES - ON STRUCTURE: UNDER STRUCTURE:

(29) AVERAGE DAILY TRAFFIC:

(30) YEAR OF ADT: (109) TRUCK ADT %:

(19) BYPASS, DETOUR LENGTH: KM

**********GEOMETRIC DATA**********

(48) LENGTH OF MAXIMUM SPAN: M

(49) STRUCTURE LENGTH: M

(50) CURB OR SIDEWALK - LEFT: M RIGHT: M

(51) BRIDGE ROADWAY WIDTH CURB TO CURB: M

(52) DECK WIDTH OUT TO OUT: M

(32) APPROACH ROADWAY WIDTH (W/SHOULDERS): M

(33) BRIDGE MEDIAN: CODE:

(34) SKEW: (35) STRUCTURE FLARED:

(10) INVENTORY ROUTE MIN VERT CLEAR: M

(47) INVENTORY ROUTE TOTAL HORIZ CLEAR: M

(53) MIN VERT CLEAROVER BRIDGE RDWY:

(54) MIN VER UNDERCLEAR REF: M

(55) MIN LAT UNDERCLEAR RT REF: M

(56) MIN LAT UNDERCLEAR LEFT: M

**********NAVIGATION DATA**********

(38) NAVIGATION CONTROL: CODE:

(111) PIER PROTECTION: CODE:

(39) NAVIGATION VERTICAL CLEARANCE: M

(116) VERT-LIFT BRIDGE NAV MIN VERT CLEARANCE: M

(40) NAVIGATION HORIZONTAL CLEARANCE: M

(70) BRIDGE POSTING:

(41) STRUCTURE OPEN, POSTED OR CLOSED:

DESCRIPTION:

**********APPRAISAL********** CODE

(67) STRUCTURAL EVALUATION:

(68) DECK GEOMETRY:

(69) UNDERCLEARANCES, VERTICAL & HORIZONTAL:

(71) WATERWAY ADEQUACY:

(72) APPROACH ROADWAY ALIGNMENT:

(36) TRAFFIC SAFETY FEATURES:

(113) SCOUR CRITICAL BRIDGES:

**********PROPOSED IMPROVEMENTS**********

(75) TYPE OF WORK: CODE:

(76) LENGTH OF STRUCTURE IMPROVEMENT:

(94) BRIDGE IMPROVEMENT COST:

(95) ROADWAY IMPROVEMENT COST:

(96) TOTAL PROJECT COST:

(97) YEAR OF IMPROVEMENT COST ESTIMATE:

(114) FUTURE ADT:

(115) YEAR OF FUTURE ADT:

**********INSPECTIONS**********

(90) INSPECTION DATE: (91) FREQUENCY:

(92) CRITICAL FEATURE INSPECTION: (93) CFI DATE

(A) FRACTURE CRITICAL DETAIL: A) /

(B) UNDERWATER INSP: Yes B) /

(C) OTHER SPECIAL INSP: Yes C) /

**********WASHINGTON OFFICE FIELDS**********

(DT) DEDUCT CODE:

(RC) SPECIAL CODE:

(DLU) DATE LAST UPDATE (MM/DD/YYYY):

(TLU) TYPE LAST UPDATE:

PROGRAM CODE:

PROJECT NUMBER:

Exhibit 13.2 – TTP Bridge Program Certification Checklist

TTP BRIDGE PROJECT _____

Project Name:_____Project Number: _____

Structure No. (item 8):_____ID Number: _____Region: _____

Agency:_____Reservation:_____

County:_____State_____

Project Location:_____

General Description of the Work:_____

Ownership:_____BIA:_____ If non-BIA owned, provide the following:

Name of Owner:_____Point of contact (name):_____

Point of Contact's phone number:_____

Sufficiency Rating:_____(Note: Attach SI&A data sheet on which this project is based)

Status:

Type of Construction: ADT (item 29):_____

Detour Length (item 19):_____(miles) Truck ADT (item 109)_____ Function Class (item 26):_____

Do School Buses use this bridge?_____How many trips per day? _____

Safety Issues involved with this project?_____

_____

Does the bridge project have Right of Way? _____If Yes, date obtained:_____

NEPA Compliance, Date:_____ Archeological/Cultural Resource Compliance, Date: _____

PS&E Approval, Date:_____

Estimated cost of the construction contract (funds Requested): $ _____

Remarks: _____

_____

We certify that the bridge project PS&E package is complete, approved, and the project is ready to proceed to construction and request funding:

Tribal Transportation Director (approval): _____

Date: _____