

# Tribal Transportation Program Delivery Guide

A Guide for Tribes with an FHWA  
Tribal Transportation Program Agreement



**July 31, 2024**

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## Acronyms

AA	Associate Administrator
AASHTO	American Association of State Highway and Transportation Officials
ACH	Automated Clearing House
ADA	Americans with Disabilities Act
AADT	Annual Average Daily Traffic
ADT	Average Daily Traffic
ANCSA	Alaska Native Claims Settlement Act
BIA	Bureau of Indian Affairs
BIADOT	Bureau of Indian Affairs Division of Transportation
BIL	Bipartisan Infrastructure Law
BLM	Bureau of Land Management
CE	Categorical Exclusion
CEQ	Council on Environmental Quality
CFL	Central Federal Lands
CFR or C.F.R.	Code of Federal Regulations
CM	Contract Modification
CPA	Certified Public Accountant
DOI	Department of Interior
DOT	Department of Transportation
DUNS	Data Universal Numbering System
EA	Environmental Assessment
EFL	Eastern Federal Lands
EIS	Environmental Impact Statement
ERFO	Emergency Relief for Federally Owned Roads
FAC	Federal Audit Clearinghouse
FAST Act	Fixing America's Surface Transportation Act
FHWA	Federal Highway Administration
FLH	FHWA Office of Federal Lands Highway
FONSI	Finding of No Significant Impact
FTA	Federal Transit Administration, Department of Transportation
FY	Fiscal Year
HSIP	Highway Safety Improvement Program
IBC	Interior Business Center of the U.S. Department of Interior
ICR	Indirect Cost Rate
IJA	Infrastructure Investment and Jobs Act
IRR	Indian Reservation Roads
ISDEAA	Indian Self-Determination and Education Assistance Act
ITIMS	Integrated Transportation Information Management System
L RTP	Long Range Transportation Plan
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
MPO	Metropolitan Planning Organization
MSHA	Mine Safety and Health Administration

**Acronyms (cont'd.)**

MUTCD	Manual on Uniform Traffic Control Devices
NACE	National Association of County Engineers
NEPA	National Environmental Policy Act
NHTSA	National Highway Traffic Safety Administration
NMFS	National Marine Fisheries Service
NOFO	Notice of Funding Opportunity
NTTFI	National Tribal Transportation Facility Inventory
OIG	Office of Inspector General
OMB	Office of Management and Budget
OSG	Office of Self Governance
OSHA	Occupational Safety and Health Administration
OTT	FLH Office of Tribal Transportation
PA	Program Agreement; also known as a TTPA
PDDM	Project Development and Design Manual
PFSA	Program, Functions, Services, and Activities
P.L.	Public Law
POC	Point of Contact
PORT	Program Online Reporting Tool
PS&E	Plans, Specifications, and Estimates
RFA	Referenced Funding Agreement
RIFDS	Road Inventory Field Data System
ROD	Record of Decision
ROW	Right-of-Way
SAFETEA- LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act
SOW	Statement of Work
SRTS	Safe Routes to School
STIP	State Transportation Improvement Program
STRA-21	Surface Transportation Reauthorization Act of 2021
TC	Tribal Coordinator (employee of FHWA)
TERO	Tribal Employment Rights Ordinance
TFMMS	Transportation Facilities Maintenance Management System
TOSR	Tribal On-Site Representative
TRB	Transportation Research Board
TSR	Title Status Reports
TTAP	Tribal Technical Assistance Program
TTIP	Tribal Transportation Improvement Program
TTP	Tribal Transportation Program
TTPA	Tribal Transportation Program Agreement
TTPSF	Tribal Transportation Program Safety Funding
TTPTIP	Tribal Transportation Program Transportation Improvement Program
UEI	Unique Entity Identifier <u>Note:</u> Replaced DUNS numbers in 2022.
US or U.S.	United States
USC or U.S.C.	The Code of Laws of the United States of America
USFWS	United States Fish and Wildlife Service
WFL	Western Federal Lands

## Forward

The TTP, originally known as the IRR Program, was established by the Surface Transportation Assistance Act of 1982, and addresses transportation needs of the 574 federally recognized Tribes<sup>1</sup> by providing funds for planning, designing, construction, and maintenance activities. The program is jointly administered by FHWA and BIA in accordance with a memorandum of understanding. The regulations for carrying out the TTP are in 25 CFR Part 170.

Any transportation facility that provides access to or is located within Tribal lands may be eligible for inclusion in the NTTFI. These roads, trails and other facilities provide 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, safety and economic development of Native American communities. There are currently more than 161,000 miles of roads in the NTTFI. Approximately 31,500 miles are BIA roads and another 27,000 are Tribal roads. All of the remaining mileage is owned by others including States, counties, townships, boroughs, or other Federal agencies.

SAFETEA- LU (P.L. 109-59 (2005)) gave Tribes the option of working directly with 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. The *Tribal Transportation Program Delivery Guide* is an updated version of the guide, and is intended for use by Tribes with FHWA Program Agreements. The *Tribal Transportation Program Delivery Guide* is an important reference and it provides assistance in delivering the Tribal Transportation Program.

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

Office of Tribal Transportation,  
Federal Highway Administration

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<sup>1</sup> Wherever “**Tribe**” appears in this document, “**Consortium**” also applies. FHWA will work with a Tribal Consortium the same as a Tribe.

## I. Purpose of the Program Delivery Guide

The fundamental purpose of this document is to provide guidance to eligible Tribes entering into, or already having, a TTPA with FHWA.

The *Tribal Transportation Program Delivery Guide* clarifies the terms, roles and responsibilities, and provisions for the Tribes and FHWA as outlined in the TTPA. It assists Tribal governments in the administration of the TTP, and sets out the processes and procedures used by FHWA to carry out its program management and oversight responsibilities.

In addition, the *Tribal Transportation Program Delivery Guide* 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 <https://highways.dot.gov/federal-lands/programs-tribal>
- The BIA Division of Transportation (BIADOT) at <https://www.bia.gov/bia/ois/division-transportation>

## II. Tribal Transportation Program (TTP)

### 2.1 Overview

The TTP is an important component of a Tribe's overall infrastructure investment strategy. The TTP is a Federal program, with requirements and responsibilities that each Tribe needs to fully understand.

**A. Statutory/Regulatory Requirements.** In administering its TTP, a Tribal government is required to comply with the provisions of Title 23 of the United States Code, and 25 CFR 170. A Tribal government is also required to comply with the terms of its most current executed TTPA with FHWA. See 25 CFR §§170.170.2 through 170.4 for policies and requirements that apply to the TTP.

Federal law gives hiring and training preferences to Indians for all work performed under the TTP (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 in the award of contracts, subcontracts, and subgrants for all work performed under the TTP.

The following is a list of key statutes and regulations related to the implementation and oversight of the TTP:

- 25 CFR § 170 – TTP at [25 CFR 170](#)
- 23 U.S.C. § 202 – 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) – Wage and Labor Standards

**B. Federal Agencies which administer the TTP.** Federal agencies must work cooperatively together in a government-to-government relationship with Tribes to administer the TTP. Below is a short description of two Federal agencies that administer the TTP: FHWA and BIA.

**1. FHWA** has the broad responsibility of ensuring that America's roads and highways continue to be safe and efficient. Although State, local, and Tribal governments own most of the Nation's highways, FHWA provides financial and technical support for constructing, improving, and preserving the highway system. The FHWA's funding is divided between two programs areas: (1) Federal-aid funding to State and local governments; and (2) FLH funding for the 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), located in the same city as the State Department of Transportation, 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 Highway (FLH) Program.** The OTT is part of FLH and is responsible for administration of the TTP for Tribes having TTPAs with FHWA.



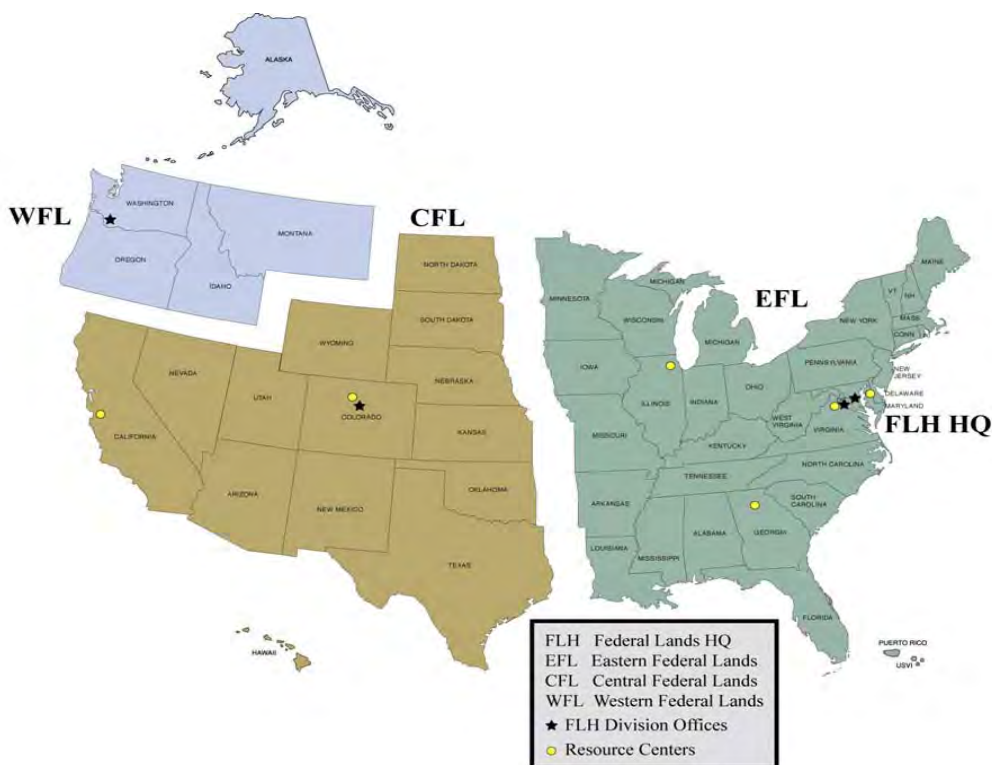
Within FLH, there are also three FLH Divisions: EFL, CFL, and WFL, providing engineering related services (design, environmental, contract advertisement and award, and construction management), and engineering technology information to Federal, State, and local agencies/governments, and Tribes.

- **EFL** is located in Sterling, Virginia serves the eastern United States, Puerto Rico, and the Virgin Islands.
- **CFL** is located in Lakewood, Colorado serves the central United States, Hawaii, and American Samoa.
- **WFL** is located in Vancouver, Washington serves the northwestern United States and Alaska.

The OTT is also included in FLH and is responsible for administration of the TTP.

Information on FLH is at <https://highways.dot.gov/federal-lands>

FHWA contact information and other TTP related information is at <https://highways.dot.gov/federal-lands/programs-tribal/contact-info>



**Figure 2.1: Locations of the three FLH Divisions’ service areas**

2. **BIA** is an agency of the US 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. 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.



- a. **BIADOT** is the Division of BIA overseeing the road maintenance and road construction programs for the 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.

BIA contact information and other TTP related information is at

<https://www.bia.gov/bia/ois/division-transportation>



**Figure 2.2: Locations of BIA Regional Offices and boundaries**

C. **TTP Coordinating Committee** (See 25 CFR §§ 170.135 through 170.137). The TTP Coordinating Committee consists of 24 Tribal representatives (two from each BIA Region), and two non-voting Federal representatives (from FHWA and BIA). The principal duties of the Committee are:

- Provides input and recommendations to BIA and FHWA in developing TTP regulations, policies and procedures; and
- Supplements government-to-government consultation by coordinating with and obtaining input from Tribes, BIA, and FHWA.

## 2.2. Allowable Uses of TTP Funds

- A. TTP Funding - Overview.** The calculation and distribution of annual TTP funding shares to individual Tribes is described in 25 CFR §§ 170.200 through 170.205. The statutory funding formula is defined in USC § 202(b).
- B. Allowable Uses of TTP Funds.** TTP funds are Federal funds that Tribes can spend only on allowable activities. See 25 CFR §§ 170.111, 170.112. Also, TTP funds provided to Tribes can only be spent on eligible projects and activities identified in an FHWA-approved TIP (see 25 CFR § 170.204).

Allowable uses of TTP funds are described in 25 CFR 170 Appendix A to Subpart B, 25 CFR 170 Subpart G, 25 CFR Part 170 Appendix to Subpart G, 25 CFR §§ 170.132-134, and 25 CFR § 170.607.

### 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 Cost](#) 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.
- 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.).
- Use of a Tribe's allocation of TTP funds for contract support costs.
- Road sealing and chip sealing.
- ADA improvements.
- Seasonal transportation routes including, but not limited to, snowmobile trails, ice roads, and overland winter roads (also see 25 CFR § 170.117).
- Mitigation activities required by Tribal, State, or Federal regulatory agencies, and 42 U.S.C. § 4321 *et seq.*, NEPA. See 25 CFR Part 170 Appendix A to Subpart B for other environmental related allowable costs.

- TERO fees.
- Maintenance of TTP facilities identified in the 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 XI - Maintenance of Transportation Facilities](#).
- Development and negotiation of Tribal-State road maintenance agreements.
- Purchasing, leasing or rental of construction and/or maintenance equipment. See [Chapter X - Construction and Construction Engineering](#) and [Chapter XI - Maintenance of Transportation Facilities](#).

**C. 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 (25 CFR § 170.138).
- Construction – Up to 100% of Tribe’s total fiscal year TTP allocation minus any amounts from other areas (25 CFR 170 Appendix A to Subpart B).
- Construction Engineering – Up to 100% of Tribe’s total fiscal year TTP allocation minus any amounts from other areas (25 CFR 170 Appendix A to Subpart B).
- Transit – Up to 100% of Tribe’s total fiscal year TTP allocation minus any amounts from other areas (25 CFR 170 Appendix A to Subpart B).
- 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 XI - Maintenance of Transportation Facilities](#).

**D. Administrative Facilities Constructed with TTP Funds.**

The allowable uses of TTP funds listed in 25 CFR 170 Appendix A to Subpart B do not include the construction of facilities for administration of transportation programs. However, the list does include “Other eligible activities as approved by FHWA”. In 2009, FHWA approved the use of TTP funds for the construction of administrative facilities under the following conditions:

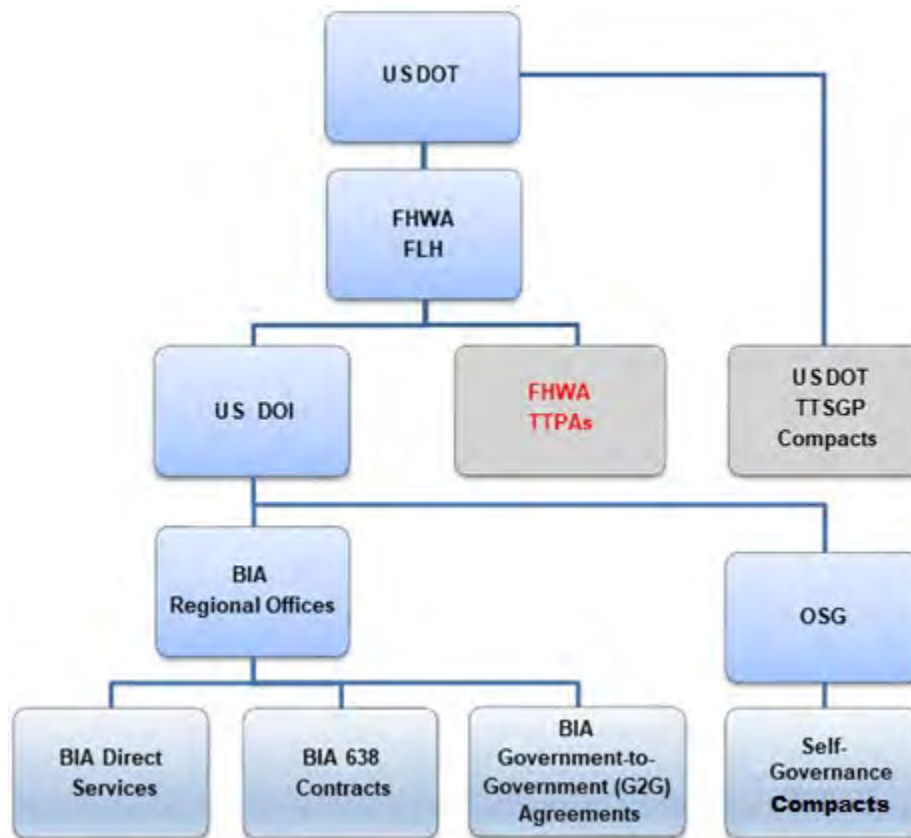
1. The administrative facility is constructed for the administration of a Tribe’s transportation programs. (The construction of an administrative facility for other tribal programs is not an allowable use of TTP funds.)
2. If the facility is larger than required for administration of a Tribe’s transportation programs, other funds should be used to construct that portion of the facility that will be used for non-transportation related programs
3. If the administrative facility is constructed with TTP funds and the Tribe then uses all or part of the facility for administration of other programs, the Tribe’s TTP must be reimbursed for the use of the facility. This reimbursement may be a full payment based on square footage or through rent.
4. The reimbursement collected must be deposited into the Tribe’s TTP account and used in accordance with 25 CFR 170.

- E. Other Requirements on Use of TTP Funds.** See [Section C. Funding in Chapter III, Tribal Transportation Program Agreement \(TTPA\)](#) and 25 CFR §§ 170.117 through 170.230.
- F. How can a Tribe Determine if a New Use of Funds is Allowable?** A Tribe can propose to FHWA or BIA a new use of TTP funds that is not listed in 25 CFR 170. See 25 CFR § 170.113 for the process to follow.
- G. TTP Coordinating Committee Recommendations** (see 25 CFR § 170 (a)(33)). The TTP Coordinating Committee may recommend other activities not listed in 25 CFR § 170 to become an allowable use of TTP funds. These recommendations must be approved by the appropriate Secretary (of Interior or Transportation) to become an allowable use of TTP funds.
- H. Requirements on Tribe's Management of NTTFI Facilities.** See 25 CFR §§ 170.114 through 170.117.

### III. Tribal Transportation Program Agreement (TTPA)

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

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



**Figure 3.1: TTP Delivery Options Available to Tribal Governments**

A Tribe with a TTPA administers its own TTP as authorized by Chapter 2 of Title 23, as amended by: P.L. 114-94, current applicable legislation and regulations,; and, P.L. 109-59, *Safe*, SAFETEA-LU.

The purpose of a 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 current applicable legislation and regulations.
- To provide the Tribe or its designee, under an RFA, its share of TTP funds pursuant to the current applicable legislation and regulations and 25 CFR 170.

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

- Transportation Planning

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

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

When a new Federal Transportation Authorization is approved, FHWA will begin negotiations with a Tribe for a new TTPA to replace the Tribe's existing TTPA.

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

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

The two ways a TTPA may be terminated are:

- **Voluntary termination.** A Tribe which already has a TTPA with FHWA may voluntarily terminate its TTPA (23 U.S.C. § 202 (b)(7)(J)). The Tribe submits to its TC a request contained in a letter signed by the Tribal signatory or a Tribal resolution, to terminate the Tribe's TTPA with FHWA. FHWA uses the "Off-boarding" letter template shown in Appendix B - [Exhibit 3.6](#) to acknowledge receipt of the Tribe's letter/Tribal resolution.
- **Involuntary termination.** FHWA may terminate a TTPA if FHWA determines a Tribe is no longer eligible to receive TTP funds (Article V, Section 9 of the TTPA). 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 a Tribe as an annual lump sum payment, subject to the availability of funding and as identified in the RFAs provided to the Tribe. See [Chapter 3.2 - Referenced Funding Agreements \(RFAs\)](#).

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

- Funds shall be used by the Tribe as permitted under 23 U.S.C. § 202(a)(1), the current applicable legislation and regulations, 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 and activities identified on the FHWA approved Tribal Transportation Improvement Program (TTIP) (see 25 CFR § 170.204).
- Funds may not be reprogrammed for other purposes. Funds shall be placed in a savings, checking or investment account and tracked independently (see TTPA–Article II, Section 2).
- Savings and checking accounts must be insured by an agency or instrumentality of the U.S., or fully collateralized to ensure protection of the funds, even in the event of a bank failure (see TTPA–Article II, Section 2).

- If the Tribe invests these funds, they shall be invested only in the following types of accounts: obligations of the U.S; obligations or securities guaranteed or insured by the U.S.; or mutual (or other) funds (see TTPA–Article II, Section 2).
- The Tribe may accumulate multiple allocations of funds, and shall deposit these in savings, checking, or investment accounts subject to the above requirements. Funds not expended by the Tribe within the fiscal year in which they were allocated shall remain in the custody of the Tribe and used for the purposes authorized under the TTPA (see TTPA–Article II, Section 2).
- Interest and investment income that accrue on the funds become the property of the Tribe in accordance with the provisions of 25 U.S.C. § 5324(b) and may be used on projects identified on the FHWA approved TTIP (see TTPA–Article II, Section 2).
- A Tribe can use flexible financing for TTP projects according to 25 CFR §§ 170.227 through 170.230. These include:
  - Issue bonds or enter into other debt financing instruments (see 25 CFR § 170.227(a) and TTPA–Article II, Section 2).
  - Obtain agreement of the Secretary of Transportation for secured loans or lines of credit for TTP projects meeting the requirements in 23 USC (see 25 § CFR 170.227(b))
  - Use TTP funds as collateral for loans or bonds to finance TTP projects (see 25 CFR § 170.227(c)).
  - Use TTP funds to leverage other funds (see 25 CFR §§ 170.228(a))
  - Pay back loans or other finance instruments for a project (see 25 CFR § 170.228(b) and TTPA–Article II, Section 2).
- The Tribe may use TTP funds to meet matching or cost participation requirements for most Federal or non-Federal transit grant or program (see 25 CFR § 170.133, and TTPA–Article II, Section 2)(See the Notice of Funding Opportunity for the specific 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 (see TTPA–Article II, Section 3).
- In the event of a dispute, the Tribe and FHWA agree to use mediation, conciliation, arbitration, and other dispute resolution procedures authorized under 25 CFR § 170.934 (see TTPA–Article II, Section 4).
- The TTPA shall be construed to facilitate and enable the transfer of programs authorized by 23 USC § 202, as amended by the current applicable legislation and regulations(see TTPA–Article II, Section 5).

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

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



### 3.1 Tribal On-Boarding Process for TTPAs

- A. Overview.** The Tribal on-boarding process is the procedure for a Tribe to request and potentially gain approval for a TTPA with FHWA.

The same process is followed for a Tribal consortium.

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

**Step 1. Tribe learns about the TTPA:** FHWA provides information to help a Tribe answer these questions: "What is a 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 provided, the Tribe may decide to pursue a TTPA for the administration of its Tribal Transportation Program. If so, the Tribe submits a **Notice of Intent** to FHWA, which is an official letter or Tribal resolution from the Tribal government notifying FHWA of its desire to enter into a TTPA with FHWA. See Appendix B - [Exhibit 3.2](#) for an optional Tribal resolution template that a Tribe may choose to use. Tribes submit the Notice of Intent to an FHWA TC. FHWA assigns a TC to work through the on-boarding process with the Tribe. The designated FHWA TC notifies the BIA Regional Road Engineer of the Tribe's intent to enter into a TTPA with FHWA

**Step 3. FHWA sends to the Tribal government an e-mail response or letter** (copied to the Tribe's Transportation Director or similar position). The letter may be in the format shown in Appendix B - [Exhibit 3.5](#). The e-mail response or letter will usually contain the following information:

- Confirmation of receipt of the Notice of Intent.
- A description of the On-Boarding process steps.
- A copy of the TTPA template (see Appendix B - [Exhibit 3.1](#)).
- A copy of the Referenced Funding Agreement template (see Appendix B - [Exhibit 3.3](#)).
- A copy of the FHWA TTPA Orientation presentation.
- A copy of the FHWA on-boarding orientation checklist (see Appendix B - [Exhibit 3.7](#)).
- The internet link to the *Tribal Transportation Program Delivery Guide*.

**Step 4. Tribe provides additional material** (see 23 U.S.C. § 202(b)(7)(F)). If the Tribe wishes to continue to pursue a TTPA, FHWA requests the following documentation that the Tribe must provide (also listed in the letter format in Appendix B - [Exhibit 3.5](#)):

- **Notice of Intent**, if not previously submitted by the Tribe. FHWA may provide the Tribe with a Sample Tribal Resolution which expresses the desire of a Tribe to enter into a TTPA (see Appendix B - [Exhibit 3.2](#)).
- **Audits:**
  - Copies of the Tribe's Single Audits covering the past three fiscal years if the Tribe expended \$750,000 or more of Federal funding during each of those years (see [Chapter IV – TTP Reporting Responsibilities, Section C](#)). Although FHWA doesn't necessarily need the full audit report, any findings and discussions related to the Tribe's DOT program, as well as for its other Federal programs should be included. Copies of auditor's letters attesting to any internal controls or compliance findings or lack thereof should also be

included. The Tribe should also include corrective action plans/implementation schedules that were developed for any material findings identified in the Single Audits.

- If the Tribe expended less than \$750,000 of Federal funding during a Tribal fiscal year, the Single Audit requirement does not apply. In these cases, FHWA asks the Tribe to provide copies of any internal or external financial review/audits that may have taken place over the past three fiscal years as well as any corrective action plans and implementation schedules that were developed. If audits were not carried out, the Tribe should provide copies of the “Certification of Non-Audit Requirements letter” that was previously provided to BIA for the past three fiscal years.
- The Tribe’s organizational charts for their Transportation and Financial Departments; and
- Copies of the Tribe’s written Financial, Procurement, and Property Management Procedures, if available.

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

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

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

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

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

**Step 8. If the Tribe has been approved for a TTPA, 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 B – [Exhibit 3.7](#)) to document this discussion.

**Step 9. The TTPA document is prepared.** FHWA prepares the TTPA (see Appendix B – [Exhibit 3.1](#)). The TTPA is the official record of the programmatic agreement between the Tribe and the U.S. government.

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

When the TTPA is completed, FHWA emails it to the Tribe for completion and signature by the Tribal leadership.

The Tribe must have an active UEI number. The Tribe should verify that its UEI number is active in SAM.gov, and provide the 5 digit CAGE code associated with the bank account for depositing Transportation Funds.

**Step 10.** The Tribe returns the signed TTPA and verification of their UEI and CAGE Code in SAM.gov to FHWA.

**Step 11.** FHWA signs the TTPA and a copy of the executed TTPA is provided to the Tribe.

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

**Step 13.** The newly assigned TC coordinates with the Tribe, the BIA Regional Office, and the OTT financial specialist 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 BIA (e.g. through 638 contracts or direct service agreements)?

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

## 3.2 Referenced Funding Agreements (RFAs)

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

**Step 1. FHWA Prepares an RFA.** The RFA sets forth specific conditions for Fiscal Year funding under the TTPA, and identifies the specific 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 B - [Exhibit 3.3](#).

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

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

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

Prior to approval of the RFA, the Tribe must have an FHWA-approved TTIP. Tribes recently onboarded 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 RFA email address at [TTPRFA@dot.gov](mailto:TTPRFA@dot.gov).

**Step 4. FHWA approves (“executes”) the RFA.** The RFA (or RFA Amendment), previously signed by the Tribe, is signed and approved by FHWA.

The RFA may not be approved if the Tribe does not have a current FHWA-approved TIP (see [Chapter V-Transportation Planning](#)). If the Tribe has an FHWA-approved TIP that addresses the planned TTP expenditures for the upcoming fiscal year, the Tribe is not required to submit an updated TIP with their signed RFA. However, if the Tribe's current TIP does not include all of the projects and activities covered by the new RFA, then the Tribe is required to submit a new TIP and obtain FHWA approval before the RFA will be signed. If a Tribe is unsure about whether it should submit a new TTIP, the Tribe should contact its TC for guidance.

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

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

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

TTP funding is available for obligation in the FY for which it is authorized plus three additional FYs. After that point, the funds lapse and are no longer available. When the funds are provided to the Tribe through the RFA, the funds are deemed obligated and do not lapse.

2. **TTP Bridge Program Funds.**
3. **Tribal Transportation Program Safety Funding.**
4. **202(a)(9) Fund Transfers.**

**Overview.** State, county, or local transportation-related funds may be transferred from the State to FHWA, and then from FHWA to a Tribe through an RFA. See 23 USC § 202(a)(9), 23 USC § 104(f)(3)(A), and 25 CFR § 170.627. For additional information, see the FHWA information sheet at <https://highways.dot.gov/federal-lands/programs-tribal/finance>

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

- **Funds to be transferred must be for a specific project.**
- **The project must be eligible under the initial source of funding.** The transferred funds must be used for the purpose originally agreed to between the State and the Tribe.
- **Funds shall retain their match requirements.** The transferred funds keep the match requirements from the original funding source or program.
- **The State is relieved of oversight responsibilities.** FHWA assumes oversight. The Tribe administers the project in accordance with the transfer agreement and TTP provisions.
- An **Intergovernmental Fund Transfer Agreement** shall be developed by the Tribe, in coordination with the State and the FHWA TC. When finalized to the satisfaction of all the signatories, the **Agreement** shall be signed by the Tribe, State, and FHWA. See Appendix B – [Exhibit 3.8](#) for the template to use for the **Agreement**. In some cases, other templates may be used according to the State the project is located in. Portions of this document will need to be modified further by FHWA if non-Federal funds are being transferred.
- The **Addendum to the Intergovernmental Fund Transfer Agreement** shall be developed by the Tribe in coordination with the State and the FHWA TC. This identifies the project, funding, expectations, roles and responsibilities, etc. The **Addendum** shall be attached to the **Intergovernmental Fund Transfer Agreement**. See Appendix B - [Exhibit 3.9](#) for the required template to use for the **Addendum**. Portions of this document will need to be modified further by FHWA if non-Federal funds are being transferred.
- **Complete Form FHWA-1576.** The State DOT shall complete and submit this form to the FHWA Division Office in the respective State, in order to transfer the funds to FLH Headquarters. The information entered on **Form FHWA-1576** shall include the following:
  - Clearly define the type of funds being transferred;
  - Specify that the funds are transferred to FLH Headquarters for the TTP in accordance with 23 U.S.C. § 202(a)(9);
  - Identify the purpose (a specific project) for which the funds are being transferred, the name of the receiving Tribe; the specific project.

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

**Form FHWA-1576** is available for download at <https://www.fhwa.dot.gov/legisregs/directives/policy/att1c.xls>

- **The transferred funds must be obligated in same Federal FY as the transfer.** The transferred funding (and associated obligation limitation) will be obligated through the same process as TTP funding. The TTP formula obligation limitation is available for a single FY. Therefore, if the transfer is of apportioned funds and formula obligation limitation, the funds and formula obligation limitation must be obligated within the FY of the transfer.
- **Funds tracked separate from TTP funds.** FLH should track the transferred funds separately from the Tribe's TTP funds, to ensure that obligation deadlines are met. The Tribe should also track the funds separately from their TTP funds to satisfy the terms of the transfer agreement.
- **Unused funds returned to the State.** When the project is complete, any remaining balance of the transferred funds must be returned by the Tribe to the State that originated the transfer, unless further agreements are reached for eligible projects.

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

- 6. Tribe's share of Program/Project-related administrative funds** as authorized by section 202(b)(7)(E) of title 23. This amount has typically been \$0.00.

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

- 23 U.S.C. § 202(b) and 25 CFR 170, Subpart C regulate distribution of TTP funds;
- 23 USC § 104(f)(3)(A), 23 USC § 202(a)(9), and 25 CFR § 170.627;
- SAFETEA-LU, Pub. L. 109-59, 119 Stat. 1144 (Aug. 10, 2005);
- ISDEAA, Pub. L. 93-638;
- 25 U.S.C. § 5301 et seq.;
- 49 CFR § 1.48(b)(29).

## IV. TTP Reporting Responsibilities

**A. Overview.** Tribes that have a TTPA with FHWA 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 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 FHWA the following reports and documents:

- Annual TTP Reports (see Section **D** below).
- The Tribe's TTIP (see [Chapter V - Transportation Planning](#)).
- The final stamped PS&E prior to project construction (see [Chapter VII - Preliminary Engineering – Project Package](#)).
- The project construction closeout report (see [Chapter X – Construction and Construction Engineering](#)).

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

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 reviews (see Section **B** below).
- FHWA performs Program Reviews of Tribes (see Section **E** below).

FHWA may initiate remedial actions with a Tribe in certain cases of a Tribe's noncompliance with the TTPA. See [Appendix A – Glossary](#) for definition of remedial actions.

**B. On-Site Visits to Tribes.** The TC makes 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 of the TTP (planning, design, environmental processes, construction functions, transportation safety, maintenance, and transportation funding opportunities).
- Project construction reviews (see [Chapter X – Construction and Construction Engineering](#)).

The TC needs to complete the **Trip Inspection Report** (see Appendix B - [Exhibit 10.1](#)) for all on-site visits to Tribes. The OTT Trip Inspection Report 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:

- TTP Reports are current and on file;
- The TTIP is current, on file, and approved by FHWA; and
- TTP financial accounting records in the office are current, and using acceptable accounting procedures

The 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 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 (see 25 CFR §§ 200.501 and 514).

The Single Audit must be performed according to 2 CFR 200, Subpart F - Audit Requirements. The single audit is typically performed by an independent CPA, and encompasses both financial and compliance operations of the Tribe. Tribes shall submit their Single Audits to the FAC (see link below) according to 2 CFR § 200.512(c).

The OTT may request from a Tribe the documentation required by FHWA to demonstrate that the 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>
- The FAC at <https://harvester.census.gov/facweb/default.aspx/>

- D. Annual TTP Reports.** Tribes must use the PORT online reporting system to submit their annual TTP reports (see Article III, Section 7 of the FHWA TTPA and 25 CFR § 170.240). The website explaining how PORT works is at <https://highways.dot.gov/federal-lands/programs-tribal/annual-report>

The TC will provide each Tribe with the internet links (“keychains”) to complete their annual TTP reports using the PORT online reporting system. The annual TTP PORT reports shall include:

- **Financial Report.** The Tribe must complete all the required fields of the online Financial Report. See blank copy of report in Appendix B – [Exhibit 4.1](#). See Section F below in this chapter for explanation on how Tribes should calculate indirect costs.
- **Non-Construction Activities Report.** This report includes the Tribe’s data on jobs, and administrative, planning, safety, maintenance, transit, and other non-construction activities. See blank copy in Appendix B – [Exhibit 4.2](#).
- **Report on Each Project** for the Tribe’s active TTP funded projects. See blank copy of report in Appendix B – [Exhibit 4.3](#).

**Reporting Schedule.** Tribes must submit their annual TTP reports by the required due date shown in the following table. FHWA may establish additional monitoring and reporting requirements while discussing with a Tribe the terms of the TTPA during the On-Boarding process (see [Chapter 3.1 - Tribal On-Boarding Process for TTPAs](#)), or as the result of other findings.

Reporting Schedule for Tribes		
Report	Reporting Period	Due Date
Annual TTP Reports (using the PORT online reporting system)	October 1 through September 30	Within 90 days of conclusion of reporting period (no later than December 31)

- E. Program Reviews.** FHWA conducts formal Program Reviews of a Tribe’s TTP as needed based on risk management, in accordance with FHWA Program Review procedures (25 CFR §§ 170.703-704). FHWA also conducts Program Reviews of a Tribe as requested by external sources. For example, FHWA is responsible for conducting Program Reviews as requested by the OIG.

During a Program Review, FHWA focuses on the Tribe's processes in the following areas: (1) financial management, (2) procurement, (3) planning, (4) program, management, (5) project development, (6) construction, and (7) maintenance. Tribes should be able to provide accurate records of program expenditures upon request. In addition to helping FHWA to monitor compliance with program requirements, these reviews allow FHWA to identify effective practices among Tribes, which they can share with other Tribes.

FHWA documents the Program Review in the Program Review Summary Report and submits 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. 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 utilities, rent, insurance, taxes, finance/typing pool, motor pool vehicles, etc. could be charged directly to each individual funding source or program of a Tribe, such as the TTP, if they could be measured. 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. 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 TTP.

**3. How a Tribe Calculates its TTP Indirect Cost.** A Tribe’s TTP indirect cost includes:

- a) The Tribe’s **“Program Administration costs”** multiplied by the IBC negotiated ICR. If a Tribe has never received a negotiated indirect cost rate, then the Tribe may use an ICR of 10% (see 2 CFR 200.414 (f));
- b) The Tribe’s **“Pass-through costs”** multiplied by the IBC negotiated ICR for pass-through costs. If there is no such negotiated rate, then Tribes may use an ICR of not more than 3% for pass-through costs.

**Reporting the TTP Indirect Cost.** A Tribe reports the sum of the Indirect costs described in paragraph a) and b) above, in their PORT reports submitted to FHWA.

## V. Transportation Planning

### A. Overview (see 25 CFR §§ 170.400-447).

A Tribal government performs transportation planning to analyze existing and future transportation facilities serving the Tribal community under changing conditions to make informed investment decisions. Transportation facilities are multimodal and generally include streets, highways, sidewalks, trails, boardroads, bike lanes, public transit systems, buildings for vehicle storage/repair, airports, helipads, marine facilities and terminals, and ferry systems.

### B. Roles and Responsibilities of Transportation Planning (see 25 CFR § 170.402).

1. **Tribes.** Tribal governments administering the Tribal Transportation Program (TTP) have ownership of their transportation planning activities by determining what long-range transportation planning areas benefit their community's vision and goals and are then included in their long-range transportation plans (LRTPs). Tribal governments have the authority over their LRTPs by approving them. The following are Tribal government functions in TTP planning:

- Develop the Tribe's LRTP;
- Develop the Tribe's TTIP or priority list;
- Coordinate with States, their political subdivisions, appropriate planning authorities, and local governments on regionally and locally significant projects;
- Prepare and enter updates in the NTTFI maintained by BIA;
- Facilitate public involvement;
- Perform traffic studies;
- Mapping;
- Participate in transportation planning and other transportation related meetings;
- Perform transportation planning for operational and maintenance facilities;
- Develop Program budgets including transportation planning cost estimates;
- Conduct special transportation studies as needed;
- Research rights-of-way documents for project planning; and
- Perform pre-project planning.

#### 2. **FHWA:**

- Conduct mid-point review of Tribal LRTP during development;
- Review TTIPs developed by the Tribe;
- Approve TTIPs developed by the Tribe;
- Make the TTIPs available to the States so they can append them to their STIP.

3. **BIA and FHWA.** Roles and responsibilities of the BIA DOT or FHWA Program Planning Specialist, and the BIA POC or FHWA TC are described in detail in the following sections of this chapter. A key role of the BIA DOT or FHWA Program Planning Specialist is to provide technical expertise and assistance throughout the transportation planning processes described herein. The BIA POC or FHWA TC should coordinate with the BIA DOT or FHWA Program Planning Specialist when working with a Tribe on transportation planning activities.

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

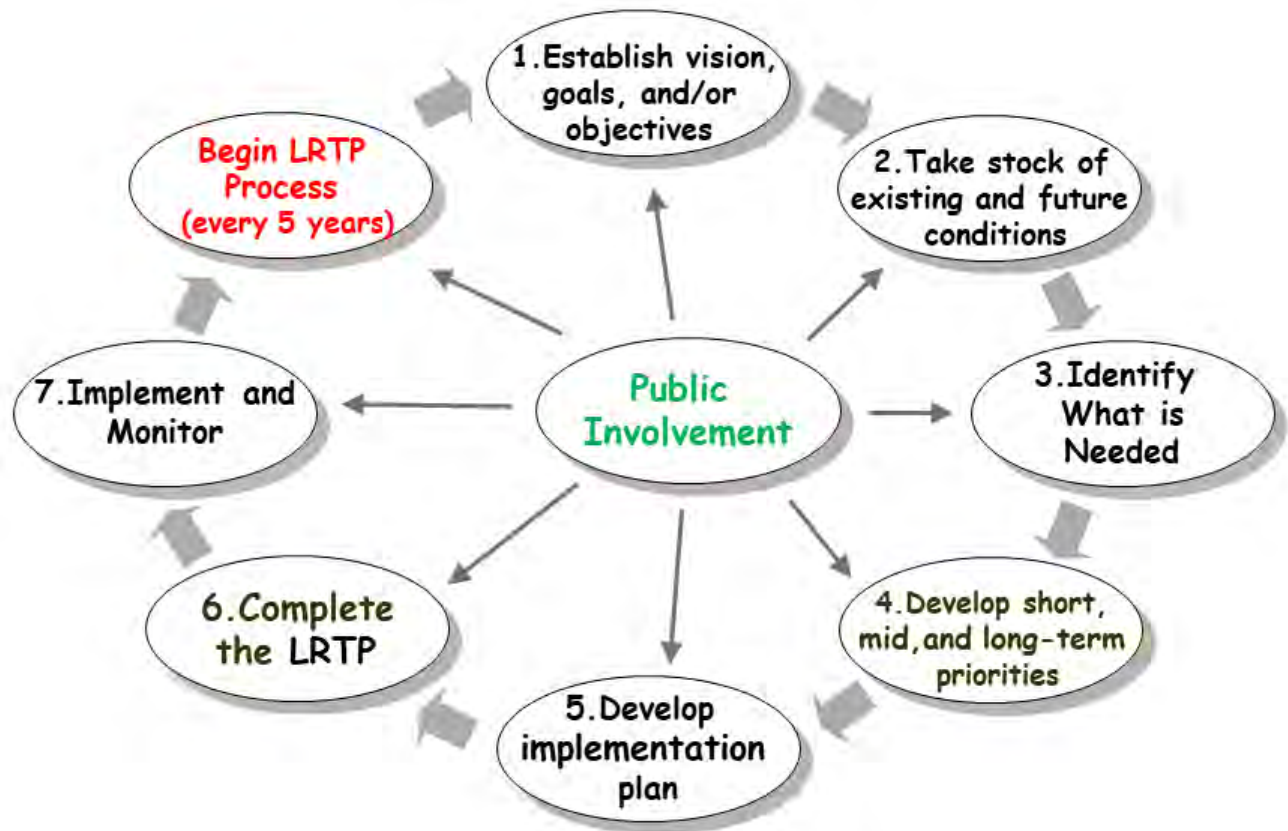
- Conduct a midpoint review of LRTPs developed by the Tribe;
- Review TTIPs developed by the Tribe;
- Provide technical assistance to Tribal governments;
- Support Tribal, State, regional, and/or local government coordination, as requested by the Tribe; and
- Support coordination with other Federal agencies, as requested by the Tribe.

### C. Tribal LRTP

- 1. Overview.** The Tribe develops its 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 may amend its LRTP as a result of changes in projected Federal, State, and Tribal funding, major improvement, project, corridor justification, or environmental impact studies, and major changes in Tribal goals, vision, and mission. The LRTP provides the context from which the Tribe develops its TTIP.

The Tribe must review its LRTP every year and update it every 5 years (25 CFR § 170.414). 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 5.1** shows the steps for a Tribe to develop or update an LRTP as part of transportation planning per 25 CFR §§ 170.409-414. However, there is no one way of developing a LRTP. Tribal governments utilizing TTP funds should ensure necessary TTP requirements are met, but carry out a transportation planning process that supports their communities, state of transportation infrastructure, and land areas. See [Appendix B Exhibit 5.1](#) for another example of the TTP planning process.



**Figure 5.1 - Transportation planning - 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 according to 25 CFR §§ 170.409-414 are listed as follows. While integrating TTP requirements, Tribes should develop their LRTPs for their unique circumstances and plan for transportation systems that address their community goals and objectives.

**Step 1. Establish the vision, goals, and/or objectives.**

- 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. This may require:
  - Researching and documenting reservation, Tribal, and community history
- Establish transportation related **goals** that support the vision using community input. Goals may pertain to, but not limited to:
  - 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;
- Environmental improvement;
- General Tribal Transportation Program administration and delivery.
- **Develop objectives.** These objectives support the overall goals and express the purpose of the study. Objectives may:
  - 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;
  - Consider all modes of transportation including vehicle, transit, pedestrian, bicycle, freight, and as appropriate, rail, air, and water;
  - Include developing a road maintenance plan; and
  - Include an access management plan.

**Step 2. Take stock of existing and future conditions.** Look at the existing and future transportation system serving the Tribal community. This involves performing the following:

- Evaluate land use and socioeconomic conditions;
- Examine the conditions and document characteristics such as location and adequacy of the existing transportation facilities including roads, boardroads, bridges, trails, barge facilities, transit, etc.;
- Use community input to obtain information about the condition and performance issues of the facilities;
- Conduct a comprehensive facilities inventory, including collecting missing data;
- Assemble the safety and accident data and perform crash data analysis using both interviews and records (25 CFR §§ 170.101(a)(1) and 170.128);
- Determine existing and future traffic conditions including levels of service and access;
- Identify existing material sources including ownership and types;
- Identify the modes of travel on each facility: foot travel, ATVs, snow machines, boats, bicycles, school buses;
- Review previous Tribal and neighboring transportation, economic development, land-use, and general community studies/plans; and
- 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 objectives and compare to the existing and future conditions = **NEEDS**.
  - **Community input** on transportation needs is very important. Discussion with the community should begin before the public meeting.
  - Consider developing some high-level evaluation criteria to quantify the benefits of each potential transportation improvement option based on the results from Step 2 and the goals and objectives that were established at the beginning of the study.
- When identifying transportation needs/improvements:

- Consider developing a detailed evaluation and prioritization table/tool to use for each recommended improvement/need category. The detailed evaluation criteria may differ for each mode, but should include all the high-level criteria developed. See **Figures 5.2** and **5.3**.
- 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; and
- Consider land uses.
- Identify projects or activities for each transportation need. Examples are:
  - Construction or reconstruction of roads and boardroads;
  - Trail construction or reconstruction;
  - Trail marking projects (for safety);
  - Trail wayside shelters;
  - Trail hardening (plastic grid, boardwalks, gravel);
  - Bridge repair or replacement;
  - Transit: vehicles, shelters, storage/maintenance building;
  - Water, barge access roads;
  - Ice roads;
  - Road and trail maintenance, dust control;
  - Training for Tribe's people to work on "force account" construction projects or maintenance;
  - Functional classification; and
  - Tribal Transportation Program administration and delivery.
- For each **project or activity**, identify the following:
  - Planning level cost estimate (25 CFR §§ 170.402(b)(10) and 170.415);
  - Funding sources, existing or potential (25 CFR §§ 170.411(j) and 170.415(a)(1));
  - Who will maintain the facility;
  - Affected environmental areas such as archeological and cultural sites, and other environment factors (25 CFR § 170.415(a)(5));
  - Right-of-way difficulty and other risks; and
  - Coordination with agencies (BLM, USFWS, USFS, NPS, State) on or near a project. Identify existing and future transportation routes to be added or changed on the NTTFI (25 CFR § 170.442-447).

**Step 4. Develop Short, Mid, and Long-term Priorities.** Using the evaluation process from Step 3, identify projects or activities that provide the greatest benefits and classify into the short, mid, or long-term timeframes (25 CFR § 170.411). A sample prioritization may look like the following.



**Figure 5.2. Example High-level Evaluation and Prioritization Criteria:**

Evaluation Criteria	Objective	Measure	Benefit Scale		
			High	Med	Low
Safety	Improve overall modal safety *	Continuous reduction in lives lost	High	Med	Low
	Enhance kids' safety at bus stops/pullouts *	50% reduction in traffic incidents	High	Med	Low
Other Criteria	-	-	Yes	-	No

\* Note: Carry these example objectives to the next Table (Figure 5.3) as headers, as shown.

**Figure 5.3. Example Detailed Evaluation and Prioritization for Roadway:**

Road	Location	Description	Length	Existing AADT	Existing LOS	Improve overall modal safety	Enhance kids' safety at bus stops/pullouts	Project Phase	Cost
Kind Road	MP 64 to MP 68	Reconstruction	4.0	<100	B	Med	Low	Mid	\$6M
School Road	MP 20 to MP 22	Widening and restriping	2.0	<100	C	High	High	Short	\$2M

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".

Other considerations when prioritizing projects and activities include:

- The needs, goals, and ideas expressed by members of the community, which should be incorporated when developing the evaluation criteria;
- The “bang for the buck”; that is, how much good does a project do for the cost;
- Availability of funding for a project and feasibility of actual implementation;
- Degree of community support for a project; and
- Risk items that could stop or significantly delay a project: right-of-way problems, environmental issues, etc.

Performing this process should result in a prioritized list of do-able, fundable projects, and activities for (25 CFR § 170.411):

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

**Step 5. Develop an implementation plan.** Perform an analysis of funding sources and alternatives to carry out the LRTP improvement recommendations and identify implementation actions to execute the projects and/or activities.

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)). Research and learn about funding source requirements and limitations to realistically assess the potential of utilizing a funding source for project implementation. For example, learn about the eligible uses of TTP funds (25 CFR §§ 170.111-113).

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

Develop the Tribe's unique approach to implementation with specific actions. This may involve establishing and/or strengthening partnerships, creating project implementation sheets to carry into pre-project planning for short-term timeframe projects, develop policies and procedures, and conduct further research for potential funding sources.

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

- **Public involvement.** Tribes must perform public involvement activities (25 CFR § 170.413). To create an opportunity for an all-inclusive exposure to the plan, public involvement should occur to collect input on needs and then again to gain feedback on recommended improvements during the LRTP process.
- **Tribe makes draft LRTP available to the public and agencies.** The Tribe will make the draft LRTP available to the public (i.e. stakeholders, private citizens, major public and private entities, etc.) through appropriate methods (i.e. public meetings and/or public notice). The Tribe should send an electronic copy of the draft LRTP to their BIA POC or FHWA TC, 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 their BIA POC or FHWA TC.
- **LRTP approval.** The Tribal government approves the LRTP per 25 CFR § 170.412(c). Although BIA or FHWA does not approve a Tribe's LRTP, BIA or FHWA will jointly conduct a midpoint review with the Tribe during the development of the LRTP to ensure conformity with the TTP planning requirements and to offer technical assistance. The BIA or the FHWA Program Planning Specialist will be available for technical assistance to the BIA POC or FHWA TC and Tribe during the plan development, update, or amendment prior to adoption by the Tribal Council. Once the Tribe adopts the plan, the Tribe's POC provides a courtesy copy of the final LRTP to BIA or FHWA.

**Step 7. Implement and Monitor.** The LRTP must be reviewed annually (25 CFR § 170.414) due to factors such as changing visions and goals, conditions, progress and setbacks, and unforeseen circumstances, and as a result, priority of projects and activities on the TTIP often change. In addition to maintaining consistency between the LRTP and TTIP (25 CFR § 170.421(a)(1)), reviewing the LRTP on a frequent basis provides pre-project planning information for upcoming projects and aids as a reference to information that supports partner collaboration.

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

**Web links:**

- FHWA Office of Tribal Transportation Planning  
<https://highways.dot.gov/federal-lands/programs-tribal/planning/resources-guidance>
- FHWA Tribal Transportation Planning  
<https://www.fhwa.dot.gov/planning/processes/tribal/index.cfm>
- Regional National Tribal Transportation Facilities Inventory Reports  
<https://itims.bia.gov/reports.shtml>
- Tribal Technical Assistance Program (TTAP)  
<https://ttap-center.org/>

**Books/Manuals:**

- Manual on Uniform Traffic Control Devices (MUTCD) 2009 Edition, DOT, FHWA.  
[https://mutcd.fhwa.dot.gov/kno\\_2009r1r2.htm](https://mutcd.fhwa.dot.gov/kno_2009r1r2.htm).
- Trip Generation, Institute of Transportation Engineers.
- Parking Generation, Institute of Transportation Engineers.
- Developing a Long-Range Transportation Plan, FHWA Tribal Transportation Planning Modules  
[https://www.fhwa.dot.gov/planning/processes/tribal/planning\\_modules/lrtp/](https://www.fhwa.dot.gov/planning/processes/tribal/planning_modules/lrtp/)
- Practitioner's Handbook #10: Using the Transportation Planning Process to Support the NEPA Process, American Association of State Highway and Transportation Officials  
[https://environment.transportation.org/wp-content/uploads/2021/05/practitioners\\_handbook10.pdf](https://environment.transportation.org/wp-content/uploads/2021/05/practitioners_handbook10.pdf)

**D. Pre-Project Planning and project identification studies (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 placed on the Tribe's TIP (TTIP) because the process evaluates the viability of actual project delivery by exploring associated risks and defining a specific approach to project execution. The pre-project planning process provides the Tribe with a more realistic scope, schedule, and budget before deciding whether or not the project would go onto the TTIP and, in doing so, increases Program success.

Pre-project planning looks at the following items:

- The various alternatives to a project (for example: roundabout vs. intersection);
- Preliminary cost estimate of a project (25 CFR §§ 170.402(b) (10) and 170.415(a));
- If the project warrants a public hearing (25 CFR §§ 170.435);
- The regional significance of the project;
- Public involvement;
- Right of way clearance requirements; and
- The project's need for preliminary environmental and archeological reviews.

The pre-project planning process helps to further filter which projects are proposed to end up on the TTIP. Proposing projects for the TTIP should be made only after the Tribe thoroughly analyzes all the relevant information, including the project's preliminary environmental and archeological reviews. The Tribe can decide whether or not the project is suitable to proceed after the preliminary environmental process review is completed. Comparing the environmental requirements and/or impacts to the planned scope of the project helps the Tribe effectively program a TTIP.

The Pre-Project Planning Worksheet (see Appendix B – [Exhibit 5.5](#)) may be used by the Tribe when performing pre-project planning.

Pre-project planning activities may include, but not limited to:

- **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 needs 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 the road for a left-hand turn lane is warranted according to applicable standards. If the increase in ADT is not addressed, safety issues such as decelerating vehicles causing an impediment on traffic flow will increase."
  - Descriptions such as "dangerous", "hazardous", or "this curve caused six accidents" that are not supported by data and facts should be avoided. These may be interpreted as opinions that do not add value to the determination of a need.
- **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 guidance).

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 VI - Preliminary Engineering - NEPA and Other Environmental Requirements](#) to determine the level of NEPA analysis that will be needed for the proposed project.

- **Concepts of possible alternative strategies** that could satisfy the identified deficiencies and purpose and need. This should not be an all-inclusive list, but factors to be considered for programming a project. A complete list of all reasonable alternatives will be identified in the environmental process.
- **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 B – [Exhibit 5.5](#)). 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% to 25%) be added to the cost estimates to reflect other possible items.
- **Consultation and coordination with States and/or MPOs for 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 (25 CFR § 170.5). 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 an area.

## E. TTIP

1. **Overview.** The TTP transportation planning process requires the Tribe to develop a **TTIP**. The **TTIP** is a list of fiscally constrained transportation projects and activities eligible for TTP funding covering a period of 4 years. These projects and activities must be included on an approved TIP prior to expenditure of TTP funds (25 CFR § 170.204). The TTIP must be updated every 4 years (23 USC 134(j)(1)(D)), however, to better align with changing priorities, it is recommended that Tribes review and update their TTIP every year (170.421(a)(3)). TTP funds can be withheld if a TTIP is out of the 4-year compliance. As described in the Tribal Transportation Program Agreement, FHWA approves the **TTIP** developed by the Tribe, and the Tribe implements the projects and activities from the FHWA-approved **TTIP**.

**Figure 5.4** illustrates that the development of the TTIP requires a review of the LRTP to determine progress and revisit priorities based on the Tribe's transportation goals. TTIP development also involves preliminary evaluation and analysis of short-term projects and activities. These activities require public outreach and possible public hearings on specific project (s).



**Figure 5.4. Relationship between pre-project planning and the TTIP**

## 2. 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 committed, available, or "reasonably expected to be available" (see 23 CFR §§ 450.104 *Definitions*, and 25 CFR §§ 170.5 and 170.421(a)(2)) to cover the cost of design and construction, as well as the cost of future operation and maintenance of the proposed project (23 CFR §§ 450.104 *Definitions*). Financial constraint/fiscal constraint applies to each of the four program years. 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 consistent with the LRTP or included on the approved Tribal priority list. 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 revise the TTIP showing the project as funded and programmed, and submit it to their BIA POC or FHWA TC. If the Tribe does not have a TTIP modification or amendment guide or policy, then the BIA POC or FHWA TC will determine if the revision is an administrative modification or an amendment (23 CFR §§ 450.104 *Definitions*). An amendment will require public review and comment and a re-demonstration of fiscal constraint. See Section TTIP 8. TTIP Amendments and Administrative Modifications for further guidance.
- **The TTIP needs to be consistent with the Tribe’s planning documentation.** The projects listed on the TTIP must be consistent with the LRTP or priority list (25 CFR § 170.421(a)(1)).
- **Facilities Official on the Inventory and consistent with the LRTP.** Tribal governments utilize their LRTP to document and justify the Tribe’s updates to the NTTFI (170.414 and 170.446(a)). For those projects funded under the TTP, the route and section (s) must be listed in the National Tribal Transportation Facility Inventory (25 CFR § 170.442) and certified as “Official” or eligible for TTP funding.
- **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 MPO, on all regionally significant projects when developing its TTIP (25 CFR § 170.107(a)(1)). This is to ensure the regionally significant project (s) are included in the State programs (23 U.S.C 201(c)(3)) and encourages entity coordination on plans and collaboration on resources to implement the project (s) for mutual benefit.
- **Planning Requirements for Development of the TTIP.** The TTIP must comply with all the relevant provisions in 25 CFR § 170. The BIA POC or FHWA TC in coordination with the Program 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 provided 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). Topics that may generate controversy include removing inventory routes, changing ownership or maintenance responsibility.

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 and/or recording of hearing; and other documentation that provide records of public involvement.

- **Categories the Tribe needs to include in the TTIP.** The following table shows the seven categories to include in the TTIP (25 CFR §§ 170.421).

<b>Categories in a TTIP</b>	
<b>Category</b>	<b>Guidance</b>
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 <a href="#">Indirect Cost</a> 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) such as 20 year LRTP, TTIP 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 CFR § 170.460) such as 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 new roadway construction or reconstruction, 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.
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 FTA if used as match for 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).

<b>TTIP Timeline (Fiscal Year)</b>			
<b>Action Item</b>	<b>Authority / Reference</b>	<b>Frequency / Due Date</b>	<b>Responsible Party</b>
Tribes notified of the opportunity to update TTIP. Tribe receives 1) estimated TTP funding amounts for FY; 2) copy of previously approved TTIP; and 3) instructions for submitting the annual update.	25 CFR §§ 170.423(b)	FY Annually –1st Quarter (October through December)	BIA POC or FHWA TC
Review any new transportation planning information, priority lists, and previous approved TTIP to draft a new one. <b>Draft TTIP - Public Review</b> – Tribe puts TTIP out for public review	25 CFR §§ 170.423(c) 25 CFR § 170.422	FY Annually –2nd Quarter (January through March)	Tribe (unless delegated to BIA through an RSA)
Complete and forward an updated TTIP package consisting of the following: 1) TTIP forms for each project and/or activity, 2) Tribal resolution or Tribally authorized government action, and/or a signed and dated TTIP Certification Statement to the TC, and 3) If requested, a copy of the public participation notice to the BIA POC or FHWA TC.	Internal Tribal process	FY Annually – 3rd Quarter (April through June)	Tribe (unless delegated to BIA through an RSA)
Compile TTIPs and make TTIP available on OTT planning website.	25 CFR §§ 170.424(b)	FY Annually – 4 <sup>th</sup> Quarter (July through September)	FHWA Program Planning Specialist

**3. Process for Development and Review of the TTIP.** The Tribe develops the TTIP from the Tribal priority list or the Tribe’s LRTP (see 25 CFR §§ 170.421-423).

**Step 1.** The Tribe prepares its TTIP using the following forms:

- Tribes who have a TTPA with FHWA may use the Microsoft Access FHWA **TTIP Template**, and the **FHWA TTIP Template User Guide**, available on OTT [planning website](#). See Appendix B - [Exhibit 5.2](#) for a printout of the blank FHWA **TTIP Template**.

**Step 2.** The Tribe submits the draft TTIP to the FHWA TC, who will work with the Tribal POC to ensure all requirements have been met and any issues with TTIP are resolved.

**Step 3.** Once the FHWA TC and Tribal POC agree that TTIP is complete, the FHWA TC will follow internal steps to obtain TTIP concurrence, and inform the Tribal POC. Additional changes may be required and coordinated between FHWA TC and Tribal POC.

**Step 4.** When the final draft TTIP is complete, the Tribe conducts public involvement activities (see 25 CFR §§ 170.422). 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. The Tribe reviews the public comment and incorporates any changes to the TTIP as necessary and then creates a final TTIP supported by Tribal Resolution.

**Step 5.** Tribal POC submits Tribally approved **TTIP Package** to FHWA.

4. **Submitting the TTIP Package.** The Tribe should submit by mail, email, or fax, the following items as a package to the FHWA TC so that the FHWA Program Planning Specialist can review the TTIP for approval:
  - A **TTIP Certification (FHWA TTPA only)**, signed and dated by the Tribe's Chief, Chairperson, CEO, or President, or designated acting (see Appendix B - [Exhibit 5.3](#)). This document is an assurance to FHWA that the Tribe developed the TTIP according to 25 CFR §§ 170.415, and 421-422, 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 (s); 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 an FHWA TTPA, the FHWA TC provides the Tribe with the Microsoft Access FHWA TTIP Template (see Appendix B - [Exhibit 5.2](#)).
  - A supporting **Tribal Resolution or Tribal government action** (see example Tribal resolution template in Appendix B - [Exhibit 5.3](#)). This is optional *if* the TTIP Certification form (see Appendix B - [Exhibit 5.4](#)) is signed and dated by the Tribe's Chief, Chairperson, CEO, or President, or designated acting.
5. **Reviewing the TTIP.** The FHWA Program Planning Specialist will review the TTIP package for completeness and may request any missing information or package documents.
6. **Approving the TTIP.** FHWA approves the TTIP. Once approved by FHWA, the TTIP becomes part of the official TTPTIP. The Tribe will then receive an FHWA approved TTIP, along with an approval email from the FHWA TC. If some projects on the TTIP are determined by FHWA to not be eligible, the Tribe will receive a "partial" TTIP approval by FHWA.
7. **The TTPTIP** is put together by FHWA, and contains the information from all of the FHWA-approved TTIPs. The TTPTIP information is made available to States to be included in their STIP (see 25 CFR § 170.5 for definitions). **Note:** Having a project listed on the STIP does not guarantee State funding.
8. **TTIP Amendments and Administrative Modifications.** The Tribal Transportation Program (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 (170.421(a)(3)). The approval of the TTIP is required before the Tribe can spend any TTP funds. See [TTP Program Delivery Guide](#) for developing a TTIP.

Although TTIPs must be updated every 4 years, TTP planning regulations encourage Tribes to update the TTIP annually to best represent the plans of the Tribe. Revisions to the approved TTIP can be made any time between updates. These revisions can either be minor or major known as an administrative modification and amendment, respectively. To accommodate progress and the changing priorities of a Tribe, the Federal Highway Administration (FHWA) Office of Tribal

Transportation (OTT) accepts TTIP updates, administrative modifications, or amendments as needed by the Tribe.

- **Regulatory Guidance.** 23 U.S.C. 201(c)(1) requires the implementation of transportation planning procedures for Tribal transportation facilities *consistent* with the planning processes required under 23 U.S.C 134 (MPO) and 135 (State). MPO and state transportation planning regulations are especially helpful where additional details are available for specific guidance. 25 CFR Part 170 provides further guidance to 23 U.S.C 201. Similarly, 23 CFR Part 450 provides guidance for 134 and 135. In accordance with 23 U.S.C. 201(c)(1), 23 CFR Part 450.104, provides TIP modification and amendment direction to the TTP.
- **Definitions.** Federal planning regulations define administrative modifications and amendments at 23 CFR 450 § 450.104. Changes to projects that are included only for illustrative purposes do not require an administrative modification or an amendment. According to this regulation:
  - An **administrative modification** means a minor revision to an approved Transportation Improvement Program (TIP) that includes minor changes to project/project phase costs, minor changes to funding sources of *previously* included projects, and minor changes to project/project phase initiation dates. An administrative modification is a revision that **does not**:
    - require public review and comment and
    - a redemonstration of fiscal constraint.
  - An **amendment** means a revision to an approved TIP that involves a major change to a project included in a TIP that includes the addition or deletion of a project or a major change in project cost, project/project phase initiation dates, or a major change in design concept or design scope (e.g., changing project termini or the number of through traffic lanes). An amendment is a revision that **requires**:
    - public review and comment and
    - a redemonstration of fiscal constraint.
- **FHWA TTIP Revision Guidance.** A transportation improvement program is a public document that identifies proposed transportation projects planned to be delivered within a 4-year timeframe (25 CFR Part 170.421(a)(3)) and that meet the short-term needs of a Tribal community. The program of projects and activities are, in part, a result of input from the Tribal community and other stakeholders. As such, Tribes/Nations and their transportation departments, or designated offices or individuals responsible for facilitating this prioritization process, are most knowledgeable about the impacts of changes to a TTIP.

**Using the Federal planning regulations on administrative modifications and amendments as a basis, Tribes/Nations are encouraged to develop their own guidelines for TTIP changes.** It is up to each Tribe or Nation to determine criteria thresholds that will be used to differentiate between “minor” and “major” changes. The size, scope, schedule, and funding allocation of each Tribe or Nation’s transportation program can help determine what is most appropriate for the individual needs of a Tribal transportation program.

Changes to the TTIP are generally amendments; however, in certain circumstances, they can be administrative modifications. The FHWA has compiled examples for criteria that Tribes and Nations may want to consider when determining what criteria to use for an administrative modification versus an amendment. These are based on practices from State Department of Transportations (SDOT) and Metropolitan Planning Organizations (MPOs) around the country. With adjustments to accommodate for the unique Tribal settings and Tribal capacity,

these practices may be appropriate for a Tribal transportation program, while others may not be.

The examples provided in **Appendix B – Exhibit 5.7 Example TTIP Administrative Modification and Amendment Guidelines** are only to illustrate guideline and threshold possibilities to consider for a Tribal TIP administrative modification or amendment process or procedures. There may be multiple categories of TTIP revisions, such as changes in project cost or scope. Known SDOT and MPO examples have between two and five categories.

**If there are no Tribal policies or guidelines regarding TTIP changes, then FHWA will determine whether a TTIP change is an administrative modification or an amendment.**

## 9. TTIP Resources.

- The **FHWA TTP Planning [website](https://highways.dot.gov/federal-lands/programs-tribal/planning)** 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.  
<https://highways.dot.gov/federal-lands/programs-tribal/planning>
- The **FHWA Tribal Transportation Planning [website](https://www.fhwa.dot.gov/planning/processes/tribal/)** 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.*  
<https://www.fhwa.dot.gov/planning/processes/tribal/>

## F. National Tribal Transportation Facility Inventory Update

### 1. Overview.

The 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 includes classification, route number, bridge number, current and future traffic volumes, maintenance responsibility, and ownership (see 25 CFR § 170.5).

The NTTFI is developed through the LRTP process, as described in 25 CFR §§ 170.409 - 170.414. The Tribes can use the NTTFI 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 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 their BIA Regional Office.

### 4. NTTFI Roles and Responsibilities. The following table shows the dates, roles, and responsibilities for updating or adding a facility to the NTTFI.

<b>Updating or Adding a Facility to the NTTFI</b>			
<b>Program Activity / Process</b>	<b>Authority / Reference</b>	<b>Frequency / Due Date</b>	<b>Responsible Party</b>
BIA Regional Offices provide Tribe a copy of the Tribe's own NTTFI data.	25 CFR § 170.444(a)(1)	Annually – By December 31st	BIA Regional Office
Review the provided data and enter all changes/updates into the NTTFI database. Submittals that add a facility to the NTTFI must include all required attachments (see 25 CFR § 170.446) and authorizing resolutions or similar official authorizations.	25 CFR § 170.444(a)(2) and 25 CFR § 170.444(b)(1)	Annually – Prior to March 15 (No due date for updating a facility already in the NTTFI).	Tribe (unless delegated to BIA through RSA)
Review Tribe initial submission; return errors or omissions to Tribe. 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) and 25 CFR § 170.444(b)(2) and (3)	Annually – Prior to May 15 (No due date for updating a facility already in the NTTFI).	BIA Regional Office
<b>Updating or Adding a Facility to the NTTFI</b>			
<b>Program Activity / Process</b>	<b>Authority / Reference</b>	<b>Frequency / Due Date</b>	<b>Responsible Party</b>
Correct or complete submissions from BIA; enter corrected submission electronically in the NTTFI (RIFDS) and notify the BIA Regional Office that corrections have been uploaded; cc the FHWA TC (if Tribe has a TTPA with FHWA).	25 CFR § 170.444(a)(4) and 25 CFR § 170.444(b)(2)	Annually – by June 15 (No due date for updating a facility already in the NTTFI).	Tribe (unless delegated to BIA through an RSA)
Certify and submit Tribal NTTFI data electronically to BIADOT	25 CFR § 170.444(a)(5) and 25 CFR § 170.444(b)(2)	Annually – By July 15	BIA Regional Office

A Tribe may appeal the rejection of submitted data on a new or existing facility included in the NTTFI by filing a written notice of appeal to the Director, BIA, with a copy to the BIA Regional Director (see 25 CFR § 170.444(c)).

**4. Resources**

- BIA ITIMS website, including NTTFI and RIFDS information  
<https://itims.bia.gov/index.shtml>
- BIA NTTFI Coding Guide  
[https://itims.bia.gov/document\\_library/irr\\_coding\\_guide.pdf](https://itims.bia.gov/document_library/irr_coding_guide.pdf)
- Document providing step-by-step process for updating the NTTFI on a route and section basis  
[https://itims.bia.gov/document\\_library/rifds\\_quickref\\_guide.pdf](https://itims.bia.gov/document_library/rifds_quickref_guide.pdf)
- BIADOT RIFDS training workshops - by BIADOT

**G. Requirements on Tribe's Use of NTTFI Facilities.** See 25 CFR §§ 170.114 through 170.117.

## VI. 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 LRTP and the FHWA-approved TTIP (see [Chapter V - Transportation Planning](#)).
- B. Authority for Environmental Requirements of the TTP.** As outlined in [25 CFR § 170.450](#), all Federal government 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.
- C. NEPA.** To assist Federal agencies in effectively implementing the environmental policy and “action-forcing” provisions of NEPA, the 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 CEQ, FHWA and the 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 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 VII - 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.

**D. Development of the NEPA Document and Approval Authority.** The development of the NEPA document is undertaken by the Tribe, unless otherwise arranged with 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 is developing a NEPA document, it is recommended that the Tribe prepare and submit to the TC the **TTP Environmental Checklist/Categorical Exclusion** (see Appendix B – [Exhibit 6.1](#)).

The FHWA Environmental Toolkit website is at

[https://www.environment.fhwa.dot.gov/env\\_topics/tribal/tribal\\_consultation\\_guidelines.aspx](https://www.environment.fhwa.dot.gov/env_topics/tribal/tribal_consultation_guidelines.aspx)

FHWA Tribal Consultation Guidelines are located at

[https://www.environment.fhwa.dot.gov/env\\_topics/tribal/tribal\\_consultation\\_guidelines.aspx](https://www.environment.fhwa.dot.gov/env_topics/tribal/tribal_consultation_guidelines.aspx)

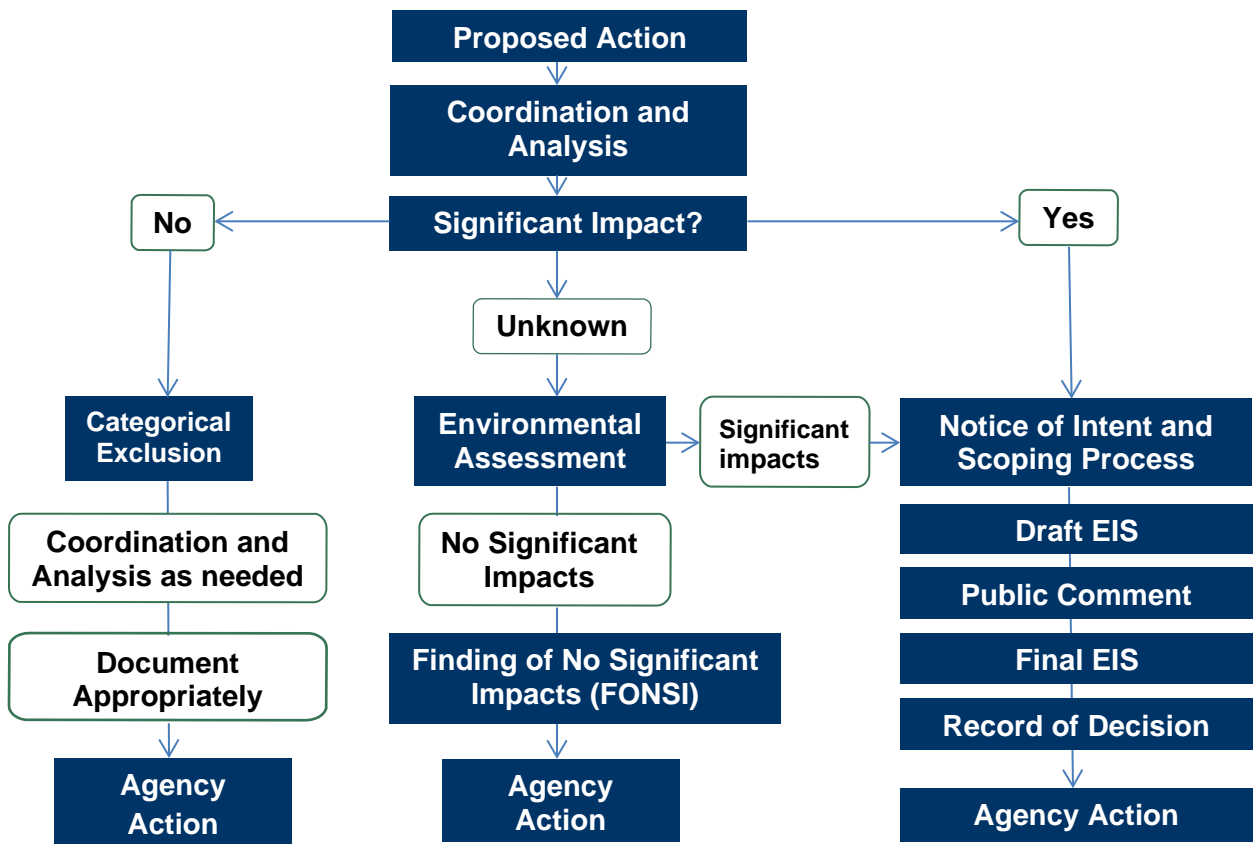
**E. Documentation and Processing.** NEPA requires that Federal agencies disclose the results of their analysis and the effects of project implementation on the environment. The purpose of documenting the NEPA process is to provide for complete disclosure to the public; to allow others an opportunity 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; and
- 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 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](#). A list of FHWA's CEs 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 [23 CFR § 771.117\(b\)](#).

**Resources:**

- CEQ - Regulations for Implementing NEPA: [https://www.energy.gov/sites/prod/files/NEPA-40CFR1500\\_1508.pdf](https://www.energy.gov/sites/prod/files/NEPA-40CFR1500_1508.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, then either: 1) a 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](#)); or, 2) an EIS is developed if it is determined that the preferred alternative will result in significant impacts. 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 FLH 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. 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 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.

**Resources:**

- CEQ - Regulations for Implementing NEPA: [https://www.energy.gov/sites/prod/files/NEPA-40CFR1500\\_1508.pdf](https://www.energy.gov/sites/prod/files/NEPA-40CFR1500_1508.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 EA: see Appendix B - [Exhibit 6.2](#)
- Example Notice of Availability & Solicitation of Public Comment: see Appendix B - [Exhibit 6.3](#)

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, BIA's procedures for EISs is at [43 CFR § 46 Subpart E](#) and BIA's [NEPA Guidebook](#), and FHWA's are at [23 CFR 771 §§ 123-130](#) and [Chapter 3](#) of FLH's PDDM.

**Resources:**

- CEQ - Regulations for Implementing NEPA: [https://www.energy.gov/sites/prod/files/NEPA-40CFR1500\\_1508.pdf](https://www.energy.gov/sites/prod/files/NEPA-40CFR1500_1508.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>

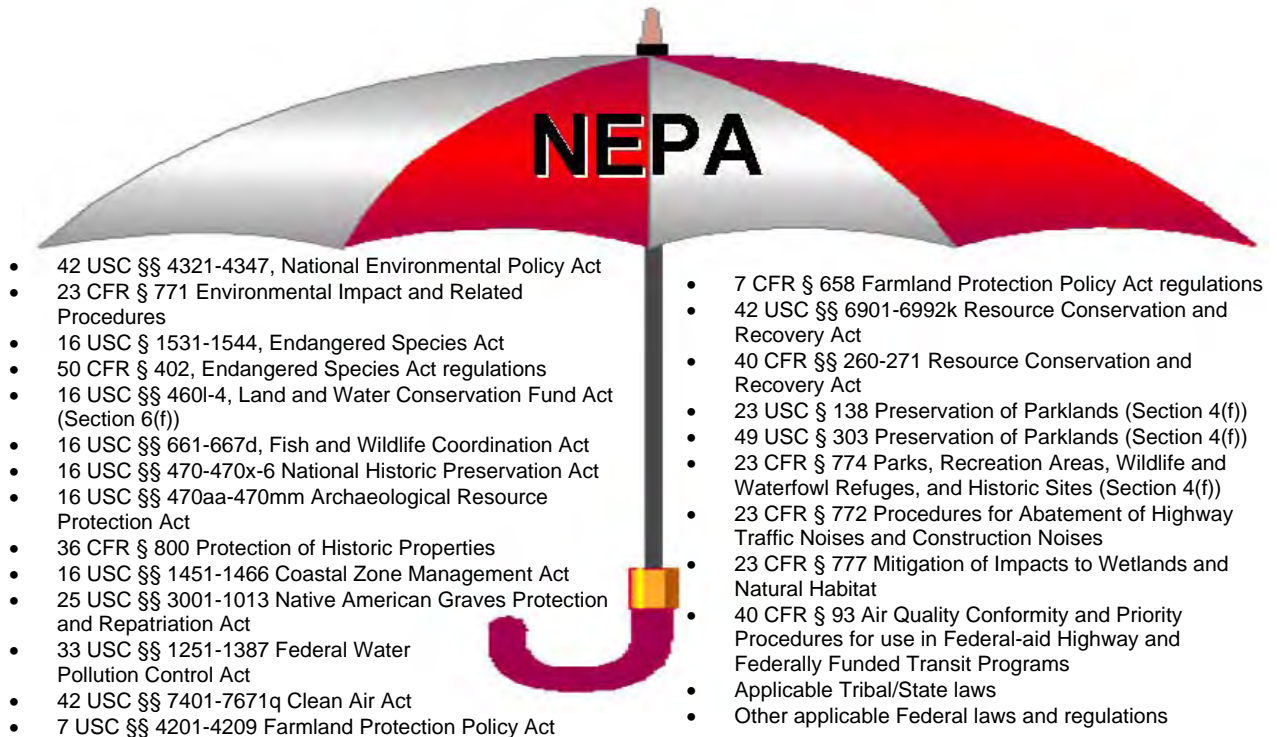
- 4. Administrative Record.** The administrative record is a fundamental component of the NEPA project decisionmaking and documentation process. It is intended to provide evidence that the agency's decision was derived in accordance with NEPA and is in compliance with other requirements. The administrative 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: <https://environment.transportation.org/wp-content/uploads/2021/05/ph01-2.pdf>
- PDDM Chapter 3: <https://highways.dot.gov/federal-lands/pddm>

- F. 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:

<https://highways.dot.gov/federal-lands/pddm>

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, 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 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: <https://highways.dot.gov/federal-lands/pddm>

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 Applicant Toolkit: <https://www.achp.gov/digital-library-section-106-landing/section-106-applicant-toolkit>
- PDDM Chapter 3: <https://highways.dot.gov/federal-lands/pddm>

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. The USFWS and the 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: [https://www.fws.gov/ENDANGERED/esa-library/pdf/esa\\_section7\\_handbook.pdf](https://www.fws.gov/ENDANGERED/esa-library/pdf/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: <https://archive.epa.gov/water/archive/web/html/fact24.html>
- NPDES Website: <https://www.epa.gov/npdes>
- Overview of Section 404 Permitting: <http://water.epa.gov/lawsregs/guidance/cwa/dredgdis>



## VII. Preliminary Engineering – Project Package

- A. Overview.** Preliminary Engineering begins after the project has been identified in the Tribe’s LRTP and the FHWA-approved TTIP (see [Chapter V - Transportation Planning](#)).

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

The Tribe is responsible for developing and compiling **project packages** (25 CFR §§ 170.460 and 170.461). 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 PS&E, approved by the Tribe, and any FHWA-approved design exceptions. Approval of design exceptions and ensuring complete project packages are part of FHWA’s stewardship and oversight responsibilities under the TTP. Additionally, Tribes may request FHWA’s technical assistance during development of the project package.

- B. Ice Roads.** Ice roads may be placed on the NTTFI pursuant to 25 CFR §§ 170.5 and 170.117.

Developing and operating an ice road has inherent risks. To minimize and mitigate the risks, Tribes should follow the best available references. **A manual published by the Arctic Infrastructure Development Center at the University of Alaska Fairbanks, titled [Design and Operation of Ice Roads](#)** can be used as an available reference when preparing to develop and operate an ice road. It contains information compiled from various sources:

It is incumbent upon the Tribe to review and apply the best available references before opening an ice road to the public. Records of ice thickness and condition should be maintained in the Tribal files. The Tribal files should also identify the NTTFI numbers and sections that make up the ice road.

**In addition to these resources, local TTAPs may have training opportunities for ice road development and operation.**

- C. The 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, or use the services of a Federal, State or local agency or governments through a project agreement.

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 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.

2. **Design Standards.** TTP funded projects are required to follow the design standards listed in [25 CFR Part 170 Appendix B to Subpart D](#). Other design standards may be used if submitted to and approved by FHWA. See 25 CFR §170.454.

This design standards requirement applies to seasonal as well as non-seasonal transportation routes (see 25 CFR § 170.117). A “Seasonal Transportation Route” is defined in 25 CFR § 170.5, and includes snowmobile trails, ice roads, and overland winter roads.

The **MUTCD** is included in the design standards listed in [25 CFR Part 170 Appendix B to Subpart D](#). The MUTCD 2009 Edition is at [https://mutcd.fhwa.dot.gov/kno\\_2009r1r2.htm](https://mutcd.fhwa.dot.gov/kno_2009r1r2.htm)

Here are some important questions and answers (Q and As) on the **MUTCD**:

**Q:** Are dual language signs permitted on public roads?

**A:** No. The MUTCD does not include provisions permitting dual language signs on public roads.

**Q:** What is the MUTCD?

**A:** The MUTCD contains the national standards governing all traffic control devices. All public agencies, Tribes, and owners of private roads that are open to public travel across the nation rely on the MUTCD to bring uniformity to the roadway. The MUTCD plays a critical role in improving safety and mobility of all road users.

**Q:** Is the MUTCD law?

**A:** Yes. The MUTCD is the law governing all traffic control devices. Non-compliance with the MUTCD ultimately can result in the loss of Federal-aid funds as well as in a significant increase in tort liability.

**Q:** Why is compliance with the MUTCD important?

**A:** Uniformity of traffic control devices is critical in highway safety and mobility, as well as reducing the purchase and maintenance costs of traffic control devices for public agencies, Tribes, and manufacturers. The success of the MUTCD depends on nationwide acceptance and application of the MUTCD, as well as extensive participation by the practitioners in developing and evaluating the content of the MUTCD.

**Q:** How is the MUTCD updated?

**A:** The FHWA has established a sound process to include new devices and applications in the MUTCD. The process involves the Federal Register rulemaking activity, which encourages public involvement. Any interested person, Tribe, or organization may provide input to the rulemaking activity by submitting comments to the docket. The process encourages innovation and flexibility while maintaining uniformity. Input from practitioners and all other stakeholders is critical in keeping the MUTCD current and relevant.

**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 V - 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%, 70%), 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 and Tribal review of a PS&E at certain design phases is a good practice that Tribes are encouraged to implement.

A good guideline for development and Tribal review of PSE packages is at 30/70/95% design phases, but these should remain flexible and adjusted as appropriate for a particular project.

Recommended design phases are presented in the [FLH PDDM, Section 9.6.3](#).

- 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.

The Tribe submits a design exception request to the TC. 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.

The FHWA Field Operations Manager reviews the design exception request and recommends approval/denial to the FHWA Director, within 30 days of the TC's receipt of the design exception request from a Tribe. 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. Also, it is recommended that the form in Appendix B - [Exhibit 7.1 - Highway Design Standards Certification](#) be completed and submitted with the design exception request.

When deciding whether or not to approve a design exception for a project, 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.

- D. Review of PS&Es by FHWA.** FHWA does 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 Field Operations Manager, then notify the Tribe of the design deficiency and request that it be promptly resolved.

If a Tribe requests FHWA to perform a complete review of a PS&E, FHWA reserves 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 FHWA.

## **E. Preparation and Submittal of the Final Project Package**

**1. Tribal approval of the PS&E.** 23 U.S.C. § 202(b)(5) allows an Indian tribal government may approve plans, specifications, and estimates and commence road and bridge construction with funds made available from the tribal transportation program through a contract or agreement under the Indian Self-Determination and Education Assistance Act. The following requirement 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 and specifications that these meet applicable health and safety standards according to 25 CFR § 170.461.

**2. Submittal of the Final Project Package.** The Tribe shall submit the project package to the TC before the start of project construction (25 CFR § 170.461). The final project package shall include the following (25 CFR §§ 170.460 and 170.461):

- 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. Tribes may use the optional Right-of-Way Certification Letter Template in Appendix B – [Exhibit 7.3](#).
- Required environmental, archeological, and cultural clearances.
- FHWA-approved Design Exceptions, if used in the plans.
- **Tribe's Certification on Public Authority Review** (see 25 CFR § 170.5 for definition of public authority). The Tribe must certify in writing to the FHWA Administrator, prior to soliciting bids for a project, 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 70% 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 BIA.

Recommended additional items include:

- The PS&E Certification Checklist (See Appendix B - [Exhibit 7.2](#)).
- Utility agreements.

- If the project includes a facility maintained by a Public Authority other than 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.

- The FLH PDDM at <https://highways.dot.gov/federal-lands/pddm>
- FHWA - *Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-14* at <https://highways.dot.gov/federal-lands/specs>
- FLH supplemental specifications at <https://highways.dot.gov/federal-lands/specs>
- AASHTO - *A Policy on Geometric Design of Highways and Streets, 7th Edition* 2018 (the “Green Book”) available for purchase at <https://store.transportation.org/item/collectiondetail/180>
- AASHTO - *Guidelines for Geometric Design of Low-Volume Roads, 2nd Edition, 2019, Single User PDF* available for purchase at <https://store.transportation.org/Item/PublicationDetail?ID=4192>
- AASHTO *Roadside Design Guide, 4<sup>th</sup> Edition, 2011* available for purchase at <https://store.transportation.org/search?q=roadside%20design%20guide&categoryCode=&index=storeitem&type=All&pageNum=1&pageSize=10&sortBy=Relevance&itemType=All>
- 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.
- *MUTCD 2009 Edition*, DOT, FHWA, 2009 at [https://mutcd.fhwa.dot.gov/kno\\_2009r1r2.htm](https://mutcd.fhwa.dot.gov/kno_2009r1r2.htm)
- FHWA Utilities Guidelines at [https://www.fhwa.dot.gov/real\\_estate/right-of-way/utility\\_rights-of-way/index.cfm](https://www.fhwa.dot.gov/real_estate/right-of-way/utility_rights-of-way/index.cfm)
- FHWA Right-Of-Way Guidelines at [https://www.fhwa.dot.gov/real\\_estate/index.cfm](https://www.fhwa.dot.gov/real_estate/index.cfm)
- FLH Right-Of-Way and Utilities web site at <https://highways.dot.gov/federal-lands/rw-util>
- 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](http://www.fhwa.dot.gov/engineering/hydraulics/library_arc.cfm?pub_number=7&id=13)
- FLH Standard Drawings and Detail Drawings at <https://highways.dot.gov/federal-lands/design>
- Geopak and Microstation information at <https://highways.dot.gov/federal-lands/cadd-support>
- FHWA-approved State standards.



## VIII. 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 VI - Preliminary Engineering - NEPA and Other Environmental Requirements](#)), development of the PS&E (see [Chapter VII - Preliminary Engineering – Project Package](#)), acquisition of right-of-way, utility relocations, and advertisement and procurement of the project’s construction contract (see [Chapter IX - Procurement, Construction Bid Advertisement and Award](#)).

**B. Acquisition of ROW for projects.** ROW 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 (23 CFR § 771.113).

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). Tribes may use the optional Right-of-Way Certification Letter Template in Appendix B – [Exhibit 7.3](#).

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. 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 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 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. Types of land ownership.** It is important for the Tribe to determine the types 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 Federal 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 Federal 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. 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.

**D. Statutory/Regulatory Requirements.**

- Rights of way over Indian land: 25 CFR § 169 at [http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title25/25cfr169\\_main\\_02.tpl](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 [https://www.fhwa.dot.gov/real\\_estate/uniform\\_act/index.cfm](https://www.fhwa.dot.gov/real_estate/uniform_act/index.cfm)
- Right-of-way clearance must be included in the project package: 25 CFR § 170.460(c).
- 25 CFR § 1 at <https://www.bia.gov/sites/bia.gov/files/assets/bia/ots/pdf/idc-018737.pdf>

**E. 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.

**F. 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.

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.

<b>Land Type / Road Ownership</b>	<b>ROW Acquisition Regulations, and Agency Roles and Responsibilities</b>
Trust Land	<p>All ROW actions involving Trust Lands shall comply with 25 CFR § 169.</p> <p><b>FHWA/BIA:</b> When a Tribe is in the early stages of developing a PS&amp;E for a project needing ROW on Trust lands, the TC needs to provide a list of the 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 TC.</p> <p><b>BIA Regional Office:</b> 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 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 the Uniform Standards of Professional Appraisal Practice.</p>

Land Type / Road Ownership	ROW Acquisition Regulations, and Agency Roles and Responsibilities (cont'd.)
Restricted Fee Land	<p>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”).</p> <p><b>FHWA/BIA:</b> When a Tribe is in the early stages of developing a PS&amp;E for a project needing ROW on Restricted Fee lands, the TC needs to provide a list of the 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 TC.</p> <p><b>BIA Regional Office:</b> 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 TSRs, Grants of Easement, and file ROW documents; reviews and approval.</p>
Fee Land	<p>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”).</p>
BIA owned transportation facilities	<p><b>FHWA/BIA:</b> 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 is in the early stages of developing a PS&amp;E for a project that has BIA owned roads, the TC needs to provide a list of the NTTFI routes in the project to the BIA Regional Road Engineer and the BIA Realty Office.</p>
State Owned transportation facilities	<p><b>State DOT:</b> 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.</p>
County, borough or local agency owned transportation facilities	<p><b>County, borough or local agency:</b> 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.</p>

**G. Resources.**

- FHWA right-of-way and real estate website at [http://www.fhwa.dot.gov/real\\_estate/](http://www.fhwa.dot.gov/real_estate/)
- FHWA Right-Of-Way Acquisition Guidelines located at [https://www.fhwa.dot.gov/real\\_estate/uniform\\_act/acquisition/real\\_property.cfm](https://www.fhwa.dot.gov/real_estate/uniform_act/acquisition/real_property.cfm)
- *The Uniform Act* at <http://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter61&edition=prelim> and <https://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?category=rightofw>
- FLH Right-Of-Way and Utilities web site at <https://highways.dot.gov/federal-lands/rw-util>
- Chapter 12, Right of Way and Utilities of the FLH PDDM at <https://highways.dot.gov/federal-lands/pddm/right-way-utilities>

## IX. 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,” using its own forces and equipment (see 25 CFR Appendix A to Subpart B, (b)(24)). The “force account” process is described in greater detail in [Chapter X - 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 or other agency. The Tribe pays the contractor 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.
- The project package must be complete and approved by the appropriate public authority, and a copy provided to FHWA, before construction is started on the project (25 CFR §§ 170.460 and 170.461).
- The Tribe must certify in writing to the FHWA Administrator, prior to soliciting bids for a project, 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 BIA.
- 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: To hire a construction contractor for a project, 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 according to 2 CFR 200.318 and 2 CFR 200.319, 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 FHWA procedures, or develop Tribal procedures which meet or exceed Federal standards. These procedures are used for equipment purchasing (lease vs purchase analysis), construction (advertising for bids, award, and contraction), architectural/engineering services, etc.

## 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 ISDEAA (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 (see 25 CFR § 170.461). An optional form to use is in Appendix B - [Exhibit 9.1 – TTP Pre-Advertisement Checklist](#).

- 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 (see 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 TC, and others as applicable.

<b>Roles and Responsibilities for Procurement, Construction Bid Advertisement and Award</b>		
<b>Program Activity / Process</b>	<b>Authority / Reference</b>	<b>Responsible Party</b>
<b>Certification of public authority:</b> Before soliciting bids for the project, the Tribe must certify in writing to 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 BIA).	TTPA–Article III	Tribe
<b>Completion of Construction Project:</b> Agreed to complete TTP construction project.	TTPA–Article III	Tribe
<b>Tribe has Documented Contracting Procedures:</b> (for advertising, bidding, awarding and contracting).	2 CFR § 318(a)	Tribe

#### **E. Resources**

- Contract Administration Core Curricular Participants’ Manual and Reference Guide 2014, 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](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title23/23cfr635_main_02.tpl)



## X. 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 (see 25 CFR Appendix A to Subpart B, (b)(24)). 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 TTP is to contribute to “...employment of Indians and Alaska Natives.” FHWA encourages 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 IX - 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 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, or by using the services of a Federal, State or local agency or governments through a project agreement.

### B. Statutory/Regulatory Requirements.

- All TTP project construction and construction engineering is regulated under 25 CFR §§ 170.470 - 170.474.
- Tribes must meet applicable labor standards in accordance with MSHA regulations found in 30 CFR §§ 1 - 199, Mineral Resources, developed pursuant to the Federal Mine Safety and Health Act of 1977 (P.L. 91-173) as amended, and in accordance with the OSHA regulations found in 29 CFR § 1900, Labor - Construction Standards, developed pursuant to the Occupational Safety and Health Act of 1970 (P.L. 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 of equipment.** With prior written approval from FHWA, Tribes may purchase construction equipment with TTP funds, to be used for constructing the Tribe’s TTP funded projects (see 25 CFR Part 170 Appendix A to Subpart B (b)(49)).

To purchase the equipment with TTP funds, a Tribe must first provide the TC with a written notice showing a lease/purchase cost analysis, which is a comparison of the cost of leasing versus the cost of purchasing the equipment (see 25 CFR Part 170 Appendix A to Subpart B (b)(49)(i), and 2 CFR

§ 200.318(d)). The costs shown on the lease/purchase cost analysis must include the cost of shipping the equipment from the vendor's location to the equipment work location.

The written notice shall include the completed form shown in [Exhibit 10.6 – Construction Equipment Purchase Request Form](#) and also vendors' quotes that show the same costs used in the lease/purchase cost analysis. Vendors' quotes may be on copies of emails from vendors and/or letters on vendors' letterhead.

The funding for the equipment must be included in an approved TTIP.

After written approval is given to the Tribe by the authorized official at FHWA, the Tribe can then purchase the construction equipment listed in the written notice using TTP funds.

2. **Purchase of vehicles.** A "vehicle" is defined here as FHWA Vehicle Class 1 and 2 (includes cars, vans and trucks with a Gross Vehicle Weight Rating up to 10,000 lbs.) for use by the Tribal government to meet objectives in their LRTP and activities described in their TIP. Purchases of vehicles of this type DO NOT need a "Cost Analysis" or purchase request.
3. **Program income** (25 CFR §§ 170.111-112, [23 U.S.C. 202\(a\)\(1\)](#), [2 CFR §§ 200.307](#), and [2 CFR § 200.313](#)). Tribes may also use the construction equipment (purchased with TTP funds) for non-TTP related activities as long as appropriate rates are charged to 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 for eligible TTP projects and activities. FHWA recommends that the income be used 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.

4. **Equipment inventory.** Tribes should keep a current and complete inventory of all construction and maintenance equipment purchased with TTP funds, and provide a courtesy copy to the TC upon request.
5. **Surplus or excess Federal government equipment.** FHWA can assist Tribes to acquire surplus or excess Federal government for use on TTP projects and activities. Information on this service is at <https://highways.dot.gov/federal-lands/programs-tribal/surplus-excess-property>.

#### 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 (see definition of TOSR in [Appendix A - Glossary](#)). 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&E;
- Delegation of Authority;
- Roles & responsibilities of the Tribe's TOSR and inspectors, and the contractor;
- Administrative Procedures (i.e. Pay requests, Cut-off dates, Change orders, etc.);
- Key Project Personnel (Project Manager, Contracting Staff, Traffic Control Supervisor, etc.);

- Administrative Procedures (i.e. Pay requests, Cut-off dates, Change orders, etc.);
- 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;
- Environmental permits and their requirements;
- Tribal archeological concerns;
- Subcontracting requirements;
- Safety Meetings;
- Required contractor submittals; and,
- 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 needed to evaluate project activities and the quality and progress of the project's construction work.

The TC should attend 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. The TC will participate in a final inspection for every TTP project completed by a Tribe, and will strive to attend the final inspection as scheduled by the Tribe. If the TC cannot attend that scheduled event, the TC will schedule a separate inspection to occur shortly thereafter.

The TC will give the Tribe reasonable advance notice of planned attendance at construction project reviews. For projects involving BIA owned facilities, the Tribe will invite a representative of BIA to attend. Other parties that should attend project construction reviews are the construction contractor, the TOSR, the Tribal employee or consultant or government agency personnel serving as construction manager, and other key stakeholders.

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 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 VII - Preliminary Engineering – Project Package](#).

The TC will complete a Construction **OTT Trip Inspection Report** (see Appendix B - [Exhibit 10.1](#)) during the project site visit and discuss and review it with the TOSR. The TC shall also complete a trip report, using the standard OTT format .

The goal of the OTT Trip Inspection Report is to monitor the key risk areas. It identifies the items and activities that will be reviewed and documented during each Tribal site visit. The completion of the OTT Trip Inspection Report 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 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 in the official OTT Directory.

- 3. Final Inspection.** A Final Inspection shall always be conducted for a construction project, and conducted according to 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. The final inspection should be an on-site visit to the construction project. The FHWA TC is responsible for participating in the final inspection.

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 Tribe’s project manager should schedule the final inspection, and coordinate with the attendees on the date. Attendees should include appropriate Tribal officials, public authorities who are owners or maintainers of project facilities, FHWA/BIA representative, project construction contractors and maintenance personnel. The appropriate representative from BIA should always attend the final inspection if there is a BIA owned facility in the project.

The TC will complete a **OTT Trip Inspection Report** (see Appendix B - [Exhibit 10.1](#)) jointly with the TOSR and the owner of the facility, and also completes a trip report.

The TC will promptly notify the Tribe of any issues identified during the final inspection, and provide technical assistance to address the issues, as requested by the TOSR.

- 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 takes place throughout the life of the construction project (25 CFR § 170.471).

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 if they are managing or monitoring the construction.

The Tribe should establish the TOSR position for each construction project, whether the project is being constructed by Tribal force account crews or by a contractor. The TOSR is also known as the “Project Manager”, the “Construction Manager” or the “Construction Engineer”. The TOSR is an employee of the Tribe or a consultant hired by the Tribe.

- 1. Construction Project Files.** The TOSR needs to establish and maintain an organized filing system for the construction project files. The files should include the project information from the pre-construction stage through the final inspection and project closeout. 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 Federal 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.

Tribes can obtain construction management forms used by FHWA at <https://highways.dot.gov/federal-lands/construction/forms>. Tribes may use these or other forms at their option.

Establishing and maintaining this filing system will ensure compliance with 25 CFR § 170.472, which shows the TTP construction records BIA and Tribes must keep and the requirements for access.

**a. 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:

- **TOSR Daily Diaries.** The TOSR should complete these to document the 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 delegated this responsibility.
- **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. Tribes may use the FHWA form at their option available at <https://highways.dot.gov/federal-lands/construction/forms-wfl/fhwa-1413>
- **Contractor's 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. Tribes may use the FHWA form at their option available at <https://highways.dot.gov/sites/fhwa.dot.gov/files/docs/federal-lands/construction/15746/cdr-1413.pdf>
- **Material certifications, bills of materials, list of materials and suppliers, and fabrication approvals.** 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.
  - Contractor submittals and record log of them.
  - Contractor's project schedule.
  - Records of payrolls, labor records, and the Davis-Bacon pay list.
  - Testing plan and testing reports.
  - Photographs/videos of Project.
  - EEO and TERO requirements.
  - Environmental & other permits.
  - Traffic control.
  - Construction phasing plan.

- Access to project (haul roads).
  - Erosion control reports.
  - Progress Payments to Contractor
  - Utility Relocations.
  - Right-of-way and property, driveways, etc.
  - Waste / Borrow site Agreements.
  - Contract Modifications (CMs).
  - Change Orders.
  - Contractor Claims and dispute resolutions.
  - The original plans, specifications, and engineer's estimate (the PS&E).
  - Project modifications/design changes, including marked up plans showing design changes.
  - Emails and other correspondence.
2. **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 (25 CFR § 170.471). Construction inspection should be performed by competent, technically qualified, and experienced inspectors.

Tribes may use the following forms, handbooks, and manuals at their option:

- FHWA construction inspection forms at <https://highways.dot.gov/federal-lands/construction/forms>
- FHWA Contract Inspector (CI) Handbook at <https://highways.dot.gov/federal-lands/construction/ci-handbook>
- FLH Field Materials Manual at <https://highways.dot.gov/federal-lands/materials/field-materials-manual>

Construction inspection includes the following activities.

- a. **Quality Assurance/Quality Control (QA/QC)** must be performed on all TTP funded projects (25 CFR § 170.471). 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 contractor 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. Tribes may use, at their option, Traffic Control Report forms at

<https://highways.dot.gov/federal-lands/construction/forms-wfl>

A Safety Checklist (see Appendix B - [Exhibit 10.5](#)) 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 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.

3. **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.

4. **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.
5. **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 standards, or Tribal standards that meet or exceed Federal standards.

Only the Professional Engineer of record may change the 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 should be maintained by the TOSR to assist in determining final costs and liability.

A Tribe may use, at their option, FHWA's contract modification forms at <https://highways.dot.gov/federal-lands/construction/forms-wfl-internal>

6. **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.
7. **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.
8. **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 (25 CFR §§ 125.473-474).

- 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 example template in Appendix B - [Exhibit 10.2](#)). In addition, for a BIA owned facility, BIA will write a Letter of Acceptance to the Tribe, with a copy to FHWA (see example template in Appendix B - [Exhibit 10.3](#)).

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, 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 project closeout report to the TC and the facility owner. The project closeout 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 project closeout report shall include:

- A summary of the construction project records to ensure compliance requirements 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.

Tribes may, at their option, use the forms located in Appendix B - [Exhibit 10.4](#), and include them in 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.

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

- Final 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 Tribe and others as applicable.

<b>Roles and Responsibilities for Construction and Construction Engineering</b>		
<b>Program Activity / Process</b>	<b>Authority / Reference</b>	<b>Responsible Party</b>
Ensure the project is constructed according to the plans, specifications and estimates (PS&E)	25 CFR §§ 170.470-474	Tribe
Project construction documentation: Ensure it is current and complete.	25 CFR § 170.472	
<b>Facility Owner and Project Acceptance:</b> 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
<b>Tribal Project Acceptance:</b> 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
<b>Project closeout report:</b> Tribe finalizes project paperwork. Tribe provides a project closeout report to the TC, and to the facility owner (or to 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 <https://highways.dot.gov/federal-lands/construction/manual>
- FHWA Contract Inspector (CI) Handbook at <https://highways.dot.gov/federal-lands/construction/ci-handbook>
- FLH Field Materials Manual at <https://highways.dot.gov/federal-lands/materials/field-materials-manual>
- Construction management forms used by FHWA at <https://highways.dot.gov/federal-lands/construction/forms>
- Inspector’s Daily Report (FHWA form) at <https://highways.dot.gov/federal-lands/construction/forms-wfl/fhwa-1413>
- Contractor’s Daily Report (FHWA form) at <https://highways.dot.gov/sites/fhwa.dot.gov/files/docs/federal-lands/construction/15746/cdr-1413.pdf>
- FHWA’s contract modification forms (optional) at <https://highways.dot.gov/federal-lands/construction/forms-wfl-internal>
- Project closeout forms (FHWA form) at <https://highways.dot.gov/federal-lands/programs-tribal/guide/project-closeout>
- *MUTCD 2009 Edition*, DOT, FHWA, 2009 at [https://mutcd.fhwa.dot.gov/kno\\_2009r1r2.htm](https://mutcd.fhwa.dot.gov/kno_2009r1r2.htm)

## XI. 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. 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 defined in 23 USC 101 § (a)(2) and 25 CFR § 170.5.

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 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 NTTFI if permitted by BIA on a case-by-case basis. The [BIA Transportation Facilities Maintenance Handbook for BIA Road Maintenance Program](http://www.nijc.org/pdfs/TTAP/BIA/82_IAM_Handbook_-_BIA_Road_Maintenance_Program_minimized_(1).pdf) is located at [http://www.nijc.org/pdfs/TTAP/BIA/82\\_IAM\\_Handbook - BIA Road Maintenance Program minimized \(1\).pdf](http://www.nijc.org/pdfs/TTAP/BIA/82_IAM_Handbook_-_BIA_Road_Maintenance_Program_minimized_(1).pdf)

**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 ERFO program. A Tribe's road maintenance program may perform repairs to restore essential traffic, protect remaining facilities and prevent additional damages.

#### 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 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. **TTIP.** Maintenance must be included on the FHWA-approved TTIP before TTP funds can be expended on maintenance (25 CFR 170. § 170.421).
2. **Maintenance activities eligible for TTP funding.** See 25 CFR Part 170 Appendix to Subpart G.
3. **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 the following:
  - a. **The MUTCD.** All temporary and permanent signs and other traffic control devices must comply with the current edition of the MUTCD. The MUTCD 2009 Edition is located at [https://mutcd.fhwa.dot.gov/kno\\_2009r1r2.htm](https://mutcd.fhwa.dot.gov/kno_2009r1r2.htm). More information on the MUTCD requirements is in this Program Delivery Guide at [Chapter VII Preliminary Engineering – Project Package, section C.2;](#)
  - b. Also, one or more of the following:
    - Appropriate National Association of County Engineers maintenance standards;
    - The *AASHTO Maintenance Manual for Roadways and Bridges, 4th Edition*, available at [https://store.transportation.org/publications?/C\\_MN](https://store.transportation.org/publications?/C_MN); or
    - Another Tribal, Federal, State, or local government maintenance standard negotiated in an ISDEAA road maintenance self- determination contract or self-governance agreement.
4. **Maintenance Equipment.** Maintenance equipment may be leased, purchased, or acquired by a Tribe, according to the following paragraphs a. through d.
  - a. **Purchase process.** Tribes may purchase maintenance equipment with TTP funds, to perform TTP funded maintenance on transportation facilities on the NTTFI (see 25 CFR Part 170 Appendix A to Subpart B (b)(49)(ii)). Before the maintenance equipment is purchased, its cost must be identified on the Tribe's FHWA approved TTIP in accordance with 23 U.S.C. 202(b)(4)(B). This may require the Tribe to update or amend its TTIP, and submit the updated/amended TTIP to FHWA for approval according to [Chapter V - Transportation Planning](#). The maintenance equipment cost shown on the TTIP must include the cost of shipping the equipment from the vendor's location to the equipment work location.

The maintenance equipment purchase price plus shipping cost must be less than the Tribe's TTP maintenance spending limit, which is 25 percent of the Tribe's annual TTP funds, or

\$500,000, whichever is greater (see 23 U.S.C. § 202(a)(8) and 25 CFR § 170.800(a)).

- b. Program income** (25 CFR §§ 170.111-112, [23 U.S.C. 202\(a\)\(1\)](#), [2 CFR §§ 200.307](#), and [2 CFR § 200.313](#)). 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.

- c. Equipment inventory.** Tribes should keep an up-to-date and complete inventory of all their maintenance equipment and construction equipment, and provide a courtesy copy to the TC upon request.
- d. Excess or surplus Federal government property.** FHWA can assist Tribes to transfer surplus and excess Federal government property to the Tribe, for use on TTP projects and activities. Information on how Tribes having TTPAs with FHWA can use this service is at <https://highways.dot.gov/federal-lands/programs-tribal/surplus-excess-property>.

#### **F. Resources:**

- AASHTO road and bridge maintenance manuals and maintenance management system manuals.
- NACE action guides, and other Federal, State, Tribal, or local government maintenance standards and operations manuals.
- Maintenance related publications of the TRB and other international Transportation Organization located on the internet.

## XII. Tribal Transportation Program (TTP) - Bridge Program

**A. Overview.** The TTP Bridge Program, as established under 23 U.S.C. 202(d), is a nationwide priority program for improving TTP bridges classified as in poor condition, having low load capacity, or needing geometric improvements. Funds provided to Tribes from the TTP Bridge Program can be used by a Tribe: (a) to carry out any planning, design, engineering, preconstruction, construction, and inspection of new or replacement TTP bridges; (b) to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and deicing composition; or (c) to implement any countermeasure for TTP bridges classified as in poor condition, having a low load capacity, or needing geometric improvements, including multiple-pipe culverts; or (d) to demolish the old bridge if a bridge is replaced under the TTP Bridge Program. The approved TTP Bridge Program funds are transferred to a Tribe through an RFA.

The TTP Bridge Program website is at <https://highways.dot.gov/federal-lands/programs-tribal/bridge>

### Definitions.

- **Construction engineering** 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.
- **Fair** means when the lowest rating of the 3 NBI items for a bridge (Items 58-Deck, 59-Superstructure, 60-Substructure) is 5 or 6, the bridge will be classified as Fair. When the rating of the NBI item for a culvert is 5 or 6, the culvert will be classified as Fair.
- **Good** means when the lowest rating of the three NBI items for a bridge is 7, 8, or 9, the bridge will be classified as Good. When the rating of the NBI item for a culvert (Item 62-Culvert) is 7, 8, or 9, the culvert will be classified as Good.
- **National Bridge Inventory (NBI)** means an FHWA database containing bridge information and inspection data for all highway bridges on public roads, on and off Federal-aid highways, including Tribally owned and federally owned bridges, that are subject to the National Bridge Inspection Standards.
- **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.
- **Poor** means when the lowest rating of the three NBI items for a bridge is 4, 3, 2, 1, or 0, the bridge will be classified as Poor. When the rating of the NBI item for a culvert is 4, 3, 2, 1, or 0, the culvert will be classified as Poor.
- **Preliminary engineering** means planning, survey, design, engineering, and preconstruction activities (including archaeological, environmental, and right-of-way activities) related to a specific bridge project.



- ***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.

**B. *TTP bridge*** means a structure located on the NTTFI, 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 Highway Bill authorizes distinct and separate funds for the replacement or rehabilitation of poor and fair condition bridges.
- The TTP Bridge Program is authorized and defined under 25 CFR §§ 170.510-512, 23 U.S.C. § 202(d), and set forth in 23 CFR § 661.
- 23 CFR § 661 - 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: (a) to carry out any planning, design, engineering, preconstruction, construction, and inspection of new or replacement TTP bridges; (b) to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and deicing composition; or (c) to implement any countermeasure for TTP bridges classified as in poor condition, having a low load capacity, or needing geometric improvements, including multiple-pipe culverts; or (d) to demolish the old bridge if a bridge is replaced under the TTP Bridge Program.

**2. Criteria for bridge eligibility.** Bridge eligibility requires the following (23 CFR § 661.17):

(a) For bridge replacement or rehabilitation, TTP bridges are required to meet the following:

- (1) have an opening of 20 feet or more;
- (2) be classified as a Tribal transportation facility;
- (3) be classified as in poor condition, have low load capacity, or need highway geometric improvements;
- (4) be recorded in the NBI maintained by FHWA.

(b) For new bridge construction, TTP bridges are required to meet the following:

- (1) be classified as a Tribal transportation facility;
- (2) be a public bridge with opening of 20 feet or more, and recorded in the NBI after project completion.

**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 for construction, 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 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/OTT 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 condition with bridges in poor condition, having precedence over bridges in fair condition, and bridges in fair condition having precedence over bridges in good condition;
  - (2) Low load capacity bridges based on Operating Rating
  - (3) Bridges on school bus routes;
  - (4) Bypass detour length;
  - (5) Annual average daily traffic; and
  - (6) Annual truck average daily traffic.
- e. Funding for successful TTP bridge applications will be distributed on a quarterly basis.
- f. Queues will carryover from fiscal year to fiscal year as made necessary by the amount of annual funding made available.

**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 FHWA TC will assist the Tribe in preparing the application package, review the Tribe's submittal and resolve any issues with the Tribe.

The TC will then submit the completed bridge application package directly to the Bridge Program Manager at FLH/OTT for review of the application.

**5. Application Package for Preliminary Engineering Funding (23 CFR § 661.25).** The application package should contain the following:

- TTP Bridge Program Certification Checklist (see Appendix B - [Exhibit 12.2](#)).
- A Tribal TIP, approved by FHWA, with the bridge project identified. The bridge project may be shown as "Illustrative" on the TIP.
- A detailed Project scope of work (SOW).
- Detailed cost itemization for Preliminary Engineering tasks.
- NBI data sheet (see Appendix B - [Exhibit 12.1](#)).

**NOTE:** For **non-BIA/non-Tribal 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** (23 CFR § 661.27). 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 12.2](#)).
- NBI data sheet (see [Exhibit 12.1](#)).
- A Tribal TIP, approved by FHWA, with the bridge project identified. The bridge project may be shown as “Illustrative” on the TIP.

**NOTE:** For **non-BIA/non-Tribal 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 and placed on the queue prior to the start of the construction of the bridge project.

**7. Project Application Review and Selection Process.** The Bridge Program Manager at FLH/OTT 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. Tribal Bridge Inspection.** The following is the procedure for FHWA Agreement Tribes requesting initial inspection of tribally owned bridges for inclusion in the FHWA NBI:

**Step 1.** The Tribe verifies if the Tribal bridge is a public bridge, 20 ft. or more in opening.

**Step 2.** Tribe coordinates with the TC to fill out the Tribal bridge inspection request form.

**Step 3.** The TC submits the inspection request form to the Bridge Program Manager at FLH/OTT for review.

- Step 4.** The OTT Bridge Program Manager submits the inspection request form to the EFL Bridge Inspection Team.
- Step 5.** Once inspected by the EFL Bridge Inspection Team, a copy of the inspection report and the NBI data file (432 text file) is provided to the Bridge Program Manager and to the EFL Bridge Management Team for 2nd level review.
- Step 6.** Once approved, the NBI data file is submitted to the FHWA HQ Office of Bridges and Structures for acceptance and recordation of the data file in the FHWA NBI.

### XIII. Safety Programs

- A. Overview.** Every year, more than 30,000 motorists die<sup>1</sup> 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.<sup>2</sup> 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.

The Tribal Transportation Strategic Safety Plan presents priority topics for transportation safety in Tribal areas which include: establishing a decision-making process (including transportation safety plans developed by each Tribe), crash data improvement, roadway departure, pedestrian safety, impaired driving, occupant protection, and the availability of public safety services. The plan can be found online at <http://www.TribalSafety.org/Reports>.

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 several 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 risks based on available data that have the potential of leading to serious injury or death. Strategies identified to address identified issues should represent the recommendation of transportation departments in addition to leadership, law enforcement, emergency medical services, and public education professionals. 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 an analysis of incident history (crash data). This allows funding entities to understand the needs and may even compel the funding of the community's safety priorities. Ideally safety plans should be updated no less frequently than every 3-5 years to consider any new data patterns or changed conditions.

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<sup>1</sup> Source: NHTSA Fatality Analysis Reporting System, <http://www-fars.nhtsa.dot.gov/Main/index.aspx>

<sup>2</sup> Fatal Motor Vehicle Crashes on Indian Reservation 1975-2002 NCSA, April 2004

Resources, including a safety plan template and a library of safety plans completed by other Tribes, can be found online at <https://www.tribalsafety.org/safety-planning-resources> or at <https://safety.fhwa.dot.gov/LRSPDIY/>.

## References and Resources

- FHWA-FLH website for the TTPSF, <https://highways.dot.gov/federal-lands/programs-tribal/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](http://www.fhwa.dot.gov/planning/processes/tribal/planning_modules/safety/summary.cfm)  
FHWA Do-It-Yourself Local Road Safety Plans website, <https://safety.fhwa.dot.gov/LRSPDIY/>
- Developing Safety Plans – A Manual for Local Rural Road Owners, FHWA, March 2012, [http://safety.fhwa.dot.gov/local\\_rural/training/fhwasa12017/](http://safety.fhwa.dot.gov/local_rural/training/fhwasa12017/)
- TTAP, <https://ttap-center.org/>

## 2. Safety Data Analysis

- a. Overview.** A variety of safety data analysis methodologies can be useful to identifying safety needs and updating safety plans. Five major approaches to planning safety improvements are:
- i. Contributing Factors Analysis – Tallying attributes among crashes (examples: time of day, driver condition, roadway alignment, crash type) can identify safety topics that need further attention.
  - ii. Systemic Safety Studies (a.k.a. Risk Based Safety Analysis) – Prioritizing improvements across the road network to address a topic identified through contributing factors analysis by treating high risk roadway features. (Example: Prioritizing roadway departure improvements in sharp horizontal curves because these locations are similar to high severity crash locations.)
  - iii. Systematic Safety Improvements – Applying low-cost safety improvements that are known to be effective across the entire road network because there is anticipated safety benefit. This method takes less data analysis but requires a large budget.
  - iv. Hot Spot Screening – Identifying locations on the road network with high crash frequency or rates where safety improvements could be beneficial
  - v. Road Safety Audits – Formal evaluation of a roadway intersection or segment by an independent, multi-disciplinary team to identify specific safety recommendations.

### b. References and Resources

- Data Analysis Resources for Tribes, <https://www.tribalsafety.org/data-analysis>
- 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. Safety Data Collection

A key component to effective transportation safety efforts is an incident database that enables the identification of transportation safety problems. 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). The USDOT expects to publish a Tribal Crash Reporting Toolkit in fall of 2020. The toolkit will contain resources that Tribes can use to establish a new crash data base or better utilize an existing database. The latest information about this toolkit will be available at <https://www.tribalsafety.org/tribal-crash-reporting-toolkit>.

### 4. 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 maintain 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 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 Nighttime Visibility website, [https://safety.fhwa.dot.gov/roadway\\_dept/night\\_visib/](https://safety.fhwa.dot.gov/roadway_dept/night_visib/)
- 2009 MUTCD Section 2A.08, [https://mutcd.fhwa.dot.gov/kno\\_2009r1r2.htm](https://mutcd.fhwa.dot.gov/kno_2009r1r2.htm)

### 5. Safety Management System

To address the dire transportation safety needs in Tribal areas, FHWA and BIA have developed a Tribal Safety Management System Steering Committee (SMS) with assistance from the Tribes. The committee has published reports to Congress and a Tribal Transportation Strategic Safety Plan. These documents identify strategies that Tribes can use to improve safety for travelers on Indian



Lands. The documents also identify topics that can help focus efforts by the Federal government in improving transportation safety. The reports can be found online at <http://www.TribalSafety.org/reports/>.

## 6. Other Safety Resources

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

- Tribal Transportation Safety Management System Steering Committee Website, <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/>
- Contact the FHWA Office of Tribal Transportation at [TTPSF@dot.gov](mailto:TTPSF@dot.gov)

## C. Safety Funding Programs

There are many funding sources, including the Tribal Transportation Program Safety Fund, available to assist Tribal governments in implementing safety programs and projects. A summary of several safety funding programs can be found at <https://www.tribalsafety.org/funding>.

Much of the Federal funding for transportation safety is managed by State governments. State safety contacts are listed online at <https://www.tribalsafety.org/state-contacts>.

## Appendix A – Glossary

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

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

**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** – See definition in 25 CFR § 170.5.

**Contractible Service** – A function or activity that is not inherently Federal and can be achieved via contract (25 CFR § 170.610).

**Design Exception** – Any deviation from approved design standards (25 CFR §§ 170.456, 170.457, and 170.460).

**DUNS** – A unique nine-digit identifier used by businesses and the Federal government to keep track of more than 70 million businesses world-wide.

**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).

**FAST Act** – The “Fixing America’s Surface Transportation Act”, P.L. 114-94.

**Financially or Fiscally Constrained** – See the definition for Financial constraint or Fiscal constraint in 25 CFR § 170.5.

**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.

**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.

**NTTFI** – See the definition in 25 CFR § 170.5.

**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.

**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.

## Appendix A – Glossary (cont'd.)

**Project** – Any undertaking determined as being eligible under the Title and Program for which funds are being provided.

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

**Public Authority** – See the definition in 25 CFR § 170.5.

**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).

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

**Regionally Significant Project** – See the definition in 25 CFR § 170.5.

**Remedial Actions** – In carrying out their TTP stewardship and oversight responsibilities, FHWA may initiate remedial actions onto a Tribe when the Tribe has not met its responsibilities as agreed to in the TTPA. Remedial actions may include technical assistance from FHWA, alternative reporting schedules, additional monitoring activities, limits on distribution of funding, or other actions as needed. The intent of remedial actions is to help build a Tribe's capacity to manage its TTP.

**RFA** – A document between FHWA and a Tribe which sets forth specific conditions for Fiscal Year funding under the TTPA. 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.

**Risk Assessment** – 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 FHWA.

**Risk Assessment Matrix** – Table with a set of questions used by 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** – Also known as the OMB A-133 audit. It is a rigorous, organization-wide audit of an entity (including Tribes) that expends \$750,000 or more of Federal funds, grants, or awards received for its operations in any one fiscal year. Usually performed annually, it is typically performed by an independent certified public accountant and encompasses both financial and compliance components.

**State** – Any of the 50 States, the District of Columbia, and Puerto Rico.

**State Transportation Department** – See the definition in 25 CFR § 170.5.

**STIP** – See the definition in 25 CFR § 170.5.

## Appendix A – Glossary (cont'd.)

**TC** – An employee of FHWA who is the Federal point of contact leading the TTP coordination between a Tribal government and FHWA. The TC provides stewardship and oversight of a Tribe's TTP, and provides technical assistance to the Tribe for administration of 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.

**Technical Assistance** – Those activities which provide advice, education, support, knowledge, skills and opportunities to address specific current and future implementation of TTP policies and procedures. Technical assistance may be through training, outreach, peer and expert review, and expert assistance.

**TERO** – 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.

**TOSR** -- A Tribe's Project Manager for the Tribe's construction project. The TOSR is also known as the "Construction Manager" or the "Construction Engineer". The TOSR is an employee of the Tribe or a consultant hired by the Tribe.

**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, designated by the Tribe as the official point of contact with FHWA for the TTP. The FHWA TC coordinates and interacts with the Tribal POC.

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

**Tribal Share** – A Tribe's portion of all eligible TTP funds, provided through a TTPA, contract, MOU, compact, or funding agreement between a Tribe and a Federal agency, that support applicable PFSA's (or portions thereof), and are not required for the performance of inherent Federal functions.

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

**Tribe or Indian Tribe** – See the definition in 25 CFR § 170.5.

**TTAM** – Methodology for distributing funding under the TTP.

**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.

**TTPTIP** – See the definition in 25 CFR § 170.5.

**TTP** – See the definition in 25 CFR § 170.5.

**TTPA** – An agreement between a Tribe and FHWA, that transfers all but the inherently Federal program functions, services and activities of the TTP to the Tribe. It may also be called a PA.

**TTPA Template** – The standard format that a Tribe and the TC use as a basis to create the official TTPA between a Tribe and the U.S. government.

**UEI** – A unique number assigned to all entities (public and private companies, individuals, institutions, or organizations) who register to do business with the federal government. This will replace the old DUNS system, expected to happen sometime in 2021.

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(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 (“Agreement”) is entered into by the Administrator of the Federal Highway Administration, (“Administrator”, which term shall mean the Administrator or designee, as appropriate), for and on behalf of the United States Department of Transportation, Federal Highway Administration (“FHWA”) and by the **(INSERT NAME OF TRIBE)** (“Tribe”, and together with the Administrator for the FHWA, the “Parties”), under the authority of the Constitution and By-Laws of the Tribe and by resolution of the Tribal Government, and under the authority granted by 23 U.S.C. §§ 201–202, as amended by the Surface Transportation Reauthorization Act of 2021 (STRA-21), Div. A of Pub. L. 117-58 (November 15, 2021), also colloquially known as the “Bipartisan Infrastructure Law” or “BIL” (together, the “Tribal Transportation Program” or “TTP”), 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 and Strengthening Nation-to-Nation Relationships dated January 26, 2021; 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. This Agreement authorizes the Tribe to perform the transportation planning, research, maintenance, engineering, rehabilitation, restoration, construction, and reconstruction of tribal transportation facilities 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 under the TTP, 25 CFR Part 170 and 23 CFR Part 661 (together, the "TTP Regulations"). This Agreement is made pursuant to 23 U.S.C. § 202 (b)(7), the TTP Regulations 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. § 5301 et.seq.), including for purposes of Federal Tort Claims Act coverage.

**Section 2. Purpose.** The purposes of this Agreement are 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 the TTP and the TTP Regulations, 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 STRA-21; and
- B. to provide the Tribe or its designee, under this Agreement, its formula share of TTP funds pursuant to STRA-21 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 (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 credited to the TTP, or otherwise 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 as further identified in Article II, Section 2.

## 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 it shall remain in effect and be automatically extended for the period authorized by any statutory extensions of STRA-21 or until all funds transferred to the Tribe under this Agreement have either been expended or returned to the Administrator, whichever occurs last.

### **Section 2. Funding.**

- A. Subject to the availability of funding and in accordance with 23 U.S.C. § 202 (b), 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 as determined by the Tribe's annual funding percentage under 23 U.S.C. § 202 (b)(3), the TTP planning funds described in 23 U.S.C. § 202 (c), together with such other funds as may be made available under, or credited to, the TTP for the Tribe to carry out eligible activities authorized by the TTP and the TTP Regulations.
- B. Upon the execution of this Agreement and a Referenced Funding Agreement (RFA) by both Parties, and subject to the availability of funds identified in the preceding Paragraph A., the Administrator shall notify the Tribe or its designee, in accordance with Article IV, Section 5 of this agreement, that the funds identified in the RFA are available. The Tribe shall submit electronic banking information to the Administrator either by transmitting the CAGE Code assigned to the Tribe's transportation account in SAM.gov or by providing a signed ACH Vendor/Miscellaneous Payment Enrollment Form and a signed W-9 form. The Administrator shall provide to the Tribe a single advance payment in the amount identified in the RFA within thirty (30) calendar days of receipt of the Payment Enrollment Form.
- 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 (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 preaward costs incurred by the Tribe in the initial year of this Agreement in accordance with 25 USC § 5325 (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 indirect or other contract costs incurred by the Tribe.**
- 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), the TTP Regulations, 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. The Tribe shall track and account for the receipt, obligation and expenditure of all TTP funds in accordance with 2 CFR 200.305. For purposes of this Agreement, such funds when invested or deposited by the Tribe shall be subject to the following:
- a. 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; and
  - b. 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; and

- c. Interest and investment income that accrue on any funds provided for by this Agreement become the property of the Tribe and may be used on projects and activities identified on an FHWA approved TTIP; and
  - d. 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. The Tribe may accumulate multiple annual allocations of TTP funds when necessary to fund an eligible project that requires more than one fiscal year of funding and is identified on an FHWA-approved TTIP.
- F. 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.
- G. The Tribe may issue bonds or enter into other debt financing instruments under 23 U.S.C. § 122, 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.
- H. 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.
- I. As authorized by 25 CFR § 170.228, the Tribe may use TTP funds to:
- a. leverage other funds; and

- b. pay back loans or other finance instruments for a project that:
  - i. the Tribe paid for in advance of the current year using non-TTP funds, including tribal funds;
  - ii. was included in a FHWA-approved TTIP; and
  - iii. 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 acknowledge that this Agreement is entered into, and funds are made available to the Tribe, in accordance with the ISDEAA and pursuant to 23 U.S.C. § 202, including for purposes of Federal Tort Claims Act Coverage. 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.

**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 the TTP Regulations, together with such duties and responsibilities as may be performed by 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 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. §§ 201-202 and Chapter 1 of Title 23.

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

- Transportation Planning; and
- Program Administration; and
- Design; and
- Construction; and
- Construction Management; and
- Road Maintenance as authorized under 23 U.S.C. § 202 (a)(8)(A); and
- Development and negotiation of Tribal-State Road Maintenance agreements authorized under 23 U.S.C. § 202 (a)(8)(C); and
- Other TTP Program-eligible activities authorized under Chapter 1 or 2 of Title 23, the TTP Regulations, or other applicable law; and
- Other activities authorized under Chapter 1 of Title 23, 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. If, at any time, the Tribe has reason to believe that the total amount required for performance of this Agreement, or a specific activity or project conducted under this Agreement, would be greater than the amount of funds provided under this Agreement, the Tribe shall provide reasonable notice to the Administrator and 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 that 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 contractable 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 and 2 CFR Part 200 apply to this agreement, together with any amendments thereto, except where there is a conflict, in which case the TTP Regulations shall control. The Tribe may seek a waiver of these regulations to the extent permitted by law and as provided by 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 lease/rental rates for facilities and equipment, as well as to maintain such facilities and equipment when performing contractable activities under this Agreement. Consistent with subparagraph (49)(i) of Appendix A to Subpart B of 25 CFR Part 170, in those cases where the Tribe reasonably determines and provides written notice and analysis documentation to the Administrator that the purchase of construction equipment is more cost effective than the leasing of construction equipment, such equipment may be purchased upon written approval from FHWA. As provided by subparagraph 49(ii) the purchase of maintenance equipment shall be an allowable cost to the Tribe, so long as not more than 25% of the Tribe's annual TTP funds or a maximum of \$500,000 are used for this purpose and any other annual maintenance activities. Funding for the purchase of construction or maintenance equipment must be identified on an FHWA-approved TTIP prior to expenditure.

### **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 Administrator that within available funding, the Tribe 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. § 5307 (b) and (c).

**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. 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 that meet or exceed federal standards to facilitate operation or administration of any aspect of the TTP under this Agreement.

**Section 3. Plans, Specifications and Estimate (PS&E) Approval Authority.**

- A. Tribal and BIA-owned facilities. The Tribe is authorized to review and approve plans, specifications and estimates (“PS&E”) for project packages in accordance with the requirements of 25 CFR §§ 170.460 through 170.463. The Tribe hereby:
- a. will provide a copy of the PS&E approval to the facility owner and FHWA; and
  - b. provides assurances under this Agreement that the construction will meet or exceed applicable health and safety standards; and
  - c. 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
  - d. provide a copy of the State-licensed civil engineer’s certification to the 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). 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) of this Section, above, 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; and
- 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; and
- c. prior to 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.

**Section 4. Transportation Planning and Inventory.** Within available funding, the Tribe 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). The Tribe further agrees to update its Long Range Transportation Plan (LRTP) at least every 5 years, and submit the draft LRTP update to FHWA or BIA for a midpoint review in accordance with 25 CFR 170.412.

**Section 5. Easements, Maintenance and Utility Agreements, Environmental Assessments.** In coordination with local jurisdictions and to the extent required by Federal law, the TTP Regulations, and 25 CFR 169, if applicable, the Tribe agrees to develop appropriate construction easements or right-of-ways, maintenance and utility agreements needed for carrying out the construction of TTP facilities 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, the TTP Regulations, and other applicable laws.

**Section 6. Construction.**

- A. In accordance with the FHWA-approved TTIP, the Tribe agrees to initiate and complete TTP construction projects in reasonable conformity 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 that meet or exceed federal standards.

- B. The Tribe agrees to expend TTP funds on:
- a. program and administrative expenses authorized under:
    - i. this Agreement;
    - ii. the TTP Regulations, as amended by STRA-21; and
    - iii. 2 CFR Part 200; or
    - iv. other applicable laws; and
  - b. construction activities on projects that are listed on a FHWA-approved TTIP; and
  - c. in a manner consistent with the Buy America provisions of 23 U.S.C. 313 for all funds transferred under this Agreement. The Tribe may consult with the FHWA regarding the process for requesting a waiver of the Buy America provisions from the Secretary of Transportation under 23 U.S.C. 313(b).
- C. 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 and CFR Part 169, if applicable.
- D. 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.

**Section 7. Reporting Requirements.**

- A. If a Tribe must have a Single Audit as required by 2 CFR 200.501, the Tribe shall submit its annual Single Audit report to the Federal Audit Clearinghouse. If the Tribe is not required by 2 CFR 200.501 to carry out a Single Audit for a specific fiscal year, then the Tribe shall provide a written statement to the Administrator certifying that a Single Audit is not required for that fiscal year.
- B. Additionally, in order to assist the Tribe with fulfilling the reporting requirements of 23 U.S.C. §201 (c)(6)(C) applicable to all recipients of TTP funds, BIA and FHWA have established an electronic data reporting system known as the Tribal Transportation Program Online Reporting Tool (PORT). The Tribe shall be responsible for inputting all

of its required data into PORT no later than December 30, of each year. From that data, a report will be generated by BIA and FHWA for the Secretary and the Secretary of the Interior, respectively. The Tribe acknowledges its understanding that timely submission of its data is mandated by statute and that non-compliance with this requirement may be a sole basis for withholding available TTP funds until the Tribe complies with this paragraph or, in the event the Tribe fails to achieve compliance within a reasonable time, termination of this Agreement by the Administrator.

## **ARTICLE IV – RESPONSIBILITIES OF THE ADMINISTRATOR**

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

**Section 2. Authorize Project Work.** The Administrator authorizes the Tribe to carry out transportation planning, preliminary engineering, construction engineering, development of management systems, construction, and maintenance of the programs and projects carried out by the Tribe under this Agreement related to projects/facilities included on an FHWA-approved TTIP in accordance with the approved project packages, this Agreement, and applicable laws and regulations.

**Section 3. Coordination with BIA.** The Administrator shall coordinate with the Bureau of Indian Affairs concerning transportation functions and activities delegated by law to that agency to aid the Tribe in the proper and efficient administration of the PFSAs performed by the Tribe under this Agreement.

**Section 4. Coordination with Public Authorities.** The Administrator, 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 E61-202

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 where the project is constructed.

**Section 7. Joint Inspection.** The Tribe shall conduct the final project inspection jointly with the FHWA and facility owner, and shall notify the BIA Regional Office that construction has been completed in reasonable conformity with the project plans and specifications for the purpose of project acceptance for BIA roads, and updating the NTTFI.

**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 aid the Tribe in carrying out its responsibilities under this Agreement.

**Section 9. Notice of Availability 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 that are available to Tribes 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 that may need to be renegotiated, both Parties agree to take action as necessary to correct such errors.

**Section 2. Access to Data Available to the Administrator to Administer the Program.** The Tribe is administering a Federal program under the authority of STRA-21 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 contractable activities 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 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. § 5321), 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 TTP 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 Act 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 carrying out 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. § 5307 (b) and (c), 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. As required by 23 U.S.C. § 202 (a)(10), the Tribe shall establish procurement management standards providing for full and open competition in accordance with 25 CFR Part 900, Subpart F, as authorized by 23 U.S.C. § 202 (b)(7). 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 CFR § 170.2(h) and the federal obligations set forth in 25 CFR § 170.103.

**Section 7. Program Review.** The Tribe shall allow FHWA officials or their designees/representatives, and BIA officials if requested, to perform program reviews including but not limited to on-site and virtual reviews 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.

**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 that 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 STRA-21, 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. Reserved**

**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.** Consistent with the provisions of Article II, Section 1 herein, the Parties shall commence negotiations of a successor TTP Agreement only after the enactment of the highway reauthorization legislation that succeeds STRA-21.

**(INSERT NAME OF TRIBE)**

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

By \_\_\_\_\_  
**(INSERT NAME OF SIGNATORY)**  
**(INSERT TITLE)**

By \_\_\_\_\_  
Stephanie Pollack  
Acting Administrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## **Exhibit 3.2 – Example Tribal Resolution for Intent to Enter into a TTPA**

[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 “Surface Transportation Reauthorization Act of 2021” (STRA-21), also colloquially known as the “Bipartisan Infrastructure Law” (BIL), 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 United States Congress passed and the President of the United States signed STRA-21 highway reauthorization; and

**WHEREAS** STRA-21 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**, STRA-21 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 and such other Tribal transportation programs-as may be appropriate under 23 U.S.C, 25 CFR Part 170, and STRA-21 ; and

**WHEREAS**, the [INSERT NAME OF TRIBE] tribal transportation department possesses the financial stability and management capability required by STRA-21 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, 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; 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], [enter year], 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

**FISCAL YEAR 20XX**

**REFERENCED FUNDING AGREEMENT**

**Pursuant to (INSERT NAME OF TRIBE)’s**

**Tribal Transportation Program Agreement**

**with the Department of Transportation**

**Section 1. Authority.** This Referenced Funding Agreement (RFA) is entered into by the Administrator, Federal Highway Administration (hereinafter “FHWA”) on behalf of the Secretary of Transportation, and by (INSERT NAME OF TRIBE) (Tribe) and together with the FHWA (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, (INSERT NAME OF TRIBE/Reservation/Alaska Native Village/Consortium) along with related program administration activities and associated transportation services authorized by the Tribal Transportation Program (TTP), 23 U.S.C. §§ 201-202, as amended by the Surface Transportation Reauthorization Act of 2021 (STRA-21), Div. A of Pub. L. 117-58 (November 15, 2021), also colloquially known as the “Bipartisan Infrastructure Law,” or “BIL,” 25 C.F.R. Part 170 and 23 C.F.R. Part 661 (together, the “TTP Regulations”), and in accordance with the Indian Self-Determination and Education Assistance Act (ISDEAA), Pub. L. 93-638, as amended, 25 U.S.C. § 5301 et seq., including for purposes of Federal Tort Claims Act coverage, and by resolution of the Tribe’s governing body.

**Section 2. Effective Date.** This RFA is effective upon its approval and execution by authorized representatives of the Tribe and FHWA, *except that* if the Program Agreement is not yet in effect, then this RFA shall become effective upon approval of the Program Agreement by authorized representatives of the Tribe and FHWA.

**Section 3. Purpose.** The purpose of this RFA is to identify the source and amounts of funds for Fiscal Year 20XX made available to the Tribe under the Program Agreement, the time and

method of payment, and such other provisions as the Parties agree in writing, if any, as provided below.

**Section 4. Summary of Funds.** The total amount and sources of funding provided under this RFA are as follows:

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
Total FY 20XX Funds Available <sup>4</sup> :	\$	0.00
<b><u>Total Amount for this RFA:</u></b>	<b><u>\$</u></b>	<b><u>0.00</u></b>

**Section 5. 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 4 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 and other funds described under Article II, Section 2.A of the Program Agreement.

**Section 6. 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.

---

<sup>4</sup> The Parties acknowledge that the TTP funds identified on and made available through this RFA reflect the initial amount made available in FY 20XX as a result of the passage of Public Law 117-180, which resulted in XX.XX% of FYXX Program Levels being made available.



**Section 7. Fiscal Year 20XX Referenced Funding Agreement.** The Parties shall commence negotiation of a successor RFA at the beginning of Fiscal Year 20XX, with the intention that the FY20XX RFA be made available for use no later than November 1, 20XX.

**(INSERT NAME OF TRIBE)**

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

By \_\_\_\_\_

By \_\_\_\_\_

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

Erin Kenley  
Director  
Office of Tribal Transportation

\_\_\_\_\_

\_\_\_\_\_

Date

Date

LOA: Fund (15X0G60050); Budget Year (0000); BPAC (114V600500); Object Class Code (41013)

Cost Center #1420003018

CFDA 20.205

CAGE

<sup>1</sup> The Parties acknowledge that the TTP funds identified on and made available through this RFA reflect the initial amount made available in FY 20XX as a result of the passage of Public Law 117-180, which resulted in XX.XX% of FYXX Program Levels being made available.

UEI # **TRIBES UEI**

ID # **BIA 6 Code**

GRANT # (FAIN) **YYYYYYYYYYYY**

PO # **YYYYYYYYYYYY**

**Exhibit 3.4 – FHWA Referenced Funding Agreement (RFA) Amendment Template**

UEI #«UEI\_» ID #«BIA\_Tribe\_Code» GRANT # (FAIN) «FAIN\_s» PO #«PO\_s»  
 «Bridge PO»

**REFERENCED FUNDING AGREEMENT**

**Pursuant to the «FHWA\_Tribe»’s Tribal Transportation Program Agreement with the Department of Transportation for Fiscal Year 20XX**

**Amendment # «Amendment\_»**

In accordance with **Section 6. Amendments** of the Referenced Funding Agreement, dated «Date\_Signed», pursuant to the Tribal Transportation Program Agreement between «FHWA\_Tribe» and the United States, **Section 4. Summary of funds** is hereby amended, as follows:

**4. Summary of Funds.** The total amount and sources of funding provided under this RFA are as follows:

FY 20XX Tribal Transportation Program Funding:

TTP Funds	\$«Full_Year_Tribal_Share»
TTP Transportation Planning Funds (2%)	\$ «Full_Year_2_Plans»

FY 20XX Tribal Facility Bridge Program Funding:

TTP Bridge Funds	\$ «Bridge»
------------------	-------------

**Total Amount for this RFA:**  
**«Total Amount this RFA»\***

\$

SUMMARY

Amount of this RFA	\$ «Total_Amount_this_RFA»
Amount provided through prior FY 20XX RFAs	
\$ «Total_Amt_Prior_RFA»	
Total Amount provided to date through FY 20XX RFAs	\$ «Total_Amt_Provided_to_date»

«FHWA\_Tribe»

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

By \_\_\_\_\_  
«Signator\_Name»,  
«Signator\_Title\_»

By \_\_\_\_\_  
Erin Kenley  
Director  
Office of Tribal Transportation

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**LOAs:**

«PO\_s» in the amount of «Total\_TTP»: Fund (15X1G60050); Budget Year (0000); BPAC (114V600500); Object Class Code (41013)

«IF BRIDGE»B in the amount of «BFP\_Funds»: Fund (1540552B50); Budget Year (0000); BPAC (114N974500); Object Class Code (41013)

**Cost Center #**«Cost\_Center»

CFDA# - 20.205

\*Parties acknowledge that the funds shown in this RFA reflect the remaining amounts made available in FY 2022 as a result of the passage of Public Law 117-103 which resulted in 91.3% of Authorized Program levels being made available.

## Exhibit 3.5 – 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 (TTP) 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 expended less than \$750,000 of Federal funding during a Tribal 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 Tribal Transportation Program Delivery Guide that was developed by FHWA and Tribes for our use in carrying out the program. The link to the Guide is <https://highways.dot.gov/federal-lands/pddm>.

A member of the FHWA Office of Tribal Transportation (OTT) 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,

Erin Kenley,  
Director – FHWA Office of Tribal Transportation

CC: BIA Regional Road Engineer  
BIADOT

## Exhibit 3.6 – 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,

Erin Kenley  
Director – FHWA Office of Tribal Transportation

CC: BIA Regional Road Engineer  
BIADOT

### Exhibit 3.7 – FHWA On-Boarding Orientation Checklist

ON-BOARDING ORIENTATION CHECKLIST		
TRIBE:	DATE:	
<b>FHWA TTP FUNDING AGREEMENT FOR TTP</b>		
ORIENTATION FORMAT: <input type="checkbox"/> MEETING <input type="checkbox"/> 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)
<b>ARTICLE I - AUTHORITY AND PURPOSE</b>		
Brief Overview of Authority	<input type="checkbox"/>	<input type="checkbox"/>
Review Purpose	<input type="checkbox"/>	<input type="checkbox"/>
Review differences in ISDEAA and FHWA Agreement	<input type="checkbox"/>	<input type="checkbox"/>
<b>ARTICLE II - Terms, Provisions, and Conditions</b>		
Effective Date and Terms	<input type="checkbox"/>	<input type="checkbox"/>
Funding	<input type="checkbox"/>	<input type="checkbox"/>
Powers	<input type="checkbox"/>	<input type="checkbox"/>
Dispute Resolution	<input type="checkbox"/>	<input type="checkbox"/>
Construction of the Agreement	<input type="checkbox"/>	<input type="checkbox"/>
Activities to be Performed	<input type="checkbox"/>	<input type="checkbox"/>
Limitation of Costs	<input type="checkbox"/>	<input type="checkbox"/>
Carryover	<input type="checkbox"/>	<input type="checkbox"/>
Applicable regulations	<input type="checkbox"/>	<input type="checkbox"/>
Tribal Facilities and Equipment	<input type="checkbox"/>	<input type="checkbox"/>
<b>ARTICLE III - RESPONSIBILITIES OF THE TRIBE</b>		
A. Health and Safety	<input type="checkbox"/>	<input type="checkbox"/>
B. Program Standards and Regulations	<input type="checkbox"/>	<input type="checkbox"/>
C. PS&E Approval	<input type="checkbox"/>	<input type="checkbox"/>
D. Planning and Inventory	<input type="checkbox"/>	<input type="checkbox"/>
E. Easements, Maintenance, and Utility Agreements, & Environmental Assessments	<input type="checkbox"/>	<input type="checkbox"/>
F. Construction	<input type="checkbox"/>	<input type="checkbox"/>
G. Reporting Requirements	<input type="checkbox"/>	<input type="checkbox"/>



ARTICLE IV - RESPONSIBILITIES OF THE ADMINISTRATOR		
Providing funds	<input type="checkbox"/>	<input type="checkbox"/>
Authorizing work	<input type="checkbox"/>	<input type="checkbox"/>
Coordination with BIA	<input type="checkbox"/>	<input type="checkbox"/>
Coordination with Public Authorities	<input type="checkbox"/>	<input type="checkbox"/>
Designated Officials	<input type="checkbox"/>	<input type="checkbox"/>
Federal Construction Standards	<input type="checkbox"/>	<input type="checkbox"/>
Joint Inspection	<input type="checkbox"/>	<input type="checkbox"/>
Technical Assistance	<input type="checkbox"/>	<input type="checkbox"/>
Reporting	<input type="checkbox"/>	<input type="checkbox"/>
Additional Fund Notification	<input type="checkbox"/>	<input type="checkbox"/>
OTHER PROVISIONS		
Eligibility for Additional Funding and Services	<input type="checkbox"/>	<input type="checkbox"/>
Access to Data	<input type="checkbox"/>	<input type="checkbox"/>
Sovereign Immunity	<input type="checkbox"/>	<input type="checkbox"/>
Trust Responsibility	<input type="checkbox"/>	<input type="checkbox"/>
Federal Tort Claims Act/Insurance	<input type="checkbox"/>	<input type="checkbox"/>
Indian and Tribal Preference	<input type="checkbox"/>	<input type="checkbox"/>
Severability	<input type="checkbox"/>	<input type="checkbox"/>
Termination of the Agreement	<input type="checkbox"/>	<input type="checkbox"/>
Special Conditions	<input type="checkbox"/>	<input type="checkbox"/>
Amendments	<input type="checkbox"/>	<input type="checkbox"/>
Good Faith	<input type="checkbox"/>	<input type="checkbox"/>
Successor Agreements	<input type="checkbox"/>	<input type="checkbox"/>

**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 3.8 – 202(a)(9) 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 7<sup>th</sup> Drive NW, providing approximately 3.1 miles of pedestrian facilities. The Project will add a multi-use trail, connecting 7<sup>th</sup> Drive NW to 36<sup>th</sup> 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 Infrastructure Investment and Jobs Act (“IIJA”) (P.L. 117-58 November 15, 2021), 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 11101 of the IJA, 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**

\_\_\_\_\_  
NAME  
TITLE  
Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
NAME  
TITLE  
Date \_\_\_\_\_

**UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION**

\_\_\_\_\_  
Timothy Hess  
Associate Administrator  
Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Vivian Philbin  
Assistant Chief Counsel – Federal Lands  
Date \_\_\_\_\_

INSERT NAME OF TRIBE

\_\_\_\_\_  
NAME  
TITLE

APPROVED AS TO FORM:

NAME OF TRIBAL LEGAL OFFICE

\_\_\_\_\_  
NAME TITLE  
Date \_\_\_\_\_



**Exhibit 3.09 – 202(a)(9) 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 7<sup>th</sup> Drive NW, providing approximately 3.1 miles of pedestrian facilities. The Project will add a multi-use trail, connecting 7<sup>th</sup> Drive NW to 36<sup>th</sup> 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

11/17/23, 12:44 PM

Tribal Transportation Prgm Attributed Survey: TTP Online Reporting Tool Financial Report



# Tribal Transportation Prgm Attributed Survey: TTP Online Reporting Tool **Financial Report**

\* Required

**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 Referenced Funding Agreement (RFA). (Do not include FTA Transit funds or BIA Road Maintenance Program funds.)

Note: When entering amounts, do not use commas \*

This includes all funds transmitted from FHWA through RFAs completed during the fiscal year of reporting.

The value must be a number

**2. Amount of Federal transportation funds EXPENDED during reporting period**

Enter the total amount of Federal transportation funds (TTP, ERFO, Ear Marks, & other Highway Funds) expended during this reporting period, regardless of the year the funds were received through a Referenced Funding Agreement (RFA). (Do not include FTA Transit funds or BIA Road Maintenance Program funds.)

Note: When entering amounts, do not use commas \*

This includes all funds spent during the fiscal year of reporting out of all those transmitted from FHWA.

The value must be a number

**3. 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, such as a Referenced Funding Agreement (RFA). (Do not include FTA Transit funds or BIA Road Maintenance Program funds.) This amount will equal the amount in 2 if the Tribe only expended TTP funds.

Note: When entering amounts, do not use commas

\*

This includes only the TTP funds spent during the fiscal year of reporting, out of any and all TTP funds transmitted from the administering agency (FHWA, BIA, or OSG), including those transmitted in prior years).

The value must be a number

**4. 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. Include this amount in 2 and 3 above.

Note: When entering amounts, do not use commas \*

This includes all indirect costs collected from Federal transportation funds spent during the fiscal year of reporting. This amount needs to have been included in the amounts under question 2.a and 2.b. as well.

The value must be a number



**5. 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. Include all funds that were originally shown on a Referenced Funding Agreement (RFA) with FHWA.

Note: When entering amounts, do not use commas \*

This includes all funds the Tribe received from FHWA through an RFA since signing their initial Program Agreement.

The value must be a number

**6. All Federal Transportation Funds spent**

Enter the total amount of Federal transportation funds (TTP, ERFO, & other Highway Funds) expended by the Tribe since signing your first FHWA Program Agreement. Include all transportation funds that were originally shown on a Referenced Funding Agreement (RFA) with FHWA.

Note: When entering amounts, do not use commas \*

This includes all funds the Tribe spent from those received from FHWA since signing their initial Program Agreement.

The value must be a number

**7. 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 Referenced Funding Agreements (RFAs) since signing your first FHWA Program Agreement.

Note: When entering amounts, do not use commas \*

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 question 5 minus question 6.

The value must be a number

**8. Single Audit Qualification**

During the 2023 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



**9. Amount of HIP-CRRSAA Funds RECEIVED to date**

Enter the total amount of only HIP-CRRSAA funds (Highway Infrastructure Program - Coronavirus Response and Relief Supplemental Appropriations Act) funds routed to the Tribe TO DATE through a Tribal Transportation funding mechanism.

Note: When entering amounts, do not use commas \*

HIP-CRRSAA funds were allocated in FY21 and were to be tracked separately from TTP funds in accordance with the terms of the funding mechanisms. Enter the amount of HIP-CRRSAA funds received to date.

The value must be a number

**10. Amount of HIP-CRRSAA Funds EXPENDED during the reporting period**

Enter the total amount of only HIP-CRRSAA funds spent during this reporting period.

(Do not include any other funds) \*

The amount of HIP-CRRSAA funds spent on eligible activities during the reporting period.

The value must be a number

11. **Enter the category and amount of HIP-CRRSAA funds EXPENDED during the reporting period**

Administration (operations, personnel, including salaries of employees [including those employees who have been placed on administrative leave] or contractors, debt service payments, availability payments, and coverage for other revenue losses) \*

The value must be a number

12. **Enter the category and amount of HIP-CRRSAA funds EXPENDED during the reporting period**

Maintenance (routine or preventative)

\*

13. **Enter the category and amount of HIP-CRRSAA funds EXPENDED during the reporting period**

Other eligible activities and projects on the tribal entity's approved TTIP

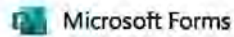
\*

14. Enter your BIA 6-digit code for identification. \*

15. Enter your full Tribe name. \*

---

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# Exhibit 4.2 – TTP Online Reporting Tool - Report on Non-Construction Activities

11/17/23, 8:57 AM

Tribal Transportation Prgm Attributed Survey: TTP Online Reporting Tool Non-Construction



## Tribal Transportation Prgm Attributed Survey: TTP Online Reporting Tool **Non-Construction**

This form serves as a project/activity progress report for the Tribal Transportation Program.  
You are reporting for Federal Fiscal Year 2023 (October - September).

\* Required

### **Jobs**

**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.

The value must be a number

**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 specific 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 work on multiple projects.

The value must be a number



## **Administrative Expenses**

Administrative expenses may include: Rent, Utilities, Salaries, Computer Equipment, etc. Do not include administrative expenses already paid for through indirect cost accounting (if applicable).

### **3. Funds Programmed for Administrative Activities**

Enter amount shown on TIP.

\*

Enter amount shown on TIP. A Tribe's indirect cost pool may include items like rent and utilities. If so, these items are covered under the indirect rate and would not be broken out separately. As indirect cost rate payments are made at the point of expenditure, they should be tracked and included with the activities and projects where the point of expenditure occurred.

The value must be a number

### **4. Funds Expended for Administrative Activities**

Include only TTP Funds.

\*

The value must be a number

### **5. Describe Progress of Administrative Activities \***

## **Planning Activities**

Planning activities may include: TTP Inventory, LRTP, TIP, Studies, etc.

### **6. Funds Programmed for Planning Activities**

Enter amount shown on TIP.

\*

The value must be a number

### **7. TTP Funds Expended for Planning Activities**

Include only TTP Funds.

\*

The value must be a number

### **8. Describe Progress of Planning Activities**

Planning activities may include: TTP Inventory, LRTP, TIP, Studies, etc.

\*

## **Safety Activities**

Nonconstruction 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.

### **9. Funds Programmed for Safety Activities**

Enter amount shown on TIP.

\*

Do not include funds used for safety related construction projects. Safety related construction projects should be included as a separate project on a TTIP and the costs reported under its associated project report, not within the non-construction activities report.

The value must be a number

### **10. TTP Funds Expended for Safety Activities**

Include only TTP Funds spent on non-construction safety activities.

\*

The value must be a number

### **11. Describe Progress of Safety Activities \***



## **Maintenance Activities**

### **12. Funds Programmed for Maintenance Activities**

Enter Amount shown on TIP.

\*

The list of eligible maintenance activities can be found in 25 CFR 170 Appendix to Subpart G. As noted, this list is not all-inclusive. Contact your agency POC for any questions on whether an activity not listed in the Appendix to Subpart G would be considered maintenance.

The value must be a number

### **13. TTP Funds Expended for Maintenance Activities**

Include only TTP Funds. Do not include BIA Maintenance Program funds.

\*

The value must be a number

### **14. Describe Progress of Maintenance Activities**

Please list the Maintenance Activities (Mowing, Patching, Snow Removal, New Equipment, Employees, etc.) and give a brief status of each activity.

\*

**15. Transit Activities \***

**16. Funds Programmed for Transit Activities**

Enter amount shown on TIP. \*

Do not include costs associated with a transit construction project. Transit construction projects should be included as a separate project on a TTIP and costs included under its associated project report, not within the non-construction activities report.

The value must be a number

**17. TTP Funds Expended for Transit Activities**

Include only TTP Funds spent on non-construction transit activities. Do not include any Federal Transit Administration funds.

\*

The value must be a number

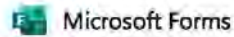
**18. Describe Progress of Transit Activities \***

19. Enter your BIA 6-digit code for identification. \*

20. Enter your full Tribe name. \*

---

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# Exhibit 4.3 – TTP Online Reporting Tool - Report on Each Project

11/17/23, 12:55 PM

Tribal Transportation Prgm Attributed Survey: TTP Online Report Tool Projects



## Tribal Transportation Prgm Attributed Survey: TTP Online Report Tool **Projects**

You are reporting for Federal Fiscal Year 2023 (October - September).

\* Required

**1. Federal Agency Project Number (enter "none" if not used)**

Assigned by FHWA/BIA. \*

**2. Tribe's Project Number (enter "none" if not used)**

Tribe's internal tracking number, if one is used. Not required. \*

**3. Project Name**

Enter the name of this project as shown on the TIP.

\*

**4. Project Description**

Describe the improvement that this project aims to make. For example: This project will add sidewalks, improve drainage, and pave ABC Street.

\*

**5. Funding Source(s)**

Check any that apply or enter funding source not listed under "Other". \*

Enter source name of non-TTP funds designated for project.

- TTP Formula Funds
- TTP Bridge Program
- TTP Safety Fund
- Other

**6. Project Location: National Tribal Transportation Facility Inventory (NTTFI) Route and Section Numbers \***

**7. Project Location: Milepost, place name, or other reference \***

**8. Project Location: County / Borough \***



**9. Project Location: State(s) \***

AL

AK

AZ

AR

CA

CO

CT

DE

FL

GA

HI

ID

IL

IN

IA

KS

KY

LA



11/17/23, 12:55 PM

Tribal Transportation Prgm Attributed Survey: TTP Online Report Tool Projects

- ME
- MD
- MA
- MI
- MN
- MS
- MO
- MT
- NE
- NV
- NH
- NJ
- NM
- NY
- NC
- ND
- OH
- OK
- OR
- PA

- RI
- SC
- SD
- TN
- TX
- UT
- VT
- VA
- WA
- WV
- WI
- WY

10. **Project Length (in miles)**

For discrete facilities or site specific projects, entering 0.1 is acceptable.

\*

Only numbers may be entered in this field.

The value must be a number

**11. Project Status Narrative**

Please describe the progress to date on this project. Include any major highlights or changes related to the project.

\*

**12. 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 (Preproject Planning)
- 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

**13. Project Funding: TTP Funds Expended this Fiscal Year**

These amounts should include all projects 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.

\*

Note: When entering amounts, do not use commas.

The value must be a number

**14. Project Funding: Total Funds Expended this Fiscal Year**

These amounts should include all projects 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.

\*

Note: When entering amounts, do not use commas.

The value must be a number

**15. Project Funding: Anticipated Total Project Cost (include all funding sources and all years)**

These amounts should include all projects 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.

\*

Note: When entering amounts, do not use commas.

The value must be a number

**16. Estimated Percentage of Work Complete**  
Each answer must be between 0 and 100. \*

Only integer value may be entered in this field.

The value must be a number

**17. Estimated Project Completion Date**

This is only an estimate and not a commitment to any date. Please use MM/DD/YY format.

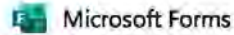
\*

18. Enter your BIA 6-digit code for identification. \*

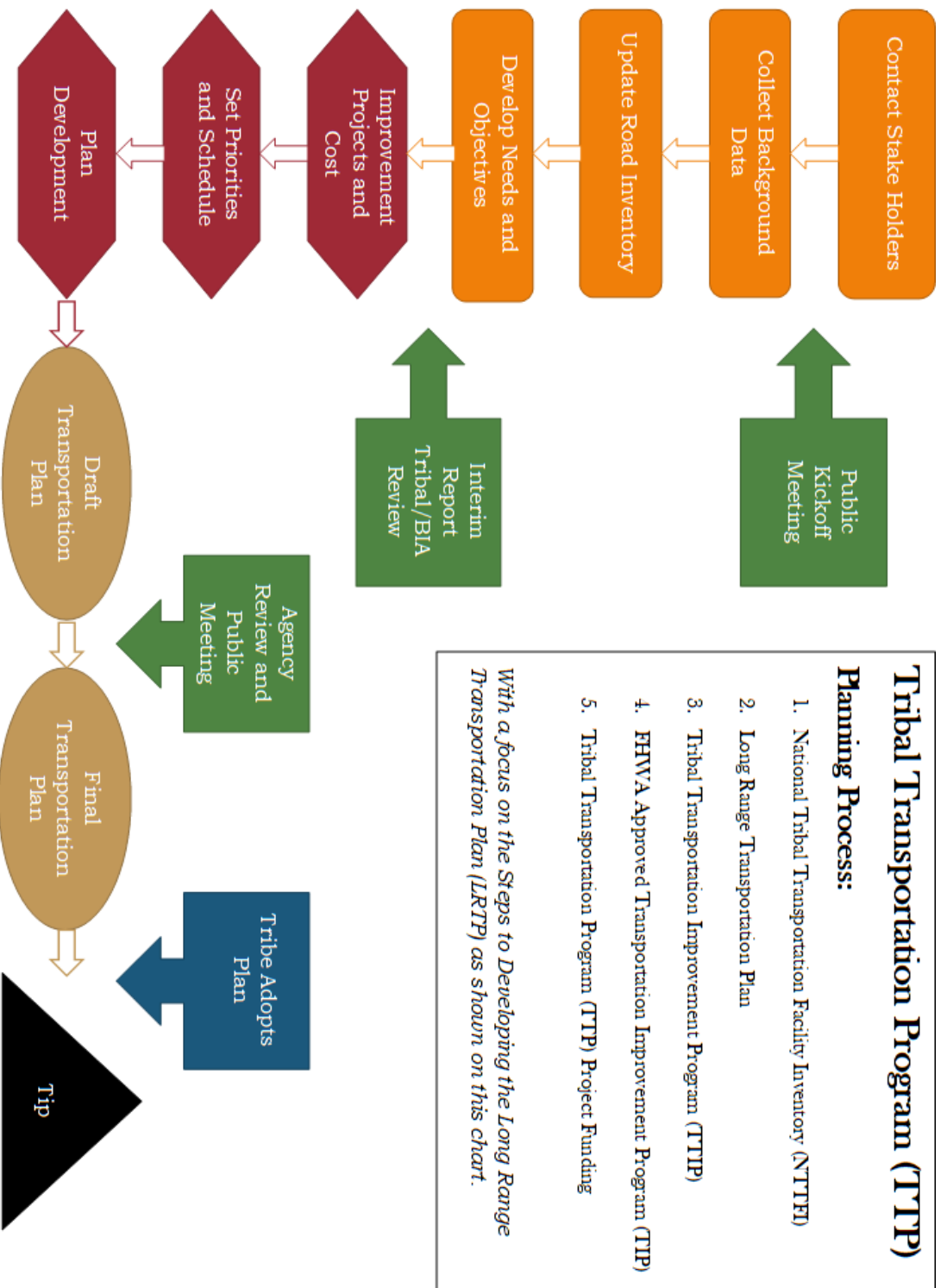
19. Enter your full Tribe name. \*

---

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**Exhibit 5.1 – Example TTP Transportation Planning Process**





## Exhibit 5.2 - Microsoft Access FHWA TTIP Template



Available Funds Data Entry Form

### Step 1: Enter Anticipated Funds

Current FY:

Entity:

<u>Funding Sources</u>	<u>Unprogrammed Funds (FY2023 or Earlier)</u>	<u>FY2024</u>	<u>FY2025</u>	<u>FY2026</u>	<u>FY2027</u>	<u>Subtotal</u>
TTP Shares	\$0.00		\$0.00	\$0.00	\$0.00	
TTP Planning	\$0.00		\$0.00	\$0.00	\$0.00	
TTP Safety	\$0.00		\$0.00	\$0.00	\$0.00	
TTP Bridge	\$0.00		\$0.00	\$0.00	\$0.00	
202(a)(9)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Other	\$0.00		\$0.00	\$0.00	\$0.00	\$35,000.00
<b>Subtotal</b>	\$0.00		\$0.00	\$0.00	\$0.00	<b>Total Available:</b>

Identify source(s) of Other funding



## Step 2: Enter Project Details

1 of 1

Back to Step 1: Anticipated Funds
Continue to Step 3: Fiscal Constraint

Help
Add New Project
Delete Project
Go to: 
Prev Project
Next Project

**Project Type** Reconstruction

**Project Name**

**Tribe's Project No.**

**Estimated Construction Year**

**Preliminary Project Cost Estimate**  (25 CFR 170.415)

**County/Borough**

**State**

**Length of Project**  miles

Route	Section	Road Name

List any additional route/sections in comments.

**Geospatial Coordinates (Optional)**

**Begin Lat**  **Long**

**End Lat**  **Long**

**Funds Allocation Check**

**Enter Anticipated Project Funding**  =

**ACTIVITY**

	2024	2025	2026	2027	TOTAL
Preliminary Engineering	<input type="text"/>	\$0	\$0	\$0	<input type="text"/>
Construction	\$0	<input type="text"/>	<input type="text"/>	\$0	<input type="text"/>
Construction Engineering	\$0	<input type="text"/>	<input type="text"/>	\$0	<input type="text"/>
<b>TOTAL</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	\$0	<input type="text"/>

**Comments Box**

**Last Updated Date**

MESSAGE CENTER

## Step 3. Check Financial Constraint

Back to Step 1: Anticipated Funds
Back to Step 2: Project Details
Help

GIS Export
Preview PDF
Export PDF

TIP is not financially constrained as entered. Please go back to Step 1 and adjust anticipated funding or to Step 2 and adjust programmed funds/scale of project or move projects to the illustrative list.

	Unprogrammed Funds (FY2023 or earlier)	2024	2025	2026	2027
TTP Shares	\$0.00	\$100,000.00	\$0.00	\$0.00	\$0.00
TTP Planning	\$0.00	\$35,000.00	\$0.00	\$0.00	\$0.00
TTP Bridge Program	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TTP Safety	\$0.00	\$150,000.00	\$0.00	\$0.00	\$0.00
202(a)(9)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Other Funds	\$0.00	\$35,000.00	\$0.00	\$0.00	\$0.00
<i>Unprogrammed funds (from previous FY)</i>		\$0.00	\$320,000.00	(\$580,000.00)	(\$680,000.00)
<b>TOTAL ANTICIPATED FUNDS by FY</b>	\$0.00	\$320,000.00	\$0.00	\$0.00	\$0.00
<b>TOTAL PROGRAMMED PROJECT(S) FUNDS</b>		\$0.00	\$900,000.00	\$100,000.00	\$0.00
<i>Fiscal Year Remainder:</i>		\$320,000.00	(\$580,000.00)	(\$680,000.00)	(\$680,000.00)

Summary

Total Estimated Available Funds	\$320,000.00
Total of Programmed Project(s) on TIP	\$1,000,000.00
Remaining Funds	(\$680,000.00)

## Exhibit 5.3 - 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] 2018 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 20\_\_ 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 20\_\_ TIP, consistent with Title 23 USC Section 135 and 202 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 \_\_\_\_\_, 20\_\_, with a quorum present, by a vote of \_\_\_ in favor, \_\_\_ against and \_\_\_ abstaining.

\_\_\_\_\_  
[Insert name of leader of Tribal Government, Title]  
[Insert Tribe name]

\_\_\_\_\_  
Date

**Exhibit 5.4 - 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 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 5.5 - Pre-Project Planning 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 5.6 - Example TIP Administrative Modification and Amendment Guidelines

Revision Type	Amendment	Administrative Modification*												
Addition or deletion of a project	Any addition or deletion not specifically listed as an administrative modification.	Addition or deletion of a project that is: a) An emergency repair; b) From a grouped project, provided it is within the funded amount; c) Not regionally significant.												
Change in project cost	Any amount above the cost threshold. Changes that adversely impacts financial constraint.	Any amount equal or below the cost threshold.												
<p>Thresholds that are a percentage of total project cost and/or a flat dollar amount. The actual amounts should be based on the average cost of projects in the program, and so will vary from Tribe to Tribe.</p> <p style="text-align: center;"><b>Example of Change in Project Cost Amendment vs. Administrative Modification:</b></p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Total Project Cost Estimate</th> <th>Amendment Criteria</th> <th>Administrative Modification Criteria</th> </tr> </thead> <tbody> <tr> <td>\$0 - \$25,000</td> <td>&gt; 50% of total project cost</td> <td>≤ 50% of total project cost</td> </tr> <tr> <td>\$25,000-\$200,000</td> <td>&gt; 40%</td> <td>≤ 40%</td> </tr> <tr> <td>\$200,000</td> <td>&gt; 30%</td> <td>≤ 30%</td> </tr> </tbody> </table>			Total Project Cost Estimate	Amendment Criteria	Administrative Modification Criteria	\$0 - \$25,000	> 50% of total project cost	≤ 50% of total project cost	\$25,000-\$200,000	> 40%	≤ 40%	\$200,000	> 30%	≤ 30%
Total Project Cost Estimate	Amendment Criteria	Administrative Modification Criteria												
\$0 - \$25,000	> 50% of total project cost	≤ 50% of total project cost												
\$25,000-\$200,000	> 40%	≤ 40%												
\$200,000	> 30%	≤ 30%												
Change in project or project phase initiation dates	Changes in initiation dates of a project or project phases that are not within the same 4-year TTIP cycle.	Changes in initiation dates of project development phases, including moving different project phases from one year of the TTIP to another within the same 4-year TTIP cycle. Addition of a project development phase.												
Change in funding sources of currently included projects	Any funding changes that are not specifically listed as an administrative modification.	Changes in funding that involve: a) Shifting funds between projects or groupings with the TTIP, provided the thresholds established are not exceeded; b) Shifting program funds between projects, provided the thresholds established are not exceeded; c) Adding, removing, increasing, or decreasing Advance Construction/TTP allocation (25 CFR Part 170.227); d) Converting a non-federally funded project to a federally funded one with no change in cost or scope; e) Funding source changes between Federal funds (e.g., TTP to HSIP) with no change in cost or scope.												

Revision Type	Amendment	Administrative Modification*
Change in design concept or scope, or project limits	Any design concept or scope, or project limit changes that are not specifically listed as an administrative modification.	Change in scope or project limits that: <ul style="list-style-type: none"> <li>a) Change in logical termini (e.g., less than 0.25 mile);</li> <li>b) Minor changes to project descriptions;</li> <li>c) Does not trigger a National Environmental Policy Act (NEPA) re-evaluation;</li> <li>d) A change to a grouped project that allows it to stay in the group;</li> <li>e) Does not change the purpose and need;</li> <li>f) May, but are not required to, consider including certain common activities in the criteria, such as extending a turn lane, adding a guiderail, paving, or other minor activities not included in the original scope;</li> <li>g) Combine or split projects, provided it is compliant with NEPA.</li> </ul>
Change across oversight operating agencies	All changes that are not administrative modifications.	Change in oversight agency from FHWA to BIA or vice-versa.
*All administrative modifications include the requirement that the project is still consistent with the <b>Long-Range Transportation Plan</b> and there is no effect on <b>fiscal constraint</b> .		

# Exhibit 6.1 – TTP Environmental Checklist/Categorical Exclusion

## TTP Environmental Checklist/Categorical Exclusion

Tribe Name:		Is Project on an approved TTIP?
Project Name/Number:		NTTFI Route No. and Section:
<b>SECTION 1: PROJECT DETAILS</b>		
<p><b>A. Purpose and Need:</b> Briefly describe what the transportation problems are that need to be addressed and why. Do not provide solutions to the problems in this section.</p>		
<p><b>B. Project Description:</b> Briefly describe project including location, limits, design elements, and construction activities. Describe how the proposed project will address the needs described above. Use Continuation Sheet, if necessary. Attach maps, aerials, photos, etc. to help visualize the project.</p>		
<p><b>C. Independent Utility and Logical Termini</b>  <input type="checkbox"/> 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)]</p>		



TTP Environmental Checklist/Categorical Exclusion

**SECTION 2: ENVIRONMENTAL RESOURCE EVALUATIONS**

All applicable environmental requirements were evaluated for this Environmental Checklist and are identified below.

**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.  
Provide further discussion as needed.

Are there other Tribes with ancestral ties to lands in or near the project area?  Yes  No  
If yes, list the Tribes and describe results of consultation efforts.

**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  
Provide further discussion as needed.

## TTP Environmental Checklist/Categorical Exclusion

### D. Floodplains

- Floodplains (Executive Order #11988)

- No Floodplain Encroachment     No Significant Encroachment     Significant Encroachment  
If in floodplain, are there practicable alternatives avoiding the floodplain?  Yes     No  
Provide further discussion as needed.

### E. Biology

- Section 7 (Federal Endangered Species Act) Consultation Findings (Effect determination). Note: these webpages are helpful in identifying federally-listed species [IPAC](#) and [NOAA Section 7 Mapper](#).

- 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 \_\_\_\_\_  
Provide further discussion as needed.

- Essential Fish Habitat (Magnuson-Stevens Act) Findings (Effect determination):

- No Effect     No Adverse Effect     Adverse Effect and consultation with NMFS  
Provide further discussion as needed.

- Migratory Bird Treaty Act

- Will the project potentially impact migratory birds?  Yes     No
- What actions will be taken to avoid migratory bird impacts, if any (e.g. vegetation clearing restricted to outside of migratory bird nesting periods, surveying for migratory bird nests prior to construction, etc. Additional help may be accessed here [Avoiding and Minimizing Incidental Take of Migratory Birds](#))?

- Bald and Golden Eagle Protection Act

- Will the project potentially impact eagles?  Yes     No
- What actions will be taken to avoid eagle impacts, if any (Following the USFWS' [National Bald Eagle Management Guidelines](#) is recommended)?

TTP Environmental Checklist/Categorical Exclusion

**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 it meets one or more of the exceptions listed in 23 CFR 774.13.*)
  - Section 4(f) applies, select level of evaluation from below:
    - De Minimis
    - Programmatic Evaluation (types of [Programmatic Evaluations](#)):  
Select one if applicable \_\_\_\_\_
    - Individual:     Legal Sufficiency Review complete     HQ Coordinator Review Complete
  
- Section 6(f)—Does the project involve property purchased with Land and Water Conservation Funds?
  - 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.

**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
- Provide further discussion as needed.

**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:

### TTP Environmental Checklist/Categorical Exclusion

<p><b>J. Wild &amp; Scenic Rivers</b></p> <ul style="list-style-type: none"> <li>• Are there Wild &amp; Scenic River designations in the project area? Check the <a href="#">National Wild and Scenic Rivers System</a>.  <input type="checkbox"/> Yes    <input type="checkbox"/> No</li> <li>• Describe any impacts. (Attach the full evaluation if applicable).</li> </ul>
<p><b>K. Ancillary Sites (Materials, Disposal, Staging, Etc.)</b></p> <ul style="list-style-type: none"> <li>• 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?  <input type="checkbox"/> Required by Plans    <input type="checkbox"/> Selected by Contractor</li> <li>• If required by project plans, have the ancillary sites been included in all assessments of environmental impacts and consultations with appropriate agencies?    <input type="checkbox"/> Yes    <input type="checkbox"/> No                      If needed, discuss further below.</li> </ul>
<p><b>L. Air Quality</b></p> <ul style="list-style-type: none"> <li>• Is the project in a "nonattainment" or "maintenance" area designated under the Clean Air Act (<a href="#">EPA Green Book</a>)?  <input type="checkbox"/> Yes    <input type="checkbox"/> No                      If yes, is the project consistent with air quality goals for the area?    <input type="checkbox"/> Yes    <input type="checkbox"/> No</li> <li>• 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?</li> </ul>
<p><b>M. Socioeconomics</b></p> <ul style="list-style-type: none"> <li>• Will construction activities substantially disrupt normal traffic patterns (including access to businesses, community facilities, and accessibility of emergency vehicles)?    <input type="checkbox"/> Yes    <input type="checkbox"/> No</li> <li>• If yes, please explain how these impacts will be mitigated.</li> </ul>
<p><b>N. Noise</b></p> <ul style="list-style-type: none"> <li>• Will the project significantly change the horizontal or vertical alignment of a road?    <input type="checkbox"/> Yes    <input type="checkbox"/> No</li> <li>• Will the project increase the number of through-traffic lanes on a road?    <input type="checkbox"/> Yes    <input type="checkbox"/> No</li> </ul> <p>If yes to either of the above questions, are there sensitive noise receptors (see <a href="#">FHWA guidance</a>) located near the project?    <input type="checkbox"/> Yes    <input type="checkbox"/> No    If yes, please explain how increased noise, if any, will be abated:</p>

## TTP Environmental Checklist/Categorical Exclusion

### **O. Other Relevant Environmental Considerations/Approvals**

- Are there other relevant environmental considerations or approvals needed for this project?  Yes  No  
If yes, please describe.

### **P. 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:  
 Certification  Waiver  N/A
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 Environmental Checklist/Categorical Exclusion

### **SECTION 3: Environmental Commitments**

List all environmental commitments for the project in this section, or attach additional documentation as necessary. The list should include any mitigations, permit conditions, or other commitments that were required or agreed to during environmental analyses, coordination, and consultation with relevant agencies.



## TTP Environmental Checklist/Categorical Exclusion

**SECTION 4: 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 categorical exclusions from the drop-down menu(s) below. For full text of CEs, click [here](#).**

Select a Categorical Exclusion:

Write in additional Categorical Exclusion(s), if needed:

**D. If categorical exclusions (c)(26), (c)(27), or (c)(28) were selected above, do any of the following circumstances apply?**

**Yes**    **No**    **N/A**

- (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 Environmental Checklist/Categorical Exclusion

### **SECTION 5: Certification**

This approval pertains only to the scope of work and project described above. Any changes to the scope of work should be evaluated for additional environmental impacts and reviewed by FHWA. The environmental commitments listed in the document are not subject to change without approval from FHWA.

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 identified environmental laws, regulations, and Executive Orders.

**Concurrence:** By signing, you acknowledge you have authority to sign this document on behalf of the Tribe/Consortium, agree with the descriptions and assessments described within, and will insure the identified environmental commitments will be fulfilled and appropriate permits obtained.

Tribe/Consortium  
representative

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

#### Approval:

FHWA  
representative

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TTP Environmental Protection Specialist

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

#### FHWA Environmental Contacts:

David Cremer,  
Environmental Protection Specialist  
202-236-7613  
[david.cremer@dot.gov](mailto:david.cremer@dot.gov)

Terry Schumann,  
Environmental Protection Specialist  
360-619-7607  
[terry.schumann@dot.gov](mailto:terry.schumann@dot.gov)



## Exhibit 6.2 - OUTLINE FOR AN ENVIRONMENTAL ASSESSMENT (EA)

The following format generally complies with requirements for EAs and finding of no significant impacts (FONSI) 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<sup>5</sup>
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.
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:

---

<sup>5</sup> The Chapters on *Affected Environment* and *Environmental Consequences* can be combined.

- a. *Location of the Proposed Project* – This text is often accompanied by maps and figures.
  - b. *Scope and Nature of the Proposed Work*
    - i. **Funding**
    - ii. **Planning by Others**
6. **PURPOSE OF AND NEED FOR THE PROJECT** - This chapter of the EA describes the condition or conditions requiring relief and purpose in taking action. Often the EA describes the problems and the consequences of not taking action. This section should clearly demonstrate that a need exists and should define the need 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 6.3 – EXAMPLE NOTICE OF AVAILABILITY

# PUBLIC NOTICE OF AVAILABILITY AND SOLICITATION OF PUBLIC COMMENT

PROJECT NAME  
LOCATION

The Federal Highway Administration, in partnership with the TRIBE, is pleased to announce the availability of the Environmental Assessment (EA) for PROJECT NAME. The proposed project includes PROJECT SIMPLE DESCRIPTION AND SCOPE.

The purpose of this notice is to announce the availability of the EA for public review and comment. The EA is available at the following locations:

- LOCATION 1
- LOCATION 2
- Online at: <http://website location of document.pdf>

A copy of the EA may also be requested by contacting Terry Schumann at FHWA at (360) 619-7607.

Please send written comments by email to Terry Schumann at [Terry.Schumann@dot.gov](mailto:Terry.Schumann@dot.gov) or by mail to the address below by DATE.

Contact Information:  
Terry Schumann  
Tribal Transportation Program  
Federal Highway Administration  
610 East 5<sup>th</sup> St, Vancouver, WA 98661  
(360) 619-7607

## Exhibit 7.1 – TTP HIGHWAY DESIGN STANDARDS CERTIFICATION

*Project Number and Name:* \_\_\_\_\_

*NTTFI Route(s) and Section Number(s):* \_\_\_\_\_

*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:* \_\_\_\_\_

*Terrair* \_\_\_\_\_

TRAFFIC	YEAR	AVERAGE	SEASONAL	DHV	PERCENT TRUCKS DHV		D
					ADT		
Current					%	%	
Design					%	%	

- Design Standards:**  AASHTO Green Book  AASHTO Low Volume  County/Borough  
 State  Other (describe) \_\_\_\_\_

GEOMETRIC AND BRIDGE CRITERIA - Show Station Range			
GEOMETRIC AND BRIDGE CRITERIA	STANDARD	AS DESIGNED	EXCEPTION
Design Speed	Design Speed should equal or exceed Posted or Regulatory Speed of completed facility		<input type="checkbox"/>
Lane Width			<input type="checkbox"/>
Shoulder Width			<input type="checkbox"/>
Horizontal Curve Radius			<input type="checkbox"/>
Superelevation Rate			<input type="checkbox"/>
Stopping Sight Distance			<input type="checkbox"/>
Maximum Grade			<input type="checkbox"/>
Cross Slope			<input type="checkbox"/>
Vertical Clearance			<input type="checkbox"/>
Design Loading Structural capacity			<input type="checkbox"/>

**For each exception provide description (including context), reasons, alternatives considered, analysis of risk, and proposed mitigation. (Attach additional sheet if needed)**

**RECOMMENDED ACTION**

There are no exceptions to applicable standards.

The listed exceptions to design standards and their related risks have been reviewed with the appropriate agencies and interested 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: \_\_\_\_\_  
(if different from above)

**THE ABOVE RECOMMENDATIONS ARE APPROVED:**

\_\_\_\_\_  
Tribal Transportation Program,  
Federal Lands Highway Office

Date: \_\_\_\_\_

## Exhibit 7.2 - PS&E CERTIFICATION CHECKLIST

<b>PS&amp;E Certification Checklist</b>	
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. There is a Tribal resolution or other authorized document (signed and dated by the Tribal Government Leader) supporting the project.	
5. 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.	
6. Cultural resources and environmental requirements have been met, that are listed in the official Tribal Transportation Program Delivery Guide on the Federal Lands Highway – Office of Tribal Transportation Website at <a href="https://highways.dot.gov/federal-lands/programs-tribal">https://highways.dot.gov/federal-lands/programs-tribal</a> .	
7. This PS&E package meets or exceeds applicable design, health and safety standards according to 25 CFR § 170.454.	
8. No design exceptions are required for the design or specifications in this PS&E.	
9. 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.	
10. 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 7.3 - Right-of-Way Certification Letter Template

Federal Highway Administration

Office of Tribal Transportation

Name of Tribe or Tribal Council

Address

Phone number

Date

### RIGHT-OF-WAY CERTIFICATE STATEMENT

Project Name

As required by 25 CFR Part 170.460 and 23 CFR Part 635.309, and other pertinent Federal regulations, right-of-way has been acquired for the [insert project name] 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.

#### Select one of the following:

I hereby certify that the acquisition of right-of-way was not required. All work proposed is within existing right-of-way.

I hereby certify that all necessary rights-of-way, including control of access rights (when pertinent), have been acquired, including legal and physical possession; all lands and improvements (if appropriate) are vacant; and, the (agency) has physical possession and the right to enter upon all lands. The provisions of all current FHWA directives, including 49 CFR Part 24, were followed on this project. **If this is selected, select one of the following:**

I further certify that there were no individuals or families displaced by this project.

I further certify that there were [insert number] of individuals or families displaced by the project. The provisions of the current FHWA directives for displacements, including 49 CFR Part 24, covering the relocation of displaced persons to decent, safe and sanitary (DSS) housing and availability of adequate replacement housing were followed on this project. All necessary actions relative to relocation advisory assistance and payments as required by FHWA directives covering the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, have been

taken.

Signature:

---

Type in Tribal Representative Name

---

Date

# INSTRUCTIONS FOR FILLING OUT “DOCUMENTS NEEDED PRIOR TO CONSTRUCTION” FORM

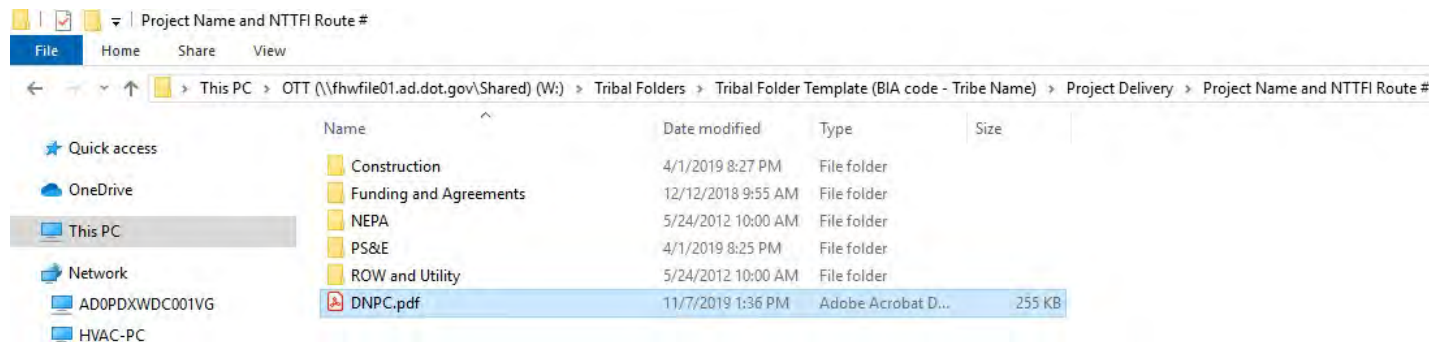
*(The field number below correspond to the numbered boxes on the “Documents Needed Prior to Construction” Form*

## Purpose of the form:

This form ensures that all documents have been provided by the Tribe before the start of construction in accordance with 25 CFR 170.460 (project package documents) and Article III, Section 1.C. (PS&E Approval Authority) of the FHWA Tribal Transportation Program Agreement.

## Documentation of the Form:

The completed and signed form shall be documented in Project folder in the FLH HQ Shared Server under the name “DNPC.pdf.” **These instructions do not need to be documented.**



## Heading Fields

**Tribe.** Provide the Tribe’s name.

**Public Authority.** Provide the 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, according to 25 CFR 170.5.

**Project Name.** Provide the Project Name

## Field 1: PLANS, SPECIFICATIONS, AND ESTIMATES

Receipt of the Plans, Specifications, and Estimates satisfies the requirements of 25 CFR 170.460(a).

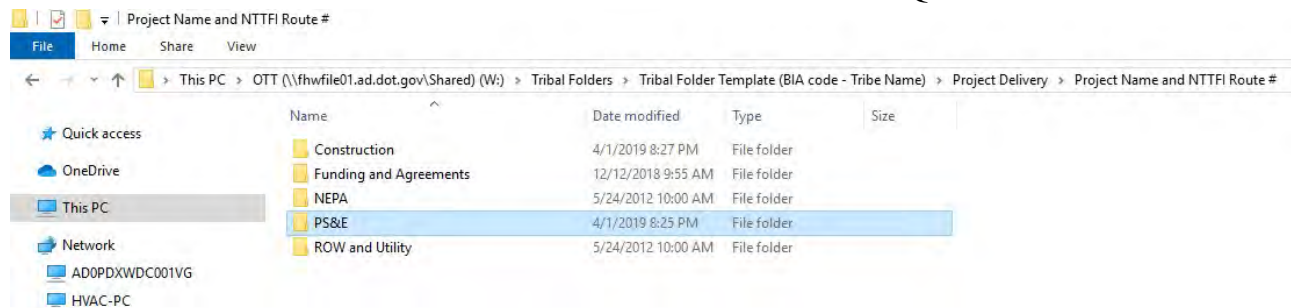
Documentation verification needed:

1. Plans are certified (stamped) by a State-licensed civil engineer, which also satisfies the requirements of 25 CFR 170.461(c).
2. Specifications are certified (stamped) by a State-licensed civil engineer, which also satisfies the requirements of 25 CFR 170.461(c).
3. Engineer's Estimate showing bid items, units, and unit prices.

*Note: According to 25 CFR 170.461, a Tribe may approve plans, specifications, and estimates if the Indian Tribal government:*

- (a) Provides assurances in the contract or [Program] agreement that the construction will meet or exceed applicable health and safety standards. In Article III, Section 1.C(1)(a) the Tribe provides their assurance by signing the FHWA Program Agreement.
- (b) Obtains advance review of the plans and specifications from a State-licensed civil engineer that has certified the plans and specifications meet or exceed the applicable health and safety standards. This is addressed through the state-licensed civil engineer certifying (stamping) the plans.
- (c) Provides a copy of the certification under paragraph (a) of this section to the...Department of Transportation; and
- (d) Provides a copy of 25 CFR 170.460 (project package) to...FHWA before the start of construction.

Documentation of the files will be in the "PS&E" folder in the FLH HQ Shared Server.



Fill in the date the document was received.

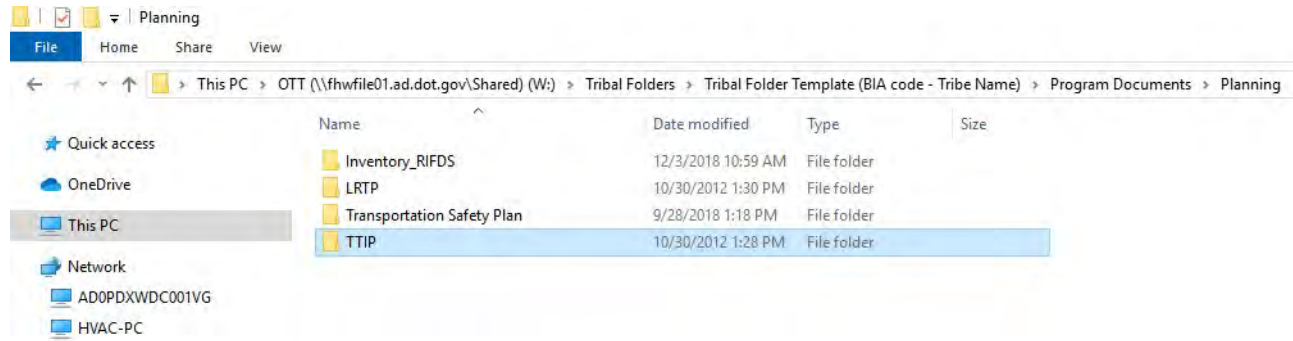
## Field 2: TRIBAL RESOLUTION OR OTHER AUTHORIZED DOCUMENT SUPPORTING THE PROJECT

The Self-Certification and/or Tribal Resolution accompanying the current FHWA-approved TTIP satisfies the requirements of 25 CFR 170.460(b).

Documentation verification needed:

1. The project is included in the current FHWA-Approved TTIP
2. The project facility, as applicable, is included in the National Tribal Transportation Facility Inventory

Documentation of the files will be maintained in the “TTIP” folder in the FLH HQ Shared Server.



Fill in the first Fiscal Year that the current FHWA-approved TTIP has been approved for.

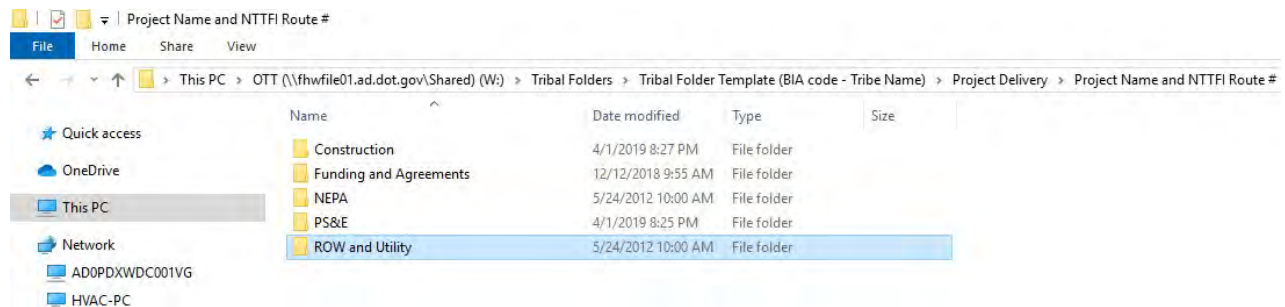
### Field 3: CERTIFICATION OF COMPLIANCE WITH THE REQUIREMENTS OF 25 CFR PART 169, AS WELL AS ANY ADDITIONAL PUBLIC TAKING DOCUMENTATION CLEARANCES, IF APPLICABLE

Receipt of the right-of-way certification satisfies the requirements of 25 CFR 170.460(c).

Documentation verification needed:

1. Right-of-way certification signed by the Tribe or authorized designee. Documentation of the packet from BIA Region is also acceptable. If no Right-of-Way was needed to be acquired, there should also be a certification document stating that no Right-of-Way was needed to be acquired.

Documentation of the files will be maintained in the “ROW and Utility” folder in the FLH HQ



Shared Server.

Fill in the date the document was received.

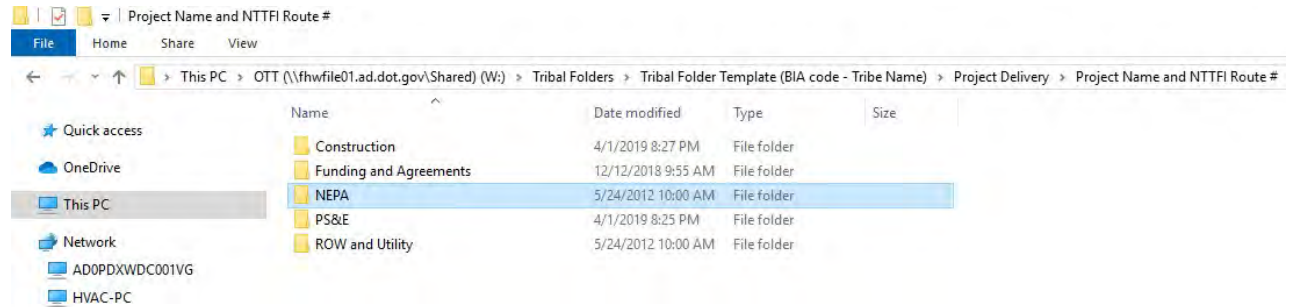
## Field 4: REQUIRED ENVIRONMENTAL, ARCHEOLOGICAL, AND CULTURAL CLEARANCES

Documentation of the TTP Environmental Checklist signed by the Tribe and FHWA satisfies the requirements of 25 CFR 170.460(d).

Documentation verification needed:

1. TTP Environmental Checklist signed by the Tribe and FHWA.

Documentation of the files will be maintained in the “NEPA” folder in the FLH HQ Shared Server.



Fill in the date the document was signed by FHWA.

## Field 5: IDENTIFICATION OF DESIGN EXCEPTIONS IF USED IN THE PLANS

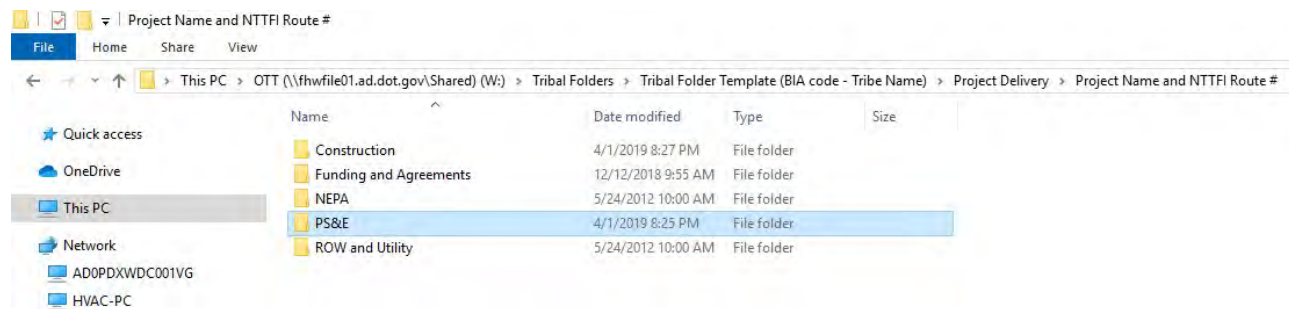
Documentation of the design exceptions, if used, satisfies the requirements of 25 CFR 170.460(e).

If design exceptions are not identified, it is assumed that the State-licensed civil engineer ensures that there are no design exceptions by certifying (stamping) the plans and specifications.

Documentation verification needed:

1. Design exceptions signed and approved by FHWA, if used.

Documentation of the files will be in the “PS&E” folder in the FLH HQ Shared Server.



Fill in the date the design exception was signed by FHWA or;

Fill in the date with an “N/A” if no design exceptions were identified.

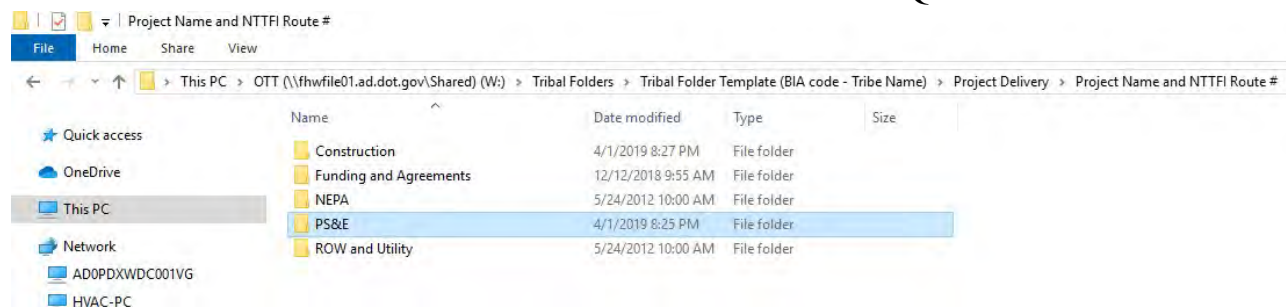
## **Field 6: TRIBE’S CERTIFICATION THAT THE PUBLIC AUTHORITY, OTHER THAN THE TRIBE OR BIA, WAS AFFORDED AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PS&E**

Documentation of the Tribe’s Certification that the public authority, other than the Tribe or BIA, was afforded an opportunity to review and comment on the PS&E satisfies the requirements outlined in Article III, Section 1.C. of the FHWA Tribal Transportation Program Agreement. The requirements outlined states that the Tribe 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; and (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. 25 CFR 170.5 defines a Public Authority as 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.

Documentation verification needed:

1. If the Public Authority, in the header, is not the Tribe or BIA, a certification is required by the Tribe.

Documentation of the files will be in the “PS&E” folder in the FLH HQ Shared Server.



Fill in the date the certification was received or;

Fill in the date with an “N/A” if no certification is required.

## **Field 7: FHWA TRIBAL COORDINATOR PROVIDES COPY OF PROJECT PACKAGE TO BIA ON BIA- OWNED FACILITIES (INTERNAL POLICY)**

When a project is being constructed on a BIA owned facility, the FHWA Tribal Coordinator will send the project package document to the appropriate Regional Road Engineer.

Fill in the date the project package was sent to the Regional Road Engineer or;

Fill in the date with an “N/A” if BIA is not the facility owner.

---

## Documents Needed Prior to Construction

Tribe:

Public Authority:

Project Name:

Docu ment	Date
<b>25 CFR 170.460 Requirements (Project Package)</b>	
1. Plans, specifications, and estimates <i>(25 CFR 170.460(a))</i>	
a. Plans (stamped)	
b. Specifications (stamped)	
c. Engineer's Estimate	
2. Tribal resolution or other authorized document supporting the project. <i>(25 CFR 170.460(b))</i>	
3. Certification of compliance with the requirements of 25 CFR part 169, as well as any additional public taking documentation clearances, if applicable. <i>(25 CFR 170.460(c))</i>	
4. Required environmental, archeological, and cultural clearances. <i>(25 CFR 170.460(d))</i>	
5. Identification of design exceptions if used in the plans. <i>(25 CFR 170.460(e))</i>	
<b>Tribal Transportation Program Agreement Requirement</b>	
6. Tribe's certification that the Public Authority, other than the Tribe or BIA, was afforded an opportunity to review and comment on the PS&E. <i>(FHWA Tribal Transportation Program Agreement Article III, Section 1.C)</i>	
<b>BIA-owned Facilities</b>	
7. FHWA Tribal Coordinator provides a copy of project package to BIA.	
FHWA Tribal Coordinator Signature:	Date:



## Exhibit 9.1 – 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:** .....

<b>DOCUMENT or MILESTONE</b>	<b>DATE</b>
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) .....	
Tribal resolution or other authorized document (signed and dated by the Tribal Government Leader) supporting the project	
.....	
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: \_\_\_\_\_

All Plan Sheets Stamped, Sealed and Front Page of SCRs Stamped, Sealed and Signed

..... Signed.....

..... Signed.....

Anticipated Advertisement Date.....

**If Developed By A/E Firm:**

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

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

.....

**Recommended for Approval by Tribal Official**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

## Exhibit 10.1 – OTT Trip Inspection Report

Please see the following instruction to understand what steps are necessary to effectively navigate the template. These instruction provide a brief description along with a picture showing what is being discussed and how to operate each of the dialog boxes/sections. These instruction pages will be deleted upon printing/saving the document.

- One of the purposes of this template is to provide for the documentation of both the Trip Report and Project Inspection allowing for these to be included in one document.
  - Many times the sole purpose for a TC’s visit to the Tribe would be to provide for the inspection of a project and this format provides for this opportunity without having a checklist to be attached.
- Another purpose is that the report provides for various questions that may be asked by the TC during the inspection of the project.
  - It is completely up to the TC to determine what questions they want to ask and these questions are merely a guide and not a requirement.
- Also, this report, when used by all TCs, would provide for a consistent format allowing all who view the report to have a certain expectation as to what may be included.
- Next is that the report would provide for the necessary questions needed to be answered for final inspections and final acceptance
- This report would also not only allow for the trip reporting and inspection, but also allow for the documentation of meetings, design reviews, and process reviews, to name a few.
- Lastly, It is recommended to wait until after the template is printed and saved before any rows in the table and/or any questions in the sections be deleted.

The table has dropdown boxes, check boxes, or blank areas to provide information needed related to the trip/project. If there are any rows within the table that need to be deleted because they are not applicable, i.e. no construction project reviewed, do this deletion after the document is printed.

BIA Region:	<small>Select Region</small>	BIA 6-Code:	<small>Select or Enter a BIA 6 Code</small>	Trip Date:	<small>Select Date</small>
County/Borough/Parish:		State:	<small>Select State</small>	Report Date:	<small>Select Date</small>
Tribal Entity:	<small>Select or Enter Tribe/Nation/Village/Rancheria/Pueblo/Consortium/Community/Colony/Band/Corporation</small>				
Trip Type:	<input type="checkbox"/> Construction Inspection <input type="checkbox"/> Design Review <input type="checkbox"/> ERPO <input type="checkbox"/> Conference <input type="checkbox"/> Process Review <input type="checkbox"/> Meeting <input type="checkbox"/> Property Inventory Review <input type="checkbox"/> Other				
Report Prepared by:					
Other Attendees:					
Project/Meeting Location:					
Construction Delivery Mode:	<small>Select Mode</small>	Facility Owner:	<small>Select Owner</small>		
Contractor/Consultant Name:					
Contract Amount	Contract Bid Days	Date Work Started	Anticipated Completion Date		
		<small>Select Date</small>	<small>Select Date</small>		
Quality of Work	Progress of Work	Work Completed (%)	Time Elapsed (%)		
<input type="checkbox"/> Satisfactory <input type="checkbox"/> Unsatisfactory	<input type="checkbox"/> Satisfactory <input type="checkbox"/> Unsatisfactory				

Below the table is the Executive Summary section and in this section is where you would provide a summary of all the activities completed, the documentation reviewed, and any findings that would need to be monitored and followed-up on with the Tribe.

**EXECUTIVE SUMMARY**

**Scope of Meeting/Inspection/Review/Other** (Note to reviewer: May use the example language below for construction)

**If Construction, then:**  
 Construction activities reviewed included: quality of inspection oversight and contractor workmanship. Construction inspection staff was interviewed in relation to contract plans and specification requirements for project elements currently under construction along with observing the contractor’s work.

**If Meeting, then:**  
 Give a brief description of the reason(s) for the Meeting being scheduled.

**If Review, then:**  
 Give a brief description of the reason(s) for the Review to be conducted.

When the box with the “X” is double-clicked, a dialog box will appear.

Check box if photographs were not taken during this visit



## Trip/Project Inspection Report

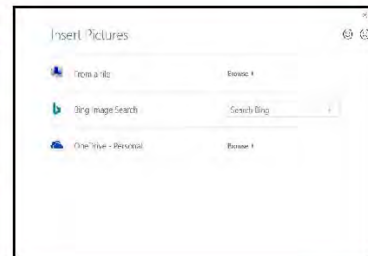
This dialog box will look like this and the user will either select the radio button of “Not checked” if they want this page to be visible after the “Print This Document” button is selected. If the user does not want this page to be visible, ensure the radio button “Checked” is selected and the page will not be visible after the “Print This Document” button is selected.

This should be done for each of the pages where pictures are to be provided.



For the image on the left as it relates to uploading pictures, select the icon in the middle and the dialog box here on the right will appear.

Choose the option on how you want to insert/upload a picture.



When the box with the “X” is double-clicked, a dialog box will appear.

This section not reviewed during this visit

This dialog box will look like this and the user will either select the radio button of “Not checked” if they want this page to be visible after the “Print This Document” button is selected. If the user does not want this page to be visible, ensure the radio button “Checked” is selected and the page will not be visible after the “Print This Document” button is selected.

This should be done for each of the section relevant to the work under construction for the project being reviewed.





# Trip/Project Inspection Report

This section provides for questions that should be asked when on a trip visiting the Tribe. These questions provide for some of the basic information that pertains to each Tribe and should be part of the review.

This section not reviewed during this visit

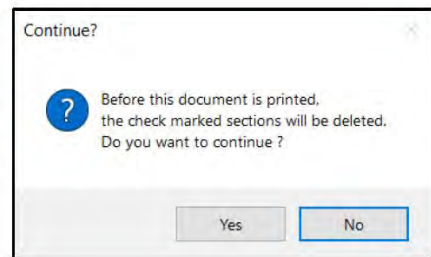
**GENERAL TRIBAL STATUS QUESTIONS**

1. Has the Tribe's LRTP been reviewed and/or updated by the Tribe within the last 5 years from its last submission? Yes – No. If No, explain.
2. Has the Tribe's TTP been updated within the last 4 years from its last approval? Yes – No. If No, explain.
3. Is the Tribe using a method or software that adequately tracks all transportation funds provided and expended? Yes – No. If No, explain.
4. Does the Tribe have written Financial, Procurement and Property Management Policies? Yes – No. If No, explain.
5. Are all Annual Reports completed and on file? Yes – No. If No, explain.
6. Does the Tribe have any personal property/equipment that was purchased using TTP funds or was received from GSA excess and surplus? Yes – No. Was all property/equipment visually located? Yes – No. If No, explain the reason property/equipment was not visually identified.

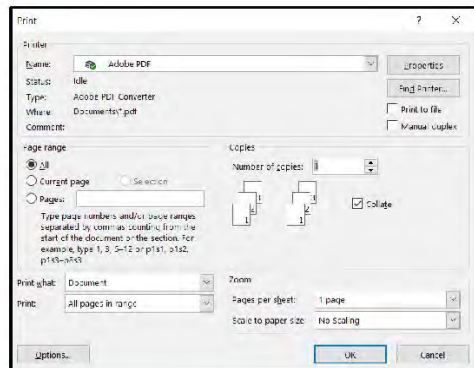
After the template has been updated with all the information related to the trip, the "Print This Document" button should be selected to allow for the document to be printed/saved.



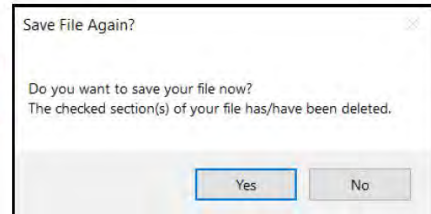
Once the button has been selected, this dialog box will appear and if the "Yes" button is selected, all the sections where the boxes that are "Checked" will be deleted from the form and those boxes that are not checked will provide for those sections to be included in the document. If the "No" box is checked, the document will return to where it was just prior to selecting the "Print This Document" button.



After all the sections that have the boxes "Checked" are deleted, the "Print" dialog box will appear. If you would like to print the document at this time, select where you want the document printed and then select the "Ok" button. If you do not want to print the document then select the "Cancel" button.



If the "Cancel" button is selected, the "Save File" dialog box will appear. If you would like to save the document, select the "Yes" button. If you select the "No" button, then the document will return to where it was just prior to selecting the "Print This Document" button.





# Trip/Project Inspection Report

## Trip/Project Inspection Report U.S. Department of Transportation Federal Highway Administration Tribal Transportation Program (TTP)



[Print This Document](#)

<b>BIA Region:</b>	Select Region	<b>BIA 6-Code:</b>	Select or Enter a BIA 6 Code	<b>Trip Date:</b>	Select Date
<b>County/Borough/Parish:</b>		<b>State:</b>	Select State	<b>Report Date</b>	Select Date
<b>Tribal Entity:</b>	Select or Enter Tribe/Nation/Village/Rancheria/Pueblo/Consortium/Community/Colony/Band/Corporation				
<b>Trip Type:</b>	<input type="checkbox"/> Construction Inspection <input type="checkbox"/> Design Review <input type="checkbox"/> ERFO <input type="checkbox"/> Conference <input type="checkbox"/> Process Review <input type="checkbox"/> Meeting <input type="checkbox"/> Property Inventory Review <input type="checkbox"/> Other				
<b>Report Prepared by:</b>					
<b>Other Attendees:</b>					
<b>Project/Meeting Location:</b>					
<b>Construction Delivery Mode:</b>	Select Mode	<b>Facility Owner:</b>	Select Owner		
<b>Contractor/Consultant Name:</b>					
<b>Contract Amount</b>	<b>Contract Bid Days</b>	<b>Date Work Started</b>	<b>Anticipated Completion Date</b>		
		Select Date	Select Date		
<b>Quality of Work</b>	<b>Progress of Work</b>	<b>Work Completed (%)</b>	<b>Time Elapsed (%)</b>		
<input type="checkbox"/> Satisfactory <input type="checkbox"/> Unsatisfactory	<input type="checkbox"/> Satisfactory <input type="checkbox"/> Unsatisfactory				

### EXECUTIVE SUMMARY

**Scope of Meeting/Inspection/Review/Other** (Note to reviewer: May use the example language below for construction)

**If Construction, then:**

Construction activities reviewed included: quality of inspection oversight and contractor workmanship. Construction inspection staff was interviewed in relation to contract plans and specification requirements for project elements currently under construction along with observing the contractor's work.

**If Meeting, then:**

Give a brief description of the discussion that occurred during the meeting.

**If Review, then:**

Give a brief description for the purpose of the review and a summary of what was reviewed and document any findings.



# Trip/Project Inspection Report

## PHOTOGRAPHS

Check box if photographs were not taken during this visit




## Trip/Project Inspection Report

### PHOTOGRAPHS

Check box if photographs were not taken during this visit






# Trip/Project Inspection Report

## PHOTOGRAPHS

Check box if photographs were not taken during this visit




# Trip/Project Inspection Report

This section not reviewed during this visit

## GENERAL TRIBAL STATUS QUESTIONS

1. Has the Tribe's LRTP been reviewed and/or updated by the Tribe within the last 5 years from its last submission? **Yes – No** If No, explain.
2. Has the Tribe's TTIP been updated within the last 4 years from its last approval? **Yes – No** If No, explain.
3. Is the Tribe using a method or software that adequately tracks all transportation funds provided and expended? **Yes – No** If No, explain.
4. Does the Tribe have written Financial, Procurement and Property Management Policies? **Yes – No** If No, explain.
5. Are all Annual Reports completed and on file? **Yes – No** If No, explain.
6. Does the Tribe have any personal property/equipment that was purchased using TTP funds or was received from GSA Excess and Surplus? **Yes – No** Was all property/equipment visually located? **Yes – No** If No, explain the reason property/equipment was not visually identified.

Additional Comments:

This section not reviewed during this visit

## GENERAL PROJECT QUESTIONS

1. Are there any Contract Modifications? **Yes – No** If Yes, explain.
2. Has time been added to the Contract? **Yes – No** If Yes, explain.
3. Do working conditions on the project appear safe? **Yes – No** If No, explain.

Additional Comments:

This section not reviewed during this visit

## PREVAILING WAGES/SUBCONTRACTS

1. Were all the subcontracts reviewed and approved prior to subcontractor starting work? **Yes – No**
2. Was the SAM.gov website searched to verify that the contractor nor all subcontractors were on the debarred list? **Yes – No**
3. Have wage rate interviews been performed? **Yes – No**
4. Are there any discrepancies found from the wage rate interviews? **Yes – No**
5. If there are any Davis-Bacon compliance issues, have they been adequately addressed? **Yes – No**
6. Does the contractor submit certified payrolls weekly? **Yes – No**
7. Are the certified payrolls reviewed by the project staff? **Yes – No**

Additional Comments:

This section not reviewed during this visit

## ENVIRONMENTAL

1. Is the Contractor adhering to the environmental commitments in the PS&E? **Yes – No**
2. Is the NPDES NOI posted and located on the project that allows the public to view and are the permits available at the project site location? **Yes – No**
3. Are BMPs installed properly, inspected, and maintained in accordance with the SW3P, with any BMP modifications updated on the SW3P/erosion control plan? **Yes – No**

**Note:** The PS&E should be viewed to identify all environmental commitments that are to be provided on the project.

Additional Comments:



# Trip/Project Inspection Report

This section not reviewed during this visit

## TRAFFIC CONTROL

1. Are the project's traffic control layout and detour (if used) adequate? **Yes – No**
2. Are all traffic control devices installed according to TCP standard sheets and PS&E? **Yes – No**
3. Are channelizing devices clear, clean, straight and provide appropriate guidance to drivers for daytime and provide reflectivity for nighttime conditions? **Yes – No**
4. Are signs visible day and night and have appropriate sight distance? **Yes – No**
5. Are pavement markings visible and adequate for providing guidance day and night (if required)? **Yes – No**
6. Are temporary shifts, tapers and lane closures laid out with good visibility and are adequately designed? **Yes – No**
7. Are flaggers attentive and responsible, with appropriate high visibility gear and equipment? **Yes – No**
8. Do concrete barriers or guardrail ends have end treatment or protection? **Yes – No**
9. Were any pavement drop-offs observed? **Yes – No**
10. If Pedestrian facilities were present before construction, are walkways closures posted as required, are signs out of the pedestrian path, and are ADA compliant detour routes provided? **Yes – No**
11. Are there any traffic control plan changes? **Yes – No** If so, who approved the changes?
12. Are the Traffic Control Inspections conducted with detail findings for both day and night? **Yes – No**
13. Is the Contractor addressing the Traffic Control deficiencies in a timely manner? **Yes – No**

Additional Comments:

This section not reviewed during this visit

## MATERIAL DOCUMENTATION/PROJECT RECORDS

1. Are the material delivery tickets accurate and complete, and available in the project files? **Yes – No**
2. Have all mix designs been approved by an authorized Tribal representative prior to work progressing with that item of work? **Yes – No**
3. Are pay folders adequately documented and do project records provide adequate assurance that quantities are accurate and uniform? (includes field measurements, calculations, invoices, or daily work report as required) **Yes – No**
4. Is all un negotiated added work justified and necessary and does the project records provide for adequate assurance that the material quantities, labor hours, and equipment usage are accurate and uniform? **Yes – No**
5. Are inspector daily reports and/or project diaries current, properly filed and adequately support work progress? **Yes – No**

Additional Comments:

This section not reviewed during this visit

## EMBANKMENT/EXCAVATION

### Embankment:

1. Are all embankments being sloped to ensure adequate and positive drainage to avoid flooding on the project and damaging adjacent property outside the ROW? **Yes – No**
2. Has all material being embanked on the project met the minimum specifications? **Yes – No**
3. Is all compaction equipment being used appropriately and per specifications necessary to achieve optimum compaction? **Yes – No**
4. Is all embankment compacted at adequate depths and layered to get to finish grade? **Yes – No**



# Trip/Project Inspection Report

- 5. Has all testing equipment been calibrated and certified prior to measuring densities and optimum moisture content for all embanked material? **Yes – No**
- 6. Has all gradations, densities, and plasticity passed within the required limits for the type of soils on the project? **Yes – No**

### Excavation:

- 1. Are all excavations being sloped to ensure adequate and positive drainage to avoid flooding on the project and damaging adjacent property outside the ROW? **Yes – No**
- 2. Is the contractor clearing and grubbing to a satisfactorily depth? **Yes – No**
- 3. Is excavated topsoil being stockpiled for later use? **Yes – No**
- 4. Are all unsuitable materials excavated being disposed of appropriately? **Yes – No**

### Additional Comments:

This section not reviewed during this visit

## MATERIALS/TESTING, GRADING, HMA/PCC PAVEMENT

### Materials/Testing:

- 1. Is all rebar properly stored on site and elevated? (check at construction area/Contractor on-site yard) **Yes – No**
- 2. Are the materials testing staff certified? **Yes – No**
- 3. Are all material certifications completed and on file? **Yes – No**
- 4. Are all materials tested per applicable specification? **Yes – No**
- 5. Has the laboratory conducting acceptance testing been approved by an independent laboratory qualification program? **Yes – No**
- 6. Are the plant, scale and truck certification on file and current (at least every 6-months)? **Yes – No**
- 7. Is the Guide Schedule (testing frequency) of sampling and testing being followed for all required material placements? **Yes – No**
- 8. Is sampling and testing data up to date and on file? **Yes – No**
- 9. Are the material delivery tickets reviewed and determined to be acceptable by the inspector prior to placement to ensure the correct material is being delivered for the work to be completed within an adequate time for placement? **Yes – No**
- 10. Have all iron and steel products been certified for Buy America requirements? **Yes – No**
- 11. Does the Tribe or owner's representative control the location for Tribal acceptance or verification testing and take immediate possession (and maintain possession) of cores and/or concrete cylinders? **Yes – No**
- 12. Are there any test results that were out of specification tolerances? **Yes – No** If yes, are the failed tests documented in the files with cross-references to retests? **Yes – No**
- 13. Are the Mix Designs on file and approved? **Yes – No**
- 14. Are the concrete batch tickets or equivalent for each load of concrete on file and properly filled? **Yes – No**

### Subgrade/SubBase/Base:

- 15. Is adequate drainage being provided to protect the existing roadbed and reduce flooding impacts to adjacent properties (i.e. are ditches and slopes being maintained)? **Yes – No**
- 16. Have the sub-grade, subbase or lower course been properly prepared for each lift placed (i.e. lift thickness maximums; obtained minimum density and moisture content)? **Yes – No**
- 17. Is surface clipped, skinned, or tight bladed to an acceptable depth? **Yes – No**
- 18. Is surface sealed immediately after finishing? **Yes – No**



# Trip/Project Inspection Report

## Hotmix Asphalt (HMA) Pavement:

- 19. Is the Tribe ensuring the temperature of the HMA coming out of the haul truck and the temperature of the asphalt mix after laydown within the allowed range? *Yes – No*
- 20. Is a bond breaker applied (prime coat, tack coat, etc.) and is clear of debris prior to asphalt placement? *Yes – No*
- 21. Are depth checks provided after hotmix is placed prior to rolling? *Yes – No*
- 22. Is the rolling pattern approved and followed to allow for optimum compaction before break-over point? *Yes – No*

## Portland Cement Concrete (PCC) Pavement:

- 23. Are manual placements of steel secured together with wire ties or locking support chairs at alternate intersections and is the steel mat clean and clear of dirt and debris? *Yes – No*
- 24. Are the longitudinal reinforcement splices staggered to avoid having more than 1/3 of the splices within a 2-ft. longitudinal length of each lane of pavement? *Yes – No*
- 25. Are steel lap length minimums provided? *Yes – No*
- 26. Are all forms and sub-pavement thoroughly wetted prior to concrete placement? *Yes – No*
- 27. Are immersion vibrators spaced adequately allowing for sufficient consolidation of the concrete? *Yes – No*
- 28. Are depth checks of the pavement thickness being conducted at the required frequency? *Yes – No*
- 29. Are tines/grooves being provided at the adequate spacing and the adequate depths? *Yes – No*
- 30. Is curing compound being applied uniformly and consistently within an adequate timeframe? *Yes – No*

### Additional Comments:

This section not reviewed during this visit

## BRIDGES AND STRUCTURES

### Drill Shafts:

- 1. Is the embankment at bridge ends completed before installing drilled shafts that pass through the fill? *Yes – No*
- 2. If drilled shafts are located within a Mechanically Stabilized Earth Wall (MSE) volume, are they constructed prior to construction of the wall? *Yes – No*
- 3. If concrete placement is not started within 4 hours of the completion of the shaft excavation, is the hole reprocessed with the auger as directed, the hole bottom cleaned with an air lift or cleanout bucket, and the slurry at the bottom of the hole checked for compliance with the slurry requirements? *Yes – No*
- 4. Is the reinforcing steel cage clean of any foreign material prior to placement in the excavated shaft? *Yes – No*
- 5. If the reinforcing steel cage does not reach the bottom of the shaft, is it suspended, or a portion of the longitudinal steel extended to support the cage on the bottom of the shaft? *Yes – No*
- 6. Is the steel reinforcing cage centered in the excavation using approved centering devices, using enough devices to hold the cage in position along its entire length? *Yes – No*

### Sub-Structure:

- 1. Has the alignment, elevation and layout of bents, columns, abutments, headwalls, wingwalls, and caps been checked? *Yes – No*
- 2. Was compressive strength 80% of the required 28-day compressive strength prior to the loading of caps or setting of beams? *Yes – No*

### Super-Structure:

#### Falsework and Forms:

- 1. Are beams braced in accordance with minimum erection bracing standards? *Yes – No*



## Trip/Project Inspection Report

2. Were beams profiled to determine actual camber or sag of beams prior to placing the panels, pan forms, steel, etc.? **Yes – No** The profile grade line, panel elevation, and bearing seat elevations may need to be adjusted to obtain the required clear cover over the slab reinforcement and the required slab thickness.
3. Have voids beneath the deck panels or pan forms been sealed to prevent excessive grout leakage? **Yes – No**

### **Reinforcing Steel:**

1. Is reinforcement accurately located in the forms and firmly held in place, before and during concrete placement, by means of bar supports, adequate in strength and number to prevent displacement and to keep the steel at the proper distance from the forms? **Yes – No**
2. Are manual placements of steel securely wired together at all intersections? **Yes – No**
3. Are tie wires, bar chairs, supports or clips used with epoxy coated reinforcement fully coated with epoxy? **Yes – No**
4. Has all visible damage to epoxy coating been repaired? **Yes – No**

### **Dry Run:**

1. Is the clear cover for the top mat of reinforcement within minimum tolerances? **Yes – No**
2. Before pour, is all placing, finishing, and curing equipment adjusted properly readily available? **Yes – No**
3. Are there sufficient work bridges available for finishing operations? **Yes – No**
4. Are there backup vibrators available? **Yes – No** Special rubber-tipped vibrators are required for epoxy coated steel.
5. Is there enough evaporation retardant and curing compound available? **Yes – No**
6. Can fogging equipment apply water in a fine mist not a spray? **Yes – No**

### **Concrete Placement:**

1. Are manual placements of steel secured together with wire ties or locking support chairs at each intersection and is the steel mat clean and clear of dirt and debris? **Yes – No**
2. Are the longitudinal reinforcement splices staggered to avoid having more than 1/3 of the splices within a 2-ft. longitudinal length of each lane of pavement? **Yes – No**
3. Are steel lap length minimums provided? **Yes – No**
4. Is the ambient temperature in the shade 35°F and rising or above 40°F? **Yes – No** Concrete should not be placed when ambient temperature in the shade is 40°F and falling. Do not place concrete on frost covered steel.
5. Is the temperature of the concrete between 50°F and 80°F? **Yes – No**
6. Is concrete placed within the approved time limit after batching? For non-agitating equipment, concrete has a shorter time limit after batching to be placed? **Yes – No**
7. Are all forms, deck panels, beams, etc. thoroughly wetted prior to concrete placement? **Yes – No**
8. Are immersion vibrators spaced at adequate intervals to allow for sufficient consolidation of the concrete? **Yes – No**
9. Has the bridge slab been protected and maintained at the appropriate temperature ranges for the required timeframes? **Yes – No**
10. In hot weather, were methods used to maintain adequate concrete temperatures and evaporation rates? **Yes – No**
11. If span is on a profile grade of 1.5% or more, is concrete placement started at the low end? **Yes – No**

### **Concrete Finishing:**

1. After the concrete is placed and vibrated in a section wide enough to work, is it leveled struck off, and screeded as soon as possible? **Yes – No**
2. Is there a slight excess of concrete ahead of the screed to fill all low spots? **Yes – No**





## Trip/Project Inspection Report

3. Is the surface of the concrete screeded enough times and at appropriate intervals to produce a uniform surface true to grade and free of voids? **Yes – No**
4. Does the Contractor perform sufficient checks with a long-handled straightedge on the plastic concrete to ensure that the final surface will be within tolerance? **Yes – No**
5. Is the concrete finished to a uniform texture with a carpet drag, burlap drag, or broom finish from a work bridge or platform immediately after completing the straightedge checks? **Yes – No**
6. Are tines/grooves being provided at the adequate spacing and the adequate depths? **Yes – No**
7. Is curing compound being applied at a consistent/uniform rate within an adequate timeframe? **Yes – No**

**Additional Comments:**

This section not reviewed during this visit

### FINAL PROJECT SITE VISIT

1. Has a punch list been generated that provides for any items that need to be corrected? **Yes – No**
2. Are all items in the PS&E related to environmental commitments compliant, correct and complete? **Yes – No**
3. Is there a plan of action in place to close out all environmental commitments/permits prior to project closeout? **Yes – No**
4. Are there any claims associated with the project? **Yes – No**. If yes, refer to 10.d. of this section.
5. Was all sampling and testing (frequency/location) conducted in accordance with contract requirements for Earthwork, Structures, Asphalt, and PCC **Yes – No**
6. Are all failed tests documented and provide for any pay deductions or remove and replace actions? **Yes – No**
7. Were all traffic control inspections completed at the appropriate frequency and on file? **Yes – No**
8. Are payroll records Davis-Bacon rate compliant unless Tribe performs work with its own employees? **Yes – No**
9. Were the as-built plans available for review during the final inspection? **Yes – No**
10. Was the Tribe notified of the necessary information that would need to be provided to FHWA in order to closeout the project.\* **Yes – No** These would include:
  - a. Date of final inspection – a date that the final inspection report was generated as a result of a final inspection conducted between the Tribe and the contractor.
  - b. Date of final acceptance letter – the date when the owner provided written documentation that they have accepted the project.
  - c. A final accounting of all TTP construction project expenditures – the TTP funds associated with the project to include the amount paid to the contractor and any construction engineering costs.
  - d. Providing any unresolved or pending claims in the final project closeout report and any costs associated with those claims, if known. If there are any unresolved or pending claims related to the project after submission of the final project closeout report, the Tribe will report those amounts through the annual (PORT) reporting.

\* These documents include the final inspection, final acceptance letter, and final estimate are not necessary to submit to FHWA to close out the project. Only the dates and amounts related to the information needed to closeout a project are required for submittal. The Tribe will need to submit a closeout report (within 120 days of receipt of the final acceptance letter) to the TC with this information provided, at a minimum. It is recommended that the Tribe use the **Closeout Template** to provide for this information as the templates requests this information.

**Additional Comments:**

## Exhibit 10.2 - 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 10.3 - 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 10.4 - Project Closeout Forms for Tribes – Optional

### TRIBAL TRANSPORTATION PROGRAM

#### PROJECT CLOSEOUT CHECKLIST

---

**Project Name:**

**Project Number:**

**Final Estimate Assembly:**

- Certification Of Final Estimate
- Contractor's Release
- Summary of Quantities
- As-Built Plans

**Final Construction Report**

- Final Estimate Assembly (See above)
- Final Construction Report Summary Sheet
- Reports (as required):
  - Daily Diaries
  - Weekly Progress Reports
  - Clear Water Act (NOT)
  - Certificate of Material Compliance
  - Utility Adjustments
  - Report on Use of Regulatory Speed Signs (if Regulatory Speed order used)
  - Report on Claims (if the contractor submits a claim)
- Explanation of Overruns, Underruns, Change Documents. (List only contract major bid items whose final quantity varied more than 25% from the estimated quantity and an explanation of all change document items)
- Right-of-Way Certification
- Proof of Use for Material Sources with Material Site Record.
- Final Inspection Report

**TRIBAL TRANSPORTATION PROGRAM  
CERTIFICATION  
FINAL ESTIMATE REVIEW REPORT**

**Project Number:** \_\_\_\_\_ **Contractor:** \_\_\_\_\_  
**Project Name:** \_\_\_\_\_  
**Description of Work:** \_\_\_\_\_

\_\_\_\_\_  
**Required Project Completion Date:** \_\_\_\_\_ / \_\_\_\_\_ **Calendar Days**  
**Actual Project Completion Date:** \_\_\_\_\_ / \_\_\_\_\_ **Calendar Days**  
**Project Manager:** \_\_\_\_\_ **Project Engineer:** \_\_\_\_\_  
**Final Acceptance Date:** \_\_\_\_\_  
**Days Overrun:** \_\_\_\_\_ **Liquidated Damages**  
\_\_\_\_\_ **Assessed:** \_\_\_\_\_  
**Final Amount:** \_\_\_\_\_ **Bid Amount:** \_\_\_\_\_  
**Materials Certification Date:** \_\_\_\_\_ **Right-of-Way Clearance Date:** \_\_\_\_\_  
**Dept. of Revenue Clearance Date:** \_\_\_\_\_

\*\*\*\*\*

**CLASSIFICATION OF COSTS – FINAL AMOUNTS**

**Indian Reservation Road:** \_\_\_\_\_  
**Alaska Department of Transportation and Public Facilities:** \_\_\_\_\_  
**Denali Commission:** \_\_\_\_\_  
**Other:** \_\_\_\_\_  
**Total:** \_\_\_\_\_  
**Remarks** \_\_\_\_\_

I certify that my review of this project, in accordance with TTP policy, indicates that all work has been completed within the term of the contract and authorized change documents; and it also indicates that funds have been properly classified unless otherwise noted above.

\_\_\_\_\_  
**Signature of Reviewer** **Date Submitted**

**TRIBAL TRANSPORTATION  
PROGRAM  
CONTRACTOR'S RELEASE**

Issue Date: _____
Project No: _____
Contract No.: _____

<b>Project Name:</b> _____	<b>Contract Compensation Summary</b>
<b>Located at:</b> _____	<b>Final Amount:</b> _____
	Less Liquidated Damages: _____
	<b>Total Final Sum:</b> _____
	Less previous payments <b>OR</b>
	Estimate(s), 1 through _____
	Totaling: _____
	<b>Final Payment Due:</b> _____
Pursuant to the terms of the written contract dated _____, _____ for the construction of _____	
Project Number(s) _____, and in consideration of the total final sum of _____	
Dollars ( ) which has been or is to be paid under the said contract to (Contractor's Name)	
located at _____	
(hereinafter called the Contractor) or it assignees, if any, the Contractor, upon payment of the said sum by the Tribe, does remise, release, and discharge the Tribe, its officers, agents, and employees, of and from all liabilities, obligations, claims, and demands whatsoever under or arising from said contract, whether known or unknown and whether or not ascertainable at the time of the execution of this instrument except specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor, as follows:	
The Contractor agrees, in connection with the claims which are not released as set forth above, that (s)he will comply with all of the provisions of the said contract, including without limitation those provisions relating to the notification of the Tribe and relating to the prosecution of claims.	
IN WITNESS WHEREOF, this release was executed this _____ day of _____, _____.	
_____ Witness	_____ Contractor
_____ Witness	By: _____
	Title: _____

(NOTE: In the case of a corporation, witnesses are not required, but certificate on reverse side must be completed by a corporate officer other than the one who signs above.)

**CERTIFICATE**

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_  
Name Title  
of the corporation named as Contractor in the foregoing release; that \_\_\_\_\_  
Name  
who signed said release on behalf of the Contractor was then \_\_\_\_\_  
Official Title  
of said corporation; that said release was duly signed for and in behalf of said corporation by  
authority of its governing body and is within the scope of its corporate powers.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

IN WITNESS WHEREOF,  
I have set my hand and affixed my official seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

My Commission Expires: \_\_\_\_\_  
Notary Public



**TRIBAL TRANSPORTATION PROGRAM**

**FINAL CONSTRUCTION REPORT SUMMARY SHEET**

PROJECT NAME: _____
PROJECT NUMBER: _____
PROJECT LOCATIONS: _____
PROJECT DESCRIPTION: _____ _____
PROJECT ENGINEER: _____
CONTRACTOR: _____
DATE OF AWARD: _____ NOTICE TO PROCEED: _____
START DATE OF CONSTRUCTION: _____
ORIGINAL CONTRACT COMPLETION DATE: _____
AMENDED CONTRACT COMPLETION DATE: _____
PROJECT ACCEPTANCE DATE: _____
OVERRUN TIME: _____ DAYS      LIQUIDATED DAMAGES: _____ DAYS
ENGINEER'S ESTIMATE: _____
ORIGINAL AWARD AMOUNT: _____
ADDITION OR REDUCTION AFTER AWARD: _____
FINAL CONTRACT AMOUNT: _____

**TRIBAL TRANSPORTATION PROGRAM**

**RIGHT-OF-WAY CERTIFICATION  
AND  
RELOCATION PROGRAM ASSURANCES**

There are \_\_\_\_\_ parcels on this project and \_\_\_\_\_ temporary easements and permits.

All individuals and families were relocated to decent, safe, and sanitary housing, or displaced persons were relocated to the adequate replacement housing that the Tribe made available to them in accordance with the provisions of the current BIA/FHWA directives and one of the following applies:

- All necessary right-of-ways, including control of access rights when pertinent, were acquired including legal and physical possession. There are \_\_\_\_\_ parcels in condemnation.
- Although all necessary right-of-ways were not fully acquired, the right to occupy and to use all rights-of-way required for the proper execution of the project was acquired. There are \_\_\_\_\_ parcels with right of entry only.
- The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have replacement housing made available to them in accordance with 49 C.F.R. 24.204. A listing of these parcels with their anticipated acquisition date is shown on the attached sheet.
- Construction will be contained within existing right-of-way.

Date \_\_\_\_\_

\_\_\_\_\_  
TRIBE'S TRANSPORTATION PROGRAM OFFICIAL

\_\_\_\_\_  
Print Name



<b>FINAL INSPECTION OF TRIBAL TRANSPORTATION PROGRAM PROJECT</b>		
<b>1. PROJECT NAME AND NUMBER</b>	<b>2. TRIBAL COUNCIL</b>	<b>3. CITY</b>
<b>4. DESCRIPTION OF IMPROVEMENT AS PROGRAMMED</b>		
<b>5. CONTRACTOR'S NAME</b>		<b>6. CONTRACT AMOUNT</b>
<p><b>7. NOTICE OF COMPLETION:</b> The above listed project is completed. A final inspection by the Tribe's Transportation Program has found this project to be in reasonable conformance with the PS&amp;E.</p> <p style="text-align: right;">_____ Date _____</p> <p><b>SIGNATURE</b> (TRIBE'S TRANSPORTATION PROGRAM OFFICIAL)</p> <p>_____</p> <p><b>NAME and TITLE</b></p>		
<b>8. INSPECTION MADE BY</b>		<b>9. DATE OF INSPECTION</b>
<b>10. IN COMPANY WITH</b>		
cc:		

**CLOSEOUT REPORT  
FOR TRIBES IN A FHWA TRIBAL TRANSPORTATION PROGRAM  
AGREEMENT  
(TO BE FILLED OUT BY TRIBE)**

<b>Project Information</b>	
<b>Tribe Name:</b> [Fill-in]	
<b>Project Name:</b> [Fill-in Project Name]	
<b>Final Inspection:</b> [Fill-in Date that final inspection was conducted with the Contractor]	
<b>Final Acceptance:</b> [Fill-in Date that Facility Owner made Final Acceptance]	
<b>Financial Closeout</b>	
<b>Funding Source(s)</b>	
<b>Check any that apply or enter funding source not listed under "Other"</b>	<input type="checkbox"/> TTP Formula Funds <input type="checkbox"/> Other: [Specify] <input type="checkbox"/> TTP Bridge Program <input type="checkbox"/> Other: [Specify] <input type="checkbox"/> TTP Safety Funds
<b>Expenditures:</b>	
<b>Final Construction Contract Cost</b> <i>[Same as provided in Project Narrative]</i>	[fill-in TTP expenditure \$] [fill-in other expenditure (TTP Safety, TTP Bridge Program, or others specified) \$]
<b>Pending claims/litigation or Warranties with Retainage:</b> <i>[outstanding]</i>	<p style="color: red;"><i>[Delete these instructions prior to submittal of final construction closeout report.</i></p> <p style="color: red;"><i>A closeout report must be submitted for each project even when there are pending claims/litigation or warranties with retainage.</i></p> <p style="color: red;"><i>Include the \$ amount of the pending claim and a brief description.</i></p> <p style="color: red;"><i>*Any pending claims/litigation or warranties with retainage that are resolved and paid to the project shall be identified in the PORT Report.]</i></p> <p>[fill-in "N/A" if there are no pending claims]          [fill-in Pending Claim #1, \$, and description]           [fill-in Warranty with Retainage #1, \$, and description]</p>
<b>Tribes' Signature:</b>	<b>Date:</b>

## Exhibit 10.5 – Safety Checklist

Version 1.0, 2/7/2014

<b>SAFETY CHECKLIST</b> for Construction Projects	
Date of Review:	Conducted by:
<b>General</b>	
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:	
<b>Signing</b>	
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
<b>Markings</b>	
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:	
<b>Construction Signing</b>	
Are the signs being used per the MUTCD?	Y/N

<b>SAFETY CHECKLIST</b> for Construction Projects	
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
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:	
<b>Channelizing Devices</b>	
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:	
<b>Pavement Markings</b>	
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:	
<b>Lighting Devices</b>	
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

<b>SAFETY CHECKLIST</b> 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:	
<b>Barriers</b>	
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:	
<b>Flaggers</b>	
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:	
<b>Miscellaneous</b>	
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 10.6 – Construction Equipment Purchase Request Form

This form shall be used and submitted for all construction equipment purchase requests by Tribal Governments who have a Tribal Transportation Program Agreement with FHWA.

1. How will this construction equipment be used for the Tribal Transportation Program (TTP)?

(If more space is needed, provide attachment)

2. What storage is available for the equipment? Check one: Garage  Outdoors

3. How will the equipment be maintained? Check one: In-house  Contract Services

4. Lease/Purchase Cost Analysis:

Equipment Make and Model	Model Year	Equipment Attachments or Accessories	Lease Cost Plus Shipping Round-trip (\$)*	Purchase Price Plus Shipping One-Way (\$)

\* Note: Multiply the monthly lease cost by the number of months the equipment will be leased. Add the cost of round-trip shipping from vendor to the project site and return.

5. What is the amount of TTP funds to be used for this purchase? \$\_\_\_\_\_

6. Enter the funding available for this construction equipment as shown on the current approved Tribal TIP: \$\_\_\_\_\_

7. Attach copies of vendors' quotes that show the costs entered in the above table. Vendors' quotes may be on copies of emails from vendors and/or letters on vendors' letterhead.

**Requestor:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
Name/Title

**FHWA Approved By:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
Name/Title

## Exhibit 12.1 – National Bridge Inventory Structure Inventory and Appraisal Sheet

Year:	State:	Structure:	Federal Agency:
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USE OF THIS DOCUMENT IS SUBJECT TO 23 USC SEC 409.

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

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



**Exhibit 12.2 – TTP Bridge Program Certification Checklist**

**TTP BRIDGE PROGRAM CERTIFICATION CHECKLIST –  
Infrastructure Investment and Jobs Act (IIJA)**

Project Name: \_\_\_\_\_ Project  
Number: \_\_\_\_\_ Structure No.  
(Item 8): \_\_\_\_\_  
ID Number: \_\_\_\_\_ BIA Region: \_\_\_\_\_  
Agency: \_\_\_\_\_  
Reservation: \_\_\_\_\_  
County: \_\_\_\_\_ State: \_\_\_\_\_ Project  
Location:

General Description of the Work:

Ownership: BIA (Yes/No): \_\_\_\_ If non-BIA owned, provide the following:

Name of Owner:

\_\_\_\_\_  
Point of Contact: Name and Phone Number

\_\_\_\_\_

Bridge Condition (Good/Fair/Poor):

\_\_\_\_\_

*Note: Attach NBI Data Information for bridge (<https://infobridge.fhwa.dot.gov/>)*

Type of Construction (Rehabilitation/Replacement/New Construction):

\_\_\_\_\_

Do School Buses use this bridge (Yes/No)? \_\_\_\_

Safety issues involved with this project?

Does the bridge project have Right-of-Way (Yes/No)?\_\_\_\_ If Yes, date obtained: \_\_\_\_\_

NEPA Compliance, Date: \_\_\_\_\_ PS&E Approval, Date: \_\_\_\_\_

Amount of Funding Request: \$ \_\_\_\_\_

Remarks:

*We certify that the bridge project information is accurate and complete.*

Tribal Transportation Director (sign & date): \_\_\_\_\_

Print Name: \_\_\_\_\_

## Exhibit 12.3 – TTP Bridge Program Application Checklist

### TTP Bridge Program Application Checklist

#### Infrastructure Investment and Jobs Act (IIJA)

##### I. General Information:

Project Name: \_\_\_\_\_

Structure No. (from certification checklist): \_\_\_\_\_

Project scope of work:

##### II. Eligibility requirements (please checkmark boxes):

- Meets eligible activities as identified in 23 CFR Part 661.15?

##### ***For bridge replacement or rehabilitation:***

- Must meet the definition of a TTF bridge
- Classified as a Tribal transportation facility
- Bridge in poor condition, have low load capacity, or need geometric improvements
- Bridge recorded in the NBI maintained by the FHWA

##### ***For new bridge construction:***

- Classified as a Tribal transportation facility
- Is a TTF bridge
- TTF bridge to be recorded in the NBI after project completion

**III. Required Attachments** (please checkmark boxes):

***Application for Preliminary Engineering (PE) funds:***

- TTF Bridge Program Certification checklist
- FHWA-approved TTIP with the bridge project identified
- Detailed cost for PE
- NBI data sheet (n/a for new bridge)

*For non-BIA/non-Tribal bridge:*

- Tribal resolution supporting the project

***Application for Construction (CN) funds:***

- Copy of approved Plans, Specifications, and Estimate (PS&E)
- TTF Bridge Program Certification checklist
- FHWA-Approved TTIP with the bridge project identified
- NBI data sheet (n/a for new bridge)
- Environmental and archaeological clearances
- Right of Way acquisition

*For non-BIA/non-Tribal bridge:*

- Letter from bridge owner approving the project and its PS&E
- Tribal resolution supporting the project