

Memorandum of Agreement



between the

FEDERAL HIGHWAY ADMINISTRATION (FHWA) and INDIAN AFFAIRS (IA)

**I. PURPOSE**

The purpose of this Memorandum of Agreement (MOA) is to formalize a commitment to deliver the Tribal Transportation Program (TTP) in a consistent and transparent manner between agencies, without regard to program delivery method, or Operating Agency, and to maximize the benefit of TTP funding to tribal transportation infrastructure. This MOA reflects the desire of both parties to engage tribes as partners and coordinate the administration, delivery, and stewardship and oversight of the TTP for enhanced program performance and risk mitigation.

Specifically, this MOA commits both Federal Highway Administration (FHWA) and Indian Affairs (IA) (Agencies) to the implementation of a National Business Strategy (NBS) that provides for: a more streamlined and consistent approach to program delivery,

stewardship, and oversight; the sharing of resources; the elimination of redundant activities and reflects a single voice in TTP information dissemination to Indian tribes in accordance with all applicable provisions of law and regulation.

This MOA reinforces the longstanding relationship between FHWA, IA, and Indian tribes by continuing to build a transparent, flexible, and collaborative relationship whereby logical, practical, and responsible actions and solutions can be undertaken as the TTP continues to evolve.

Finally, this MOA replaces the previous M OA and amendment between the FHWA and

BIA , dated May 24, 1983 and July 22, 1992 respectively, as well as the Indian Reservation

Roads (IRR) Program Stewardship and Oversight Plan signed in July, 1996.

**II. BACKGROUND**

The partnership between the Department of the Interior (DOI), Indian Affairs (IA) and the Department of Transportation (DOT), Federal Highway Administration (FHWA), was established in 1930. This 85-year relationship was formalized with an interagency agreement on May 18, 1948, with a MOA between the Office of Indian Affairs and the Public Roads Administration.

Though these agencies entered into various other agreements during the years that followed, efforts began in 1994 to establish an entirely new type of relationship. This culminated into a formal *Stewardship Plan* (Plan) between the FHWA and the Bureau of Indian Affairs (BIA) in July, 1996. The Plan detailed FHWA and BIA responsibilities for administering and operating the IRR Program, the precursor to the TTP. Additionally, it reinforced their existing federal relationship while also strengthening their commitment to Indian Tribal governments and organizations.

The NBS builds upon the federal government’s longstanding commitment, as described above, toward surface transportation-related matters in Indian Country. Furthermore, the NBS acknowledges the need to share resources and work together in the spirit of cooperation and the promotion of Tribal self-determination. Finally, the NBS identifies those critical elements necessary to the successful delivery of the TTP, as it anticipates the need for sustainability and growth well into the future.

**III. GOALS**

The FHWA and IA intend, to the extent set forth below, to coordinate their activities and programs to maximize opportunities, create flexibility in tribal decision-making, recognize the diversity and the unique relationships between tribes and the United States government, to provide Indians, Alaska Natives, the traveling public, visitors, recreational users, and others with safe and adequate transportation facilities to and within Indian reservations, lands, and communities, while also contributing to the economic development, Tribal self-determination, and employment of Indians and Alaska Natives.

**A. Stewardship and Oversight**

The FHWA and IA agree to the following definitions for Stewardship and Oversight respectively:

• efficient and effective management of program funds.

• TTP is jointly delivered through superior leadership, successful program management, top-quality project delivery, streamlined technology deployment, outstanding technical assistance, and enhanced professional development

• Joint activities to ensure program delivery in a manner consistent with all applicable laws, regulations and policies.

Both FHWA and IA recognize the importance of enhanced coordination and consistency in operations, particularly in the stewardship and oversight of FHWA and IA Tribal Transportation Program Agreements, Self-Determination contracts, and Self-Governance Compacts in which Tribes are responsible for the delivery of their TTP. Regardless of program delivery methods, IA and FHWA commit to performing stewardship and oversight responsibilities in accordance with 25 CFR 170, in a consistent and transparent manner, among agencies, and across BIA regions across all program areas. These program areas are: transportation planning; project development, review and approval; bridge; safety; contract procurement and administration; construction and construction engineering; maintenance; and financial management.

Descriptions, references, guidance, working relationships, and stewardship and oversight activities are identified in the *Operations Manual* that was developed by FHWA and IA and are in accordance with the list of program functions that cannot be subcontracted (IE: inherent federal responsibilities and activities) that are identified in Appendix A to Subpart E in 25 CFR 170. The *Operations Manual* will be reviewed annually, and updated as

necessary, and is incorporated into this MOA by reference in the Addenda.

**B. Communications and Technical Assistance**

FHWA and IA, in cooperation with the Tribal Technical Assistance Program (TTAP) Centers and with input from the TTP Coordinating Committee, have developed a *Communications Plan* to: strengthen the coordination and transparency between FHWA and IA so that tribes receive timely, clear, consistent and relevant communication about the TTP; improve the quality and consistency of the communications between TTP and tribes; better identify, understand, and address the communication needs of tribes; and make information on TTP easier to find and use. The *Communications Plan* will be updated annually to reflect the evolving nature of communications and technical assistance needs, and is incorporated into this MOA by reference.

FHWA and IA fully embrace the consultation and coordination provisions established by all Executive Orders pertaining to Indins, as well as the provisions of 25 CFR 170, 900 & 1000 that assure maximum Indian participation in the direction, planning, conduct and administration of transportation related programs in Indian communities. Contracts,

agreements and regulations shall be liberally construed for the benefit of the tribes and tribal organizations effectuate self-determination and to transfer the funding and the related functions, services, activities, and programs.

**IV. AGENCY MISSIONS A. Indian Affairs**

To serve Indian country communities by protecting life, safety and property; promoting and maintaining order; preventing crime; and enforcing the law.

**B. Federal Highway Administration**

To improve mobility on our Nation’s highways through national leadership, innovation, and program delivery.

**V. AUTHORITIES**

The TTP is carried out under the authority of 23 USC 201 and 202, and in accordance with

25 CFR 170.

**VI. ROLES AND RESPONSIBILITIES**

The FHWA and IA commit to jointly perform the federal roles and responsibilities associated with the TTP and NBS as contained in 25 CFR 170 or as described in this MOA.

The FHWA and IA will coordinate all official responses to TTP inquiries including those addressed to their respective departments, Indian tribes, Congress, and other federal or local agencies.

The FHWA and IA will work collaboratively on policy development and program updates to this MOA, the NBS, any documents incorporated by reference, and any other components that may affect TTP delivery, communications, stewardship or oversight.

Additionally, FHWA and IA will work collaboratively with the TTP Coordinating Committee (TTPCC), as established in 25 CFR 170. This committee provides input and recommendations to IA and FHWA on TTP regulations, policies, and procedures.

**A. Financial Management and Internal Control**

The FHWA and IA agree to establish and maintain joint internal control processes to achieve the objectives of effective and efficient operations, reliable financial reporting, and compliance with applicable laws and regulations. The TTP agrees to consistently apply the

internal control standards to meet each of the internal control objectives and to assess internal control effectiveness consistent with 2 CFR 200.

The FHWA and IA commit to taking systematic and proactive measures to (i) develop and implement appropriate, cost-effective internal control for results-oriented management; (ii) assess the adequacy of internal control in the TTP and its operations; (iii) separately assess and document internal control over financial reporting (iv) identify needed improvements; (v) take corresponding corrective action; and (vi) report annually on internal control

through management assurance statements.

In order for the FHWA to meet its oversight responsibilities over TTP funds, FHWA and BIA agree to develop a joint reporting mechanism where each entity can provide the following reports, at a minimum, associated with the tribes they work directly with, and the administrative TTP funds allocated to their respective offices:

• Provide monthly obligation and expenditure status reports for each tribe

• Provide monthly obligation and expenditure status reports for all administrative funds

• Provide quarterly SF-133, Report on Budget Execution, reflecting specific financial and budget data for each different type of allocation and overall summary by Treasury symbol, annual TSF-2108, Year-End Closing statement

• Final Construction Reports for recently completed bridge projects funded under the

TTP Bridge Program.

**B. Inventory**

FHWA and IA will work closely with all tribes to maintain the National Tribal Transportation Facility Inventory (NTTFI) as defined in 23 USC 202(b)(1), and 25 CFR 170. Standard Operating Procedures (SOPs) and Guidance Manuals will be developed and provided to all practitioners. FHWA and IA will conduct outreach and education in accordance with the NBS Communications Plan.

**C. Bridge Inspection**

1. IA will;

a. Ensure that in-service safety inspections are performed on all TTP bridges every two years.

b. Conduct quality assurance (QA) of IA and Tribal bridge inspections, reviewing and monitoring the data collection, inspection activity, and maintaining schedule of bridge inspections.

c. Approve bridge inspection reports. Review and approval of reports should be

within 90 days after completion of the field inspections.

d. Submit annually the bridge data to the FHWA for updates in the FHWA’s

National Bridge Inventory (NBI) by April 1.

2. FHWA will;

a. Conduct 2nd level review of the updated IA and Tribal bridge data and notify IA

for any error in the data for correction.

b. Record the revised bridge data in the FHWA’s NBI.

c. Notify IA once the bridge data is recorded in the FHWA’s NBI.

**VII. LIMITATIONS**

Each Party shall engage in any activity under this MOA only to the extent it is within its authorities, and subject to the availability of funds and resources, such as would not impact the other mission responsibilities of the Agency.

Each party agrees that this agreement is not intended to be followed so rigidly as to prevent logical, practical, and responsible actions or ideas by the FHWA or IA, but rather to focus on performing program delivery in a consistent manner and to engage tribes as partners in the process.

**VIII. POINTS OF CONTACT**

The following individuals are designated points of contact for this MOA: FHWA Office of Federal Lands, Tribal Transportation Program Director

BIA Chief, Division of Transportation, Tribal Transportation Program

**IX. COMMENCEMENT, DURATION, MODIFICATION, AND TERMINATION**

This MOA is to take effect on the date of signature by the parties and remain in effect until such time it is amended or cancelled by consent of both parties. This MOA may be

amended at any time by the written consent of both parties. It may be terminated by either of the parties by giving a sixty (60) day written notice in advance of the termination to the other party.

In the event that amendment or termination is being considered, Indian tribes will be notified that a written amendment or termination notice has been issued.

**X. MOA IMPLEMENTATION**

Each agency resolves commitment to the NBS, both in concept and in its plans and documents incorporated by reference. In accordance with the Communications Plan referenced in this Plan, FHWA and IA will inform TTP employees and constituents through newsletters, Internet sites, orientation programs, and other communications methods and tools in the spirit of true partnership and Tribal self-determination.

[signatures]

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