

**UNITED STATES  
DEPARTMENT OF THE INTERIOR  
and  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.  
AGREEMENT  
BETWEEN  
the BUREAU OF INDIAN AFFAIRS  
and  
the FEDERAL HIGHWAY ADMINISTRATION**

1. The agreement as set forth below between the Bureau of Indian Affairs, Department of the Interior, and the Federal Highway Administration, Department of Transportation, is published as a matter of public record and shall be effective on the date of the approving signatures.
2. This agreement supersedes the previous agreements between the Bureau of Indian Affairs, Department of the Interior, and the Federal Highway Administration, Department of Transportation, dated July 30, 1974, and July 11, 1979, as amended. Indian reservation road projects which have FHWA plans, specifications, and estimates (PS&E) approval and will be advanced to construction in FY 1983 under previous agreements shall be completed in accordance with those agreements and procedures.

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**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE BUREAU OF INDIAN AFFAIRS  
AND  
THE FEDERAL HIGHWAY ADMINISTRATION  
RELATING TO INDIAN RESERVATION ROADS**

Whereas, the Department of the Interior, acting through the Bureau of Indian Affairs (BIA), in fulfillment of its statutory responsibilities under the Snyder Act of November 2, 1921 (25 U.S.C. 13), the Buy Indian Act (25 U. S. C. 47), and the Indian Self Determination Act (P.L. 93-638), must engage in a continuing program of planning, programming, construction, reconstruction, and improvement of roads, including bridges, tunnels, and appurtenances; and

Whereas, the Federal Lands Highways Program as established within the Surface Transportation Assistance Act of 1982 and more specifically defined in Section 126; and 23 U.S.C. 202 shall be the basis for the funding of work involved with the planning, engineering, and construction of new routes and improvements on existing Indian reservation roads and correction of identified safety hazards; and sums authorized to be appropriated shall be allocated for Indian reservation roads according to the relative needs of the various reservations; and

Whereas, 23 U.S.C. 204 (f) as amended, provides that appropriations for the construction and improvement of Indian reservation roads shall be administered in conformity with regulations jointly approved by the Secretary of Transportation and the Secretary of the Interior; and also, in order to carry out this Federal Lands Highways Program, the BIA and the Federal Highway Administration (FHWA) shall jointly develop highway design, construction, maintenance, and safety standards in accordance with 23 U.S.C. 402 (23 CFR 1230);

Now, therefore the BIA and FHWA do hereby mutually agree as follows:

**I. GENERAL**

It is mutually recognized that:

- A. The BIA is responsible for the implementation of the Federal Government's trust responsibilities to the lands of the Indian people, and is vitally interested in the development of a public road system which will provide transportation facilities and provide access for use and development of Indian lands.

- B. The BIA shall carry out a transportation planning process for Indian reservation roads, deemed to be adequate to support the construction and improvement program similar to 23 U.S.C. 307, and 25 U.S.C.
- C. The BIA shall develop and submit to FHWA a priority program of projects for approval and allocations of sums authorized. Program and policy review conferences will be scheduled as mutually agreed between BIA and FHWA.
- D. The FHWA and BIA shall jointly determine respective responsibility for execution of the approved program. The FHWA shall ensure that the performance of such work shall be in conformance with similar established policies of, and pursuant to, 23 U.S.C.
- E. To the fullest extent possible and in the interest of avoiding any duplication of services and costs, and unless otherwise provided, it is understood and agreed that at the request of BIA, FHWA shall be available to perform planning assistance, research, engineering studies, traffic engineering services, project development, and construction contract administration. The FHWA shall ensure that the performance of such work shall be in conformance with similar established policies of 23 U.S.C. The BIA shall be responsible for transportation planning.
- F. The FHWA and BIA will cooperate to implement the provisions of law providing for Indian preference in employment, minority business set aside, preferential Indian subcontracting, and training and assistance to minority contractors.
- G. The BIA, upon request, shall furnish highway statistic data on capital outlay and maintenance expenditures to FHWA for the annual "Highway Statistics" publication.

## II. ROLES AND RESPONSIBILITY

- A. Based upon the approved program of projects, BIA and FHWA will jointly agree on a division of program responsibility and will provide the supervision for carrying out the project execution as herein defined.
- B. For those activities and projects which FHWA will be carrying out the following applies:
  - 1. Project agreements will be executed between FHWA and BIA covering specifics not herein described.
  - 2. The FHWA shall conduct planning and engineering studies, inventories, investigations, reconnaissance surveys, or other studies undertaken with the participation of the BIA and shall submit same to the BIA for review and concurrence.
  - 3. The FHWA shall undertake the preparation of plans, specifications, and detailed cost estimates, which shall be submitted to the BIA Area Director for review and concurrence. Environmental documents shall be prepared and approved in accordance with the National Environmental Policy Act (NEPA) by FHWA. As determined appropriate, on a project-by-project basis, the NEPA document will also be subject to the concurrence and/or approval of BIA. The notification and public involvement process will be in accordance with 23 U.S.C., 25 U.S.C., and the appropriate Executive Order as jointly agreed to in the project agreement.
  - 4. Concurrences furnished to the FHWA for PS&E will be in writing from the BIA Area Director.
  - 5. The FHWA will advertise, award, and administer the contract for the construction of the project in conformance with the approved plans and specifications.
  - 6. Any changes of the contract plans or specifications shall have the concurrence of the BIA Area Director before they are adopted by FHWA. Changes affecting program priorities will be approved by FHWA/BIA Headquarters.
  - 7. The FHWA shall furnish project status reports to the BIA as required and afford the BIA the opportunity to participate in project inspections, including final inspection. The BIA shall furnish written recommendations to FHWA for project acceptance prior to FHWA's acceptance and final payment to the contractor.
  - 8. Upon completion and acceptance of each contract, FHWA shall furnish to the BIA a final construction report and as-constructed plans.
  - 9. The FHWA shall be responsible for all payments to contractors and for any services of a State or civil subdivision thereof which are completed under the responsibility of FHWA.
- C. For those activities and projects which BIA will be carrying out, the following applies. The BIA shall:
  - 1. perform required planning, environmental, public notification, engineering, and architectural services needed for each project in accordance with established regulations and responsibilities;
  - 2. advertise, award, and administer the contracts in conformance with the approved plans and specifications; and

3. be responsible for all payments to contractors and for any services of a State or civil subdivision thereof which are undertaken for the BIA.

#### D. Funding and Reporting

1. Obligational (contract) authority shall be transferred to BIA for projects which BIA shall have program responsibility by allocation letter from FHWA. Liquidating cash will be transferred to BIA to meet current expenditure needs. Request for cash should be in writing and addressed to the Chief, Finance Division, FHWA.
2. For the Federal Lands Highways Program, on projects which the BIA undertakes, the BIA shall furnish the following reports and data as indicated: (a) monthly SF-133, Report on Budget Execution, reflecting specific financial and budget data for each different type of allocation and overall summary by Treasury symbol; (b) annual TFS-2108, Year-End Closing Statement; (c) monthly report on total cumulative obligations and expenditures for each project; (d) annual obligations and expenditures for each project including planning and research, engineering and special studies, preparation of PS&E, construction contract administration and inspection costs, contract payments, and any direct or indirect overhead charges; and (e) other reports as may be required.
3. For all non-Federal Lands Highways Program projects funded directly through Department of the Interior, BIA appropriations, and for which FHWA has been assigned responsibility, obligation authority and liquidating cash shall be transferred to FHWA. Transfers shall be accomplished by SF-1151.
4. The FHWA shall furnish reports for the portion of BIA funded projects undertaken by FHWA including: (a) monthly SF-133, Report on Budget Execution, reflecting specific financial and budget data for each different type of allocation and overall summary by Treasury symbol; (b) annual TFS-2108, Year-End Closing Statement; (c) monthly report on total cumulative obligations and expenditures for each project; (d) annual obligations and expenditures for each project including research and planning, engineering and special studies, preparation of PS&E, construction contract administration and inspection costs, contract payments, and any direct or indirect overhead charges; and (e) other reports as may be required.

#### E. General responsibilities are as follows:

1. The BIA and FHWA shall exchange information on any contract claims or litigation arising out of, or in connection with, a project. When the BIA is the Contracting Officer, the Department of the Interior Board of Contract Appeals shall have jurisdiction. When the FHWA is the Contracting Officer, the Department of Transportation Contract Appeals Board shall have jurisdiction.
2. All requests for FHWA technical assistance on projects being developed by BIA shall be in writing.
3. The design and construction of highway projects will be in accord with the applicable provisions of 23 U.S.C. and the latest edition of the Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects. Design and construction of low-volume roads (estimated 20-year average daily traffic under 400) shall be in accordance with good engineering practices or with standards to be adopted.
4. The BIA will request PS&E approval from the FHWA with such certification that the plans comply with 23 U.S.C. and other applicable Federal regulations. The FHWA shall approve the project for advancement to construction. These approval requirements may be modified by agreement with an alternative approval and acceptance process.
5. The BIA will keep the FHWA advised of the status of the ongoing projects. The FHWA may participate in the intermediate inspections and shall make a final inspection.
6. The right-of-way, railroad agreements, and utility adjustment matters will be the responsibility of BIA, unless otherwise agreed to with respect to the particular project.
7. The BIA will develop, adopt, and enforce road maintenance and safety standards as required in 23 U.S.C. 116, 204(a), and 402.
8. A program and policy review conference will be conducted as necessary. Information for such conferences will include the following:
  - a. The BIA will provide:
    - (1) a list of projects with supporting data that will best meet its transportation needs for the short- and long-range objectives;
    - (2) status reports on transportation planning activities including State and local land and resource management planning for Indian land development which affect an existing or proposed road;

and

(3) identification of funding needs for special studies, research, surveys, and design.

b. The FHWA will provide:

(1) the latest information on available financing and its effects on the proposed program;

(2) the status of existing projects and agreements and any supporting information that may be required in analysis and review of future projects; and

(3) recommendations as to possible alternatives and changes that should be considered as a result of a review and analysis of data provided by BIA.

9. Following the program and policy review conference and upon written request from the BIA, the FHWA will approve the program of projects or changes thereto and allocate the funds authorized. Program changes and modifications as proposed by BIA shall be submitted to FHWA for reprogram approval.

10. The FHWA shall be responsible for presenting budget and program information to the Congress as required. The BIA and FHWA will cooperate in collecting information and preparing reports as may be required.

### III. SUMMARY

- A. The FHWA and BIA personnel are encouraged to consult with each other during construction and to agree on such matters as fall within their scope of responsibility. Matters which require consideration at a higher level should be referred to the appropriate authority in each agency.
- B. This agreement is not intended to fix the procedure to be followed so rigidly as to prevent logical, practical, and responsible actions by the FHWA or BIA; but rather to fix a general and uniform procedure for most projects and situations.
- C. This agreement shall become effective on the date of the approving signatures. Termination of this agreement or renegotiation of any part shall be by the mutual concurrence of both parties.

Approved:

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[Original signed by:]  
Assistant Secretary - Indian Affairs  
U.S. Department of the Interior

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[Original signed by:]  
  
Federal Highway Administrator  
U.S. Department of Transportation

Dated: May 24,  
1983

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### Amendment No. 1

## "REPLACEMENT AND REHABILITATION OF BRIDGES ON INDIAN RESERVATION ROADS"

**Amending:**

**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**THE BUREAU OF INDIAN AFFAIRS**

**AND**

**THE FEDERAL HIGHWAY ADMINISTRATION**

**RELATING TO INDIAN RESERVATION ROADS**

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**Whereas**, a Memorandum of Agreement was approved on May 24, 1983, named as shown above, containing mutually agreeable roles and responsibilities for the Bureau of Indian Affairs (BIA) and the Federal Highway Administration (FHWA) that are applicable to bridge as well as road projects on Indian reservation roads; and

**Whereas**, Amendment No. 1 amends the May 24, 1983, Memorandum of Agreement for administering the Indian Reservation Road Program to include procedures for replacement and rehabilitation of bridges in accordance with Title 23, United States Code, Section 144 (c) and (g); and

**Whereas**, the BIA acts for the Secretary of the Interior in fulfillment of its statutory responsibilities related to Indian affairs; and

**Whereas**, the FHWA acts for the Secretary of Transportation in matters related to Title 23, United States Code, (U.S.C.) Section 144, the Highway Bridge Replacement and Rehabilitation Program (HBRRP); and

**Whereas**, Section 1028 of the Intermodal Surface Transportation Efficiency Act of 1991, (ISTEA) Pub. L. 102-240, 105 Stat. 1914 (1991) amends the HBRRP; and

**Whereas**, Section 1028(a) of the ISTEA amends 23 U.S.C. 144 (c) to require the (a) inventorying of all those highway bridges on Indian reservation roads which are bridges over waterways, other topographical barriers, other highways, and railroads, (b) classifying them according to serviceability, Safety, and essentiality for public use, (c) based on the classification, assigning each a priority for replacement or rehabilitation, and (d) determining the cost of replacing each such bridge with a comparable facility or of rehabilitating such bridge; and

Whereas, Section 1028 (f) of the 1991 ISTEA amends 23 U.S.C. 144 (g) and requires not less than 1 percent of bridge program funds apportioned to each State be expended for projects to replace, rehabilitate, paint or apply calcium magnesium acetate to eligible highway bridges on Indian reservation roads, and requires the Secretary of Transportation to transfer the 1 percent funds to the Secretary of the Interior for these projects; and

**Whereas**, Section 1028 (f) of the 1991 ISTEA further amends 23 U.S.C. 144 (g) and provides that the Secretary of Transportation, after consultation with State and Indian tribal government officials and with the concurrence of the Secretary of the Interior, may, with respect to such State, reduce the requirement for expenditure for bridges under this paragraph when the Secretary of Transportation determines that there are inadequate needs to justify such expenditure; and

**Whereas**, the transferred funds are for eligible Indian reservation roads bridge projects within the State from which the funds were set aside, and may not be used or transferred for use outside that State; and

**Whereas**, the eligible Indian reservation roads bridges may be BIA owned or non-BIA owned bridges on roads designated as Indian reservation roads; and

**Whereas**, if there are inadequate bridge needs on Indian reservation roads in the State to justify a 1 percent transfer pursuant to 23 U.S.C. 144(g), any unneeded funds will be returned to the respective State; Now, therefore, the BIA and the FHWA do hereby mutually agree as follows:

**I. GENERAL**

It is mutually recognized that:

1. The referenced May 24, 1983, Memorandum of Agreement is the "parent" document modified herein.
2. The FHWA will manage the National Bridge Inventory (NBI), and monitor the selection list of eligible projects (reference 23 CFR 650.409(b))
3. The BIA will inspect and load rate their bridges and send the data to the States for inclusion in the NBI.
4. The State highway agencies will identify the bridges (deficient and non-deficient) on Indian reservation roads that are non-BIA owned, and will forward candidate deficient bridge projects, in priority order, to the BIA.
5. The FHWA and the BIA will jointly cooperate in obtaining information, concurrences and agreements with respect to the provision permitting the Secretary of Transportation to reduce the 1 percent minimum set aside in transferable funds because of inadequate needs for bridges on Indian reservation roads within a State.
6. The BIA may initiate a request for an increase in the percentage of a State's bridge program funds to be transferred to the Secretary of the Interior. An increase will require the agreement of the Secretary of Transportation, the respective State, the Indian tribal government and the Secretary of the Interior.

## **II. ROLES AND RESPONSIBILITIES**

### **A. The FHWA will carry out the following activities:**

1. The FHWA will monitor the NBI to ensure that BIA bridges are included in the State bridge inventories.
2. The FHWA will annually identify the amount of the apportioned bridge program funds to be set aside from the States in which Indian reservations are located that are to be transferred to the Secretary of the Interior for bridges on Indian reservation roads.
3. The Federal Lands Highway Office (FLHO) of the FHWA will transfer the minimum 1 percent funds to the BIA as soon as practical after the beginning of each fiscal year for the BIA's use in funding and administering the bridge projects selected under this program. This transfer will include the obligation limitation related to the minimum 1 percent transferred funds.
4. The FLHO will monitor the funding and the related obligation limitation by fiscal year, based on information provided by the BIA.
5. The FLHO will monitor the obligation limitation associated with the transferred funds, and, in cooperation with the BIA, make adjustments as needed to meet changing project schedules.
6. The FHWA will annually issue instructions for States to submit candidate non-BIA bridge projects on Indian reservation roads, and for which the States request a portion of the minimum 1 percent set aside funds. The candidate projects may be State or locally owned bridges.
7. The FHWA will, upon the request of the BIA, provide technical assistance to the BIA.
8. Upon request by the BIA to act in their behalf on BIA administered, non-State managed projects, the FHWA will perform final project inspections of bridge projects funded under this program.
9. The FHWA will keep adequate records of its activities in this program and report on the program status as may be required or requested. The FHWA will provide a copy of any such reports and briefings to the BIA.

### **B. The BIA will carry out the following activities:**

1. The BIA will accumulate and commingle the BIA candidate deficient bridge projects along with those submitted and prioritized by the States.
2. The BIA will make the selection of the projects to be funded reflecting an equitable distribution of funds to BIA and non-BIA bridge projects.
3. At the time of project selection, the BIA will provide the FLHO with a list of the selected projects showing the project identification and required Federal funds. The BIA will provide revised information as revisions occur.
4. The BIA will maintain adequate records of its activities under this program. The BIA will provide information to the FHWA related to this program to assist in the preparation of reports and briefings as may be required or requested.
5. For the selected BIA owned bridges, the BIA will be responsible for the following project activities:
  - a. Assuring that Federal laws and requirements are met during the preliminary engineering, right-of-way and construction phases of work;

- b. Advertising, awarding and administering the contracts;
  - c. Making all payments to contractors and to a State or civil subdivision for any services which are undertaken for the BIA.
6. For the selected bridges other than those owned by the BIA, the BIA will enter into cooperative agreements with States and/or local governments for accomplishing project activities.
7. The FHWA will cooperate with the BIA to assure that Indian reservation road bridges on the National Highway System (NHS) conform to the FHWA approved American Association of State Highway and Transportation Officials standards. Those projects not on the NHS shall be designed, constructed, operated and maintained in accordance with State laws, regulations, directives, safety standards, design standards, and construction standards.
8. Using the transferred funds, the BIA will be responsible for the Federal share of project costs expended by the State and local governments for work accomplished. The BIA will provide the status of funds used and obligation limitation to the FHWA on a monthly basis.

### III. SUMMARY

- A. The FHWA and the BIA agree to cooperate to the fullest extent to carry out and successfully accomplish the program to replace and rehabilitate deficient bridges on Indian reservation roads.
- B. Each agency is encouraged to find ways to improve the administration of this program, and to make mutually agreeable changes to this amendment to reflect those improvements.
- C. This amendment shall become effective on the date of the approving signature.
- D. Termination of this amendment or renegotiation of any of its parts shall be by the mutual concurrence of both parties.

Approved:

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[Original signed by:]

Dated: July 22,  
1992

Federal Highway Administrator  
U.S. Department of Transportation

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[Original signed by:]

Dated: August 07,  
1992

Assistant Secretary, Indian Affairs  
U.S. Department of Interior

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