

**INTERGOVERNMENTAL FUND
TRANSFER AGREEMENT
AMONG THE
[INSERT NAME OF STATE] STATE DEPARTMENT OF TRANSPORTATION
AND THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
AND THE
[INSERT NAME OF TRIBE]**

This Intergovernmental Fund Transfer Agreement (“Agreement”) is entered into by and among the [INSERT NAME OF STATE] State Department of Transportation (“State”), the United States of America, Department of Transportation, Federal Highway Administration – Office of Federal Lands Highway (“FHWA”), and the [INSERT NAME OF TRIBE] (“Tribe”), a federally recognized Indian Tribe.

WHEREAS, the Tribe, in cooperation with the State, are proposing improvements to INSERT NAME OF TRANSPORTATION FACILITY – HERE’S AN EXAMPLE: Marine Drive, a major arterial within the boundaries of the Tulalip Reservation; and

WHEREAS, INSERT OVERVIEW OF THE PROJECT, INCLUDING SOME DETAILS – HERE’S AN EXAMPLE: the Marine Drive Pedestrian Pathway (“Project”) provides for a pedestrian and bicycle facilities along the Marine Drive corridor. Currently, Marine Drive has sidewalks and bicycle lanes from I-5 to 7th Drive NW, providing approximately 3.1 miles of pedestrian facilities. The Project will add a multi-use trail, connecting 7th Drive NW to 36th Avenue NW. Once constructed, the Project will provide approximately 2.4 miles of illuminated, multi-use trail for users and enhanced storm water management facilities. This Project includes design elements that provide pedestrian facilities that meet federal accessibility guidelines, establish new storm water management facilities, and adds new pedestrian illumination. These improvements are integrated with and are empowered by the Tribe’s Long Range Transportation Plan. The Project will be constructed in accordance with the approved plans and specifications; and

WHEREAS, the Project will be carried out on a transportation facility that is listed on the National Tribal Transportation Facility Inventory (“NTTFI”); and

WHEREAS, in accordance with 23 U.S.C. §§ 104 (f)(3)(A) and 202 (a)(9), the State desires to transfer to the Tribe, via FHWA, contract and obligation authority in the sum of \$INSERT (“Funds”) so the Tribe may carry out the Project in accordance with Addendum A; and

WHEREAS, details of the Project are fully described in Addendum A to this Agreement; and

WHEREAS, under the Fixing America’s Surface Transportation Act (“FAST Act”), P.L. 114-94 (December 4, 2015), the Congress of the United States appropriated Federal-aid funds to be apportioned or allocated to the State for use on State and local agency priorities throughout the State; and

WHEREAS, Section 1118 of the FAST Act, reauthorized the Tribal Transportation Program (TTP) under 23 U.S.C. § 202, which distributes on a tribal shares basis funds for eligible planning and construction activities on transportation facilities that are located within, or provide access to, tribal lands; and

WHEREAS, FHWA and the United States Department of the Interior, Bureau of Indian Affairs (“BIA”) jointly administer the TTP pursuant to a Memorandum of Agreement between the BIA and FHWA; and

WHEREAS, the State and FHWA wish to support the Tribe’s involvement in the improvement of road safety, planning and construction of infrastructure to facilitate and support economic development and other activities that are within, or provide access to, the Tribe’s lands consistent with the purposes of the TTP; and

WHEREAS, the Project will be administered in accordance with all applicable Federal requirements including, but not limited to, the National Environmental Policy Act (NEPA) and the regulations governing the TTP at 25 C.F.R. Part 170; and

WHEREAS, 23 U.S.C. § 202 (a)(9) – Cooperation, provides that the cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement, and that any funds received from a State, county, or local subdivision shall be credited to appropriations available for the TTP; and

WHEREAS, the State and the Tribe have requested that FHWA accept the Funds from the State and transfer the Funds to the Tribe, that FHWA accept all stewardship and oversight responsibility involving the use of the Funds by the Tribe, and the Parties agree that any Federal-aid match requirements have been met.

NOW THEREFORE, the Parties agree as follows –

A. Project Identification and Source of Funding

1. As described in Addendum A, the Tribe and State have identified the need and agreed upon a plan to carry out the Project.
2. The State has agreed that the Project will be carried out by the Tribe under the terms of Addendum A.
3. As described above, Congress has appropriated the Funds to carry out the Project and the Funds were made available to the State.
4. The Funds are not part of any appropriations made available by the Congress for obligation by FHWA or the BIA for the TTP.

B. Authority for this Agreement

1. The authority for this Agreement is 23 U.S.C. §§ 104 (f)(3)(A) and 202 (a)(9).
2. This Agreement shall not constitute a contract, compact, annual funding agreement, or other agreement under the Indian Self Determination and Education Assistance Act (ISDEAA), P.L. 93-638, as amended, and no provisions of the ISDEAA are specifically adopted, incorporated by reference, or otherwise included in this Agreement.

C. State Responsibility

1. Pursuant to 23 U.S.C. § 104 (f)(3)(A), the State shall request that the FHWA Division Office transfer the Funds to the FHWA – Federal Lands Highway Headquarters in furtherance of implementation of 23 U.S.C. § 202 (a)(9)(B).
2. The State shall provide certain services or activities for the Project, if any, as described in Addendum A.
3. The State shall be relieved of all stewardship and oversight obligations involving the Funds upon transfer of the Funds to FHWA.

D. FHWA Responsibilities

1. FHWA shall accept the Funds from the State and upon receipt of the Funds FHWA shall become responsible for all stewardship and oversight obligations involving use of the Funds by the Tribe in accordance with Addendum A, the terms of which are incorporated by reference and fully made part of this Agreement.
2. Subject to the requirements described in Paragraph E.1, below, FHWA shall transfer the Funds to the Tribe.
3. FHWA shall continue carrying out program management and oversight of the Project in accordance with the TTP, its regulations at 25 C.F.R. Part 170 and any applicable Federal law, but this Agreement shall not bind FHWA or BIA to providing funds from other sources for designing, constructing, managing or supervising the Project.

E. INSERT NAME OF TRIBE's Responsibilities

1. The Tribe shall establish a separate bank account to receive the Funds from FHWA and transmit the bank, name, address, routing, and account numbers to FHWA within ten business days of full execution of this Agreement.
2. In accordance with Addendum A, the Tribe will undertake and perform only those eligible activities associated with the Project that are allowed under Title 23 of the United States Code and any applicable regulations at Parts 23 or 25 of the Code of Federal Regulations.
3. In the event that the Tribe does not carry out the Project or the total amount of Funds transferred pursuant to this Agreement are not expended, the Tribe agrees to return the remaining Funds to the State upon written demand of the State and agreement by the Tribe, whose agreement shall not be unreasonably withheld.
4. The Tribe shall invite State representatives to participate in the final inspection of the Project, as well as any other activities as provided under Addendum A.

F. Transfer of Funds from FHWA to the INSERT NAME OF TRIBE

FHWA shall notify the Tribe when the Funds are received from the State. If the Tribe has not already done so, the Tribe shall provide FHWA with its bank information described in Paragraph E.1, above. FHWA shall then transfer the Funds to the Tribe within ten business days of receipt of the Funds from the State or the Tribe's banking information, whichever FHWA receives last.

G. General Provisions

1. FHWA shall not act as a surety or guarantor of any Tribal or State private, commercial, or governmental financing instrument obtained for the planning, design or construction of the Project.
2. FHWA shall not be liable under any theory of law or equity to transfer to the Tribe under this Agreement any funds other than the Funds that are the subject of this Agreement.
3. Should any portion or provision of this Agreement be held invalid, the remaining portions or provisions shall continue in full force and effect.
4. This Agreement is binding upon the signatories hereto not as individuals but solely in their capacities as officials of their respective governments and each acknowledges that he or she is authorized to execute this Agreement on behalf of their respective government.
5. This Agreement contains all of the terms and conditions governing the transfer of Funds from the State to FHWA and on to the Tribe. No other terms or conditions apply. Any amendment or modification of the Agreement must be made in writing and signed by the authorized representative of the Tribe, the State, and FHWA.

6. Nothing in this Agreement shall be construed as a waiver of the Tribe's sovereign immunity regarding the activities undertaken by the Tribe as described generally herein or in Addendum A, including any contracts, grants or subcontracts entered into between the Tribe and third parties necessary for the Project. The Tribe does not, by entering into this Agreement, consent to the jurisdiction of a State court to hear any claims or disputes arising under this Agreement, whether arising as claims against the Tribe itself, its wholly owned entities, or any employee of the Tribe performing work hereunder. No Tribe employee shall be subject to the jurisdiction of the State's courts as a result of having performed work associated with the Project.
7. Nothing in this Agreement shall be construed as a waiver of the State's sovereign immunity or of any limitation of liability afforded to the State by its laws. The State does not, by entering into this Agreement, consent to the jurisdiction of a tribal court to hear any claims or disputes arising under this Agreement, whether arising as claims against the State itself or against any employee of the State performing work hereunder. No State employee shall be subject to the jurisdiction of the Tribe's court as a result of having performed design, inspection, or other work associated with the Project.

H. Authorized Representatives. Each authorized representative below will have the responsibility to administer and, unless otherwise noted, serve as the main point of contact for the Project described in this Agreement and Addendum A.

For FHWA:

[insert name and contact info of the FHWA Tribal Coordinator:]

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 _____

ADDENDUM A
to the
INTERGOVERNMENTAL FUND
TRANSFER AGREEMENT
among the
[INSERT NAME OF STATE] STATE DEPARTMENT OF TRANSPORTATION
and the
UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
and the
[INSERT NAME OF TRIBE]

PROJECT: [INSERT SHORT TITLE]

FUND AMOUNT: \$

TRIBAL MATCHING FUNDS: \$

TOTAL: \$

SOURCE OF FUNDING: [INSERT NAME OF FUNDING SOURCE]

INTRODUCTION

The [INSERT NAME OF TRIBE] (“Tribe”) has elected to enter into an Intergovernmental Fund Transfer Agreement (“Agreement”) with the [INSERT NAME OF STATE] State Department of Transportation (“State”) and the United States Department of Transportation, Federal Highway Administration, Office of Federal Lands Highway (“FHWA”) in order to transfer funding through the Agreement pursuant to 23 U.S.C. § 202 (a)(9) for a [INSERT SHORT TITLE OF PROJECT] project. This statute permits the transfer of the State’s contract and obligation authority (“Funds”) for the project to the Tribe through FHWA. Upon receipt of the Funds from the State, FHWA shall be responsible for all stewardship and oversight responsibility associated with the Funds.

PROJECT

[INSERT OVERVIEW OF PROJECT INCLUDING SOME DETAILS – COPYING AND PASTING FROM THE SECOND “WHEREAS” CLAUSE IN THE IGFTA SHOULD BE ACCEPTABLE – HERE’S AN EXAMPLE FROM TULALIP’S 202 (a)(9)] he Marine Drive Pedestrian Pathway (“Project”) provides for a pedestrian and bicycle facilities along the Marine Drive corridor. Currently, Marine Drive has sidewalks and bicycle lanes from I-5 to 7th Drive NW, providing approximately 3.1 miles of pedestrian facilities. The Project will add a multi-use trail, connecting 7th Drive NW to 36th Avenue NW. Once constructed, the Project will provide approximately 2.4 miles of illuminated, multi-use trail for users and enhanced storm water management facilities. This Project includes design elements that provide pedestrian facilities that meet federal accessibility guidelines, establish new storm water management facilities, and adds new pedestrian illumination. These improvements are integrated with and are empowered by the Tribe’s Long Range Transportation Plan.

SCOPE OF AGREEMENT

The parties agree to cooperate to ensure the implementation of the Project as follows

1. The State agrees to:
 - a. Transfer the Funds to FHWA's [INSERT NAME OF STATE] 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:

[insert name and contact info of the FHWA Tribal Coordinator:]

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