

## PUBLIC ASSISTANCE ADMINISTRATIVE PLAN

### I. PURPOSE

In accordance with the emphasis of Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq. (Stafford Act), and the emphasis of 44 CFR part 13 (Uniform Requirements for Grants and cooperative Agreements to State and Local Governments), the Tribe's role in the management and administration of the Public Assistance Program will be both proactive and aggressive.

The purpose of this plan is to establish the Tribe's organizational structures, staffing patterns, management philosophies, and the administrative procedures for administering the Public Assistance Program, once activated by the declaration of an emergency or a major disaster by the President.

### II. AUTHORITIES

#### A. Federal:

1. 42 U.S.C. § 5121, et seq.
2. FEMA Regulations, 44 CFR parts 9, 10, 11, 13, 14, 206, and 207.
3. Public Law 91-190, as amended and Executive Order 11991 National Environmental Policy Act of 1969.
4. Executive Order 11988, Floodplain Management and Protection of Wetlands.
5. Executive Order 12612, Federalism.

#### B. Definitions:

1. Alternate Project means when the Tribe determines it not to be in the public interest to repair a damaged facility, funds may be used to repair or expand other Tribal facilities, construct new facilities, or fund hazard mitigation measures. Federal funding will be limited to 75% of the Federal share of the approved estimate of eligible costs or 90% for publicly owned facilities on unstable soil.
2. Application Period means the thirty (30)-day period following designation of the area in which the damage is located during which the Tribe's Authorized Representative (TAR) submits a completed Request for Public Assistance (RPA) form to the Federal Emergency Management Agency (FEMA) Regional Director.
3. Betterment means any work performed by the Tribe that exceeds restoring a facility to its predisaster design. Betterment also includes repairs or replacements to Tribal real property that are necessary to mitigate a predisaster condition that the Tribe had a predisaster duty to mitigate or correct.
4. Chairperson means the Tribal Chairperson of the Tribe or his/her duly authorized representative.
5. Education Facilities means those facilities that support the mission of the educational institution.

6. Educational Institution means the following:

Any elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965.

Any secondary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965.

Any institution of higher education as defined by section 1201 of the Higher Education Act of 1965.

7. Emergency Work means the work that must be done immediately to save lives and to protect improved property and public health and safety, or to avert or lessen the threat of a major disaster.
8. Facility means any building, works, system, or equipment, built or manufactured, or an improved and maintained natural feature. Land used for agricultural purposes is not a facility.
9. Federal Assistance means aid to local Tribes by the Federal Government pursuant to Federal statutory authorities.
10. Force Account means the Tribe's own labor forces and equipment.
11. Grant means an award of financial assistance. The grant award shall be based on the total eligible Federal share of all approved projects.
12. Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. For the purposes of this plan, the Tribe is the grantee.
13. Hazard Mitigation means any cost-effective measure that will reduce the potential for damage to a facility from a disaster event.
14. Historical Property means any facility eligible for or on the National Register of Historic Properties.
15. Immediate Threat means the threat of additional damage or destruction from an event that can reasonably be expected to occur within five (5) years.
16. Improved Project means a project that includes improvements, but still restores the predisaster function of the damaged facility. Federal funding shall be limited to the Federal share of the approved estimate of eligible costs.
17. Improved Property means a structure, facility, or item of equipment that was built, constructed, or manufactured. Land used for agricultural purposes is not improved property.
18. Local Emergency means a condition of extreme peril to persons or property declared as such by the governing body of the affected Tribe.
19. Local Jurisdiction means any city, county, tribe, school district, or special district.

20. Permanent Work means restorative work that must be performed, through repairs or replacement, to restore an eligible facility on the basis of its predisaster design and in accordance with current applicable standards.
21. Predisaster Design means the size or capacity of a facility as originally designed and constructed or subsequently modified by changes or additions to the original design. It does not mean the capacity to which the facility was being used at the time the major disaster occurred if different from the designed capacity.
22. Private Nonprofit Facility means any private nonprofit educational, utility, emergency, medical, or custodial care facility, including a facility for the aged or disabled, or other facilities providing essential governmental-type services to the general public on Indian Reservations.
23. Private Nonprofit Organization means any nongovernmental agency or entity that currently has an effective ruling letter from the U.S. Internal Revenue Service granting tax exemption under section 501(c), (d), or (e) of the Internal Revenue Code of 1954.
24. Project – also referred to as “Individual Project” means all work performed at a single site whether or not described on a single Project Worksheet (PW).
25. Project Application means the Application for Assistance, Standard Form 424 and Assurances for Construction Programs, Standard Form 424D.
26. Public Facility means the following facilities owned by a Tribe: any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-Federal aid street, road, or highway; any other public building structure, or system, including those used for educational, recreational, or cultural purposes; or any park.
27. Public Entity means an organization formed for a public purpose whose direction and funding are provided by one or more political subdivisions of the Tribe.
28. Public Real Property means any facility owned and operated or maintained by a Tribe.
29. Replacement means when a facility is not repairable (disaster damages exceed 50 percent of the cost of replacing a facility to its predisaster condition and it is not feasible to repair the facility so that it can perform the function for which it was being used immediately prior to the disaster), the approved restorative costs may include replacement of the facility to predisaster design, in conformity with applicable standards for new construction.
30. School District means any and all public school districts, regardless of kind or class, except a community college district. School districts include those districts defined in sections 80 through 87 of the Educational Code.
31. Standards means codes, specifications, or standards required for the construction of facilities to include legal requirements for additional features. Such standards may be different for new construction and repair work and must be adopted prior to project approval.

32. Tribal Authorized Representative (TAR) means the person empowered by the Tribal Chairperson to execute, on behalf of the Tribe, all necessary documents for disaster assistance.

33. Tribal Agency means any Tribal agency or Tribal office.

### III. ROLES AND RESPONSIBILITIES

#### A. General

##### 1. Tribal Coordinating Office:

- a. The Chairperson of the Tribe will establish a Tribal Coordinating Office to coordinate Tribal activities and Federal disaster assistance programs.
- b. The Tribe's Tribal Authorized Representative (TAR) is the official responsible for administration of the Public Assistance Program. The TAR has general responsibility for:
  - (1) Maintaining close communication and liaison with FEMA during the recovery period and throughout the duration of each disaster contract.
  - (2) Providing guidance, assistance, and program management sufficient to ensure compliance with conditions contained within the FEMA-Tribal Agreement and grant conditions.
  - (3) Coordinating the activities of Tribal agencies in support of disaster assistance activities authorized under the Stafford Act.
  - (4) Providing personnel for Preliminary Damage Assessment (PDA) activities.
  - (5) Providing personnel to prepare Project Worksheets (PW), with FEMA assistance if necessary.
  - (6) Providing cost information on PWs on completed and proposed work.
  - (7) Conducting hazard mitigation plan monitoring in accordance with the requirements of the FEMA-Tribal Agreement.
  - (8) Assisting the Tribe and Regional Director with determining that Federal aid is used in accordance with the requirements of the Advisory Council on Historic Preservation Procedures for Historic and Cultural Properties.

#### B. Organization and Staffing:

##### 1. General:

- a. The TAR will submit a staffing plan to FEMA following the signing of the FEMA-Tribal Agreement.
- b. The TAR and a deputy TAR will be the minimum staffing required to administer the Federal grant.
- c. The TAR will assume initial responsibility for public assistance activities upon the Federal declaration of an emergency or a major disaster.

2. Administrative Support:

a. The TAR will:

- (1) Execute all necessary applications and documents for public assistance, on behalf of the Tribe.
- (2) Review and recommend PWs, prior to submittal to their Public Assistance Coordinator.
- (3) Assist the Regional Director and the Response and Recovery Division staff with determining eligibility of potentially eligible private nonprofit organizations.
- (4) Coordinate and provide personnel for PDA, Applicants' Briefing, Kickoff Meeting, Project Formulation, and final inspection activities.
- (5) Organize documentation and recordkeeping to meet both pre-award and post-award requirements.
- (6) Supervise hazard mitigation and floodplain management issues in accordance with the Stafford Act and FEMA regulations.
- (7) Coordinate with the Regional Director to determine that the Tribe's insurance coverage complies with 44 CFR part 206 subpart I – Public Assistance Insurance Requirements and sections 311 and 406(d) of the Stafford Act.
- (8) Initiate actions and make recommendations, as authorized, in accordance with the Stafford Act, and FEMA regulations relative to:
  - (a) Improved and alternate project funding options.
  - (b) Advance of funds and reimbursements.
  - (c) Time extensions.
  - (d) Cost overruns.
  - (e) Quarterly status reports.
  - (f) Appeals.
- (9) Ensure Tribal conformity with the administrative, fiscal control, and accounting requirements of 44 CFR parts 13 and 206.
- (10) Coordinate with the Tribal Fiscal Officer to ensure compliance with 44 CFR Appendix A to part 14 – OMB Circular A-128, "Audits of State and Local Governments."
- (11) Process requests for cash advance or reimbursement in accordance with the FEMA-Tribal Agreement, Federal regulatory requirements, and Tribal accounting practices.

- (12) Submit all copies of audit reports, as required by OMB Circular A-128, to the FEMA Office of the Inspector General (OIG).
- (13) Process final claims for submittal to the Regional Director with requests for final payment.
- (14) Submit final project closure documents to the Regional Director to terminate the FEMA-Tribal Agreement when all work has been completed.
- (15) Coordinate and assign Tribal inspectors to FEMA teams for preparation of large project PWs and for Tribal preparation of small project PWs.
- (16) Act as first-level review for completed PWs.

b. The Deputy TAR (DTAR) will:

- (1) Assume responsibilities and perform duties of the TAR in the TAR's absence.
- (2) Assist the TAR with the administration and management of the Public Assistance Program, as authorized under Tribal and Federal laws and regulations.
- (3) Perform other duties as required.

c. Project Worksheet Inspector (PWI) will:

- (1) Represent the Tribe on the project formulation team, assist in preparation of large project PWs, prepare small project PWs, provide technical assistance and guidance for the Tribe, and make eligibility recommendations for restorative work.
- (2) Perform other duties as required.

3. Support Services:

a. Tribal Clerical Staff will:

- (1) Process various disaster assistance applications.
- (2) Prepare routine correspondence for signature of Tribal staff.
- (3) Perform other clerical or office support tasks as required.

b. Tribal Fiscal Officer will:

- (1) Develop and implement accounting procedures as required by Federal regulations, the FEMA-Tribal Agreement, and applicable Tribal requirement.
- (2) Prepare ledgers and supervise recording of Tribal transactions.
- (3) Coordinate the processing of documents necessary for reimbursement procedures and requests for additional funding.

- (4) Use the Department of Health and Human Services Payment Management System, SMARTLINK, to drawdown funds obligated for the Tribe under the Public Assistance Program.
- (5) Process FEMA Bills for Collection (BFC) in accordance with FEMA-Tribal Agreement and 44 CFR part 11, subpart C.
- (6) As the Grant Manager submit Quarterly Financial Status Reports (FEMA Form 20-10) to the Regional Director.
- (7) Perform other administrative duties as required.

#### IV. PUBLIC ASSISTANCE PROGRAM

##### B. Pre-Declaration Activities:

###### 1. Preliminary Damage Assessments (PDAs):

The PDA process is a mechanism used to determine the impact and magnitude of damage and the resulting unmet needs of individuals, businesses, the public sector, and the Tribe as a whole. Information collected by the Tribe is used by FEMA as a basis for its recommendation to the President for a disaster declaration. It is in the best interest of all parties to combine Tribal and Federal personnel resources by performing a joint PDA prior to the initiation of a Tribe's request.

###### 2. Pre-assessment:

The Tribal Council is responsible for collecting information to determine that disaster operations may be beyond the effective response or recovery capability of the Tribe, indicating a need for the PDA activities allowed under 44 CFR part 206 subpart B.

###### 3. Damage Assessment Teams:

Tribal representatives will coordinate with the Regional Director to organize joint Federal/Tribal damage assessment teams to work in consultation with FEMA to survey damage to Tribal facilities.

###### 4. Review of Findings:

At the close of the PDA, FEMA will consult with Tribal officials to discuss findings and attempt to reconcile any differences.

###### 5. Exceptions:

- a. The requirement for a joint PDA may be waived for those incidents of unusual severity and magnitude that do not require field damage assessments to determine the need for supplemental Federal assistance under the Stafford Act, or in such other instances determined by the Regional Director, upon consultation with the Tribe. It may be necessary, however, to conduct an assessment or reconnaissance to determine unmet needs for managerial response purposes.

- b. If the Tribe is located within an assessed County of a State that has been declared for disaster assistance, then that Tribe is included and does not have to be assessed in order to be eligible for disaster assistance.
- c. In order to be eligible for Immediate Needs Funding (INF), the tribe must be included in the PDA.

B. Major Disaster Declaration:

1. Tribal Responsibilities:

- a. Based on PDA information, the Tribe may determine that the situation is of such severity and magnitude that effective response is beyond the capabilities of the Tribe. In such instances FEMA will add Tribal damage assessment data to the damage assessment of State and local governments. The combined damage assessment will be used by FEMA in preparation of a request for a major disaster declaration by the President.
- b. Based on information submitted by the State and Tribes, the FEMA request for a major disaster will:
  - (1) Describe the incident and time period involved;
  - (2) Identify the counties affected;
  - (3) Confirm that the Governor has taken appropriate action under law and has directed execution of the \_\_\_\_\_ State Emergency Plan;
  - (4) Summarize damages and disruption of essential services;
  - (5) Estimate the nature and extent of Federal assistance needed;
  - (6) Indicate Tribal resources that have been or will be used to alleviate the conditions of the disaster;
  - (7) Certify that Tribal and local government expenditures will constitute a reasonable amount of the funds for alleviating damages and suffering; and
  - (8) Estimate total expenditures and obligations for which no Federal reimbursement will be requested.
- c. In the event of an Expedited Request, those instances where disaster damages are so extensive that preliminary damage assessments are not needed to determine the need for supplemental Federal assistance, the Governor will submit an abbreviated written request through the Regional Director for a declaration of an emergency or major disaster.

2. Federal Responsibility:

- a. After receipt of the Governor's request for an emergency or major declaration, the Regional Director will prepare a recommendation based on PDA results and consultation among Federal, State, Tribal and local officials for submittal to the FEMA Director.

- b. The Director will formulate a recommendation and forward it to the President.
- c. The President will notify the Director of the decision to approve or deny Federal disaster assistance.
- d. The Director will inform the Regional Director, who will notify the Tribe of the President's decision.
- e. If the request is approved, the Executive Associate Director, Response and Recovery Division, will determine the type of assistance to be made available. The Regional Director will designate the counties or cities eligible for Federal assistance. All Tribes located in designated counties will be eligible for all programs indicated in the disaster declaration for those counties.
- f. Upon approval, the Tribe and FEMA will meet to discuss the FEMA-Tribal Agreement and a review of this Public Assistance Administrative Plan.
- g. If the request for a major disaster declaration is denied, the Tribe will review the reasons for the denial and prepare an appeal to FEMA. Appeals will be based on new damages that were not included in the PDA, or on remaining needs that can only be met by unique Federal capabilities.
- h. Appeals and supporting justification will be sent to the President through the Regional Director within (30) days from the date of the letter denying the request.

C. Post-Declaration Activities:

1. Training:

The TAR, in cooperation with FEMA representatives, will instruct inspectors and Tribal staff regarding FEMA requirements and procedures for the procedures for the following:

- a. Eligibility.
- b. Documentation and recordkeeping.
- c. Completion dates.
- d. Time extensions.
- e. Insurance.
- f. Funding options.
- g. Advances and reimbursements.
- h. PW versions.
- i. Audits.

2. Disaster Field Office:

- a. Purpose:

The Disaster Field Office (DFO) is the focal point for disaster recovery operations. One or more DFOs may be established by FEMA depending on the size of the disaster area or other logistical problems.

b. Selection:

FEMA will select the location of DFO facilities and publicize locations, telephone numbers, and hours of operation.

3. Tribal Briefings:

a. Scheduling:

(1) FEMA in coordination with the Bureau of Indian Affairs (BIA) will schedule and conduct briefings for all potential Tribal applicants. These briefings are an important part of the grant process and should be accomplished prior to the start of damage surveys.

(a) The number and location of the briefings will depend on the size of the disaster area.

(b) Briefings will be scheduled to allow all potential Tribal applicants to attend.

(c) BIA, in consultation with FEMA, may select additional locations, times, and dates for subsequent briefings.

(d) BIA will arrange for use of facilities.

(e) Federal officials will brief the press, other media, and public officials as to the location, date, and time of all briefings.

4. List of Projects:

a. Within thirty (30) days of the declaration of a major disaster the TAR will submit to the Public Assistance Coordinator (PAC) a list of damage sites including information on specific emergency activities, site location as applicable, and a brief description of damage and scope of work. The thirty (30)-day deadline may be extended, with adequate justification; and

b. If additional damage is discovered, a supplemental list may be filed, up to sixty (60) days following the completion of the initial inspection by the FEMA/Tribal inspection team. The TAR may request an extension of the sixty (60)-day deadline if required because of the magnitude or scope of the disaster, or logistical or administrative problems.

5. Designation of Authorized Representative:

No funding will be provided to a Tribe until the TAR is appointed to execute documents pertaining to the FEMA Public Assistance Program.

6. Project Application for Federal Assistance:

Prior to release of funds, an Application for Federal Assistance, SF-424 and Assurances – Construction Programs, SF-424D must be signed by the TAR and

submitted to FEMA. These documents are the Tribe's certification of compliance with established requirements for the receipt and use of Federal assistance.

7. Private Nonprofit Organizations:

- a. An effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under sections 501 (c), (d), or (e) of the Internal Revenue Code of 1954; or satisfactory evidence from the Tribe that the nonrevenue producing organization or entity is a nonprofit one organized or doing business under Tribal law must be on file with the TAR.
- b. Private nonprofit organizations operating on Indian Reservations must be represented by an authorized agent designated by the Tribe where the organization is located.

D. Project Worksheets (PWs):

1. PW Inspection Teams:

- a. PWs are prepared by the Tribe, if the projects are small and if the Tribe feels capable of preparing the PWs without FEMA assistance. Large project PWs are prepared by inspection teams comprised of a Project Officer representing FEMA and a Tribal inspector.
- b. The TAR will participate in coordination, scheduling, and performance of damage surveys of large projects and small projects, if necessary, with their Public Assistance Coordinator. The TAR will assign appropriate Tribal personnel as the Tribe's inspector on PW inspection teams. The inspection team will schedule and perform inspections of damage sites.
- c. The Tribal inspector must ensure that all eligible work and costs are properly identified and that tribal interests are protected.
- d. Estimates may be based on standard costs developed by FEMA, or any other acceptable estimating method that the Tribe may wish to use. FEMA inspectors will provide cost code definitions to Tribal inspectors and project formulators for PW preparation.

2. Project Worksheets (PWs):

- a. The TAR will provide to the Public Assistance Coordinator (PAC) a listing of all damage sites. This written listing will be used by the PAC to check off the PWs as they are turned in by the Tribe and the inspection teams.
- b. A PW will be prepared for each damage site on the Tribe's list of damage sites. The PW defines the scope of eligible work and, when approved, authorizes funding for the eligible work.
- c. FEMA's PAC will use PWs to form one basic grant application for the Tribe.
- d. To allow the obligation of funds, the TAR must submit an SF 424, Application for Federal Assistance to the Regional Director. Upon receipt, the Regional Director obligates funds to the Tribe based upon PWs approved by the PAC, the FEMA Public Assistance Officer, and/or the Disaster Recovery Manager (DRM).

E. Financing:

1. Tribal Management Costs:

- a. Costs of Tribal personnel (regular wages only) assigned to administer the Public Assistance Program may be eligible when in accordance with an approved staffing plan, acceptable to the Regional Director. Hours of labor claimed must be documented by daily time records showing hours worked and a description of the work performed.
- b. Extraordinary costs, for overtime pay, per diem, and travel, of the Tribe incurred to administer the Public Assistance Program may be eligible. The allowance will be based on the following percentages of the total amount of assistance (Federal share) provided to the Tribe under sections 403, 406, 407, 502, and 503 of the Stafford Act.
  - (1) For the first \$100,000 of total assistance provided (Federal share), three percent of such assistance.
  - (2) For the next \$900,000, two percent of such assistance.
  - (3) For the next \$4,000,000, one percent of such assistance.
  - (4) For assistance over \$5,000,000, one-half percent of such assistance.
- c. Indirect costs of administering the disaster program (with the exception of the audit of the Tribe's grant) are eligible in accordance with Title 44 CFR 206.228 (b)(1).

V. DIRECT FEDERAL ASSISTANCE

A. General:

When the Tribal government lacks the capability to perform or to contract for eligible debris removal and/or emergency work, the TAR may request that the work be accomplished by a Federal agency. Such assistance is subject to the cost-sharing provisions outlined in 44 CFR 206.203(b). Direct Federal assistance is also subject to the eligibility criteria contained in FEMA regulations. FEMA will reimburse other Federal agencies in accordance with these regulations.

B. Requests for Assistance:

All requests for direct Federal assistance must be submitted by the TAR to the Regional Director and will include a written agreement that the Tribe will:

1. Provide without cost to the United States all lands, easements, and rights-of-way necessary to accomplish the approved work.
2. Hold and save the United States free from damages due to the requested work and will indemnify the Federal Government against any claims arising from such work.
3. Provide reimbursement to FEMA for the non-Federal share of the cost of such work in accordance with the provisions of the FEMA-Tribal Agreement.

4. Assist the performing Federal agency in all support and local jurisdictional matters.

C. Implementation:

1. If the Regional Director approves the request, a mission assignment will be issued to the appropriate Federal agency. The mission assignment letter to the agency will define the scope of eligible work. Prior to execution of work on any project, the Regional Director will prepare a PW establishing the scope and estimated cost of eligible work. The Federal agency will not exceed the approved funding limit without the authorization of the Regional Director.
2. If all or any part of the requested work falls within the statutory authority of another Federal agency, the Regional Director will not approve that portion of the work. In such cases, the unapproved portion of the request will be referred to the appropriate agency for action.

D. Time Limitation:

The time limitation for completion of work by a Federal agency under a mission assignment is sixty (60) days after the President's declaration. Based on extenuating circumstances or unusual project requirements, the Regional Director may extend this time limitation.

E. Project Management:

1. The performing Federal agency will ensure that the work is completed in accordance with the Regional Director's approved scope of work, costs, and time limitations. The performing Federal agency, to ensure compliance with applicable Federal regulations, will keep the Regional Director and TAR advised of work progress and other project developments. It is also the responsibility of the performing Federal agency to ensure compliance with applicable Federal, Tribal, and local legal requirements. A final inspection report will be completed upon termination of all direct Federal assistance work. Final inspection reports will be signed by a representative of the performing Federal agency and the Tribe. Once the final eligible cost is determined, including Federal agency overhead, the Tribe will be billed for the non-Federal share of the mission assignment in accordance with the cost-sharing provisions of the FEMA-Tribal Agreement.
2. Pursuant to the agreements provided in the request for assistance, the TAR will assist the performing Federal agency in all Tribal and local jurisdictional matters. These matters include securing local building permits and rights of entry, control of traffic and pedestrians, and compliance with local building ordinances.

VI. FIRE SUPPRESSION ASSISTANCE

The Bureau of Indian Affairs has Federal responsibility for suppressing wild fires on Indian Reservations and/or Tribal lands and has the capability of providing fire suppression assistance and funding for those costs.

VII. PROJECT ADMINISTRATION

A. General:

The TAR serves as the grant administrator for all funds provided under the Public Assistance grant program. The TAR's responsibilities include, but are not limited to,

providing tribal support for damage survey activities, ensuring that all Tribal agencies and departments are aware of assistance available, and submitting documents necessary for the obligation and disbursement of funds.

B. Grant Approval:

1. Upon completion of project formulation, PWs will be validated or reviewed and then approved either by the Tribal Public Assistance Coordinator, the Public Assistance Officer, or the Disaster Recovery Manager, depending on the size of the project.
2. The TAR must submit a SF-424, Application for Assistance and SF-424D, Assurances for Construction Programs, to the Regional Director prior to obligation of funds by FEMA.
3. The Regional Director will obligate funds for approved PWs to the Tribe upon receipt of the SF-424 and SF-424D.

C. Reimbursement Procedures:

1. Payments:

Funds will be provided to the Tribe for the purpose of making advance payments, partial payments, and final payments for approved project applications. The Tribe is responsible for establishing a system to process such payments on a priority basis. FEMA will provide such funds through the use of The U.S. Department of Health and Human Services' Payment Management System, SMARTLINK, or through the use of Standard Form 270 (SF-270). The Tribe hereby agrees to the following terms and conditions that will govern all funds used to make these payments:

- a. SMARTLINK or cash drawdowns under a SF-270 will be initiated only when actually needed for disbursements or upon approval of small project PW funding.
- b. The Tribe will handle the funds provided in a manner that maintains their identification as disaster relief funds.
- c. The funds will be used solely for disaster relief projects approved by FEMA.
- d. The Tribe will establish and maintain accounting records that will be subject to Federal audit, containing the amount and date of each Federal disaster assistance payment including the check number, amount, date, and individual payee.
- e. Tribal reports of cash disbursements will be made quarterly.
- f. The Tribe will maintain records that identify adequately the source and application of Federal disaster assistance funds for FEMA-supported activities, along with accounting records that are supported by adequate source documentation.
- g. The tribal official responsible for the custody of funds will be a bonded official or, if other than a bonded official, assurances or satisfactory surety will be provided.

2. Excess Funds:

- a. Any and all funds drawn down by or provided to the Tribe that are in excess of amounts approved by FEMA, or found by audit or investigation to be owing to FEMA, will be returned to FEMA.
- b. Repayment will be made to FEMA within thirty (30) days after the Tribe becomes aware of such excess fund or funds due FEMA. If the Tribe fails to pay FEMA such funds within (30) days after the Tribe receives formal notice of such excess fund or funds due FEMA, then the tribe will become obligated to pay interest on the unpaid balances due at the current United States Treasury investment rate in effect beginning with the date that FEMA first notified the Tribe that payment was due. However, this period may be extended, pursuant to 44 CFR 11.48(b)(2). If immediate repayment is not possible, then a reasonable repayment schedule with interest charged on the unpaid balance will be submitted to FEMA for approval. In the event that repayment is not made within six (6) months or in accordance with the FEMA-approved repayment schedule, FEMA may exercise offset against Federal Government payments that would otherwise be made to the Tribe in accordance with 44 CFR 11.44.
- c. The Tribe acknowledges that because it is the recipient of all funds approved under the Act for Public Assistance, FEMA is authorized to collect Federal disaster relief assistance debts of the Tribe and eligible private nonprofit entities by offset against any funds that the Tribe would otherwise receive from FEMA under the Act, either for its own use or for the use of eligible private nonprofit entities.

D. Payment Procedures:

1. General:

- a. All projects approved under Tribal disaster assistance grants will be subject to the cost-sharing provisions established in the FEMA-Tribal Agreement and the Stafford Act.
- b. Advances and reimbursements will normally be provided on a progress payment basis. Final payment will be based on eligible expenditures that are properly documented.

2. Request for Funds:

- a. The Tribe is encouraged to use the U.S. Department of Health and Human Services' Payment Management System, SMARTLINK, to draw down funding obligated by FEMA for approved projects of the Tribe.
- b. If the Tribe is not using SMARTLINK, they must submit a written request for an advance or reimbursement of funds. Large Project reimbursement and Small Project advances must be documented.
- c. FEMA will review the Tribe's current expenditures to determine payment amounts and either approve or deny the request in total or in part.
- d. If the request is denied, the TAR will be advised in writing, as to why the request was rejected.

- e. If the request is approved, the TAR will transmit the request with any applicable documentation to the Tribal Fiscal Officer.
  - f. The Tribal Fiscal Officer is responsible for processing all payments in coordination with the Accounting Department.
  - g. The Tribal Fiscal Officer will maintain both electronic and manual ledgers of disbursements and receivables.
  - h. Prior to any payment, the Tribe must have on file a properly executed resolution designating an Authorized Representative and a signed Application for Federal Assistance.
3. Small Project Payments:
- a. When the total approved costs for an individual project are less than the current Federal fiscal year threshold (\$48,900 for FY2000), Federal funding will equal the Federal share, as determined in the FEMA-Tribal Agreement, of the approved estimate of eligible costs. Final payment will be made to the Tribe upon approval of a small project.
  - b. The \$48,900 amount has been adjusted to reflect changes in the Consumer Price Index for All Urban Consumers.
  - c. Prior to closeout, the TAR will certify that all small projects are completed in accordance with FEMA approvals and that the Tribe's contributions to the non-Federal share, as specified in the FEMA-Tribal Agreement, have been paid.
4. Large Project Payments:
- a. When the total approved costs for an individual project are \$48,900 or greater, Federal funding will equal the Federal share, as determined in the FEMA-Tribal Agreement, of the approved estimate of eligible costs.
  - b. The \$48,900 amount has been adjusted to reflect changes in the Consumer Price Index for All Urban Consumers.
  - c. SMARTLINK drawdowns and reimbursement payments using the SF-270 procedures will be limited to the actual, immediate cash requirements of the tribe; i.e., expenditures to date and bills in hand. The total of such payments will not be less than 75% of the total approved cost for such projects. Requests for reimbursement must be documented. The TAR may request that an advance be provided if warranted by the magnitude and overall financial impact of a disaster event.
  - d. Final payment of the Federal share of each large project will be made following project completion, the submission of a final claim by the Tribe, and final inspection or audit by FEMA. The TAR will make a claim to the Regional Director for reimbursement of eligible costs for each approved large project. In submitting such claim, the TAR will certify that:
    - (1) Reported costs are incurred in the performance of eligible work.
    - (2) All approved work was completed.

- (3) The project is in compliance with provisions of the FEMA-Tribal Agreement.

VIII. Program Management:

A. Project Performance:

1. Time Limitations for Completion of Work:

The project completion deadlines shown below are set from the date that a major disaster or emergency is declared and apply to all projects approved under Tribal disaster assistance grants:

Debris Clearance..... 6 months  
Emergency Work..... 6 months  
Permanent Work.....18 months

2. The Tribe may extend the above deadlines, based on extenuating circumstances or unusual project requirements beyond the Tribe's control, as follows:

Debris Clearance..... Additional 6 months  
Emergency Work.....Additional 6 months  
Permanent Work..... Additional 30 months

Permanent Work is on a project-by-project basis.

3. Documentation of approved time extensions should be provided to the Disaster Recovery Manager for review and in order to update the Tribe's records for extended projects.

4. Requests for time extensions beyond the Tribe's authority shall be submitted by the Tribe to the Regional Director and shall include the following:

- a. The dates and provisions of all previous time extensions on the project; and
- b. A detailed justification for the delay and a projected completion date.

5. The Regional Director shall review the request and make a determination. The Tribe shall be notified of the Regional Director's determination in writing.

- a. If the request is approved, the letter shall reflect the approved completion date and any other requirements the Regional Director may determine necessary to ensure that the new completion date is met.
- b. If the Regional Director denies the time extension request, the Tribe may, upon completion of the project, be reimbursed for eligible project costs incurred only up to the latest approved completion date. The TAR can submit an appeal to be considered by the Regional Director in accordance with FEMA Regulations, 44 CFR part 206.

6. If the project is not completed, no Federal funding will be provided for that Project.

B. Cost Overruns:

1. General:

- a. When actual project costs of approved work significantly exceed approved costs, the TAR may request approval for funding of additional costs. The TAR must justify the request for additional funding by providing documentation to support the eligibility of all claimed costs (invoices, daily activity reports, progress reports, etc.) for FEMA evaluation.
  - b. Approved cost overruns will be funded by new versions of the previously approved PW.
  - c. Minor cost adjustments for large projects will be made at the time of final inspection. A final inspection report will be forwarded to the Regional Director for approval or further action, if necessary, at the time of project closeout.
  - d. Cost overruns on small projects will be considered in accordance with section 206.204(e). Only net cost overruns of small projects after they have all been completed will be considered. In order to be considered the Tribe will submit supporting documentation for all of their small projects.
2. Increase in Scope of Work:
- a. The TAR may request a review of the PW scope of work; i.e., dimensions, nature, and method or manner of work completion. The TAR should seek approval for a scope change, prior to the commencement of work, and the work should not be completed before review and approval. Any such request must be filed in writing with appropriate justification.
  - b. If the request for change in scope is acceptable, FEMA will contact the TAR to schedule a joint FEMA/Tribal Engineering Team to perform a field inspection and to prepare a supplemental DSR.
  - c. FEMA will notify the TAR if the request is unacceptable, stating specific reasons for rejection.

C. Insurance Requirements:

1. General:

The Stafford Act sections 311 and 406(d) and the Flood Disaster Protection Act of 1973, Public Law 93-324, established the following insurance requirements for disaster assistance:

- a. Actual or anticipated insurance recoveries will be deducted from eligible costs.
  - b. The maximum amount of flood insurance recovery that could have been obtained for a building and its contents within the special flood hazard area will be subtracted from eligible costs.
  - c. An insurance requirement should not be interpreted as a substitute for hazard mitigation techniques that may be available to reduce the incidence and severity of future damage.
2. Applicability:

- a. The requirements apply to assistance provided in accordance with the Stafford Act for major disasters declared after November 23, 1988, unless specifically excluded.
  - b. Prior to approval of a Federal grant for the restoration of a facility and contents, the TAR will notify the Regional Director of any entitlement to an insurance settlement or recovery. The Regional Director will reduce eligible costs by the actual amount of insurance proceeds, with the exception of flood insurance.
  - c. If insurance recovery by the Tribe is contingent on the amount of reimbursement under the Stafford Act, reimbursement will be limited to eligible costs determined by the Regional Director after the deduction of the maximum amount recoverable under and to the limit of the insurance policy.
  - d. The Regional Director will not approve assistance unless the TAR has provided acceptable assurance that the Tribe will, as a minimum, obtain and maintain insurance for the approved DSR estimate of damages to the facility and contents:
    - (1) The Tribe must complete an Insurance Commitment Form, certifying intent to obtain and maintain required insurance by the time of final inspection; and
    - (2) The Tribe must provide a copy of the insurance policy to the FEMA inspector at the time of final inspection; and
    - (3) The TAR will inform the Regional Director of a Tribe's failures to comply with FEMA insurance requirements.
  - e. No Federal assistance will be provided for any facility for which assistance was previously provided unless insurance was obtained and maintained, in accordance with the Stafford Act.
  - f. Insurance requirements apply to private nonprofit facilities that receive assistance under the Stafford Act.
3. Additional Flood Insurance Requirements:
- a. The Regional Director will require flood insurance for flood disasters when it is reasonable, available, adequate, and necessary.
  - b. If a building damaged by flooding is located in a special flood area identified for more than one (1) year by the FEMA Director, and the building and its contents are not fully covered by flood insurance, assistance will be reduced as follows:
    - (1) The amount of reduction will be the value of the building immediately prior to the damage, or the maximum amount of the insurance proceeds that would have been received if the building and contents had been covered by standard flood insurance, whichever is less.
    - (2) The reduction will not apply to a private nonprofit facility located in a community not participating in the National Flood Insurance Program (NFIP).

(3) Federal assistance is prohibited in special flood hazard areas of nonparticipating communities. If the community in which the private nonprofit facility is located in is not participating in the NFIP, disaster assistance is not available.

- c. FEMA will not approve financial assistance for acquisition or construction in a special flood hazard area unless the community is participating in the NFIP at the time of the approval.
- d. A facility may become eligible for financial assistance if the reservation qualifies for and enters the NFIP within six (6) months of the Presidential Declaration.

4. Type, Extent, and Duration of Insurance:

- a. Assurances to obtain reasonably available, adequate, and necessary insurance will be required only for the type or types of hazard for which the major disaster was declared. The Regional Director cannot require greater types and extent of insurance than are certified as reasonable by the Tribal Insurance Office.
- b. The Regional Director will determine the type and extent of insurance that is reasonably available when he/she is unable to obtain a certification by the State Insurance Commissioner.
- c. The Tribe's Insurance Director will assist the TAR with the administration of FEMA insurance regulations.

D. Final Inspections:

- 1. After completion of all PWs in the project application, including those with time extensions, a project summary with appropriate certification must be submitted to FEMA by the TAR.
- 2. Original source documentation must be maintained in a central location and be readily available for examination by Federal inspectors.
- 3. FEMA inspectors will perform a joint final inspection, along with tribal inspectors, of those facilities that had any significant structural work performed, or any project selected by the FEMA inspector. FEMA may conduct a final inspection of any facility at any time.
- 4. Final inspection documents will be forwarded to the Regional Director for preparation and approval of a closing PW.

E. Audits:

- 1. The TAR may request, at any time, an audit for any reimbursed monies disbursed to the Tribe. This report will be submitted to the Regional Director for eligibility determination based on the FEMA-Tribal Agreement.
- 2. Audits will be conducted in conformance with the requirements of the Single Audit Act of 1984, Public Law 98-502, OMB Circular A-128, 44 CFR part 14, and related FEMA instructions to:

- a. Determine whether the Tribe has met the applicable audit requirements of the Single Audit Act as outlined in OMB Circular A-128.
  - b. Determine whether the tribe spent disaster relief funds in accordance with the Stafford Act, 44 CFR part 14, and 44 CFR 206.207.
3. Assurance of audit compliance may be accomplished by reviewing the audit performed under the Single Audit Act or through other means (i.e., program reviews) if the Tribe has not yet had such an audit or does not fall under the Single Audit Act.
  4. The TAR will ensure that appropriate corrective action is taken within six (6) months after receipt of an audit report that cites instances of noncompliance.
  5. The TAR will ensure that copies of audits are provided to FEMA'S Office of the Inspector General.

F. Appeals:

1. Tribal Authorized Representative (TAR):

- a. The TAR may, on behalf of the Tribe, appeal any FEMA determination on Federal assistance.
- b. The TAR must provide sufficient information to allow FEMA to determine the facts and validity of the request.
- c. An appeal by the TAR will be in writing and will be submitted to the Regional Director within sixty (60) days from the date of the action being appealed.
- d. If after completion of all small projects, the Tribe has a significant overrun in the combined costs, compared to the total approved costs for all small projects, the TAR may submit an appeal requesting a supplemental PW be approved for the amount of the cost overrun.

2. Regional Director (RD):

- a. The Regional Director (RD) will review all first appeals. The RD may make field investigations or request additional information in support of the appeal. The RD will respond to the appeal within ninety (90) days from receipt of all related information.
- b. If the first appeal is denied by the RD the TAR may file a second, and final, appeal, through the RD, to the Associate Director (AD). The AD will act on the TAR's second appeal within ninety (90) days from the receipt of all related information. A written summary of the AD's decision will be forwarded to the TAR by the RD.
- c. The AD may refer technical appeals to an independent scientific or technical group for review. The TAR must first agree to any such review, including designation of a revised time limitation for appeal completion and sharing in the cost of the review.

G. Post Disaster Field Office Operations:

1. Purpose:

- a. After closure of the Disaster Field Office (DFO), the focal point for disaster recovery activities will shift to the tribal offices of the TAR.
- b. The TAR will ensure that sufficient staff is maintained to provide proper and prudent management of the disaster recovery activities.

2. Staffing:

The TAR will review the program requirements and determine the staffing level required. The TAR will prepare a budget request for the Regional Director's approval within thirty (30) days of the DFO closure.

H. Program Compliance:

Uniform administrative requirements that are set forth in 44 CFR part 13 and OMB Circular A-87 apply to all disaster assistance grants and subgrants. Uniform audit requirements established in 44 CFR part 14 will apply to all grant assistance provided in accordance with the Stafford Act and implementing regulations.

PUBLIC ASSISTANCE ADMINISTRATIVE PLAN

FOR:

Name of Tribe

Submitted by TAR:

Date: