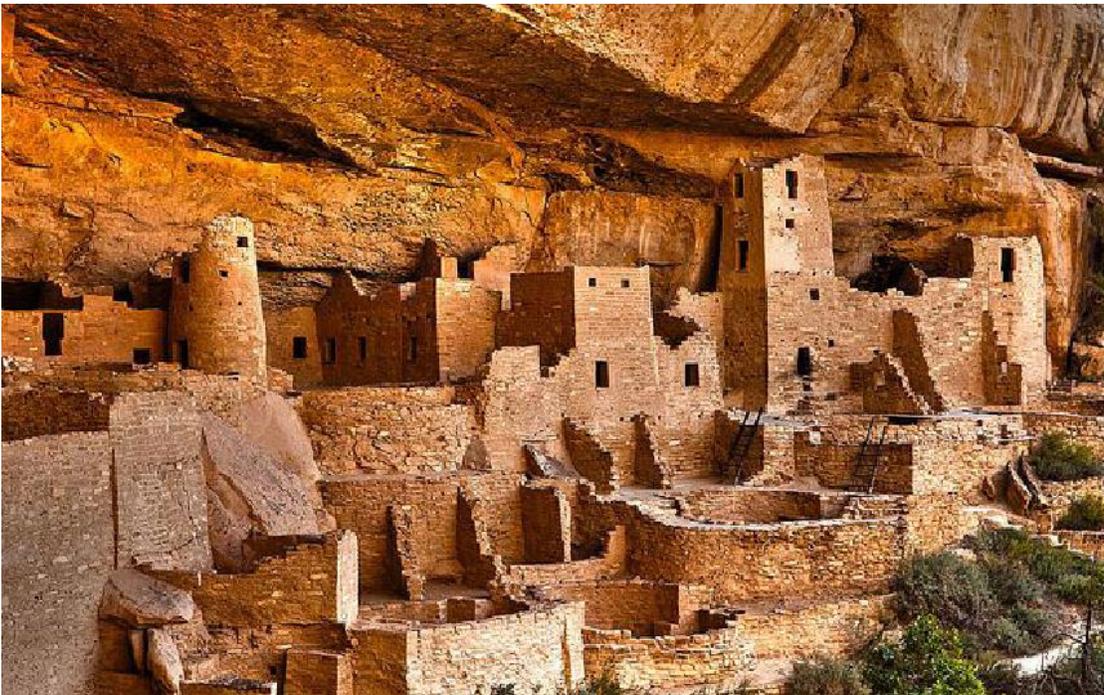


105(l) Facility Lease Program

Technical Assistance Guidebook



INDIAN AFFAIRS

**Office of the Deputy
Assistant Secretary for
Management**

**Office of Facilities,
Property and Safety
Management**

prepared by
Sedona Technologies

2022

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105(l) Facility Lease Program



Chapter 1 introduces the 105 (l) facility lease program, available through the [Office of Facilities, Property, and Safety Management \(OFPSM\) Branch of Real Property & Leasing \(BRPL\)](#). Chapter 1 reviews how a Tribe can determine their eligibility for this program.

This chapter also provides descriptions of the types of compensation available for a Tribe under the 105 (l) facility lease.

What is the 105 (l) Facility Lease?



The 105 (l) lease is not a traditional lease. It more closely resembles a facility cost agreement between [Indian Affairs \(IA\)](#) or [Indian Health Service \(IHS\)](#) and a Federally Recognized Tribe or Tribal Organization (Tribe) to compensate the Tribe for facility operational expenses. These expenses relate to the use of the facility to operate contracted or compacted Programs, Functions, Services, and Activities (PFSAs). Section 105(l) of the

[Indian Self Determination and Education Assistance Act](#) (ISDEAA) 25 USC § 5324 provides that Tribes carrying out Federal functions under a self-determination contract or self-governance compact may enter into a lease agreement. A Tribe may enter into a lease agreement with IA.

How do I know if my Tribe is eligible for a 105 (I) Facility Lease Program?

- The Tribe must hold title to the facility; or
- The Tribe must hold a leasehold interest in the facility; or
- The Tribe must hold a trust interest in the facility.

Along with the above requirement, the following must apply:

- The Tribe must also be currently using the facility to carry out a Federal PFSA.
- The PFSA must be in an approved ISDEAA Self-Determination contract, Self-Governance compact, or a Public Law 100-297 grant ([Tribally Controlled School](#)).

How does the Tribe prove interest in the facility?

- Trust Title.
- Quitclaim Deed, or Warranty Deed.
- Lease or Rental Agreement.

What are the types of compensation available through the 105 (I) Lease?

Compensation may include multiple options. The 105 (I) Facility Lease Program can cover facility operating costs. These costs may include rent, depreciation, reserve funds principal & interest, and operation & maintenance expenses. These costs may also include repairs, alterations, and other reasonable expenses. The Tribe chooses the type of compensation they would like to receive and what best meets their needs. Tribes are eligible to receive compensation only if they are not receiving compensation from other Federal or State funding for the same space.

The Tribe may choose from three categories of compensation fair market rental, cost elements in the 25 CFR Section 900.70 only, or a combination of fair market rental and cost elements in the 25 CFR section 900.70.

a. **Fair Market Rental**

If a Tribe seeks lease compensation based upon fair market rental, they must provide a Fair Market Rental Analysis (FMRA) for their area, compare the costs for similar properties, describe how the costs were developed, and other supporting documents as needed. Typically, an appraiser completes a FMRA. The appraiser will consider the age of the facility, square footage, location, amenities, and the condition of the property, as compared to similar properties in the area.

b. **Cost elements listed in 25 CFR Section 900.70 only.**

If a Tribe requests lease compensation based on the elements contained at 25 C.F.R. § 900.70 (a-h), then the Tribe must provide documents supporting each cost element requested. Supporting documents should include a copy of the program's general ledger, a crosswalk between the cost elements and the general ledger, actual costs from the previous year, contractor quotes, and/or copies of invoices.

c. **Combination**

A Tribe may request compensation based upon a combination of the cost elements listed in 25 CFR Section 900.70 and fair market rental. There must be documentation for each. The FMRA may document which "other reasonable expenses" are allowable under 25 C.F.R. § 900.70.

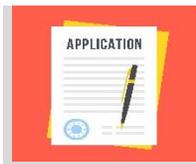
Incorporating 477 Programs

The employment and training programs eligible for compensation are those programs that are integrated into Tribal Workforce Development plans. These plans are approved by the Indian Affairs Division of Workforce Development under the authority of Public Law 102-477, the Indian Employment, Training, and Related Services Demonstration Act of 1992, as amended. PL 102-477 is then incorporated into ISDEAA contracts, compacts, and funding agreements.

Starting the Process

Chapter 2 describes how a Tribe may begin the process of creating a 105 (I) lease proposal. This chapter provides best practices for getting the lease proposal organized. In this chapter you will find the [Indian Affairs \(IA\)](#), [Office of Facilities, Property, and Safety Management \(OFPSM\)](#) [Branch of Real Property & Leasing \(BRPL\)](#) has provided an email address to send the lease proposal. It also reviews when lease terms begin. A complete overview of the program is located in the process map found at the end of the Chapter.

How does the Tribe start the process?



There is not a standard application. You may send a lease proposal to [Indian Affairs \(IA\)](#), [Office of Facilities, Property, and Safety Management \(OFPSM\)](#) [Branch of Real Property & Leasing \(BRPL\)](#) 105(I) mailbox at ISDEAA105L@BIA.GOV.

The lease proposal from the Federally Recognized Tribe or Tribal Organization (Tribe) should confirm:

- The Tribe holds title to, a leasehold interest in, or a trust interest in a specific facility.
- The Tribe is using the facility to administer and deliver services under an approved ISDEAA 638 compact or contract or 297 grant.
- The approved Self-Governance or Self-Determination contract/compact, or 297 grant number associated with the Programs, Functions, Services, and Activities (PFSA) that the Tribe is conducting in the facility.
- The type of compensation the Tribe is seeking.
- The address of the facility for which the Tribe requests lease compensation.

- The contact information for the Tribal representative(s) seeking the program. Please include names, phone numbers, and email addresses.

What are the best practices a Tribe can take to organize internally to move along the 105 (I) process effectively?

Based on the experience of Tribes who have completed several leases, the following actions are recommended:

- Establish a primary point of contact to work with Indian Affairs who can engage internal stakeholders.
- Establish an internal 105 (I) working group with representatives from the following areas: budget/finance, facilities, Tribal leader executive office, and Tribal council office.

When we email ISDEAA105L@BIA.GOV to whom does that go?

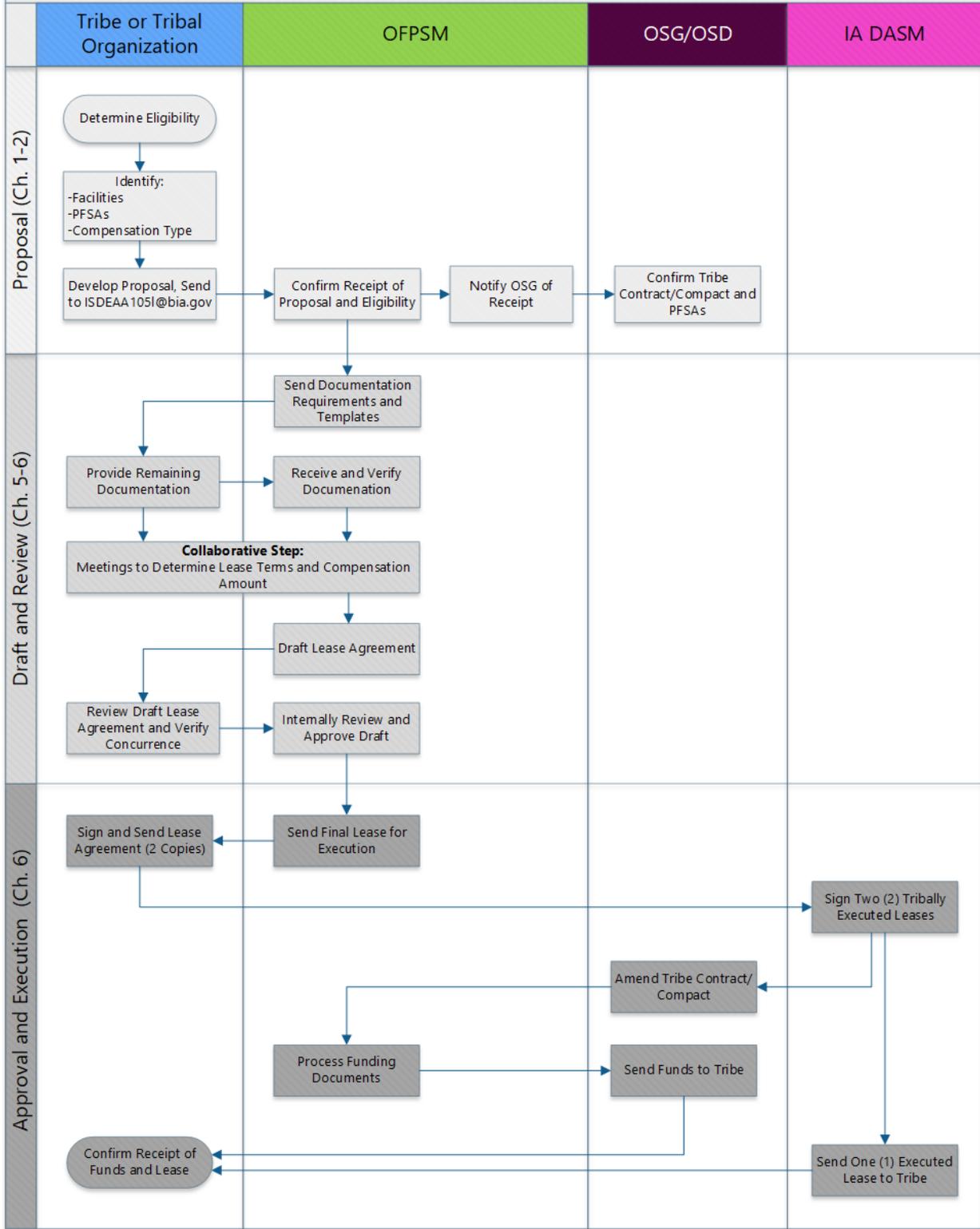
This email mailbox will allow the Tribe to contact the Core ISDEAA team which includes the OFPSM, [Office of Self Governance](#) (OSG), and the Department of Interior (DOI) Solicitor’s Office. If the Tribe has a Self-Determination contract, OFPSM will also reach out to the IA [Office of Self-Determination](#) and the appropriate [BIA regional office](#). If the Tribe is operating a 297 Grant, OFPSM will also reach out to the appropriate [Bureau of Indian Education](#) (BIE) Officials.

When does a lease term begin?

The Consolidated Appropriations Act of 2021 states that the initial lease term will start no earlier than the date IA receives the lease proposal.

See [Appendix A](#) & [Appendix B](#) showing the two types of leases available.

105(l) Facility Lease Process Map



Facility Details

Chapter 3 clarifies the nuances of questions about facilities and PFSAs. It addresses who shoulders the long-term financial responsibilities for the facilities. Specifics are given on the facility detail information that is necessary to arrive at reasonable compensation. The chapter also explains how to handle shared and common spaces.

If our Tribe signs up for a 105(I) facility lease, will we lose the facility rights to the government?



No. The 105 (I) facility lease program is compensation for the space where the Tribe is operating the Federal 638 program. The facility rights are still fully the responsibility of the Tribe. This also means that the 105 (I) facility

lease program does not negate or supersede any land contracts, rent to own, land for deed, mortgage, bankruptcy, or other financial obligation the Tribe may have for the facility. The Tribe is still fully financially responsible for the facility. The 105 (I) facility lease program is made available to reduce the burden of running the ISDEAA Self-Determination contract, Self-Governance compact, Tribally Controlled Schools (Public Law 100-297) grant Federal approved programs in the Tribe's facilities.

If we have multiple PFSA Programs in the same facility, do we need to make multiple proposals?

See Figure 1 below. The Tribe can make one proposal for one facility even if multiple PFSAs are operating in the same location.

What happens when we do have multiple programs in a facility and some of the programs have Tribe or State funding?

The 105 (I) facility lease program can only compensate the Federal PFSA programs. Therefore, the square footage for just those Federal programs inside the facility will need to be mapped out. The funding may be prorated for the Federal PFSA area instead of the entire facility. See Figure 1 below.

How do we map out the area of the facility or square footage in a facility?

A simple markup of existing floor plans or drawings of the facility layout may be completed. This may be drawn by hand on graph paper. Each block of the graph can represent one foot. The Tribe may use a free software program to assist with drawing rooms, doors, and windows with accurate square footage. The Tribe may also list the spaces, PFSAs, and square feet in an Excel document. This is completely up to the Tribe's preference.

Photos

Both interior and exterior photos should be included in a Fair Market Rental Analysis or sent separately in an email.

Inspection Reports

The Tribe should submit a copy of the most recent inspection report for each facility if available.

What needs to be included in the facility description?

Items a Tribe should include are as follows:

- The location and address.
- An architectural floor plan that shows gross square footage for all floors.
- The date the facility was placed into service.
- The Certificate of Occupancy.
- Recent photos of the facility's interior and exterior.
- A recent inspection report of the condition of the facility if available.

- A floor plan showing all the PFSAs, and any non-PFSAs, or if there are other tenants in the facility.

Here is one example:

Figure 1

EXAMPLE - ABC Building with Multi-Use Spaces

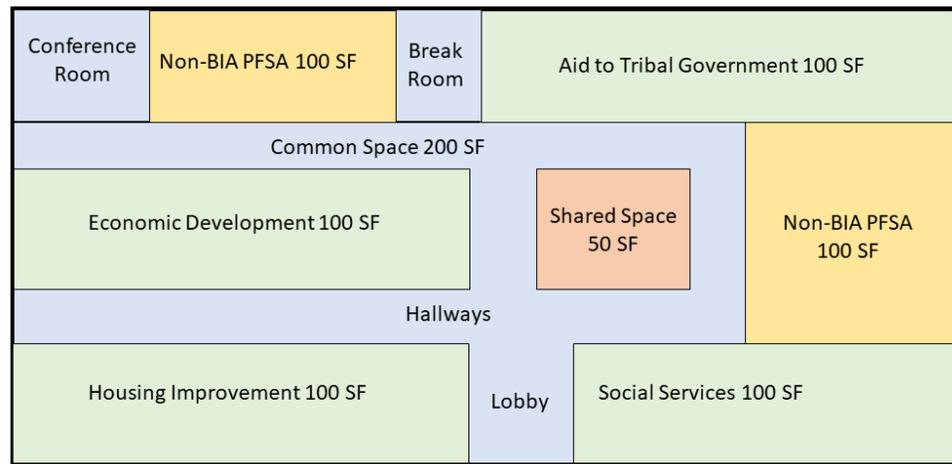
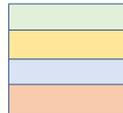
Total Space = 850 SF

BIA PFSA Space = 400 SF

Non-BIA PFSA Space = 200 SF

Common Space = 200 SF

Shared Space = 50 SF



Commons Space

In a facility where the Tribe administers both ISDEAA and non-ISDEAA activities, usually, there are Common Spaces the Tribe uses to carry out the approved PFSAs. These spaces are needed to support the basic functions of the occupants within the facility. Some examples include break rooms, restrooms, lobbies, stairwells, corridors, conference rooms, mechanical rooms, electrical rooms, IT closets, etc. The Tribe will be compensated 100 percent for these types of Common Spaces.

Shared Services Space

Many Tribes have Shared Services Spaces that support the administration and delivery of both ISDEAA and non-ISDEAA activities – for example, Tribal finance departments, human resources offices, or information technology operations. The Tribe is compensated for 50 percent of Shared

Services Space without the need to provide any supporting documents. Tribes that can provide documentation to support costs of more than 50 percent would remain eligible to receive compensation for those costs. This is consistent with the [Office of Management and Budget](#) (OMB) approach to Tribal indirect costs. This approach recognizes that a Tribe is eligible for compensation for a portion of the space occupied by a shared service. Finally, this option allows Tribes to recover costs that may not be easy to obtain.



Casa Blanca Community School

Indoor Photo: Casa Blanca Community School



Casa Blanca Community School



Casa Blanca Community School



Family Services Center



Lomack Building



Tugkar Building

Outdoor Photos – Casa Blanca Community School, Family Services Center, Lomack Building, & Tugkar Building

Compensation Details for Cost Elements

Chapter 4 provides details on each of the cost elements in 900.70 (a-h). The cost elements (a-h) line up in the excel document in [Appendix C](#). The goal of the [Indian Affairs \(IA\), Office of Facilities, Property, and Safety Management \(OFPSM\)](#) Branch of Real Property and Leasing is for Tribes to feel confident in completing these forms. If the Tribe has any questions, please do not hesitate to email ISDEAA105L@BIA.GOV. This chapter also provides information on how a Tribe certifies financial information.

What are the cost elements in 900.70?



The cost elements at 900.70 include (a-h).

- a) Rent (sublease).
- b) Depreciation and use allowance based on the useful life of the facility based on acquisition costs not financed with Federal funds.
- c) Contributions to a reserve for replacement of facilities.
- d) Principal and interest paid or accrued.
- e) Operation and maintenance expenses.
- f) Repairs to facilities and equipment.
- g) Alterations needed to meet contract requirements.
- h) Other reasonable expenses.

What does the rental amount cover?

- Rental monies owed.
- Lease monies owed.
- Sublease monies owed.

What is depreciation and use allowance?

In general terms, depreciation is accounting for the aging of the facility over time. Depreciation also accounts for the actual annual use of the facility each year. Depreciation is calculated over 39 years as per the [Internal Revenue Service \(IRS\) publication 946](#). Facilities that are older than 39 years are not eligible for depreciation as a cost element.

Per [Appendix C](#) Excel Document [105 (I) Template All-Areas Consolidated] Depreciation can be calculated with or without P&I.

If the Tribe is uncertain of how to calculate depreciation in the Excel sheet, the OFPSM staff may provide assistance.

If the Tribe is sending the Excel Spreadsheet as an attachment, please rename the document to include the Tribe name, month, and year of submission. “105 (I) Lease [Tribe Name] Financial Spreadsheet, [Month and Year]”.

What information is needed to request compensation for depreciation without principal and interest?

- The date the facility was originally placed into service
- The total cost of construction.
- The amount of non-Federal funding provided or borrowed by the Tribe used in the total cost of construction.
- The amount of funding provided from Federal sources used in the total cost of construction.

What information is needed to request compensation for depreciation with principal and interest?

- The total cost of construction.
- The total amount of funding provided or borrowed by the Tribe.
- The amount of non-Federal funds used in the total cost of construction.
- The total Principal paid by the Tribe for the loan prior to the start of the first 105 (I) lease.
- The date the facility was originally placed into service.
- The year that the loan started.
- The length of the loan in years.

What is a Reserve Fund?

If a Tribe intends to request compensation for reserve funding (replacement of a roof, HVAC system, boiler, etc.) compensation is based on:

- The year the system or component was placed in service.
- The replacement cost at the time that it was placed in service.
- The expected system or component service life.

What information is needed to provide for Principal and Interest?

A schedule of payments is provided by the lender.

- Annual Interest Rate.
- Year the Loan Started.
- The Loan Term in Number of Years (10, 15, 30 years).
- Year of Lease.
- Full construction cost of the facility not including soft costs or any supplemental funds from Federal sources.
- Any down payment or other off-setting payment provided by the Tribe.

What are operation and maintenance expenses?

- Water, sewage.
- Utilities.
- Fuel.
- Insurance.
- Facility management supervision and custodial services.
- Custodial and maintenance supplies.
- Pest control.
- Site maintenance (including snow and mud removal).
- Trash and waste removal and disposal.
- Fire protection/firefighting services and equipment.
- Monitoring and preventive maintenance of facility structures and systems (HVAC, Plumbing, Electrical, Elevators, Boilers, Fire Safety, Security, Roof, Foundation, Walls, and Floors).
- Unscheduled maintenance.
- Scheduled maintenance (including replacement of floor coverings, lighting fixtures, repainting).
- Security services.
- Management fees.
- Other reasonable and necessary operation or maintenance costs justified by the contractor.

What are Repairs to Facilities and Equipment?

Repairs to facilities and equipment are an unexpected cost. This includes work performed to return equipment to service after a service failure or to prevent further damage to the facility. An example is a roof repair to prevent internal water damage and mold. The Reserve Fund would manage full roof replacements.

What are Alterations needed to meet contract requirements?

Alterations may be needed to properly administer the approved PFSA's to meet code or contract requirements.

What are other reasonable expenses?

IA wanted to be prudent in providing some flexibility to capture any costs that are not already included in another category.

How does the Tribe certify all financial information is correct?

The Tribe provides a written Certification of Financial Information signed by the designated Tribal Chief Financial Officer (CFO). [See [Appendix D](#)]

Lease Details

Chapter 5 addresses the length of time to negotiate a lease with [Indian Affairs \(IA\)](#), [Office of Facilities, Property, and Safety Management \(OFPSM\)](#) [Branch of Real Property & Leasing \(BRPL\)](#). This chapter provides the types of documents needed to support the lease agreement. This chapter explains the negotiation process and clarifies items that are often requested. Additionally, this chapter discusses how a Tribe might utilize the 105 (I) program lease for immediate compensation after obtaining a new facility.

How long does it take to negotiate a lease?



Upon receiving the necessary documentation, Indian Affairs (IA) aims to execute leases within 90 days. The process can take longer depending on the availability of staffing resources, the amount of technical assistance required by the Tribe, and the ability to understand and arrive at reasonable compensation. The first lease a Tribe establishes typically takes longer but this experience speeds up the formulation of subsequent leases. Per program guidelines IA will offer Tribes technical assistance if needed, this may also lengthen the time to negotiate a lease. The process can also take longer if Tribes need more time to gather supportive documents. See [Appendix C, D, E \(Tribal Resolution Sample\)](#).

What are the typical requests for clarification and documents requested?

- Floor plans need to properly show the square feet (SF) for each PFSA.
- Clearly indicating the Federal PFSAs that are operating in the facility space(s).
- Documentation justifying cost elements.
- Clearly identifying the shared services and common spaces.

- Identifying spaces that are already covered/compensated by IHS or other fund source(s).

This guidebook attempts to provide the information needed to begin the proposal and negotiation process. However, after you begin to apply information to the Tribes' specific facility and PFSA, new cost items may come up. For example:

- Additional PFSA or common space is identified after the initial proposal is submitted.
- The lease process without cost elements was easier than expected. The Tribe may decide they want to add in some of their cost elements after all.
- Two months into the process the roof is damaged by a hailstorm and now the Tribe would like to include the repair cost element.

The Tribe can request changes to the lease compensation until the lease is signed. This is a part of the negotiation process. There are many options. The OFPSM are here to support the Tribe in developing a facility lease that really works best for the Tribe.

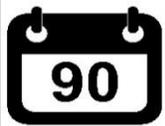
With proper planning, a Tribe could use the 105 (I) lease program to receive compensation for a new facility.

It is possible for a Tribe to obtain a construction loan, plan, design, build a new facility, and then receive compensation for Principal and Interest through a 105(I) lease. The facility must be used to carry out an approved ISDEAA PFSA. IA does not get involved with the loan process. IA will work with the Tribe to develop a Program of Requirements (POR) to meet the associated design requirements and code compliance. The lease term would start once the facility has received a Certificate of Occupancy, is occupied, and is being used to carry out an approved ISDEAA PFSA. Contact ISDEAA105L@BIA.GOV to request more information.

Executing A Facility Lease

Chapter 6 provides details on how a facility lease is processed with the [Indian Affairs \(IA\)](#), [Office of Facilities, Property, and Safety Management \(OFPSM\)](#) [Branch of Real Property & Leasing \(BRPL\)](#). This chapter states how quickly Tribes can expect receipt of a signed copy, and who will send out their funding. This chapter explains how the funding is backdated. This Chapter also explains when funding would need to end or be prorated.

How are facility leases processed?



Indian Affairs aims to complete leases within 90 days, but the process can take longer if additional technical assistance is necessary or if Tribes need more time to pull together the necessary information or get Tribal resolutions approving the lease. After the ISDEAA Team and the Tribe agree the information is complete, they will work to agree upon the compensation amount. The ISDEAA Team will then draft the lease, using the standard lease template. The Office of the Solicitor Division of Indian Affairs conducts a legal sufficiency review. Once the legal sufficiency review is complete, the ISDEAA Team will provide the final draft to the Tribe for one last review and concurrence. Upon the Tribe's concurrence, IA will route the lease through their Department's internal document review and approval system. Once all approvals are documented, the ISDEAA Team will send the final lease agreement to the Tribe for execution by the Tribe's designated official, via a Tribal Resolution.

The Tribe is to wet sign and date two copies and mail (USPS) both to the following address for the Deputy Assistant Secretary for Management's (DASM's) signature.

Executive Assistant
Office of the Deputy Assistant Secretary for Management
Assistant Secretary – Indian Affairs
Department of the Interior
1849 C Street NW, MS 4650
Washington, DC 20240

***Alternatively, the Tribe can electronically sign the lease if IA and the Tribe agree to do so in advance.

The DASM will sign the lease.

A copy of the fully executed lease will be returned to the Tribe and the Awarding Official (AO). The AO will incorporate the lease agreement by an amendment in the ISDEAA agreement or 297 Grant as an attachment. IA will send the funding to the AO. The AO will distribute the funds to the Tribe.

How quickly after the lease is signed will the Tribe receive official copies?

IA will send one original, fully executed lease to the Tribe within three business days of being signed.

Who is responsible to transfer the funding over to the Tribe?

The Awarding Official will transfer the funding to the Tribe once the lease is signed (known as the executed copy) and the funds are received from OFPSM.

How far is funding backdated?

Funding and the initial lease term is backdated to the date the proposal for an initial lease is received by IA. Example: The initial lease proposal may have been received on June 1, 2022, additional documents and market analysis were received in August 2022, negotiations were entered, and the Tribe signs the lease in October 2022. Tribes run on either Fiscal Years or Calendar Years. Fiscal years run from October 1 to September 30. Calendar Years run from January 1 to December 31. If the Tribe is a Fiscal Year Tribe and signs an initial lease in October, the lease term begins in June when IA received the proposal, and the Tribe will want to complete a renewal lease the same year.

Their funding will cover June 1, 2022 – September 30, 2022. The new fiscal year will begin October 1, and therefore a new funding year.

What happens if the Tribe stops performing the PFSA in that space?

If the PFSA is no longer operated in that space, the lease agreement is terminated. If the PFSA ends or the facility is no longer able to support the PFSA before the end of the lease term, please contact IA at ISDEAA105L@BIA.GOV. Since the lease compensation is paid on an annual basis, it will need to be adjusted.

Renewals

Chapter 7 focuses on providing the details on how a Tribe can prepare for renewing their 105 (I) lease with the [Indian Affairs \(IA\), Office of Facilities, Property, and Safety Management \(OFPSM\) Branch of Real Property & Leasing \(BRPL\)](#). Specifics are given on the need for the annual renewal. Details are provided on how to send the renewal request. The documents needed for the renewal request are described.

How will we know when to renew?



Section 8 of the lease “Lease Term” requires the Tribe to provide notice of intent to renew three months before the current lease expires. IA will also send a notification of renewal.

How does the Tribe apply for renewal?

Send all updated information to ISDEAA105L@BIA.GOV.

Do we need to renegotiate the lease each year?

Only if the Tribe has changes to the lease would a renegotiation need to occur. Many Tribes may renew with one meeting, phone call, or email. OFPSM sends a new lease draft out for the Tribe to review and approve. Then the signature process can begin.

What information needs to be sent as a part of the renewal request?

Requests for updates to the previous compensation will need to be sent to ISDEAA105L@BIA.GOV. If compensation is based on Fair Market Rental Analysis (FMRA), a Consumer Price Index (CPI) adjustment can be agreed on and used to calculate the lease renewal amount. If compensation is based on Cost Elements or a combination of FMRA and Cost Elements, then the Tribe will need to submit documentation to justify the lease renewal amount. If any new documents are submitted as a part of a lease renewal, then a new CFO Cert will need to be submitted. If the initial Tribal resolution does not include wording for renewals or is time-specific, then the Tribe will provide an updated Resolution.

How are CPI adjustments calculated?

The CPI adjustment based on location can be calculated using the U.S Bureau of Labor Statistics Consumer Price Index databases – All Urban Consumers “Top Picks” – <https://www.bls.gov/cpi/data.htm>. When calculating annual CPI adjustments, Calendar Year Tribes should use January of the previous year to January of the current year and Fiscal Year Tribes should use October of the previous year to October of the current year.

Appendices Table of Contents

[Appendix A](#) Lease Agreement Template for Self-Determination Tribe

[Appendix B](#) Lease Agreement Template for Self-Governance Tribe

[Appendix C](#) Excel Document 105 (I) Template All Areas Consolidated

[Appendix D](#) CFO Certification Example

[Appendix E](#) Tribal Resolution Sample

Appendix A Lease Agreement Template for Self-Determination Tribe

LEASE BETWEEN [TRIBE/TRIBAL ORGANIZATION]
AND THE UNITED STATES DEPARTMENT OF THE INTERIOR
[FISCAL/CALENDAR]

[TRIBE/TRIBAL ORGANIZATION NAME]

[FACILITY NAME]

THIS LEASE is made and entered into as of the ____ day of _____, 2022 by and between [TRIBE/TRIBAL ORGANIZATION NAME], a [federally recognized Indian Tribe/Tribal Organization] ("**Lessor**"), whose address is _____, and **THE UNITED STATES DEPARTMENT OF THE INTERIOR**, acting through the Office of the Assistant Secretary – Indian Affairs (hereinafter referred to as "**U.S. Government**"), whose address is Main Building, 1849 C Street N.W., MS-3609-MIB, Washington, D.C., 20240. This lease is executed under the authority of the *Indian Self-Determination and Education Assistance Act* at 25 U.S.C. §5324(d) and the regulations at 25 C.F.R. Part 900, Subpart H, and pursuant to the agreement and authority set out in Contract No. _____ ("**Contract**") between the [TRIBE/TRIBAL ORGANIZATION NAME] and the Department of the Interior – Bureau of Indian Affairs.

Lessor and U.S. Government agree as follows:

1. **Leased Premises.** The Lessor hereby leases to the U.S. Government the following described Leased Premises:

A total of _____ leasable square feet of [describe space – ex: "office space"] in the [FACILITY NAME] facility, located at _____. (See Exhibit A.) [IF SHARED SPACE IS INCLUDED: Compensable space includes _____ square feet of PFSA space and _____ square feet of Shared Space.]

2. **Lease.** For and in consideration of the Lease Compensation and agreements hereinafter set forth, Lessor hereby leases the Leased Premises to U.S. Government, and U.S. Government hereby leases and accepts the Leased Premises from Lessor.
3. **Purpose.** The [TRIBE/TRIBAL ORGANIZATION NAME] shall maintain and operate the Leased Premises for the administration and delivery of services relating to the following Programs pursuant to the Contract:

o [List contracted PFSA(s) administered in this space.]

4. **Permitted Use of Leased Premises.** At all times during the Lease Term, the [TRIBE/TRIBAL ORGANIZATION NAME] shall operate the Leased Premises for the administration and delivery of services relating to [Specify PFSA Categories] pursuant to the Contract and paragraph 3 as stated above. No change of the Permitted Use of the Leased Premises shall be undertaken without prior written approval of the parties.

LEASE BETWEEN [TRIBE/TRIBAL ORGANIZATION]
AND THE UNITED STATES DEPARTMENT OF THE INTERIOR
[FISCAL/CALENDAR]

5. **Authority.** The parties enter into this Lease under the authority of the *Indian Self-Determination and Education Assistance Act* at 25 U.S.C. § 5324(*I*) and the regulations at 25 C.F.R. Part 900, Subpart H, and of the Contract.
6. **Incorporation of Lease into Contract by Amendment.** At the request of the Lessor, this Lease shall be entered into by U.S. Government, pursuant to Section ___ of the Contract and 25 U.S.C. § 5324(*I*), and thereafter shall be incorporated into the Contract by amendment.
7. **Impact on Contract Support Cost Calculations.**
- a. Lessor costs for insurance that it acquires pursuant to Section 10.1 are included in the Lease Compensation (See **Exhibit B**) and may not be included in Contract Support Cost Calculations under the Contract.
 - b. No other costs provided under this Lease may be again included in Contract Support Cost Calculations under the Contract. The purpose of this section is to prevent duplicate compensation for Lease costs.
8. **Lease Term.** The term for this Lease is [START DATE] through [END DATE]. This Lease will be terminated if the Lessor fails to use the facilities in accordance with the terms of this Lease. This Lease may be renewed annually, subject to 9.c., at the request of the Lessor and upon mutual agreement of the U.S. Government on the same terms and conditions as set forth herein. The Lessor shall provide notice of intent to renew this Lease at least three months in advance of the expiration date of the lease term.
9. **Lease Compensation**
- a. **Payment.** Lease Compensation shall be payable directly to Lessor in accordance with Section ___ of the Contract.
 - b. **Facility Lease Compensation.** The lease compensation due for the Lease Term is \$ _____. This represents compensation for the cost elements identified in **Exhibit B**. This Total Lease Amount represents the full and complete compensation under the 2022 Lease Agreement. The Parties agree that the Total Lease Amount is the negotiated amount for the cost elements requested and no additional compensation is due or owed under the 2022 Lease Agreement.
 - c. **Subject to Availability of Funds.** Compensation under this Lease is subject to Congressional action on appropriations and will be adjusted accordingly.
10. **Insurance.**
- 10.1. **Lessor Responsibility.** Lessor shall be responsible for major repairs to the Leased Premises. Without prejudice to the foregoing, Lessor shall be solely responsible for procuring and maintaining “all-risk” property insurance for all facilities comprising the Leased Premises and such other insurance that it deems necessary to protect its ownership interest in the Leased Premises, of such type and coverage, and on such other terms, as it may determine in its discretion.

LEASE BETWEEN [TRIBE/TRIBAL ORGANIZATION]
AND THE UNITED STATES DEPARTMENT OF THE INTERIOR
[FISCAL/CALENDAR]

10.2. U.S. Government Responsibility. The U.S. Department of the Interior is an agency of the United States Government, which self-insures in accordance with the Federal Tort Claims Act, 28 U.S.C. § 2671 *et. seq.*, and backed by the United States Judgment Fund, a bureau of the United States Treasury.

- 11. Additional Costs and Funding.** Lessor shall not request additional funding for replacement or repair of the Leased Premises from the U.S. Government during the Lease Term.
- 12. Right of Lessor to Review Operation of Leased Premises.** U.S. Government shall not object to Lessor's exercise of any right Lessor may possess to review the operation of the Leased Premises during the Lease Term.
- 13. Dispute Resolution.** Pursuant to incorporation of this Lease into the Contract by amendment, any claim, dispute, or other matter arising out of or relating to this Lease shall be subject to resolution pursuant to Article ___, Section ___ of the Contract.
- 14. Validity of Lease and Amendments.** This Lease shall not be valid or binding upon either party hereto until approved by the U.S. Government and the [TRIBE/TRIBAL ORGANIZATION NAME] with the [TRIBE/TRIBAL ORGANIZATION NAME]'s authorizing resolution attached hereto as **Exhibit C**. Any modifications of or amendments to this Lease shall be valid only if made in a writing approved by the Lessor and the U.S. Government.
- 15. Severability.** If any term or provision of this Lease Agreement is determined to be unenforceable, the rest and remainder of this Lease Agreement shall remain in full force and effect.
- 16. Merger Clause.** This Lease document represents the entire agreement between [TRIBE/TRIBAL ORGANIZATION NAME] and the United States Department of the Interior in relation to the facilities lease for the [FACILITY NAME] for [Fiscal/Calendar] Year 2022. No other documents or communications not incorporated herein shall have any force or effect on this Lease Agreement.
- 17. Notices; Payments; Demands.** Except for payments to Lessor, all notices, payments and demands shall be sent to the parties hereto at the address herein recited or to such addresses as the parties may hereafter designate in writing:
- 17.1 For Lessor:** [Point of Contact Name]
[TRIBE/TRIBAL ORGANIZATION NAME]
ADDRESS
- 17.2 For U.S. Government:** Assistant Secretary – Indian Affairs
Department of the Interior

LEASE BETWEEN [TRIBE/TRIBAL ORGANIZATION]
AND THE UNITED STATES DEPARTMENT OF THE INTERIOR
[FISCAL/CALENDAR]
1849 C Street NW
MS-4660-MIB
Washington, DC 20240

with a copy to:

[BIA REGIONAL DIRECTOR]
[REGIONAL OFFICE NAME]
[REGIONAL OFFICE ADDRESS]

with a copy to:

Office of Facilities, Property, and Safety Management -
Indian Affairs
Department of the Interior
12220 Sunrise Valley Dr.
Reston, VA 20192

18. Waiver. No waiver by a party of any of its rights or of any default of the other party's obligations under this Lease, or of any provision of this Lease, shall be effective unless made in writing signed by the waiving party. Neither waiver nor any failure of a party to insist on strict performance under this Lease by the other party shall affect the right of such party thereafter to enforce such provision or to exercise any right or remedy in the event of any default of the other party, whether or not similar.

19. Commencement Date. The Commencement Date for this Lease Agreement is the ___ day of _____, 2022.

LESSEE:

LESSOR:

United States Department of the Interior

**TRIBE/TRIBAL ORGANIZATION
NAME**

Deputy Assistant Secretary – Management

Signatory Name
Title

Dated: _____

Dated: _____

Appendix B Lease Agreement Template for Self-Governance Tribe

LEASE BETWEEN [TRIBE/TRIBAL ORGANIZATION]
AND THE UNITED STATES DEPARTMENT OF THE INTERIOR
[FISCAL/CALENDAR]

[TRIBE/TRIBAL ORGANIZATION NAME]

[FACILITY NAME]

THIS LEASE is made and entered into as of the ____ day of _____, 2022 by and between **[TRIBE/TRIBAL ORGANIZATION NAME]**, a [federally recognized Indian Tribe/Tribal Organization] ("*Lessor*"), whose address is _____, and **THE UNITED STATES DEPARTMENT OF THE INTERIOR**, acting through the Office of the Assistant Secretary – Indian Affairs (hereinafter referred to as "*U.S. Government*"), whose address is Main Building, 1849 C Street N.W., MS-3609-MIB, Washington, D.C., 20240. This lease is executed under the authority of the *Indian Self-Determination and Education Assistance Act* at 25 U.S.C. §5324(f) and the regulations at 25 C.F.R. Part 900, Subpart H, and pursuant to the agreement and authority set out in the "Compact of Self-Governance Between the [TRIBE/TRIBAL ORGANIZATION NAME] and the United States of America" ("*Compact*") and associated funding agreement(s).

Lessor and U.S. Government agree as follows:

1. **Leased Premises.** The Lessor hereby leases to the U.S. Government the following described Leased Premises:

A total of _____ leasable square feet of [describe space – ex: "office space"] in the [FACILITY NAME] facility, located at _____. (See Exhibit A.) [IF SHARED SPACE IS INCLUDED: Compensable space includes _____ square feet of PFSA space and _____ square feet of Shared Space.]

2. **Lease.** For and in consideration of the Lease Compensation and agreements hereinafter set forth, Lessor hereby leases the Leased Premises to U.S. Government, and U.S. Government hereby leases and accepts the Leased Premises from Lessor.

3. **Purpose.** The [TRIBE/TRIBAL ORGANIZATION NAME] shall maintain and operate the Leased Premises for the administration and delivery of services relating to the following Programs pursuant to the [SELECT: Annual Funding Agreement ("*FA*") – OR - Multi-Year Funding Agreement ("*MYFA*") between the [TRIBE/TRIBAL ORGANIZATION NAME] and the U.S. Department of the Interior:

o [List compacted PFSA's administered in this space.]

4. **Permitted Use of Leased Premises.** At all times during the Lease Term, the [TRIBE/TRIBAL ORGANIZATION NAME] shall operate the Leased Premises for the administration and delivery of services relating to [Specify PFSA Categories] pursuant to the [FA/MYFA] and paragraph 3 as stated above. No change of the Permitted Use of the Leased Premises shall be undertaken without prior written approval of the parties.

LEASE BETWEEN [TRIBE/TRIBAL ORGANIZATION]
AND THE UNITED STATES DEPARTMENT OF THE INTERIOR
[FISCAL/CALENDAR]

5. **Authority.** The parties enter into this Lease under the authority of the *Indian Self-Determination and Education Assistance Act* at 25 U.S.C. § 5324(*I*) and the regulations at 25 C.F.R Part 900, Subpart H, and of the Compact.
6. **Incorporation of Lease Under Compact and MYFA.** At the request of the Lessor, this Lease shall be entered into by U.S. Government, pursuant to Section ___ of the [FA/MYFA] and 25 U.S.C. § 5324(*I*), and thereafter shall be incorporated into the [FA/MYFA] by amendment.
7. **Impact on Contract Support Cost Calculations.**
 - a. Lessor costs for insurance that it acquires pursuant to Section 10.1 are included in the Lease Compensation (See Exhibit B) and may not be included in Contract Support Cost Calculations under the [FA/MYFA].
 - b. No other costs provided under this Lease may be again included in Contract Support Cost Calculations under the [FA/MYFA]. The purpose of this section is to prevent duplicate compensation for Lease costs.
8. **Lease Term.** The term for this Lease is [START DATE] through [END DATE]. This Lease will be terminated if the Lessor fails to use the facilities in accordance with the terms of this Lease. This Lease may be renewed annually, subject to 9.c., at the request of the Lessor and upon mutual agreement of the U.S. Government on the same terms and conditions as set forth herein. The Lessor shall provide notice of intent to renew this Lease at least three months in advance of the expiration date of the lease term.
9. **Lease Compensation**
 - a. **Payment.** Lease Compensation shall be payable directly to Lessor in accordance with Section ___ of the [FA/MYFA].
 - b. **Facility Lease Compensation.** The lease compensation due for the Lease Term is \$ _____. This represents compensation for the cost elements identified in Exhibit B. This Total Lease Amount represents the full and complete compensation under the 2022 Lease Agreement. The Parties agree that the Total Lease Amount is the negotiated amount for the cost elements requested and no additional compensation is due or owed under the 2022 Lease Agreement.
 - c. **Subject to Availability of Funds.** Compensation under this Lease is subject to Congressional action on appropriations and will be adjusted accordingly.
10. **Insurance.**
 - 10.1. **Lessor Responsibility.** Lessor shall be responsible for major repairs to the Leased Premises. Without prejudice to the foregoing, Lessor shall be solely responsible for procuring and maintaining “all-risk” property insurance for all facilities comprising the Leased Premises and such other insurance that it deems necessary to protect its ownership

LEASE BETWEEN [TRIBE/TRIBAL ORGANIZATION]
AND THE UNITED STATES DEPARTMENT OF THE INTERIOR
[FISCAL/CALENDAR]

interest in the Leased Premises, of such type and coverage, and on such other terms, as it may determine in its discretion.

10.2. U.S. Government Responsibility. The U.S. Department of the Interior is an agency of the United States Government, which self-insures in accordance with the Federal Tort Claims Act, 28 U.S.C. § 2671 *et. seq.*, and backed by the United States Judgment Fund, a bureau of the United States Treasury.

- 11. Additional Costs and Funding.** Lessor shall not request additional funding for replacement or repair of the Leased Premises from the U.S. Government during the Lease Term.
- 12. Right of Lessor to Review Operation of Leased Premises.** U.S. Government shall not object to Lessor's exercise of any right Lessor may possess to review the operation of the Leased Premises during the Lease Term.
- 13. Dispute Resolution.** Pursuant to incorporation of this Lease into the MYFA, any claim, dispute, or other matter arising out of or relating to this Lease shall be subject to resolution pursuant to Article ___, Section ___ of the Compact.
- 14. Validity of Lease and Amendments.** This Lease shall not be valid or binding upon either party hereto until approved by the U.S. Government and the [TRIBE/TRIBAL ORGANIZATION NAME] with the [TRIBE/TRIBAL ORGANIZATION NAME]'s authorizing resolution attached hereto as **Exhibit C**. Any modifications of or amendments to this Lease shall be valid only if made in a writing approved by the Lessor and the U.S. Government.
- 15. Severability.** If any term or provision of this Lease Agreement is determined to be unenforceable, the rest and remainder of this Lease Agreement shall remain in full force and effect.
- 16. Merger Clause.** This Lease document represents the entire agreement between [TRIBE/TRIBAL ORGANIZATION NAME] and the United States Department of the Interior in relation to the facilities lease for the [FACILITY NAME] for [Fiscal/Calendar] Year 2022. No other documents or communications not incorporated herein shall have any force or effect on this Lease Agreement.
- 17. Notices; Payments; Demands.** Except for payments to Lessor, all notices, payments and demands shall be sent to the parties hereto at the address herein recited or to such addresses as the parties may hereafter designate in writing:

17.1 For Lessor: [Point of Contact Name]
[TRIBE/TRIBAL ORGANIZATION NAME]
ADDRESS

LEASE BETWEEN [TRIBE/TRIBAL ORGANIZATION]
AND THE UNITED STATES DEPARTMENT OF THE INTERIOR
[FISCAL/CALENDAR]

17.2 For U.S. Government: Assistant Secretary – Indian Affairs
Department of the Interior
1849 C Street NW
MS-4660-MIB
Washington, DC 20240

with a copy to:

Office of Self-Governance – Indian Affairs
Department of the Interior
1849 C Street NW
MS-2071-MIB
Washington, DC 20240

with a copy to:

Office of Facilities, Property, and Safety Management -
Indian Affairs
Department of the Interior
12220 Sunrise Valley Dr.
Reston, VA 20192

18. Waiver. No waiver by a party of any of its rights or of any default of the other party's obligations under this Lease, or of any provision of this Lease, shall be effective unless made in writing signed by the waiving party. Neither waiver nor any failure of a party to insist on strict performance under this Lease by the other party shall affect the right of such party thereafter to enforce such provision or to exercise any right or remedy in the event of any default of the other party, whether or not similar.

19. Commencement Date. The Commencement Date for this Lease Agreement is the ___ day of _____, 2022.

LESSEE:

LESSOR:

United States Department of the Interior

**TRIBE/TRIBAL ORGANIZATION
NAME**

Deputy Assistant Secretary – Management

Signatory Name
Title

Dated: _____

Dated: _____

Appendix C Excel Document 105 (I) Template All Areas Consolidated

Consolidated Summary

Consolidated Calculation Summary (Form Updated 5/4/2020)

The Consolidated Summary tab in this template is used to enter the applicable calculations from the other tabs in the template.

This template requires cells highlighted in YELLOW to be filled in. Please follow the guidance provided to the right of the cell or described below. The rest of the Spreadsheet will auto calculate.

Cost Elements (b) through (h): Enter the calculated value for each of the applicable cost elements as calculated in the corresponding tab.

Cost Elements (a) and (i): IF APPLICABLE, these cost elements will require additional information and documentation that is not consistent with a form template. Once these have been negotiated then the resulting values should be entered here.

The majority of the cells in the tabs of this template are "protected." If modifications are needed for a unique requirement, advise the Indian Affairs team.

If a lease term is not a full 12 month period, then "Lease Begin" and "Lease End" dates will be used to prorate the full year amounts provided. If this is a full-year lease agreement, ensure the begin & end dates reflect 365 days (prorate will be 100%). The formula disregards leap years. The data entered and calculated in the other tabs should reflect actual or estimated amounts for a FULL Year.

Date Updated:		Enter date data was provided or updated for this form (M/D/YYYY format)
Tribe/School:		Provide here to autopopulate other tabs
Facility Name/No.		Provide here to autopopulate other tabs
Lease Begin Date:	10/1/2021	Enter the Beginning Date for this 105(I) Lease Agreement (M/D/YYYY format)
Lease End Date:	9/30/2022	Enter the Ending Date for this 105(I) Lease Agreement (M/D/YYYY format)
Calendar Days of Lease:	365	Autocalculated number of Calendar Days of Lease Term
Prorated percentage:	100%	Autocalculated prorated percentage for this lease term
25 CFR Part 900 Subpart H Section 900.70 Cost Elements	1 Yr. Total	Prorated
(a) Rent		\$0.00
(b) Depreciation		\$0.00
(c) Reserve Fund Contributions	\$0.00	\$0.00
(d) Principal and Interest Paid or Accrued		\$0.00
(e) O&M Lease Calc. Per Schedule	\$0.00	\$0.00
(f) Repairs to buildings and equipment	\$0.00	\$0.00
(g) Alterations needed to meet contract requirements	\$0.00	\$0.00
(h) Other reasonable expenses	\$0.00	\$0.00
(i) Fair Market Rental		\$0.00
Total	\$0.00	\$0.00
O&M Received From Indian Affairs (BIA or BIE) for this Facility	\$0.00	\$0.00
Proposed Lease Amount	\$0.00	\$0.00

Appendix D CFO Certification

CHIEF FINANCIAL OFFICER/TREASURER CERTIFICATION

I, (insert name), Tribal Treasurer (or Chief Financial Officer) of the (insert name of Tribe or Tribal Organization), hereby certify that the financial information provided to the Department of the Interior for purposes of negotiating the (insert name of the facility) Facility Lease Agreement was prepared in accordance with generally accepted accounting principles and that the information presented is, to the best of my knowledge, a true and correct accounting of the costs associated with the (insert name of facility) in xxxx year.

Signature Line _____

Date: _____

Name

Title

Appendix E Tribal Resolution Sample

Tribal Resolution Sample

WHEREAS, federal law requires the Secretary of the U.S. Department of the Interior to enter into a lease agreement with a tribe proposing a lease pursuant to Section 105(l) of Public Law 93-638, as amended (codified at 25 U.S.C. § 5324(l)), with such lease compensation as calculated in accordance with 25 C.F.R. Part 900 Subpart H (beginning at 25 C.F.R. § 900.69); and

WHEREAS, the U.S. Department of the Interior requires tribes and tribal organizations to certify that all information provided by the tribe or tribal organization for purposes of calculation of calculating lease compensation under Section 105(l) of Public Law 93-638 is true and correct; and

NOW THEREFORE BE IT RESOLVED, [Name and Title of Authorized Representative] is authorized to submit a lease proposal to the U.S. Department of the Interior for the following facility(y/ies) pursuant to Public Law 93-638:

[facility name], located at [facility address]

[facility name], located at [facility address]

BE IT FURTHER RESOLVED, [Name and Title of Authorized Representative] is authorized to negotiate and execute said lease agreement and to take all measures necessary to implement said lease agreement for [fiscal/calendar] year [YEAR] and subsequent lease periods for which funds are available; and

BE IT FURTHER RESOLVED, [Name and Title of Authorized Financial Representative] is hereby designated as the appropriate official to verify the information provided by the tribe or tribal organization for purposes of calculating lease compensation under Section 105(l) of Public Law 93-638, and is hereby authorized to attest as to the accuracy of such.
