

105(l) Facility Lease Guide



Table of Contents

| | |
|---|-----------|
| Chapter 1: Introduction- Eligibility- Application..... | 03 |
| Chapter 2: Lease Execution Process..... | 06 |
| Chapter 3: Required Documents..... | 10 |
| Chapter 4: Financial Details & Use of Funds..... | 22 |
| Chapter 5: Negotiation & New Construction..... | 25 |
| Chapter 6: Fund Distribution & Renewals..... | 27 |
| Appendices Table of Contents..... | 29 |

Introduction-Eligibility-Application



Chapter 1 introduces the 105 (l) facility lease program, available through the Office of Facilities, Property, and Safety Management (OFPSM), Office of Tribal Leases (OTL). This chapter also explains how a Tribe can determine their eligibility and how to apply for a 105(l)-facility lease.

A 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 (T/TO) to compensate 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.

The facility rights are still fully the responsibility of the Tribe. This also means that the 105 (l) facility lease program does not negate or supersede any land contracts, rent-to-own, land-for-deed, mortgage, bankruptcy, or other financial obligations the Tribe may have for the facility. The Tribe is still fully financially responsible for the facility. The 105 (l) 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, and federally approved programs in the Tribe's facilities.

Purpose for Entering Into a 105(l) Lease

The 105 (l) lease can cover facility operating costs. These costs may include rent, depreciation, reserve funds, principal and interest, operation and maintenance expenses, repairs, alterations, and other reasonable expenses.

Eligibility

- The Tribe must hold title to the facility,
- A leasehold interest in the facility; or
- Trust interest in the facility.
- The facility must be occupied and used to carry out a qualified Federal PFSA.
- The PFSA must be in an approved ISDEAA Self-Determination contract, Self-Governance compact, Public Law 100-297 grant, or 477 program.

Proof of Interest

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

The Application Process

The Federally Recognized Tribe or Tribal Organization (T/TO) should confirm that...

- The T/TO holds title to, a leasehold interest in, or a trust interest in, the facility.
- The T/TO uses the facility to administer and deliver services under an approved ISDEAA 638 compact, contract, 297 grant, or 477 program.

Submit a Letter of Intent on Tribal letterhead to the Office of Tribal Leases (OTL) 105(l) mailbox at ISDEAA105L@BIA.GOV that includes:

- Each facility, including the address.

- The approved ISDEAA PFSAAs listed for each facility.
- The type of compensation the T/TO is seeking.
- A statement of ownership interest.
- Whether the T/TO operates on a fiscal or calendar year.
- Tribal POCs. Please include names, phone numbers, and email addresses.

Note: The letter of intent can include multiple facilities, but each must be identified separately. Unless the facilities share the same address, each facility will have its own lease.

Letter of Intent example, see [Appendix A](#).



105(l) Lease Execution Process

Lease Assignments

One of the first questions Tribes ask is when leases will be completed and what the wait time in the queue is. Lease requests are entered into the queue upon receiving the letter of intent. Once a Tribe comes up in the queue, it is assigned a Realty Specialist who will process all the Tribe's 105(l) leases from the initial letter of intent through the current year.

If the Tribe has a *New Construction facility, School, or Correctional facility*, that facility will not get placed in the general queue. That facility will be given priority and will immediately be assigned a Realty Specialist. All new construction facilities have an anticipated lease completion date based on the date the Office of Tribal Leases receives the certificate of occupancy.

Distribution of funds may take several weeks after the lease execution, pending staffing demand, backlog, and fund availability.

File Organization and Standard Naming Conventions

It will speed up the process if T/TO will name files the same as the OTL.

- Exhibit A-Facility-FY/CY 202X-Tribe
- Exhibit B-Facility- FY/CY 202X-Tribe
- Exhibit C-Facility- FY/CY 202X-Tribe
- FMRA-Facility- FY/CY 202X-Tribe
- Ownership-Facility- FY/CY 202X-Tribe
- Letter of Intent- Facility- FY/CY 202X-Tribe
- Floor Plans-Facility- FY/CY 202X-Tribe
- Lease-Facility- FY/CY 202X-Tribe

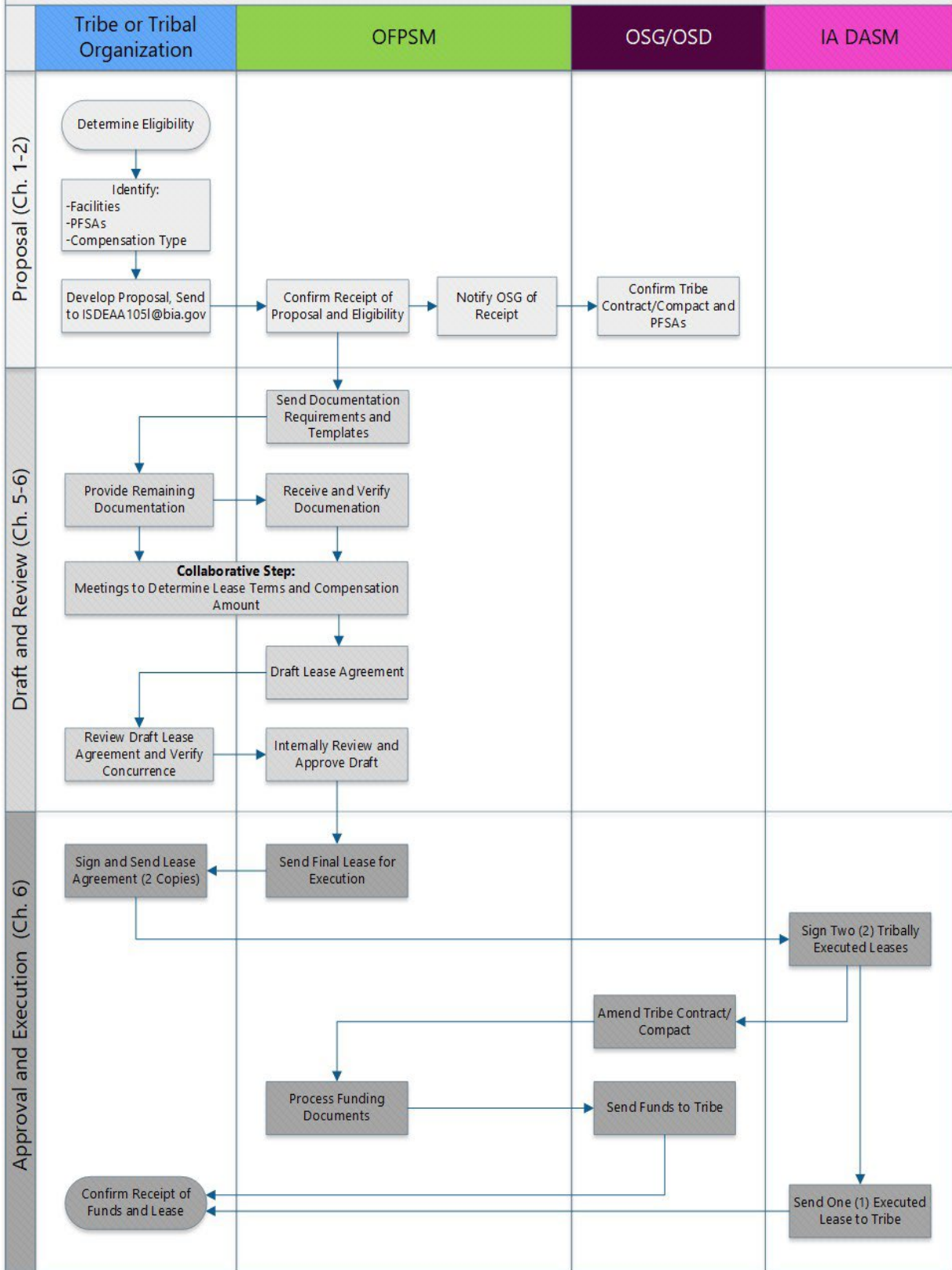
The process for awarding initial leases

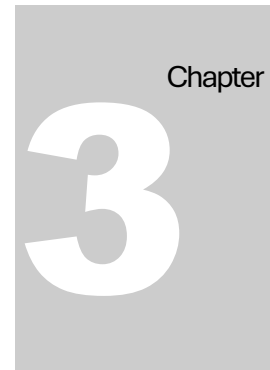
1. Tribe submits a Letter of Intent. When the Realty Specialist is assigned, they should send an introductory email to the Tribe.
2. OTL will provide technical assistance upon request.
3. Receive and review the required documents.
 - a. Letter of Intent
 - b. Floor plans and recent photos, interior and exterior
 - c. Proof of ownership
 - d. Compensation/Financial Documents
 - e. Certificate of occupancy
 - f. Financial certification
 - g. Tribal resolution
 - h. 638 funding agreement, 477 program, or 297 grant. The Realty Specialist must confirm that the PFSA's qualify.
4. Complete the draft lease using the appropriate Title I (Self-Determination), Title IV (Self-Governance), or 297 Grant (Schools) Lease Template.
5. Send draft lease to the Tribe for concurrence.
6. Complete final lease updates.
 - a. Complete (Word) lease; no exhibits or attachments.
 - b. Complete (PDF) lease, including:
 - 1) Exhibit A (floor plans and photos),
 - 2) Exhibit B (financial spreadsheet and supporting financial documentation, if any), and
 - 3) Exhibit C (Tribal Resolution)
 - c. Complete (PDF) lease binder, including:
 - 1) Table of contents.
 - 2) Cover Page.
 - 3) Letter of Intent.
 - 4) Lease, including exhibits.
 - 5) FMRA, proof of cost elements, or both.

- 6) Financial certification.
 - 7) Certificate of occupancy.
 - 8) Proof of ownership.
 - 9) Current 638 funding agreement, 477 program, or 297 grant.
7. Initial review from senior staff.
 8. Uploaded to DTS for surnaming.
 9. Once surnaming is complete, send the PDF file of the lease with exhibits (only) to the Tribe for signature.
 10. Route the Tribally signed lease in DTS for the signature of the Deputy Assistant Secretary of Management (DASM).
 11. The initial lease will be backdated to the date we receive the complete approved 105(l) lease package. If the Tribe is not able to provide all required approved documents within the year of application; the Tribe will need to re-apply in the current year.
 12. Once the fully executed/approved lease is returned from DASM, the assigned realty specialist will request that the funds be distributed and send a copy of the fully executed lease to the Tribe.

[SEE NEXT PAGE]

105(l) Facility Lease Process Map





Required Documents

1. Letter of Intent or Renewal Request

The T/TO must submit a formal letter of intent on Tribal letterhead requesting to enter the 105(1) Program. The letter of intent should be emailed to ISDEAA105I@bia.gov.

For Renewal Requests, the T/TO must submit a renewal request for each lease period, preferably on tribal letterhead, 90 days before the expiration of their existing lease.

The Letter of Intent or Renewal Request must:

- Identify each facility, including the address.
- List the approved ISDEAA PFSA's in each facility.
- Specify the type of compensation the Tribe is seeking (if known at that time).
- Include a statement of ownership interest.
- Identify whether the Tribe operates on a fiscal or calendar year.
- Provide the contact information for the Tribal Point of Contact representative(s).

2. Proof of Qualifying Public Law 93-638 Contract or Compact, Public Law 100-297 Grant, or Public Law 102-477 Program

The facility or space must be used for a qualified Program, Function, Service, or Activity (PFSA), and the PFSA must be in an approved Public Law 638 ISDEAA Self-Determination contract, Self-Governance compact, Public Law 100-297 grant (the Funding Agreements), or 477 Program. The OTL will verify the qualification.

Note: Unless otherwise authorized, the lease will be executed in the entity's name on the contract, funding agreement, or grant. If the entity on the lease will differ from the entity on the contract, funding agreement, or grant, a Tribal Resolution authorizing the entity to execute the lease on behalf of the Tribe is required.

Acceptable Types of Funding Agreements or Programs:

- *Public Law 638-* contracts and compacts transfer the responsibility and funds for a PFSA from the federal government to the tribe.
- *Public Law 100-297-* Indian tribes may enter into a Public Law 100-297 grant agreement with Indian Affairs (IA) if the tribe operates a school under a Public Law 93-638 contract or compact agreement.
- *Public Law 102-477 program-* Employment and training programs eligible for compensation are those integrated into Tribal Workforce Development plans. The Indian Affairs Division of Workforce Development approves these plans under Public Law 102-477, the Indian Employment, Training, and Related Services Demonstration Act of 1992, as amended. PL 102-477 must be incorporated into ISDEAA contracts, compacts, and funding agreements.

3. Proof of Ownership

To prove ownership interest, T/TOs must provide one of the following:

- Tribe must hold title to the facility (Deed or Title)
- A leasehold interest in the facility (current rental agreement(s))
- A trust interest in the facility (trust records or tax records).

Proof of Interest

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

4. Methods of Compensation

T/TOs may determine the type of compensation they would like to receive and what best meets their needs.

T/TOs may choose from three categories of compensation:

- Fair Market Rental
- Cost elements listed in 25 CFR Section 900.70(a-h)
- Combination of the cost elements listed in 25 CFR Section 900.70(a-h) and fair market rental

Fair Market Rental

A. General Requirement

When a Tribe elects to receive lease compensation based on fair market rental, the Tribe must submit a full service (gross) **Fair Market Rental Analysis (FMRA)**. The FMRA shall be conducted and certified by a **qualified appraiser or licensed real estate broker**.

B. Minimum FMRA Components

The FMRA must include, at a minimum, the following elements:

a) **Comparable Property Analysis:**

A comparison of **no fewer than three (3)** similar rental properties, to the extent such properties are available.

b) **Valuation Methodology:**

A detailed explanation of how the fair market rental value was calculated, including all assumptions, adjustments, and analytical methods used.

c) **Photographic Documentation:**

Clear photographs of the subject facility and each comparable property used in the analysis.

C. Appraisal Standards and Comparable Selection

In conducting the FMRA, the appraiser shall evaluate the facility based on factors including, but not limited to:

- Age
- Square footage
- Location
- Amenities
- Overall physical condition

The appraiser shall compare these characteristics to those of similar rental properties within the relevant market area.

If appropriate comparable rental properties are not available within the immediate area, the appraiser may expand the geographic search radius as necessary. When comparable rental properties are identified outside the local market, the appraiser may apply **mathematical or market-based adjustments**, provided that all adjustments are fully justified, documented, and supported by recognized appraisal standards.

D. Alternative Valuation Methods

If no suitable comparable rental properties can be identified, the Tribe may submit an FMRA using **alternative reasonable valuation methods**, including the **cost approach** or other accepted appraisal practices. Each facility will be evaluated **individually** based on the information provided.

E. Justification for Fewer Comparables or Alternative Methodology

While three comparable rental properties are strongly preferred, it is recognized that such data may not always be available. In these situations, the FMRA submission must include:

- A written justification explaining why three comparable rental properties could not be identified; and
- A rationale for why the alternative valuation method or reduced number of comparables is appropriate and should be accepted.

Cost Approach-Guardrails

Purpose

This section establishes required conditions, documentation standards, and review controls governing the use of the Cost Approach in fair market rent determinations. The objective is to ensure defensible valuation, minimize risk exposure, and promote consistency and audit readiness.

Definition

The traditional cost approach is a method of property valuation in which the value of property is determined by estimating the current cost of construction a replacement of the building, deducting all forms of depreciation, and adding the value of the land.

Basic Formula

$$\text{Property Value} = \text{Land Value} + (\text{Cost of Improvements} - \text{Depreciation})$$

$$\text{Property Value} = \text{Land Value} + (\text{Cost of Improvements} - \text{Depreciation})$$

Steps in the Traditional Cost Approach

- Estimate the value of the land as if it were vacant.
- Estimate the current cost to reproduce or replace the building.
- Estimate depreciation (physical deterioration, functional obsolescence, economic obsolescence).
- Subtract depreciation from the cost of improvements.
- Add the land value to get the total property value.

When the Cost Approach May Be Used

The cost approach may only be used when at least one of the following conditions exists:

- Fewer than three reliable comparable rentals can be identified after documented and reasonable search efforts have been completed within a 200-mile radius.
- The facility is a special use or unique property type lacking an active rental market (Religious Buildings, Air Terminals, Sports Arenas, Theaters, Museums, Funeral Homes, Government Buildings, Amusement Parks, Libraries, and Utilities Facilities).
- Available comparables are unreliable due to volatility or atypical property characteristics or other documented conditions (Historic Buildings, Agriculture Estates, Extremely Remote Areas).
- Comparative analysis demonstrates the Cost Approach provides a more reliable indication of value than market comparables.

Staff shall not select the Cost Approach for convenience or preference.

Required Documents Checklist

- Written explanation of why the comparable rental method is insufficient.
- Documentation of comparables search efforts (sources, geography, dates).
- Construction cost data (sources and dates).
- Complete valuation calculations.
- Market reasonableness narrative.

All assumptions must be supported by credible, verifiable data. Appraisals must be traditional Cost Approach and not a hybrid of different approaches.

Review and Approval Requirements

Use of the Cost Approach automatically triggers the following:

- A technical review must be conducted by the Office of Tribal Leases or an independent approving authority, as authorized by the Office of Tribal Leases.
 - Independent Technical Review Committees
 - Government appointed valuation review panels
 - Infrastructure project review board
 - Regulatory Agencies
 - Building Inspection Authority
 - Appraisal or Valuation Boards
 - Financial Oversight Authorities
 - Treasury Department
 - Public Audit Office
 - Senior Government Officials
 - Office of Facilities, Property and Management Director
 - Deputy Assistant Secretary of Management
 - BIA Director
 - BIE Director
 - Assistant Secretary of Indian Affairs
- The Reviewer must verify:
 - Methodology appropriateness
 - Reasonableness of assumptions
 - Adequacy of supporting data
 - Calculation accuracy
 - Policy compliance

Oversight and Quality Assurance

OTL may conduct on-site inspections of properties. OTL may also rely on information obtained by routine monitoring visits conducted by other bureaus or divisions, as authorized by 25 USC §. Discrepancies may result in lease adjustments or corrective actions.

Waiver Request

The Tribe will be required to submit a request for waiver form to the Assistant Secretary of Indian Affairs for each facility where the Tribe wants to use the Cost Approach to determine the value of fair market rent.

Templates will be provided by the Office of Tribal Leases.

Cost Elements

If a Tribe requests lease compensation based on cost elements contained in 25 C.F.R. § 900.70 (a-h), the Tribe must provide documents supporting each cost. 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.

900.70(a-h)

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

Combination of FMRA and Cost Elements

A Tribe may request compensation based upon a combination of the cost elements 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 with a modified gross or NNN FMRA.

5. Floor plans

Floor plans must clearly identify all spaces and types of use.

Examples:

- PFSA (identifying specific PFSAs)
- Common Areas (Hallways, restrooms, foyers, break rooms, conference rooms, etc.)
- Shared Space (any space shared with or in support of qualified and unqualified programs)
- Non-PFSA (unqualified program space or other tenants occupying the facility)

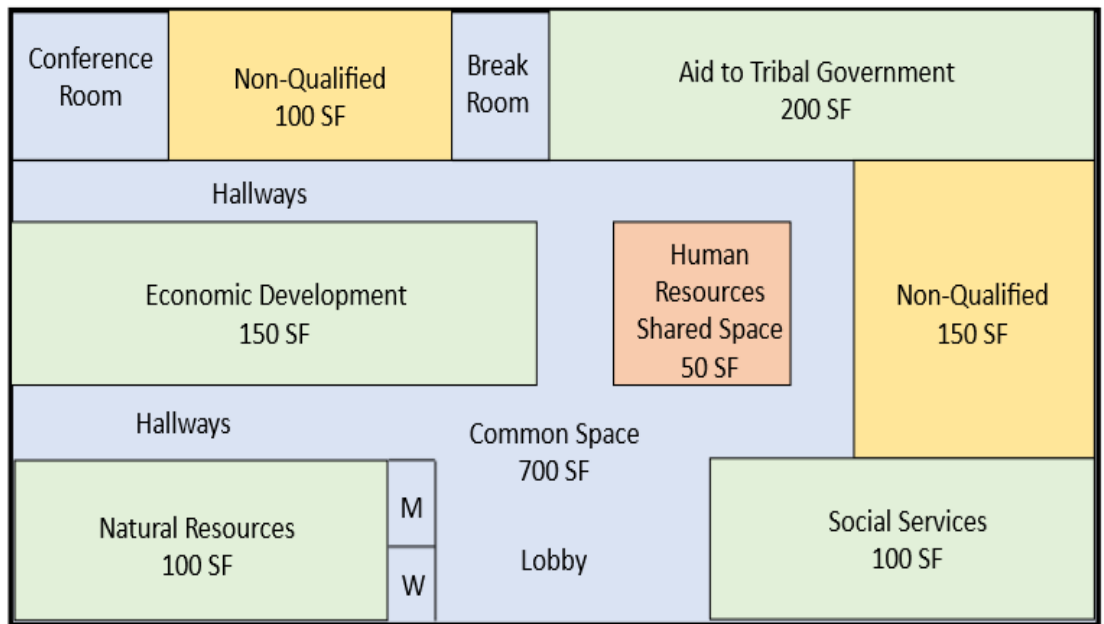
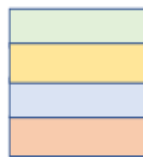
A simple markup of existing floor plans or drawings of the facility layout may be completed. This may be drawn by hand on graph paper, or the Tribe may use a software program to assist with drawing rooms, doors, and windows with accurate square footage. All space must be accounted for and clearly identified.

Note: There must be a key or legend.

EXAMPLE - Building with Multi-Use Spaces

Total Space = 1,550 SF

BIA PFSA Space = 550 SF
 Non-Qualified Space = 250 SF
 Common Space = 700 SF
 Shared Space = 50 SF



Common Space

In a facility where the Tribe administers both ISDEAA and non-ISDEAA activities, there are usually Common Spaces that the Tribe uses to carry out the approved PFSA's. These spaces are needed to support the basic functions of the facility's occupants. 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 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 or human resources offices. The Tribe is compensated for 50 percent of the Shared Services Space without providing 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.

[SEE NEXT PAGE]

Photos

Both interior and exterior photos should be included.



Casa Blanca Community School

6. Certificate of Occupancy

T/TOs must provide a Certificate of Occupancy for each facility. The Certificate should be issued by the legal jurisdiction in which the facility resides (city, county, reservation).

A Certificate of Occupancy is required to demonstrate the facility's in-service date and confirm that it is currently used to operate a qualified PFSA.

If no Certificate of Occupancy is available, the T/TO may provide a good-faith statement explaining why (e.g., one was never issued, unavailable due to the facility's age, etc.). This statement must be approved and signed by the Tribal Chair, President, or authorized legal representative.

7. Financial Certification

The information submitted by the T/TO should, to the best of their knowledge, be a true and correct account of the costs associated with the proposed leased facility in the claimed year. The T/TO must provide financial certification stating that all financial information provided by the Tribe to the Department of the Interior is true and accurate. The Tribe's CFO or Treasurer must sign the certification.

8. Tribal Resolution

The T/TO must provide a signed resolution agreeing to enter into the 105(l) Program with the United States Government under the terms of the contract or agreement.

The Tribal Resolution must list each facility and the years of approval. If the Tribal Resolution for the initial lease does not include wording for renewals or is time-specific, then the Tribe must provide an updated Resolution each year. (The T/TO may choose to include the template language “*all subsequent periods*” to prevent having to provide future updated Resolutions.)

Financial Details & Use of Funds

Depreciation

In general terms, depreciation accounts for the facility's aging over time and its actual annual use. According to the Internal Revenue Service (IRS) publication 946, depreciation is calculated over 39 years. Facilities older than 39 years are not eligible for depreciation as a cost element.

If the Tribe is uncertain how to calculate depreciation, the OTL staff may assist. The Tribe can only depreciate the portion of the facility it owns, not the portion financed.

Required Information

- The date the facility was initially 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.

Principal and Interest

The Tribe may be eligible to be reimbursed for principal and interest costs received after the lease is in effect.

Required Information

- Copy of the Loan.
- Annual Interest Rate.
- Year the Loan Started.
- The Loan Term in Number of Years (10, 15, 30 years).

- Any funds or grants received from other sources.
- Full construction cost.
- Any down payment or other offsetting payment provided by the Tribe.

Reserve Fund

A reserve fund is a set of savings to cover unexpected future costs not part of the regular operating budget. Tribes are encouraged to keep *Reserve Funds* in a liquid, interest-bearing account, such as a savings or money market account, so that funds are available to cover unexpected expenses.

20% Building Replacement Down Payment

- 20% of the cost to construct the facility (new construction) is eligible for this calculation. The tribe must provide proof of the total construction cost.
- 20% of the current replacement value of existing facilities is eligible for this calculation. The Tribe must provide proof of the current facility replacement value. A suggested source would be the facility's insurance documentation, which is typically kept up to date by the insurer (in terms of replacement cost). Please note the insurer's value would be in today's dollars, so a side calculation would need to be made to convert the cost to a value equivalent to the year in which the building was constructed/initially occupied.
- Reserve payment will be made for 10 years annually from the start of the lease.
- An inflation rate of 4% per annum will be factored into the replacement cost calculation.

Qualified 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, and repainting).
- Security services.
- Management fees.
- Other reasonable and necessary operation or maintenance costs justified by the contractor.

Qualified Repairs

Facilities and equipment repairs are unexpected costs. This includes work done to return the equipment to service after a service failure or to prevent further damage to the facility. An example is roof repair to prevent internal water damage and mold.

Qualified Tenant Improvements

OTL approves modifications needed to properly administer the approved PFSAs and meet code or contract requirements. (Usually performed through a construction loan).

Other Reasonable Expenses

IA wanted to be prudent in providing flexibility to capture costs not included in another category.

Use of Funds

T/TOs must spend funds as outlined in their 105(l) facility lease agreement.

If the tribe has already paid for facility expenses with other funds, the T/TO may use them at its discretion.

Funds are restricted.

Reserve funds are restricted but may be invested conservatively. However, they may not be used as collateral or down payment for constructing or repairing other facilities.

Negotiation & New Construction

Negotiation

The Tribe must submit all required and approved documents within the calendar or fiscal year of application; otherwise, the Tribe must submit a new application in the current year. The time to negotiate and process a new lease may vary depending on staff availability, the technical assistance required, and the ability to understand and arrive at reasonable compensation. The first lease a Tribe does typically takes longer, but this experience speeds up the process of subsequent leases. Per program guidelines, IA will offer Tribes technical assistance as 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.

Typical requests for clarification.

- Floor plans must properly show the square feet (SF) for each PFSA.
- Provide missing documents for lease execution.
- Documentation justifying cost elements.
- Clearly identify the shared services and common spaces.
- Identifying spaces already covered/compensated by IHS or other fund source(s).

A Tribe could use the 105 (l) lease program to receive compensation for a new facility.

A Tribe may obtain a construction loan, plan, design, and build a new facility, and receive compensation for Principal and Interest on the construction loan through a 105(l) lease. The facility must be used to carry out an approved ISDEAA PFSA. IA does not get involved with the loan process. 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.

New Construction Pre-Approval (Optional-Highly Recommended)

Floor plans for new construction facilities must be reviewed for reasonableness and approved by the following authorities:

- New Schools - Must be reviewed by the DFMC (Division of Facilities Management and Construction).
- Correctional Facilities - Must be reviewed by the OJS (Office of Justice Services).
- All Other New Construction Facilities - Will be reviewed by the OTL (Office of Tribal Leases).

T/TO must submit:

- Conceptual Design
- Specify the PFSAs
- Estimated cost
- Estimated completion date
- Written justification for the facility

OTL will review and discuss the request with the solicitor's office and other subject matter experts as needed. Once the initial concept is approved or disapproved for reasonableness by the appropriate office, the Chief of OTL will review the documentation provided by all sources and write an opinion. The floor plans, tribal justification, DFMC or OJS opinion (if applicable), and OTL's opinion will be submitted via DTS for review by SOL, OFPSM, BIA, and DASM. Once all approvals are obtained, the reasonableness opinion will be returned to the T/TO.



Fund Distribution & Renewals

Upon final lease execution

- The Tribe's assigned Realty Specialist will send a fully executed copy of the lease to the Tribe within three business days of the government signing.
- The Realty Specialist will submit a request to the Finance Specialist within three business days of receiving the fully executed lease that the funds be distributed to the Tribe.
- The Finance Specialist will process the FED request.
- The funds will be distributed via the Region or OSG through the Tribe's 638 contract or compact.
- A school's funds may be distributed via the Tribe's 638 funding agreement or 297 grant.
- The Office of Tribal Leases will track the distribution of funds to the Tribe.

Prorating & Backdating

The initial lease term is backdated and prorated to start on the date the complete 105(l) application package is received and approved. (All documents must be received within the application year, or the Tribe must re-apply in the current year.)

Termination

The existing lease will be terminated if the facility is replaced or the operation is discontinued.

If the facility can no longer support the PFSA before the lease term ends, please contact IA at ISDEAA105L@BIA.GOV. Since the lease compensation is paid annually, it must be adjusted.

Renewals

Section (8) of the lease, "Lease Term," requires the Tribe to provide notice of intent to renew three months before the lease expires.

If compensation is based on Fair Market Rental Analysis (FMRA), a Consumer Price Index (CPI) adjustment will be 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 must submit documentation to justify the lease renewal amount. A new CFO Certification must be submitted if any new documents are submitted as part of a lease renewal. If the initial Tribal resolution does not include wording for renewals or is time-specific, then the Tribe must provide an updated Resolution.

- The Tribe may change the square footage, choose a different compensation method, and renegotiate the lease terms upon renewal.
- If space modification is negotiated, a floor plan must be included with the lease renewal.
- If the facility location changes, a new lease will be required.

Send all updated information along with the renewal request letter to ISDEAA105L@BIA.GOV.

CPI adjustments

The CPI adjustment is based on geographical location and is calculated using the U.S. Bureau of Labor Statistics Consumer Price Index (<https://www.bls.gov/cpi/regional-resources.htm>).

All renewals will be subject to the current year's policies.

Appendices Table of Contents

[Appendix A](#) Letter of Intent

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

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

[Appendix D](#) Lease Agreement Template for 105(l) School

[Appendix E](#) Excel Document Financial Template (Consolidated Summary)

[Appendix F](#) CFO Certification Example

[Appendix G](#) Tribal Resolution Sample

[Appendix H](#) Cost Approach Exemption Form

Appendix A - Letter of Intent

[Preferred on Tribal Letterhead]

Cody Seaton
Office of Tribal Leases
Indian Affairs
12201 Sunrise Valley Dr. Mail Stop-244
Reston, VA 20192

Re: [Tribe's Name] Letter of Intent for 105(l) Leases

Dear Mr. Seaton:

Pursuant to 25 U.S.C. § 5324(l), Pub. L. 93-638, Title I, § 105(l), on [Date] the [Tribe's Name] hereby requests ISDEAA Section 105(1) facility lease agreements with the Secretary of the Department of the Interior.

This request is for the following facilities in accordance with the provisions of 25 U.S.C. § 5324(1), 25 C.F.R. § 900 Subpart H, and our [Title I or Title IV] Funding Agreement:

Name of Building/Facility Complex, Address and PFSAs

- [Name of Building/Facility, Address and PFSAs]
- [Name of Building/Facility, Address and PFSAs]
- [Name of Building/Facility, Address and PFSAs]

Tribes or Tribal Organizations must choose one of the following methods of compensation:

- Fair Market Rental.
- Cost Elements listed in the 25 CFR Sections 900.70 A-H only.
- Combination of Fair Market Rental and Cost Elements, provided that no element is duplicative.

The [Tribe's Name] seeks compensation based on [Method of Compensation]. We look forward to working with our federal partners to determine a reasonable and non-duplicative compensation amount for this lease.

Tribes or Tribal Organizations must choose one of the following ownership interests:

- Fee
- Leasehold Interest
- Trust Interest

The [Tribe's Name] has [Ownership Interest] and administers its qualified programs using a [Calendar/Fiscal Year] accounting method.

Sincerely,

[Signature]

[Tribal Representative Name & Title]

Appendix B - Lease Agreement Template for Self-Determination Tribe

[TRIBE/TRIBAL ORGANIZATION NAME]
[FACILITY NAME]

THIS LEASE is made and entered into as of the [] day of [], 202X 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(l) 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:

○ [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.
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(l) 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 the currently active Contract and 25 U.S.C. § 5324(l), 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 will be for the period commencing [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 in two (2) year periods, 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 the currently active Contract.
- b. **Facility Lease Compensation.** The lease compensation due for the first year of the Lease Term is \$. This represents compensation for the cost elements identified in Exhibit B. This amount represents the full and complete Compensation for the first year under the 202X Lease Agreement. Compensation for the second year of the Lease Term will be memorialized in a separate Lease Modification. Once the Compensation for the second year is agreed to and set forth in a Lease Modification, the Parties agree that Compensation for both years of the Lease Term (the “Total Lease Amount”) will be the final, negotiated amount for the cost elements requested and no additional compensation will be due or owed under the 202X 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.

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 the currently active 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 facility lease for the [FACILITY NAME] for [Fiscal/Calendar] Years [Beginning Year] - [Ending Year]. 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
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
12201 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 [redacted] day of [redacted], 202X.

LESSEE:

United States Department of the Interior

Daniel A. Galvan
Acting Deputy Assistant Secretary – Mgmt

Dated: _____

LESSOR:

TRIBE/TRIBAL ORGANIZATION NAME

Signatory Name
Title

Dated: _____

Appendix C - Lease Agreement Template for Self-Governance Tribe

[TRIBE/TRIBAL ORGANIZATION NAME]
[FACILITY NAME]

THIS LEASE is made and entered into as of the [] day of [], 202X 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(l) 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 (“AFA”) – 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 currently active [AFA/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.

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(l) 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 the currently active [AFA/MYFA] and 25 U.S.C. § 5324(l), and thereafter shall be incorporated into the [AFA/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 [AFA/MYFA].
 - b. No other costs provided under this Lease may be again included in Contract Support Cost Calculations under the [AFA/MYFA]. The purpose of this section is to prevent duplicate compensation for Lease costs.
8. **Lease Term.** The term for this Lease will be for the period commencing [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 in two (2) year periods, 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 the Lessor in accordance with the currently active [AFA/MYFA].
 - b. **Facility Lease Compensation.** The lease compensation due for the first year of the Lease Term is \$ [REDACTED]. This represents compensation for the cost elements identified in Exhibit B. This amount represents the full and complete Compensation for the first year under the 202X Lease Agreement. Compensation for the second year of the Lease Term will be memorialized in a separate Lease Modification. Once the Compensation for the second year is agreed to and set forth in a Lease Modification, the Parties agree that Compensation for both years (the “Total Lease Amount”) will be the final, negotiated amount for the cost elements requested, and no additional compensation will be due or owed under the 202X 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.

- 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 the current 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 facility lease for the [FACILITY NAME] for [Fiscal/Calendar] Years [Beginning Year] - [Ending Year]. 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
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
12201 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 [redacted] day of [redacted], 202X.

LESSEE:

United States Department of the Interior

Daniel A. Galvan
Acting Deputy Assistant Secretary – Mgmt

Dated: _____

LESSOR:

TRIBE/TRIBAL ORGANIZATION NAME

Signatory Name
Title

Dated: _____

Appendix D - Lease Agreement Template for 105(l) School

[TRIBE/TRIBAL ORGANIZATION NAME]
[SCHOOL NAME]

THIS LEASE is made and entered into as of the **Date** by and between **[TRIBE/TRIBAL ORGANIZATION NAME]**, a federally recognized Indian Tribe (“*Lessor*”), whose address is **[REDACTED]**, 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(l) and the regulations at 25 USC Chapter 27, and pursuant to the agreement and authority set out in the “PL100-297 GRANT” Between the **[TRIBE/TRIBAL ORGANIZATION NAME]** and the United States of America” (“Grant”) and associated funding agreement(s).

Lessor and the 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 **[REDACTED]** leasable square feet within the **Tribal School** located at **Address**. (See Exhibit A).

- 2. Lease.** For and in consideration of the Lease Compensation and agreements hereinafter set forth, Lessor hereby leases the Leased Premises to the U.S. Government, and the 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 currently active 297 Grant (“Grant”) between the **[TRIBE/TRIBAL ORGANIZATION NAME]** and the U.S. Department of the Interior.

- **Tribal School (grades)**

- 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 education and school programs pursuant to the grant and paragraph 3, as stated above. No change of the Permitted Use of the Leased Premises shall be undertaken without the prior written approval of the parties.
- 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(l), the regulations at 25 USC Chapter 27, and the Grant.

6. **Incorporation of Lease Under PL100-297 Grant.** At the request of the Lessor, this Lease shall be entered into by the U.S. Government, pursuant to Item 15.047 of the Grant and 25 U.S.C. § 5324(l), and thereafter shall be incorporated into the Grant 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 Grant.
 - b. No other costs provided under this Lease may be again included in Contract Support Cost Calculations under the Grant. The purpose of this section is to prevent duplicate compensation for Lease costs.
8. **Lease Term.** The term for this Lease will be for the period commencing [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 in two (2) year periods, 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 the Lessor in accordance with Item 15.046 of the Grant and 25 USC Chapter 27.
 - b. **Facility Lease Compensation.** The lease compensation due for the first year of the Lease Term is \$ [REDACTED]. This represents compensation for the cost elements identified in Exhibit B. This amount represents the full and complete Compensation for the first year under the 202X Lease Agreement. Compensation for the second year of the Lease Term will be memorialized in a separate Lease Modification. Once the Compensation for the second year is agreed to and set forth in a Lease Modification, the Parties agree that Compensation for both years of the Lease Term (the “Total Lease Amount”) will be the final, negotiated amount, and no additional compensation will be due or owed under the 202X 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.** The 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.

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.** The lessor shall not request additional funding from the U.S. Government for the replacement or repair of the Leased Premises during the Lease Term.
12. **Right of Lessor to Review Operation of Leased Premises.** U.S. Government shall not object to the Lessor’s exercise of any right the Lessor may possess to review the operation of the Leased Premises during the Lease Term.
13. **Dispute Resolution.** Pursuant to the incorporation of this Lease into the Grant, any claim, dispute, or other matter arising out of or relating to this Lease shall be subject to resolution pursuant to 25 USC Chapter 27.
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 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] and the United States Department of the Interior in relation to the facility lease for the [SCHOOL NAME] for [Fiscal/Calendar] Years [Beginning Year] - [Ending Year]. 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
1849 C Street NW
MS-2071-MIB
Washington, DC 20240

with a copy to:

Bureau of Indian Education
Seattle Education Resource Center
909 1st Avenue Suite 104
Seattle, Washington 98014

with a copy to:

Office of Facilities, Property, and Safety Management -
Indian Affairs
Department of the Interior
12201 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 and 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 [redacted] day of [redacted], 202X.

LESSEE:

LESSOR:

United States Department of the Interior

TRIBE/TRIBAL ORGANIZATION NAME

Daniel A. Galvan
Acting Deputy Assistant Secretary – Mgmt

Signatory Name
Title

Dated: _____

Dated: _____

Appendix E - Consolidated Calculation Summary

Consolidated Calculation Summary

The Consolidated Summary tab in this template is used to input Fair Market Rent and summarize 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.
NOTE: The YELLOW color will disappear after you input data in the field. The rest of the Spreadsheet will auto-calculate.

Fair Market Rental: To open up the input fields for 1st Year Leases, click on the "+" sign located to the left of row 108, and to open the input fields for Renewal Leases, click on the "+" sign located to the left of row 160.

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

For Cost Elements input on the O&M tab: There is one further step on this Consolidated Calculation Summary tab. Open up the input fields for Leases with O&M by clicking on the "+" sign located to the left of row 66 and input the requested information.

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.

If you need more rows to add facilities in the Fair Market Rental Calculation section, click on one of the "+" signs located to the left of the applicable row. Each "+" sign inserts 5 new rows. Be sure to display the relevant input sections below the "Proposed Lease Amount" totals for printing the Exhibit - either the 1st Year Lease section or the Renewal Lease sections. 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.

| | | |
|--|--------------------|--|
| Exhibit Creation Date: | | Enter date data was provided or updated for this form (M/D/YYYY format) |
| Tribe/School: | | Provide here to auto-populate other tabs |
| Facility Name/No. | | Provide here to auto-populate other tabs |
| Lease Begin Date: | | Enter the Beginning Date for this 105(l) Lease Agreement (M/D/YYYY format) |
| Lease End Date: | | Enter the Ending Date for this 105(l) Lease Agreement (M/D/YYYY format) |
| Calendar Days of Lease: | 0 | Auto-calculated number of Calendar Days of Lease Term |
| Prorated Percentage: | 0.0000000000% | Auto-calculated 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 | \$0.00 |
| (c) Reserve Fund Contributions | \$0.00 | \$0.00 |
| (d) Principal and Interest Paid or Accrued | \$0.00 | \$0.00 |
| (e) - (h) O&M, Repairs, Alterations, and Other Expenses | \$0.00 | \$0.00 |
| (i) Fair Market Rental | \$0.00 | \$0.00 |
| Total | \$0.00 | \$0.00 |
| O&M Received From Indian Affairs (BIA or BIE) for this Facility | | \$0.00 |
| Proposed Lease Amount | \$0.00 | \$0.00 |

Appendix F - CFO Certification Example

CHIEF FINANCIAL OFFICER/TREASURER CERTIFICATION

For financial information pertaining to the 105(l) Lease: [Beginning Year] – [Ending Year]

I, [Insert Name], [Tribal Treasurer or Chief Financial Officer] of the [Tribe or Tribal Organization], hereby certify that the financial information and documentation provided to the Department of the Interior for purposes of negotiating an ISDEAA 105(l) Facility Lease Agreement is, to the best of my knowledge, true and accurate.

Date: _____

Name: _____

Title: _____

Appendix G - 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 calculating lease compensation under Section 105(l) of Public Law 93-638 is true and correct;

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(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 or Calendar] Years [Beginning Year] – [Ending 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.

[Signature]

[Insert Tribal Representative Name & Title]

Appendix H – Cost Approach Exemption Form

[Date]

VIA EMAIL AND U.S. MAIL

Assistant Secretary – Indian Affairs
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Re: Request to Waive 25 CFR § 900.74 under 25 CFR Part 900, Subpart K, to Authorize a USPAP-Compliant Cost Approach Appraisal as an Additional Compensation Method for § 105(l) Facility Leases (Ref. Indian Self Determination and Education Assistance Act (ISDEAA), Public Law 93-638, § 105(l) (Jan. 4, 1975), as amended; codified at 25 U.S.C. § 5324(l)) [hereinafter “Section 105(l) or §105(l) facility leases”].

Dear Assistant Secretary [Name]:

On behalf of [Tribe/Tribal Organization], we respectfully request, pursuant to 25 CFR Part 900, Subpart K, a waiver of 25 CFR § 900.74 to authorize a fourth compensation method—a USPAP-compliant Cost Approach appraisal—for our § 105(l) facility lease(s). Subpart K provides that, upon tribal request, the Secretary may waive provisions of Part 900 when the waiver is in the best interest of the Indians served by the contract or is consistent with the policies of the Indian Self-Determination and Education Assistance Act (ISDEAA) and not contrary to statutory law; Subpart K also requires a written decision within 90 days, with deemed approval if a waiver does not issue.

Under § 900.74, lease compensation is currently limited to three methods: (a) fair-market rental; (b) fair-market rental combined with § 900.70(a)–(h) (no duplication); or (c) § 900.70(a)–(h) only. Our service area features special-purpose facilities and thin/remote markets where credible market-rent evidence is limited or unreliable. Adding a carefully controlled Cost Approach option would provide a defensible, consistent valuation aligned to actual facility utility and cost, while preserving § 900.70’s non-duplication rule.

Our requested waiver would result in an additional appraisal methodology to § 900.74): “Lease compensation may be supported by a USPAP-compliant Cost Approach appraisal prepared by a Certified General Appraiser, estimating value as Replacement Cost New minus all forms of depreciation (physical, functional, external) plus supported land value. Any compensation derived from the Cost Approach would be reconciled to § 900.70(a)–(h) and would not duplicate costs already included under those elements.”

To ensure discipline and audit readiness, we will apply the attached Cost Approach Guardrails, which establish conditions for use, documentation standards, and review/approval requirements

(including the 200-mile comparable search threshold, prohibition on hybrid appraisals, detailed cost/depreciation/land support, and mandatory technical review). In addition, we will apply a market-reasonableness guardrail: Cost Approach-supported compensation shall not exceed 110% of independently supported FMV rent unless expressly justified by the appraiser and accepted during technical review.

We believe granting this waiver is in the best interest of the Indians served, as it furnishes credible, supportable compensation for facilities delivering essential Programs, Functions, Services, and Activities (PFSAs)—especially in special-purpose and remote-market contexts—mitigating underfunding risk and supporting service continuity. The waiver is consistent with ISDEAA and Part 900 policy, supplements rather than alters the existing § 900.74 options, and honors § 900.70’s non-duplication requirements through the required crosswalk and technical review.

We respectfully request approval within Subpart K’s 90-day period; if a decision is not issued in this time, the waiver is deemed approved.

Thank you for your consideration and continued partnership. Please contact [Primary Contact Name/Title] at [Phone/Email] with any questions.

Sincerely,

[Signature]

[Authorized Tribal Official]

[Title]

[Tribe/Tribal Organization]

[Address]

[Phone/Email]

Enclosures:

- Enclosure A – Waiver Support Form (Cost Approach, § 105(l))
- Cost Approach Guardrails (adopted)
- Supporting appraisal and documentation

Enclosure A — Form Completion Instructions

(To support a waiver request under 25 CFR Part 900, Subpart K, adding a Cost Approach option to § 105(l) lease compensation)

Before you start:

1. Confirm the waiver pathway. Subpart K is a tribal-request process and requires a written decision within 90 days; if no decision is issued, the waiver is deemed approved.
2. Know the baseline regulation. § 900.74 currently offers three compensation methods; you are requesting a fourth (Cost Approach) via waiver. Keep your form and attachments focused on why the Cost Approach is necessary and credible for your facility.
3. Honor the non-duplication rule. § 900.70's elements (e.g., rent, depreciation/use allowance, O&M, reserves) cannot be double-counted. Your crosswalk must show what's included in the appraisal vs. claimed under § 900.70(a)–(h).
4. Use a traditional Cost Approach. The appraisal must be USPAP-compliant, estimating Replacement Cost New minus total depreciation + supported land value—no “hybrid” methods.

Section-by-Section How-To

Section 1 — Contact & Scope

- Enter the Tribe/TO, contact, ISDEAA agreement number(s), facility name(s)/address(es), PFSA(s), and lease term as they will appear in the lease file and in the waiver letter.

Section 2 — Comparable-Market Limitations (200-mile threshold)

- Check the applicable box and document your search: list data sources (e.g., MLS, CoStar, local brokers, public records), the radius (up to 200 miles), the time window, and why each comparable is not reliable (special-purpose features, remote location, volatility). Attach your search map and data sheets. *(The 200-mile guardrail is from your internal Cost Approach Guardrails.)*
- Explain why market-rent is insufficient for your facility and how the Cost Approach will produce a more credible indication of value.

Section 3 — Appraiser & USPAP Compliance

- Identify your Certified General Appraiser and attach the USPAP certification page. Include a short paragraph on the appraiser's special-purpose/institutional experience. *(USPAP governs the development and reporting standards you must follow.)*

Section 4 — Construction Cost Evidence

- State the primary cost source(s) used for Replacement Cost New (RCN)—e.g., Marshall & Swift/Swift Estimator, and/or actual invoices/bids. Provide publication/date, the specific tables or report references, and regional multipliers applied.
- Explicitly choose replacement vs. reproduction cost and explain your rationale (e.g., modern functional equivalent vs. exact replica). Summarize depreciation (physical, functional, external) and land value support (sales, allocation/abstraction).

Section 5 — Cost-Index Documentation (time/region adjustments)

- Enter the index name/provider (e.g., Marshall & Swift RCN Index), index type, base date/value and current date/value. Compute the time-adjustment factor (*current ÷ base*) and list regional/location multipliers. Attach the index tables or provider report.
- Briefly note update frequency (monthly/quarterly) and why the series is appropriate for your occupancy/construction class.

Section 6 — Freight/Logistics Documentation (remote/seasonal impacts)

- Record carrier(s), origin/route, distance/mode, invoice numbers/dates, and rate basis—plus surcharges (fuel, oversize, winter road) and seasonal constraints (freeze-up, ice roads, storm windows). Attach bills of lading, invoices, route maps, weather logs; total the freight cost included in RCN/O&M.

Section 7 — Market-Reasonableness Guardrail (110% of FMV Rent)

- Enter the independently supported FMV rent (amount + source/date), the Cost Approach indication, and the percent difference.
- Calculate the cap: $FMV \times 1.10$ (i.e., 110%). If your adjusted request exceeds the cap, attach the appraiser’s written justification and secure the reviewer’s acceptance in Section 9. (*This guardrail keeps compensation aligned with any credible market signal while allowing justified exceptions.*)

Example (fill on the form):

$FMV = \$500,000 \rightarrow Cap = \$500,000 \times 1.10 = \$550,000.$

Cost Approach (reconciled) = \$565,000 → exceeds cap by \$15,000 (3%).

Attach justification (e.g., extraordinary freight/weather costs) + reviewer acceptance.

Section 8 — § 900.70 Non-Duplication Crosswalk

- Build a line-by-line crosswalk showing which amounts in the appraisal would correspond to § 900.70(a)–(h) elements (e.g., O&M, reserves, depreciation/use allowance, principal/interest, rent/sublease). Exclude those amounts from your final compensation schedule to avoid double counting.

Section 9 — Technical Review & Oversight

- Name the reviewing authority (OTL or independent approving authority designated by OTL) and the planned review date(s). Use this space to record reviewer acceptance if you exceed the 110% cap. (*Guardrails require technical review; OTL may conduct on-site inspections and mandate corrective actions.*)

Section 10 — Proposed Compensation Schedule (final)

- Present your appraisal indication, subtract duplicated § 900.70 elements, and enter the adjusted request. Show the cap calculation ($FMV \times 1.10$) and check “within cap” or “exception with reviewer acceptance.”

Section 11 — Program Impacts (if denied)

- Provide a succinct narrative of impacts on PFSA delivery (access, staffing, health/safety, continuity) to support the best-interest finding under Subpart K.

Section 12 — Certification

- Sign and date; ensure your attachments are complete and numbered. The certification attests that the data meet Subpart K criteria, § 900.74 context, and § 900.70 non-duplication requirements.

Required attachments (check before you submit)

- USPAP-compliant Cost Approach appraisal (Certified General Appraiser).
- Comparable search evidence and map (up to 200 miles).
- Cost-index tables/provider reports and regional multipliers (e.g., Marshall & Swift).
- Freight invoices/bills of lading/route maps/weather logs (if remote/seasonal drivers apply).
- Depreciation analyses and land value support.
- § 900.70 non-duplication crosswalk, FMV guardrail (110%) reconciliation, and reviewer acceptance (if applicable).

Enclosure A – Waiver Support Form For § 105(l) Cost Approach
Complete all applicable fields. Attach supporting documentation.

Section 1: Contact & Scope

- Tribe/Tribal Organization: _____
- Primary Contact (Name/Title): _____
- Phone/Email: _____
- ISDEAA Agreement(s) (contract/compact #): _____
- Facility Name(s)/Address(es): _____
- PFSA(s) Delivered: _____
- Proposed Lease Term (start/end, mm/dd/yyyy): _____
- Facility Type/Special-Use Attributes (e.g., clinic, cultural, utility): _____

Section 2: Comparable-Market Limitations (200 miles)

Check all that apply and provide documentation:

- Fewer than three reliable comparable rentals found within 200 miles after reasonable, documented search efforts.
- Facility is special-use/unique; comparables unreliable due to volatility, atypical characteristics, or extreme remoteness.

Comparable search narrative (sources/dates/geography): _____.

Data sources checked (MLS, CoStar, brokers, gov't records, etc.): _____.

Search radius (miles) & map attached: _____.

Reasons comparables are unreliable: _____.

Section 3: Appraiser & USPAP Compliance

- Appraiser Name/Firm: _____.
- License Type/Number/State: _____.
- USPAP Certification Included: [] Yes [] No → If No, explain: _____.
- Appraiser experience with special-purpose/institutional facilities: _____.

(USPAP governs development/reporting; a Cost Approach must summarize methods, depreciation, land support, and reconciliation when necessary for credible results.)

Section 4: Construction Cost Evidence

- Cost source(s) (e.g., Marshall & Swift/Swift Estimator; invoices; bid tabs): _____.
- Source publication/date & page/report reference: _____.
- Regional/location multipliers applied: _____.

- Replacement vs. reproduction cost—choice & rationale: _____.
- Depreciation (physical/functional/external)—methods & calculations: _____.
- Land value method(s) (sales, allocation/abstraction) & support: _____.

(Marshall & Swift provides validated replacement-cost data and localized multipliers used widely for Cost Approach analyses.)

Section 5: Cost-Index Documentation (time/region adjustments)

- Index name/provider (e.g., Marshall & Swift RCN Index): _____.
- Index type (Residential/Commercial/Segregated/Unit-in-Place): _____.
- Base date/value: _____. Current date/value: _____.
- Computed time-adjustment factor (current ÷ base): _____.
- Regional/location multiplier(s) applied: _____.
- Index tables/provider report attached: Yes No

(If using Swift Estimator or similar, include the series name and local factors.)

Section 6: Freight/Logistics Documentation (remote/seasonal impacts)

- Carrier(s)/vendor(s): _____.
- Origin/route; distance (miles) & mode (truck/rail/air/sea/barge): _____.
- Bills of lading / pro # / invoice # and dates: _____.
- Freight rate basis & surcharges (fuel, oversize, winter road): _____.
- Seasonal/weather constraints (freeze-up, ice roads, storms): _____.
- Total freight cost applied to RCN or O&M (\$): _____.
- Supporting docs attached (invoices, route maps, weather logs): Yes No

Section 7: Market-Reasonableness Guardrail (115% of FMV rent)

- Independently supported FMV rent (\$) & source/date: _____.
- Cost Approach indication after reconciliation (\$): _____.
- Percent difference vs. FMV (%): _____.
- FMV × 1.15 (cap) (\$): _____.
- ****Within *115%* cap:**** Yes No
- ****Justification (if exceeding *115%* cap):**** _____.

(Attach appraiser's written justification and obtain reviewer acceptance in Section 9.)

Example: FMV = \$500,000 → Cap = \$500,000 × 1.15 = \$575,000.
 Cost Approach (reconciled) = \$585,000 → exceeds cap by \$10,000 (1.74%).

Section 8: § 900.70 Non-Duplication Crosswalk (required)

(Identify any amounts in the appraisal that correspond to § 900.70(a)–(h) elements—O&M, reserves, principal/interest, rent/sublease—and exclude them from the compensation schedule.)

- Elements potentially duplicated: _____.
- Items excluded to prevent duplication: _____.

Section 9: Technical Review & Oversight

- Reviewing authority (OTL or independent approving authority designated by OTL): ____.
- Planned review date(s): _____.
- Reviewer acceptance for any >115%** FMV exception:** Accepted N/A

(Use of the Cost Approach triggers technical review; OTL may conduct on-site inspections or require corrective actions.)

Section 10: Proposed Compensation Schedule (final, after non-duplication)

- Cost Approach indication (from appraisal) (\$): _____.
- Less duplicated elements per § 900.70(a)–(h) (\$): _____.
- Adjusted lease compensation request (\$): _____.
- **FMV × *1.15* (cap) shown (\$):** _____.
- Adjusted request within cap? Yes No
(If “No,” ensure Section 7 justification is attached and Section 9 reviewer acceptance is checked.)

Section 11: Program Impacts if Waiver Denied

Describe anticipated impacts on PFSA delivery (access, staffing, patient care, safety, operations):

_____.

Section 12: Certification

I certify the information provided is true and complete to the best of my knowledge and that the attached documentation supports this waiver request in accordance with Subpart K (waiver criteria & 90-day decision/deemed approval), § 900.74 (existing compensation options), and § 900.70 (non-duplication).

- Signature (Authorized Tribal Official): _____ Date: _____
- Printed Name/Title: _____

Section 13: Attachments Checklist (check all attached)

- USPAP-compliant Cost Approach appraisal (Certified General Appraiser)
- Comparable-search evidence & map (up to 200 miles)

- Cost-index tables/provider reports & regional multipliers (e.g., Marshall & Swift/Swift Estimator)
- Freight invoices/bills of lading/route maps/weather logs (if remote/seasonal drivers apply)
- Depreciation analyses & land value support (within appraisal work file)
- § 900.70(a)–(h) non-duplication crosswalk (line-by-line)
- FMV guardrail (115%) reconciliation & reviewer acceptance (if applicable)