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## MEMORANDUM

November 24, 2025

TO: TRIBAL HOUSING CLIENTS

FROM: Ed. Clay Goodman & Cari L. Baermann  
HOBBS, STRAUS, DEAN & WALKER, LLP

RE: *NAIHC Legislative Committee and Legal Symposium*

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This memorandum provides a synthesis of recent developments in housing matters, as well as information presented during the National American Indian Housing Council (NAIHC) Legislative Committee meeting and Legal Symposium held in Durant, Oklahoma on November 17–20, 2025.

### I. NAIHC Legislative Committee Meeting

NAIHC held its monthly Legislative Committee Meeting in person on November 17, 2025. NAIHC Federal Affairs Associate Blythe McWhirter presided over the meeting.

The NAIHC Legislative Committee met on the afternoon of Monday November 17, 2025, the first day of the Legal Symposium. NAIHC Executive Director Rudy Soto gave opening remarks. He mentioned that NAIHC thought, up until a week ago, that the Legal Symposium might not take place due to the uncertainty about air travel created by the shutdown. With the shutdown now over, NAIHC was able to move forward with the Legal Symposium. However, the uncertainty remains. For example, the Continuing Resolution that was just passed expires on January 30, 2026, just a week before the NAIHC Legislative Conference in Washington, D.C. Furthermore, Congress has been in session fewer days than at any other time in any of our lifetimes.

Mr. Soto went on to discuss the reauthorization of the Native American Housing Assistance and Self-Determination Act (NAHASDA). NAIHC has been working with U.S. Representatives Janelle Bynum (D-OR) and Troy Downing (R-MT), who will take the lead on NAHASDA reauthorization. However, they are freshmen Congressmembers and their time is limited, and they have not been able to introduce anything yet. Senate allies tried to attach NAHASDA reauthorization to the National Defense Authorization Act (NDAA), but that effort did not succeed.

Thus, the goal is to introduce a new NAHASDA reauthorization bill at the beginning of the new year. Mr. Soto suggests reaching out to your Congressional delegation and asking them

to reach out to the NAHASDA bill sponsors to push for introduction of a NAHASDA reauthorization bill in 2026.

Ms. McWhirter provided the legislative overview. She noted that the legislation to reopen the federal government was signed into law on November 12, 2025, ending the longest federal government shutdown in history (43 days). The bill included a Continuing Resolution funding the federal government at fiscal year (FY) 2025 levels to January 30, 2026; reversal of the layoffs by the Administration during the shutdown; and full-year funding for three of twelve appropriations bills: Military Construction/Veterans Affairs; Agriculture; and Legislative Branch. Congress will need to come to an agreement on appropriations for FY 2026 by January 30, 2026, or there will be another shutdown. Ms. McWhirter asked that NAIHC members communicate to NAIHC what impacts occurred as a result of the shutdown, as that information will be useful for communications with Congress.

Ms. McWhirter also provided the results of an NAIHC survey on impacts of the shutdown on tribal housing. NAIHC heard from 28 respondents across the country. The most frequent adverse impacts mentioned were to the following areas: new construction, maintenance and repairs, tenant services and support, and rental assistance distribution. These impacts resulted from limited cashflow, uncertain funding, and delayed approvals by federal agencies. Other significant impacts included postponement of inspection and compliance activities; acquisitions, environmental review, and approvals; Bureau of Indian Affairs (BIA) approval delays; lack of technical assistance; and inability to access grant management systems.

NAIHC held a “Tribal Housing 101” Congressional staff briefing in September 2025, in coordination with the Congressional Native American Caucus. NAIHC also held a joint webinar with the National Congress of American Indians (NCAI) on the NAHASDA reauthorization on October 28, 2025, with 400+ participants. NAIHC is planning a “deep-dive” NAHASDA webinar ahead of the Legislative Conference in February.

Chris Kolerok from Alaska, the Co-Chair of the Legislative Committee, discussed how important it is for NAIHC members to share their experiences with NAIHC, who can in turn share this information with Congress. Information and examples need to flow from programs on the ground to Congressmembers and their staff. This is even more critical when there is a shutdown. The more examples and information you have to share, the better and the more effective NAIHC can be when advocating for tribal needs.

Ms. McWhirter asked for NAIHC members’ input on five-year production and cost trends in order to compare costs in 2015–2020 to 2020–2025 costs. Inflation has absorbed funding increases for housing development and NAIHC would like to know whether there are other factors impacting the ability to build housing, such as infrastructure and utility extension, limited capacity, or regulatory delays. This all matters for advocacy, both when asking for increased appropriations as well as for the amendments that are built into the NAHASDA reauthorization bill.

While the final NDAA did not include a NAHASDA reauthorization, it did include the Road to Housing Act, which comprises the Whole-Home Repairs Act, the BUILD Housing Act, Replacement of Obsolete Manufactured Housing, Rural Housing Services Reform Act, HUD-

SDA-VA Interagency Coordination Act, Streamlining Rural Housing Act, and the Innovation Fund. This has been included in the Senate version of the NDAA. While none of these are tribal-specific, they will help tribes and NAIHC supported them. The Whole-Home Repairs Act creates a 5-year pilot program at the U.S. Department of Housing and Urban Development (HUD) offering grants and forgivable loans to low-income homeowners and small landlords to address home repairs and health hazards, preserve affordable units, and stabilize aging housing stock. The BUILD Housing Act would streamline environmental review requirements and remove other bureaucratic requirements. The Innovation Fund establishes a competitive fund for communities expanding housing supply, thereby supporting infrastructure development. The NDAA also included Community Development Financial Institutions Fund (CDFI) and Native CDFI legislation that would expand access to long-term, low cost capital, improve liquidity for CDFIs, and set aside part of the CDFI Fund for Native CDFIs.

The NAIHC Legislative Committee meetings will continue to be held on the first Thursday of each month via Zoom. NAIHC has scheduled its Legislative Summit and Gala on February 3–5, 2026, at the Capitol Hilton in Washington, D.C. NAIHC is going to take a more active role in setting up meetings at the Legislative Summit. The Gala is also a new element intended to bring Congressmembers and staff to a function where they can meet tribal housing program leaders and staff. Additionally, NAIHC will be holding its 52<sup>nd</sup> Annual Convention & Tradeshow in Anchorage, Alaska on May 3–6, 2026. In conjunction with that event, NAIHC will be holding a 2026 Housing All of Our Relatives Summit at the end of the Annual Convention, on May 7–8, 2026, to support the tribal communities that have been impacted by environmental disasters.

## II. NAIHC First Plenary Session

NAIHC held a Plenary Session on November 21, 2025. Bobby Yandell, NAIHC Board of Directors Chairman and Executive Director of the Housing Authority of the Choctaw Nation, and NAIHC Executive Director Soto gave opening remarks.

### *a. Keynote Speaker, Chief Gary Batton of the Choctaw Nation*

Chief Batton also provided opening remarks, including recounting some history of the Choctaw Nation. The Nation's territory encompasses 11,550 square miles, including 13 counties. The Nation has 235,000 members and employs 13,500 people across its enterprises. The Choctaw Casino/Resort is located on the Western side of the Nation's lands. The Eastern side is beset with greater poverty, homelessness, and domestic violence. The Nation is working to meet the needs of all its members across its territory. Chief Batton is a product of Choctaw Nation housing, having moved into tribal housing when he was three years old. He remarked that homeownership is not just a means of developing intergenerational wealth, but also pride and self-sufficiency. However, simply getting people into homes is not enough; tribal housing programs have to educate people on how to be successful homeowners and understand financing and maintenance.

### *b. Senator Elizabeth Warren (D-MA)*

Senator Warren gave remarks by video. She began by noting that the United States is in a full-blown housing crisis. Costs are too high, and there are too many people who are homeless or

who live in overcrowded or substandard housing. This crisis is acutely impacting Native families in higher numbers than the population at large. She described this as an “all-hands-on-deck” situation which requires creative thinking, bold solutions, and work across the political aisle. She has been working with Senator Tim Scott (R-SC) on the first bi-partisan housing bill (the Road to Housing Act, described above) to move through Congress in a decade. Senator Warren was proud to note that the Road to Housing Act passed the Senate (attached to the NDAA) unanimously. The bill includes provisions for tribal governments, including streamlining environmental review and giving tribes access to key federal funding. To get this over the finish line, she said its sponsors need to work with the House in the conference to finalize the NDAA.

*c. Panel: Strengthening Native Homeownership through Local Coalitions.*

The panelists included Jody Cahoon Perez, Executive Director of Salish and Kootenai Housing Authority (Moderator); Tyler Baker, Executive Director of Southwest Native Assets Coalition (Panelist); and Fern Orie, CEO of Wisconsin Indigenous Housing & Economic Development Corporation (Panelist).

*What has helped to overcome barriers between partners?* Ms. Orie noted that Wisconsin has a good and cooperative “housing ecosystem.” However, the key to this success was to formalize a coalition, which they learned from models in other states. In Wisconsin, they started the Wisconsin Native Housing Coalition, beginning with strategic planning in late 2024. They then set up a steering committee and began working on a housing assessment report. Based on that report, they can focus on how to work together to address the issues identified. They also reached out for sponsors in the financial community that supports Native housing. The mission is to promote and create diverse housing opportunities for Native Americans in Wisconsin through innovative solutions and resources. Mr. Baker spoke about the importance of visiting and meeting with each tribe/Tribally Designated Housing Entity (TDHE) in the coalition to understand their specific situations and particular housing-related needs. Each tribal situation is unique and there is no one-size-fits-all approach. However, there are some overarching issues that can be addressed through a coalition (e.g., problems with obtaining financing on trust lands, problems with timely agency approval of leases and leasehold mortgages).

*What are your efforts for the next year?* Ms. Orie said that they began by looking at the homeownership needs assessment that the coalition put together. The next step will be a survey of tribal leaders, partners, and individual members to identify the issues that they would like to see the coalition work on. They also plan to work on providing homeownership financing opportunities and related trainings for tribal staff, and they want to hire a full-time staff member to lead the coalition. Mr. Baker said that their focus will be on strengthening tribal representation in the coalition. It is critical to have a representative from each Montana tribe on the coalition. One of the specific issues they are working on is homeownership financing packages that are fully transparent and affordable. They are also working on training for the Pathways Home program and getting all Montana tribes certified. Finally, they are reviewing each tribe’s infrastructure to see if they have the capacity for additional housing development.

The speakers also noted that homeownership is not the be-all and end-all solution for tribal housing issues. Simply getting people into homes, whether as homeowners or renters, is critical.

There is a wide spectrum of housing needs, and services are required all along the way. Supportive housing services for people dealing with substance abuse disorder or transitioning from incarceration are also very important, and several tribes in these coalitions are developing supportive housing projects. Developing the relationships and understanding of the specific needs for each community is an ongoing practice.

*d. Honorable Bill Anoatubby, Governor of the Chickasaw Nation*

Governor Anoatubby echoed the sentiments of the prior panel on the importance of coalitions. He has been involved in developing housing for the Chickasaw Nation throughout his years in leadership. He has served as Governor since 1989, and prior to that he was Lieutenant Governor. When he began serving in tribal government 50 years ago, the Tribe had 30 employees, all of whom were funded through federal contracts and grants. One of the first programs that the Tribe developed (in the 1960s) was a housing program.

Governor Anoatubby gave a history of the Chickasaw Nation, noting that the Nation was essentially run by the federal government until 1971, when the Nation began self-governing. By 1979, the Nation had adopted its own Constitution. The tools that they used came through the Indian Self-Determination and Educational Assistance Act (ISDEAA). He emphasized that self-determination and self-governance are key to development. However, the work of the Nation toward self-governance and economic self-sufficiency began with the foundation established by the housing program. Housing is central to economic growth as well as self-governance. He stated that it is critically important to have housing for our people to return to our lands.

*e. Panel: Expanding Mortgage Financing Options to Strengthen Native Homeownership*

As part of the Plenary Session, NAIHC hosted a panel that addressed the Expanding Mortgage Financing Options to Strengthen Native Homeownership initiative. Jamie Navenma, NAIHC Region VIII Board Member and Executive Director of Laguna Housing Development & Management Enterprise, moderated the panel. The panelists were: Nancy Bainbridge, Executive Vice President and Director of Tribal & Construction Lending Department, Chickasaw Community Bank; Ben Navarro, Advisor at Fannie Mae; Corey Strong, Tribal Relations Specialist at Minnesota Housing Finance Agency; and Juel Burnette, Branch Manager at 1<sup>st</sup> Tribal Lending. The panelists presented on how tribes and TDHEs can expand the availability of financing options on tribal land to build, buy, or renovate homeownership units to help meet the housing needs of their tribal citizens.

*What opportunities and challenges exist in expanding mortgages in tribal areas?* Ms. Bainbridge remarked that there are many opportunities for homeownership on fee land. However, one of the main challenges is the lack of housing on tribal trust land. Tribes can expand homeownership opportunities by obtaining tribal HUD Section 184 loans to either build homes to sell to tribal members, or help tribal members obtain individual Section 184 loans to then build their own homes. Section 184 loans can also be used to buy manufactured housing. Mr. Navarro commented that TDHEs can also expand homeownership opportunities indirectly through Fannie Mae (as described in more detail in Section III.c. of this memo). Mr. Strong commented that one

homeownership challenge is the requirement to record mortgages, which is sometimes time consuming and costly. Mr. Strong also stated that opportunities exist in leveraging state funding.

*How can tribes make their lands more mortgage-ready?* Mr. Burnette commented that one of the challenges with mortgages is the lack of trust between tribes and lenders. Lenders need to develop relationships with tribes first, so that tribes become familiar the lenders' mortgage processes and the lenders understand tribal cultures and laws. The mortgage process is complicated, so Ms. Bainbridge remarked that successful programs are those where the TDHE staff and tribal members have received education on the mortgage process and the expectations and requirements. Mr. Navarro remarked that Fannie Mae can work with lenders to help them navigate processes on tribal trust land and fee simple land.

*What does successful collaboration between tribes and lenders look like?* Mr. Burnette described the importance of bringing the lenders and tribes to the table to talk about the lending process before the process begins. Educating both housing staff and tribal members on the mortgage process is critical to ensuring that the mortgage process moves quickly enough to meet lending deadlines. Mr. Strong commented that bringing lenders to tribal lands can be beneficial, as it helps lenders understand the housing challenges that tribes face. That in turn can better inform lenders about how they can help tribes overcome those challenges through homeownership loans.

### III. Breakout Sessions Day 1

We presented at or attended several of the relevant breakout sessions at the Legal Symposium and report on them below.

#### *a. Breakout Session: Construction Contracting*

Ed Clay Goodman, Partner, and Cari L. Baermann, Attorney, at Hobbs, Straus, Dean & Walker gave a presentation on Construction Contracting. Below is a summary of our presentation, including different types of contracts and some of the key contract terms that a tribe or TDHE (referred to below as "Owner") should include in contracts. A copy of our presentation slides is attached to this memorandum.

One option for construction contracts is to structure it as two main contracts attached to each other: a "general conditions" contract and a "base construction" contract. A "General Conditions" contract is a template form containing a multitude of generally applicable provisions. The generally applicable provisions can include, but are not limited to: general construction requirements (site conditions, permits/codes, safety, etc.); federal requirements (e.g., NAHASDA, TERO/Indian/Tribal preference, Davis Bacon/Tribal prevailing wage rates, and federally required contract terms (2 CFR Part 200)); changes; contract modifications; suspension of work; liability, damages; and termination clauses. The "Base Contract," on the other hand, establishes the specifics of the project, such as the price, scope of work, and project timing and deadlines.

The type of construction contract used is also dependent on the structure of the project. The two primary ways to structure a project are as either a design-build or design-bid-build. In a design-build construction project, a contractor does all of the work, from design to construction.

An Owner can split the project into phases. In these design-build projects, the contractor may handle all tasks in-house or subcontract out the design elements. By contrast, a design-bid-build project, the more traditional approach, is one where the Owner first hires an architect/engineer to design the project, then puts the designed project out for bid to construction contractors.

There are a number of contract templates that the Owner can use to draft their own contracts. Some of the more common templates are those drafted by the American Institute of Architects (AIA). The AIA contract templates are more or less industry standard and contain very comprehensive provisions to address most of the terms and conditions common to construction contracts. The terms of AIA contract templates are more favorable for architects/engineers. The favorability of terms is more balanced between contractors and owners, with some terms benefiting contractors and others benefiting owners. However, the AIA templates are still generally okay for Owners to use, provided that the Owner reviews and modifies the templates to fit the Owner's and any federal requirements. One additional downside is that an Owner must purchase an AIA template each time it is used.

An Owner can also use a few other contract templates, including ones drafted by the Contractor (this is not advisable since the terms are largely drafted in the Contractor's favor), a NAIHC or HUD template, or a template prepared by your own counsel. Some regional housing associations, such as the Northwest Indian Housing Association, have hired legal counsel to draft NAHASDA-specific construction contract templates that protect tribes and TDHEs.

There are a number of terms that are important to include in contracts, such as: listing other documents to be included, like scope of work and design documents (although the contract should state that the contract terms prevail in case of conflict between contract and any attachments); timeframe for performance; acknowledgement by the Contractor that they completed on-site due diligence during bidding process; the process for approval of change orders, costs, and payments; termination; warranties; retainage; and bonding requirements (there are basic federal bonding requirements, along with some HUD-approved alternatives).

It is also critical that a contract addresses applicable law, court jurisdiction, and sovereign immunity. Specifically, the contract should specify whether tribal, federal, or state law will govern the contract and should require the contractor to comply with tribal law. The contract should specify process for handling disputes (mediation, arbitration, court enforcement, etc.) and should clarify which court (tribal, state, or federal) will have jurisdiction over disputes. Tribes and TDHEs should be careful about whether there is language waiving sovereign immunity.

*b. Breakout Session: Supportive Housing: A Solution to Ending Homelessness*

Zoe LeBeau, CEO of BeauxSimone, gave a presentation entitled Supportive Housing: A Solution to Ending Homelessness. Ms. LeBeau provided an overview of supportive housing as a means of providing trauma-informed housing and wrap-around supportive services to both individuals and families experiencing homelessness or housing instability. These services can address addiction, mental health needs, poverty, and trauma. The supportive housing model is structured so that individuals are provided with housing in conjunction with supportive services,

but participation in the supportive services is not a condition of receiving housing. Federal funding is available to entities that provide supportive services in conjunction with providing housing.

Permanent supportive housing is structured to be independent-living and is focused on helping tenants stay in the units. Ms. LeBeau stated that the programs recognize that tenants will violate the lease many times and will likely continue to use drugs and alcohol. As a result, the housing managers do not evict the tenants for lease violations or drug use unless the violation presents a danger to the tenant or others. The goal is to promote harm reduction by focusing on treating trauma, helping tenants adjust to living in housing, and keeping people housed. Ms. LeBeau emphasized that providing culturally relevant services is key to helping tribal members.

Jody Cahoon Perez, NAIHC Finance Committee Chair and Executive Director of the Salish and Kootenai Housing Authority, described the supportive housing program that her tribe developed and implemented. She noted that helping supportive housing tenants maintain housing allows those individuals to devote their energy to recovery and working through their trauma.

*c. Breakout Session: Legal Frameworks for More Lending—Your Lands, Your Ways*

This presentation involved attorneys and finance personnel from Fannie Mae, who discussed Fannie Mae's Native American Conventional Lending Initiative (NACLI). The panelists began by discussing the legal framework for NACLI. Under this initiative, Fannie Mae purchases mortgage loans (they are not a primary mortgage lender) from primary lenders in a secondary market role. This continuous flow of funds, along with Fannie Mae's standards, promotes housing supply and the availability of affordable mortgages. Fannie Mae has several initiatives that assist with affordable housing, including 97% Loan to Value, which helps serve low- to moderate-income first-time homebuyers, and HomeReady, which helps low-income borrowers qualify for an affordable mortgage with down payments as low as 3%. MH Advantage supports affordable alternatives to site-built homes (manufactured housing), and Homestyle Renovation and Homestyle Energy expands housing opportunities by making fixer-uppers an affordable option through combining the financing of improvements with the purchase or refinance of a mortgage. HFA Preferred pairs HomeReady with flexibilities from local housing finance agencies.

NACLI is not one specific loan product (because Fannie Mae is not a direct lender), but is a complement to various loan products that are available, and NACLI provides additional mortgage financing options via conventional loans. This is a critically important program that provides an incentive for private lenders to loan in Indian Country. NACLI gives tribes indirect access to the vast resources of Fannie Mae. Lenders who otherwise wouldn't want to lend in Indian Country will use this program because they know that Fannie Mae will buy their loans on the secondary market. To use NACLI, interested tribes would sign a Memorandum of Understanding (MOU) with Fannie Mae and approve NACLI Loan Documents tailored to fit tribal laws. Interested lenders then would obtain approval by Fannie Mae. Fannie Mae also keeps a list of lenders throughout the country who are already approved to use this program. Fannie Mae will then be prepared to purchase the loans on the secondary market.

The NACLI legal structure involves three elements. First, tribal Mortgage Laws must satisfy the NACLI requirements of having a process for allowing leasehold mortgages and resolution in the event of default, including addressing the terms of leases and leasehold mortgages, a process for lien priority, a recording process, tribal Court jurisdiction, and a foreclosure/eviction process. Fannie Mae has an old sample ordinance on its website. Second, the tribe and Fannie Mae must sign an MOU that memorializes the mutual support for conventional lending, and which must be expressly approved by a tribal government resolution. The MOU must provide that the tribal mortgage laws exist and will remain intact, that the NACLI forms must be used, that the tribe won't terminate the lease if a mortgage exists (without the lender's consent), and that the tribe will assist in finding a new qualified borrower in the event of a default. Third, the tribe must use specific residential lease and NACLI loan documents, including a note, NACLI note addendum, security instrument (leasehold mortgage or deed of trust), and a NACLI rider to the security instrument. The NACLI Lease Rider amends the tribe's lease to incorporate NACLI's requirements. If the tribe prefers, it can incorporate these requirements directly into the lease itself. Fannie Mae also requires use of a standardize Note and Security Interest, and the MOU will require use of these documents.

The NACLI process works as follows. First, the tribe puts the legal infrastructure in place, and then signs an MOU with Fannie Mae. Fannie Mae then approves lenders for NACLI lending on that tribe's lands. The tribe then issues a residential lease to a tribal homebuyer. The tribe, through its housing program or TDHE, provides services to tribal members interested in the NACLI program. The tribal member then applies for the loan directly with the lender. The lender then underwrites and approves eligible buyers. The lender then sells the eligible loan to Fannie Mae, rebuilding capital for new loans. The lender typically retains the right to service (manage) the loan.

In the last few months, Fannie Mae has developed some key enhancements, such as: making it clear that tribal lands will stay tribal lands (even if there is foreclosure on a loan); expanding to permit third-party originators (Native CDFIs); recognizing tribal law restrictions on occupancy; flexibility for use of manufactured housing; including placeholders for tribal member rights (i.e., a redemption period); having the MOU cross-reference all NACLI loan documents; updating the recording requirements; and adding an option for the MOU preamble to describe Fannie Mae's role in assisting tribal Council considerations.

#### **IV. Second Day Plenary Session**

##### *Panel: Building Safe Communities—Addressing Legal Challenges in Tribal Housing*

After some introductory remarks by sponsors, the second-day plenary session involved a panel comprised of Ed Clay Goodman, Dave Heisterkamp (Wagenlander & Heisterkamp), Lael Robertson (Minnesota Housing Finance Agency), and Carole LaPointe, a Native advocate for victims of domestic violence. The purpose of the panel was to discuss legal barriers to the development of affordable housing for Native people both on- and off-reservation, and solutions for dealing with those barriers. One key barrier that the panelists identified for on-reservation projects was the unique land ownership structure, and noted how that creates hurdles for securitization of private investment. Investors and lenders are used to dealing with mortgages or

deeds of trust on fee land, and the securitization structure involving a long-term leasehold interest will often scare them off. Adding to the difficulty is that these documents require approval by the BIA and such review and approval is often very slow, which can be a problem when investors need to lock in favorable rates on relatively short notice. Some ways of addressing these problems involve, first, education and flexibility on both sides. Other ideas discussed by the panel involve developing complete tribal codes and posting them on tribal websites to promote ease of access; utilizing the HEARTH Act to provide for tribal review and approval; setting up a process for recording at the tribe with transparency and easy access; outreach by tribes and tribal Courts to educate lenders and others about tribal institutions and processes; and establishing the ability to have special meetings of a TDHE or tribal Council to approve security/loan documents.

The panel also addressed the question of how to balance compliance with federal requirements while maintaining tribal control over housing laws, land, and dispute resolution. The suggestions were wide-ranging, including enact tribal laws that cover the same areas as federal laws, but tailored specifically to the tribe's situation. This does not need to involve simply cutting and pasting federal legal requirements, but rather considering the federal requirements thoroughly, figuring out what problems or concerns they are trying to address, and crafting tribal-specific provisions to address those concerns. Another suggestion was to ensure, to the extent possible, that the tribal process is transparent and insulated from political pressures and decisions. Finally, there was a discussion of arbitration as a means of enforcement. Many tribes find the American Arbitration Association process burdensome. One option is for tribes to adopt their own arbitration codes and processes and utilize those. The awards can be enforced in tribal Court, with a process that is standardized and transparent. Finally, there was a discussion of using non-disturbance agreements once the deal points have been locked in, to provide investors insurance that the terms of the deal that they have negotiated remain in place.

The last topic discussed was how intergovernmental partnerships at the state/local level have developed, and whether they have proven effective in opening access to additional streams of funding. The panelists discussed programs in several states, including Oregon, California, Minnesota and Michigan. In each of these programs, the states and tribes have developed productive working relationships, though in many instances it required lobbying by tribal leaders and principled stands to move past bureaucratic intransigence. Ed Goodman described the AB1010 waiver process in California, which was a statute passed specifically to authorize waivers of bureaucratic requirements when the state housing agency works with Indian tribes. All the panelists discussed the importance of creativity and flexibility in designing programs that will work for tribes, since many state and local programs are not designed to work for tribal housing or on-reservation.

## **V. Breakout Sessions Days 2 and 3**

### *a. Breakout Session: Surviving Property Inspections "In the Age of INSPIRE"*

Kristen Wamego, Senior Asset Manager, and Jake Wells, Asset Manager at Travois Asset Management & Compliance, gave a presentation on the National Standards for the Physical Inspection of Real Estate (NSPIRE) and how it affects tribes and TDHEs. On May 11, 2023, HUD published the NSPIRE final rule that establishes HUD's new inspection model for assessing the

physical condition of HUD-assisted housing. It replaces older inspection systems, standardizes inspections across HUD programs, and emphasizes health and safety issues to improve housing quality for residents.

The final rule does not specifically mention tribes or TDHEs and it does not apply to any specific programs supportive of tribal housing (i.e., NAHASDA). However, the final rule’s amendments affect the Multifamily Housing regulations, the Housing Choice Voucher regulations, the Project-Based Voucher regulations, Section 8 Moderate Rehabilitation regulations, and the Community Planning and Development programs such as HOME Investment Partnerships Program, the Housing Trust Fund, Housing Opportunities for Persons with AIDS, Emergency Solution Grants, and Continuum of Care regulations. If a TDHE receives funding through one of these funding sources, the TDHE may be affected by the NSPIRE final rule. Further, many TDHEs adopt these standards for tribal housing.

The presenters described the timeframes for repairs of deficiencies. NSPIRE requires different timeframes, depending on the severity of the deficiency:

Deficiency Severity	Examples	Corrective Timeframe
Life-threatening	Gas leaks, exposed wiring, blocked exits, missing smoke/CO detectors	24 hours
Severe	Broken locks, pest infestations, mold-like substances, broken entry doors	30 Days
Moderate	Leaks, broken windowpanes, missing/damaged screens	30 days
Low	Minor or cosmetic issues	60 days

The presenters then described some of the common NSPIRE standards. The NSPIRE standards require at least one working smoke alarm to be installed on every level of a property, and at least one working smoke alarm to be in each bedroom. Housing should also have carbon monoxide alarms installed in any house with any fuel-burning system or appliances. All appliances must be in good working condition and must not have any broken or missing pieces that could cause a safety hazard. Electrical panels must be free of defects or signs of burns.

The presenters stated that hazardous materials must not be stored inside a housing unit. Easily combustible materials such as paper, plastic, hairspray, etc. should not be stored within three feet of a heating source or a fuel-burning water heater. Fuel sources such as gasoline, kerosene, or propane should never be stored inside a housing unit, even if not stored near an ignition source. Additional NSPIRE standards can be found [here](#).

*b. Breakout Session: Individual Capacity Lawsuits and Sovereign Immunity*

Ed Clay Goodman and Dave Heisterkamp gave a presentation entitled *Lewis v. Clarke: Nefarious Nine*. The presentation was the ninth in a row, with each year’s presentation covering various court decisions following the Supreme Court’s decision in *Lewis v. Clark*, 581 U.S. 155 (2017), in which the Court held in a suit brought against a tribal shuttle driver in his individual capacity for a tort committed in the scope of employment, that the employee, not the tribe, is the

real party in interest and the tribe's sovereign immunity is not implicated. In that case, the Court allowed the lawsuit to move forward against the individual tribal employee even though the accident which caused the injuries being sued over happened while he was on-duty for the tribe, and even though the tribe had an indemnification agreement in place stating that the tribe would pay for damages in such situations. In the Court's words: "This is not a suit against [the] Tribal employee in his official capacity. It is simply a suit against [employee] to recover for his personal actions, 'which will not *require* action by the sovereign or disturb the sovereign's property.'" (Citing *Larson v. Domestic and Foreign Commerce Corp.*, 337 U. S. 682, 687 (1949)) (emphasis added). This decision has the potential to open tribal/TDHE employees or officials to personal liability for certain actions they take while carrying out their job duties.

Each year, this presentation focuses on cases that involve suits against tribal officials or tribal employees to better understand what kinds of actions might lead to liability, and explore ways to structure programs and activities to minimize the potential for liability. From January to October 2025, there were approximately 40 federal district court cases and 8 federal appellate court cases that discussed (not just cited) *Lewis v. Clarke* and also involved officers or employees of Indian tribes or tribal entities. These cases included payday lending operations, casino financing deals gone bad, failure to carry out basic BIA functions, excessive use of force by tribal police, personnel decisions, and governmental structure issues.

One of the motifs of the presentation this year and in years past was to "use the force wisely"; in other words, recognize that sovereign immunity is a powerful tool but that you need to be sure that the actions you are defending are not so concerning to public perception that the courts are not going to find a way to get to a decision. This idea was brought home in the case titled *Weidley v. Aaniiih Nakoda Finance, LLC*, 787 F. Supp. 3d 1255 (N.D. Ala. 2025), which involved a tribal payday lending operation. From the very beginning of the decision, in which the court noted that the Tribal entity was charging over 700 percent interest (30 times higher than the maximum allowed by the State of Alabama), it was clear that the court was going to find some way to hold someone liable. And the court did just that, stretching the boundaries of individual capacity liability to allow for suit against the Tribal Chairman, who was not even Chairman at the time the loans at issue were made. Similarly, in *Modoc Nation v. Bohl*, No. 24-5135, 2025 WL 2814397 (10th Cir. Oct. 3, 2025), the Tenth Circuit allowed a suit to proceed against the Modoc Nation's former attorney general for alleged actions involving fraud and misappropriation of funds—noting that some of the actions taken by the individual were done before he was attorney general, and thus were allegedly done in his personal capacity.

On the other hand, where the case involves actions by tribal officials or employees that they can only take in their official capacity, and where they are more squarely run-of-the-mill governmental activities, the courts will often dismiss the case against the individual employee, noting that the actions in such cases are actions against the sovereign itself. In *Eggers v. Healing Lodge of the Seven Nations, et al.*, No. 2:24-CV-00078, 2025 WL 2346885 (E.D. Wash. Aug. 13, 2025), the court dismissed a case brought against an intertribal health care provider, as well as against its Interim Executive Director, by a former employee for personnel decisions involving grievances, reasonable accommodation requests, and termination. The suit was found to be properly against the tribal entity, and not the individuals, because the federal claims brought could only be brought against an employer as an entity, not any individuals. Since the tribal entity has

sovereign immunity from suit, that immunity protected the Interim Executive Director as well. Similarly, in *George v. Colville Confederated Tribes, et al.*, No. 2:24-CV-00123, WL 595161 (E.D. Wash. Feb. 24, 2025), the court dismissed a case brought by a former councilmember of the Tribe who alleged that she was unlawfully removed from council and barred from ever running again. The Court found that these actions were all formal governmental actions that could only be taken by tribal officials acting on behalf of the Tribe, and therefore the suit was actually against the Tribe. The court also found that the plaintiff had already brought these same claims in two separate Tribal Court lawsuits and lost both of those actions under Tribal law.

## VI. Closing Plenary Session

The Legal Symposium concluded with a plenary session on November 20, 2025. NAIHC Executive Director Soto and NAIHC Board Chairman Yandell gave closing remarks. Mr. Soto briefly described NAIHC's plan to continue to advocate that Congress reauthorize NAHASDA, provide increased appropriations for tribal housing, and further support tribal self-governance and self-determination.

### *Conclusion*

If you have any questions about this memorandum or any of the topics discussed in this memorandum, please contact Ed Clay Goodman ([egoodman@hobbsstrauss.com](mailto:egoodman@hobbsstrauss.com)) or Cari Baermann ([cbaermann@hobbsstrauss.com](mailto:cbaermann@hobbsstrauss.com)). Both may also be reached at 503-242-1745.



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# LEGAL SYMPOSIUM

## Construction Contract Presentation

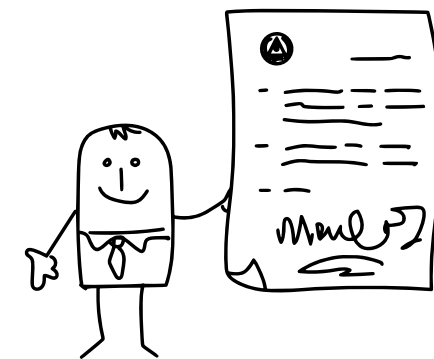
Ed Clay Goodman  
Cari L. Baermann

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# Agenda:

- Types of Contracts
- Key Contract Terms
- Best Practices



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# Types of Contracts

## What are “General Conditions”?

Template form containing a multitude of generally applicable provisions

- General construction requirements (site conditions, permits/codes, safety, etc.)
- Federal requirements
- Changes, contract modifications, suspension of work
- Liability
- Damages
- Termination



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# Base Contract

- Establishes the specifics of the project
- Price
- Scope of Work
- Timing



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# Small Purchase Contract

- Below \$250,000
- More streamlined terms
- General Conditions and Base Contract built into one
- Still need to include federal requirements
- Consider BABA applicability based on project

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# Design- Build

- Contractor does all work from design to construction
- Can be split into phases (design then build)

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# Design-Bid- Build



- Standard type of contract
- First there is an Architect/Engineer contract with designer
- Then project goes out to bid for a general contractor
- Once General Contractor is selected, use this kind of form

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# Different Contract Templates Available

AIA models: more favorable for architects/engineers, more balanced between contractors and owners, but still okay

- Will need some modification to fit tribes/TDHEs
- Have to purchase them for use from AIA
- More or less industry standard

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## Different Contract Templates Available (con't)

- Contractors' proposed template: least favorable for tribes/TDHEs
- NAIHC and versions drafted for tribes: most protective of tribes (NAIHC versions somewhat dated though – need to review and update for federal requirements)
- HUD forms: more protective of contractors than necessary



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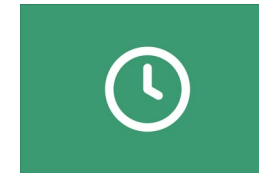
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# Key Parts to a Contract

## Contract Documents:

List all of the documents that will be part of the contract. Examples can include:

- Scope of Work
- Contractor Proposal
- Schedule of Values/Wages
- Project of Timeline
- Design Documents



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# Key Parts to a Contract (con't)

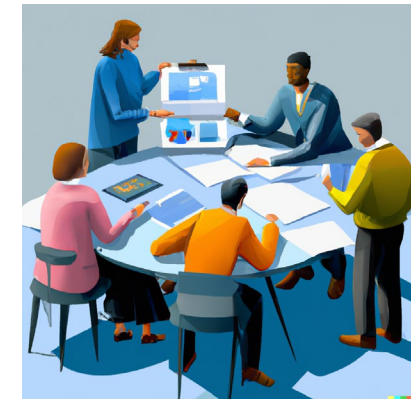
- Explicitly state that the contract documents are attached to and incorporated into the contract as attachment
- Make sure contract states that contract terms prevail in case of conflict between contract and any attachments

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# Scope of Project

- Make sure scope of work is clearly defined
- Who is responsible for which tasks?
- Who is responsible for materials, tools, equipment, etc.?
- Any ambiguity could cause problems later



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# Timeframe for Performance

- Clearly state the deadline for substantial completion
- Specify what happens if there's a delay in project
  - Contractor's fault:
    - Remedy of liquidated damages, or other damages.
  - Discovery of unknown/concealed conditions at the site
  - Unpredictable events (weather, environmental issues, etc.)



Don't  
Delay!

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# Due Diligence:

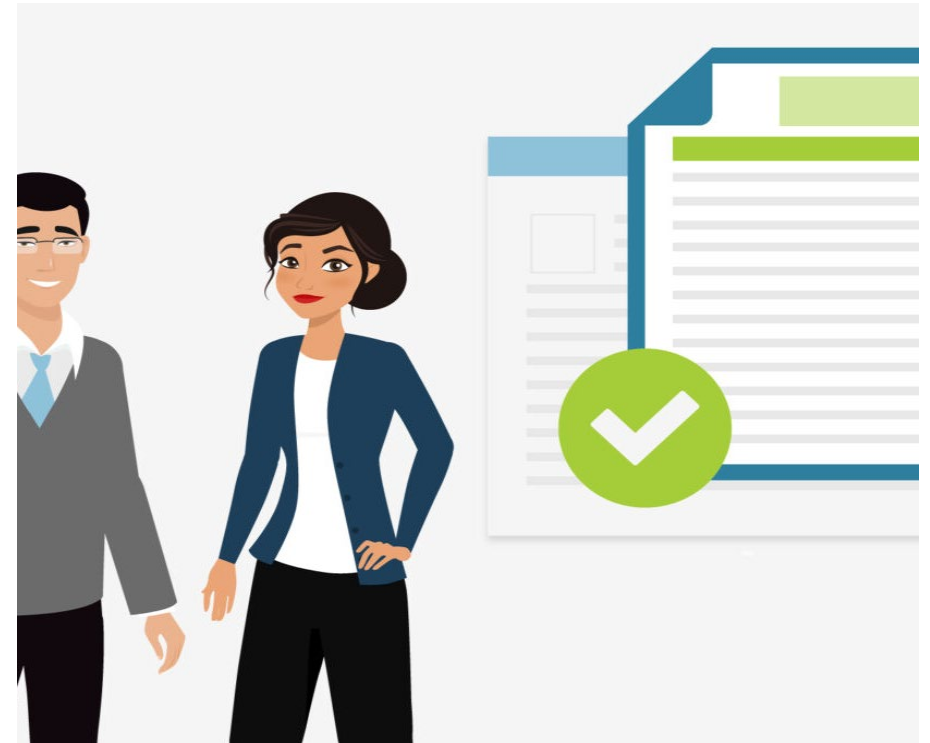
- Statement that Contractor completed due diligence during bidding process.
- Statement that Contractor has visited the site and become generally familiar with local conditions under which the Work is to be performed.
- This statement should be as comprehensive as possible to avoid Change Order requests based on unforeseen site conditions.

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## Change Orders:

- Want to outline a process that puts Owner in control of Change Orders and approval.
- Contractor can only make substitutions after owner approves a change order.
- Should specify the change in the work, the amount of contract price adjustment, and any adjustment to the contract time.



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## Cost, Payments, etc.:

- Contract should list the contract cost (not to exceed cost, hourly wages, etc.)
- Structure of payments: up-front lump sum, progress payments, reimbursement only after invoices, etc.
- Final payment not made until all work is fully performed and owner has accepted the contractor's work.
- Other costs: mobilization fees, software fees, travel costs etc.



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# Substantial Completion, Completion, and Waivers

- Clearly set out requirements for what is substantial completion
  - Who determines substantial completion?
  - What are the standards?
- Clearly set out requirements for what is completion
  - Who determines completion?
  - What are the standards?
- Clearly set out requirements for waivers of any claims upon completion

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# Warranties

- Contract should establish warranties
- Be careful about language waiving warranties
- Look at timeframe for length of warranties
- Some products used will have a longer warranty period – be sure those transfer to owner for full length



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# Retainage

- Tribe/TDHE retains % of the amount of progress payments until completion and acceptance of all work under the Contract
- Help protect tribe/TDHE from contractor walking off project before project is complete
- Also gives Owner leverage if contractor fails to do work to Owner's satisfaction
- Can structure so that % goes down after certain milestones are met

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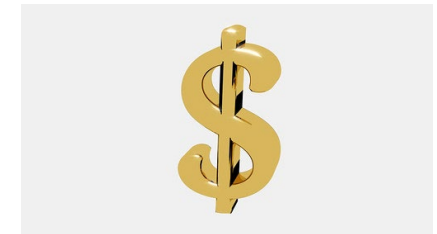


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# Types of Bonds:

1. Bid Bond
2. Performance Bond
3. Payment Bond



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# Bonding

- Per 2 CFR § 200.326, tribes/TDHEs must follow these minimum requirements:
  - A bid guarantee equal to 5% of bid price.
  - A performance bond for 100% of the contract price.
  - A payment bond for 100% of the contract price.



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## Bonding (con't)

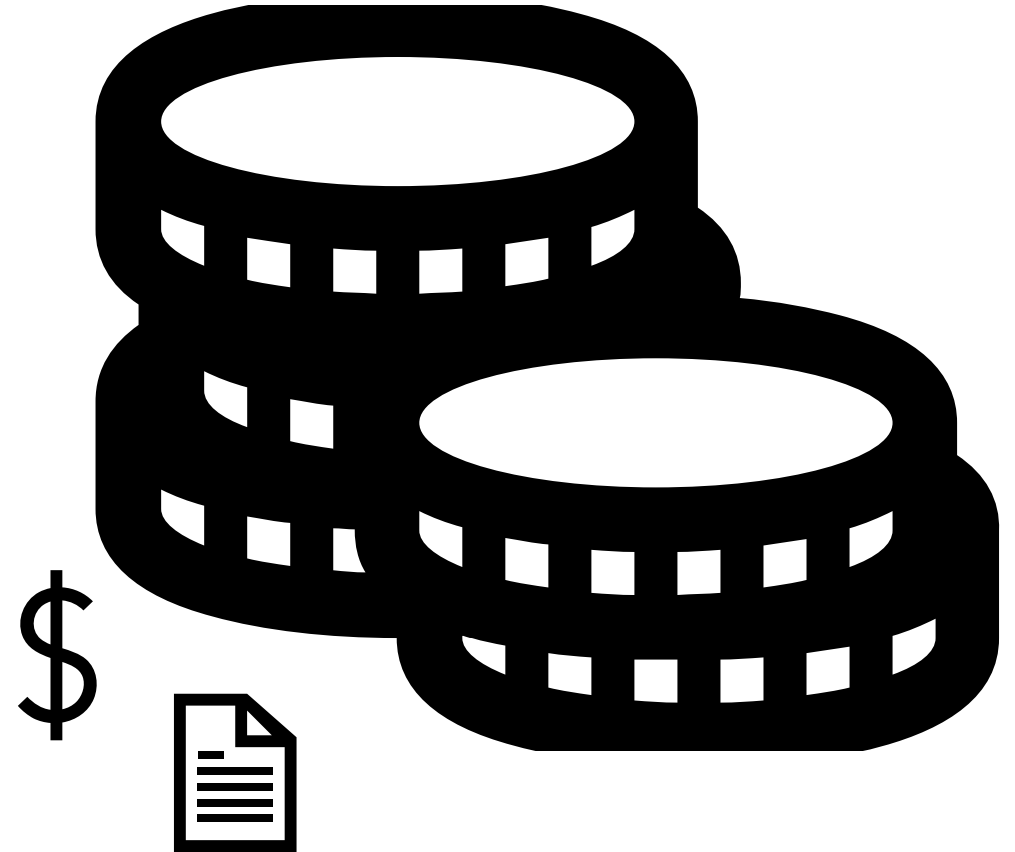
- HUD has also exercised authority to allow for during circumstances under which the previous bonding requirements “are inconsistent with other responsibilities and obligations of the recipient” (24 CFR 1000.26(12)):
  - Deposit a cash escrow of not less than 20% of the total contract price, subject to reduction during the warranty period, commensurate with potential risk;
  - Letter of credit for 25%, unconditionally payable upon demand, subject to reduction during any warranty period commensurate with potential risk; or
  - Letter of credit for 10%, same conditions as 25%, but with additional procedures for monitoring of disbursements by the contractor

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## Bonding (con't)

- Additional flexibility
- A Federal agency can accept a tribe/TDHE's bonding policy/requirements if the Federal agency determines that the Federal interest is adequately protected

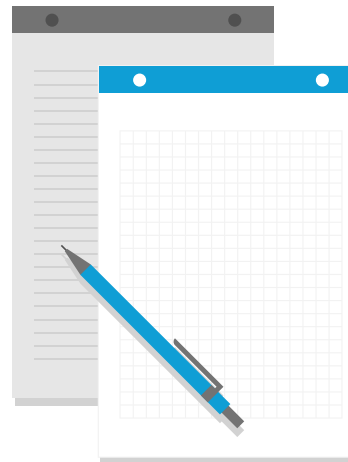
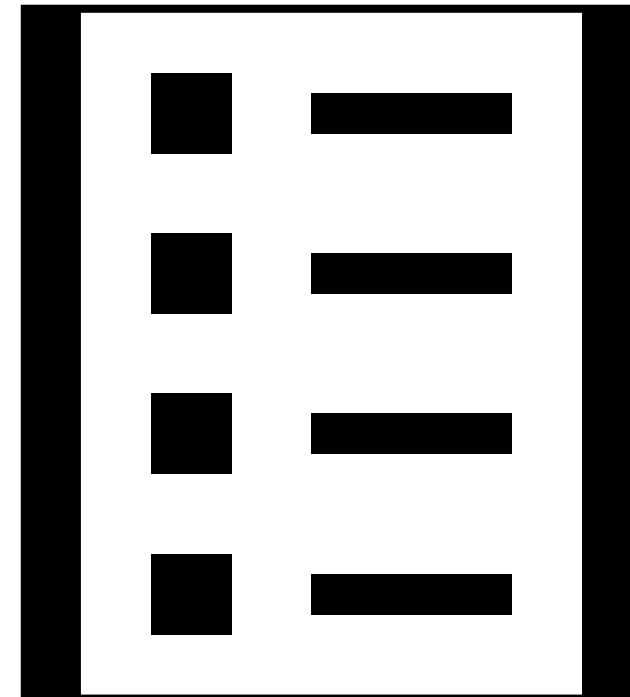


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## Other Terms:

- Specify whether contractor is allowed to subcontract or assign work without owner's consent
- Subcontractors: Make sure contract requires contractor to include federal requirements in subcontracts
- Clarify who owns project documents, and how contractor will handle confidential tribal information



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# Applicable Law:

- Will contract be governed by state law, tribal law, or federal law?
- Include statement that contractor must comply with tribal law and owner's procurement process, as well as federal contract procurement requirements.

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## Federal Contract Terms:

- NAHASDA requirements
- TERO/Indian/Tribal preference
- Davis Bacon/Tribal prevailing wage rates
- Federal contract terms required by federal regulations (2 CFR Part 200)



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## Termination:

- Termination for cause
- Termination for convenience
- Remedies for violation or breach (required if federal funding is used)



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## Disputes and Court Jurisdiction:

- Sovereign Immunity: be careful about whether there is language waiving sovereign immunity
- Clarify which court (tribal, state, or federal) will have jurisdiction
- Specify process for handling disputes (mediation, arbitration, court enforcement, etc.)



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## **Best Practices**

- Include a template contract in the Invitation for Bids
- Make sure contractor does not sneak in unwanted terms in through a contractor's proposal
  - If you attach a proposal as part of the contract documents, make sure you read it carefully and make sure contract states that contract terms prevail in case of conflict between contract and proposal
- If you want legal counsel to review the contract, have them review it before you sign the contract, and ideally before you send it to the contractor
  - Send your legal counsel all bidding proposals and contract documents for review

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## **Questions?**

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