

Sisseton-Wahpeton Oyate  
Judicial Committee  
New Code  Amended Code  Repeated Code   
Tribal Council Resolution No. SWO-16-091  
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CHAPTER 77  
TRANSPORTATION CODE  
OF THE  
SISSETON-WAHPETON OYATE  
ADOPTED: July 27, 2016

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## **TRANSPORTATION CODE FOR THE LAKE TRAVERSE RESERVATION**

### **PART 1- GENERAL PROVISIONS**

#### **1.1 GENERAL PROVISIONS**

The Tribe enacts this Transportation Code in order to provide those persons with a forum for redress of their legitimate claims, which would otherwise be barred due to the Tribe's sovereign immunity from suit. Therefore, the Tribe will pay compensation, solely pursuant to an insurance policy, for damages suffered due to injury to or loss of personal property, or personal injury or death, where such losses or damages are caused by a negligent or wrongful act or omission of an employee of the Tribe while functioning within the scope of the duties of that person's office or employment, under those circumstances where the Tribe, if a private person, would be liable to the claimant.

#### **1.2 AUTHORITY**

The Sisseton-Wahpeton Oyate of the Lake Traverse Reservation (the "Tribe") enacts this Code as an exercise of its inherent and Treaty-recognized sovereignty in accordance with Article VII of the Amended Constitution and By-laws of the Tribe.

#### **1.3 SEVERABILITY**

If any clause, sentence, paragraph, section, or part of this Code shall, for any reason be adjudicated by the Tribal or Appellate Court to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof, directly involved in the controversy in which the judgment shall have been rendered.

#### **1.4 CONSTRUCTION**

This Code shall be interpreted and applied in a manner consistent with all other Codes, Laws, Resolutions, and Regulations of the Sisseton-Wahpeton Oyate.

#### **1.5 AMENDMENT**

This Code may be amended only upon an affirmative vote of a majority of the Council of the Sisseton-Wahpeton Oyate.

#### **1.6 EFFECT OF HEADING**

Headings shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of any portion of this Code.

### **PART 2 – TRIBAL HIGHWAY SYSTEM**

## 2.1 DECLARATION OF LEGISLATIVE INTENT

Declaration of legislative intent - Adequate highways, roads, and streets provide for the free flow of traffic; result in low cost of motor vehicle operation; protect the health and safety of the residents of the Lake Traverse Reservation; increase property value; and generally promote economic and social progress on the Reservation. Therefore, the Sisseton-Wahpeton Oyate Tribal Council hereby determines and declares that an adequate and integrated system of highways, roads, and streets is essential to the general welfare of the Lake Traverse Reservation.

In designating the highway system of the Reservation as hereinafter provided, the Sisseton-Wahpeton Oyate Tribal Council desires to make the Director of the Sisseton-Wahpeton Oyate Department of Transportation custodian of the Reservation highway system and to provide sufficiently broad authority to enable the Department of Transportation to function adequately and efficiently in all areas of appropriate jurisdiction with specific details to be determined by reasonable rules and regulations which may be promulgated by the Director, subject to the limitations of the Tribal Constitution and the legislative mandate hereinafter imposed.

## 2.2 DEFINITIONS

The following words and phrases when used in this Code shall, for the purposes of the Chapter, have the meanings respectively ascribed to them in this subsection.

1. "Abandonment" shall mean cessation of use of a right of way or activity thereon with no intention to reclaim or use again for highway purposes.
2. "Acquisition or taking" shall mean the process of obtaining a right of way.
3. "Arterial highway" shall mean a general term denoting a highway primarily for through traffic, usually on a continuous route.
4. "Indian Reservation Roads" means public roads, including roads on the Federal-aid systems, that are located within or provide access to an Indian reservation or Indian land which is not subject to fee title alienation without the approval of the Federal Government, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians.
5. "Public Road" means any road or street maintained by a public authority and open to public travel. Irrespective of any construction or maintenance contributions by any public or private authority, the Sisseton-Wahpeton Oyate shall have jurisdiction over all such roads which presently or which may here after exist within the exterior bounds of the Lake Traverse Reservation or which may hereafter be acquired by or for the Sisseton-Wahpeton Oyate or its members.
6. "Consequential damages" shall mean loss in value of a parcel, no portion of which is acquired, resulting from a highway improvement.

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7. "Controlled-access facility" shall mean a highway or street especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have no right or easement or only a controlled right or easement of access, light, air, or view by reason of the fact that their property abuts upon such controlled-access" facility or from any other reason.
8. "Department" shall mean the Department of Transportation of the Sisseton-Wahpeton Oyate.
9. "Direct compensation" shall mean payment for land or an interest in land and improvements actually acquired for highway purposes.
10. "Divided highways" shall mean a highway with separated roadways for traffic in opposite directions.
11. "Easement" shall mean a right acquired by public authority to use or control property for designated highway purposes.
12. "Engineer" shall mean the Engineer of the Transportation Department or such employees performing engineering functions for the Department of Transportation.
13. "Expressway" shall mean a divided arterial highway for through traffic with full or partial control of access and generally with grade separations at intersections.
14. "Fee simple" shall mean an absolute estate or ownership in property including unlimited power of alienation, except as to any and all lands acquired or taken for highway, road, or street purposes. Where lands are taken for such purposes, "fee simple" shall not be deemed to include any oil, gas or mineral rights.
15. "Freeway" shall mean an expressway with full control of access.
16. "Frontage Street or road" shall mean a local street or road auxiliary to and located on the side of an arterial highway for services to abutting property and adjacent areas and for control of access.
17. "Grade Crossing" shall mean the intersection of a public highway and of the track or tracks of any railroad, however operated, on the same plane or level.
18. "Highway, street or road" shall mean a general term denoting a public way for purposes of vehicular travel, including the entire area within the right of way. A highway in a rural area may be called a "road," while a highway in an urban area may be called a "street."
19. "Tribal Transportation Program TTP" shall mean the program authorized in the Federal Highway Legislation and is a part of the Federal Lands Highway Program.
20. "BIA Road Maintenance Program" shall mean the BIA road maintenance program that is funded through the Department of interior, even if the Sisseton-Wahpeton Oyate should contract for such maintenance under P.L. 93-638.

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21. "BIA Road System" shall mean those (existing or proposed) for which the BIA has an official right-of-way for or plans to acquire a right-of-way and that serve the transportation needs of Indians.
22. "Highway Trust Fund" shall mean a trust fund established within the Treasury of the United States consisting of federal highway user taxes to fund federal highway improvement programs.
23. "Tribal road system" shall mean those roads whose rights-of-ways are under the jurisdiction of a tribe.
24. "Other Federal Agency Roads" shall mean those public roads whose rights-of-way are under the jurisdiction of various Federal agencies such as Bureau of Land Management, Forest Service, Corps of Engineer, Department of Defense, Bureau of Reclamation, or National Park Service. Nothing herein shall prevent the Sisseton-Wahpeton Oyate from exercising jurisdiction over such roads pursuant to agreement with the relevant federal agency as permitted by federal and tribal law.
25. "Local Street or local road" shall mean a street or road primarily for access to residence, business, or other abutting property.
26. "Market value" shall mean the highest price for which a willing purchaser, neither acting under compulsion nor both exercising reasonable judgment, can sell property in the open market.
27. "Reservation" shall mean the area encompassing the original boundaries of the Lake Traverse Reservation (the geographic extent of which is defined in the Constitution of the Sisseton-Wahpeton Oyate) as well as such areas in which hereafter may be acquired by or for the Sisseton-Wahpeton Oyate or its members.
28. "Right of Access" shall mean the right of ingress to a highway from abutting land and egress from a highway to abutting land.
29. "Right of survey entry" shall mean the right to enter on to property temporarily to make surveys and investigations for proposed highway improvements.
30. "Right of way" shall mean a general term denoting land, property, or interest therein, acquired for or devoted to highway purposes and shall include, but not be limited to, publicly owned and controlled rest and recreation areas, sanitary facilities reasonably necessary to accommodate the traveling public, and tracts of land necessary for the restoration, preservation and enhancement of scenic beauty adjacent to the Reservation highway system.
31. "Right of way appraisal" shall mean a determination of the market value of property including damages, if any, as of a specified date, resulting from the analysis of facts.
32. "Right of way estimate" shall mean an approximation of the market value of property including damages, if any, in advance of an appraisal.

33. "Roadway" shall mean, in general, the portion of a highway, including shoulders for vehicular use. In construction specifications, the portion of a highway within limits of construction.

34. "Shoulder" shall mean the portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

35. "Traffic lane" shall mean the portion of the traveled way for the movement of a single line of vehicles.

36. "Tribal Highway System" shall mean the system of Indian Reservation Roads the responsibility for which is lodged in the Transportation Department of the Sisseton-Wahpeton Oyate.

37. "Functional Classification" is the grouping of roads, streets, and highways into integrated systems, each ranked by its relative importance and the function it is intended to serve, relative to mobility and land access.

38. "Encroach" to gradually move or go into an area that is beyond the usual or desired limits.

## **2.3 TRIBAL HIGHWAY SYSTEM**

The Tribal Highway System shall include all highways/roads designated by the Executive Committee and Tribal Council of the Sisseton-Wahpeton Oyate. All highways/roads within the original exterior boundaries of the "Reservation" as defined hereinabove and which is a "Public Road" as defined hereinabove shall be deemed to be included unless specifically disclaimed by the Sisseton-Wahpeton Oyate.

## **2.4 DESIGNATION OF TRIBAL HIGHWAY SYSTEM**

The Executive Committee of the Tribal Council is hereby vested with authority to designate, locate, create and determine what roads, highways, and streets shall constitute the Tribal Highway System, subject, however, to approval by the Sisseton-Wahpeton Oyate Tribal Council and such conditions, requirements, and mileage limits as provided by law.

## **2.5 CLASSIFICATION OF TRIBAL HIGHWAY SYSTEM**

The Tribal highway system shall be classified in four classes of routes; three vehicular classes and one non-vehicular class. Functional classification is based on the existing or anticipated functional use of the road. The road classes are then combined with the traffic characteristics of the road to select criteria and standards for the adequate design of the roadway. Definitions of the four system classes are given below.

**Class 1:** Major or minor arterial roads providing an integrated network has the characteristics of serving traffic between population centers; generally without stub connections. May also link



towns and communities to recreation and resort areas that attract travel over long distances and generally provide for relatively high overall speeds with minimum interference to through traffic movement. Generally spaced at intervals consistent with population density.

**Class 2:** Streets and roads that are located within communities serving residential or other urban type settings.

**Class 3:** Section line: and/or stub out roads that collect traffic for arterial type roads and make connections, within the grid of the Indian Reservation Road Systems. May serve areas around villages, into farming areas, to schools, tourist attractions or various small enterprises. Also includes road: and vehicular trails for administration of forest, grazing, mining, oil, recreation, or other utilization purposes. The classification encompasses all those public roads not falling into either class 2 or Class 3 definitions set forth above.

**Class 4:** This classification encompasses all non-road paths, trails, walkways, bike paths, or other designated types of routes for public access of non-vehicular traffic.

## **2.6 RESPONSIBILITY FOR TRIBAL HIGHWAY SYSTEM**

The Director of the Sisseton-Wahpeton Oyate Department of Transportation shall be responsible for the construction, maintenance, and operation of the Tribal highway system.

## **2.7 COMMUNITY STREET MASTER PLAN**

The Sisseton-Wahpeton Oyate Department of Transportation shall develop and adopt a master street plan cooperatively between the Department of Transportation and tribal entities. The cooperating officials shall take into account the more important principle streets that connect the residential areas with business areas, and the streets that carry the important rural traffic into and through the community to ensure a system of streets upon which traffic can be controlled and protected in such a manner as to provide safe and efficient movement of traffic within a community. The Department shall compile and maintain a booklet containing all such community street master plans.

## **2.8 OFFICIAL MAP OF RESERVATION TRANSPORTATION SYSTEM**

The Department at all times shall provide and maintain an official map of the Reservation Road system, which shall show all the highways which have been designated, located, created, and constituted as part of the Tribal highway system and, if practical, the status of improvement thereof.

## **2.9 TRIBAL TRANSIT SYSTEM**

The Director shall examine the feasibility of establishing a Tribal Transit System to meet transportation needs of those persons without access to motor vehicles and to facilitate transportation to work and other reservation appointments.

## **PART 3 – DEPARTMENT OF TRANSPORTATION**

### **3.1 ESTABLISHMENT OF DEPARTMENT OF TRANSPORTATION**

There is hereby established a Tribal Transportation Department as a Division of the Sisseton-Wahpeton Oyate Tribal government. It shall be known as the Sisseton Wahpeton Oyate Department of Transportation.

### 3.2 OBJECTIVES

The objectives of the Department of Transportation are as follows:

1. To provide a single administrative department which addresses feasibility studies, planning and implementing of various transportation activities within the Lake Traverse Reservation.
2. To improve the Sisseton-Wahpeton Oyate's transportation capacities by establishing a coordinated government-to-government relationship with federal, state, county and other agencies as it relates to transportation matters.
3. To advise the Sisseton-Wahpeton Oyate Tribal Council on highway user revenue and the Tribe's ability to finance the Department of Transportation and its activities.
4. To oversee and coordinate all activities for all modes of transportation including roads, rail, water and air.

### 3.3 DUTIES

The Department of Transportation shall:

- A. Develop legislation, policies, rules and regulations relating to the Sisseton-Wahpeton Oyate transportation's needs based upon feasibility studies and analysis.
- B. Implement and monitor policies for projects and/or program operation to ensure compliance with guidelines, regulations and requirements mandated by funding agencies and Sisseton-Wahpeton Oyate Tribal government.
- C. Establish a centralized data center for all transportation activities and disseminate necessary information to appropriate Agencies.
- D. Develop methodologies for raising revenues for the orderly development of the Sisseton-Wahpeton Oyate transportation system.
- E. Develop effective coordination, liaison and planning of all transportation priorities within the Lake Traverse Reservation with other entities, agencies and departments to provide a systematic and orderly transportation development process.
- F. Prepare and recommend effective priority criteria for project schedules and updating the annual and five-year transportation plan for the Sisseton-Wahpeton Oyate.
- G. Report periodically on department activities, progress and recommendations to the

Executive committee of the Sisseton-Wahpeton Oyate Tribal Council.

- H. Assist the SWO Executive Committee in developing recommended policies and guidelines concerning all modes of transportation activities with the Lake Traverse Reservation.
- I. Develop and maintain current computerized management and reporting systems to manage and report the activities of the department.
- J. Prepare and maintain a program for construction and improvement of all transportation facilities including roads, railways, and waterways.

### **3.4 DISTRICT ADVISORY COMMITTEE**

- A. The Sisseton-Wahpeton Oyate Department of Transportation shall convene a meeting with transportation representatives from each District on an annual basis to receive their formal input regarding road priorities as part of the one year and five year plans.
- B. The District Advisory Committee shall provide specific information and recommendations regarding condition of roads with their respective Districts.

### **3.5 AUTHORITY**

The Department of Transportation shall have full authority to carry out the duties and responsibilities delegated by the provisions of this Code.

### **3.6 ORGANIZATION**

The Department of Transportation shall be divided between two functions: Administrative and Operational.

- A. The administrative functions, powers, duties, rights and responsibilities shall include:
  - 1. Personnel management and training, testing and development including maintenance of records, data processing, procurement, and payroll.
  - 2. Financial aspects of the department including, but not limited to, budgets, accounting, contracts, and fiscal planning.
  - 3. Reservation planning studies, including but not limited to, the development of priority programming for all forms of transportation on the Lake Traverse Reservation including highways, school bus routes, airports, and railroads, public relations, local government coordination, transportation safety, maintaining current transportation, social, economic and environmental data relating to transportation for use in developing, revising and updating.
- B. Operational functions, powers, duties, rights and responsibilities shall include but not limited to:

1. Pre-Construction/Construction activities including preparation of plans, specifications and estimates relating to the construction of transportation systems, testing, examination and research into the materials and methods for construction, administration of activities performed by private contractors under contract with the Department including engineering, inspection for compliance with specifications, certification of quantities and estimate and settling disputes.
2. Right-of-way issues for acquisition of any necessary rights-of-way, negotiations, appraisals, archeological clearances, conservation procedures and research related to those procedures, relocation assistance programs and providing information to other offices or divisions of the department relative to the need for special facilities to provide access to or across tribal highways and land operations abutting tribal highways.
3. Maintenance activities for overall maintenance of transportation systems including, but not limited to, maintenance of the present highway system on the reservation actually carried out by the maintenance and warehousing operations of the department.
4. Safety issues involving implementation of highway safety programs, development of transportation safety standards and coordination of all safety programs within the department, except as otherwise assigned to the Department of Public safety by law or by the Tribal Chairman:
  - a. Investigate, inspect, or cause to be investigated or inspected, all public carrier to ensure compliance with the orders and regulations of the department and the provisions of the Tribal code.
  - b. Investigate conditions of highway-railway crossings and maintain files in relation thereto.
  - c. Develop Rules and Regulations relating to security and safety.
  - d. Develop safety regulations as they pertain to public and private motor carriers engaged in interstate and intra-reservation operations.
5. Equipment matters including development of equipment management system. Inventory, purchasing new equipment, scheduling and transporting equipment, equipment utilization, and purchase and inventory of repair parts. The Department shall employ or contract for engineers as needed, draftsmen and such other persons as needed to carry out the purpose and intent of this Chapter.

### **3.7 DEPARTMENT OFFICES**

The Department of Transportation shall maintain office(s) on the reservation as deemed necessary and reasonable to carry out the purposes of this act.

### **3.8 ANNUAL REPORT**

The Director shall submit to the Tribal Council an annual report.

### 3.9 CONTRACTS FOR CONSTRUCTION WORK OR MAINTENANCE WORK

The Transportation Director and the Sisseton-Wahpeton Oyate Executives and Tribal Council may elect to contract any road construction or maintenance project under P.L. 93-638 (or successor federal legislation). The Department may elect to subcontract all or a portion of the work required (including equipment, labor, material, supply, etc.) or may perform all or a portion of the work through the Force Account method.

Subcontracting a vendor supplies may be obtained by the Department through Request for Bids (RFB), Request for Proposals (RFP), or a negotiation process as permitted by procurement policies under Tribal and Federal law.

Contracts utilizing monies from the Sisseton-Wahpeton Oyate Tribal Highway and Roads Fund or other funding sources not subject to P.L.93-638 shall be expended utilizing the same purposes specified by this Code or as prescribed by the source of such funds.

The Department shall add to each P.L.93-638 subcontractors or vendor's price fair and reasonable amount (not to exceed 15%), which will be used by the Department of Transportation for administrative costs, wages, supplies, equipment, force account construction, and maintenance.

### 3.10 CONTRACTS AND SUBCONTRACTS

Whenever the cost of any construction improvement shall exceed the sum of twenty-five thousand dollars (\$25,000), the Department shall proceed to obtain prices through request for bids or request for proposals and award such contracts in the manner provided by procurement policies of the Sisseton-Wahpeton Oyate unless otherwise provided herein. Under unusual circumstances where time is of the essence, the Department may negotiate for such improvement provided the Chairman of the Sisseton-Wahpeton Oyate Tribal Council is fully informed on a timely basis and the agreement is approved as provided by law.

### 3.11 REQUEST FOR BIDS

Any requests for bids or proposals for construction work or improvement of highway or structure in excess of the amount of \$25,000.00 shall be advertised. Such RFB or RFP shall state where the bidder may inspect the plans and specifications, with whom bids or proposals shall be filed, and the time and place where bids shall be opened. Such place shall be the Transportation Department office unless otherwise specifically provided. All requests for the purchase of equipment, materials, and supplies, exclusive of repairs to equipment, in excess of the sum of \$25,000.00 shall be advertised for bid.

### 3.12 BIDS WHERE OPENED

All bids shall be opened at the time and place specified in the advertised request for bids. Each bid shall be accompanied by a certified or cashier's check in an amount equal to five percent (5%) of their bid, to be forfeited to the Tribal Highway and Roads Fund should the bidder fail to effect a contract within twenty (20) days after notice of an award, or by a bidder's bond in an

amount equal to ten percent of the full amount of the bid executed by the bidder as principal and by surety company authorized to do business in the State of South Dakota and the Sisseton-Wahpeton Oyate, conditioned that if the principal's bid be accepted and the contract awarded to them within (20) days after notice of award, will execute and effect a contract in accordance with the terms of their bid and a performance and payment bond as required by law and by the regulations and determinations of the Department.

All bonds or checks, except those of the responsible bidders submitting the three (3) lowest and best bids, shall be returned to the bidders promptly upon opening such bids. The bond or check of the responsible bidder submitting the lowest and best bid may be cashed or retained until the contract has been awarded and executed properly. The bonds may be returned to the bidders when the Department has determined when and to whom the contract is to be awarded.

### **3.13 AWARD OF CONTRACTS – BONDS**

The Director shall award all construction contracts only after the contractor provides suitable bonds that are in compliance with tribal law and approved.

### **3.14 NOTICE TO PARTICIPATING AGENCIES**

Participating state, county or municipality to be notified of opening bids. In the event that the state or any county or municipality shall participate in and defray the cost, or part of the costs, of any improvement to be made by the Department, the Director shall notify the board of county commissioners of the county so interested, the proper city officials of the municipality, or the State Highway Commissioners of the time set for opening bids.

### **3.15 PAYMENTS MADE TO CONTRACTORS**

Unless otherwise provided, payments shall be made monthly to the contractor for all work performed and accepted and material furnished and accepted, in such amount as determined by the terms of the contract and approved by the Director.

### **3.16 CLAIMS AGAINST PROJECT**

A person who has furnished labor, materials, or supplies on a contract awarded by the Department, and who has not been paid in full at the time of final acceptance of the project by the Department, shall have the right to file a claim against the contractor and the surety furnishing the performance bond in Tribal Court. Notice of the claim shall be given, in writing, to the contractor or the surety furnishing the performance bond and must provide a clear and concise statement of the labor, materials, and supplies furnished, to whom it was furnished and the monetary value thereof. The notice of the claim shall be made by certified mail postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or has a residence and posted within one hundred eighty (180) days from the date on which the person completed the contract giving rise to the claim.

### **3.17 STANDARD CONTRACT FORMS**

The Director may prepare, adopt and amend uniform standard forms for contracts, bonds, estimates and other forms and documents deemed essential for the efficient administration of highway matters within the department.

### **3.18 SEPARATE PROPOSALS**

Whenever any highway improvement involves structural work, dirt grading and traffic service gravel, graveling, stabilizing and paving, or concrete surfacing, or any two or more of them, whenever practicable, and not contrary to any tribal or federal law or regulation, separate proposals and bids may be received on each separate type of work.

### **3.19 INFORMAL BIDS**

All bids are to be made pursuant to this Code and pertinent provisions of Tribal and federal laws and regulations.

### **3.20 FORCE ACCOUNT WORK**

The Department may perform any work in construction, improvement, and/or maintenance by the force account method whenever it is deemed by the Director that the public interest would be best served by performing such work. Whenever work is performed by the force account method, the Director shall hire employees in accordance with applicable Tribal and Federal laws relating to Indian preference.

### **3.21 INDIAN PREFERENCE**

The Department shall utilize Indian preference to the fullest extent permitted by Tribal and Federal law for all employment and contract decisions.

### **3.22 TRIBAL EMPLOYMENT RIGHTS OFFICE ORDINANCE**

- A. Provision of the Tribal Employment Rights Ordinance (TERO) of the Sisseton-Wahpeton Oyate shall apply to all contractors or subcontractors who provide work, materials or equipment to the Sisseton-Wahpeton Oyate Department of Transportation; provided, however, that TERO shall not apply to the Sisseton-Wahpeton Oyate.
- B. The Sisseton-Wahpeton Oyate Department of Transportation is authorized to take all steps necessary to assure contractor or subcontractor compliance with TERO, including, (but not limited to) tribal court action, withholding of payments to the contractor or subcontractor, or termination of contracts for repeated willful violations of TERO. The TERO Office shall receive notice of such actions and related hearings.

## **PART 4 DIRECTOR OF TRANSPORTATION**

Whenever any activities are likely to affect any public road within this reservation, the director is authorized to take such action as necessary to protect such road from damages that may be caused, and to negotiate with any contractor or officer of an agency for the repair of damage or

extraordinary maintenance that may be required on such public roads. If the road is under the jurisdiction of the state or county, the director shall strive to obtain the consent of such entity before any agreement is entered into or other action is taken with respect to that particular road.

## **PART 5 HIGHWAY PLANNING DIVISION**

The Director of the Department of Transportation shall acquire pertinent highway and transportation related information for use in the development and management of the Sisseton-Wahpeton Oyate Transportation Program.

## **PART 6 ANNUAL AND FIVE YEAR PROGRAMS**

### **FIVE-YEAR IMPROVEMENT PROGRAM; PUBLICATION; ADOPTION ESTIMATED EXPENDITURES BY PROJECT; REVISION**

Each year the Director shall review and submit to the Tribal Executives and Tribal Council an updated Tribal Transportation Improvement Plan (TTIP), which shall be presented to the Sisseton-Wahpeton Oyate Tribal Council for approval.

The Transportation Office shall present to the Committee and the full Council for adoption an updated five-year transportation improvement plans for the ensuing five fiscal years and file a written report outlining the program and explaining any priority changes made pursuant to this subsection. The five-year plan shall include the following:

- A. Detailed information by project, including description, reasons for the project's assigned priority, and estimated costs.
- B. List projects by priority and group in fiscal year with an estimated construction start date.

The Sisseton-Wahpeton Oyate Tribal Council and Executives may make changes in a proposed or adopted five-year plan. Any priority changes approved by the Sisseton-Wahpeton Oyate Tribal Council and Executives shall be incorporated into the five-year plan, prior to submission for approval.

## **PART 7 REVENUES**

### **7.1 HIGHWAY DEPARTMENT REVENUES**

All revenue in the form of charges, reimbursements, or earnings as hereinafter specified, accruing to the Department or any agencies, shall be collected and received by the Director or his agent, and deposited with the Tribal Finance Office. All such deposits shall be credited to the Tribal Highway and Roads Fund.

Such revenue shall include but not limited to the following:

1. Overload fees or charges, permit fees, proceeds from sales, and reimbursements from other entities.



2. Service fees and charges for furnishing documents, material, information or performing work at the request, or for the convenience of other entities.
3. Income resulting from ownership of rights or properties.
4. Funds collected pursuant to reciprocal or other agreements.
5. Other income resulting from authorized activities of the Department and the discharge of its statutory responsibilities.

## **7.2 FEDERAL AID**

Subject to Sisseton-Wahpeton Oyate Tribal Council approval, the Director is authorized and empowered to make contracts and cooperate with the state and federal government in the construction of roads under the provisions of Public Law No.156, enacted by congress on July 11, 1916 entitled "An act to provide that the United States government shall aid the states in the construction of rural post roads, and for other purposes" and is applicable to roads on the reservation.

Subject to Sisseton-Wahpeton Oyate Tribal Council approval, the Director is also authorized to make contracts and apply for federal aid under the Surface Transportation Efficiency Act of 1991 and any other acts of Congress that relate to reservations.

Such authority shall also extend to other transportation related legislation, which the federal government may heretofore or hereafter enact, subject to approval of the Sisseton-Wahpeton Oyate Tribal Council.

## **7.3 TRIBAL TRANSPORTATION PROGRAM (TTP) PROGRAM**

Subject to Sisseton-Wahpeton Oyate Tribal Council approval, the Director is authorized to apply for, receive and expend any funds within the limits of legislative appropriations made available by Congress for construction, improvement and maintenance of the tribal highway system under the Tribal Transportation Program (TTP) Program and any other roads or streets not on the system which qualify for funding.

## **PART 8 DISTRIBUTIONS OF HIGHWAY AND ROADS FUND**

The Tribal Highway and Roads Fund, shall be used for the following purposes:

1. The cost of maintaining the Tribal Highway System including the purchase and maintenance of equipment.
2. The cost of construction and reconstruction of highways in the amount necessary to match, as required, federal aid granted to the Sisseton-Wahpeton Oyate by the federal government for road purposes including purchase and maintenance of equipment.
3. Any funds not allocated under 1 and 2 above may be expended for the construction of Tribal highways without federal aid or may be expended in the

construction, improvement, or maintenance of such tribal highways including purchase and maintenance of equipment or administrative or other expenses.

Nothing herein shall prevent the Sisseton-Wahpeton Oyate from retaining a portion of such funds in reserve or escrow for unforeseen contingencies or to accumulate funds for specific future roads projects.

The Director shall keep and maintain complete and accurate records showing that all expenditures have been made in accordance with legislative appropriations and authorizations.

## **PART 9 CONSTRUCTIONS AND MAINTENANCE OF TRIBAL HIGHWAY SYSTEM**

### **9.1 PREPARATIONS AND ADOPTION OF STANDARD PLANS AND SPECIFICATIONS**

The Director shall prepare and adopt uniform standard plans and specifications for the establishment, construction, and maintenance of highways and bridges within the reservation. Such plans and specifications may be amended, as the Director deems necessary. The Director shall, where feasible, provide shoulders adjacent to the roadway of sufficient size and width to minimize danger to persons walking along the roadway. In areas with heavy pedestrian usage, the Director shall consider the feasibility of constructing a non-Road pathway.

### **9.2 AUTHORITY TO CONSTRUCT AND MAINTAIN TRIBAL HIGHWAY SYSTEM**

The Director shall have authority and responsibility for the construction and maintenance of highways, which comprise the Tribal Highway System.

### **9.3 CONSTRUCTION PROGRAM**

Each year, the Director shall provide a written report showing the improvements, structures, and construction work that have been requested and the actual work undertaken by the department. Such report shall indicate the estimated quantities and cost of each class, type and nature, with the totals for each project made. The Department upon the basis of reports, shall proceed to adopt a construction program, wherein shall be determined what projects and improvements shall be undertaken by the Department during the ensuing construction season and the order of priority. The Director may amend, revise or reduce such construction program, subject to any limitation imposed on the authority of the Director to do such. The Director shall proceed to advertise for bids for contracts at such time as he may elect, and in the manner set forth in this code.

### **9.4 FORCE ACCOUNT CONSTRUCTION**

When the Director determines that it is in the best interests of the Sisseton-Wahpeton Oyate, consistent with law, and with the approval of Tribal Council, he may perform any construction project by the force account method.

### **9.5 CLOSING OF ROADS**

Whenever, during construction work on any tribal highway or at any other time, it may be necessary to prevent traffic from passing over any portion of such highway, the Department may close such portion of the highway to all traffic by posting in a conspicuous manner, at the ends of the highway so closed, signs warning the public or erecting barricades or other obstructions.

#### **9.6 WARNING SIGNS OF ROAD CONSTRUCTION**

Whenever the Department shall perform construction or improvement of any road, bridge, etc. warning signs shall be placed in accordance with the latest standards for construction signage (such as the Manual on Uniform Traffic Control Devices). Nothing contained in this subsection shall make the Director, the Department, or the Sisseton-Wahpeton Oyate liable for failure of any contractor to erect such warning signs. The Sisseton-Wahpeton Oyate specifically retains its immunity from suit due to its status as a sovereign government.

#### **9.7 LIABILITY FOR FAILURE TO ERECT WARNING SIGNS**

Unless otherwise provided in section 9.6 of this Code, any contractor of work or repairs on the Lake Traverse Reservation who shall fail or neglect to erect and maintain suitable warning signs shall be subject to civil action in the Sisseton-Wahpeton Oyate Tribal Court for damages resulting from said negligence.

#### **9.8 AUTHORITY TO ACQUIRE EQUIPMENT**

The Director shall have authority to purchase, lease or otherwise acquire all road material, road machinery, tools, equipment and supplies necessarily for use in constructing, maintaining, and administering the tribal highway system, subject to Procurement Policies of the Sisseton-Wahpeton Oyate.

#### **9.9 PURCHASES OR ACCEPTANCE OF DONATED ITEMS**

The Director may in his discretion, purchase or accept donated equipment, materials, supplies or other personal property useful to the Department, from the United States government, subject to provisions of Tribal law and its procurement policies.

#### **9.10 AUTHORITY TO ACQUIRE BUILDINGS FOR EQUIPMENT**

The Director shall have authority to construct, rent or purchase for the Sisseton-Wahpeton Oyate the necessary land and buildings for storage and housing of road materials, road machinery, and equipment and tools and office space. These items shall become the property of the Sisseton-Wahpeton Oyate unless the rent/lease agreement provides otherwise. Lands shall be placed into trust status whenever possible.

#### **9.11 OBSOLETE EQUIPMENT**

The Director shall be authorized with the approval of Tribal Council to sell, exchange, or otherwise dispose of obsolescent machinery, equipment and material no longer needed for Department purposes. Such equipment shall be sold by negotiation upon the basis of established

market value.

However, such equipment valued at more than \$3,000.00 shall be sold by public auction or sealed bids to the highest and best bid, reserving the right to reject all bids. Funds derived from the sale of such property shall be credit to the fund from which such purchase was made originally. If acquired at no cost and if subject to no other provision of the law, the funds received shall be deposited into the Tribal Highway and Roads Fund.

### **9.12 TESTING LABORATORY**

The Director shall have the authority to develop and maintain a testing laboratory to carry out the testing requirements of the Department. The Department may, upon request of any entity, make available the testing services of said testing laboratory, and make a reasonable charge thereof.

### **9.13 MANUALS OF METHODS AND PROCEDURES**

The Director shall maintain a library of manuals, on methods, specifications, and procedures for road construction at the Tribal Transportation Program. Where manuals and procedures of other federal or state programs or professional organizations may be used when they are suitable and available the Director may, to the extent practicable, prepare, print, and distribute manuals of standard and uniform methods for any of the activities, divisions, or work of the Department, or for general road and bridge construction, design, land acquisition, traffic control, maintenance, marking and other purposes.

### **9.14 RESEARCH ON HIGHWAY DEVELOPMENT**

The Director shall have the authority to gather, investigate and compile information concerning the use, construction and maintenance of highways, the practices and methods of efficient highway organization, financing, and other information, data and statistics of the Sisseton-Wahpeton Oyate as deemed necessary. The Director with the approval of the Sisseton-Wahpeton Oyate Tribal Council shall have the authority to enter into agreements with the federal government, the State of South Dakota, other Native American Tribes, or research organizations to carry on research and test projects involving development and to expend highway funds for this purpose. The Director shall disseminate such information with recommendations as necessary.

### **9.15 TRAFFIC SURVEYS**

The Director shall have the authority to conduct traffic surveys including data to measure existing and future streets and highway traffic characteristics such as, origin, destination, volumes, speeds, accidents, congestion, parking, pedestrian use of streets and the economic loss caused by inferior traffic facilities, including the preparation of traffic plans and recommendations.

### **9.16 PREPARATION OF ROAD MAPS**

The Director shall develop and maintain road maps of the reservation highway system. Maps may be available for general distribution at reasonable cost.

### **9.17 HIGHWAY DEPARTMENT RADIO NET**

The Department is authorized but not required to purchase and maintain a department radio communication network out of the fund designated as tribal highway maintenance fund.

### **9.18 ENCROACHMENTS ON HIGHWAY RIGHTS OF WAY**

No right-of-way for tribal highways shall be encroached upon by erecting any structure, or placing personal property other than a temporary parking for a motor vehicle. Any encroachment may be removed and the person responsible for the encroachment thereof shall pay the cost.

## **PART 10 ROAD MAINTENANCE**

### **10.1 DISTRIBUTION OF MAINTENANCE FUNDS**

Road maintenance funds will be utilized in accordance with the annual road maintenance program developed by the Director and approved by the Sisseton-Wahpeton Oyate Tribal Council.

### **10.2 ROAD MAINTENANCE PRIORITY PROGRAM**

Road maintenance priorities will be established by the Director and approved by the Sisseton-Wahpeton Oyate Tribal Council.

## **PART 11 ACCEPTANCE OF JURISDICTION**

### **11.1 IMPLIED CONSENT**

Any person, corporation or other entity, which utilizes any portion of the Sisseton-Wahpeton Oyate Tribal Highway System by his usage, gives his implied consent to the jurisdiction of the Sisseton-Wahpeton Oyate.

### **11.2 STATUS**

To assure public safety and orderly enforcement of laws, the implied consent provided in section 10.1 hereinafter shall apply to all users of the Tribal Highway System without distinction regarding Tribal membership, residency, or status as a non-Indian.

### **11.3 SIGNAGE**

The Sisseton-Wahpeton Oyate Department of Transportation shall post signs at conspicuous places along the Tribal Highway System providing notice that any person, corporation, or entity by their use of the Tribal Highway System gives their implied consent to jurisdiction of the Sisseton-Wahpeton Oyate and the civil or criminal provisions thereof.

## **PART 12 TEMPORARY ROADBLOCKS**

### **12.1 DEFINITION**

For the purpose of this Section, a temporary roadblock means any structure, device, or means used by any agents or officers of an authorized law enforcement agency for the purpose of

controlling traffic through a point on a highway, road, street, whereby all vehicles may be slowed or stopped. Roadblocks may be created only for those purposes permitted by tribal law.

## 12.2 AUTHORITY TO ESTABLISH ROADBLOCKS

Department of Transportation and law enforcement agencies duly authorized by the Sisseton-Wahpeton Oyate Tribal Council to establish temporary roadblocks upon the highways, streets, and roads within the reservation for the purpose of apprehending persons wanted for violation of laws, and using the highways, roads, or streets within the reservation for the purpose to escape.

- A. The temporary roadblock must be established at a point on the highway clearly visible at a distance of not less than three hundred feet (91.44meters) in either direction.
- B. At the point of the temporary roadblock at least one red light must be placed at the side of the highway displaying an intermittent or flashing beam of light, clearly visible to oncoming traffic at a distance of not less than three-hundred feet (91.44 meters) under normal conditions.

## 12.3 EXISTING LAW PRESERVED

Nothing in this section shall be deemed to limit or encroach upon the existing authority of tribal law enforcement agents and officers in the performance of their respective duties involving traffic control and criminal apprehension.

**WEIGHTED VOTE ON MOTION NO. 105:** 17 For: Kevin Roberts (3); Jerry Eastman (2); Marc Beaudreau (3); Edmund Johnson Jr. (2); Francis Crawford (2); Kenneth Johnson (1); Virginia Max (2); Tribal Vice-Chairman (1); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.  
**MOTION PASSED.**

**MOTION NO. 106:** made by Kevin Roberts, second by Jerry Eastman, question by Kenneth Johnson, to go into Executive Session, at 11:23am.

**WEIGHTED VOTE ON MOTION NO. 106:** 17 For: Kevin Roberts (3); Jerry Eastman (2); Marc Beaudreau (3); Edmund Johnson Jr. (2); Francis Crawford (2); Kenneth Johnson (1); Virginia Max (2); Tribal Vice-Chairman (1); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.  
**MOTION PASSED.**

**MOTION NO. 107:** made by Kevin Roberts, second by Kenneth Johnson, question by Edmund Johnson Jr., to come out of Executive Session, at 11:55am.

**WEIGHTED VOTE ON MOTION NO. 107:** 16 For: Kevin Roberts (3); Jerry Eastman (2); Marc Beaudreau (3); Edmund Johnson Jr. (2); Francis Crawford (2); Kenneth Johnson (1); Virginia Max (2); Tribal Secretary (1). 0 Opposed. 0 Abstained. 1 Absent From Vote: Tribal Vice-Chairman (1). 1 Not Voting: Tribal Chairman.  
**MOTION PASSED.**

**MOTION NO. 108:** made by Kevin Roberts, second by Kenneth Johnson, question by Francis Crawford, to authorize the Realty Office to bid on parcels of land offered for sale at upcoming auctions.

**WEIGHTED VOTE ON MOTION NO. 108:** 17 For: Kevin Roberts (3); Jerry Eastman (2); Marc Beaudreau (3); Edmund Johnson Jr. (2); Francis Crawford (2); Kenneth Johnson (1); Virginia Max (2); Tribal Vice-Chairman (1); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.  
**MOTION PASSED.**

**MOTION NO. 109:** made by Kevin Roberts, second by Edmund Johnson Jr., question by Jerry Eastman, in resolution form, to adopt Chapter 77 – Transportation Code into the SWO Codes of Law, as presented by the Judicial Committee.

**WEIGHTED VOTE ON MOTION NO. 109:** 12 For: Kevin Roberts (3); Jerry Eastman (2); Edmund Johnson Jr. (2); Francis Crawford (2); Kenneth Johnson (1); Tribal Vice-Chairman (1); Tribal Secretary (1). 3 Opposed: Marc Beaudreau (3). 0 Abstained. 2 Absent From Vote: Virginia Max (2). 1 Not Voting: Tribal Chairman.  
**MOTION PASSED.**

**Resolution No. SWO-16-091**

