



Seneca Nation Pennsy Trail — Intergovernmental Fund Transfer Agreement

Pennsy Trail

Local Agreement



Implementation Summary

Transfer Agreement

Transfer Request

Hold-Ups

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Department of Transportation, Director

What will be covered during this presentation:

1. Brief overview of the TEP funded Pennsy Trail Project
2. Issues the Seneca Nation faced after award
3. Project Implementation Summary
4. Intergovernmental Fund Transfer Agreement
23 U.S.C. 104 (f)(3)(A) & 202(A)(9)
5. State - FHWA Fund Transfer Request
6. Hold-Ups

The Onondowagah “Great Hill People,” or more formally known as the Seneca Nation is the westernmost Nation of the six Nations of the Iroquois Confederacy. We are therefore also known as “Keepers of the Western Door.” Today, the Seneca Nation is made up of multiple non-contiguous Territories located around Western NY however the Nation is not a part of New York. The Seneca Nation’s Allegany Territory is one of the only sovereign Nations with a non-native city, the City of Salamanca, occupying its land per lease agreement.

During today’s presentation, we will be discussing one of the federally funded Transportation Enhancement Program (TEP) projects that the Nation was awarded; the Pennsy Trail Project. We will discuss how the Nation was able to get the funding for the project that was apportioned to the New York DOT, back to the USDOT FHWA under 23 US Code 104(f)(3)(A) and 202 (A)(9). We’ll touch on process we went through so that hopefully some of you might be able to utilize the process for your own project.

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Need:

- To improve pedestrian transportation and circulation
- To increase the safety of pedestrians and bicyclists
- To promote healthier lifestyles



- In 2013, the Seneca Nation Department of Transportation **Applied** for Federal Aid Funds Under the Transportation Enhancement Program (TEP)
- In 2014, the Seneca Nation Department of Transportation was **Awarded** TEP funds in the amount of \$482,206 (20% match)

“ There is but one secret to success: Never give up.” : Ben Nighthorse

Based on the need to improve pedestrian transportation, increase public safety, and promote healthier lifestyles, in 2013 the Seneca Nation Department of Transportation applied for federal aid funds through the federal Transportation Enhancement Program, or “TEP.” The TEP funding would be used to convert a portion of the abandoned New York – Pennsylvania railroad corridor on the Allegany Territory, in the City of Salamanca. In 2014, the Nation was presented with an award notification in the amount of \$482,206 which required a 20% local match.

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Objective: Enhance the abandoned New York/Pennsylvania rail line in the city of Salamanca to be used as an multi-use accessible trail

- To increase economic vitality and quality of life by improving pedestrian transportation and circulation from the east side of Salamanca to the west side of Salamanca, to business and public centers near the Seneca Allegany Casino, and to the Jimersontown community.
- To increase the safety of pedestrians, bicyclists, and disabled users
- To promote healthier lifestyles, connect users to the environment, and provide captivating cultural learning experiences.



The objective of the Pennsy Trail project was to improve pedestrian transportation and circulation throughout the City of Salamanca on the Allegany Territory from the East end to the West end. We wanted to connect neighborhoods to local businesses and community services as well as connect multiple community neighborhoods. We wanted to increase the availability and access to public transit, allowing people the ability to more easily travel throughout the town and to other neighboring towns with more shopping, dining, and health care/human services opportunities. The trail would also improve safety, meet ADA standards, and bring people off the main traffic thoroughfare to a designated pedestrian thoroughfare.

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Solution:

- Improve the accessibility and safety of the Pennsy Trail
- Extend the existing trail from 1.75 miles – 3 miles to connect the east to west ends
- Install 8' wide asphalt surface
- Install pedestrian scale overhead lighting
- Install delineated crosswalks
- Install bollards at intersections to deter vehicle access
- Install video surveillance cameras and emergency call boxes
- Install bicycle and pedestrian amenities (bench swings, garbage cans & bike racks)
- Awarded wheelchair charging stations
- Replace a culvert at Titus Creek



The old NY-PA rail corridor had been used for several years as an undesignated trail and as-such had a pretty dark history. The goal of the project was to enhance the accessibility and safety of the trail, as well as increase the length of the trail from 1.75 miles to just over 3 miles. Enhancements included installation of an 8' wide asphalt paved surface to accommodate ADA accessibility and pedestrian scale lighting. The trail would include delineated crosswalks, bollards at all intersections to deter vehicle use, video surveillance to discourage crime and vandalism, emergency call boxes, signage, and pedestrian and bicycle amenities. (ex: the park bench swing pictured on the slide) The Seneca Nation DOT was also gifted with wheelchair charging stations as a thank you for the efforts to improve walkability in the community. Also included in the overall project scope was the replacement of a culvert where the trail crossed a small creek.

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The Seneca Nation and the City of Salamanca entered into a MOA to complete in-house force account work for portions of the construction and for on-going maintenance.

2014 – TEP Award Notification
2018 - Construction starts
2019 - 95% complete
2020 - Close-out & grand opening

So.....
What happened between the 2014 award and the start of construction in 2018?

A Seneca Nation, Allegany Territory - Pedestrian Trail Project

MOU

As stated earlier, the City of Salamanca lies on Seneca lands. Non-native residents are required to sign a lease for the property their homes are on. The City/Nation continually try to coordinate activities which serve the entire community, like the Pennsy Trail. Therefore, after the award notification was presented, the Seneca Nation prepared a Memorandum of Agreement with the City of Salamanca to complete in-house, force account work for construction and maintenance and have been great partners on this project.

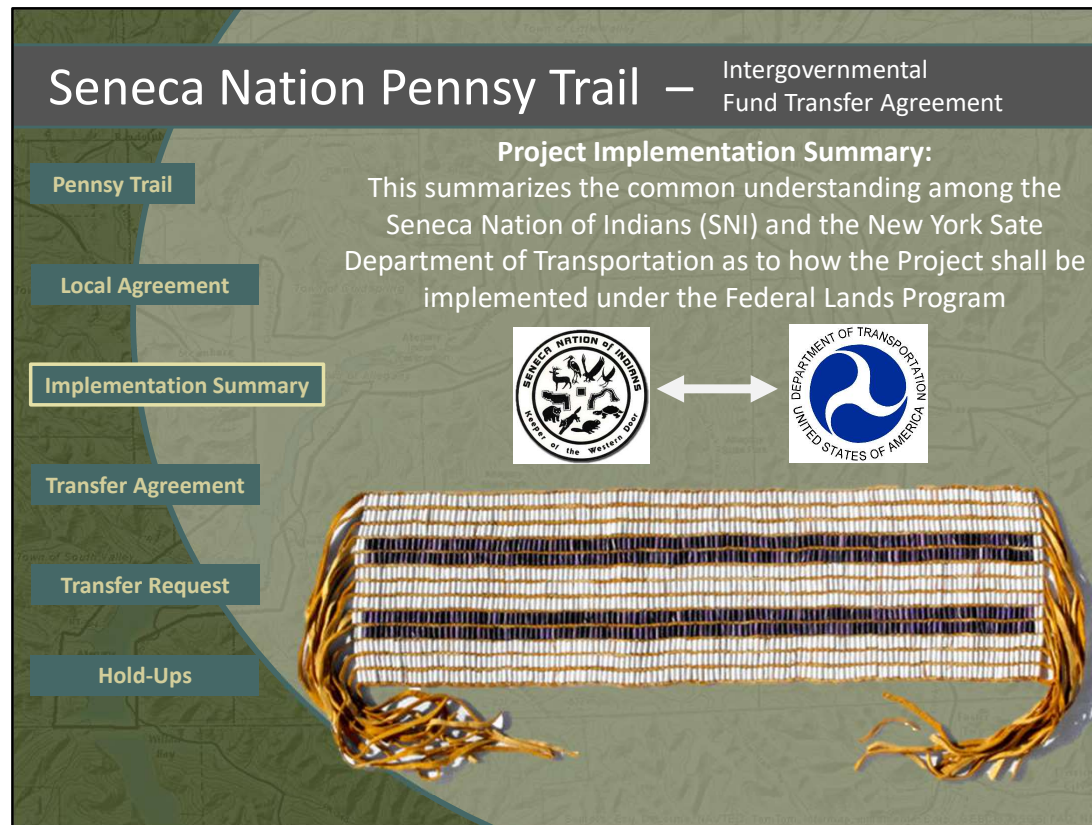
Schedule

In early 2014 the Seneca Nation was awarded the funds to help build the Pennsy Trail. In 2018, construction on the trail began and took approximately 2 construction seasons to complete. We are planning a grand opening of the trail this spring. The grant stipulated that the project was to be completed within 5 years. So, what happened between the 2014 award and the start of construction in 2018?



In the case of the Federal Aid TEP grant, funds were apportioned by Federal Aid to the state to be administered. In our case New York State. As stated earlier in this presentation, the Seneca Nation considers its lands as territories to signify the Nation's sovereignty. While Seneca Territories are located within the formal boundary of the State of NY and the State maintains state routes and other infrastructure on Seneca lands, the Seneca Nation is NOT a part of New York.

In order to draw down the federal funds from the state, NY required the execution of a local project agreement. Within the agreement were various stipulations that the Nation found unacceptable. Most notably was the section that required the Nation to waive its sovereign immunity. The Nation did not agree to such terms and requested the sections be removed.




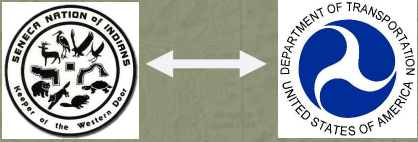
Through a series of meetings, teleconferences, and communications among representatives of the Seneca Nation, NYSDOT, the NY Division office of FHWA, and the Tribal Transportation Program of FHWA, collectively referred to as the project partners, a common understanding was met that the project shall be implemented under the Federal Lands Program.

The understanding was summarized in 2015 through a Project Implementation Summary: Pennsy Trail PIN5760.90 The summary outlined the process for reaching the common understanding and gave a brief description of the project. It also provided that the project did not involve any NYS funding and that the work would take place entirely on SNI lands. The Project Partners committed to consult and collaborate throughout design development and construction so that any potential impacts would be avoided.

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Project Implementation Summary:
This summarizes the common understanding among the Seneca Nation of Indians (SNI) and the New York State Department of Transportation as to how the Project shall be implemented under the Federal Lands Program

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The summary proposed the understanding that was met that the project be advanced through the Federal Lands Program and that participation from the State was not required however that the project still needed to be in compliance with NYSDOT standard specifications. Furthermore, the NY Division Office of FHWA's Financial Group would handle the transfer of funds to the SN once an "Intergovernmental Fund Transfer Agreement" was executed.

The image pictured on this slide is of the "Two Row Wampum Belt."

The three rows of white beads symbolize peace, friendship, and respect separate the two purple rows. The two purple rows symbolize two paths or two vessels travelling down the same river but not interfering with each other. This is a good symbol for how we proceeded with the project.

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Intergovernmental Fund Transfer Agreement (IFTA):



- What is an I.F.T.A. ?
- How did the Seneca Nation Utilize an IFTA?
- Who needed to participate in the agreement?
- How was the Seneca Nation eligible?

What is an Intergovernmental Fund Transfer Agreement (IFTA)?

Intergovernmental transfers are done for many purposes to transfer funds from a government entity to another government entity or agency. For example, from a state to a city or from one state to another. They require an official agreement to be signed by all entities effected by the transfer. In the case of the Pennsy Trail, the agreement was to transfer Federal Aid funds originally appropriated under the Fixing America's Surface Transportation, or FAST Act, to the State of NY to be administered, back to FHWA to be administered. The agreement was entered into by the New York State Department of Transportation, the US Department of Transportation, Federal Highway Administration – Office of Federal Lands Highway, and the Seneca Nation.

The Pennsy Trail Project was eligible for the IFTA under 23 USC 104(f)(3) and 202(a)(9)

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23 U.S.C. 104 (f)(3):
In General-
Subject to subparagraph (B), the Secretary may, at the request of a State, transfer amounts apportioned or allocated under this title to the State to another State, or to the FHWA, for the purpose of funding 1 or more projects that are eligible for assistance with amounts so apportioned or allocated

Subject (B) Apportionment-
The transfer shall have no effect on any apportionment of amounts to a State under this section

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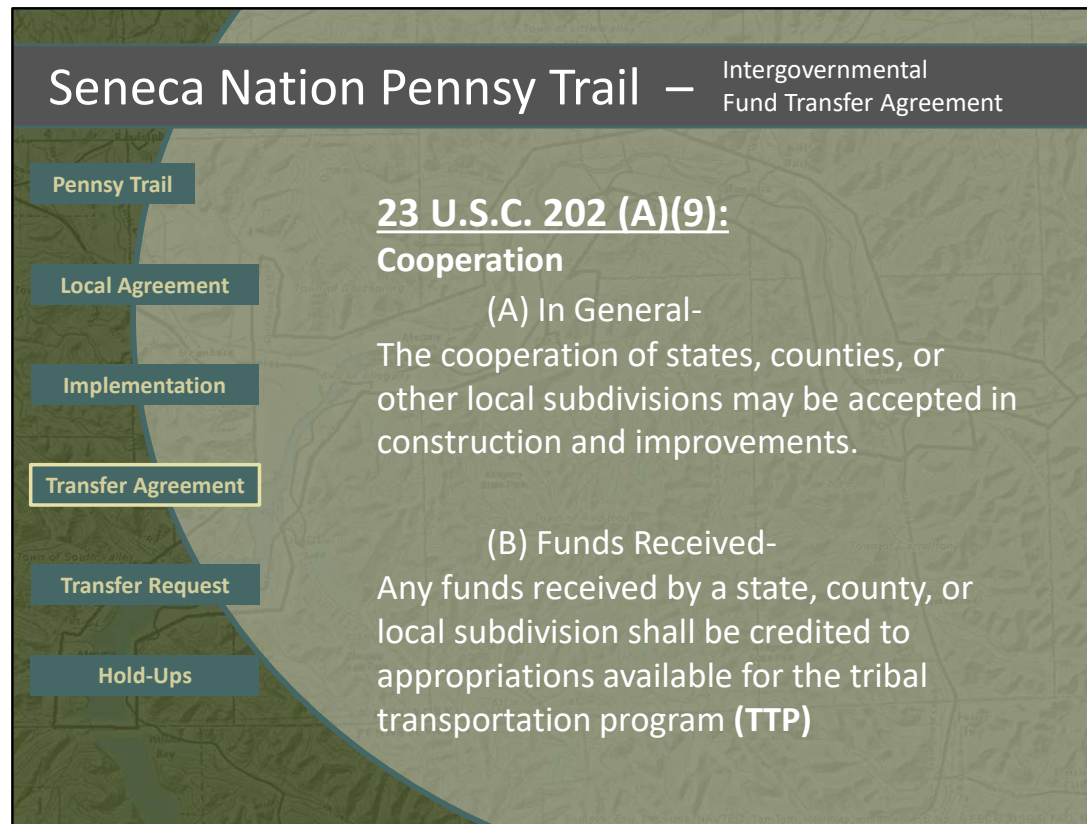
The first part that made the Pennsy Trail project eligible for an IFTA falls under section 104(f)(3) of US Code 23. 104(f)(3)(A) states:

In General- Subject to subparagraph (B), the Secretary may, at the request of a State, transfer amounts apportioned or allocated under this title to the State to another State, or to the FHWA, for the purpose of funding 1 or more projects that are eligible for assistance with amounts so apportioned or allocated.

Subparagraph (B) states:

Apportionment- The transfer shall have no effect on any apportionment of amounts to a State under this section.

In the case of our project, 100% of the funds allocated to the state were Federal Aid funds with \$0 that came from state funding. Had any portion of the funds came from the states revenue, this transfer may not have been eligible.



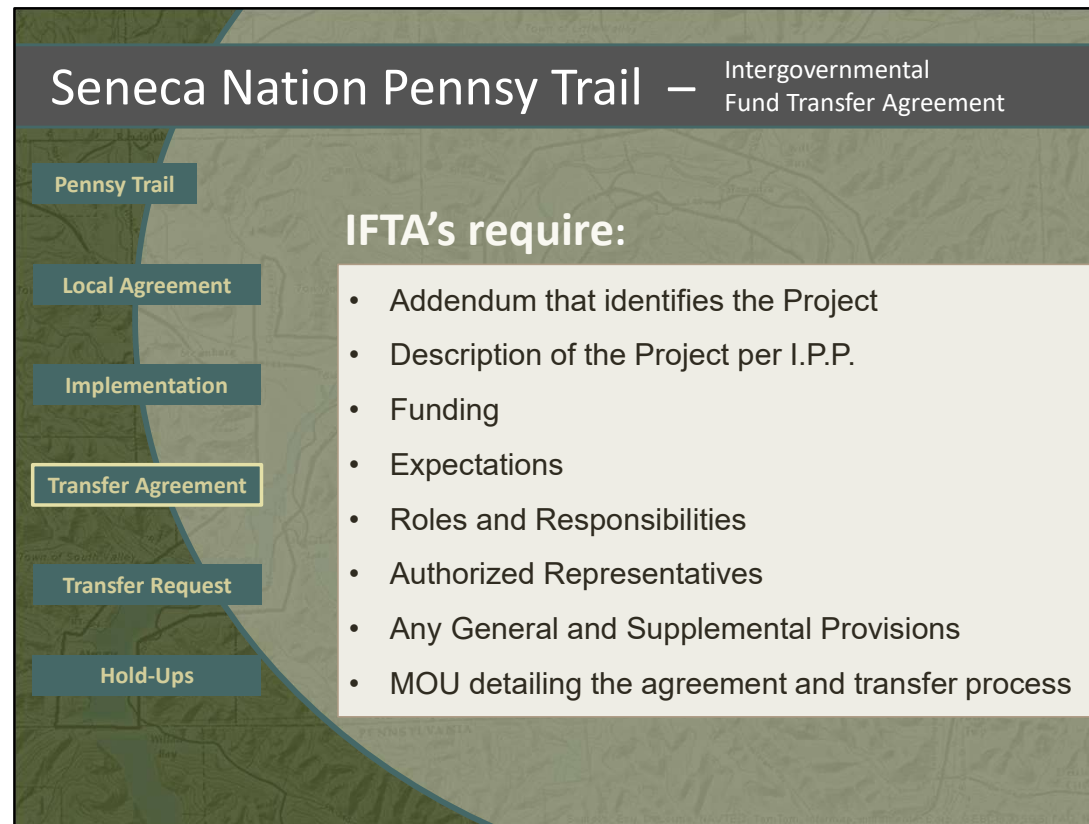
The second part that made the Pennsy Trail project eligible for an IFTA is section 202 (a)(9) of US Code 23. Section 202(a)(9) states:

(A) In General-

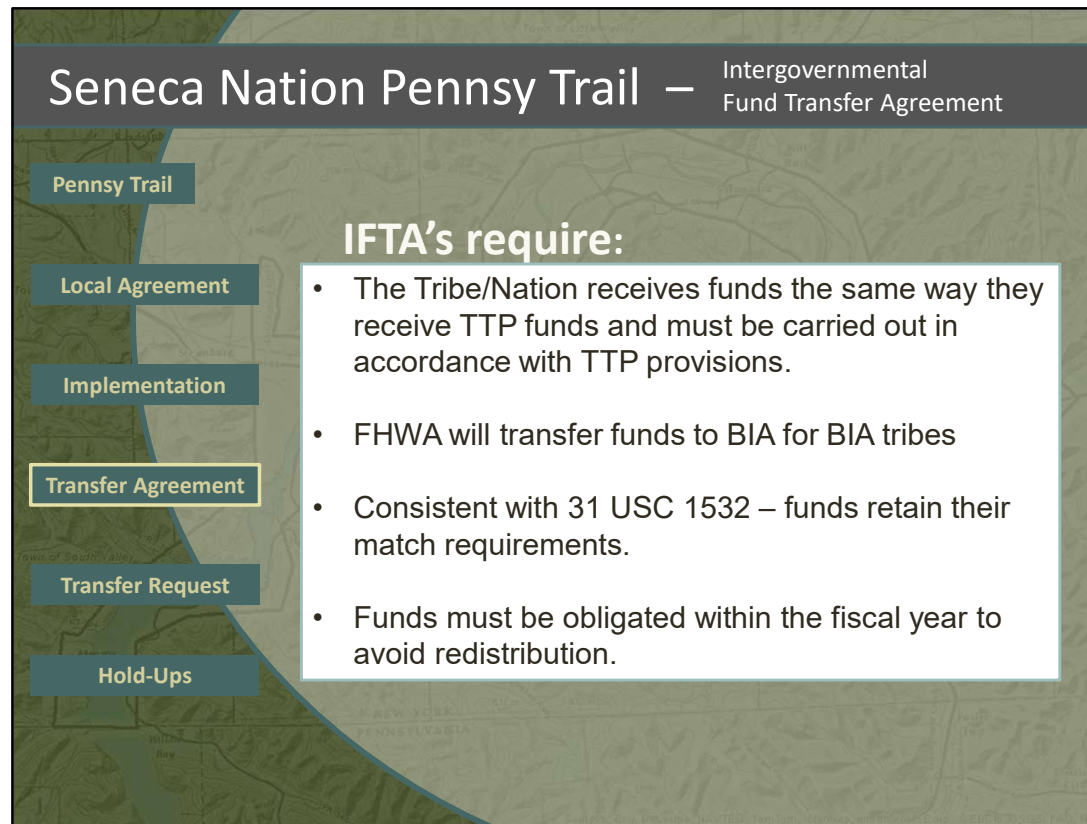
The cooperation of states, counties, or other local subdivisions may be accepted in construction and improvements.

(B) Funds Received-

Any funds received by a state, county, or local subdivision shall be credited to appropriations available for the tribal transportation program **(TTP)**

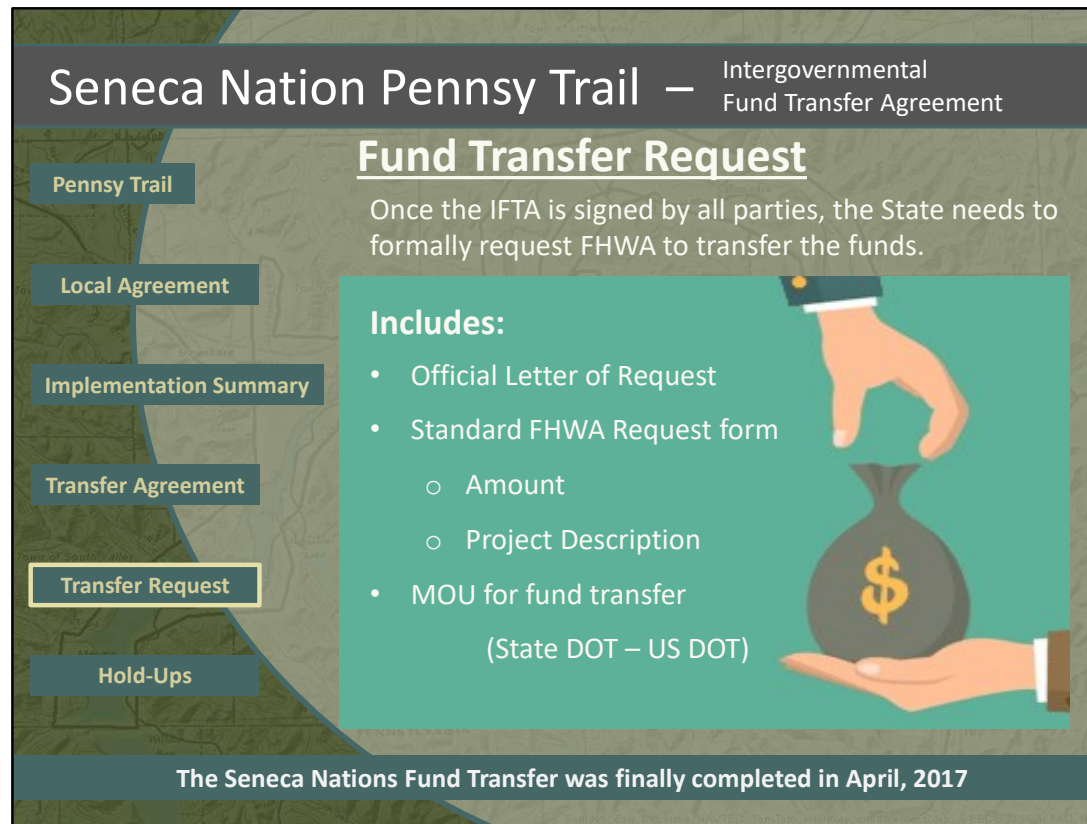


Since the Seneca Nation's Pennsy Trail project was eligible for an IFTA, and all governing bodies were in agreement, a master tri-party agreement was entered into. Contained within the agreement is an addendum that identifies the project, provides a description of the project per IPP (Initial Project Proposal), identifies funding, expectations, roles and responsibilities including authorized representatives, and any general or supplemental provisions. Also included in our agreement under amendment (A) was a Memorandum of Understanding detailing the agreement and the transfer process.

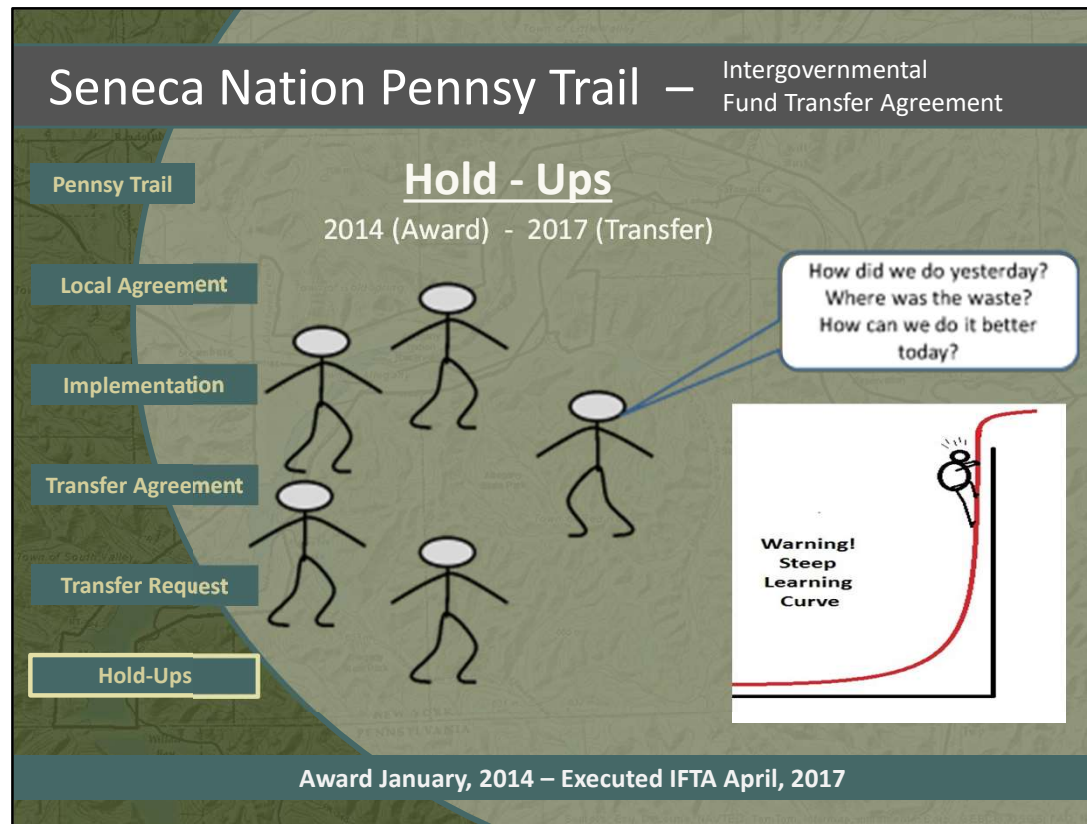


Once the agreement is sign, the Tribe/Nation receives the funds in the same manner that it receives TTP funds and the project must be carried out in accordance with TTP provisions. For BIA tribes, FHWA will transfer the funds over to BIA. In the Seneca Nation's case, the project was carried out under FHWA.

Consistent with 31 US Code 1532, the funds retain their matching requirements. Funds must also be obligated within the fiscal year of the transfer to avoid redistribution in August.



After everything was completed and the IFTA had all the proper signatures, there needed to be a request from NYSDOT to FHWA to officially request the transfer. This request included an official letter of request, a standard FHWA Request Form showing the amount to transfer and a project description, as well as an MOU for transferring funds between NYSDOT and the USDOT FHWA office of Federal Lands Highway. The entire process for the transfer was fully executed by the end of April 2017.

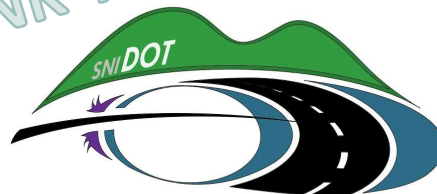


As was stated earlier in this presentation, there were many meetings, discussions, and collaborative efforts that transpired in order to reach this agreement and have the funds transferred. While the TEP grant was awarded in January 2014, the actual FHWA transfer agreement wasn't signed until 2017. There are a couple main reasons for this but it mostly comes down to just a steep learning curve.

This process simply hasn't been executed a whole lot in the past. From our understanding, the Seneca Nation was the first tribal Nation to initiate the effort and second to complete the full transfer process.

Once the IFTA was drafted and before the FHWA transfer request was sent, NYS required the signatures of the State Attorney General and the State Comptroller. Since it was the first time that they had ever initiated this type of agreement, it is understandable that the State's legal representatives needed some time to research and gain a solid understanding of the legal implications that surrounded it. Hopefully, we will have helped to pave a smoother road for other tribal nations to follow this process.

Nya:weh!!
THANK YOU!!



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In English, the Seneca word Nya:weh means “Thank you for being.” So, thank you everyone for coming and I hope you have great rest of your stay and have a safe trip home.

If anyone has any questions during their pursuit, please feel free to take down our contact information and reach out.