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# **201009 SELF-GOVERNANCE NEGOTIATION GUIDANCE FOR BIA PROGRAMS**

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# **20~~1009~~ WORKING FINAL DRAFT SELF-GOVERNANCE NEGOTIATION GUIDANCE FOR BIA PROGRAMS**

## **Office of Self-Governance**

### **I. Purpose**

This document is prepared as a tool to guide federal negotiators in the Bureau of Indian Affairs (BIA) including Office of Justice Services (OJS), Bureau of Indian Education (BIE), Office of the Special Trustee for American Indians (OST), [Office of Indian Energy and Economic Development \(IEED\)](#) and Office of Self-Governance (OSG) negotiators in conducting, on a government-to-government basis, the 20~~1009~~ Self-Governance (SG) negotiations. This guidance is provided to the Tribes/Consortia for their information. This guidance is prepared as a tool to guide federal negotiators.

For the 20~~1009~~ negotiations, the OSG's participation in negotiations will be structured to conduct negotiations electronically whenever possible. Where the Tribes/Consortia are not planning any significant changes in the programs and services included in their Self-Governance agreements, OSG will make arrangements to conduct negotiations over the phone, fax, and e-mail. Where the Tribe/Consortia or the BIA specifically request face-to-face negotiations, OSG will make arrangements [for negotiations](#).

### **II. Interpretation and Process**

Prior to negotiations, if there is confusion or misunderstanding about the content or meaning of this guidance, please contact the OSG in Washington, DC at (202) 219-0240 or the Northwest Field Office in Vancouver, WA at (360) 699-1013. If, during negotiations, the policies and processes of this guidance become an issue of dispute between the BIA and the Tribe/Consortium, the OSG negotiator will make decisions necessary to complete the negotiations. The OSG's negotiation decisions will be subject to the dispute resolution process identified in the final Self-Governance [rules regulations at](#), 25 CFR Part 1000, Subpart R.

As in past years, the OSG Negotiator will be the lead negotiator for the Assistant Secretary - Indian Affairs (AS/IA) and the BIA Regional Director will be the negotiator for all BIA programs, services, functions or activities pursuant to guidance issued by the BIA Director, for non-base programs. Also, the BIA Regional Director has responsibility to coordinate with and notify all pertinent BIA program offices regarding dates and locations of the negotiations to support the timely completion of negotiations. OSG will coordinate with the BIE, OST, [IEED](#) and OJS Line Officers. The BIA Director will provide guidance to the Regional Directors regarding funds controlled by Central Office.

The Regional Director and the OSG Negotiator will surname the Final Report of a Tribe's 20~~1009~~ negotiations, once negotiations have concluded and the funding agreement has been signed by the Tribe's/Consortia's designated official(s). The BIE, ~~IEED~~ and OJS Line Officers will surname the Final Report only when the funding agreement is new or there is education program or law enforcement and corrections program issues or funding changes from the previous funding agreement. The OSG Director will sign all funding agreement amendments with concurrence from the BIA Director, the BIE Director, ~~the IEED~~, and the OJS Director as appropriate. The Final Report form reflects this process. In cases where an Indian Reservation Roads (IRR) Addendum has been negotiated, a separate IRR Addendum Final Report Form will be used. The OSG Director will sign all IRR Addend~~um~~ with concurrence from the BIA Director and Chief, BIA Division of Transportation.

It is the intent of the OSG to have 20~~1009~~ negotiations completed for fiscal year Tribes/Consortia by June 30, 200~~89~~, and for calendar year Tribes/Consortia by August 31, 200~~89~~. This allows OSG time to obtain the necessary signatures before the 90 day review period of the agreement's effective date as required by Section 403 (f) of P.L. 93-638, as amended. Under normal budget and appropriation circumstances, this allows OSG to obligate funds to Self-Governance Tribes/Consortia on a more efficient and timely basis once an appropriation bill has been enacted. It is important to meet these deadlines so that Tribes/Consortia receive the funds necessary to continue their tribal operations without interruption and avoid the cost of borrowing other funds.

### **III. Tribal Self-Governance (SG) Base Budgets**

Once a Self-Governance Tribe/Consortium has elected to establish a Tribal SG base budget for Operation of Indian Program (OIP) funds and the amounts have been base transferred in the President's budget, the tribal shares which make up the base budget will only be adjusted in accordance with 25 C.F.R Part 1000.109. Language in funding agreements regarding the Secretary's responsibility for SG base budgets shall be identical to PL 93-638, Section 404 and 25 C.F.R. Part 1000.10~~9~~. ~~Programs which are non-recurring, are one-time project funding, are earmarked, have other restricted funding conditions, or are not in the OIP accounts cannot be base transferred to SG base budgets. [Cite the relevant Part 1000 regulation.]~~ Self Governance base budgets shall be established and maintained in accordance with 25 CFR Part 1000.105-109. Tribal SG base budgets do not include Contract Support, Law Enforcement and Corrections funds. ~~Some tribes have funds for Road Maintenance in their base amounts.~~ However, these amounts are adjusted each year based upon the national funding distribution methodology. Examples of funds from sources other than the OIP accounts are Indian Reservation Roads (IRR) Program Funds, Department of Labor and Department of Health and Human Services funds for the Indian Employment Training and Related Services Demonstration Project, and ~~Bureau of Land~~

~~Management~~ fire preparedness funding.

A Tribe/Consortium may also choose not to base transfer funds for a certain program or category of programs. If a Tribe/Consortium chooses not to establish a base amount in a certain program or line item, the item must be clearly identified as not to be base transferred. Otherwise, for funds other than non-recurring, OSG will seek to transfer the identified funds into the Tribe's/Consortium's base at the first opportunity in order to expedite the distribution of funds.

Over \$~~141.6~~ 147.7 million has been transferred to the Self-Governance Compact line item in the President's FY 20~~1009~~ BIA budget request. The deadline for additional base transfers in the President's FY 2009 BIA budget has passed. The next opportunity will be the President's FY 201~~0~~1 BIA budget.

#### **IV. Tribal Shares**

Subpart E of the Self-Governance regulations deals with funding agreements for BIA programs and the tribal shares process.

The President's 20~~1009~~ budget contains proposed appropriation language prohibiting any funds, "available to the Bureau of Indian Affairs or Bureau of Indian Education for central office oversight and Executive Direction and Administrative Services (except executive direction and administrative services funding for Tribal Priority Allocations and regional offices, and facilities operations and maintenance)" from being included in contracts, grants, compacts, or cooperative agreements, to include funding agreements. Consistent with this language, such funds will not be negotiated in the 20~~1009~~ funding agreements.

#### **V. Negotiations Process**

Subpart G of the Self-Governance regulations describes the process for negotiating funding agreements. Generally, this process is oriented toward new funding agreements and consists of an information phase and negotiation phase.

For Continuing Self-Governance Tribes/Consortia, pre-negotiations and actual face-to-face negotiations may not be necessary and will not be scheduled unless a Tribe/Consortium seeks to add new programs to its Self-Governance funding agreement in 20~~1009~~ or has other issues which need to be addressed, such as retrocessions or partial retrocessions.

For Self-Governance Tribes/Consortia ~~are reminded that~~ Section 403(b)(5) of Title IV of P.L. 93-638 (25 USC 458cc(b)(5)), as amended, requires that Self-Governance funding agreements specify the services to be provided, the functions to be performed, and the

responsibilities of the Tribe/Consortium and the Secretary pursuant to the funding agreement. This should be accomplished in all cases during the 201009 negotiations where it has not already occurred. Tribes/Consortia and the BIA should identify the functions and services which are being assumed by the Tribe/Consortium and which functions the BIA will continue to perform. The funding agreement should at a minimum identify the functions and services that the Tribe/Consortia intends to provide by Tribal/Consortium budget categories and programs. It should be noted that specifying the services to be provided and the functions to be performed by the Tribe/Consortium does not limit in any way the Tribe's/Consortium's authority to reallocate funds and redesign programs as authorized by Title IV of P.L. 93-638 except for funds appropriated and/or authorized for specific purposes.

In instances where there is a need to identify who is performing different functions, wording should be negotiated and included in the funding agreement to clarify the matter. Detailed Memorandum of Understanding (MOU) may be negotiated and included as funding agreement attachments or amendments to provide greater clarity regarding the respective roles and responsibilities of the Tribe and the BIA for programs and services included in the funding agreement. ~~Text that sets forth disputes, disagreements, differing views and the like, are not to be included in the agreement, footnote or funding agreements, memoranda of understanding, reprogramming documents, or footnotes to them.~~ A "Memorialization of Matters Remaining in Dispute" may be ~~attached as an attachment or addendum~~ to the funding agreement where there are disagreements or the Tribe and the Department have differing view points, ~~but are not considered~~ The Memorialization of Matter Remaining in Dispute: will state that it is not part of the funding agreement. See Attachment 10.

Tribal SG base budget information will be pre-loaded and supporting financial information will be provided by the OSG based on the President's FY 201009 BIA budget request. [A comment has been submitted that the President's budget request no longer be used as the basis for beginning negotiations. Tribal comments on this proposal are requested.] A Self-Governance Negotiations Checklist to help guide Tribes/Consortia and BIA participants through the negotiations process has been provided (Attachment 1).

When a funding agreement specifically indicates, either in the narrative or the reprogramming request, that a Tribe/Consortium ~~intends to include~~ has elected to assume a certain program, the funding for that program will be ~~added once an award is made awarded, once available,~~ without further amendment to the funding agreement. When there is no indication in the funding agreement that the Tribe elects to assume a certain program ~~is to be included and an award is later made to the Tribe,~~ an amendment will be required to add the program and associated funding to the funding agreement.

## **VI. Multi-Year Funding Agreements (MFA)**

The Self-Governance regulations allow for Tribes/Consortia to enter into multi-year funding agreements. If a Tribe/Consortia desires to negotiate a multi-year funding agreement (MFA), then the following language is recommended:

“Section (xxx) --- Effective Date. The effective date of this agreement will be 90 days following the submission of this signed agreement to the Congress and to the other Tribes served by the BIA agency office. The planned effective date is \_\_\_\_\_. This agreement shall stay in effect until \_\_\_\_\_, 20\_\_\_\_. Terms of the agreement will remain in effect unless changed by Congressional action, the promulgation of Federal regulations or an amendment to the multi-year funding agreement (MFA). The amount of funding received by the Tribe/Consortium in any fiscal or calendar year during which this agreement is in effect is subject to Congressional appropriation, and the amount of funding the Tribe/Consortium may receive in any given year is subject to change based on Congressional action. In subsequent years, requests to modify the MFA will need to be negotiated by July 1st /October 1st (*select July 1st for fiscal year agreements or October 1st for calendar year agreements*). “

| In order to properly verify and document the funding to be transferred in subsequent years of a MFA it is necessary that a reprogramming request worksheet be completed and signed for each year of the MFA in accordance with Section X.C. of this [gG](#)Guidance. For administrative and signatory purposes, incorporation into the MFA of subsequent year reprogramming request worksheets should be accomplished by an amendment which will be signed by the Tribe and the OSG Director.

If either the Tribe/Consortium or Department wishes to amend the MFA, then the standard amendment process shall be used which could involve negotiations. If such an amendment has budgetary implications, then negotiations should be completed according to the time lines in Section II of this guidance in order to facilitate the timely transfer of funds.

| The regulations ([25 CFR 1000.90](#)) also stipulate that a Tribe’s/Consortium’s current FA will remain in effect in the event that the effective date of its successor FA is not on or before the expiration date of the current FA. ~~This means that “...the Tribe/Consortium may continue to carry out the program authorized under the AFA to the extent adequate resources are available” (25 CFR 1000.90). The following AFA/MFA provision is recommended to cover this contingency:~~

~~“This AFA/MFA will remain in effect in the event that the effective date of its successor AFA/MFA is not on or before the expiration date of the AFA/MFA.”~~

## **VII. Reporting Requests**

As ~~requested in the last few~~ in past years, the AS/IA is requesting the cooperation of Tribes/ Consortia to provide program performance data and information as required by the Government Performance and Results Act of 1993 (P.L. 103-62) (GPRA) for budget formulation purposes. This information and data is required on a quarterly basis. Without GPRA program performance information, it is not possible to explain to the Department, OMB or the Congress what the Tribes/Consortia have accomplished with funds transferred to them in their funding agreements. In addition to meeting the GPRA requirements, this tribal performance data is essential for successfully completing the Program Assessment Rating Tool (PART), which is OMB's way of assessing the effectiveness of Federal programs. The following language is provided as a starting point for the Tribe's/ Consortium's negotiations with its respective Regional Office:

The (Tribe/Consortium) agrees to provide applicable data and information to the BIA \_\_\_\_\_ Regional Office pursuant to the Government Performance and Results Act of 1993 (P.L. 103-62). Before providing such information, the (Tribe/Consortium) will work with its respective Regional Office GPRA Coordinator to determine applicable data and information needed to meet the requirements pursuant to the Act.

Attachment 2 lists the BIA Central Office and Regional Office GPRA Coordinators. Attachment 3 identifies possible information requests that Self-Governance Tribes/Consortia may receive during the 20~~1009~~ operating year. It should be understood that actual requests for data and information received by individual Tribes/Consortia, as well as the timing of the requests, may vary from this list. Not included are any requests for information that might come from Federal courts, OMB or Congress.

## **VIII. Documents for Self-Governance Negotiations**

### **A. Compacts**

Newly selected Tribes/Consortia should prepare their draft compacts in advance of negotiations using as their guide the model compact that appears in Appendix A of the final rules. This model compact applies to all bureaus within the Department of the Interior rather than a single bureau or agency.

Changes from the model compact to fit the Tribe's/Consortium's particular situation are negotiable. However, any changes must comply with Title IV of P.L. 93-638, as amended, and 25 CFR Part 1000 and be agreed to by all bureaus within the Department. Tribes/Consortia wishing to propose a compact different than the model compact should allow ample time for the proposed differences to be reviewed by OSG, the Solicitor's Office and the non-BIA bureaus within the Department.

When preparing the final compact for signature, type in “Assistant Secretary – Indian Affairs” on the signature page. Do not type in a specific name. If necessary, this allows the Assistant Secretary – Indian Affairs to designate who will sign the Compact in the Assistant Secretary’s absence.

For continuing Self-Governance Tribes/Consortia, OSG requests that changes or amendments to existing Compacts be delayed until after October 1, 200~~89~~<sup>09</sup> when the negotiations for 201~~009~~<sup>09</sup> funding agreements have been completed. If the Self-Governance Tribe/Consortium is not willing to delay the compact amendment negotiations until that time, please notify the OSG as soon as possible. OSG will work with the Tribe/Consortium to establish a negotiation schedule. Also, OSG needs an advance copy of the proposed compact amendment to allow for a timely legal review.

## **B. Annual Funding Agreements (AFAs)**

A model AFA has been developed (Attachment 4) for new Tribes. Existing Self-Governance Tribes/Consortia may wish to review this model agreement to see if there are special provisions they may wish to include in their respective AFAs. A copy of the model AFA is on the OSG’s web site (<http://64.58.34.34>) ~~and is included as Attachment 4. or will be provided upon request.~~ OSG requests that the Tribe/Consortium assume the responsibility for preparing the Compact, AFA, and ~~AFA Worksheet~~Reprogramming Request once tribal employee security clearance for accessing the SG Database AFA Online component has been completed. In cases where the tribal employee’s security clearance for accessing the SG Database AFA Online component has not been completed, the OSG Negotiator will prepare the ~~AFA worksheet~~Reprogramming Request. Tribal employees may have access to the SG Data Base in a READ ONLY capacity without undergoing a background check.

Consistent with practices of previous years, we request that the following mistakes language be included in the funding agreement:

It is recognized that during negotiations, there may be errors in calculations or other mistakes regarding tribal funding amounts which may need to be renegotiated. The parties mutually agree to take appropriate action to correct such errors as soon as they are identified.

As this is an agreement, there should be no documentation of disputes or disagreements in the AFA. When preparing the final funding agreement for signature, type in Director, Office of Self-Governance. Do not type in a specific name. Once final decisions have been reached, Tribes/Consortia should submit two signed original funding agreements along with two signed original ~~funding agreement worksheets~~Reprogramming Requests.

## C. Self-Governance 2009 Annual Funding Agreement - Reprogramming Request Worksheets ([AFA Worksheet](#))

The key financial document to be completed at negotiations is the Self-Governance 2009 Annual Funding Agreement - Reprogramming Request Worksheet. The [AFA Worksheet](#) [Reprogramming Request](#) data entry table is available online via the Internet located on the OSG Website (<http://64.58.34.34>).

OSG Financial Management will pre-load 201009 SG base budget data into each Tribe's/Consortium's [AFA Worksheet](#) [Reprogramming Request](#). Negotiated amounts will be entered into the [AFA Worksheet](#) [Reprogramming Request](#) via the Internet.

For Tribes/Consortia negotiating their first Self-Governance agreements, 201009 budget information will be provided.

It is essential that the negotiators (Tribal, BIA [including OJS], BIE, OST and OSG) work from the same [AFA Worksheet](#) [Reprogramming Request](#) at negotiations and that all decisions are clearly documented in the [AFA Worksheet](#) [Reprogramming Request](#).

## D. Footnotes

A footnote should be written to cover every item where there is some uncertainty concerning the amount, unusual circumstance, or need for documentation about a program. For example, a footnote could identify the circumstances under which the amount could change. Typical examples include line items in the BIA budget which are formula driven, projects, or competitive programs where the tribe may or may not receive an award or is not certain as to the amount to be awarded. Footnotes may not be used to document disagreements or the Tribe and the Department's differing positions. A "Memorialization of Matters Remaining in Dispute" may be ~~an Attachment or addendum attached~~ to the AFA where there is disagreement or the Tribe and the Department are of differing positions ~~but the attachment or addendum is not to be made a part of the funding agreement.~~ The "Memorialization of Matters Remaining in Dispute" will contain the following introductory sentence:

This "Memorialization of Matters Remaining in Dispute" is not part of the funding agreement.

See Attachment 10.

## E. Tribal Resolutions

The Tribe/Consortium should review its resolutions authorizing participation in Self-Governance to determine whether additional resolutions are necessary for authority to

~~sign the negotiated agreements or actually participate in Self-Governance funding agreements in 201009. The Tribe/Consortium should also review its resolutions to determine whether the resolutions provide authority for a funding agreement for a particular year or provide authority until the resolution is rescinded. Any Tribe/Consortium requiring an annual authorization to negotiate a Self-Governance funding agreement or adding or removing one or more programs from a Self-Governance funding agreement shall provide a copy of its authorizing resolution(s) for the 201009 negotiations along with its completed funding agreement. Tribes/Consortia should provide to the OSG negotiator at the time of negotiations the tribal resolution being used to authorize the 201009 funding agreement.~~

## **F. Final Reports for Federal Negotiators**

The purpose of the Final Reports for Federal Negotiators (Attachment 5) is for the Federal negotiators to attest that the language and numbers contained in the funding agreement and worksheet are those that were agreed to at the negotiation table. Both the OSG negotiator and the BIA negotiator shall review these documents and provide a quality control check for any errors before submission for Federal signatures. The Tribe/Consortium should provide a copy of completed documents to the OSG negotiator and the BIA negotiator in advance of obtaining Tribal signatures.

Any disputes concerning amounts in the agreement or other matters involving the agreement will be handled through the appropriate dispute resolution process covered in this guidance. It is intended that once the funding agreement with the Tribe's/Consortium's signature and the Final Report for Federal Negotiators are received in central office, there will be a 2 to 5 day review before signature of the funding agreement. There will also be a final report form for the IRR Addendum when a Tribe elects to receive IRR funding through OSG.

## **G. P.L. 104-109**

P.L. 104-109, Section 19, enacted in February, 1996, amended Section 403 of P.L. 93-638. This amendment added a new subsection (l) which allows participating Tribes/Consortia to include "any or all provisions of Title I" in Self-Governance agreements and "the Secretary is obligated to include such provisions at the option of the participating Tribe or Tribes."

Accordingly, Tribes should provide advance notice to OSG as soon as possible with the precise wording of the change to their funding agreement and the specific citation regarding any provisions from Title I to be included. Direct excerpts or citations from Title I will facilitate the negotiations. Each funding agreement that includes Title I provisions should also contain the following sentence:

"To the extent that provisions in this funding agreement conflict with this

Tribe's/Consortium's Compact, the funding agreement shall prevail."

## IX. Programs Requiring Special Attention

### A. Trust Programs

This year there will be three options with recommended language for training, employee security requirements for access to DOI information technology, and records management. In addition, information is provided for negotiating the appraisals program or the beneficiary processes program [Individual Indian Money (IIM)]. OST should be referenced in the footnotes only when the Tribe/Consortium is operating the appraisals or beneficiary processes program.

#### Option 1

##### 1. Training

The following language should be included:

"Prior to being granted access to DOI automated trust information technology systems, Tribal/Consortium employees must successfully complete BIA trust automated technology systems training, the costs of which will be met by the BIA (or OST)."

##### 2. Employee Security Requirements for Access to DOI Information Technology Systems

The requirement remains this year for favorable screening of tribal employees and employees of tribal contractors before being granted access to DOI information technology systems and DOI trust records in any electronic data or hardcopy format. Further, it may become necessary to have background investigations conducted of employees of Tribes/Consortia and their contractors. Such investigations will be conducted by the U.S. Office of Personnel Management and adjudicated by the BIA Personnel and Physical Security Office (or for OST programs, the OST Security Office). Both functions (investigation and adjudication) are considered Federal functions and cannot be delegated for purposes of granting access to DOI information technology systems and DOI trust records in any electronic data or hardcopy format and/or individual Indian and tribal trust resources. Since background investigation and adjudication may be required, it is not possible for the BIA (or OST) to rely on screening conducted by a non-Federal entity.

In addition, Homeland Security Presidential Directive 12 (HSPD-12) mandates a

government-wide standard of identification for Federal Government employees, contractors and specific DOI categories of individuals who are affiliated with DOI for more than 180 days and who require access to federally controlled information systems and/or access to federally controlled facilities (no matter the frequency or duration). Tribal employees and employees of their contractors must also successfully go through a Personal Identity Verification process prior to being granted access to DOI automated information technology systems.

The following provision should be included in each funding agreement involving functions and activities that require access to DOI information technology systems:

“Prior to being granted access to DOI automated information technology systems and DOI trust records in any electronic data or hardcopy format, the Tribe/Consortium agrees its employees and employees of its contractors must be favorably screened and a final favorable suitability determination issued by the BIA Personnel and Physical Security Office pursuant to OMB Circular No. A-130 and DM 441. In addition, pursuant to Homeland Security Presidential Directive 12 (HSPD-12), Tribal employees and employees of their contractors must also successfully go through a Personal Identity Verification process prior to being granted access to DOI automated information technology systems. Costs will be incurred by the OST or the BIA for their respective programs, functions, services or activities (PFSA).”

## Option 2

The following language may be included:

"The Parties agree that prior to being granted data entry access to DOI automated information technology systems,

1) employees of the Tribe/Consortium and its contractors must be favorably screened and a final suitability determination issued by the applicable Security Office pursuant to OMB Circular No. A-130 and DM 441.

2) pursuant to Homeland Security Presidential Directive 12 (HSPD-12), employees of the Tribe/Consortium and its contractors must also successfully go through a Personal Identification process.

3) the Tribe's/Consortium's employees must successfully complete DOI trust automated technology systems training, the costs of which will be met by BIA or OST for each agency's respective PFSA.

b) Policies are currently being developed to implement background investigation requirements for tribal employees and their contractors. The parties agree that during the interim the Tribe/Consortium will continue to carry out BIA/OST trust PFSA under this funding agreement and employees of the Tribe/Consortium will continue to have access to federal records.

c) The Tribe/Consortium will assess tribal employees by function in order to determine level of risk for each employee as well as the corresponding level of background investigation necessary based upon DOI guidance. However, the Tribe/Consortium will begin requesting background investigations for those employees the Tribe/Consortium determines to have an immediate need. DOI agrees to work with the Tribe/Consortium in this process.

d) The cost of the initial round of background investigations to perform the functions described in this agreement will be paid by BIA or OST for their respective PFSAs. The parties agree to renegotiate terms upon the completion of the development of the background investigation requirement policies for tribal employees and their contractors.

e) Wherever feasible or possible, tribal and federal agencies will coordinate their efforts to utilize reciprocal suitability determinations when appropriate."

Option 3:

Should a Tribe/Consortium choose not to use either of the above two options in its 200910 funding agreement, then the following disclaimer should be included:

"The Department and the Tribe/Consortium mutually agree that for 201009, none of the Tribe's/Consortium's employees or employees of its contractors will have access to DOI automated information technology systems or DOI Trust records in any electronic data or hardcopy format."

### 3. Records Management

The following language is suggested to be negotiated into the 201009 funding agreements regarding fiduciary trust records management:

"The Tribe/Consortium and the Secretary agree to the following:

The Tribe/Consortium agrees to:

(a) preserve, protect and manage all fiduciary trust records, created and/or maintained by the Tribes/Consortia during their management of trust programs in their Title IV agreements. (A fiduciary trust record is any document that reflects the existence of an Indian trust asset and was used in the management of an Indian trust asset. An Indian trust asset refers to lands, natural resources, monies or other assets held in trust at a particular time by the Federal Government for a Tribe, Alaska natives or that are or were at a particular time restricted against alienation, for individual Indians. Management includes actions

that influence, affect, govern, or control an Indian trust asset. The following are examples not considered to be fiduciary trust records: general administrative, personnel or travel records; education records; law enforcement records; health records; law making unrelated to Indian trust assets; tribal council resolutions and laws unrelated to Indian trust assets; and tribal elections.)

(b) make available to the Secretary all fiduciary trust records maintained by the Tribe/Consortium, provided that the Secretary gives reasonable oral or written advance request to the Tribe/Consortium. Access shall include visual inspection and at the expense of the Secretary the production of copies (as agreed upon between the parties) and shall not include the removal of the records without tribal approval; and

(c) store and permanently retain all inactive fiduciary trust records at the Tribe/Consortium or allow such records to be removed and stored at the American Indian Records Repository (AIRR) in Lenexa, Kansas at no cost to the Tribe/Consortium.

The Secretary agrees to:

(a) allow the Tribe/Consortium to determine what records it creates to implement the trust program assumed under its Title IV agreement, except that the Tribe/Consortium must create and maintain the information required by statute and regulation. No additional record keeping requirements are required by this agreement.

(b) store all inactive fiduciary trust records at AIRR at no cost to the Tribe/Consortium when the Tribe/Consortium no longer wishes to keep the records. Further, the Tribe/Consortium will retain legal custody and determine access to these records and such records shall not be treated as Federal records for purposes of chapter 5 of Title 5 of the United States Code unless expressly agreed to by the Tribe;

(c) create and manage a single tribal storage and retrieval system for all fiduciary trust records stored at AIRR (No records will be accepted at AIRR until such a retrieval system exists); and

(d) provide technical assistance for Tribes/Consortia in preserving, protecting and managing their fiduciary trust records from available funds appropriated for this purpose.”

In order to request technical assistance, please contact the Office of Trust Records (OTR) at (505) 816-1600.

## B. Contract Support, Welfare Assistance and Road Maintenance

There are two options for tribes in handling the three recurring programs described in this section. Tribes may elect to omit the amount from the funding agreement but indicate with a footnote their intention to assume responsibility for the program once the funding amount has been determined. The second option is to include an estimated funding amount. Please use the appropriate footnote as described below:

### Contract Support funds:

“Funds will be distributed as described in the BIA’s Contract Support Policy. ~~If this footnote is not acceptable, then it is recommended that the wording “To Be Determined” (TBD) be used for the Contract Support Cost line.~~”

### Welfare Assistance funds:

For Tribes/Consortia not operating under a Tribal Redesign Plan:

“Funds will be distributed based upon welfare assistance need as determined by the national distribution methodology used by the BIA.”

Implementation of the national distribution methodology will require all BIA and tribal welfare assistance programs to submit their welfare assistance reports in a timely manner (by October 31 for Tribes operating under a fiscal year and January 31 for Tribes operating under a calendar year). The reports are required so BIA can determine whether the full need welfare assistance payment level can be made or some pro rata reduction is required. The timely submission of information is needed to avoid ~~delaying holding up~~ the national distribution and adversely impacting Tribal and Bureau welfare assistance programs nationwide.

For Tribes/Consortia operating under a Tribal Redesign Plan:

“The Tribe/Consortium is operating a general assistance program under a Tribal Redesign Plan and will receive a fixed negotiated amount of general assistance program funding. The Tribe/Consortium may use savings from a redesign of the general assistance program to meet other priorities. However, the Tribe/Consortium must meet any increase in the cost of the general assistance program that results solely from tribally increased payment levels due to a Tribal Redesign Plan. Other welfare assistance funds will be distributed based upon welfare assistance need as determined by the national distribution methodology used by the BIA.”

### **Road Maintenance funds:**

“Bureau of Indian Affairs road maintenance funds will be distributed using the same formula as used last fiscal year.

### **C. Law Enforcement and Corrections**

The FY 20~~1009~~ budget request includes law enforcement and corrections program funding in the Public Safety and Justice activity. Funds from the Public Safety and Justice line item will be transferred by the BIA’s Office of Justice Services to the OSG for distribution to Self-Governance Tribes. These funds are intended for law enforcement and corrections program purposes only. Consistent with the findings contained in the Inspector General’s Report, Tribes are encouraged to report serious incidents in the law enforcement and detention fields through the BIA chain of command. Consistent with the law enforcement and corrections program, and subject to Congressional appropriation, each Tribe may include an estimated amount based on the law enforcement base funding it was eligible to receive in 200~~89~~. An approved list of law enforcement base funding estimates to be included in the 200~~9~~10 funding agreements will be available for negotiations. The following footnote should be used:

Any new eligible law enforcement and corrections program funding will be determined and added to the funding agreement based on a determination by the BIA OJS.

### **D. Appraisals and Beneficiary Processes Program<sup>1</sup> Funds**

The Appraisal Services and Beneficiary Processes Programs are managed by the OST. Negotiation with Tribes/Consortia for these programs will involve OST in conjunction with BIA and OSG negotiators. Tribes/Consortia that currently perform these programs will be contacted by OST to negotiate a separate MOU between the Tribe/Consortium and OST that outlines the roles and responsibilities for management of these programs. ~~The MOU for Real Estate Appraisal Services, which was intended to be included as Attachment 6 contains a template for an MOU for the Real Estate Appraisal Services Program, is undergoing technical review. It will be made available at the 2008 Annual Self-Governance Conference.~~ Attachment 7 contains a template for an MOU for the Beneficiary Processes Program. For more information, please contact the OST Office of External Affairs – Washington D.C. (202) 208-3460.

### **E. Indian Employment Training and Related Services Demonstration Project (P.L. 102-477)**

[This section will need to be revised if P.L. 102-477 funds are no longer allowed to be](#)

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<sup>1</sup> The Beneficiary Processes Program formerly was known as the Financial Trust Services Program.

[included in SG Agreements after September 30, 2009.\]](#)

P.L. 102-477 funds are eligible to be included in Self-Governance funding agreements. A Tribe/Consortium desiring to include P.L. 102-477 funds in the Tribes/Consortiums funding agreement needs to incorporate the following language into a section of the funding agreement:

“To the extent this agreement includes Indian Employment Training and Related Services Demonstration Project funds pursuant to P.L. 102-477, the Tribe agrees that such funds will be administered in accordance with the Tribe's approved plan, all statutory requirements including reporting, and applicable federal regulations that have been published in the Federal Register. With respect to programs operated under the P.L. 102-477 Plan, only those Federal regulations which are in conflict with the provisions in P.L. 102-477 and those for which waivers have been specifically requested and formally approved in writing will be considered waived. All P.L. 102-477 Plan modifications should be submitted to the Division of Workforce Development, Office Indian Energy and Economic Development. They will be distributed to each Federal agency whose programs are affected by the modifications and reviewed through the usual P.L. 102-477 inter-departmental review process.”

For calendar year Tribes/Consortia, the following language should be included to insure that non-BIA fiscal year funds received by the BIA are forwarded to the Self-Governance Tribe/Consortium without regard to its status as a calendar year Tribe/Consortium:

“Advance funding for programs funded through this agreement that are derived from non-BIA agencies as a result of their inclusion in the Tribe's/Consortium's P.L. 102-477 plan are to be transferred to the Tribe/Consortium based on the funding year inherent in those funds and as soon as those funds are available for transfer.”

Lines in the Reprogramming Request Worksheet have been provided for Tribes to place funding estimates from other Federal agencies. If a Tribe/Consortium utilizes the funding agreement worksheet for this purpose, then the following footnote should be used:

“The amount included is a funding estimate. The actual amount will be based upon funding levels provided by (insert the appropriate Federal Agency).”

For additional information, interested Tribes/Consortia should contact Lynn Forcia, Division of Workforce Development, Office of Indian Energy and Economic Development at (202) 219-5270.

## **F. Construction, Fire Preparedness, and Non-Recurring Projects**

Footnotes that identify the basis for the award and the estimated amount at the time of negotiations should be used for Construction, Fire Preparedness, and Non-Recurring projects amounts where there is a degree of uncertainty in the amount of funds to be available. In these instances, funding amount estimates may should be identified and the following footnote may should be used:

“The amount identified is the best estimate at the time of negotiation and is subject to adjustment based on actual award, selection of project, or distribution methodology used by the BIA provided Self-Governance Tribes, other Tribes, and BIA agencies are treated similarly. Funding for non-recurring Programs, Services, Functions, and Activities can only be provided on a one-time basis for this year.”

The BIA’s Reprogramming documents and OSG’s Authority to Obligate (ATO) award documents will identify funds that are awarded on a one-time-only basis and that are not guaranteed to be funded in subsequent fiscal year(s). In accordance with 25 CFR 1000.105 non-recurring program funds, construction and wildland firefighting funds, Congressional earmarks, one-time project funds, funds with restrictive conditions, other funds specifically excluded by Congress and funds that are not in the OIP accounts cannot be base transferred to SG base budgets.

Preparedness program funding is non-recurring and subject to adjustment based on actual award or distribution methodology used by the BIA. Preparedness Program Management – Indirect (~~BLM-i~~ Indirect cost for Wildland Fire Preparedness) is a separate line item on the AFA Worksheet Reprogramming Request and needs to be identified separately from contract support needs for Tribal Priority Allocation and other Operation of Indian Programs appropriation accounts. The following footnote should be added for this line item:

“Estimated ~~BLM~~ Indirect Cost for Wildland Fire Preparedness will be determined at the current tribal indirect cost rate or other approved indirect methodology.”

On April 6, 2001, the Deputy Commissioner of Indian Affairs issued guidelines for Tribally operated wildland fire management programs which are included as Attachment 11.

## **G. Road Construction**

Based on the current information, it is possible that the Safe, Accountable, Flexible, Efficient Transportation Equity Act will be extended. Given this uncertainty, multi year addendum and such references in AFAs and MYAs will not be entertained. The parties will negotiate changes to the AFA and MYFA and IRR addendum to conform to any extension and such term shall mirror the time period for which the authorization is

extended. In accordance with the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users, P.L. 109-59, 23 U.S.C. 204(c), IRR Program funds eligible for road maintenance may be included in a funding agreement when the procedures are jointly developed by the Bureau of Indian Affairs and the Federal Highway Administration. See IRR Model Addendum in Attachment 9.

In accordance with 25 CFR 170.610-626, a Self-Governance Tribe/Consortium may include its negotiated Indian Reservation Roads (IRR) program funds in its 2009 funding agreements. A Tribe/Consortium having one or more projects identified in an FY 2010~~09~~ Federal Highway Administration (FHWA) approved Transportation Improvement Program (TIP) or other transportation related activities may choose to include the IRR program funds in its 2010~~09~~ funding agreement. Upon notification of available funding and planned projects (25 CFR 170.600), if a Tribe/Consortium intends to include IRR program funds in its 2010~~09~~ funding agreement for one or more approved TIP projects, it should notify OSG as soon as possible so that OSG can coordinate IRR negotiations with BIA Regional Office roads program officials. Attachment 8 describes the negotiation process to be used. Attachment 9 contains IRR Templates to guide the negotiation of the IRR Addendum by Self-Governance Tribes and Consortia.

Funding for FY 2010~~09~~ IRR road construction and tribal transportation planning activities can be directly transferred to Self-Governance Tribes and Consortia by the OSG Director. A Tribe/Consortium that intends to perform tribal transportation planning as described in 25 CFR 170.201 and is awarded Tribal Transportation Planning (23 USC 204(j)) funds by a Regional Director, may include those funds in its funding agreement without an IRR Addendum.

In accordance with the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users, P.L. 109-59, 23 U.S.C. 202(d)(5), a Self-Governance Tribe/Consortium may also enter into contracts and agreements with the Secretary of Transportation. Procedures for those Tribes/Consortia entering into these contracts and agreements can be obtained from John Baxter, Federal Lands Highways –Associate Administrator, 1200 New Jersey Avenue, S.W., Room E61-311, Washington, DC 20590, Telephone Number (202) 366-9494. When a Tribe was receiving funding from OSG and changes that election to receive funding from FWHA or BIA-DOT, this election should follow the procedure identified in 25 CFR 1000.32.

## H. Consortium Breakout of Participating Tribes' Shares

To provide clarification when negotiating amendments and responding to inquiries, each Alaskan consortium funding agreement should include a Tribe-by-Tribe break out of all negotiated shares included in the funding agreements.

### I. Housing Improvement Program (HIP) and ~~Johnson O'Malley (JOM) funds~~

~~HIP and JOM are two programs that are not included in the President's Budget Request to Congress in Fiscal Year 201009. Need to wait until 2010 budget clarifies this~~

Language for HIP can be inserted that indicates,

~~"This program is excluded from the President's 201009 Budget Request to Congress. Should final appropriations restore the program, the Tribe elects to operate the program through this Funding Agreement. Funds will be distributed based on HIP eligible applicant data and shall be used in accordance with HIP regulations unless waived."~~

~~Language for JOM can be inserted that indicates,~~

~~"This program is excluded from the President's 201009 Budget Request to Congress. Should final appropriations restore the program, the Tribe elects to operate the program through this Funding Agreement."~~

## **J. Motor Vehicle Operation Policy**

Pursuant to the requirements of 5 CFR Part 930 and the Department of the Interior's Motor Vehicle Safety Policy, 485 DM 16, the following language is requested to be included in Funding Agreements to promote the safe and prudent operations of motor vehicles while performing duties under the Agreement:

"The Tribe certifies that it will self-administer a motor vehicle operation policy that promotes the safe and prudent operations of motor vehicles while performing duties to implement the terms of the Agreement. The Tribe's policy is either comparable or superior to the May 3, 2006 Motor Vehicle Operation Policy for the BIA issued by the Associate Deputy Secretary.

A copy of the Motor Vehicle Operation Policy for the BIA is included in Attachment 12.

## **K. Single Audit copies**

**In addition to the required copy to the Federal Audit Clearing house the Tribe /eConsortium is required to provide two copies of the audit financial statements and single audit report to the Office of Internal Evaluation and Assessment, DOI, 20051 Mercator Drive, Reston, VAa 20191, phone 703-390-6578, fax 703-390-6325.**

## **XI. Summary - Final Negotiations Packets**

Once the exchanging of draft documents is completed and final agreement has been

reached, Tribes/Consortia should prepare final negotiations packets which should include the following items:

- A. Two signed, original compacts (for new SG Tribes);
- B. Two signed, original funding agreements;
- C. Two signed, original funding agreement [Reprogramming Request](#) worksheets;
- D. Two copies of authorizing Tribal resolution(s) as needed;
- E. Two copies of attachments (MOAs, Tribal breakouts, footnotes, etc.);

BIA Regional Directors should prepare the following item for the final negotiation packets:

- A. Final Report Form for Federal Negotiators (provided and completed by BIA Regional Director and OSG negotiator).

## **XI. Dispute Resolution Process**

Disputes will be resolved consistent with Self-Governance rules found at 25 CFR 1000.420 - 1000.438.

# List of Footnotes for Funding Agreements

## Footnote 1: Contract Support

"Funds will be distributed as described in the BIA's Contract Support Policy. ~~It is recommended that the wording "To Be Determined" (TBD) be used for the Contract Support Cost line."~~

## Footnote 2: Housing Improvement Program

~~"This program is excluded from the President's 201009 Budget Request to Congress. Should final appropriations restore the program, the Tribe elects to operate the program through this Funding Agreement. Funds will be distributed based on HIP eligible applicant data and shall be used in accordance with HIP regulations unless waived."~~

## Footnote 3: Welfare Assistance

"Funds will be distributed based upon welfare assistance need as determined by the national distribution methodology used by the BIA."

## Footnote 4: Road Maintenance

"Bureau of Indian Affairs road maintenance funds will be distributed using the same formula as used last fiscal year."

## Footnote 5: Law Enforcement and Corrections

"Any eligible new law enforcement and corrections program funding will be determined and added to the funding agreement based on a determination by the BIA OJS."

## Footnote 6: Indian Employment Training and Related Services Demonstration Project (P.L. 102-477)

~~[This footnote will need to be revised if P.L. 102-477 funds are no longer allowed to be included in SG Agreements after September 30, 2009.]~~

~~"The amount included is a funding estimate. The actual amount will be based upon funding levels provided by (insert the appropriate Federal Agency)."~~

## Footnote 7: Construction, Fire Preparedness and Non-Recurring Projects

"The amount identified is the best estimate at the time of negotiation and is subject to adjustment based on actual award, selection of project, or distribution methodology used by the BIA provided Self-Governance Tribes, other Tribes, and BIA agencies are treated similarly. Funding for non-recurring Programs, Services, Functions, and Activities can only be provided on a one-time basis for this year."

**~~Footnote 8: Johnson O' Malley (JOM) funds~~** <sup>(BAU)</sup>

~~"This program is excluded from the President's 2009 Budget Request to Congress. Should final appropriations restore the program, the Tribe elects to operate the program through this Funding Agreement."~~

**Footnote 8: Facilities**

"Any eligible new law enforcement and corrections program funding will be determined and added to the funding agreement based on a determination by the BIA"

**Footnote 9: Real Estate Appraisals MOU with OST:**

"The Tribe and the Office of the Special Trustee for American Indians (OST) have negotiated a Memorandum of Understanding (MOU) for the Real Estate Appraisal Services Program. This program will be governed by the terms of this MOU, which is attached and fully incorporated into the funding agreement."

# ADDITIONAL FUNDING AGREEMENT ARTICLES

## FA Article Regarding Training

“Prior to being granted access to BIA automated trust information technology systems, Tribal/Consortium employees must successfully complete BIA trust automated technology systems training, the costs of which will be met by the BIA (or OST).”

## FA Article Regarding Security

Option 1: “Prior to being granted access to DOI automated information technology systems and DOI Trust Records in any electronic data or hardcopy format, the Tribe/Consortium agrees its employees and employees of its contractors must be favorably screened and a final favorable suitability determination issued by the BIA Personnel and Physical Security Office pursuant to OMB Circular No. A-130 and DM 441. In addition, pursuant to Homeland Security Presidential Directive 12 (HSPD-12), Tribal employees and employees of their contractors must also successfully go through a Personal Identity Verification process prior to being granted access to DOI automated information technology systems. Costs will be incurred by the OST or the BIA for their respective programs, functions, services or activities (PFSAs).”

Option 2: “a) The Parties agree that prior to being granted data entry access to DOI automated information technology systems,

1) employees of the Tribe/Consortium and its contractors must be favorably screened and a final suitability determination issued by the applicable Security Office pursuant to OMB Circular No. A-130 and DM 441.

2) pursuant to Homeland Security Presidential Directive 12 (HSPD-12), employees of the Tribe/Consortium and its contractors must also successfully go through a Personal Identification process.

3) the Tribe’s/Consortium’s employees must successfully complete DOI trust automated technology systems training, the costs of which will be met by BIA or OST for each agency’s respective PFSAs.

b) Policies are currently being developed to implement background investigation requirements for tribal employees and their contractors. The parties agree that during the interim the Tribe/Consortium will continue to carry out BIA/OST trust PFSAs under this funding agreement and employees of the Tribe/Consortium will continue to have access to federal records.

c) The Tribe/Consortium will assess tribal employees by function in order to

determine level of risk for each employee as well as the corresponding level of background investigation necessary based upon DOI guidance. However, the Tribe/Consortium will begin requesting background investigations for those employees the Tribe/Consortium determines to have an immediate need. DOI agrees to work with the Tribe/Consortium in this process.

d) The cost of the initial round of background investigations to perform the functions described in this agreement will be paid by BIA or OST for their respective PFSAs. The parties agree to renegotiate terms upon the completion of the development of the policy.”

e) Wherever feasible or possible, tribal and federal agencies will coordinate their efforts to utilize reciprocal suitability determinations when appropriate.

Option 3: The Department and the Tribe/Consortium mutually agree that for 2008, none of the Tribe's/Consortium's employees or employees of its contractors will have access to DOI automated information technology systems or DOI Trust records in any electronic data or hardcopy format.

### **FA Article Regarding Fiduciary Record Keeping**

“The Tribe/Consortium and the Secretary agree to the following:

The Tribe/Consortium agrees to:

(a) preserve, protect and manage all fiduciary trust records, created and/or maintained by the Tribes/Consortia during their management of trust programs in their Title IV agreements. (A fiduciary trust record is any document that reflects the existence of an Indian trust asset and was used in the management of an Indian trust asset. An Indian trust asset refers to lands, natural resources, monies or other assets held in trust at a particular time by the Federal Government for a Tribe, Alaska natives or that are or were at a particular time restricted against alienation, for individual Indians. Management includes actions that influence, affect, govern, or control an Indian trust asset. The following are examples not considered to be fiduciary trust records: general administrative, personnel or travel records; education records; law enforcement records; health records; law making unrelated to Indian trust assets; tribal council resolutions and laws unrelated to Indian trust assets; and tribal elections.)

(b) make available to the Secretary all fiduciary trust records maintained by the Tribe/Consortium, provided that the Secretary gives reasonable oral or written advance request to the Tribe/Consortium. Access shall include visual inspection and at the expense of the Secretary the production of copies (as agreed upon between the parties) and shall not include the removal of the records without

tribal approval; and

(c) store and permanently retain all inactive fiduciary trust records at the Tribe/Consortium or allow such records to be removed and stored at the American Indian Records Repository (AIRR) in Lenexa, Kansas at no cost to the Tribe/Consortium.

The Secretary agrees to:

(a) allow the Tribe/Consortium to determine what records it creates to implement the trust program assumed under its Title IV agreement, except that the Tribe/Consortium must create and maintain the information required by statute and regulation. No additional record keeping requirements are required by this agreement.

(b) store all inactive fiduciary trust records at AIRR at no cost to the Tribe/Consortium when the Tribe/Consortium no longer wishes to keep the records. Further, the Tribe/Consortium will retain legal custody and determine access to these records and such records shall not be treated as Federal records for purposes of chapter 5 of Title 5 of the United States Code unless expressly agreed to by the Tribe;

(c) create and manage a single tribal storage and retrieval system for all fiduciary trust records stored at AIRR (No records will be accepted at AIRR until such a retrieval system exists); and

(d) provide technical assistance for Tribes/Consortia in preserving, protecting and managing their fiduciary trust records from available funds appropriated for this purpose.”

# List of Attachments

- Attachment 1: Self-Governance Negotiations Process Checklist**
- Attachment 2: List of Central and Regional Office GPRA Contacts**
- Attachment 3: Reporting Requests**
- Attachment 4: Model Annual Funding Agreement**
- Attachment 5: Final Reports for Federal Negotiators**
- Attachment 6: MOU Template for the Real Estate Appraisal Services Program**
- Attachment 7: MOU Template for the Beneficiary Processes Program**
- Attachment 8: Process for Negotiating IRR Program into Funding Agreement**
- Attachment 9: IRR Templates for Self-Governance Tribes and Consortia (2 Documents)**
- Attachment 10: Memorialization of Matters Remaining in Dispute**
- Attachment 11: Guidelines for Tribally Operated Wildland Fire Management Programs, April 6, 2001 Memorandum from the Deputy Commissioner of Indian Affairs**
- Attachment 12: Motor Vehicle Operation Policy for the BIA**

# ATTACHMENT 1

## Self-Governance Negotiations Checklist

Action or Activity	Tribes/Consortia New To Self-Governance	Tribes/Consortia Continuing Self-Governance	Deadline	Date Completed
<b>Notification</b>				
Notification of Selection to Participate in Self-Governance	OSG to Tribe/Consortium			
Confirmation of BIA and OSG to Begin Negotiations Process	Tribe/Consortia to Regional Director & OSG			
Scheduling of Negotiations	OSG, BIA, BIE, <a href="#">IEED</a> , OJS, OST & Tribe/Consortium	OSG, BIA, BIE, <a href="#">IEED</a> , OJS, OST & Tribe/Consortium		
<b>Negotiations Process</b>				
Pre-Negotiations	Tribe/Consortium, BIA, BIE, OJS, and OSG	Optional		
Preload Budget Data (Tribal Specific - AFA Online Report)	OSG Wash., D.C.	OSG Wash., D.C.		
Compact	OSG, SOL, BIA, and Tribe/Consortium			
Compact Amendments		OSG, SOL, BIA, and Tribe/Consortium		
Annual or Multi-Year Funding Agreement	OSG, BIA, and Tribe/Consortium	OSG, BIA, and Tribe/Consortium		
Reprogramming Request Worksheet - AFA Online Report	OSG, BIA, and Tribe/Consortium	OSG, BIA, and Tribe/Consortium		
Resolution(s) Authorizing Compact & Agreements	Tribe/Consortium	Tribe/Consortium		
<b>Tribal Signatures (Two Sets of Original Documents)</b>				
Compact	Tribe/Consortium			
Compact Amendments		Tribe/Consortium		
Annual or Multi-Year Funding Agreement	Tribe/Consortium	Tribe/Consortium		
Reprogramming Request Worksheet	Tribe/Consortium	Tribe/Consortium		
<b>Final Report on Negotiations - Federal Signatures</b>				
BIA Regional Director	Regional Office	Regional Office		
Regional BIE Administrator (if necessary)	Regional Office	Regional Office		
District OJS Line Officers (if necessary)	District Office	District Office		
OSG Negotiator	OSG Washington, D.C. or OSG NWFO	OSG Washington, D.C. or OSG NWFO		
Director, Bureau of Indian Affairs	Central Office	Central Office		
Director, OSG	OSG Washington, D.C.	OSG Washington, D.C.		
Director, BIE (if necessary)	Central Office	Central Office		
Deputy Director, OJS (if necessary)	Central Office	Central Office		
<b>Final Documents - Federal Signatures</b>				
Compact	Assistant Secretary - Indian Affairs			
Compact Amendments		Assistant Secretary - Indian Affairs		
Funding Agreement	Director - Office of Self Governance	Director - Office of Self Governance		
Reprogramming Request Worksheet	Regional Budget Officer and OSG Negotiator	Regional Budget Officer and OSG Negotiator		
<b>Distribution of Signed Documents</b>				
Signed Originals to:	Tribe/Consortium and OSG	Tribe/Consortium and OSG		
Copies of Originals to:	BIA Regional Office, OSG/NWFO, House and Senate Committees, and other Tribes in BIA Agency (by Regional Office)	BIA Regional Office, OSG/NWFO, House and Senate Committees, and other Tribes in BIA Agency (by Regional Office)		

## ATTACHMENT 2

### GPRA CONTACTS

AS-IA Office of Planning and Policy Analysis Main Phone Number is = Phone (703) 390-6577  
and FAX Number is (703) 390-6373

### CENTRAL OFFICE PROGRAM CONTACTS

OFFICE	CONTACT	PHONE NUMBER
CIO	Kristen Benedetto-Herin	(703) 735-4210
FINANCIAL MANAGEMENT	Kathleen Carpenter	(703) 390-6528
ECONOMIC DEVELOPMENT & Job Placement/Credit	Lynn Forcia/Mike Lucero	(202)219-5270/ (202)513-7681
EDUCATION	Spike Bighorn/Jim Martin	(202) 501-5946 /208-5810
HUMAN RESOURCES POLICY	Patti MacCleod	(202) 208-2893
OFFICE OF JUSTICE SERVICES	Leonard Merriam/ Jeannine Brooks	(202) 208-5787 Main line
OFMC- All Facilities Goals	Kim Sutton/Emerson Eskeets	(505) 346-6547/346-6520/Fax – 6553
ROAD MAINTENANCE	Paul Sunwoo	(202) 513-7712
TRIBAL SERVICES	Harry Rainbolt	(202) 513-7630 Fax-208-5113
ENVIRONMENT	Kevin Tennyson	(703) 390-6437
TRUST RESPONSIBILITIES	<ul style="list-style-type: none"> <li>- Realty – Pearl Chanar</li> <li>- Forestry -- Bill Downes/John Vitello</li> <li>- Resources Management – Vicki Forrest</li> <li>- Dams – John Anevski/ Frank Holiday</li> <li>- Water Resources – Mo Baloch</li> </ul>	<ul style="list-style-type: none"> <li>(202) 208-6410</li> <li>(202) 208-4837/208-5968</li> <li>(202) 208-5831</li> <li>(202) 219-0941/208-6041</li> <li>(202) 208-6043</li> </ul>

## REGIONAL OFFICE CONTACTS

REGION	NAMES	TELEPHONE NUMBERS	FAX NUMBERS
ALASKA	Roger Drapeaux Joe Tagaban	907/586-7571 907/586-7058	907-586-7252
EASTERN	Eric Wilcox James Kardatzke	615/564-6712 615/564-6830	615-564-6701
EASTERN OKLAHOMA	Bob Dobson Karen Ketcher Charles Head	918/781-4666 918/781-4685 918/542-2108	918-781-4621
GREAT PLAINS	Cindy Ross Mary Gonsor	605/226-7351 605/226-7422/7627	605-226-7627 605-226-7741
MIDWEST	Ann Christenson	612/725-4502	612-713-4401
NAVAJO	Paulette Johns Lillie Roanhorse	505/863-8234 505/863-8208	505-863-8269 505-863-8292
NORTHWEST	<del>Twyla Stange</del> <a href="#">Marie J. Howerton</a>	503/231- <del>6727</del> <a href="#">6796</a>	503-231- <del>6840</del> <a href="#">2201</a>
PACIFIC	Debbie Doka Loretta Goodwin	916/978-6023 916/978-6030	916-978-6129 916-978-6099
ROCKY MOUNTAIN	Jo-Ellen Cree Ginger Morris	406/247-7963 406/657-6675	406-247-7978 406-657-5916
SOUTHERN PLAINS	Sherry Lovin Wilma Tsoodle	405/247-1534 405/247-1678	405-247-5611 405-247-2905
SOUTHWEST	Anna Luxon Iris Drew	505/563-3155 505/563-3530	505-563-3038 505-563-3060
WESTERN	Cathy Black Carolyn Richards	602/379-6752 602/379-4189	602-379-6771 602-379-4590

## ATTACHMENT 3

Expected Data/Information Request	Requesting Entity	Estimated Request Date	Basis for Request
A. Report on 200 <del>89</del> status of Indian forest lands on attaining standards, goals and objectives set forth in approved forest management plans*	BIA Regional Director	October 200 <del>89</del>	Report to Congress on status of Indian forest lands per 25 C.F.R. §163.82
B. Information for contract support funding shortfall report to Congress	OSG Director	June 201 <del>009</del>	Implement Indian Affairs contract support policy and 25 U.S.C §450j-1(c)
C. Information contained in a single report format from tribes participating in the Indian Employment, Training and Related Services Demonstration Project (P.L. 102-477)	Division of Workforce Development OIEED	January 201 <del>009</del>	Determine Tribal compliance with requirements in a Tribe's approved P.L. 102-477 plan for compliance with statutory and regulatory requirements per 25 U.S.C. §3410
D. Information to be used in the formulation of the BIA FY 201 <del>12</del> budget	Assistant Secretary for Indian Affairs	February 201 <del>009</del>	Implement guidance from OMB and Assistant Secretary for Policy, Management and Budget
E. Updated roads inventory information for Road Inventory Field Data System to determine 201 <del>10</del> Indian Reservation Roads funding distribution	BIA Regional Director	February 201 <del>009</del>	Implement BIA national distribution methodology per Final Rule Published in Federal Register
F. Information on 200 <del>89</del> crime reported in Indian country*	BIA District Commander Office of Justice Services	February 201 <del>009</del>	Maintain criminal justice information system for Indian country per 25 C.F.R. §12.41
G. Information on 200 <del>98</del> tribal enrollment, service population, and labor force information.	BIA Office of Indian Services	None	Implement 25 U.S.C. § 3416
H. Information on 200 <del>89</del> tribal self-governance activity to attach to the Secretary's Tribal Self-Governance 2008 Annual Report to Congress	OSG Director	<del>February March</del> 200 <del>89</del>	Implement 25 U.S.C. § 458ee and 25 CFR §1000.382
I. <del>Financial Assistance and Social Services Analysis of Funds</del> Report to determine 201 <del>009</del> welfare assistance funding distribution <del>and service only caseload</del>	<del>Deputy Assistant Secretary for Policy and Economic Development</del> OSG Director	October 200 <del>98</del> (FY) January 201 <del>009</del> (CY)	Implement BIA national distribution methodology
J. Information to determine the amount of 201 <del>12</del> 638 pay cost funding distribution	BIA Regional Director	June 201 <del>009</del>	Implement BIA national distribution methodology
K. Real Estate information for 201 <del>009</del> Annual Activity Log and Caseload Reports	BIA Regional Director	Quarterly and Annual	Implement performance management activities per GPRA, including 5 U.S.C. § 306 & 31 U.S.C. § 1115-16
L. Irrigation and Safety of Dams Construction Project Quarterly Status Report for 201 <del>009</del>	BIA Regional Director	Quarterly and Project Completion	Resolve current and avoid future material weaknesses in BIA Audited Financial Statements
M. Information needed to compete and/or apply for 201 <del>009</del> non-recurring program funding to be provided to the Tribe/Consortium	BIA Regional Director	Periodically Throughout the Year	Implement national BIA distribution methodologies per program funding announcements
N. Indian Child Welfare Act statistical and narrative program performance reports*	BIA Regional Director	Quarterly and Annual	Maintain Indian Child Welfare Act information per 25 C.F.R. § 23.47
O. Child Abuse and Neglect statistical reports and related information*	BIA Regional Director & BIA OJS District Commander	As Incidents are Reported	Maintain child abuse and neglect information per 25 U.S.C. § 2434
P. Program performance information to measure 201 <del>009</del> program performance management	BIA Regional Director	Quarterly	Implement BIA program performance management activities per GPRA, including 5 U.S.C. § 306 & 31 U.S.C. § 1115-16
Q. <del>Enter</del> IRR program performance information <del>on Self-Governance Data Base</del>	OSG Director	Ongoing	Implement IRR program performance management activities per GPRA, including 5 U.S.C. § 306 & 31 U.S.C. § 1115-16

Expected Data/Information Request	Requesting Entity	Estimated Request Date	Basis for Request
R. Appraisal log and backlog information for Real Estate Appraisal Services Program	OST Office of Appraisal Services	Appraisal Log June 20 <del>09</del> <u>10</u>  Backlog Quarterly	Negotiated Memorandum of Understanding

\*Information may also be included in a Self-Governance minimum data collection form to be used by Self-Governance Tribes to report 200~~8~~9 Tribal Self-Governance activity to attach to the Secretary's Tribal Self-Governance 200~~8~~9 Annual Report to Congress.

MODEL  
ANNUAL FUNDING AGREEMENT FOR 200\_  
BETWEEN THE ABC TRIBE  
AND  
THE UNITED STATES OF AMERICA

Section 1

**Negotiated agreement** - Pursuant to Title IV of P.L. 93-638 as amended, the \_\_\_\_\_ Tribe (herein referred to as Tribe), and the United States of America, through the Secretary of the Interior (herein referred to as the Secretary) have negotiated the following Agreement for the assumption of responsibilities by the Tribe for the various programs, services, functions, and activities as specified in this document. This Agreement includes programs which are funded through or flow through the Bureau of Indian Affairs (herein referred to as BIA) for the benefit of the Tribe.

Section 2

**Programs, Services, Functions and Activities Assumed By the Tribe** - The Tribe agrees to assume responsibility for the implementation of the programs identified in the attached REPROGRAMMING REQUEST for which funds have been transferred to the Tribe. The Tribe's Budget Categories listed below specify the programs for which program responsibilities have been assumed. The Tribe has broad authority to consolidate and redesign the programs and to reallocate funding between programs without further approval from the Secretary unless otherwise indicated in this Agreement.

(HERE THE TRIBE SHOULD UTILIZE ITS OWN BUDGET CATEGORIES TO THE LEVEL OF DETAIL NECESSARY TO IDENTIFY THE PROGRAMS OPERATED)

(SAMPLE)

A. Government and administration

1. Administrative Direction
2. Tribal Courts
3. Aid to Tribal Government

4. Law Enforcement
5. Corrections
6. Etc.

#### B. Business and Economic Development

1. Enterprise development
2. Loan program
3. Etc.

#### C. Natural Resource Development

1. Forestry Management
2. Fisheries management/Enforcement
3. Habitat Protection
4. Water Resources
5. Wildlife Management
6. Etc.

#### D. Social and Human Services

1. Social Service Management
2. Social Service Programs
3. Welfare Assistance
4. Education (Scholarships, Adult Education)
5. Employment Assistance
6. Etc.

### Section 3

**Special Project or Earmarked Programs, Services, Functions and Activities** - The Tribe is not authorized to redesign or to reallocate any of the funds for programs, services, functions or activities which are subject to special restriction imposed by the appropriations act or which were awarded to the Tribe based on a competition or a special identified need. The amount identified is the best estimate at the time of negotiation and is subject to adjustment based on actual award, selection of project, or distribution methodology used by the BIA provided Self-Governance Tribes, other Tribes, and BIA agencies are treated similarly. Funding for non-recurring Programs, Services, Functions, and Activities can only be provided on a one-time basis for this year.

The BIA's Reprogramming documents and OSG's Authority to Obligate (ATO) award documents will identify funds that are awarded on a one-time-only basis and that are not

guaranteed to be funded in subsequent fiscal year(s). The following programs which meet this criteria are included in this Agreement:

(SAMPLE)  
Specific Construction Project  
Wildland Fire  
Litigation Support  
Water Management, Planning and Pre-Development,  
Law Enforcement and Corrections,  
Indian Reservation Roads,  
Tribal Transportation Planning,  
Programs in the Tribe's Public Law 102-477 Plan,  
Etc.

#### Section 4

**Programs, Services, Functions and Activities Retained By the Bureau of Indian Affairs** - Any program, service, function or activity not listed as transferred to the Tribe shall be assumed to be retained by the Secretary. In addition, the services related to functions which have been determined to be Federal residual functions will be available to self-governance Tribes on the same basis as other tribes. Respective roles and shared responsibilities between the Tribe and the BIA will be identified in writing on an as needed basis.

#### Section 5

**Amount of Funds** - Subject only to Congressional action and the terms of this Agreement, the Secretary shall make available to the Tribe the total amount of funds negotiated as they are identified in the attached REPROGRAMMING REQUEST for fiscal year 2001.

#### Section 6

**Contract Support** - The Tribe is eligible for contract support funding on the same basis as tribes which contract with the BIA under P.L. 93-638. An amount shall be added to this Agreement at the point when there is clear guidance from the BIA concerning the amount available.

#### Section 7

**Payment** - Payment to the Tribe shall be made by the most advantageous means available. The Tribe chooses to receive all funding possible on an annual lump sum

basis. Other funds will be transferred to the Tribe as soon as possible after the amounts due are known and deliverable.

### **Section 8**

**Amendment or Modification of this Agreement** - Except as otherwise provided in this Agreement, the compact or by law, any modifications to this Agreement shall be in the form of a written amendment signed by the Tribe and the Director, OSG. It is recognized that there may be errors in calculation or other mistakes which may need to be renegotiated. Both parties agree to take corrective action when such errors are identified.

### **Section 9**

**No Reduction in Programs, Services, Functions or Activities to Other Tribes** - Pursuant to Section 406 (a) of P.L. 93-638 as amended, nothing in this Agreement is permitted to diminish any funding or services to other tribes.

### **Section 10**

**Subject to Availability of Funds** - All amounts identified in this Agreement are subject to Congressional action on appropriations and will be adjusted accordingly. Notification to the Tribe of such adjustments will occur as soon as practicable following the action.

### **Section 11**

**Establishment of Self-Governance Base Budget** - The Tribe elects to establish and maintain a self-governance base budget for its operations under self-governance pursuant to 25 C.F.R. § 1000.105. This consists of the actual amounts of recurring funding which have been base transferred from BIA budget accounts to the self-governance budget accounts. Adjustments to base budgets will be done in accordance with 25 C.F.R. 1000.109. Non-recurring funds and any other one-time funding are not eligible to be included as part of the Tribe's base.

### **Section 12**

**Title I Provisions** - The Tribe chooses to include the following provisions from Title I of P.L. 93-638 in accordance with P.L. 104-109, [25 U.S.C § 458cc\(l\)](#):

\_\_\_\_\_  
\_\_\_\_\_

### **Section 13**

**Conflict Between Provisions of this Agreement and the Compact** - To the extent that provisions in this Agreement conflict with the Compact, this Agreement shall apply.

#### **Section 14**

**Effective Date** - The effective date of this Agreement will be 90 days following the submission of the signed Agreement to the Congress and to the other Tribes served by the BIA Agency Office. The planned effective date is \_\_\_\_\_. (OPTIONAL) This agreement shall stay in effect until \_\_\_\_\_, 20\_\_\_. Terms of the agreement and funding amounts will remain in effect unless changed by Congressional action, the promulgation of Federal regulations, or an AFA amendment. The amount of funding received by a Tribe in any fiscal/calendar (SELECT) year during which this Agreement is in effect is subject to Congressional appropriation, and the amount of funding a Tribe may receive in any given year is subject to change based on Congressional action. In subsequent years, requests to modify the multi-year Agreement will need to be negotiated by July 1/October 1 (SELECT). This AFA will remain in effect in the event that the effective date of its successor AFA is not on or before the expiration date of the AFA and the Tribe/Consortium may continue to carry out the program authorized under the AFA to the extent resources permit pursuant to 25 CFR 1000.90.

#### **Section 15**

**Reporting** - The Tribe/Consortium agrees to provide applicable data and information to the BIA \_\_\_\_\_ Regional Office pursuant to the Government Performance and Results Act of 1993 (P.L. 103-62). Before providing such information, the Tribe/Consortium will work with its respective Regional Office to determine applicable data and information needed to meet the requirements pursuant to the Act.

#### **Section 16**

**Training** - Prior to being granted access to DOI automated trust information technology systems, Tribal/Consortium employees must successfully complete BIA trust automated technology systems training, the costs of which will be met by the BIA.

#### **Section 17**

**Employee Security** - Prior to being granted access to DOI automated information technology systems and DOI Trust Records in any electronic data or hardcopy format, the Tribe/Consortium agrees its employees and employees of its contractors must be favorably screened and a final favorable suitability determination issued by the BIA Personnel and Physical Security Office pursuant to OMB Circular No. A-130 and DM

441. In addition, pursuant to Homeland Security Presidential Directive 12 (HSPD-12), Tribal employees and employees of their contractors must also successfully go through a Personal Identity Verification process prior to being granted access to DOI automated information technology systems. Costs will be incurred by the OST or the BIA for their respective programs, functions, services or activities (PFSAs).

OR

The Parties agree that prior to being granted data entry access to DOI automated information technology systems,

1) employees of the Tribe/Consortium and its contractors must be favorably screened and a final suitability determination issued by the applicable Security Office pursuant to OMB Circular No. A-130 and DM 441.

2) pursuant to Homeland Security Presidential Directive 12 (HSPD-12), employees of the Tribe/Consortium Consortium and its contractors must also successfully go through a Personal Identification process.

3) the Tribe's/Consortium's Consortium employees must successfully complete DOI trust automated technology systems training, the costs of which will be met by BIA or OST for each agency's respective PFSAs.

b) Policies are currently being developed to implement background investigation requirements for tribal employees and their contractors. The parties agree that during the interim the Tribe/Consortium will continue to carry out BIA/OST trust PFSAs under this funding agreement and employees of the Tribe/Consortium will continue to have access to federal records.

c) The Tribe/Consortium will assess tribal employees by function in order to determine level of risk for each employee as well as the corresponding level of background investigation necessary based upon DOI guidance. However, the Tribe/Consortium will begin requesting background investigations for those employees the Tribe/Consortium determines to have an immediate need. DOI agrees to work with the Tribe/Consortium in this process.

d) The cost of the initial round of background investigations to perform the functions described in this agreement will be paid by BIA or OST for their respective PFSAs. The parties agree to renegotiate terms upon the completion of the development of the policy based on advice from the Solicitor's Office.

e) Wherever feasible or possible, tribal and federal agencies will coordinate their efforts to utilize reciprocal suitability determinations when appropriate.

OR

The Department and the Tribe/Consortium mutually agree that for 200\_\_, none of the Tribe's/Consortium's employees or employees of its contractors will have access to DOI automated information technology systems or DOI Trust records in any electronic data or hardcopy format.

### **Section 18 (As Appropriate)**

**Real Estate Appraisals** – The [INSERT NAME OF TRIBE/CONSORTIUM] and the Office of the Special Trustee for American Indians have negotiated a Memorandum of Understanding (MOU) for the Real Estate Appraisals Program. This program will be governed by the terms of this MOU, which is attached and incorporated herein.

OR

**Real Estate Appraisals** – It is the intent of the [INSERT NAME OF TRIBE/CONSORTIUM] and the Secretary of the Interior to negotiate a Memorandum of Understanding (MOU) with the Office of the Special Trustee for American Indians. Upon execution, the MOU will be attached and incorporated fully within.

### **Section 18 or 19 (As Appropriate)**

**Trust Records Management** – The Tribe/Consortium and the Secretary agree to the following:

The Tribe/Consortium agrees to:

(a) preserve, protect and manage all fiduciary trust records, created and/or maintained by the Tribes/Consortia during their management of trust programs in their Title IV agreements. (A fiduciary trust record is any document that reflects the existence of an Indian trust asset and was used in the management of an Indian trust asset. An Indian trust asset refers to lands, natural resources, monies or other assets held in trust at a particular time by the Federal Government for a Tribe, Alaska natives or that are or were at a particular time restricted against alienation, for individual Indians. Management includes actions that influence, affect, govern, or control an Indian trust asset. The following are examples not considered to be fiduciary trust records: general administrative, personnel or travel records; education records; law enforcement records; health records; law making unrelated to Indian trust assets; tribal council resolutions and laws unrelated to Indian trust assets; and tribal elections.)

(b) make available to the Secretary all fiduciary trust records maintained by the Tribe/Consortium, provided that the Secretary gives reasonable oral or written advance request to the Tribe/Consortium. Access shall include visual

inspection and at the expense of the Secretary the production of copies (as agreed upon between the parties) and shall not include the removal of the records without tribal approval; and

(c) store and permanently retain all inactive fiduciary trust records at the Tribe/Consortium or allow such records to be removed and stored at the American Indian Records Repository (AIRR) in Lenexa, Kansas at no cost to the Tribe/Consortium.

The Secretary agrees to:

(a) allow the Tribe/Consortium to determine what records it creates to implement the trust program assumed under its Title IV Agreement, except that the Tribe/Consortium must create and maintain the information required by statute and regulation. No additional record keeping requirements are required by this Agreement.

(b) store all inactive fiduciary trust records at AIRR at no cost to the Tribe/Consortium when the Tribe/Consortium no longer wishes to keep the records. Further, the Tribe/Consortium will retain legal custody and determine access to these records and such records shall not be treated as Federal records for purposes of chapter 5 of Title 5 of the United States Code unless expressly agreed to by the Tribe;

(c) create and manage a single tribal storage and retrieval system for all fiduciary trust records stored at AIRR (No records will be accepted at AIRR until such a retrieval system exists); and

(d) provide technical assistance for Tribes/Consortia in preserving, protecting and managing their fiduciary trust records from available funds appropriated for this purpose.

### Section 19 or 20 (As Appropriate)

#### Single Audit copies

In addition to the required copy to the Federal Audit Clearing house the Tribe/Consortium is required to provide two copies of the audit financial statements and single audit report to the Office of Internal Evaluation and Assessment, DOI, 20051 Mercator Drive, Reston, VA 20191 phone 703-390-6578, fax 703-390-6325.

ABC TRIBE

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

UNITED STATES OF AMERICA

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

[Director, Office of Self Governance](#)

FEDERAL NEGOTIATING TEAM

BIA Regional Director \_\_\_\_\_

OSG Negotiator \_\_\_\_\_

Regional Education  
Program Administrator \_\_\_\_\_  
(If Necessary)

District Law Enforcement  
and Corrections Officials \_\_\_\_\_  
(If Necessary)

FINAL REPORT  
[NAME OF TRIBE/CONSORTIUM]  
**201009** NEGOTIATIONS

**WeE** hereby attest that the programs and dollar amounts identified in the attached funding agreement are those which were negotiated at sessions involving federal and tribal representatives as part of the Tribal Self-Governance negotiations for the 201009 funding agreement.

\_\_\_\_\_  
Date Director, Bureau of Indian Affairs

\_\_\_\_\_  
Date Director, Office of Self-Governance

\_\_\_\_\_  
Date Director, Bureau of Indian Education  
\_\_\_\_\_(If Necessary)

\_\_\_\_\_  
Date Deputy Director, Office of Justice Services  
(if Necessary)

FEDERAL NEGOTIATING TEAM

BIA Regional Director \_\_\_\_\_

OSG Negotiator \_\_\_\_\_

BIA Regional Roads Administrator \_\_\_\_\_

FINAL REPORT  
[NAME OF TRIBE/CONSORTIUM]  
INDIAN RESERVATION ROADS ADDENDUM  
20~~1009~~ NEGOTIATIONS

We hereby attest that the provisions in the attached Indian Reservation Roads Addendum are those which were negotiated at sessions involving federal and tribal representatives as part of the Tribal Self-Governance negotiations for 20~~1009~~ agreements.

\_\_\_\_\_  
Date Director, Bureau of Indian Affairs

\_\_\_\_\_  
Date Director, Office of Self-Governance

\_\_\_\_\_  
Date Chief, BIA Division of Transportation

## ATTACHMENT 6

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN THE [~~KEYBOARD-TRIBE, NATION, PUEBLO OR CONSORTIUM~~] AND**  
**THE DEPARTMENT OF THE INTERIOR**  
**OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS**  
**FOR**  
**REAL ESTATE APPRAISAL SERVICES<sup>[IAU2]</sup>**  
**[~~KEYBOARD-FISCAL OR CALENDAR YEAR~~]**

### I. AUTHORITY

This Memorandum of Understanding (MOU) between the [~~KEYBOARD-TRIBE, NATION, PUEBLO OR CONSORTIUM~~] and the Department of the Interior, Office of the Special Trustee for American Indians (OST) is entered into pursuant to compact a [~~KEYBOARD “contract” “compact”~~] initiated under Title IV [~~KEYBOARD “I” (contract) or “IV” (compact)~~] of the Indian Self-Determination and Education Assistance Act (P.L. 93-638), as amended.

### II. PURPOSE

The purpose of this MOU is to detail the coordination, implementation, duties and responsibilities of each party for the [~~KEYBOARD-TRIBE’S, NATION’S, PUEBLO’S OR CONSORTIUM’S~~] operation of the OST Real Estate Appraisal Program for [~~KEYBOARD FISCAL OR CALENDAR YEAR~~]. Pursuant to the [~~KEYBOARD-FISCAL OR CALENDAR YEAR~~] Annual Funding Agreement (AFA), this MOU is an attachment to the [~~KEYBOARD FISCAL OR CALENDAR YEAR~~] AFA and is incorporated into and made a part of the [~~KEYBOARD-FISCAL OR CALENDAR YEAR~~] AFA as if set out in full in the AFA. This MOU shall be attached to the AFA for this year and subsequent years and remain in effect unless modified and such modification is agreed to in writing by both parties.

### III. THE [~~KEYBOARD-TRIBE, NATION, PUEBLO OR CONSORTIUM~~] DUTIES AND RESPONSIBILITIES IN PERFORMING REAL ESTATE APPRAISAL SERVICES

#### A. Program Guidance

Real estate appraisal services shall be provided in accordance with published authority and procedures contained in the Code of Federal Regulations, Title 25, the Uniform Standards of Professional Appraisal Practice (USPAP), and Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), as applicable, including updates and revisions. OST-Office of Appraisal Services (OST-OAS) Regional Appraisers are available to provide guidance for the interpretation and use of these standards and to provide Statements of Work (SOW) for appraisal service contracts.-

#### B. Program Responsibilities

##### 1. Appraisal Procedures

- a. The [~~KEYBOARD-NAME OF TRIBE, NATION,~~

**PUEBLO OR CONSORTIUM]** agrees to conduct appraisal services herein identified, as required, to support real estate transactions on trust or restricted property.

b. Appraisals must:

- i) Identify the BIA [~~KEYBOARD-INSERT~~ **“and OST-OAS” IF TRIBE USES CONTRACT APPRAISER TO PERFORM APPRAISALS**] as the Client in all appraisal reports of trust/restricted property;
- ii) Identify the BIA and OST-OAS as an Intended User in the body of the appraisal report; and
- iii) Identify any third party Intended Users of the report, such as the Tribe, Agencies, individual Indians, etc.

c. ~~If consultation reports will be developed to analyze a Fair Market Rent for grazing or agricultural leases, such consultation reports will be performed in accordance with USPAP Standards 4 and 5~~ If appraisal consultation reports will be prepared to document the valuation process and data analysis to support an opinion of value, such appraisal consultation reports will be performed in accordance with USPAP Standards 4 and 5.

d. The [~~KEYBOARD-NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM~~] agrees not to submit an appraisal for use in a trust transaction until the appraisal has been reviewed and approved by the OST-OAS.

e. Appraisers must not disclose confidential information or assignment results prepared for the trust landowner to anyone other than the Client, Intended Users or persons specifically authorized by the Client.

f. The [~~KEYBOARD-NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM~~] shall submit one (1) original appraisal report for review; upon acceptance, submit a total of four (4) approved original (or color copy) reports with original

~~and one (1) copy with original signatures to the OST-OAS Regional Appraiser for review.~~ signatures to the OST-OAS Regional Appraiser for review.

g. The [~~KEYBOARD-NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM~~] agrees that all appraisals reports submitted for review must be signed by a state-certified general appraiser.

h. The [~~KEYBOARD-NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM~~] agrees to submit the completed appraisal report to the OST-OAS Regional Supervisory Appraiser for review within 60 days of receipt of the appraisal request, which will be the due date, or provide written notice to OST before the expiration of the 60 days that the tribal appraisal

program and the Client have agreed to extend the due date, if the complexity of the appraisal warrants extending this time period. Such written agreement between the Client and the tribal appraisal program should be contained in the appraisal work-file.

- i. Appraisals must be submitted to the Regional ~~\_\_\_\_\_~~ Appraiser in a Self-Contained [SR 2-2 (a)] or Summary Appraisal Report [SR 2-2 (b)] format with the workfile.
- j. Appraisals also may be prepared using alternative valuation methodologies, when appropriate and consistent with USPAP. Such alternative methodologies include, but are not limited to, Restricted Use Reports when used as part of a Project report per section D-17 of UASFLA; Market Studies submitted with the workfile. ~~Appraiser in either a self-contained or summary \_\_\_\_\_ format.~~

## 2. Appraisal Log

- a. The ~~KEYBOARD~~ **[NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]** agrees to maintain an appraisal tracking log of all appraisal requests received. The appraisal log shall be available for review by the OST-OAS for reporting purposes. The ~~KEYBOARD~~ **[NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]** agrees to submit the appraisal log to the OST-OAS ~~on an annual basis no later than October 15 each~~ year. See Section

III. B. 87.b.

- b. At a minimum, the appraisal tracking log shall contain:
  - i) Appraisal request number
  - ii) Allotment or tribal tracking number
  - iii) Due date, i.e., the date agreed upon, between the Client and the tribal appraisal program, to submit the appraisal product to the Client
  - iv) Purpose of appraisal
  - v) Legal descriptions
  - vi) Size of property appraised
  - vii) Intended use of appraisal
  - viii) Effective date of appraisal
  - ix) Ownership information:
    - a) title status; and
    - b) title holder(s)
  - x) Appraiser of record
  - xi) Approval date of the appraisal
  - xii) Conclusion of value
  - xiii) Date transmitted
  - xiv) Intended Users, if any
- c. The ~~KEYBOARD~~ **[NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]** agrees to provide to the OST-OAS Regional Supervisory Appraiser the appraisal tribal backlog information on a fiscal

year quarterly basis on: January 15, ~~[KEYBOARD APPROPRIATE YEAR]~~, April 15, ~~[KEYBOARD APPROPRIATE YEAR]~~, July 15, ~~[KEYBOARD APPROPRIATE YEAR]~~, and October 15, in the current [INSERT "fiscal" OR "calendar"] year~~[KEYBOARD APPROPRIATE YEAR]~~, and subsequent years on the same quarterly basis. *Tribal backlog* is considered to be any request(s) for appraisal(s) that have not been completed and provided to the OST-OAS Regional Appraiser for review within 60 days of receiving a complete and valid appraisal request, unless extended by negotiation.

### 3. Conflict of Interest

- a. To avoid a conflict of interest or the appearance of a conflict of interest, neither a Tribal appraiser employed, nor a fee appraiser contracted, by the ~~[KEYBOARD NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]~~ shall complete an appraisal on land held-owned by the appraiser or by an immediate relative as defined by Tribal law and policy.
- b. If applicable, when the ~~[KEYBOARD NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]~~ is conducting an appraisal for trust property that an individual landowner has offered for sale to the ~~[KEYBOARD TRIBE, NATION, PUEBLO OR CONSORTIUM]~~ the Tribe's appraiser, whether an employee or a fee appraiser, shall disclose such potential conflict of interest to OAS with the request for review and approval.

### 4. Appraisal Contracts

The ~~[KEYBOARD NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]~~ agrees that appraisals provided by contractors shall meet the requirements of this MOU.

### 5. Purposes of Appraisals: Requirements and Proscriptions

- a. Appraisals are conducted to support real estate transactions on trust or restricted property only, except when non-trust property is part of a congressionally mandated action, court order, right-of-way acquisition, or land exchange. Such transactions are limited to: negotiated sales, approved advertised sales, leases, homesite or residential leases, gift deeds that remain in trust or restricted status, subdivisions and partitions, property exchanges, back rent and simple interest for trespass purposessettlements, various types of easements and rights-of-way, special use permits, or removal of restrictions, certificate of competency, or fee patents.
- b. Appraisals cannot be performed for the following purposes: mortgages, probates (except for congressionally mandated, court ordered, or where required for a sale of property out of probate), subleases, mineral evaluations, acquisitions or sales of fee lands (unless

the acquisition is part of a congressionally mandated action, court order, right-of-way acquisition, or land exchange), or leases granted at less than fair annual rents as provided for in 25 C.F.R. § 162.604 (b).

## 65. Records Management

- a. The ~~[KEYBOARD NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]~~ agrees to:
- i) preserve, protect and manage all fiduciary trust records created regardless of media and/or maintained by the ~~[KEYBOARD NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]~~ during its management of the real estate appraisal services program.
    - a) A *fiduciary trust record* is any document that reflects the existence of an Indian trust asset and was used in the management of an Indian trust asset.
    - b) An *Indian trust asset* refers to lands, natural resources, monies or other assets held in trust at a particular time by the Federal Government for a Tribe, Alaska natives or that are or were at a particular time restricted against alienation, for individual Indians.
    - c) *Management* includes actions that influence, affect, govern, or control an Indian trust asset.

The following are examples not considered to be fiduciary trust records:

- general administrative, personnel or travel records;
  - education records;
  - law enforcement records;
  - health records;
  - law making unrelated to Indian trust assets;
  - tribal council resolutions and laws unrelated to Indian trust assets; and
  - tribal elections
- ii) make available to the Secretary of the Interior (Secretary) all fiduciary trust records maintained by the ~~[KEYBOARD NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]~~, provided that the Secretary gives reasonable oral or written advance request to the ~~[KEYBOARD NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]~~. Access shall include visual inspection and, at the expense of the Secretary, the production of copies (as agreed upon between the parties) and shall not include the removal of the records without tribal approval; and
- iii) store and permanently retain all inactive fiduciary trust records at the ~~[KEYBOARD NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]~~ or allow such records

to be removed and stored at the American Indian Records Repository (AIRR) in Lenexa, Kansas, at no cost to the ~~[KEYBOARD NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]~~.

b. The Secretary agrees to:

- i) allow the ~~[KEYBOARD NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]~~ to determine what records it creates to implement the trust program assumed under its Title ~~[KEYBOARD "I" (contract) or "IV" compact]]V~~ agreement, except that the ~~[KEYBOARD NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]~~ must create information required by statute, regulation, and this MOU. No additional record keeping requirements are required by this agreement;
- ii) store all inactive fiduciary trust records regardless of media at AIRR at no cost to the ~~[KEYBOARD NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]~~ when the ~~[KEYBOARD NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]~~ no longer wishes to keep the records. Further, the ~~[KEYBOARD NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]~~ will retain legal custody and determine access to these records and such records shall not be treated as Federal records for purposes of chapter 5 of Title 5 of the United States Code unless expressly agreed to by the ~~[KEYBOARD NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]~~;
- iii) create and manage a single tribal storage and retrieval system for all fiduciary trust records stored at AIRR. (No records will be accepted at AIRR until such a retrieval system exists); and
- iv) provide technical assistance for the ~~[KEYBOARD NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]~~ in preserving, protecting and managing its fiduciary trust records from available funds appropriated for this purpose.

76. **System Security Access**

**[THIS SYSTEM SECURITY ACCESS LANGUAGE IS SUBJECT TO CHANGE DEPENDING UPON THE PENDING POLICY DETERMINATIONS BY THE DEPARTMENT OF THE INTERIOR]**

a. **Training**

Prior to being granted access to DOI automated trust Information technology systems, ~~[KEYBOARD TRIBE, NATION, PUEBLO OR CONSORTIUM]~~ employees must successfully complete the Federal Information System Security Awareness training (and complete annually thereafter), the costs of which will be met by the OST.

b. **Security Requirements for Access to DOI Information Technology Systems**

- i) Prior to being granted access to DOI automated information technology systems and DOI trust records in any electronic data or hardcopy format, the ~~KEYBOARD-TRIBE,~~ **NATION, PUEBLO OR CONSORTIUM** agrees that its employees and employees of its contractors must undergo the appropriate clearance as determined by the position sensitivity rating process, but at a minimum, a National Agency Check with Inquiries and Credit Check (NAC-IC) and ultimately receive a final favorable suitability determination issued by the OST Security Office pursuant to OMB Circular No. A-130 and DM 441. In addition, pursuant to Homeland Security Presidential Directive 12 (HSPD-12) (OST is reciprocal with other federal agencies' background investigations), ~~KEYBOARD-TRIBE'S, NATION'S, PUEBLO'S OR CONSORTIUM'S~~ **employees and employees of its contractors must also successfully go through a Personal Identity Verification process prior to being granted access to DOI automated information technology systems. Costs will be incurred by the OST.**

- ii) The ~~[KEYBOARD-TRIBE, NATION, PUEBLO OR CONSORTIUM]~~ agrees to take logical and physical steps necessary to secure trust information as required by OMB, and in the event of a security related incident (i.e. theft, network compromise) affecting Government Furnished Equipment (GFE) or tribal equipment utilized in the performance of the Real Estate Appraisal Services Program also agrees to notify the OST or BIA IT Security Manager, or the designated representative, within 24 hours of discovery of the incident.
- iii) The ~~[KEYBOARD-TRIBE, NATION, PUEBLO OR CONSORTIUM]~~ will notify the Director, Office of Information Technology Services, OST, within 24 hours, of exiting employees who no longer require systems access.

#### 8.7. Reports

- a. The ~~[KEYBOARD-NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]~~ and OST agree to cooperate in the identification and provision of applicable data and information pursuant to the Government Performance and Results Act (GPRA) of 1993 (P.L. 103-62). Before providing the information, the ~~[KEYBOARD-NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]~~ will work with OST-OAS to determine applicable data and information needed to meet the GPRA requirements.
- b. The ~~[KEYBOARD-NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]~~ agrees to submit its appraisal log to OAS, as described in Section III. B. 2. a. and b. above, on an annual basis no later than October 15, ~~[KEYBOARD-INSERT APPROPRIATE YEAR]~~ and each year thereafter.
- c. The ~~[KEYBOARD-NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]~~ agrees to provide backlog information to the OST-OAS Regional Appraiser on a quarterly basis. See Section III. B. 2. c. above.

**8.9. OMB Circulars**

The **[KEYBOARD-NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]** agrees that, pursuant to 25 C.F.R. § 1000.395, OMB circulars and revisions apply, except for:

- a. listed exceptions for Tribes and Tribal Consortia;
- b. exceptions in 25 U.S.C. 450j-1(k); and
- c. additional exceptions that OMB may grant.

**10. Single Audit Act**

a. The [NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM] agrees the OST is authorized to obtain a copy of the [NAME OF TRIBE'S, NATION'S, PUEBLO'S OR CONSORTIUM'S] audit prescribed by the Single Audit Act Amendments of 1996 (Pub. Law 104-156), Circular A-133 ("Single Audit Act audit").

b. The [NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM] agrees to mail a copy of its Single Audit Act audit to:

Director  
Office of Trust Review and Audit  
4400 Masthead street NE  
Albuquerque, NM 87109

**IV. OST DUTIES AND RESPONSIBILITIES**

A. The OST will notify the **[KEYBOARD-NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]** of training related to management of the **[KEYBOARD-NAME OF TRIBE'S, NATION'S, PUEBLO'S OR CONSORTIUM'S]** appraisal program.

B. The OST-OAS Regional Appraiser shall provide an appraisal review completed in compliance with USPAP within 30 days after the OST-OAS receives the appraisal report.

~~C. If an appraisal cannot be approved, OST-OAS will contact the appraiser of record within five business days of identifying a deficiency in an attempt to resolve any divergencies. Once appraisals are reviewed and approved, the~~  
OST-OAS Regional Supervisory Appraiser (RSA) will do the following:

- 1. If an appraisal report did not require changes or corrections, the RSA will obtain three (3) additional original appraisal reports (or color copies) with original signatures; and will submit three (3) appraisal reports, three (3) review reports, and three (3) appraisal requests for each report to the BIA Superintendent and/or designee for processing.

- 
2. If an appraisal report required changes or corrections, the RSA will obtain four (4) original appraisal reports (or color copies) of the final approved appraisal report with original signatures; and will submit three(3) appraisal reports, three (3) review reports, and three (3) appraisal requests for each report to the BIA Superintendent and/or designee for processing.

~~D. Once appraisals are reviewed and approved, the OST-OAS Regional Appraiser will return the appraisal and review reports to the BIA Superintendent and/or designee for processing.~~

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**DE. Third-party Appraisals**

1. As used in this document, third-party appraisals are those procured by an non-federal parties, including individual Indian landowners, commercial enterprises, utility companies, or an Indian tribe acting as a non-federal party.  
~~or Indian tribes.~~
2. Upon request by the appropriate realty program (federal or 638 tribal ) and/or BIA line officer, OAS shall review a third-party appraisal if:

- a. the statement-of-work identifies the OAS-OST as the Client and Intended User of the appraisal. Statements-of-work may be coordinated with the third party, but ultimate responsibility for the document remains with OAS;
- b. the third party consults with the appropriate OAS Regional Appraiser prior to the initiation of the appraisal on the statement-of-work for the appraisal and ~~the selection of the appraiser of record;~~ and a list of recommended fee appraisers and;
- c. the appraiser-of-record selected to perform the appraisal is a state-certified general appraiser, competent to appraise the subject property at issue, and meets applicable appraisal standards for the intended use of the appraisal.

**EF.** OST agrees to compensate the **[KEYBOARD-NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]** for the cost of security clearances for up to three tribal employee appraisers per year.

F. OST has an automated risk management tool that will be available for the Tribe's use upon request.

G. OST will conduct a formal trust evaluation of the [Name OF TRIBE, NATION, PUEBLO OR CONSORTIUM] Real Estate Appraisal Services Program annually. The evaluation criteria to be used by OST shall be submitted to the [NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM] at least 30 days prior to the evaluation for the [TRIBE'S, NATION'S, PUEBLO'S OR CONSORTIUM'S] review and clarification. Other visits may occur upon agreement of the parties.

**SIGNATURES**

The foregoing is hereby agreed to as stated on this \_\_\_\_\_ day of

\_\_\_\_\_, **[KEYBOARD-INSERT YEAR]**, will become effective on **[KEYBOARD-INSERT DATE]**, and remain in effect unless modified and such modification is agreed to in writing by the parties.

**[KEYBOARD-NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]**

**[KEYBOARD-NAME OF TRIBAL GOVERNMENT REPRESENTATIVE]**

\_\_\_\_\_  
Date

**OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS**

---

Director, OST Office of External Affairs  
Secretary's Delegated Official

---

Date

**ATTACHMENT 7**

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE [KEYBOARD  
NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM] AND  
THE DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS  
FOR  
THE BENEFICIARY PROCESSES PROGRAM<sup>[IAU3]</sup>  
[KEYBOARD-INSERT FISCAL OR CALENDAR YEAR]**

**I. AUTHORITY**

This Memorandum of Understanding (MOU) between the [KEYBOARD NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM] and the Department of the Interior, Office of the Special Trustee for American Indians (OST) is entered into pursuant to a compact initiated under the Indian Self-Determination and Education Assistance Act of 1975 (P.L. 93- 638), as amended.

**II. PURPOSE**

The purpose of the MOU is to set forth the coordination, implementation, duties and responsibilities of each party in relation to the [KEYBOARD NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM] operation of the Beneficiary Processes Program (BPP) [Individual Indian Money (IIM) Accounting Technician Functions] for account holders of the [KEYBOARD-NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM] for [KEYBOARD-INSERT "Fiscal Year (FY)" OR "Calendar Year (CY)"]. Pursuant to the [KEYBOARD-INSERT FISCAL OR CALENDAR YEAR] Annual Funding Agreement (AFA), this MOU is an attachment to the [KEYBOARD-INSERT FISCAL OR CALENDAR YEAR] AFA and is incorporated into and made a part of the [KEYBOARD-INSERT FISCAL OR CALENDAR YEAR] AFA as if set out in full in the AFA. This MOU shall be attached to the AFA for this year and subsequent years and remain in effect unless modified and such

modification is agreed to in writing by both parties.

III. **[KEYBOARD NAME OF TRIBE'S, NATION'S, PUEBLO'S OR CONSORTIUM'S] DUTIES AND RESPONSIBILITIES IN PERFORMING IIM SERVICES**

**A. Program Guidance**

All IIM technician functions will be performed and all transactions will be processed in accordance with applicable laws and regulations, as well as OST policies and procedures, directives, the Bureau of Indian Affairs (BIA) - OST Interagency Handbook and desk operating procedures, for the following:

**1. Receipting**

a. Prepare and forward to the OST, within the established timeframes, respective worktickets via Customer StrataStation (CSS) (or manually if a transaction cannot be processed with CSS) and source documents related to receipt transactions, including the resolution/corrections of discrepancies identified in the cash reconciliation.

b.                      Comply with Lockbox guidance to process trust fund deposits within established timeframes 48 hours of receipt.

c.                      Respond To insufficient fund requests within one business day.

d.                      Initiate timely an appropriate action to address reject and rework receipt transactions.

~~c.                      Respond, within established timeframe, to collection~~

                     ~~suspense, reject and rework receipt transactions.~~

**2. Disbursing**

a. Prepare and forward to OST, within the established timeframes, respective worktickets via CSS (or manually if a transaction cannot be processed with CSS) and source documentation related to disbursement transactions.

- b. Verify availability of funds, prior to preparation of disbursement worktickets.
- c. Comply with disbursement requests for restricted accounts (encumbered, supervised and estates; with the exception of accounts restricted due to whereabouts unknown status) to ensure BIA approval pursuant to distribution/disbursement plans before forwarding the request package to OST for further processing.
- d. Respond, within established timeframes, to all reject and rework disbursing transactions.
- e. The Integrated Resource Management System (IRMS) can no longer be utilized.

### 3. Account Maintenance

- a. Establish, maintain and close accounts for Individual Indian beneficiaries in accordance with OST policies and procedures
- b. Prepare and forward to OST, within the established timeframes, respective worktickets via CSS (or manually if a transaction cannot be processed with CSS) and related source documentation related to account maintenance transactions.
- c. Respond, within established timeframes, to all reject and rework account maintenance transactions.
- d. Actively work on locating Whereabouts Unknown account holders.
- e. Close accounts when account holder no longer holds any trust assets and clear Special Deposit Accounts.
- f. Comply with federal and tribal court orders that affect accounts of tribal members or descendants or other accounts serviced and managed by the tribe specifically related to OST's Beneficiary Processes Program or trust responsibility.
- g. Review Lockbox reports daily and coordinate with Bureau of Indians Affairs Realty to support fund allocations.
- h. Special Deposit Accounts must be used only for the following exceptions:
  - i) pending policy decisions;
  - ii) pending litigation/appeal;

- iii) pending cadastral survey
- i. Avoid potential, as well as actual, conflicts of interest and any appearances of conflicts of interest. An IIM accounting technician may not make decisions or recommendations, or take any action, when that action is likely to have a direct and predictable effect on the IIM accounting technician's financial interests or where the IIM accounting technician's impartiality would be questioned. While recusal may be appropriate in certain situations, IIM accounting technicians have a responsibility to act on matters that are within the scope of their duties whenever they are not disqualified by conflicts or appearances of conflicts.

#### 4. Reporting

- a. Research claim information on lost or missing Treasury checks and prepare Unavailable Check Cancellation Forms (SF-1184), as necessary.
- b. Forward all Freedom of Information Act (FOIA) requests to the OST FOIA Officer.
- c. Respond to inquiries from IIM beneficiaries, other governmental agencies, OST, and the general public.
- d. Provide IIM beneficiaries with copies of transaction reports, and other account information as may be requested in accordance with the Privacy Act.
- e. The **[KEYBOARD NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]** and OST agree to cooperate in the identification and provision of applicable data and information pursuant to the Government Performance and Results Act (GPRA) of 1993 (P.L. 103-62). Before providing the information, the Tribe will work with the OST Office of External Affairs to determine applicable data and information needed to meet the GPRA requirements.
- f. Timely record all beneficiary contacts (walk-ins, faxes, mail and phone calls).
- g. When available to the Tribe, utilize the Trust Beneficiary Call Center Service Center software.

#### 5. OMB Circulars

The **[KEYBOARD NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]** agrees that, pursuant to 25 C.F.R. § 1000.395, OMB circulars and revisions apply, except for:

- a. listed exceptions for Tribes and Tribal Consortia;
- b. exceptions in 25 U.S.C. 450j-1(k); and
- c. additional exceptions that OMB may grant.

## 6. Records Management

The [~~KEYBOARD-NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM~~] agrees to:

- a. preserve, protect and manage all fiduciary trust records created and/or maintained by the Tribe during its management of this program.
  - i) A *fiduciary trust record* is any document that reflects the existence of an Indian trust asset and was used in the management of an Indian trust asset.
  - ii) An *Indian trust asset* refers to lands, natural resources, monies or other assets held in trust at a particular time by the Federal Government for a Tribe, Alaska natives or that are or were at a particular time restricted against alienation, for individual Indians.
  - iii) *Management* includes actions that influence, affect, govern, or control an Indian trust asset.

- b. make available to the Secretary of the Interior (Secretary) all fiduciary trust records maintained by the Tribe, provided that the Secretary gives reasonable oral or written advance request to the Tribe. Access shall include visual inspection and, at the expense of the Secretary, the production of copies (as agreed upon between the parties) and shall not include the removal of the records without tribal approval; and
- c. store and permanently retain all inactive fiduciary trust records at the Tribe or allow such records to be removed and stored at the American Indian Records Repository (AIRR) in Lenexa, Kansas, at no cost to the Tribe.

**7. Information Technology Necessary to Access the OST Trust Funds Accounting Systems (TFAS)**

Additional computer hardware and software (other than what is provided by OST) purchased by the tribe for the BPP should not impede or adversely affect the delivery of BPP services.

**8. System Security Access**

**[SYSTEM SECURITY ACCESS POLICY BEING DEVELOPED BY THE DEPARTMENT OF THE INTERIOR; THIS SECTION IS OST PLACEHOLDER LANGUAGE]**

**b.a. Training**

Prior to being granted access to DOI automated trust information technology systems, **[KEYBOARD TRIBE, NATION, PUEBLO OR CONSORTIUM]** employees must successfully complete the Federal Information System Security Awareness training (and complete annually thereafter), the costs of which will be met by the OST.

**e.b. Security Requirements for Access to DOI Information Technology Systems**

- i) Prior to being granted access to DOI automated information technology systems and DOI trust records in any electronic data or hardcopy format, the ~~[KEYBOARD-TRIBE, NATION, PUEBLO OR CONSORTIUM]~~ agrees that its employees and employees of its contractors must undergo the appropriate clearance as determined by the position sensitivity rating process, but at a minimum, a National Agency Check with Inquiries and Credit Check (NAC-IC), and ultimately receive a final favorable suitability determination issued by the OST Security Office pursuant to OMB Circular No. A-130 and DM 441. In addition, pursuant to Homeland Security Presidential Directive 12 (HSPD-12) (OST is reciprocal with other federal agencies' background investigations), ~~[KEYBOARD-TRIBE'S, NATION'S, PUEBLO'S OR CONSORTIUM'S]~~ employees and employees of its contractors must also successfully go through a Personal Identity Verification process prior to being granted access to DOI automated information technology systems. Costs will be incurred by the OST.
- ii) The ~~[KEYBOARD-TRIBE, NATION, PUEBLO OR CONSORTIUM]~~ agrees to take logical and physical steps necessary to secure Personally Identifiable Information trust information as required by OMB, and in the event of a security related incident (i.e. theft, network compromise) affecting Government Furnished Equipment (GFE) or tribal equipment utilized in the performance of the Real Estate Appraisal Services Program-Beneficiary Processes Program ———also agrees to notify the OST or BIA IT Security Manager, or the designated representative, within 24 hours of discovery of the incident.

- iv) The ~~[KEYBOARD-TRIBE, NATION, PUEBLO OR CONSORTIUM]~~ will notify the Director, Office of Information Technology Services, OST, within 24 hours, of exiting employees who no longer require systems access.

## 9. General

The ~~[KEYBOARD-NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]~~ agrees to:

- a. Attend OST or BIA training, workgroups, computer enhancement, and other training sessions to maintain current knowledge of trust funds services.
- b. Establish and/or maintain appropriate management controls.
  - i) Provide an assurance letter in accordance with OMB Circular No. A-123
  - ii) OST has an automated risk management tool that will be available for the Tribe's use upon request.
- c. Work with OST in addressing financial audit issues or requests.

## 10. Single Audit Act Audit

a. The [NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM] agrees the OST is authorized to obtain a copy of the [NAME OF TRIBE'S, NATION'S, PUEBLO'S OR CONSORTIUM'S] audit prescribed by the Single Audit Act Amendments of 1996 (Pub. Law 104-156), Circular A-133 ("Single Audit Act audit").

b. The [NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM] agrees to mail a copy of its Single Audit Act audit to:

Director  
Office of Trust Review and Audit  
4400 Masthead street NE  
Albuquerque, NM 87109

#### IV. OST DUTIES AND RESPONSIBILITIES

##### A. Receipting, Disbursing, and Account Maintenance

1. Review and approve disbursements, or delineate any additional requirements necessary for approval of disbursements.
2. Forward the approved transactions to the appropriate office.
3. Process transactions within the established deadlines.

##### B. Reporting

TFAS reports will be made available through Stratavision.

### **C. Records Management**

The Secretary agrees to:

1. allow the Tribe to determine what records it creates to implement the trust program assumed under its Title IV agreement, except that the Tribe must create information required by statute, regulation, and this MOU. No additional record keeping requirements are required by this agreement.
2. store all inactive fiduciary trust records at the AIRR at no cost to the Tribe when the Tribe no longer wishes to keep the records. Further, the Tribe will retain legal custody and determine access to these records and such records shall not be treated as Federal records for purposes of chapter 5 of Title 5 of the United States Code unless expressly agreed to by the Tribe;
3. create and manage a single tribal storage and retrieval system for all fiduciary trust records stored at AIRR. (No records will be accepted at AIRR until such a retrieval system exists); and
4. provide technical assistance for the Tribe in preserving, protecting and managing its fiduciary trust records from available funds appropriated for this purpose.

### **D. Information Technology Including Software and Hardware Necessary to Access OST Systems**

1. OST will provide computer hardware and software necessary to carry out the BPP.
2. OST will provide systems support related to the BPP. The OST Office of Information Technology Services will address any connectivity problems.

### **E. System Security Access and Maintenance**

1. The Director, Office of Information Technology Services shall process and maintain requests for systems access or revocation.
2. The Director, Office of Information Technology Services, shall be responsible for equipment software maintenance for GFE.

## F. General

1. OST will continue to provide technical assistance to the Tribe related to IIM functions and transactions upon request by the Tribe.
2. OST will provide and pay for training required as necessary. Subject to the availability of funds, the Tribe will have discretion as to other training that is within the parameters of this MOU.
3. OST will conduct a formal trust evaluation of the Tribe's BPP annually. The evaluation criteria to be used by OST shall be submitted to the Tribe at least 30 days prior to the evaluation for the Tribe's review and clarification. Other visits may occur upon agreement of the parties.
4. Primary OST oversight and monitoring will be performed through review of electronic transactions in the systems, review of documents and packages presented for approval and encoding, analysis of reconciliation provided by the Tribe, internal reconciliation performed at OST and results from annual trust evaluations. Perceived problems or errors will be immediately brought to the attention of the Tribe for corrective action or other resolution.

~~5. \_\_\_\_\_ 5. \_\_\_\_\_ OST will coordinate with the Tribe for financial audit issues including but not limited to implementing corrective actions for material weaknesses or reportable conditions that are a result of these audits work in partnership with the [NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM] on financial audit issues, including implementation of corrective actions.~~

Upon written agreement of both parties, other services may be performed and incorporated into this agreement.

None of the provisions of the MOU shall affect other programs and activities carried out by the Tribe and OST.

**SIGNATURES**

The foregoing is hereby agreed to as stated on this \_\_\_\_\_ day of

| \_\_\_\_\_, **[KEYBOARD-INSERT YEAR]**.

| **[KEYBOARD-NAME OF TRIBE, NATION, PUEBLO OR CONSORTIUM]**

| \_\_\_\_\_  
**[KEYBOARD-NAME OF TRIBAL GOVERNMENT REPRESENTATIVE]**

\_\_\_\_\_  
Date

**OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS**

\_\_\_\_\_  
Director, OST Office of External Affairs  
Secretary's Delegated Official

\_\_\_\_\_  
Date

**PROCESS FOR NEGOTIATING INDIAN RESERVATION ROADS PROGRAM  
PROVISIONS INTO A SELF-GOVERNANCE FUNDING AGREEMENT**

- (1) In accordance with 25 CFR Parts 1000.170-182 and 25 CFR 170.610, a Self-Governance Tribe/Consortium wanting to include the Indian Reservation Roads (IRR) program, services, functions or activities or portions thereof, in a Self-Governance Annual or Multi-Year Funding Agreement (funding agreement) should submit to the Director, Office of Self-Governance (OSG) a letter of interest to initiate the information phase or a written request to negotiate the terms for including IRR program provisions into its Self-Governance funding agreement for a particular year. Courtesy copies of the letter of interest may be sent to the Tribe's/Consortium's respective OSG negotiator and BIA Regional Office;
- (2) The OSG negotiator shall notify the appropriate BIA Regional Office contact of the Self-Governance Tribe's/Consortium's interest to operate the IRR program under a Tribal Self-Governance funding agreement for a particular year;
- (3) The BIA Regional Office contact shall indicate to the OSG negotiator the response of the Tribe/Consortium to provisions found in 25 CFR 170.600;
- (4) The BIA and the OSG shall respond to the Tribe's/Consortium's letter of interest and written request to negotiate in accordance with 25 CFR Parts 1000.172 and 1000.174, respectively;
- (5) Negotiations shall be held between Tribal/Consortium and Federal representatives in accordance with 25 CFR Parts 1000.175-176;
- (6) Using the IRR Model Addendum in Attachment 9 as a guide, the OSG Negotiator shall submit the negotiated IRR Addendum to the OSG Director for signature through the approved surname process. The approved surname process may include the BIA Regional Director, OSG Negotiator, OSG Director, Office of the Solicitor, Chief of the BIA Division of Transportation, BIA Regional Roads Administrator, and Director, Bureau of Indian Affairs;
- (7) One original signed IRR Addendum will be retained by the OSG, and one original sent to the Tribe/Consortium. In addition to the copies stipulated in 25 CFR § 1000.177, copies shall also be sent to the respective BIA Regional Office, and BIA Division of Transportation; and
- (8) SAFETEA-LU expires in 2009. Currently, there is no authorization for a Tribe/Consortium to operate its IRR Program beyond 2009. As a result, the IRR Addendum being negotiated is limited to 2009.

**ATTACHMENT 9/Single Tribe  
IRR MODEL ADDENDUM**

[Model Agreement – Single Tribe]

*[Note: SAFETEA-LU expires in 2009. There is no authorization for a Tribe to operate under the provisions of this Model Agreement beyond 2009. As indicated in the title below, the IRR Program Addendum being negotiated is limited to [FY/CY] 2009.*

*(SELECT ONE: “[FY/CY]”)* 2009  
**INDIAN RESERVATION ROADS (IRR) PROGRAM ADDENDUM  
TO THE  
[ANNUAL/MULTI-YEAR] FUNDING AGREEMENT  
BETWEEN THE  
[TRIBE]  
AND THE  
UNITED STATES OF AMERICA**

**Section 1. Authority**

This Addendum to the *select one: [Annual/Multi-Year]* Funding Agreement (*select one: “[A/M]FA”*) is entered into by and between the *[Name of Tribe]* (“Tribe”) and the United States of America (“United States”), acting through the Secretary of the Interior or an authorized designee (“Secretary”), pursuant to the authorities set forth in the Tribal Self-Governance Act of 1994, Title IV of Public Law 93-638, as amended, (“Act”); Title 23 of the United States Code, as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (“SAFETEA-LU”), Public Law 109-59, 119 Stat. 1144 (August 10, 2005); 25 C.F.R. Part 170; and 25 C.F.R. Part 1000. Except where otherwise noted herein, this Addendum is subject to all provisions of the Tribe’s *select one [A/M]FA* and the Compact of Self-Governance between the Tribe and the Secretary (“Compact”).

**Section 2. Effective Date**

This Addendum shall become effective as of the date of its execution by authorized representatives of the Tribe and the Secretary and shall remain in effect until terminated or renegotiated by mutual agreement of the Parties.

**Section 3. Purpose**

The Tribe’s *select one: [A/M]FA* and this Addendum transfer to the Tribe all the funding and the responsibility for its share of the Indian Reservation Roads Program, including all highway and bridge programs authorized to be assumed under the Act; 25 C.F.R. Part 170; and Chapter 2 of

Title 23 of the United States Code, as amended, (hereafter collectively referred to as the “IRR Program”), including those programs, functions, services, and activities, or portions thereof (collectively, “PFSAs”) which are specifically or functionally related to the administration of the IRR Program and are otherwise provided by the Secretary to the Tribe. In the event of a conflict between this Addendum and the Tribe’s *select one: [A/M]FA*, the provisions of this Addendum shall control solely with respect to the PFSAs authorized to be assumed under this Addendum.

#### **Section 4. Use of Tribal Facilities and Purchase of Equipment**

*[Note to Tribal and Federal Negotiators: The Parties should address any special equipment issues that may arise only in a particular BIA Region, such as access to BIA operated equipment pools.]*

Subject to a Transportation Improvement Program approved by the Federal Highways Administration (“FHWA-approved TIP”), the Tribe may make available facilities and equipment that it owns, at industry standard lease or rental rates, in order to carry out the purposes of this Addendum. The Parties agree that, subject to an FHWA-approved TIP, the Tribe shall be permitted to utilize IRR Program and other FHWA funds awarded under the Tribe’s *select one: [A/M]FA* to pay such lease/rental rates and to maintain such equipment when performing PFSAs under this Addendum. For purposes of this Addendum, in those cases where the Tribe reasonably determines that the purchase of equipment is more cost effective than the leasing of equipment, the Parties agree that, subject to an FHWA-approved TIP, the purchase of equipment shall be an allowable cost to the Tribe. The purchase of road maintenance equipment shall be subject to the twenty-five percent (25%) limitation on the use of IRR Program funds set forth in 23 U.S.C. § 204(c), as amended by SAFETEA-LU § 1119(i).

#### **Section 5. Limitation of Costs**

*[Note to Tribal and Federal Negotiators: At the Tribe’s option, this section may be deleted if the Tribe’s [A/M]FA already includes similarly protective language.]*

The Tribe shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds awarded under the Tribe’s *select one: [A/M]FA* to perform the PFSAs authorized under this Addendum.

#### **Section 6. Time and Method of Payment**

*[Note to Tribal and Federal Negotiators: The Tribe should specifically list in its [A/M]FA or reprogramming report all the funds to be paid within this 30-day timeframe. Depending on which IRR Programs PFSAs the Tribe has chosen to assume and whether it has special non-recurring IRR Program funding in a given year, the funding items may include the following: IRR Relative Need Distribution Factor Funds, IRR Bridge Program Funds, Tribal Transportation Planning Funds, Population Adjustment Factor Funds, IRR High Priority*

*Project Funds and other specific Title 23 program funds.]*

In accordance with 23 U.S.C. § 202(d)(2), as amended by SAFETEA-LU § 1119(c)(2), the Secretary, acting at the option of the Tribe through ***select one: the Office of Self-Governance (“OSG”) or the Bureau of Indian Affairs Division of Transportation (“BIA-DOT”)*** as sub-allottee, shall pay to the Tribe or its designee, through an electronic fund transfer in a single annual lump sum, all the IRR Program and related transportation program funds identified in the Tribe’s ***select one: [A/M]FA*** within 30 days after the funds are made available to the Secretary from the FHWA. Upon the receipt of funds from the FHWA, the Secretary shall notify the Tribe or its designee in writing that the funds are available for payment.

The total funds awarded under the Tribe’s ***select one: [A/M]FA*** for PFSAs authorized to be performed under this Addendum will be adjusted to reflect all funding in the IRR Program authorized by SAFETEA-LU and any eligible appropriations made available to the Secretary or passed through to the BIA from the FHWA for transportation projects identified for the Tribe. In addition, the Tribe will receive:

- (1) all supportive administrative funds in accordance with 23 U.S.C. § 202(d)(3)(B) and
- (2) special allocations attributable to any IRR Program and IRR Bridge Program funds, IRR High Priority Project funds, or Population Adjustment Factor funds identified for the Tribe if any such funds become available during the effective term of this Addendum.

The Tribe shall be eligible to receive additional IRR Program funds on the same basis as other Indian tribes according to the Tribal Transportation Allocation Methodology set forth in 25 C.F.R. Part 170, as well as other eligible funds available to the Tribe on a competitive, formula, or other basis.

### **Section 7. Contract Support Costs**

Pursuant to 25 C.F.R. §§ 170.607-170.608, Contract Support Costs (“CSCs”) are an eligible item out of a tribe’s IRR Program allocation and need to be included in a Tribe’s program budget. The Parties acknowledge that no additional IRR Program funds are available to pay CSCs to the Tribe with regard to the PFSAs assumed under this Addendum.

### **Section 8. Use of Funds and Flexible Financing**

- A. Payments to the Tribe shall be subject to the availability of the appropriation of funds by the Congress of the United States. Pursuant to 23 U.S.C. § 202(d)(3) and 25 U.S.C. § 450j-1(a)(1), all funds shall be paid to the Tribe without regard to the organizational level at which the Department of the Interior has previously carried out the PFSAs involved.

- B. The Tribe shall use the IRR Program funds advanced under the Tribe's *select one: [A/M]FA* to perform eligible PFSAs authorized under 23 U.S.C. § 202(d) and 25 C.F.R. Part 170, as amended by SAFETEA-LU, other applicable laws, and as authorized under this Addendum. The Tribe reserves the right to reprogram funds among the eligible projects identified on an FHWA-approved IRR Transportation Improvement Program (IRRTIP), so long as such funds are used in accordance with Federal appropriations law.
- C. The Tribe may use IRR Program funds provided under the Tribe's *select one: [A/M]FA* for flexible financing as provided in 23 U.S.C. § 122, 25 C.F.R. §§ 170.300-170.303, and other applicable laws, provided that the Tribe enters into an Advance Construction Agreement and Project Agreement, when applicable.
- D. The Tribe may issue bonds or enter into other debt financing instruments under 23 U.S.C. § 122 with the expectation of payment of IRR Program funds to satisfy the instruments. The Parties acknowledge that this Addendum does not create a commitment, guarantee, or obligation on the part of the United States to provide for payment of debts of the Tribe to third parties for loan principal or interest on any debt financing instrument that the Tribe may enter into, nor does this Addendum create any right of a third party against the United States for payment under any debt financing instrument that the Tribe may enter into.
- E. The Tribe may use IRR Program funds awarded under the Tribe's *select one: [A/M]FA* to meet matching or cost participation requirements for any Federal or non-Federal transit grant or program.

### **Section 9. Reporting**

The Tribe will provide the Secretary with an annual financial status report within 90 calendar days after the end of the [*select one as appropriate: calendar/fiscal*] year. This report, which may consist of an electronic entry to the OSG database, will contain a recording of obligations and expenditures for the work accomplished to date, based on activity.

### **Section 10. Buyback of Services and Retained Funds**

- A. Buyback of Services: The United States may, at its option, accept and utilize funds returned by the Tribe as a payment for services rendered or through some other funding arrangement as a buy back of services to perform PFSAs for the benefit of the Tribe. In the event that the buy back of services option is employed, the Secretary shall, upon written request from the Tribe, promptly report to the Tribe in writing on the accomplishments of the Secretary and the obligation/expenditure of the funds and return to the Tribe's any unobligated or unexpended funds.

- B. Retained Funds: Through the Tribe's *select one: [A/M]*FA or reprogramming documents, the Tribe and the Secretary may negotiate and agree to an amount of funds to be retained by the Secretary to perform any PFSA identified in writing.
1. Upon written request, the Secretary shall provide the Tribe with a project/program accounting and accomplishment report for the PFSA performed.
  2. Upon written notice, the Tribe may choose to perform any or all PFSA previously identified for performance by the Secretary. The Secretary will provide a project/program accounting to the Tribe and immediately return any unobligated or unexpended funds to the Tribe.
  3. No later than *[insert appropriate date here]*, the Secretary shall reconcile all of its expenditures incurred on behalf of the Tribe through the end of *[insert appropriate date here]* and estimate its projected expenditures on behalf of the Tribe through the end of the Federal fiscal year. In the event that unexpended retained funds are projected to remain at the end of the Federal fiscal year, the Secretary shall return the projected unexpended funds to the Tribe no later than *[insert appropriate date here]*.

*[Note to Tribal and Federal Negotiators: If there are no retained functions identified in Section 12.D., then Sections 10.B.2. and 10.B.3. should be deleted.]*

## **Section 11. Obligations of the Tribe**

*[Note to Tribal and Federal Negotiators: In this section, the Tribes and the Secretary may specifically identify all the PFSA which the Tribe intends to perform itself and the contractible PFSA which the Tribe, at its option, chooses to leave with the BIA to perform on the Tribe's behalf. Among the PFSA that the Tribe may wish to perform itself are: Transportation Planning; Program Management and Administration; Project Development, including, but not limited to, Plans, Specifications and Estimates ("PS&E") Development and Approval; Construction; Construction Management; Construction Engineering; Road Maintenance as authorized under SAFETEA-LU section 1119(i) (not more than 25% of the funds allocated to a Tribe or Tribal consortium may be expended for the purpose of maintenance, excluding road sealing which shall not be subject to any limitation); development and negotiation of Tribal-State road maintenance agreements authorized under section 1119(k) of SAFETEA-LU; public transit services, including capital purchase, operations, and maintenance; and other IRR Program-eligible activities authorized under Chapter 2 of Title 23 United States Code or 25 C.F.R. Part 170, as each may be amended by SAFETEA-LU, or other applicable law.]*

In carrying out the responsibilities and obligations of the Tribe pursuant to this Addendum, Title IV of the Act and Title 23 of the United States Code, and within available IRR

Program funding, the Tribe:

- A. Agrees to carry out a transportation planning process for the BIA to maintain an inventory of roads and bridges for the Tribe, and to support funding, prioritization, and programming of IRR Program projects by implementing a current Control Schedule and Transportation Improvement Program (TIP); and
- B. Assures the Secretary that it will meet or exceed applicable health and safety standards related to the administration, planning, design, and construction PFSAs assumed under this Addendum. To this end, and within available funding, the Tribe will provide all necessary qualified personnel (including licensed engineers to perform the design phase), equipment, materials, and services necessary to administer the PFSAs in compliance with 25 C.F.R. Part 170, as modified by SAFETEA-LU. In the event that the above-cited regulatory provisions conflict with the provisions of SAFETEA-LU, the provisions of SAFETEA-LU shall govern. The Tribe may, at its option, choose to apply certain other guidelines upon prior written notice to the Secretary, including but not limited to, the October 28, 1987 draft or the most recent revision of 57 BIAM; the Program Agreement between the BIA and FHWA; and other Federal directives, program memoranda or regulations (including Federal Acquisition Regulations). Additionally, the Tribe may, at its option, develop Tribal policies, procedures, program guidelines and memoranda which meet or exceed federal standards to facilitate operation of any aspect of the IRR Program assumed by the Tribe under this Addendum; and
- C. Agrees to perform all Plan, Specification and Estimate (PS&E) review and approvals for projects developed under this Addendum in accordance with 23 U.S.C. § 202(d)(2), as amended by SAFETEA-LU § 1119(e), and provide a file copy of the approved PS&E to the BIA or the facility owner, in full compliance with the statutory and quality assurance requirements made applicable under this Addendum; and
- D. Agrees to obtain all right-of-way and utility agreements necessary for construction. The Tribe further agrees to prepare all environmental and archaeological documents necessary for approval in accordance with applicable laws. Nothing in this Addendum, or performed pursuant to this Addendum, shall act to diminish the inherent sovereign governmental authority and jurisdiction of the Tribe over its members and trust, restricted, or allotted land within its territory. At the option of the Tribe, all recorded deeds or other instruments transferring title to real property acquired in whole or in part with Addendum funds shall include a written statement that the deed or other instrument shall not be construed to diminish the Tribe's inherent sovereign governmental authority and jurisdiction over its members and trust, restricted, or allotted land within its territory; and

- E. Assures the United States that all IRR Program projects constructed under this Addendum will comply with the approved PS&E and the construction standards set forth in this Addendum.

**Section 12. Obligations of the United States**

The Secretary shall:

- A. Administer this Addendum in compliance with the Act, SAFETEA-LU, 25 C.F.R. Part 1000 and 25 C.F.R. Part 170. In event that the above-cited regulatory provisions conflict with the provisions of SAFETEA-LU, the BIA and OSG shall comply with the provisions of SAFETEA-LU; and
- B. Through the BIA, participate in a final inspection of construction projects, in accordance with 25 C.F.R. § 170.473 *[Note to Tribal and Federal Negotiators: The Tribe and the Secretary may also agree to one or more project monitoring visits to be paid for from the BIA’s own project-related administrative funds];* and
- C. Upon the request of the Tribe, promptly advise the Tribe of the status of the BIA’s updates of the IRR Inventory and the IRRTIP approval process and make copies of this information available to the Tribe; and
- D. Through the BIA, satisfactorily perform all retained functions as follows: *[Note to Tribal and Federal Negotiators: If there are retained functions, list them here. If there are no retained functions, put “None” here and delete Sections 10.B.2. and 10.B.3.]*

[Name of Tribe]

\_\_\_\_\_  
[Tribal Chair, Governor or President]

\_\_\_\_\_  
Date

UNITED STATES OF AMERICA  
|

\_\_\_\_\_  
Assistant Secretary—Indian Affairs or Delegate

\_\_\_\_\_  
Date

**ATTACHMENT 9/Tribal Consortium**  
**[Model Agreement – Tribal Consortium]**

*[Note: SAFETEA-LU expires in 2009. There is no authorization for a Tribal Consortium to operate under the provisions of this Model Agreement beyond 2009. As indicated in the title below, the IRR Program Addendum being negotiated is limited to [FY/CY 2009].*

*(SELECT ONE: “[FY/CY]” 2009*  
**INDIAN RESERVATION ROADS (IRR) PROGRAM ADDENDUM**  
**TO THE**  
**[ANNUAL/MULTI-YEAR] FUNDING AGREEMENT**  
**BETWEEN THE**  
**[CONSORTIUM]**  
**AND THE**  
**UNITED STATES OF AMERICA**

**Section 1. Authority**

This Addendum to the *select one: [Annual/Multi-Year]* Funding Agreement (*select one: “[A/M]FA”*) is entered into by and between the *[Name of Consortium]* (“Consortium”) and the United States of America (“United States”), acting through the Secretary of the Interior or an authorized designee (“Secretary”), pursuant to the authorities set forth in the Tribal Self-Governance Act of 1994, Title IV of Public Law 93-638, as amended, (“Act”); Title 23 of the United States Code, as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (“SAFETEA-LU”), Public Law 109-59, 119 Stat. 1144 (August 10, 2005); 25 C.F.R. Part 170; and 25 C.F.R. Part 1000. Except where otherwise noted herein, this Addendum is subject to all provisions of the Consortium’s *select one [A/M]FA* and the Compact of Self-Governance between the Consortium and the Secretary (“Compact”).

**Section 2. Effective Date**

This Addendum shall become effective as of the date of its execution by authorized representatives of the Consortium and the Secretary and shall remain in effect until terminated or renegotiated by mutual agreement of the Parties.

**Section 3. Purpose**

The Consortium’s *select one: [A/M]FA* and this Addendum transfer to the Consortium all the funding and responsibility for its member tribes’ share of the Indian Reservation Roads Program, including all highway and bridge programs authorized to be assumed under the Act; 25 C.F.R. Part 170; and Chapter 2 of Title 23 of the United States Code, as amended, (hereafter collectively referred to as the “IRR Program”), including those programs, functions, services, and activities, or portions thereof (collectively, “PFSAs”) which are specifically or functionally

related to the administration of the IRR Program and are otherwise provided by the Secretary to the Consortium. In the event of a conflict between this Addendum and the Consortium's *select one: [A/M]FA*, the provisions of this Addendum shall control solely with respect to the PFSAs authorized to be assumed under this Addendum. The following tribes are included in this Addendum: *[Note: Identify the tribes that have authorized and are participating in this Addendum.]*

#### **Section 4. Use of Tribal Facilities and Purchase of Equipment**

*[Note to Tribal and Federal Negotiators: The Parties should address any special equipment issues that may arise only in a particular BIA Region, such as access to BIA operated equipment pools.]*

Subject to a Transportation Improvement Program approved by the Federal Highways Administration ("FHWA-approved TIP"), the Consortium or its member tribes may make available facilities and equipment that it owns, at industry standard lease or rental rates, in order to carry out the purposes of this Addendum. The Parties agree that, subject to an FHWA-approved TIP, the Consortium shall be permitted to utilize IRR Program and other FHWA funds awarded under the Consortium's *select one: [A/M]FA* to pay such lease/rental rates and to maintain such equipment when performing PFSAs under this Addendum. For purposes of this Addendum, in those cases where the Consortium reasonably determines that the purchase of equipment is more cost effective than the leasing of equipment, the Parties agree that, subject to an FHWA-approved TIP, the purchase of equipment shall be an allowable cost to the Consortium. The purchase of road maintenance equipment shall be subject to the twenty-five percent (25%) limitation on the use of IRR Program funds set forth in 23 U.S.C. § 204(c), as amended by SAFETEA-LU § 1119(i).

#### **Section 5. Limitation of Costs**

*[Note to Tribal and Federal Negotiators: At the Consortium's option, this section may be deleted if the Consortium's [A/M]FA already includes similarly protective language.]*

The Consortium shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds awarded under the Consortium's *select one: [A/M]FA* to perform the PFSAs authorized under this Addendum.

#### **Section 6. Time and Method of Payment**

*[Note to Tribal and Federal Negotiators: The Consortium should specifically list in its [A/M]FA or reprogramming report all the funds to be paid within this 30-day timeframe. Depending on which IRR Programs PFSAs the Consortium has chosen to assume and whether it has special non-recurring IRR Program funding in a given year, the funding items may include the following: IRR Relative Need Distribution Factor Funds, IRR Bridge Program Funds, Tribal*

*Transportation Planning Funds, Population Adjustment Factor Funds, IRR High Priority Project Funds and other specific Title 23 program funds.]*

In accordance with 23 U.S.C. § 202(d)(2), as amended by SAFETEA-LU § 1119(c)(2), the Secretary, acting at the option of the Consortium through ***select one: the Office of Self-Governance (“OSG”) or the Bureau of Indian Affairs Division of Transportation (“BIA-DOT”)*** as sub-allottee, shall pay to the Consortium or its designee, through an electronic fund transfer in a single annual lump sum, all the IRR Program and related transportation program funds identified in the Consortium’s ***select one: [A/M]FA*** within 30 days after the funds are made available to the Secretary from the FHWA. Upon the receipt of funds from the FHWA, the Secretary shall notify the Consortium or its designee in writing that the funds are available for payment.

The total funds awarded under the Consortium’s ***select one: [A/M]FA*** for PFSAs authorized to be performed under this Addendum will be adjusted to reflect all funding in the IRR Program authorized by SAFETEA-LU and any eligible appropriations made available to the Secretary or passed through to the BIA from the FHWA for transportation projects identified for the Consortium. In addition, the Consortium will receive:

- (1) all supportive administrative funds in accordance with 23 U.S.C. § 202(d)(3)(B) and
- (2) special allocations attributable to any IRR Program and IRR Bridge Program funds, IRR High Priority Project funds, or Population Adjustment Factor funds identified for the Consortium if any such funds become available during the effective term of this Addendum.

The Consortium shall be eligible to receive additional IRR Program funds on the same basis as other Indian tribes according to the Tribal Transportation Allocation Methodology set forth in 25 C.F.R. Part 170, as well as other eligible funds available for the Consortium’s member tribes on a competitive, formula, or other basis.

### **Section 7. Contract Support Costs**

Pursuant to 25 C.F.R. §§ 170.607-170.608, Contract Support Costs (“CSCs”) are an eligible item out of a Consortium’s IRR Program allocation and need to be included in a Consortium’s program budget. The Parties acknowledge that no additional IRR Program funds are available to pay CSCs to the Consortium with regard to the PFSAs assumed under this Addendum.

### **Section 8. Use of Funds and Flexible Financing**

- A. Payments to the Consortium shall be subject to the availability of the appropriation of funds by the Congress of the United States. Pursuant to 23 U.S.C. § 202(d)(3) and 25 U.S.C. § 450j-1(a)(1), all funds shall be paid to the Consortium without regard to the

organizational level at which the Department of the Interior has previously carried out the PFSAs involved.

- B. The Consortium shall use the IRR Program funds advanced under the Consortium's *select one: [A/M]FA* to perform eligible PFSAs authorized under 23 U.S.C. § 202(d) and 25 C.F.R. Part 170, as amended by SAFETEA-LU, other applicable laws, and as authorized under this Addendum. The Consortium reserves the right to reprogram funds among the eligible projects identified on an FHWA-approved IRR Transportation Improvement Program (IRRTIP), so long as such funds are used in accordance with Federal appropriations law.
- C. The Consortium may use IRR Program funds provided under the Consortium's *select one: [A/M]FA* for flexible financing as provided in 23 U.S.C. § 122, 25 C.F.R. §§ 170.300-170.303, and other applicable laws, provided that the Consortium enters into an Advance Construction Agreement and Project Agreement, when applicable.
- D. The Consortium may issue bonds or enter into other debt financing instruments under 23 U.S.C. § 122 with the expectation of payment of IRR Program funds to satisfy the instruments. The Parties acknowledge that this Addendum does not create a commitment, guarantee, or obligation on the part of the United States to provide for payment of debts of the Consortium to third parties for loan principal or interest on any debt financing instrument that the Consortium may enter into, nor does this Addendum create any right of a third party against the United States for payment under any debt financing instrument that the Consortium may enter into.
- E. The Consortium may use IRR Program funds awarded under the Consortium's *select one: [A/M]FA* to meet matching or cost participation requirements for any Federal or non-Federal transit grant or program.

## **Section 9. Reporting**

The Consortium will provide the Secretary with an annual financial status report within 90 calendar days after the end of the [*select one as appropriate: calendar/fiscal*] year. This report, which may consist of an electronic entry to the OSG database, will contain a recording of obligations and expenditures for the work accomplished to date, based on activity.

## **Section 10. Buyback of Services and Retained Funds**

- A. Buyback of Services: The United States may, at its option, accept and utilize funds returned by the Consortium as a payment for services rendered or through some other funding arrangement as a buy back of services to perform PFSAs for the benefit of the Consortium. In the event that the buy back of services option is employed, the Secretary shall, upon written request from the Consortium, promptly report to the Consortium in

writing on the accomplishments of the Secretary and the obligation/expenditure of the funds and return to the Consortium any unobligated or unexpended funds.

- B. Retained Funds: Through the Consortium's *select one: [A/M]FA* or reprogramming documents, the Consortium and the Secretary may negotiate and agree to an amount of funds to be retained by the Secretary to perform any PFSAs identified in writing.
1. Upon written request, the Secretary shall provide the Consortium with a project/program accounting and accomplishment report for the PFSAs performed.
  2. Upon written notice, the Consortium may choose to perform any or all PFSAs previously identified for performance by the Secretary. The Secretary will provide a project/program accounting to the Consortium and immediately return any unobligated or unexpended funds to the Consortium.
  3. No later than *[insert appropriate date here]*, the Secretary shall reconcile all of its expenditures incurred on behalf of the Consortium through the end of *[insert appropriate date here]* and estimate its projected expenditures on behalf of the Consortium through the end of the Federal fiscal year. In the event that unexpended retained funds are projected to remain at the end of the Federal fiscal year, the Secretary shall return the projected unexpended funds to the Consortium no later than *[insert appropriate date here]*.

*[Note to Tribal and Federal Negotiators: If there are no retained functions identified in Section 12.D., then Sections 10.B.2. and 10.B.3. should be deleted.]*

## **Section 11. Obligations of the Consortium**

*[Note to Tribal and Federal Negotiators: In this section, the Consortiums and the Secretary may specifically identify all the PFSAs which the Consortium intends to perform itself and the contractible PFSAs which the Consortium, at its option, chooses to leave with the BIA to perform on the Consortium's behalf. Among the PFSAs that the Consortium may wish to perform itself are: Transportation Planning; Program Management and Administration; Project Development, including, but not limited to, Plans, Specifications and Estimates ("PS&E") Development and Approval; Construction; Construction Management; Construction Engineering; Road Maintenance as authorized under SAFETEA-LU section 1119(i) (not more than 25% of the funds allocated to a Consortium for its member tribes may be expended for the purpose of maintenance, excluding road sealing which shall not be subject to any limitation); development and negotiation of Tribal-State road maintenance agreements authorized under*

*section 1119(k) of SAFETEA-LU; public transit services, including capital purchase, operations, and maintenance; and other IRR Program-eligible activities authorized under Chapter 2 of Title 23 United States Code or 25 C.F.R. Part 170, as each may be amended by SAFETEA-LU, or other applicable law.]*

In carrying out the responsibilities and obligations of the Consortium pursuant to this Addendum, Title IV of the Act and Title 23 of the United States Code, and within available IRR Program funding, the Consortium:

- A. Agrees to carry out a transportation planning process for the BIA to maintain an inventory of roads and bridges for the Consortium, and to support funding, prioritization, and programming of IRR Program projects by implementing a current Control Schedule and Transportation Improvement Program (TIP); and
- B. Assures the Secretary that it will meet or exceed applicable health and safety standards related to the administration, planning, design, and construction PFSAs assumed under this Addendum. To this end, and within available funding, the Consortium will provide all necessary qualified personnel (including licensed engineers to perform the design phase), equipment, materials, and services necessary to administer the PFSAs in compliance with 25 C.F.R. Part 170, as modified by SAFETEA-LU. In the event that the above-cited regulatory provisions conflict with the provisions of SAFETEA-LU, the provisions of SAFETEA-LU shall govern. The Consortium may, at its option, choose to apply certain other guidelines upon prior written notice to the Secretary, including but not limited to, the October 28, 1987 draft or the most recent revision of 57 BIAM; the Program Agreement between the BIA and FHWA; and other Federal directives, program memoranda or regulations (including Federal Acquisition Regulations). Additionally, the Consortium may, at its option, develop Tribal policies, procedures, program guidelines and memoranda which meet or exceed federal standards to facilitate operation of any aspect of the IRR Program assumed by the Consortium under this Addendum; and
- C. Agrees to perform all Plan, Specification and Estimate (PS&E) review and approvals for projects developed under this Addendum in accordance with 23 U.S.C. § 202(d)(2), as amended by SAFETEA-LU § 1119(e), and provide a file copy of the approved PS&E to the BIA or the facility owner, in full compliance with the statutory and quality assurance requirements made applicable under this Addendum; and
- D. Agrees to obtain all right-of-way and utility agreements necessary for construction. The Consortium further agrees to prepare all environmental and archaeological documents necessary for approval in accordance with applicable laws. Nothing in this Addendum, or performed pursuant to this Addendum, shall act to diminish the inherent sovereign governmental authority and jurisdiction of the Consortium's member tribes over their members and trust, restricted, or allotted land within their territory. At the option of the Consortium, all recorded deeds or other instruments transferring title to real property

acquired in whole or in part with Addendum funds shall include a written statement that the deed or other instrument shall not be construed to diminish the respective member tribe's inherent sovereign governmental authority and jurisdiction over its members and trust, restricted, or allotted land within its territory; and

- E. Assures the United States that all IRR Program projects constructed under this Addendum will comply with the approved PS&E and the construction standards set forth in this Addendum.

## **Section 12. Obligations of the United States**

The Secretary shall:

- A. Administer this Addendum in compliance with the Act, SAFETEA-LU, 25 C.F.R. Part 1000 and 25 C.F.R. Part 170. In event that the above-cited regulatory provisions conflict with the provisions of SAFETEA-LU, the BIA and OSG shall comply with the provisions of SAFETEA-LU; and
- B. Through the BIA, participate in a final inspection of construction projects, in accordance with 25 C.F.R. § 170.473 *[Note to Tribal and Federal Negotiators: The Consortium and the Secretary may also agree to one or more project monitoring visits to be paid for from the BIA's own project-related administrative funds];* and
- C. Upon the request of the Consortium, promptly advise the Consortium of the status of the BIA's updates of the IRR Inventory and the IRRTIP approval process and make copies of this information available to the Consortium; and
- D. Through the BIA, satisfactorily perform all retained functions as follows: *[Note to Tribal and Federal Negotiators: If there are retained functions, list them here. If there are no retained functions, put "None" here and delete Sections 10.B.2. and 10.B.3.]*

[Name of Consortium]

\_\_\_\_\_  
[Tribal Chair, Chief Executive Officer, or President]

\_\_\_\_\_  
Date

UNITED STATES OF AMERICA

\_\_\_\_\_  
Assistant Secretary—Indian Affairs or Delegate

\_\_\_\_\_  
Date

## ATTACHMENT 10

### MEMORIALIZATION OF MATTERS REMAINING IN DISPUTE

*The parties to the funding agreement have failed to reach agreement on certain matters which remain unresolved and in dispute. Such matters may be addressed through the process set forth in 25 C.F.R. Part 1000.179 and 25 C.F.R. 1000.Subpart R or at [THE TRIBE’S] option, may be set forth in this document, which shall be identified as “Memorialization of Matters Remaining in Dispute.” This Attachment is not and shall not be considered a part of the funding agreement, but is attached for the purpose of recording matters in dispute for future reference, discussion and resolution as appropriate. [THE TRIBE] does not waive any remedy [THE TRIBE] may have under the law with regard to these issues.*

1. **Item Remaining in Dispute**
2. **Item Remaining in Dispute**
3. **Item Remaining in Dispute**
4. **Item Remaining in Dispute**
5. **Item Remaining in Dispute**

## ATTACHMENT 11

**Guidelines for Tribally Operated Wildland Fire Management Programs, April 6, 2001 Memorandum from the Deputy Commissioner of Indian Affairs**

Motor Vehicle Operation Policy for the BIA