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2007 SELF-GOVERNANCE NEGOTIATION GUIDANCE FOR BIA PROGRAMS

Office of Self-Governance

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Office of Self-Governance

I. Purpose

This document guides the Bureau of Indian Affairs (BIA), Office of Indian Education Programs (OIEP) and Office of Self-Governance (OSG) negotiators in conducting, on a government-to-government basis, the 2007 Self-Governance (SG) negotiations. This guidance is not binding on any negotiating Tribe/Consortium but is provided to the Tribes/Consortia for their information.

For the 2007 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.

II. Interpretation and Process

If before negotiations 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) 699-1011. 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, 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 Director, BIA 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 BIA Education Line Officer and the Special Agent-in-charge of law enforcement. The Director, BIA 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 2007 negotiations, once negotiations have concluded and the funding agreement has been signed by the Tribe's/Consortia's designated official(s). The Education Line Officer and Special Agent-in-Charge – Law Enforcement will surname the Final Report only when the funding agreement is new or there are education program or law enforcement program issues or funding changes from the previous funding agreement. The Deputy Assistant Secretary – Policy and Economic Development will sign all funding agreements with concurrence from the Director, BIA, Director, OIEP and the Director, OSG. The Director, OSG will sign all funding agreement amendments with concurrence from the Director, BIA and the Director, OIEP. The Final Report form reflects this process.

It is the intent of the OSG to have 2007 negotiations completed for fiscal year Tribes/Consortia by June 30, 2006, and for calendar year Tribes/Consortia by August 31, 2006. 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 timely and efficient basis once an appropriation bill has been enacted.

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 as a result of general increases or decreases to the overall TPA activity within the BIA's budget or Congressional action. Programs which are in the non-recurring budget category, or are one-time project funding, or are otherwise footnoted, or are not in the OIP accounts cannot be included in SG base budgets. Tribal SG base budgets do not include Contract Support, Law Enforcement and Corrections funds. Some tribes have funds for General Assistance (GA), the Housing Improvement Program (HIP) and 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 Road Construction, 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 footnoted. Otherwise, for funds other than those in the non-recurring category, 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 \$135 million has been transferred to the Self-Governance Compact line item in the President's FY 2007 BIA budget request. The deadline for additional base transfers in the President's FY 2007 BIA budget has passed. The next opportunity will be the President's FY 2008 BIA budget.

IV. Tribal Shares

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

The President's 2007 budget contains proposed appropriation language prohibiting any funds provided for central office operations, pooled overhead, or general administration (except facilities operation and maintenance) from being included in funding agreements. Consistent with this language such funds will not be negotiated in the 2007 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 a 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 2007 or has other issues which need to be addressed, such as retrocessions or partial retrocessions.

Self-Governance Tribes/Consortia are reminded that Section 403(b)(5) of Title IV of P.L. 93-638, 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 2007 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 authorized for specific purposes.

If a Tribe/Consortium has redesigned a program, service, function, or activity, it should be reviewed to ensure that the redesigned program is covered by the list of functions and services by Tribal/Consortium budget categories and programs. In instances where there may be a dispute or lack of clarity concerning who is performing different functions, wording should be negotiated and included in the funding agreement to clarify the matter. Detailed Memorandum of Agreements (MOAs) 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.

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 2007 BIA budget request. 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 a certain program, the funding for that program will be added once an award is made without further amendment to the funding agreement. When there is no indication in the funding agreement that a certain program is to be included and an award is later made to the Tribe, an amendment will be required to add the 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 and funding amounts 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 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 Director, OSG.

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 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 last year, 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 their 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 requests that Self-Governance Tribes/Consortia may receive during the 2007 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 the 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 Acting Assistant Secretary to 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, 2006 when the

negotiations for 2007 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 OSG's web site or will be provided upon request. OSG requests that the Tribe/Consortium assume the responsibility for preparing the Compact, AFA, and AFA Worksheet.

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.

When preparing the final funding agreement for signature, type in Deputy Assistant Secretary – Policy and Economic Development. Do not type in a specific name. Once final decisions have been reached, Tribes/Consortia should submit two signed funding agreement originals along with two signed original funding agreement worksheets.

C. Self-Governance 2007 Annual Funding Agreement - Reprogramming Request Worksheets (AFA Worksheet)

The key financial document to be completed at negotiations is the Self-Governance 2007 Annual Funding Agreement - Reprogramming Request Worksheet. The AFA Worksheet 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 2007 SG base budget data into each Tribe's/Consortium's AFA Worksheet. Tribes/Consortia will then enter their negotiated amounts into the AFA Worksheet via the Internet. Tribal user instructions for online 2007 AFA worksheets will be provided separately.

For Tribes/Consortia negotiating their first Self-Governance agreements, 2007 budget information will be provided.

It is essential that the negotiators (Tribal, BIA, and OSG) work from the same AFA Worksheet at negotiations and that all decisions are clearly documented in the AFA Worksheet.

D. Footnotes

A footnote should be written to cover every item where there is some question or 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 Other Recurring portion of the 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.

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 in 2007. 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 their authorizing resolution(s) for the 2007 negotiations along with their completed funding agreement. Tribes/Consortia should provide to the OSG negotiator at the time of negotiations the tribal resolution being used to authorize the 2007 funding agreement.

F. Final Report for Federal Negotiators

The purpose of the Final Report 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 48-hour review period before signature of the funding agreement.

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 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)].

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.

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

This year there still will be a requirement 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 BIA (or OST).

Should a Tribe/Consortium choose not to use the above language in its 2007 funding

agreement, then the following disclaimer should be included:

The Department and the Tribe/Consortium mutually agree that for 2007, 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 2007 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 filing equipment and 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 filing equipment or technical assistance, please contact Andrew Abeyta, Office of Trust Records (OTR) at 505-816-1600.

B. Contract Support, Housing Improvement Program, Welfare Assistance and Road Maintenance

There are two options for tribes in handling the four 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.

Housing Improvement Programs funds:

Funds will be distributed based on HIP eligible applicant data and shall be used in accordance with HIP regulations unless waived.

Welfare Assistance funds:

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

Total funds will be distributed based upon estimated welfare assistance need as reflected in the current mid-year Analysis of Funds Report.

For Tribes/Consortia operating under a Tribal Redesign Plan:

The Tribe/Consortium is operating a general assistance [(if appropriate) and tribal work experience] program under a Tribal Redesign Plan and will receive a fixed negotiated amount of general assistance [(if appropriate) and tribal work experience] program funding. Other welfare assistance funds will be distributed based upon estimated need as reflected in the current mid-year Analysis of Funds Report.

Road Maintenance funds:

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

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), Federal Highway Administration road maintenance funds may be included in a funding agreement when the procedures are jointly developed by the Bureau of Indian Affairs and the Federal Highway Administration.

C. Law Enforcement and Corrections

The FY 2007 budget request restructures the budget and moves law enforcement and corrections program funding to the Public Safety and Justice activity. Funds from the Public Safety and Justice line item will be transferred by the BIA's Office of Law

Enforcement 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 2006. An approved list of law enforcement base funding estimates to be included in the 2007 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 OLES.

D. Appraisals and Beneficiary Processes Program¹ 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. Attachment 6 contains a template for an MOU for Real Estate Appraisal Services. Attachment 7 contains a template for an MOU for the Beneficiary Processes Program. For more information, please contact OST: Ms. Carrie Moore, Director, OST Office of External Affairs – Washington D.C. (202-208-3460).

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

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

¹ The Beneficiary Processes Program formerly was known as the Financial Trust Services Program.

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 fund 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 placing conditions on 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 should be identified and the following footnote 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.

Preparedness Program Management – Indirect (BLM indirect cost for Wildland Fire Preparedness) is a separate line item on the AFA Worksheet 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 8.

G. Road Construction

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 2007 funding agreements. A Tribe/Consortium having one or more projects identified in an FY 2007 Federal Highway Administration (FHWA) approved Transportation Improvement Program (TIP) or other transportation related activities may choose to include the IRR program funds in its 2006 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 2007 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. A Tribe/Consortium has the option of either including its IRR funding in its 2007 funding agreement or negotiating an amendment to its 2007 funding agreement. Attachment 8 describes the negotiation process to be used. Attachment 9 provides a model IRR Addendum.

A Tribe/Consortium who 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.

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 Arthur Hamilton, Associate Administrator for Federal Lands Highways, 400 7th Street, S.W., Room 6311, Washington, DC 20590, Telephone Number (202) 366-9494.

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.

X. 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 worksheets;
- D. Two copies of authorizing Tribal resolution(s) as needed;
- E. Two copies of attachments (MOAs, Tribal breakouts, footnotes, etc.);
- F. 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. 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.

Footnote 2: Housing Improvement Program

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

Total funds will be distributed based upon estimated welfare assistance need as reflected in the current mid-year Analysis of Funds Report.

Footnote 4: Road Maintenance

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

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), Federal Highway Administration road maintenance funds may be included in a funding agreement when the procedures are jointly developed by the Bureau of Indian Affairs and the Federal Highway Administration.

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 OLES.

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

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

Footnote7: 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. Estimated BLM indirect costs for Fire Preparedness will be determined at current tribal indirect cost rate or other approved indirect methodology.

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.

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. 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 BIA (or OST).

Option 2: The Department and the Tribe/Consortium mutually agree that for 2007, 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 filing equipment and 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 Report 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: Model IRR Addendum**
- Attachment 10: Guidelines for Tribally Operated Wildland Fire Management Programs, April 6, 2001 Memorandum from the Deputy Commissioner of Indian Affairs**

Self-Governance Negotiations Checklist

ATTACHMENT 1

Action or Activity	Tribes/Consortia New To Self-Governance	Tribes/Consortia Continuing Self-Governance	Deadline	Date Completed
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Notification

Notification of Selection to Participate in Self-Governance	OSG to Tribe/Consortium			
Confirmation to BIA and OSG to Begin Negotiations Process	Tribes/Consortia to Regional Director & OSG			
Scheduling of Negotiations	OSG, BIA, and Tribe/Consortium	OSG, BIA, and Tribe/Consortium		

Negotiations Process

Pre-Negotiations	Tribes/Consortium, BIA, 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 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	Tribes/Consortium	Tribes/Consortium		

Tribal Signatures (Two Sets of Original Documents)

Compact	Tribes/Consortium			
Compact Amendments		Tribes/Consortium		
Annual Funding Agreement	Tribes/Consortium	Tribes/Consortium		
Reprogramming Request Worksheet	Tribes/Consortium	Tribes/Consortium		

Final Report on Negotiations - Federal Signatures

BIA Regional Director	Regional Office	Regional Office		
Regional OIEP Administrator (if necessary)	Regional Office	Regional Office		
OSG Negotiator and OLES (if necessary)	OSG Wash., D.C. or OSG NWFO	OSG Wash., D.C. or OSG NWFO		
Director, Bureau of Indian Affairs	Central Office	Central Office		
Director, OSG	OSG Wash., D.C.	OSG Wash., D.C.		
Director, OIEP (if necessary)	Central Office	Central Office		

Final Documents - Federal Signatures

Compact	Assistant Secretary - Indian Affairs			
Compact Amendments				
Funding Agreement	DAS-Policy & Economic Development	Assistant Secretary - Indian Affairs		
Reprogramming Request Worksheet	Regional Budget Officer and OSG Negotiator	Director, OSG Regional Budget Officer and OSG Negotiator		

Distribution of Signed Documents

Signed Originals to:	Tribes/Consortium and OSG	Tribes/Consortium and OSG		
Copies of Originals to:	BIA Regional Office and OSG/NWFO	BIA Regional Office and OSG NWFO		

ATTACHMENT 2

GPRA CONTACTS

Planning Staff = Phone 202/219-1650 FAX = 202/219-1840
(Mike Pittman, Susan Stewart-Flannagan)

CENTRAL OFFICE PROGRAM CONTACTS

OFFICE	CONTACT	PHONE NUMBER
CIO	Kristen Benedetto-Herin	(703) 735-4210
FINANCIAL MANAGEMENT	Kathleen Carpenter	(703) 390-6528
ECONOMIC DEV Job Placement/Credit	Lynn Forcia/Mike Lucero	(202)219-5270/ (202)513-7681
EDUCATION	Dalton Henry/Jim Martin	(202) 208-5820/208-5810
HUMAN RESOURCES POLICY	Patti MacCleod	(202) 208-2893
LAW ENFORCEMENT	Peter Maybee/Leonard Merriam	(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	Debbie McBride	(202) 208-3606
TRUST RESPONSIBILITIES	Norman William - Realty – Pearl Chanar - Forestry - Bill Downes/John Vitello - Resources Management – Jim Orwin - Dams – John Anevski/ Frank Holiday - Water Resources – Mo Baloch	(202) 208-4870 (202) 208-6410 (202) 208-4837/208-5968 (202) 208-6464 (202) 219-0941/208-6041 (202) 208-6043

REGIONAL OFFICE CONTACTS

REGION	NAMES	TELEPHONE NUMBERS	FAX NUMBERS
ALASKA	Roger Drapeaux Joe Tagaban	907/586-7571 907/586-7058	907-586-7252
EASTERN	Andy Woommavovah Linda Tatum	615/564-6712 615/467-2928	615-467-1700
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 Jay West	612/713-4400 x 612/713-4400 x1147	612-713-4453
NAVAJO	Paulette Johns Lillie Roanhorse	505/863-8234 505/863-8208	505-863-8269 505-863-8292

NORTHWEST	Jeneane Dufour Twyla Stange	503/231-2211 503/231-6727	503-231-6810
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

Expected Data/Information Request	Requesting Entity	Estimated Request Date	Basis for Request
A. Report on 2006 status of Indian forest lands on attaining standards, goals and objectives set forth in approved forest management plans*	BIA Regional Director	October 2006	Report to Congress on status of Indian forest lands per 25 C.F.R. §163.82
B. Information to be used to determine 2007 contract support funding distribution	OSG Director	January 2007 July 2007	Implement Indian Affairs contract support policy.
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 OEDD	January 2007	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 2009 budget	Assistant Secretary for Indian Affairs	February 2007	Implement guidance from OMB and Assistant Secretary for Policy, Management and Budget
E. Updated roads inventory information to determine 2008 Indian Reservation Roads funding distribution	BIA Regional Director	February 2007	Implement BIA national distribution methodology per Final Rule Published in Federal Register
F. Information on 2006 crime reported in Indian country*	BIA District Commander Office of Law Enforcement Services	February 2007	Maintain criminal justice information system for Indian country per 25 C.F.R. §12.41
G. Information on 2006 tribal enrollment, service population, and labor force information.	BIA Office of Tribal Services	February 2008	Implement 25 U.S.C. § 3416
H. Information on 2006 tribal self-governance activity to attach to the Secretary's Tribal Self-Governance 2006 Annual Report to Congress	OSG Director	March 2007	Implement 25 U.S.C. § 458ee and 25 CFR §1000.382
I. Information needed to determine 2008 housing improvement program funding distribution	BIA Regional Director	March 2007	Implement national distribution methodology being used by BIA
J. Analysis of Funds Report to determine 2007 welfare assistance funding distribution	OSG Director	April 2007	Implement BIA national distribution methodology
K. Information to determine the amount of 2009 638 pay cost funding distribution	BIA Regional Director	June 2007	Implement BIA national distribution methodology
L. Real Estate information for 2007 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
M. Irrigation and Safety of Dams Construction Project Quarterly Status Report for 2007	BIA Regional Director	Quarterly and Project Completion	Resolve current and avoid future material weaknesses in BIA Audited Financial Statements
N. Information needed to compete and/or apply for 2007 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
O. 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
P. Child Abuse and Neglect statistical reports and related information*	BIA Regional Director & BIA OLES District Commander	As Incidents are Reported	Maintain child abuse and neglect information per 25 U.S.C. § 2434

Expected Data/Information Request	Requesting Entity	Estimated Request Date	Basis for Request
Q. Program performance information to measure 2007 program performance management	BIA Regional Director	Quarterly	Implement performance management activities per GPRA, including 5 U.S.C. § 306 & 31 U.S.C. § 1115-16

*Information may also be included in a Self-Governance minimum data collection form to be used by Self-Governance Tribes to report 2006 Tribal Self-Governance activity to attach to the Secretary's Tribal Self-Governance 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. Housing
5. Education (Scholarships, Johnson O'Malley, Adult Education)
6. Employment Assistance
7. 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 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

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 a 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. In cases where there are shared responsibilities between the Tribe and the BIA, the respective roles of the parties will be specified in the endnotes to this Agreement or footnotes to the REPROGRAMMING REQUEST.

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 200_.

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 Secretary. 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. This consists of the actual amounts of recurring funding which have been base transferred from BIA budget accounts to the self-governance budget accounts. Wherever possible, the Secretary agrees to request these amounts for the Tribe in the President's Budget for the coming year. 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:

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 received 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.

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. 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 BIA (or OST).

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 filing equipment and technical assistance for Tribes/Consortia in preserving, protecting and managing their fiduciary trust records from available funds appropriated for this purpose.

ABC TRIBE

BY: _____ DATE: _____

UNITED STATES OF AMERICA

BY: _____ DATE: _____

FEDERAL NEGOTIATING TEAM

BIA Regional Director _____

OSG Negotiator _____

**Regional Education
Program Administrator** _____
(If Necessary)

**Special Agent-in- Charge
Law Enforcement** _____
(If Necessary)

**FINAL REPORT
[NAME OF TRIBE/CONSORTIUM]
2007 NEGOTIATIONS**

WE 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 2007 funding agreement.

_____	_____
Date	Director, Bureau of Indian Affairs
_____	_____
Date	Director, Office of Self-Governance
_____	_____
Date	Director, Office of Indian Education Programs (If Necessary)

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE XYZ TRIBE
AND
THE DEPARTMENT OF THE INTERIOR
OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS
FOR
REAL ESTATE APPRAISAL SERVICES
FISCAL YEAR 2007**

I. AUTHORITY

This Memorandum of Understanding (MOU) between the XYZ Tribe ("Tribe") 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 (P.L. 93-638), as amended.

II. PURPOSE

In fiscal year 2002, the management and operation of the real estate appraisal function was transferred from the Bureau of Indian Affairs (BIA) to the OST. In fiscal year (FY) 2005, funding for the program was transferred to the OST. The purpose of this MOU is to detail the coordination, implementation, duties and responsibilities of each party for the Tribe's operation of the OST real estate appraisal function for FY 2007. This MOU shall be attached to the Annual Funding Agreement (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. TRIBAL DUTIES AND RESPONSIBILITIES IN PERFORMING REAL ESTATE APPRAISAL SERVICES

A. Program Guidance

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, including updates and revisions.

B. Program Responsibilities

1. Appraisal Procedures

- a.** The Tribe agrees to conduct all appraisals or valuations, as required, to support real estate transactions.
- b.** Appraisals must:
 - i)** Identify the BIA as the Client in all appraisal reports of trust/restricted property;
 - ii)** Identify the OST-Office of Appraisal Services (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 Tribes, Agencies, individual Indians, etc.
- c.** Appraisers must not disclose confidential information or assignment results prepared for the trust landowner to anyone other than the Client or persons specifically authorized by the Client.
- d.** The Tribe shall submit one (1) original appraisal report and (1) copy with original signatures to the OST-OAS Regional Appraiser for review.
- e.** The Tribe agrees that all appraisals submitted for review must be signed by a state-certified general appraiser.
- f.** The Tribe agrees to submit the completed appraisal report to the OST-OAS Regional Appraiser for review within 60 days of receipt of the appraisal request.
- g.** Appraisals must be submitted to the Regional Appraiser in either a self-contained or summary format and labeled either as a complete or limited appraisal.
- h.** Appraisal submissions must include the appraisal workfile to support the analysis and final value estimate. For the purposes of this requirement, *workfile* is defined as any or all data the appraiser used to develop the analysis and conclusion.

2. Appraisal Log

- a. The Tribe 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 Tribe agrees to submit the appraisal log to the OST-OAS on an annual basis. See Section III. B. 7.b.
- b. At a minimum, the appraisal tracking log shall contain:
 - i) Appraisal request number
 - ii) Allotment or tribal tracking number
 - iii) Appraisal request date (date received)
 - 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
 - x) Appraiser of record
 - xi) Approval date of the appraisal
 - xii) Conclusion of value
 - xiii) Date transmitted
- c. The Tribe agrees to provide to the OST-OAS Regional Appraiser the appraisal tribal backlog information on a fiscal year quarterly basis on: January 15, 2007, April 15, 2007, July 15, 2007, and October 15, 2007. *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 61 days of the request.

3. Conflict of Interest

- a. To avoid a conflict of interest or the appearance of a conflict of interest, a Tribal appraiser employed by the Tribe shall not complete an appraisal on land held by an immediate relative as defined by Tribal law and policy.
- b. When the Tribe is conducting an appraisal for a trust property for which the individual landowner has offered for sale to the Tribe, the Tribal Appraiser shall disclose such potential conflict of interest to OAS with the request for review and approval.

4. Appraisal Contracts

The Tribe agrees that appraisals provided by contractors shall meet the requirements of this MOU.

5. Records Management

- a. The Tribe agrees to:
 - i) preserve, protect and manage all fiduciary trust records created and/or maintained by the Tribe/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 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
- iii) 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.
- b. The Secretary agrees to:
- i) 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 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 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;

- 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 filing equipment and technical assistance for the Tribe/Consortium in preserving, protecting and managing its fiduciary trust records from available funds appropriated for this purpose.

6. Security Clearance

The Tribe agrees that its appraisal employees and contractors must be favorably screened and a final favorable suitability determination issued by the OST Security Office pursuant to OMB Circular A-130 and DM 441.

7. Reports

- a. The Tribe 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 negotiate with OST-OAS to determine applicable data and information needed to meet the GPRA requirements.
- b. The Tribe 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 June 15, **2007**.
- c. The Tribe agrees to provide backlog information to the OST-OAS Regional Appraiser on a quarterly basis. See Section III. B. 2. c. above.

8. Miscellaneous Appraisal Issues

- a. Market studies and consultation reports will be developed in coordination with the OST-OAS Regional Appraiser and in accordance with the USPAP. These market studies and consultation reports will be used to support leasing activities for agricultural and homesite leases. Also included are market studies and analyses for probate and gift deed transactions.
- b. Market analyses for grazing rate studies and/or

appraisals for agricultural leases will be completed prior to the beginning of a new lease or at least in five-year intervals if the lease exceeds five years, at the request of the BIA Superintendent or the Tribe.

IV. OST DUTIES AND RESPONSIBILITIES

- A.** The OST will notify the Tribe of training related to management of the Tribe'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.** 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.
- D.** If an appraisal is not approved, OST-OAS will inform the Tribe within five business days of any deficiency in the appraisal. The OST-OAS will work with the Tribes to resolve any deficiency.
- E.** OST agrees to compensate the Tribe for the cost of security clearances for up to three tribal appraisers.

SIGNATURES

The foregoing is hereby agreed to as stated on this _____ day of _____, 2006.

XYZ TRIBE

_____, Tribal Representative

_____ Date

OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS

_____, Special Trustee, Ross O. Swimmer

_____ Date

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE XYZ TRIBE
AND
THE DEPARTMENT OF THE INTERIOR
OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS
FOR
THE BENEFICIARY PROCESSES PROGRAM

FISCAL YEAR 2007**

I. AUTHORITY

This Memorandum of Understanding (MOU) between the XYZ Tribe ("Tribe") 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 Tribe's operation of the Beneficiary Processes Program [Individual Indian Money (IIM) Technician Functions] for, account holders of the XYZ Tribe for FY 2007. This MOU shall be attached to the Annual Funding Agreement (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. TRIBE'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 and Bureau of Indian Affairs (BIA) Policies and Procedures, Directives, and Desk Operating Procedures, for the following:

1. Receipting

- a. Prepare and forward to the OST, within the established timeframes, respective work tickets, either

manually or via Customer Strata Station (CSS) and source documents related to receipt transactions, including the resolution/corrections of discrepancies identified in the cash reconciliation.

Deposit all trust funds timely (within 24 hours of receipt) into local depository.

- b. Review and verify prior day posted transactions for completeness and accuracy.
- d. 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 work tickets (manually or via CSS) and source documentation related to disbursement transactions.
- b. Verify availability of funds, prior to preparation of disbursement work tickets.
- c. Review and verify prior day posted transactions for completeness and accuracy.
- d. Respond, within established time frames, to all reject and rework disbursing transactions.
- e. Pursuant to 25 CFR, disbursement requests for restricted accounts (encumbered, supervised and estates; with the exception of accounts restricted due to whereabouts unknown status) will need to be approved by BIA through distribution/disbursement plans before forwarding the request package to OST for further processing.

3. Account Maintenance

- a. Establish, maintain, close and assign identification numbers for accounts of Tribal individuals and accounts of other Indian individuals historically served by the Tribe and special deposit account holders in accordance with OST policies and procedures. See *Act of August 4, 1947, 61 Stat. 732, section 5. for degree of blood requirements on IIM accounts for the Five Civilized Tribes.*
- b. Prepare and forward to OST, within the established timeframes, respective work tickets (manually or via CSS) and related source documentation related to

- c. account maintenance transactions.
- c. Review and verify prior day posted transactions for completeness and accuracy.
- d. Respond, within established time-frames, to all reject and rework account maintenance transactions.
- e. Actively work on locating Whereabouts Unknown Account Holders.
- f. Close accounts when account holder no longer holds any trust assets and clear special deposit accounts.
- g. 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. *(For example: adoption, guardianship, and probate court orders. Such orders must be endorsed by the BIA and cannot conflict with the applicable laws and regulations. In addition OST and BIA Policies and Procedures and Directives must be followed).*

4. Reporting

- a. Research claim information on lost checks and prepare Unavailable Check Cancellation Forms (SF-1184), as necessary. *See Treasury Financial Manual Bulletin, No.90-03*
- b. Forward all Freedom of Information Act (FOIA) requests to the Director, OST Office of External Affairs for handling.
- c. Respond to inquiries from IIM clients, other governmental agencies, OST, and the general public. *Reference: Privacy Act, 5 U.S.C. § 552a*
- d. Provide IIM beneficiaries with copies of transaction reports, and other account information as may be requested by IIM beneficiaries. Forward account holder requests for Statement of Accounts to OST for direct mail out to the account holder.
- e. The Tribe 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 negotiate with OST-OAS to determine applicable data

and information needed to meet the GPRA requirements.

5. Records Management

- a. Maintain original source documents such as court orders, disbursement requests, social services documents including proper signatures, etc., to support transactions.
- b. Maintain and protect trust records in accordance with National Records Act, the Office of Trust Records (OTR), and OST policies and procedures, and comply with requirements of ongoing litigation.
- c. All records pertaining to the trust functions will remain the property of the U.S. Government. The U.S. Government has the authority to obtain, access, examine and reproduce these records at any time, and such records shall be deemed federal records for purposes of the Privacy Act.

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

Additional Automated Data Processing (ADP) equipment 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.

7. System Security Access

- a. Prior to system access, the Tribe agrees that its employees and/or contractors performing this function must be favorably screened and a final favorable suitability determination issued by the OST Security Office pursuant to OMB Circular A-130 and DM 441.
- b. The Tribe will forward all requests for systems access to the Director, Office of Information Technology Services, OST.
- c. Any connectivity problems should be addressed to the Director, Office of Information Technology Services, OST.
- d. The Tribe will notify the Director, Office of Information Technology Services, OST, within 24 hours, of exiting employees who no longer require systems access.
- e. The Tribe agrees to complete the OST annual security awareness training and to allow OST to

conduct periodic reviews of computer access controls or penetration testing. The IIM technician work environment and associated network traffic will be subject to monitoring and periodic physical and Information Technology security assessments.

- f. The Tribe agrees that TFAS system access must be segregated from all other computer networks. All equipment used to access BIA or OST systems must be located in a room/facility secured by a cipher lock or other method approved by the OST Bureau Information Technology Security Manager.

8. General

- a. Attend OST or BIA training, workgroups, computer enhancement, and other training sessions to maintain current knowledge of trust funds services.
- b. Establish appropriate management controls.
- c. Work with OST in addressing financial audit issues.
- d. The information contained in the IIM Trust Data Base and respective records are confidential, and subject to the Privacy Act.

IV. OST DUTIES AND RESPONSIBILITIES

A. Receipting, Disbursing, and Account Maintenance

- 1. Review and approve disbursements.
- 2. Forward the approved transactions to the appropriate office.
- 3. Process transactions within the established deadlines.
- 4. OST will not modify any accounts serviced by the Tribe except for:
 - a. updated information received by the OST Trust Beneficiary Call Center; and
 - b. checks received through the return check lockbox. Account modification in such instances is necessary in order to prevent disbursements and quarterly statements of account from going to the wrong address.

B. Reporting

TFAS reports will be made available through Stratavision.

C. Records Management

Maintain and protect trust records in accordance with the National Records Act, OTR, and OST policies and procedures, and comply with requirements of ongoing litigation.

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

1. Provide standard computer equipment and software necessary to carry out the BPP.
2. 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 Informational Technology Services shall be responsible for equipment software maintenance for government-provided ADP equipment.

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 parameter of this MOU.
3. OST will conduct a formal trust evaluation of the Tribe's Trust Services Program 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. OST will not be stationed on site to monitor IIM activity.

Primary OST oversight and monitoring will be performed through review of electronic transactions in the systems, 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.

review

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.

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 _____, 2006.

XYZ TRIBE

NAME OF TRIBAL GOVERNMENT REPRESENTATIVE

Date

OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS

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

Date

ATTACHMENT 8

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) The OSG shall submit the negotiated funding agreement or amendment to the Deputy Assistant Secretary – Policy and Economic Development 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, and Director, Bureau of Indian Affairs.
- (7) During the surname process and prior to signature by the Deputy Assistant Secretary – Policy and Economic Development, the OSG will provide the Federal Highway Administration with an opportunity to review and comment on the negotiated funding agreement or amendment;
- (8) One original signed funding agreement or amendment 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, BIA Division of Transportation, and Federal Highway Administration.

IRR MODEL ADDENDUM

BEING DEVELOPED BY BIA DIVISION OF TRANSPORTATION

WILL BE DISTRIBUTED WHEN COMPLETED



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20248

IN REPLY REFER TO:

Division of Forestry

APR 6 2001

Memorandum

To: All Regional Directors

From: Deputy Commissioner of Indian Affairs

A handwritten signature in black ink, appearing to read "Sharon Beckwith", is written over the printed name of the Deputy Commissioner of Indian Affairs.

Subject: Guideline for Tribally Operated Wildland Fire Management Programs

The Bureau of Indian Affairs (BIA) personnel are required to use the attached guideline when negotiating annual funding agreements with self-governance tribes and when developing self-determination contracts with tribes desiring to contract for the wildland fire management program. This guideline supersedes the previous "Compact Negotiation Guidelines - Wildland Fire Management" which was issued by the Deputy Commissioner of Indian Affairs in June 1996.

This new guideline was developed in response to tribal and BIA officials expressing a need to update the existing guidance on tribal wildland fire management programs to address the many changes that have occurred over the past five years. The guideline update process began with a national workshop on tribally operated wildland fire management programs held in Denver in November 2000. The workshop was well-attended by Tribes, and Office of Self-Governance representative, an Office of Inspector General representative, BIA and tribal self-determination contracting specialists and BIA wildland fire management program personnel from all organization levels. After developing the proposed guideline based on input from the Denver workshop, personnel from BIA Regions and Tribes were provided an opportunity to review and comment on the draft guideline in February 2001. Input from the review and comment process was considered and, when possible, incorporated into this final guideline.

The information in the guidelines is critical to tribes that currently have self-governance compacts or self-determination contracts for the wildland fire management program as well as to tribes that are considering compacting or contracting the program. Please use this guideline to assist tribes in developing their tribally operated wildland fire management programs.

recommended that Tribes be included in the document review process, be provided the opportunity to document concerns they may have for the record and be afforded the opportunity for joint approval.

5. Delegation of Authority to Incident Management and Burned Area Stabilization/Rehabilitation Teams operating on reservations. It is required that the BIA approve a delegation of authority to such teams and is strongly recommended that delegation of authority documents also be approved by the Tribe.

Program Funding

Preparedness Activity

1. Readiness sub-activity (92120) – includes all activities related to being prepared to suppress fires (e.g. work force staffing costs, training, equipment and supplies, etc.)

- Use of the Fire Management Program Analysis (FMPA) system is required to develop budget requests for preparedness or readiness funds. This system uniformly and objectively identifies the Normal Year Readiness and Performance Capability base funding, (previously referred to as Most Efficient Level, MEL) for locations with fire programs. Hot Shot or Type I Crew Programs will be included in the Normal Year Readiness and Performance Capability base funding for tribes whose crews are fully qualified and are functioning according to the interagency Type I Crew standards. Indirect costs will be paid on such Type I Crew Programs. The analysis will take tribal fire management objectives into consideration.
- Congress appropriates the preparedness or readiness budget based on the Normal Year Readiness and Performance Capability or a percentage of the Normal Year Readiness and Performance Capability.
- Tribal fire programs will be budgeted at the percentage of the Normal Year Readiness and Performance Capability appropriated for a given fiscal year.
- Tribes are eligible for available tribal shares.
- Tribes are eligible for indirect costs from the wildland fire appropriation.
- The Normal Year Readiness and Performance Capability funding, tribal shares, and indirect costs may be included in Self-Governance Annual Funding Agreements (AFA) and transferred to Self-Governance Tribes by the Office of Self Governance (OSG). In cases where Tribes have negotiated for Regional Directors to distribute funds directly to a self-governance compact, AFA funds may be transferred to Tribes by the Regional Office.

2. Non-recurring ("Non-Normal Year Readiness and Performance Capability") preparedness funding (e.g. subsidiary project funding) will be applied for annually and distributed to tribes through BIA Regional Offices via cooperative agreements or contracts. These are project-based one-time transfers of funds. Indirect costs on non-recurring or "non-Normal Year Readiness and Performance Capability" preparedness funds are not authorized, however reasonable administrative and over head costs incurred

agencies. Indirect costs funded from this sub-activity will be paid from funding in this sub-activity.

4. Hazard Fuel Reduction, Mechanical subactivity (92340) – includes costs associated with planning and the operational implementation of hazardous natural fuel reduction projects through the use of mechanical treatment(s) except when such mechanical treatment projects are specifically planned to treat hazardous fuels adjacent to the “high risk” wildland/urban interface communities.

- Funding is obtained by tribes through agreements established by BIA Regional Offices or other Federal agencies to reimburse tribes for actual costs on a project-by-project basis. Indirect costs for hazard fuel reduction, mechanical projects are authorized and will be provided to Tribes through agreements established by Regional BIA Offices or other Federal agencies. Indirect costs for projects funded from this sub-activity will be paid from funding in this sub-activity.

5. Hazard Fuel Reduction, Wildland Urban Interface subactivity (92370) - includes costs associated with planning and the operational implementation of projects to treat fuels adjacent to “high risk” wildland/urban interface communities through mechanical means (thinning, brushing, herbicide, etc.) or prescribed fire.

- Funding is obtained by tribes through agreements established by BIA Regional Offices or other Federal agencies to reimburse tribes for actual costs on a project-by-project basis. Indirect costs for hazard fuel reduction, wildland urban interface projects and authorized fuels personnel staffing costs are authorized and will be provided to Tribes through agreements established by Regional BIA Offices or other Federal agencies. Indirect costs funded from this sub-activity will be paid from funding in this sub-activity.

6. Severity subactivity (92350) – authority and funding for activities necessary to augment initial attack capability when abnormal fire conditions occur throughout a region resulting in the fire season starting earlier than normal, or exceeding average high fire danger ratings for prolonged periods.

- Funding is obtained by tribes through agreements established by BIA Regional Offices or other Federal agencies to reimburse tribes for severity costs incurred under an approved fire severity cost request. Indirect costs for severity funds are not authorized.

7. Rural Fire Assistance (92360) - authority and funding for assisting Rural Fire Departments (RFD) that have cooperative agreements with the BIA to provide wildland fire suppression services on trust Indian lands. Funding is for wildland fire fighting training, equipment and supplies that increase the safety and effectiveness of RFD operations in the wildland.

4. The "Interagency Incident Business Management Handbook" will be used as a guide for suppression operations financial business.
 - Fire suppression operations require the obligation of large amounts of Federal funds and the "Interagency Incident Business Management Handbook" is the "industry standard" for the conduct of financial business by the wildland fire community. It provides fair and prudent business practice guidance to situations common to wildland fire project operations.
5. Approved Fire Management Plans and documented compliance with environmental and cultural resource management laws must be complete to receive project funding for fuels treatment projects involving prescribed fire or mechanical treatments. The desired condition is to have a fire management plan that compliments an approved Integrated Resource Management Plan or Forest Management Plan.
 - Prescribed fire operations have potential for large liability and are critical to the BIA trust responsibility on Indian land so quality program and project level implementation planning for its use is required.

Indirect Cost Rates

In January of each fiscal year, the Budget Officer in the Branch of Fire Management will contact the Regional Offices and the Office of Self-Governance to get the applicable indirect cost rates for self-determination and self-governance Tribes that are contracting and compacting the Wildland Fire Management Program.

In January of each fiscal year, the Branch of Fire management will distribute indirect cost funding to OSG for compacting tribes and the BIA Regional Offices for contracting tribes.

In January of each fiscal year, indirect cost funding for self-determination and self-governance tribes for hazardous fuel reduction program activities will be distributed to tribes with such programs. The Budget Officer in the Branch of Fire Management will distribute indirect cost funding for hazardous fuel reduction activities to tribes through agreements established by BIA Regional Offices. Self-determination and self-governance tribes submitting fuels projects for funding should not build indirect costs into their proposals.

Minimum Contract and Annual Funding Agreement Provisions

The minimum topics that are recommended to be included in self-determination contracts and self-governance annual funding agreements follow:

1. Amount of Base Program Funding (Normal Year Readiness and Performance Capability).