**ATTACHMENT 5**

**MODEL**

**[SELECT ANNUAL OR MULTI-YEAR] FUNDING AGREEMENT FOR [SELECT: FY OR CY] 2017**

**BETWEEN THE ABC TRIBE**

**AND**

**THE UNITED STATES OF AMERICA**

**Section 1**

**Negotiated Agreement** - Pursuant to TitleIV of P.L. 93-638 as amended, the [INSERT NAME OF Tribe] (herein referred to as Tribe), and the United States of America, through the Secretary of theInterior (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 (PSFAs) as specified in this Agreement. This Agreement includes programs which are funded by 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 are transferred to the Tribe. The Tribe’s Budget Categories listed below specify the programs for which program responsibilities are 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 OPERATE THE PSFAs THAT ARE TRANSFERRED TO THE TRIBE.)

(SAMPLE)

A. Government and administration

1. Administrative Direction

2. Tribal Courts

3. Aid to Tribal Government

4. Law Enforcement

5. Corrections

6. Etc.

B. Business and Economic Development

1. Enterprise development

2. Loan program

3. Etc.

C. Natural Resource Development

1. Forestry Management

2. Fisheries management/Enforcement

3. Habitat Protection

4. Water Resources

5. Wildlife Management

6. Etc.

D. Social and Human Services

1. Social Service Management

2. Social Service Programs

3. Welfare Assistance

4. Education (Scholarships, Adult Education)

5. Employment Assistance

6. Etc.

**Section 3**

**Special Projects or Earmarked Programs, Services, Functions, and Activities** - The Tribe is not authorized to redesign or to reallocate funds provided through this Agreement for PSFAs which are subject to special restriction imposed by statute or which are awarded to the Tribe based on a competition or a special identified need. The amounts identified for these special projects or earmarked PSFAs are the best estimates at the time of negotiation and are subject to adjustment based on actual award, selection of project, or distribution methodology used by the Secretary, provided self-governance Tribes, other Tribes, and BIA agencies are treated similarly. Non-recurring PSFA funds are provided on a one-time basis for this year only. The BIA’s Reprogramming documents and OSG’s Authority to Obligate (ATO) award documents will identify funds that are awarded on a one-time-only basis and are not guaranteed to be funded in subsequent fiscal year(s). The following programs which meet this criteria are included in this Agreement:

(SAMPLE)

Certain Individual Identified Facilities Major and Minor Improvement and Repair Projects

Welfare Assistance

Housing Improvement Program

Certain Criminal Investigations/Police Service

Certain Detention/Corrections

Wetlands/Waterfowl Management

Certain Fish Hatchery Operations

Fish Hatchery Maintenance

Noxious Weed Eradication

Forestry Development

Forest Inventories and Plans

Wildland Fire Preparedness

Wildland Fire Prevention

Water Management, Planning and Pre-Development

Certain Environmental Management

Certain Other Indian Rights Protection Categories

Unresolved Hunting and Fishing Rights

Litigation Support

Mineral Assessments

Certain Real Estate Services Categories

FAST Act Tribal Transportation Program

Tribal Transportation Planning

Specific Construction Project

Programs operated under the Tribe’s/Consortium’s Approved Public Law 102-477 Plan [(such as Scholarships (P.L. 102-477), Johnson O’Malley (P.L. 102-477), Adult Education (P.L. 102-477), Job Placement and Training (P.L. 102-477), Temporary Assistance for Needy Families (P.L. 102-477), and Child Care Development Funds) (P.L. 102-477)]

Other funds not identified in this section may be separately negotiated and included in this Agreement as provided for in Section 8.

**Section 4**

**Programs, Services, Functions, and Activities Retained by the BIA** – Any program, service, function, or activity not listed as transferred to the Tribe shall be assumed to be a retained function of the Secretary. In addition, the services related to any inherently federal functions provided by the Secretary 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 footnotes to the reprogramming requests.

**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 funds identified in the attached REPROGRAMMING REQUEST for **[SELECT:** fiscal year 2017 OR each fiscal year**]**.

**Section 6**

**Contract Support Costs –** Subject to applicable federal laws, the [Tribe OR Consortium] is eligible for Contract Support Costs funding on the same basis as Tribes which contract with the BIA under P.L. 93-638. Contract Support Costs funding shall be added to this Agreement as it becomes 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.

[**Select for Fiscal Year Tribe**: (Base funding under continuing resolutions will be paid to the Tribe within 30 business days from the date the Office of Management and Budget (OMB) apportions the appropriations or, when applicable, within 30 business days after the date OMB approves an operating plan for the PSFAs in the Funding Agreement.)]

[**Select for Calendar Year Tribe**: (Base funding under continuing resolutions will be paid to the Tribe by January 1 or within 30 business days from the date the Office of Management and Budget (OMB) apportions the appropriations, whichever is later, or, when applicable, by January 1 or within 30 business days after the date OMB approves an operating plan for the PSFAs in the Funding Agreement, whichever is later.)]

**Section 8**

**Amendment or Modification of this Agreement** - Except as otherwise provided in this Agreement, the Compact, or by law, any modifications to this Agreement shall be in the form of a written amendment signed by the Tribe and the Director, OSG. It is recognized that during negotiations, there may be errors in calculations 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** - In accordance with 25 U.S.C. § 458ff (a), nothing in this Agreement shall be construed to limit or reduce in any way services, contracts or funds that any other Indian tribe or tribal organization is eligible to receive under 25 U.S.C. § 450f or any other applicable Federal law.

**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. The Tribe shall be eligible for new PSFAs and shall be advised of available funding for such PSFAs on the same basis as other tribes when the Assistant Secretary or other delegated official makes a decision that additional funds are available.

**Section 11**

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

**Section 12**

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

**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**

FOR ANNUAL FUNDING AGREEMENTS ONLY:

**Proposed Effective Date** - The proposed 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 proposed effective date is [**SELECT**: October 1 OR January 1]. The successor agreement shall be controlled by 25 CFR § 1000.90. This Agreement shall remain in effect until [**INSERT:** APPROPRIATE date Agreement ends].

FOR MULTI-YEAR FUNDING AGREEMENTS ONLY:

**Proposed Effective Date** - The proposed 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 proposed effective date is [**SELECT**: October 1 OR January 1]. The successor Agreement shall be controlled by 25 CFR § 1000.90. This Agreement shall remain in effect until the date the agreement ends. In subsequent years, the parties shall negotiate an amendment incorporating the annual REPROGRAMMING REQUEST(s) into the Multi-Year Funding Agreement by [**SELECT**: July 1 OR October 1] of each year.

**Section 15**

**Training -** Prior to being granted access to DOI automated trust information technology systems, [**SELECT**: Tribal OR Consortium] employees must successfully complete BIA trust automated technology systems training, the costs of which will be met by the BIA [**INSERT IF APPLICABLE**: and OST].

**Section 16**

**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 [**SELECT**: Tribe OR 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 for their respective PSFAs.

OR

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

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

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

3) the [**SELECT**: Tribe’s OR Consortium’s] employees must successfully complete DOI trust automated technology systems training, the costs of which will be met by BIA [**INSERT IF APPLICABLE**: or OST for each agency's respective PSFAs].

b) Policies are currently being developed to implement background investigation requirements for Tribal employees and their contractors. The parties agree that during the interim the [**SELECT**: Tribe OR Consortium] will continue to carry out BIA [**INSERT IF APPLICABLE**: OST] Trust PSFAs under this funding agreement and employees of the [**SELECT**: Tribe OR Consortium] will continue to have access to Federal Records.

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

d) The cost of the initial round of background investigations to perform the functions described in this Agreement will be paid by BIA [**INSERT IF APPLICABLE**: or OST for each agency's respective PSFAs]. The parties agree to renegotiate terms upon the completion of the development of the background investigation requirements policies for Tribal employees and their contractors.

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

OR

The Department and the [**SELECT**: Tribe OR Consortium] mutually agree that for 2017, none of the [**SELECT**: Tribe’s OR 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 17**

**OPTION: SELECT [(Real Estate Appraisal Services) OR (Beneficiary Processes)]**

The [**SELECT:** Tribe OR Consortium] and the Office of the Special Trustee for American Indians (OST) [**SELECT**: have negotiated OR are negotiating] a Memorandum of Understanding (MOU) for the OPTION: [**SELECT**: Real Estate Appraisal Services Program OR Beneficiary Processes Program]. This program will be governed by the terms of this MOU, which OPTION: [**SELECT**: is OR will be] attached and fully incorporated into the funding agreement.

**Section 18**

**Trust Records Management –** The [**SELECT**: Tribe OR Consortium] and theSecretary agree to the following:

The [**SELECT**: Tribe OR Consortium] agrees to:

(a) preserve, protect and manage all fiduciary Trust Records, created and/ormaintained by the[**SELECT**: Tribes OR Consortia] during their management of trust programs in their Title IV agreements. (A fiduciary Trust Record is/was any document that reflects the existence of an Indian trust asset and is/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 [**SELECT**: Tribe OR Consortium], Alaska natives 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 examplesnot 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 [**SELECT**: Tribe OR Consortium], provided that the Secretary gives reasonable oral or written advance request to the [**SELECT**: Tribe OR Consortium]. Access shall include visual inspection and at the expense of the Secretary the production of copies (as agreed upon between the parties) and shall not include the removal of the records without tribal approval; and

(c) store and permanently retain all inactive fiduciary Trust Records at the [**SELECT:** Tribe OR Consortium] or allow such records to be removed and stored at the American Indian Records Repository (AIRR) in Lenexa, Kansas at no cost to the [**SELECT:** Tribe OR Consortium].

The Secretary agrees to:

(a) allow the [**SELECT**: Tribe OR Consortium] to determine what records it createsto implement the trust program assumed under its Title IV Agreement**,** except that the [**SELECT**: Tribe OR 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 [**SELECT**: Tribe OR Consortium] whenthe [**SELECT**: Tribe OR Consortium] no longer wishes to keep the records. Further, the [**SELECT**: Tribe OR Consortium] will retain legal custody and determine access to these records and such records shall not be treated as Federal records for purposes of chapter 5 of Title 5 of the United States Code unless expressly agreed to by the [**SELECT**: Tribe OR Consortium];

(c) create and manage a singletribal storage and retrieval system for allfiduciary Trust Records stored at AIRR (No records will be accepted at AIRR until such a retrieval system exists); and

(d) provide technical assistance for [**SELECT**: Tribes OR Consortia] in preserving, protecting and managing their fiduciary Trust Records from available funds appropriated for this purpose.

**Section 19**

**Single Audit Copies --** In addition to the required copy to the Federal Audit Clearing House, the [**SELECT**: Tribe OR Consortium] is required by 25 U.S.C. § 450c(f) to provide two copies of the audit financial statements and single audit report to the Office of Internal Evaluation and Assessment, DOI, 12220 Sunrise Valley Drive, Reston, VA 20191 phone 703-390-6578, fax 703-390-6325 or e-mail an electronic copy to OIEA@BIA.GOV.

**Section 20**

**Motor Vehicle Operation Policy –** The [**SELECT**: Tribe OR Consortium] certifies that it will self-administer a motor vehicle operation policy that promotes the safe and prudent operation of motor vehicles while performing duties to implement the terms of the Agreement. The [**SELECT**: Tribe’s OR Consortium’s] policy is either comparable or superior to the May 3, 2006 Motor Vehicle Operation Policy for the BIA issued by the Associate Deputy Secretary. The [**SELECT**: Tribe’s OR Consortium’s] policy includes compliance with Executive Order 13513 prohibiting texting while driving.

**Section 21**

**Reporting Requests --** The [**SELECT**: Tribe OR Consortium] agrees to provide applicable data and information to the BIA [**­INSERT:** name of BIA Regional Office] pursuant to the Government Performance and Results Act of 1993 (P.L. 103-62). Before providing such information, the [**SELECT**: Tribe OR Consortium] will work with its respective Regional Office GPRA Coordinatorto determine applicable data and information needed to meet the requirements pursuant to the Act.

OPTION: Please Include Section 22 When the Tribe Has Elected To Receive P.L. 102-477 Program Funds

**Section 22**

**Indian Employment Training and Related Services Demonstration Project --** To the extent this Agreement includes Indian Employment Training and Related Services Demonstration Project funds pursuant to P.L. 102-477, the [**SELECT**: Tribe OR Consortium] agrees that:

1. Such funds will be administered in accordance with the [**SELECT**: Tribe's OR Consortium’s] approved P.L. 102-477 Plan, including compliance with existing P.L. 102-477 reporting requirements for such funds.
2. All applicable statutory requirements governing the various integrated programs must be met. The [**SELECT:** Tribe OR Consortium] agrees to abide by all applicable federal regulations published in the Federal Register. Only those federal regulations for which waivers have been specifically requested and formally approved will be considered waived.
3. No program funds under this demonstration project shall be reprogrammed for other tribal functions that are not included in the [**SELECT:** Tribe’s OR Consortium’s] approved P.L. 102-477 Plan. The [**SELECT:** Tribe OR Consortium] has the authority to integrate the program services in its approved P.L. 102-477 Plan into a single, coordinated, and comprehensive program. Within that framework the Tribe has the authority to commingle and reallocate funds to meet program objectives, unless commingling and reallocation is expressly prohibited by law (see P.L. 102-477 and legislation related to funding origin.)

[**SELECT:** The following language should be included in calendar year Agreements to ensure that non-DOI fiscal year funds received by the BIA are awarded without regard to the status of a calendar year Agreement:]

Advance funding for programs funded through this funding Agreement that are derived from non-DOI agencies as a result of their inclusion in the [**SELECT**: Tribe’s OR Consortium’s] P.L. 102-477 plan is to be transferred to the [**SELECT**: Tribe OR Consortium] based on the funding year inherent in those funds and as soon as those funds are available for transfer.

**Section 23**

**Programs Involving Contact With Children –** As mandated by the Indian Child Protection and Family Violence Prevention Act (P.L. 101-630), prior to being authorized to perform services, functions and activities that involve regular contact with or control over Indian children, Tribal program staff and volunteers must be favorably screened and a final favorable suitability determination issued. Minimum standards of character must be established and implemented in accordance with 25 CFR Part 63.

ABC TRIBE

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

UNITED STATES OF AMERICA

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

Director, Office of Self Governance