**ATTACHMENT 7**

**DRAFT TEMPLATE – 2017 OST SELF-GOVERNANCE APPRAISAL PROGRAM MOU**

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN THE \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_TRIBE**

**AND**

**THE DEPARTMENT OF THE INTERIOR**

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

**FOR**

**REAL ESTATE APPRAISAL SERVICES CALENDAR YEAR OR FISCAL YEAR 2017**

1. **AUTHORITY**

This Memorandum of Understanding (MOU) between the \_\_\_\_\_\_\_\_\_\_ Tribe (Tribe) and the Department of the Interior (DOI), Office of the Special Trustee for American Indians (OST) is entered into pursuant to acompact initiated under Title IV of the Indian Self-Determination and Education Assistance Act (P.L. 93-638), as amended.

1. **PURPOSE**

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 Program for Calendar Year (CY) or Fiscal Year (FY) 2017. Pursuant to the CY or FY 2017 Annual Funding Agreement (AFA) or Multi-Year Funding Agreement (MYFA), this MOU is an attachment to the CY or FY 2017 AFA or MYFA and is incorporated into and made a part of the CY or FY 2017AFA or MYFA as if set out in full in the AFA or MYFA.

This MOU shall be attached to the AFA or MYFA for this year and will remain in effect in subsequent years unless modified and such modification is agreed to in writing by both parties.

**III. THE TRIBE’S DUTIES AND RESPONSIBILITIES IN PERFORMING REAL ESTATE APPRAISAL SERVICES**

**A. Program Guidance**

Real estate appraisal services shall be provided in accordance with published authority contained in the Code of Federal Regulations, Title 25; appraisal standards contained in the current edition of the Uniform Standards of Professional Appraisal Practice (USPAP), and Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), as applicable, including updates and revisions; and use of appraisal industry recognized valuation methods and techniques. The Office of the Special Trustee for American Indians, Office of Appraisal Services (OST-OAS), Regional Supervisory Appraiser (RSA) is available to provide guidance for the interpretation and use of these standards and, upon written request of the Tribe, will assist the Tribe in their development of Statements of Work (SOW) for appraisal service contracts.

**B. Program Responsibilities**

**1. Appraisal Procedures**

**a.** The Tribe agrees to conduct appraisal services herein identified, as required, to support real estate transactions on trust or restricted property.

**b.** Appraisals must:

**i)** Identify the Secretary of the Interior and the Tribe as the Client in all appraisal reports of trust/restricted property;

**ii)** Identify the BIA, OST-OAS, the Secretary of the Interior and the Tribe as Intended Users in the body of the appraisal report; and

**iii)** Identify any third party Intended Users of the report e.g., Agencies, individual Indians, etc.

**c.** The Tribe agrees not to submit an appraisal report to BIA for use in a trust transaction until the appraisal has been reviewed and approved by the OST-OAS.

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

**e.** Once an appraisal report, prepared by a state-certified general appraiser, is reviewed and approved by the OST-OAS RSA, the RSA will obtain from the tribe one (1) approved original appraisal report with original signatures, which will include a copy of the appraisal request and SOW, if contracted**,** in each report. Alternatively the tribe may provide an encrypted electronic copy of the appraisal report.

**f.** The Tribe agrees that all appraisal reports submitted to the RSA for review must be signed by a state-certified general appraiser.

**g.** The Tribe agrees to submit the completed appraisal report to the OST-OAS RSA for review within 60 calendar days of receipt of the valid appraisal request, which will be the due date, or provide written notice to the OST-OAS**~~-~~**RSA before the expiration of the 60 days that the tribal appraisal program, and the Client, have agreed to extend the due date, provided the complexity of the appraisal, or other extenuating circumstances, warrants extending this time. Such written agreement between the Client and the tribal appraisal program should be contained in the appraisal work file.

**h.** Appraisals must be submitted to the OST- OAS RSA as an “Appraisal Report” pursuant to SR 2-2(a). If questions/concerns arise from the review of the “Appraisal Report” OST-OAS may request additional information from the Tribe in the form of the appraisal work file.

**i.** Appraisals also may be prepared using alternative valuation methodologies, when appropriate and in compliance with USPAP or UASFLA, as applicable. Such alternatives include, but are not limited to, Project Appraisal Report per Section D-17 of UASFLA; Market Studies; and Market Analysis.

**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**~~-~~**RSA for reporting purposes. The Tribe agrees to submit the appraisal log to the OST-OAS**~~-~~**RSA no later than October 15 each year, for the previous fiscal year ending September 30. *See* Section III. B. 8. b.

**b.** At a minimum, the appraisal tracking log shall contain:

**i)** Appraisal request number

**ii)** Allotment or tribal tracking number

**iii)** Due date, i.e., the date agreed upon, between the Client and the tribal appraisal program, to submit the appraisal product to the Client

**iv)** Purpose of appraisal

**v)** Legal descriptions

**vi)** Size of property appraised

**vii)** Intended use of appraisal

**viii)** Effective date of appraisal

**ix)** Owner/ Grantor information

**x)** Name ofAppraiser of record

**xi)** Approval date of the appraisal

**xii)** Conclusion of value

**xiii)** Date valid appraisal request is received by the Tribe

**xiv)** Date appraisal report is transmitted to the Client

**c.** The Tribe agrees to provide to the OST-OAS RSA a report on the backlog of the tribal appraisal workload on a fiscal year quarterly basis on: January 15, April 15, July 15, and October 15, during this current fiscalyearand in subsequent years on the same quarterly basis. Tribal backlog is considered to be any request(s) for appraisal(s) that have not been completed and provided to the OST-OAS RSA for review within 60 calendar days of receiving a complete and valid appraisal request, unless the due date is extended by negotiation.

**3. Conflict of Interest**

**a.** To avoid a conflict of interest or the appearance of a conflict of interest, neither a Tribal appraiser employed, nor a fee appraiser contracted, by the Tribeshall complete an appraisal on land owned by the appraiser or by an immediate relative as defined by Tribal law and policy.

**b.** If applicable, when the Tribeisconducting an appraisal for trust property that an individual landowner has offered for sale to the Tribe, the Tribe’s appraiser, whether an employee or a contract appraiser, shall disclose such potential conflict of interest to OST-OAS with the request for review and approval.

**4. Appraisal Contracts**

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

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

**a.** OAS completes appraisals to support real estate transactions on trust or restricted property only, except when non-trust property is part of a congressionally mandated action, court order, right–of-way acquisition, or land exchange.

**b.** Appraisals under this program cannot be performed for the following purposes: mortgages, probates (except for congressionally mandated, court ordered, or where required for a sale of property out of probate), subleases, mineral evaluations, acquisitions or sales of fee lands (unless the acquisition is part of a congressionally mandated action, court order, right-of-way acquisition, or land exchange), or leases granted at less than fair annual rents as provided for in 25 C.F.R. § 162.604 (b).

**6. Records Management**

**a.** The Tribe agrees to:

**i)** Preserve, protect and manage all Indian fiduciary trust records (IFTR) created and/or maintained by the Tribe, regardless of media during its management of the Real Estate Appraisal Program.

An ***Indian fiduciary trust record***is 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 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 of records not considered to be IFTR:

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 records

**ii)** Make available to the Secretary of the Interior (Secretary) all IFTR created or received in the performance of this Appraisal compact/contract and maintained by the Tribe, provided that the Secretary gives reasonable oral or written advance request to the Tribe. Access shall include visual inspection and, at the expense of the Secretary, the production of copies (as agreed upon between the parties) and shall not include the removal of the records without tribal approval.

**iii)** Store and permanently retain all inactive Appraisal IFTR at the Tribe or allow such records to be removed and stored at the American Indian Records Repository (AIRR) in Lenexa, Kansas, at no cost for storage to the Tribe (shipping costs to be borne by the Tribe). Inactive Appraisal IFTR may be stored at the AIRR in the following ways:

**A.)** Enter into an agreement with OST’s Office of Trust Records for the purposes of transferring and providing future access to the Tribe’s IFTR stored at the AIRR as tribal records. The Tribe may retrieve copies of the records or withdraw the entire inventory of their Appraisal IFTR.

**B.)** Return such records to the custody of the OST- OAS to be transferred and treated as Federal Records**.** The original records will be stored at the AIRR. If the Tribe chooses to return the IFTR to the custody of the OST – OAS, the records must be labeled in accordance with the Indian Affairs Records Schedule (IARS) or the current applicable Federal records schedule. The Tribe may request copies of the records in accordance with applicable AIRR procedures. The original records will not be available for the Tribe to withdraw.

**iv.** Return all active and inactive IFTR to the Secretary in the event the

Tribe retrocedes the Real Estate Appraisal Program, or in the event the Secretary reassumes operations of the Real Estate Appraisal Program. Records returned to the custody of the OST-OAS shall be treated as Federal Records.

**v.** For IFTR the Tribe wishes to store at AIRR, the Tribe may, but is not required to, utilize the IARS or the current applicable Federal records schedule to organize its records.

**vi.** Attend OST and/or BIA records management training.

**b.** The Secretary agrees to:

**i)** Allow the Tribe to determine what records it creates to implement the trust program assumed under its Title IV compact (or Title I contract, if applicable), except that the Tribe must create information required by statute, regulation, and this MOU. No additional record keeping requirements are required by this MOU;

**ii)** Store all inactive IFTR at the AIRR at no cost for storage to the Tribe (shipping costs to be borne by the Tribe) when the Tribe no longer wishes to keep the records. Further, the Tribe will retain legal custody and determine access to these records. These 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)** Store all inactive IFTR at the AIRR at no cost for storage to the Tribe when the Tribe returns legal custody of inactive IFTR to the Federal government for storage. The records will then be treated as Federal records;

**iv)** Manage a single tribal storage and retrieval system for all tribal IFTR stored at AIRR as Tribal records; and

**v)** Provide technical assistance and records management training for the Tribe to preserve, protect and manage its IFTR from available funds appropriated for this purpose.

**7. System Security Access**

**a.** Security Requirements for Access to DOI Information Technology (IT) Systems

**i)** Prior to being granted access to DOI IT systems and DOI IFTR in any electronic data or hardcopy format, the Tribeagrees that its employees and employees of its contractors must undergo the appropriate clearance as determined by the position sensitivity rating process, but at a minimum, a National Agency Check with Inquiries and Credit Check (NACI-C) and ultimately receive a final favorable suitability determination issued by the OST Personnel Security Office pursuant to OMB Circular No. A-130 and DM 441. In addition, pursuant to Homeland Security Presidential Directive 12 (HSPD-12) (OST reciprocates with other federal agencies’ background investigations), the Tribe’semployees and employees of its contractors must also successfully go through a Personal Identity Verification (PIV) process prior to being granted access to DOI IT systems. PIV costs will be incurred by the OST.

**ii)** The Tribe agrees to follow all DOI and OST policy on IT security measures as cited in OST Operating Manuals (OM), OM-3 and OM-431, or most current.

**iii)** The Tribeagrees to take all prudent steps necessary to secure confidentiality, integrity and availability of Personally Identifiable Information as required by the Privacy Act of 1974 (5 U.S.C. § 55a) and by subsequent OMB memoranda; and in the event of a security related incident (i.e. information exposure, theft, network compromise) affecting Government Furnished Equipment (GFE) or tribal equipment utilized in the performance of the Real Estate Appraisal Services Program also agrees to notify the OST by emailing [ost\_security@ost.doi.gov](mailto:ost_security@ost.doi.gov), within 24 hours of discovery of the incident.

**iv)** The Tribewill notify the OST at [ost\_employee\_clearance@ost.doi.gov](mailto:ost_employee_clearance@ost.doi.gov) within 24 hours of exiting employees who no longer require systems access.

**b. Training**

Prior to being granted access to DOI trust IT systems, the Tribe’semployees must successfully complete the Federal Information System Security Awareness training (and complete annually thereafterto maintain access), the costs of which will be met by the OST.

**8. 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 work 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 OST-OAS, as described in Section III. B. 2. a. and b. above, on an annual basis no later than October 15,this year,and each year thereafter.

**c.** The Tribe agrees to provide backlog information to the OST-OAS RSA on a quarterly basis. *See* Section III. B. 2. c. above.

**9. OMB Circulars**

TheTribeagrees that, pursuant to 25 C.F.R. §1000.395, OMB circulars and revisions apply, except for:

**a.** listed exceptions for Tribes and Tribal Consortia;

**b.** exceptions in 25 U.S.C. 450j-1(k); and

**c.** additional exceptions that OMB may grant.

**10. Single Audit Act Audit**

**a.** The Tribe will notify OTRA that their Single Audit is completed and submitted to OSG.

**IV. OST DUTIES AND RESPONSIBILITIES**

**A.** The OST will notify the Tribeof training provided or hosted by OAS, related to management of the Tribe’sappraisal program.

**B.** The OST-OAS RSA will provide an appraisal review within 30 calendar days after OST-OAS receives the report.

**C.** Once an appraisal report is approved by OAS, the OST-OAS RSA will transmit the approved appraisal review report with original signatures and one (1) copy of the appraisal report to the client for processing. Alternatively, OAS my provide an encrypted electronic copy of the appraisal review package.

**D.** If OST-OAS cannot approve the appraisal report under review the OST-OAS RSA will contact the Tribe in writing, and the appraiser of record, within five business days of identifying the deficiency in an attempt to resolve any concerns.

**E. Third-party Appraisals**

**1.** As used in this document, third-party appraisals are those procured by non-federal parties, including individual Indian landowners, commercial enterprises, utility companies, or an Indian tribe acting as a non-federal party.

**2.** Upon request by the appropriate real estate services program (federal or 638 tribal) and/or BIA line officer, OAS shall review a third-party appraisal if:

**a.** The SOW identifies the Secretary of the Interior and the Tribe as the Clients. The Secretary of the Interior, the Tribe, and also applicable Individual Indian Land owners, shall be identified as the Intended Users of the third-party appraisal report. SOW may be coordinated with the third party, but ultimate responsibility for the document remains with OAS;

**b.** The third party consults with the OST-OAS RSA prior to the initiation of the appraisal on the SOW for the appraisal, and on a list of potential contract appraisers. The third party appraiser is highly encouraged to attend a pre-work conference via conference call or in person with the OST-OAS RSA. If the third party appraiser elects not to attend the pre-work conference, then a written declination of the pre-work conference will be provided to the OST-OAS RSA;

**c.** The appraiser-of-record selected to perform the appraisal is a state**-**certified generalappraiser who is competent to appraise the subject property at issue and meets applicable appraisal standards for the intended use of the appraisal.

1. OST agrees to compensate the Tribe for the cost of security clearances for up to three tribal employee appraisers per year based on whether the Tribe is paid on a calendar year or fiscal year basis. In accordance with the DOI’s current Departmental Manual, Part 441, contracted appraisers who perform work for less than 180 days are not required to have background investigations. If this standard changes after execution of this MOU, during Fiscal Year 2017, the OST agrees to renegotiate this provision to include compensation for background investigations for up to three of the Tribe’s contracted appraisers.

**V. SIGNATURES**

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, **2016**, and will become effective on **October 1, 2016**, (if

FY tribe) or **January 1, 2017** (if CY tribe),and remain in effect unless modified

and such modification is agreed to in writing by the parties.

**TRIBE**

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Designated Tribal Official’s signature

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Date

**Office of the Special Trustee for American Indians**

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Director, OST Office of External Affairs, and Secretary’s Delegated Official

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