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# **2016 SELF-GOVERNANCE NEGOTIATION GUIDANCE FOR BIA PROGRAMS**

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# **2016 FINAL SELF-GOVERNANCE NEGOTIATION GUIDANCE FOR BIA PROGRAMS**

## **Office of Self Governance**

### **I. Purpose**

This document is prepared as a tool to guide Federal negotiators in Indian Affairs, including the Office of Self Governance (OSG), Office of Facilities Environmental and Cultural Resources (OFECR), Office of Indian Energy and Economic Development (OIEED), the Bureau of Indian Education (BIE), the Bureau of Indian Affairs (BIA), (including the Office of Justice Services) (OJS), and the Office of the Solicitor (SOL), in conducting, on a government-to-government basis, the 2016 self-governance (SG) negotiations. This guidance is provided to Tribes/Consortia for informational purposes.

For the most part, 2016 negotiations will be conducted telephonically/electronically. Under limited budgets, travel to conduct face-to-face negotiations will only be approved if it meets a test of what is mission critical.

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

Prior to negotiations, if there are questions about the content or meaning of this Guidance, please contact the OSG in Washington, DC at (202) 219-0240 or the Northwest Field Office in Vancouver, WA at (360) 699-1013. 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 BIA programs, services, functions, or activities (PSFAs) pursuant to guidance issued by the BIA Director for non-base programs. 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 Director, the BIE, OST, OIEED, OFECR, and OJS Line Officers. Where OJS and OFECR funds are involved, OJS and OFECR have requested that their representatives be contacted so that they may be present during self-governance negotiations.

The Regional Director and the OSG Negotiator will surname and date the Final Report of a Tribe's/Consortium's 2016 negotiations (see Attachment 6), once negotiations have concluded and after the funding agreement has been signed by the Tribe's/Consortium's designated official(s). The BIE and OJS Line Officers may surname and date the Final Report as participants in the negotiations. The BIE Director and the OJS Deputy Director will participate in the OSG Central Office surname process only when the funding agreement is new or there is Education or Law Enforcement and

Detention/Corrections program issues or funding changes from the previous funding agreement. The OSG Director will sign funding agreements and amendments with concurrence from the BIA Director, the BIE Director, the OIEED Director, and the OJS Director as appropriate. Subject to revision by Congressional action, when negotiations include a Tribal Transportation Program (TTP) Addendum, a separate TTP Addendum Final Report Form will be used (see Attachment 6) that includes the date and surname of the Regional Roads Administrator. The OSG Director will sign TTP Addenda with concurrence from the BIA Director and Chief, BIA Division of Transportation for those Tribes receiving TTP funding through a Self-Governance funding agreement.

It is the intent of the OSG to have 2016 negotiations completed for fiscal year Tribes/Consortia by June 30, 2015, and for calendar year Tribes/Consortia by August 31, 2015. This allows OSG to obtain the necessary signatures 90 days before the proposed effective date of the agreement. The 90-day review period is required by Section 403 (f) of P.L. 93-638, as amended. Under normal budget and appropriation circumstances, this allows OSG to obligate funds to Self-Governance Tribes/Consortia on a more efficient and timely basis. This also allows OSG to meet an October 1 deadline to incorporate base transfers as changes in the next President's budget. It is important to meet these deadlines so that Tribes/Consortia receive the funds necessary to continue their tribal operations without interruption and avoid the cost of borrowing other funds.

### **III. Tribal Self-Governance Base Budgets**

Once a Self-Governance Tribe/Consortium has elected to establish a Self-Governance base budget for Operation of Indian Program (OIP) funds and the amounts have been base transferred in the Tribal Priority Allocation (TPA) portion of the FY 2016 President's Budget Request to Congress, the tribal shares which make up the base budget shall only be adjusted in accordance with 25 CFR §1000.109. Language in funding agreements regarding the Secretary's responsibility for Self-Governance base budgets shall be identical to P.L. 93-638, Section 404, 25 U.S.C. § 458dd. Language in funding agreements regarding adjustment of base budgets shall be identical to 25 CFR § 1000.109. Self-Governance base budgets shall be established and maintained in accordance with 25 CFR §1000.105-109. The base budget language in the funding agreement shall include the citation to 25 CFR § 1000.109. Tribal Self-Governance base budgets do not include Contract Support Cost funds. These funds and Law Enforcement funds are awarded separately from Tribes' base budgets.<sup>1</sup>

Examples of funds from sources other than the OIP accounts are Tribal Transportation Program (TTP) Funds from the Department of Transportation, Department of Labor and Department of Health and Human Services funds for the Indian Employment Training

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<sup>1</sup> Some tribes have OSG shortfall funds in their base budgets that, before the year 2000, had been used for law enforcement programs.

and Related Services Demonstration Project, and Fire Preparedness funding. In accordance with 25 CFR §1000.105(b) and (c), non-recurring funds and any other one-time funding are not eligible to be included as part of the Tribe's base budget and shall not be base transferred. 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).

A Tribe/Consortium may choose to base transfer funds or remove funds from its base budget for a certain program or category of programs. If a Tribe/Consortium chooses to establish or remove a base amount in a certain program or line item, there must be a clear indication in the Self-Governance funding agreement that the item is to be base transferred or removed from the base budget. In instances where funding for a program is to be base transferred or removed from the base budget, the following footnote shall be applied to that program line:

“The amount identified in Column D is requested to be transferred [**SELECT**: into OR out of] the [**SELECT**: Tribe's OR Consortium's] Self-Governance TPA Base Budget as soon as possible.”

More than \$159.022 million is requested to be transferred to the Self-Governance Compacts line item in the FY 2016 President's Budget Request to Congress. The deadline for additional base transfers in the FY 2016 President's Budget Request to Congress has passed. The next opportunity to base transfer funds will be the FY 2017 President's Budget Request to Congress.

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

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

The FY 2016 President's Budget Request to Congress no longer contains proposed appropriation language that no funds “available to the Bureau of Indian Affairs for central office oversight and Executive Direction and Administrative Services (except executive direction and administrative services funding for Tribal Priority Allocations, regional offices, and facilities operations and maintenance) shall be available for contracts, grants, compacts, or cooperative agreements with the Bureau of Indian Affairs under the provisions of the Indian Self-Determination Act or the Tribal Self-Governance Act of 1994 (Public Law 103-413).” This language has appeared in appropriations acts annually for over a decade.

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

Subpart G of the Self-Governance regulations describes the process for negotiating

funding agreements. Generally, this process is oriented toward new funding agreements and consists of an information phase and negotiation phase.

For continuing Self-Governance Tribes/Consortia, pre-negotiations and actual face-to-face negotiations may not be necessary. As a general rule, teleconferencing and videoconferencing are encouraged.

Section 403(b)(5) of Title IV of P.L. 93-638 (25 U.S.C. § 458cc(b)(5)), as amended, requires that self-governance funding agreements specify the Programs, Services, Functions, and Activities to be provided and performed, and the responsibilities of the Tribe/Consortium and the Secretary pursuant to the funding agreement. This should be specified in all funding agreements. Tribes/Consortia and the BIA shall identify the PSFAs which are being assumed by the Tribe/Consortium and which functions the BIA will continue to perform. The funding agreement shall at a minimum identify the PSFAs that the Tribe/Consortium intends to provide by Tribal/Consortium budget categories. 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, as amended, except for PSFAs and funds appropriated and/or authorized for specific purposes.

In instances where there is a need to identify who is performing different functions, wording shall be negotiated and included in the funding agreement to clarify the matter. Detailed Memoranda of Understanding (MOU) may be negotiated between the Tribe and the BIA or other entities such as OST and may be included as funding agreement attachments or amendments to provide greater clarity regarding the respective roles and responsibilities of the Tribe and the BIA or other entities for PSFAs included in the funding agreement. The OSG Compact Negotiator shall provide the OSG Director with a draft BIA MOU prior to final signature.

Tribal self-governance base budget information will be pre-loaded in the BIA reprogramming request and supporting financial information will be provided by the OSG based on the FY 2016 President's Budget Request to Congress. A Self-Governance Negotiations Checklist to help participants through the 2016 negotiations process is provided. See Attachment 1.

When a funding agreement specifically indicates, either in the narrative or the reprogramming request, that a Tribe/Consortium has elected to assume a certain PSFA, the funding for that PSFA will be awarded, once available and known, without further amendment to the funding agreement. When there is no indication in the funding agreement that the Tribe elects to assume a certain PSFA, an amendment will be required to add the PSFA and associated funding to the funding agreement.

## **VI. Disputes**

Disputes language, disagreements, differing views and the like shall not be included in funding agreements, MOUs, reprogramming documents, or footnotes to them. Funding agreements are reserved for matters on which the parties agree.

Language which reserves specific rights of the Secretary or Tribe may be considered dispute language. A “Memorialization of Matters Remaining in Dispute” may be attached to the funding agreement where there are disagreements or the Tribe and the Department have differing viewpoints. The Memorialization of Matters Remaining in Dispute must state that it is not part of the funding agreement. See Attachment 11.

If, during negotiations, the policies and processes of this Guidance become an issue of dispute, the OSG Negotiator will contact the OSG Director for further discussion and thereafter make necessary decisions to complete the negotiations. If the negotiation agreement cannot be completed, the OSG Negotiator will complete with the Tribe a draft agreement that includes the items that are in agreement and set a date to resolve the remaining issue(s) later by phone. Any disputes concerning amounts in the funding agreement or other matters involving the funding agreement will be handled through the appropriate dispute resolution process referenced in 25 CFR Part 1000 Subpart R - Appeals.

## **VII. Amendments**

If either the Tribe/Consortium or Department wishes to amend a funding agreement, then the amendment process shall be used, which could involve negotiations. Negotiations of the amendment shall be completed and the amendment executed first in order to facilitate the timely transfer of funds. The OSG Director will sign amendments. In addition, OJS, BIA (including all regional and central offices), BIE, OIEED, OFECR, the Public Law 102-477 Office and OST shall provide award letters and funding distribution lists by Tribe to OSG for funding awards made throughout the year. These documents are also needed to facilitate the timely transfer of funds.

## **VIII. Reporting Requests**

As in past years, the Assistant Secretary – Indian Affairs’ (AS/IA) office 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. The following language is provided as a starting point for the Tribe’s/Consortium’s negotiations with its respective Regional Office:



“The [**SELECT**: Tribe OR Consortium] agrees to provide applicable data and information to the BIA [**INSERT**: Name] 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 Coordinator to determine applicable data and information needed to meet the requirements pursuant to the Act.”

Attachment 2 lists the BIA Regional Office GPRA Coordinators. Attachment 4 identifies possible information requests that Self-Governance Tribes/Consortia may receive during the 2016 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.

Under the 2011 – 2016 DOI Strategic Plan, one item is being compiled by OSG headquarters for GPRA purposes: the percent of P.L. 93-638 Title IV Contracts (Title IV Compact Agreements) with clean audits.

During FY 2016, the Tribal Data Exchange (TDE) System is expected to be operational and used to collect data from Tribes electronically. An example of how the TDE System can be used includes the collection of 2015 Tribal/Consortium activity data for the 2015 Tribal Self-Governance Annual Report to Congress.

## **IX. Budget Formulation**

The BIA Central and Regional Offices are responsible for budget formulation for all Tribes, including Self-Governance Tribes. Self-Governance Tribes are strongly encouraged to participate in all Regional Budget meetings. Tribal Interior Budget Committee (TIBC) Regional Representatives receive quarterly budget updates and are responsible to represent all Tribes from their Region. They are also expected to share budget and related information with their Regional Tribes.

In addition, BIA Regional Offices are responsible for collecting 638 Pay Cost information from all Tribes in their Region, including Self-Governance Tribes. This information will be used to determine increases in pay cost funding for all Regional Tribes.

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

### **A. Compacts**

Newly selected Tribes/Consortia should prepare their draft compacts in advance of negotiations using as their guide the model compact that appears in Appendix A of the final Self-Governance regulations at 25 CFR Part 1000. This model compact applies to all bureaus within the Department of the Interior and provides a starting point for

compact negotiations.

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. Tribes/Consortia should allow ample time for the proposed compact to be reviewed by OSG and SOL.

The proper title of the federal signature line of the compact is "Assistant Secretary – Indian Affairs." The federal signature line must not contain the name of an individual. This allows the Assistant Secretary – Indian Affairs to designate, if necessary, an authorized designee to sign the compact.

Negotiations to reach agreement on compact language should be scheduled as needed. One unsigned version of the compact as agreed to at the field negotiation will be routed through the Federal surname process. If issues are identified during the surname process, then negotiations may reconvene. If no issues are identified during the surname process, then the Tribe will be notified by OSG. The Tribe can then submit two originals to OSG. After the Tribe signs both originals of the final compact, the Assistant Secretary – Indian Affairs will sign the compact and OSG will return one original of the final signed compact to the Tribe.

OSG requests that changes or amendments to existing Compacts be delayed until after January 1, 2016, when the initial payments for 2016 funding agreements have been completed. If the Self-Governance Tribe/Consortium is not willing to delay changing the compact by amendment, please notify OSG as soon as possible. OSG will work with the Tribe/Consortium to establish a timeline for the amendment process.

## **B. Funding Agreements (FAs)**

A model funding agreement has been developed for Tribes. (See Attachment 5) Existing Self-Governance Tribes/Consortia may wish to review this model funding agreement to see if there are provisions for inclusion in their respective funding agreements. A copy of the model funding agreement is also on the OSG's web site (<http://64.58.34.34>). OSG requests that the Tribe/Consortium assume the responsibility for preparing the funding agreement and reprogramming request. Tribal employees may have access to the Self-Governance Data Base in a READ ONLY capacity without undergoing a background check. Tribal employee security clearance for accessing the Self-Governance Database funding agreement online component can be requested from the OSG Finance Office, phone: (202) 513-7707. In cases where the Tribal employee's security clearance for accessing the Self-Governance Database funding agreement online component has not been completed, the OSG Negotiator will prepare the reprogramming request.

When preparing the final funding agreement for signature, type in Director, Office of Self

Governance. Do not type in a specific name. Once final decisions have been reached, Tribes/Consortia should submit two signed original funding agreements, along with two signed original reprogramming requests as agreed to at the negotiation, to the OSG Compact Negotiator or the Regional Office for further processing.

### **C. Proposed Effective Date**

Section 403(f) of Title IV of Public Law 93-638, 25 USC § 458cc(f) provides that the Secretary shall submit a copy of a funding agreement no later than 90 days before the proposed effective date of the agreement to each Indian Tribe served by the Agency that is serving the tribe that is a party to the funding agreement; to the Committee on Indian Affairs of the Senate; and to the Subcommittee on Indian and Alaska Native Affairs of the Committee on Natural Resources of the House of Representatives. For annual funding agreements, the following language shall be included:

“Section (xxx) --- 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.]”

25 CFR § 1000.85 authorizes Tribes/Consortia to negotiate a funding agreement with a term that exceeds one year, i.e. a multi-year funding agreement. Multi-year funding agreements shall include the following language:

“Section (xxx) --- 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]. 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.”

### **D. Adjustments/Mistakes**

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

“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.”

### **E. Self-Governance 2016 Funding Agreement Annual Reprogramming Request Worksheet**

The key financial document to be completed at negotiations is the Self-Governance 2016 Funding Agreement – annual reprogramming request worksheet. The reprogramming request data entry table is available online via the Internet located on the OSG Website (<http://64.58.34.34>).

OSG Financial Management will pre-load 2016 Self-Governance base budget data into each Tribe’s/Consortium’s annual reprogramming request. Negotiated amounts will be entered into the annual reprogramming request via the Internet.

For Tribes/Consortia negotiating their first Self-Governance agreements, 2016 budget information will be provided prior to the negotiation by the BIA Regional Self-Governance Coordinator.

It is essential that all negotiation participants work from the same reprogramming request during negotiations and decisions are clearly documented in the reprogramming request. After negotiations are completed, those Tribal Self-Governance employees who are security cleared are encouraged to enter negotiation data on the online reprogramming request in coordination and notification with the OSG Compact Negotiator. Otherwise, the OSG Compact Negotiator will enter such data.

In order to properly verify and document the funding to be provided to the Tribe/Consortium in subsequent years of a multi-year funding agreement, it is necessary that a reprogramming request worksheet be completed and signed for each year of the multi-year funding agreement. For administrative and signatory purposes, subsequent year reprogramming request worksheets shall be incorporated into the multi-year funding agreement by an amendment which will be signed by the Tribe and the OSG Director. The Tribe/Consortium should provide a copy of completed documents to the OSG Negotiator and the BIA self-governance coordinator in advance of obtaining Tribal signatures.

### **F. Footnotes**

A footnote shall be written to cover every item where there is some uncertainty concerning the amount, unusual circumstance, or need for documentation about a program. For example, a footnote could identify the circumstances under which the amount could change. Typical examples include line items in the BIA budget which are formula driven, projects, or competitive programs where the Tribe may or may not receive an award or the amount to be awarded is not certain. Footnotes shall not be used to document disagreements or the Tribe’s and the Department’s differing

positions.

### **G. 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 funding agreements in 2016. Tribes/Consortia should provide to the OSG negotiator at the time of negotiations the tribal resolution being used to authorize the 2016 funding agreement.

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

The purpose of the Final Reports for Federal Negotiators (Attachment 6) is for the Federal Negotiators to attest that the language and numbers contained in the funding agreement and reprogramming request are those that were agreed to during the negotiations. Both the OSG Negotiator and the BIA self-governance coordinator 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 self-governance coordinator in advance of obtaining Tribal signatures.

Once the funding agreement with the Tribe's/Consortium's signature and the Final Report for Federal Negotiators are received in central office, a 7 to 10 day review period will likely be needed before the funding agreement is signed. There will also be a final report form for a negotiated TTP Addendum. See Attachment 6 for both of the Final Reports.

### **I. Incorporation of Title I Self-Determination Provisions**

25 USC 458cc (d), 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, OSG should receive advance notice as soon as possible with the precise wording and the specific citation regarding any provisions from Title I to be included in a funding agreement. Direct excerpts or citations from Title I will facilitate the negotiations. When selecting a Title I provision, any applicable qualifying and related language must be included.

It is recognized that Title I provisions and self-governance regulations may have superseded certain provisions of a Tribe's/Consortium's compact. The following footnote addresses this issue:

“To the extent that provisions in this Agreement conflict with the Compact, this Agreement shall apply.”

## **XI. Programs Requiring Special Attention**

### **A. Trust Programs**

#### 1. Real Estate Appraisal Services and Beneficiary Processes Program<sup>2</sup> Funds

The Real Estate Appraisal Services and Beneficiary Processes Programs are managed by the OST. Negotiations with Tribes/Consortia for these programs will involve OST participation 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 7 contains a template for an MOU for the Real Estate Appraisal Services Program. Attachment 8 contains a template for an MOU for the Beneficiary Processes Program. For more information, please contact the OST Office of External Affairs – Washington D.C. (202) 208-4317. The following footnote shall be used in cases where the Real Estate Appraisal Services or Beneficiary Processes Program are being operated by the Tribe/Consortium under its funding agreement:

“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.”

#### 2. Requirements for Tribes to Access DOI Information Technology Trust Systems

There are options with recommended language for training, employee security requirements for access to DOI information technology, and records management. In addition, information is provided for negotiating the Real Estate Appraisal Services Program or the Beneficiary Processes Program [Individual Indian Money (IIM)]. OST should be referenced in footnotes when the Tribe/Consortium is operating the Real Estate Appraisal Services or Beneficiary Processes Program.

#### Option 1 – Tribal Election to Access DOI Information Technology Trust Systems

##### i. Training

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<sup>2</sup> The Beneficiary Processes Program formerly was known as the Financial Trust Services Program.

The following language should be included:

“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].”

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

Tribal employees and employees of Tribal contractors must be favorably screened 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 inherently 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 [**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.”

#### Option 2 – Alternative Tribal Election Requirements to Access DOI Information Technology Trust Systems

The following language may be included:

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 [**SELECT**: Tribe OR Consortium] will continue to carry out BIA [**INSERT IF APPLICABLE**: or 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 their respective PSFAs]. The parties agree to renegotiate terms upon the completion of the development of the background investigation requirement policies for Tribal employees and their contractors.

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

#### Option 3 – Tribal Election Not to Access DOI Information Technology Trust Systems



## When a Tribe is not Operating any Trust Programs

Should a Tribe/Consortium choose not to use either of the above two options in its 2016 funding agreement, then the following disclaimer shall be included:

“The Department and the [**SELECT:** Tribe OR Consortium] mutually agree that for 2016, 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.”

### 3. Trust Records Management

The language regarding Trust Records Management to be negotiated into funding agreements was developed in consultation with Tribes and published at page 51801 of Volume 70 of the Federal Register on August 29, 2005. The purpose of the language is to specify the respective responsibilities of the Tribes and the Secretary with respect to trust record keeping for trust PSFAs included in funding agreements.

When a Tribe is operating a trust program(s) the following language shall be negotiated into the 2016 funding agreements which include PSFAs that create fiduciary Trust Records:

“The [**SELECT:** Tribe OR Consortium] and the Secretary agree to the following:

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

(a) preserve, protect and manage all fiduciary Trust Records, created and/or maintained 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 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 [**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 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 [SELECT: Tribe OR Consortium].

The Secretary agrees to:

(a) allow the [SELECT: Tribe OR Consortium] to determine what records it creates to 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] when the [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 single tribal storage and retrieval system for all fiduciary Trust Records stored at AIRR (No records will be accepted at AIRR until such a retrieval system exists); and

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

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

## **B. Programs Involving Contact With Children**

The following provision should be included in each funding agreement involving services, functions and activities where program staff has regular contact with or control over Indian 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.”

The Indian Child Protection and Family Violence Prevention Act requires the Bureau of Indian Affairs and Indian tribes and tribal organizations receiving funds under the authority of the Indian Self-Determination and Education Assistance Act or the Tribally Controlled Schools Act of 1988 to conduct background investigations for individuals whose duties and responsibilities would allow them regular contact with or control over Indian children (for example, JOM, ICWA, and Child Protective Services).

Some tribes perform their own background investigations and others use a private contractor, or work with a company that Indian Affairs Security has a contract with, Personnel Security Consultants (PSC). PSC is the conduit for tribes to obtain background investigations for their employees and employees of their contractors. However, the Criminal National Agency Check (CNAC) will only reflect information that is submitted to the FBI’s system.

### **C. Contract Support Costs**

Estimated funding amounts for Contract Support Costs may be shown in reprogramming requests.

“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. [The amount shown is an estimate.] Contract Support Costs funding shall be added to this Agreement as it becomes available.”

### **D. Welfare Assistance**

Implementation of the national distribution methodology will require all BIA and tribal welfare assistance programs to submit their welfare assistance reports in a timely manner as indicated in the 2016 Welfare Assistance Funding Distribution Methodology approved by the Assistant Secretary – Indian Affairs. A copy of the approved Distribution Methodology and associated Financial Assistance and Social Services Report (FASSR) and Narrative Report are posted in the file library of the OSG Website (<http://64.58.34.34>) for use by the Tribe. The FASSR and Narrative Reports are to be completed and electronically certified by the Tribe and sent to Ken Reinfeld at [Kenneth.Reinfeld@bia.gov](mailto:Kenneth.Reinfeld@bia.gov). The reports are required so BIA can determine whether the full need welfare assistance payment level can be made or some pro rata reduction is required. The timely submission of information is needed to avoid delaying the final national distribution and adversely impacting Tribal and Bureau welfare assistance

programs nationwide.

If the report is not submitted, the Tribe will not receive funding in the final distribution. Funding is dependent upon the submission and certification of the report.

For those Tribes/Consortia not operating under an approved Tribal Redesign Plan, if the Tribe/Consortium elects to include an estimate on the reprogramming request, the following footnote shall be used:

“The amount shown is an estimate. The actual amount to be provided is to be determined and distributed based upon welfare assistance need as determined by the national distribution methodology used by the BIA.”

For those Tribes/Consortia not operating under an approved Tribal Redesign Plan, if the Tribe/Consortium elects to omit the amount on the reprogramming request, the following footnote shall be used.

“The actual amount to be provided is to be determined and distributed based upon welfare assistance need as determined by the national distribution methodology used by the BIA.”

For Tribes/Consortia operating under an approved Tribal Redesign Plan, the following footnote shall be used:

“The [**SELECT:** Tribe OR Consortium] is operating a General Assistance program under an approved Tribal Redesign Plan and will receive a fixed negotiated amount of General Assistance program funding subject to a pro rata reduction needed to stay within any capped Welfare Assistance appropriation level enacted by Congress. The [**SELECT:** Tribe OR Consortium] may use savings from a redesign of the General Assistance program to meet other priorities. However, the [**SELECT:** Tribe OR Consortium] must meet any increase in the cost of the General Assistance program that results solely from tribally increased payment levels due to the Tribal Redesign Plan. Welfare assistance other than general assistance funds will be distributed based upon need as determined by the national distribution methodology used by the BIA.”

Tribes/Consortia operating under an approved Tribal Redesign Plan are urged to complete the Financial Assistance and Social Services Report and Narrative Report as previously indicated in this Section. This information is needed to assist the BIA in preparing budget formulation requests.

#### **E. Road Maintenance Funds:**

The BIA – Division of Transportation (DOT) has determined that Tribes eligible for BIA

Road Maintenance funds are those Tribes that have BIA owned roads that are currently included in the BIA Road Inventory Field Distribution System (RIFDS). The following language shall be used when the Tribe is eligible to receive road maintenance funds:

“When the Tribe is eligible to receive road maintenance funds, subject to appropriations, Bureau of Indian Affairs road maintenance funds will be distributed using the same formula as used last fiscal year.”

Tribes that receive Tribal Transportation Program funding pursuant to Title 23 are authorized to utilize TTP funds up to 25% under MAP-21 for the upkeep of these roads. This provision is subject to revision based on Congressional action.

#### **F. Law Enforcement:**

The FY 2016 President’s Budget Request to Congress for Law Enforcement funding includes Criminal Investigation/Police Services and Detention/Corrections program funding in separate Public Safety and Justice line items. These program funds are intended for Criminal Investigation/Police Services programs and Detention/Corrections programs only. Funds from these Public Safety and Justice line items will be transferred by the BIA Office of Justice Services (OJS) to the OSG for distribution to Self-Governance Tribes. The amount of funds transferred for each Tribe/Consortium will be determined by BIA OJS. The following footnote provision for these programs shall be used:

“Any new eligible Law Enforcement program funding will be determined and added to the funding agreement based on a determination by BIA OJS.”

Consistent with the findings contained in the Inspector General’s Report, Tribes are encouraged to report serious incidents in the Law Enforcement and Detention/Corrections fields through the OJS chain of command.

Law Enforcement base amounts for Criminal Investigation/Police Services and Detention/Corrections are included in the FY 2016 President’s Budget Request to Congress. These amounts should be included in column D of the annual reprogramming request and described as estimates. They are subject to Congressional appropriation, and include the actual amount of the previous year’s recurring Criminal Investigation/Police Services program funding received by the Tribe/Consortium.

However, in some instances, non-recurring funding that may have been included in recurring funding program lines should not be included as part of the estimated amount. An approved list of Law Enforcement programs and recurring funding estimates to be included in the 2016 funding agreements will be available for negotiations.

Those Tribes receiving Criminal Investigation/Police Services funding are required to

provide monthly crime reports pursuant to 25 CFR § 12.41. For those tribes, the following footnote provisions shall be used:

“The Tribe agrees to provide monthly uniform crime data reports pursuant to 25 CFR § 12.41. The monthly reports are due by the 5<sup>th</sup> of each month and shall be submitted to the BIA District Office in the Tribe’s area.”

OSG Negotiators are encouraged to remind Tribes that it is important to provide monthly crime data reports to OJS for purposes of ensuring eligibility for any possible funding increases.

OSG Negotiators will notify OJS district representatives so that they may participate in negotiations when Tribes are receiving OJS funds.

Funding for the Conservation Law Enforcement Officers (CLEO) program is included in the FY 2016 President’s Budget Request to Congress under Criminal Investigations/Police Services.

**G. Indian Employment Training and Related Services Demonstration Project (P.L. 102-477), 25 U.S.C. § 3401 et seq.**

A funding agreement that includes P.L. 102-477 funds shall include a section with the following language:

“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:

- i. 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.
- ii. 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.
- iii. 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.)”

The following language should be included in calendar year agreements to insure that non-DOI P.L. 102-477 fiscal year funds received by the BIA are awarded without regard to the status of a calendar year funding 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.”

Estimates of the funding amounts to be provided by non-DOI agencies may be included in Column D of the appropriate line item in the reprogramming request. The following footnote shall be used when an estimate is included:

“Funding for this line item shall be provided by OSG to the [SELECT: Tribe OR Consortium] when it is transferred by [INSERT: name of the appropriate Federal Agency] pursuant to an approved P.L. 102-477 Plan for inclusion in the [SELECT: Tribe’s OR Consortium’s] Self-Governance funding agreement. The amount included is a funding estimate. The actual amount will be based upon funding levels provided by [INSERT: name of the appropriate Federal Agency].”

The following language shall be used when an estimate of the non-DOI agency funding amount is not included:

“Funding for this line item shall be provided by OSG to the [SELECT: Tribe OR Consortium] when it is transferred by [INSERT: name of the appropriate Federal Agency] pursuant to an approved P.L. 102-477 Plan for inclusion in the [SELECT: Tribe’s OR Consortium’s] Self-Governance funding agreement. The actual amount will be based upon funding levels provided by [INSERT: name of the appropriate Federal Agency].”

#### **H. Construction, Wildland Fire Preparedness, Wildland Fire Prevention and Non-Recurring Projects**

Footnotes that identify the basis for the award and the estimated amount at the time of negotiations shall be used for Construction, Wildland Fire Preparedness, Wildland Fire Prevention and Non-Recurring projects amounts where there is a degree of uncertainty in the amount of funds to be made available. In these instances, the following footnote shall be used when an estimate of the amount of funds to be made available is included in the reprogramming request Worksheet:

“The amount identified is the best estimate at the time of negotiation and is subject to adjustment based on actual award, selection of project, or distribution methodology used by the BIA provided Self-Governance Tribes, other Tribes, and BIA agencies are treated similarly. Funding for non-recurring Programs, Services, Functions, and Activities can only be provided on a one-time-only basis for this year and are not guaranteed to be funded in subsequent years.”

The following footnote shall be used when an estimate of the amount of funds to be made available is not included in the reprogramming request Worksheet:

“The amount to be provided is based on actual award, selection of project, or distribution methodology used by the BIA provided Self-Governance Tribes, other Tribes, and BIA agencies are treated similarly. Funding for non-recurring Programs, Services, Functions, and Activities (PSFAs) can only be provided on a one-time-only basis for this year and such PSFAs are not guaranteed to be funded in subsequent years.”

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 year(s). In accordance with 25 CFR 1000.105 non-recurring program funds, construction and Wildland Fire Preparedness funds, Wildland Fire Prevention funds, Congressional earmarks, one-time project funds, funds with restrictive conditions, other funds specifically excluded by Congress and funds that are not in the OIP accounts cannot be base transferred to SG base budgets.

Wildland Fire Preparedness Program funding and Wildland Fire Prevention Program funding are both non-recurring and subject to adjustment based on actual award or distribution methodology used by the BIA. Wildland Fire Preparedness and Wildland Fire Prevention Program Management – Indirect (Indirect cost for Wildland Fire Preparedness) are separate line items on the reprogramming request and need to be identified separately from contract support cost needs for Tribal Priority Allocation and other Operation of Indian Programs appropriation accounts. The following footnote shall be added for this line item when an estimate of the Indirect Cost for Wildland Fire Preparedness is included in the reprogramming request Worksheet:

“The amount shown is an estimate of the Indirect Cost funding to be provided for Wildland Fire Preparedness. The actual amount will be determined at the current negotiated tribal indirect cost rate or other approved indirect cost methodology.”

The following footnote shall be added when an estimate for the Indirect Cost for Wildland Fire Preparedness is not included in the reprogramming request worksheet:

“The actual amount of the Indirect Cost funding to be provided for Wildland Fire



Preparedness will be determined at the current negotiated Tribal Indirect Cost Rate or other approved indirect cost 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 12.

## **I. Tribal Transportation Program (TTP)**

Provisions in this Section are subject to revision based on Congressional action. Current authorization of MAP-21 expires on May 31, 2015. Operation of the TTP beginning October 1, 2015, will require the enactment of an extension of authority. In order to be valid, the program Addendum must conform to the authorization statute that subsequently governs. Estimates of TTP and TTP Planning amounts are not to be included in 2016 reprogramming requests due to the uncertainty of the funding formula in the authorizing and appropriation statutes.

The following language shall be used for Tribal Transportation Program footnotes in the reprogramming request:

“The Tribal Transportation Program (TTP) will be operated under this Self-Governance funding agreement. A transportation Amendment and Addendum will be attached and incorporated into the funding agreement when either the MAP 21 TTP statute is extended or new authorizing legislation is enacted. The amount of funding to be provided for the program will be based upon the authorizing and appropriation statutes.”

The following language shall be used for TTP footnotes in the reprogramming request:

“The Tribal Transportation Planning Program is being operated by the [**SELECT**: Tribe OR Consortium] under its Self-Governance funding agreement in [**SELECT**: FY 2016 OR CY 2016]. The amount of funding to be provided will be based upon the authorizing and appropriation statutes.”

The Tribal Transportation Planning Program PSFAs may be included in the funding agreement without a TTP addendum.

The following language shall be used when a Tribe/Consortium decides to receive its TTP funding directly from the Federal Highway Administration during FY 2016/CY 2016:

“The [**SELECT**: Tribe or Consortium] has elected to receive Tribal Transportation Program funding directly from the Federal Highway Administration during [**SELECT**: FY 2016 OR CY 2016]. Project work or activities funded by [**SELECT**: FY OR CY] 2015 or prior years continue to be coordinated through the Office of

Self Governance and Bureau of Indian Affairs and carried out in accordance with the Self-Governance Funding Agreement and [SELECT: IRR OR TTP OR IRR and/or TTP] Addendum in place when the funds were received by the [SELECT: Tribe OR Consortium] until such time that the funds are completely expended and the project work and activities are accepted by the signatory parties.”

The BIA Division of Transportation has agreed to provide the Federal Highway Administration (FHWA) with the information it needs on the obligations and expenditures for the Road Construction work accomplished by Self-Governance Tribes/Consortium. As a result, Self-Governance Tribes/Consortia will not be required to provide the Office of Self Governance with an annual financial status report of its Road Construction activity. The BIA Division of Transportation may seek such information directly from self-governance tribes. Tribes can send such information to the BIA Regional Road Engineers.

#### **J. Consortium Breakout of Participating Tribes' Shares**

To provide clarification when negotiating agreements, providing funding, and responding to inquiries, each Alaskan Consortium shall include a Tribe-by-Tribe breakout of all negotiated shares included in the funding agreement. (See attachment A & B models on the OSG website: <http://64.58.34.34>.)

#### **K. Housing Improvement Program (HIP)**

The FY 2016 President’s budget request to Congress proposes to include the Housing Improvement Program. The following footnote shall be used:

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

#### **L. Motor Vehicle Operation Policy**

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

“The [SELECT: Tribe OR Consortium] certifies that it will self-administer a motor vehicle operation policy that promotes the safe and prudent operations of motor vehicles while performing duties to implement the terms of the Agreement. The [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.”

Pursuant to Executive Order 13513, negotiators shall give Tribes/Consortia a copy of Executive Order 13513 and shall encourage Tribes/Consortia to adopt their own policies about texting while driving and to educate their employees and contractors about texting while driving. Tribes/Consortia may elect to include compliance with Executive Order 13513 which includes texting while driving and include such reference in the funding agreement. The purpose of including a Motor Vehicle Operation Policy in the funding agreement is to better prepare to defend a tort action in the event that it becomes necessary.

A copy of the Motor Vehicle Operation Policy for the BIA is included in Attachment 13. In those instances where a Tribe declines to include this Motor Vehicle Operation Policy language in the funding agreement, the federal negotiator is to document the declination with a Memo to the File.

### **M. Single Audit Copies**

The OSG negotiator shall advise the Tribe that extensions of the date, by which single audits must be filed can no longer be granted pursuant to a Department directive. Audits that are late will be subject to sanction.

The following footnote shall be included in the funding agreement.

“In addition to the required copy to the Federal Audit Clearing House, the **[SELECT: Tribe OR Consortium]** is required by 25 USC § 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](mailto:OIEA@BIA.GOV).”

As part of an effort to reform and strengthen Federal grant making, the Office of Management and Budget (OMB) published new guidance on December 26, 2013, for Federal award programs, OMB Uniform Guidance, Administrative Requirements for Federal Awards, commonly referred to as the Omni Circular, codified at 2 C.F.R. Parts 200, 215, 220, 225, and 230. The new guidance is being implemented as of December 26, 2014.

### **XII. 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 to be sent to the Compact Negotiator or the BIA Regional Office:

- A. Two signed, original funding agreements;
- B. Two signed, original funding agreement reprogramming request worksheets;
- C. Two copies of authorizing Tribal resolution(s) as needed;
- D. Two copies of attachments (MOAs, Tribal breakouts, (“Attachment A” and “Attachment B” for Alaska Consortia), footnotes, etc.);
- E. Two copies of TTP original addendum.

If one set of signed originals is submitted by a Tribe/Consortium, that set will be retained by OSG and a copy will be provided to the Tribe/Consortium for their records.

BIA Regional Directors should prepare the following items for the final negotiation packets, using the current Attachment 6 in this Guidance:

- A. Final Report Form for Federal Negotiators (provided by and signed and dated by BIA Regional Director and OSG negotiator).
- B. Final Report Form for TTP (provided by and signed and dated by BIA Regional Director, Regional Roads Administrator and OSG Negotiator) if TTP is being included in the funding agreement.

# List of Attachments

- Attachment 1: Self-Governance Negotiations Process Checklist**
- Attachment 2: List of BIA Regional Office GPRA Contacts**
- Attachment 3: List of BIA Climate Control Points of Contact**
- Attachment 4: Reporting Requests**
- Attachment 5: Model Annual Funding Agreement**
- Attachment 6: Final Reports for Federal Negotiators**
- Attachment 7: MOU Template for the Real Estate Appraisal Services Program**
- Attachment 8: MOU Template for the Beneficiary Processes Program**
- Attachment 9: Process for Negotiating TTP Program into Funding Agreement (Subject to Revision Based on Congressional Action)**
- Attachment 10: TTP Templates for Self-Governance Tribes and Consortia (2 Documents) (Subject to Revision Based on Congressional Action)**
- Attachment 11: Memorialization of Matters Remaining in Dispute**
- Attachment 12: Guidelines for Tribally Operated Wildland Fire Management Programs, April 6, 2001 Memorandum from the Deputy Commissioner of Indian Affairs**
- Attachment 13: Motor Vehicle Operation Policy for the BIA**

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	Tribe/Consortia to Regional Director & OSG			
Scheduling of Negotiations	OSG, BIA, BIE, OIEED, OJS, OST, SOL & Tribe/Consortium	OSG, BIA, BIE, OIEED, OJS, OST, SOL & Tribe/Consortium		

**Negotiations Process**

Pre-Negotiations	Tribe/Consortium, BIA, BIE, OJS, and OSG, SOL	Optional		
Preload Budget Data (Tribal Specific - AFA Online Report)	OSG Washington, D.C.	OSG Washington, D.C.		
Compact	OSG, SOL, BIA, and Tribe/Consortium			
Compact Amendments		OSG, SOL, BIA, and Tribe/Consortium		
Annual or Multi-Year Funding Agreement	OSG, BIA, SOL and Tribe/Consortium	OSG, BIA, SOL and Tribe/Consortium		
Reprogramming request Worksheet - AFA Online Report	OSG, BIA, SOL and Tribe/Consortium	OSG, BIA, SOL and Tribe/Consortium		
Resolution(s) Authorizing Compact & Agreements	Tribe/Consortium	Tribe/Consortium		

**Tribal Signatures on Two Sets of Original Documents**

Compact	Tribe/Consortium			
Compact Amendments		Tribe/Consortium		
Annual or Multi-Year Funding Agreement	Tribe/Consortium	Tribe/Consortium		
Reprogramming request Worksheet	Tribe/Consortium	Tribe/Consortium		

**Final Report on Negotiations - Federal Signatures**

BIA Regional Director	Regional Office	Regional Office		
Regional BIE Administrator (if necessary)	Regional Office	Regional Office		
District OJS Line Officers (if necessary)	District Office	District Office		
OSG Negotiator	OSG Washington, D.C. or OSG NWFO	OSG Washington, D.C. or OSG NWFO		
Director, Bureau of Indian Affairs	Central Office	Central Office		
Director, OSG	OSG Washington, D.C.	OSG Washington, D.C.		
Director, BIE (if necessary)	Central Office	Central Office		
Deputy Director, OJS (if necessary)	Central Office	Central Office		

**Final Documents - Federal Signatures**

Compact	Assistant Secretary - Indian Affairs			
Compact Amendments		Assistant Secretary - Indian Affairs		
Funding Agreement	Director - Office of Self Governance	Director - Office of Self Governance		
Reprogramming request Worksheet	Regional Budget Officer and OSG Negotiator	Regional Budget Officer and OSG Negotiator		

**Distribution of Signed Documents**

Signed Originals to:	Tribe/Consortium and OSG	Tribe/Consortium and OSG		
Copies of Originals to:	BIA Regional Office, OSG/NWFO, House and Senate Committees, and other Tribes in BIA	BIA Regional Office, OSG/NWFO, House and Senate Committees, and other Tribes in BIA		

**ATTACHMENT 2****BIA Regional Office GPRA Coordinators**

REGION	CONTACT	PHONE NUMBER
Alaska (E00100)	Keith Kahklen Cyril Andrews	(907) 586 7618 (907) 271-1553
Eastern (S00100)	Eric Wilcox	(615) 564 - 6712
Eastern Oklahoma (G00100)	Diane Buck	(918) 781 - 4647
Great Plains (A00100)	Denise (Bruce) Hart	(605) 226 - 7343
Midwest (F00100)	Darren Smith	(612) 725 - 4530
Navajo (N00100)	Karen Zajicek	(505) 863-8486
Northwest (P00100)	Michele Hensel	(503) 231- 6790
Pacific (J00100)	Travis Britton Harley Long	(916) 978 - 6167 (530) 246 - 5167
Rocky Mountain (C00100)	Jo Ellen Cree	(406) 247 - 7964
Southern Plains (B00100)	Rose Roberson Rolanda Talley	(405) 247 - 6673 x273 (405) 247 - 1540
Southwest (M00100)	Lolita Crespin Esther Lopez	(505) 563 - 3103 (505) 563 - 3614
Western (H00100)	Nancy Jones	(602) 379 - 3083

**BIA CLIMATE CHANGE POINTS OF CONTACT**

**Central Office**

**Sean J. Hart**  
**BIA Climate Change Coordinator**  
**1849 C Street, NW, MIB 4635**  
**Washington, DC 20240**  
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**Cell: (202) 809-2070**  
**E-Mail: [Sean.Hart@bia.gov](mailto:Sean.Hart@bia.gov)**

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**Eastern Region**

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**Nashville, Tennessee 37214**  
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**Fax: (615) 564-6701**  
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## **Rocky Mountain Region**

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## **Southern Plains Region**

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## **Southwest Region**

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## **Western Region**

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## ATTACHMENT 4

Expected Data/Information Request	Requesting Entity	Estimated Request Date	Basis for Request
A. Report on 2015 status of Indian forest lands on attaining standards, goals and objectives set forth in approved forest management plans*	BIA Regional Director	October 2015	Report to Congress and tribes on status of Indian forest lands per 25 C.F.R. §163.82
B. Information for contract support costs report to Congress	OSG Director	October 2015	Implement 25 U.S.C §450j-1(c)
C. Information contained in a single report format from tribes participating in the Indian Employment, Training and Related Services Demonstration Project (P.L. 102-477)	Division of Workforce Development OIEED	January 2016	Determine Tribal compliance with statutory and regulatory requirements in a Tribe's approved P.L. 102-477 plan per 25 U.S.C. §3410
D. Information to be used in the formulation of the BIA FY 2017 budget	Assistant Secretary for Indian Affairs	February 2016	Implement guidance from OMB and Assistant Secretary for Policy, Management and Budget
E. Updated roads inventory information for Road Inventory Field Data System to determine 2015 Tribal Transportation Program funding distribution	BIA Regional Director	February 2015	Implement BIA national distribution methodology per Final Rule Published in Federal Register
F. Information on 2016 crime reported in Indian country*	BIA District Special Agent In Charge Office of Justice Services	Monthly	Maintain criminal justice information system for Indian country per 25 C.F.R. §12.41
G. Information on 2016 tribal enrollment, service population, and labor force information.	Office of Assistant Secretary – Indian Affairs	February 2016	Implement 25 U.S.C. § 3416
H. Information on 2015 tribal self-governance activity to attach to the Secretary's Tribal Self-Governance 2015 Annual Report to Congress	OSG Director	February 2016	Implement 25 U.S.C. § 458ee and 25 CFR §1000.381
I. Financial Assistance and Social Services Report to determine 2016 welfare assistance funding distribution and service only caseload	BIA Office of Indian Services	January 2016	Implement BIA national distribution methodology
J. Information to determine the amount of 2016 Public Law 93- 638 pay cost funding distribution	BIA Regional Director	May 2016	Implement BIA national distribution methodology
K. Real Estate information for 2016 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. § §1115-1116
L. Irrigation and Safety of Dams Construction Project Quarterly Status Report for 2016	BIA Regional Director	Quarterly and Project Completion	Resolve current and avoid future material weaknesses in BIA Audited Financial Statements
M. Information needed to compete and/or apply for 2016 non-recurring program funding to be provided to the Tribe/Consortium	BIA Regional Director	Periodically Throughout the Year	Implement national BIA distribution methodologies per program funding announcements
N. Indian Child Welfare Act statistical and narrative program performance reports and Standard Form 425 Events between scheduled reporting dates that have significant impact on Indian Child Welfare Act activity.	BIA Regional Director	Quarterly and Annual As soon as problems, delays, adverse conditions, or serious conditions giving rise to liability become known.	As required by 25 C.F.R. § 23.47 (a)-(c) As required by 25 C.F.R. § 23.47 (d)
O. Child Abuse and Neglect statistical reports and related information*	BIA Regional Director & BIA OJS District Commander	As Incidents are Reported	Maintain child abuse and neglect information per 25 U.S.C. § 2434
P. Program performance information to measure 2016 program performance management	BIA Regional Director	Concurrent with Reporting to Law Enforcement or Social Services Agency	Implement BIA program performance management activities per GPRA, including 5 U.S.C. § 306 & 31 U.S.C. §§ 1115-1116

Expected Data/Information Request	Requesting Entity	Estimated Request Date	Basis for Request
Q. TTP program performance information (subject to revision based on Congressional action)	BIA – DOT	Ongoing	Implement TTP program performance management activities per GPRA, including 5 U.S.C. § 306 & 31 U.S.C. §§ 1115-1116
R. TTP financial status report	BIA Regional Director	Within 90 calendar days after the end of the operating year	As required by 23 U.S.C. § 1119(c)(6)(A)
S. Appraisal log and backlog information for Real Estate Appraisal Services Program	OST Office of Appraisal Services	Appraisal Log June 2016 Backlog Quarterly	Negotiated Memorandum of Understanding

\*Information may also be included in a Self-Governance minimum data collection form to be used by Self-Governance Tribes to report 2015 Tribal Self-Governance activity to attach to the Secretary's Tribal Self-Governance 2015 Annual Report to Congress.

MODEL

ANNUAL FUNDING AGREEMENT FOR 2016

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 [INSERT NAME OF 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 (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  
Tribal Transportation Program (Subject to Revision Based on Congressional Action)  
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 fiscal year 2016.

## **Section 6**

**Contract Support Costs** – Subject to applicable federal laws, the Tribe is eligible for Contract Support funding on the same basis as Tribes which contract with the BIA under P.L. 93-638. Contract Support Cost 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

**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.

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 2016, 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 the Secretary agree to the following:

The [SELECT: Tribe OR Consortium] agrees to:

(a) preserve, protect and manage all fiduciary Trust Records, created and/or maintained 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 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 **[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 creates to 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]** when the **[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 single tribal storage and retrieval system for all

fiduciary Trust Records stored at AIRR (No records will be accepted at AIRR until such a retrieval system exists); and

(d) provide technical assistance for [**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 Coordinator to 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:

- i. 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.
- ii. 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.
- iii. 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



**FEDERAL NEGOTIATING TEAM**

_____	<b>Date</b>	<b>BIA Regional Director</b>	_____
_____	<b>Date</b>	<b>OSG Negotiator</b>	_____
_____	<b>Date</b>	<b>Regional Education Program Administrator (If Necessary)</b>	_____
_____	<b>Date</b>	<b>District Law Enforcement and Corrections Officials (If Necessary)</b>	_____

**FINAL REPORT  
[NAME OF TRIBE/CONSORTIUM]  
2016 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 2016 funding agreement.

_____	<b>Date</b>	_____	<b>Director, Bureau of Indian Affairs</b>
_____	<b>Date</b>	_____	<b>Director, Office of Self Governance</b>
_____	<b>Date</b>	_____	<b>Director, Bureau of Indian Education (If Necessary)</b>
_____	<b>Date</b>	_____	<b>Deputy Director, Office of Justice Services (If Necessary)</b>

(Subject to Revision Based on Congressional Action)  
FEDERAL NEGOTIATING TEAM

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

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

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

FINAL REPORT  
[NAME OF TRIBE/CONSORTIUM]  
TRIBAL TRANSPORTATION PROGRAM ADDENDUM  
2016 NEGOTIATIONS

We hereby attest that the provisions in the attached Tribal Transportation Program Addendum are those which were negotiated at sessions involving federal and tribal representatives as part of the Tribal Self-Governance negotiations for 2016 agreements.

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

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

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

# DRAFT TEMPLATE – 2016 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 2016

### I. 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 a compact initiated under Title IV of the Indian Self-Determination and Education Assistance Act (P.L. 93-638), as amended.

### II. PURPOSE

The purpose of this MOU is to detail the coordination, implementation, duties and responsibilities of each party for the Tribe's operation of the OST Real Estate Appraisal Program for Calendar Year (CY) or Fiscal Year (FY) 2016. Pursuant to the CY or FY 2016 Annual Funding Agreement (AFA) or Multi-Year Funding Agreement (MYFA), this MOU is an attachment to the CY or FY 2016 AFA or MYFA and is incorporated into and made a part of the CY or FY 2016 AFA 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 subsequent years and remain in effect 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, written by a state-certified general contract appraiser, is reviewed and approved by the OST-OAS RSA, the RSA will obtain from the contract appraiser three (3) approved original appraisal reports with original signatures, which will include a copy of the appraisal request in each 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 RSA as an “Appraisal Report” pursuant to SR 2-2(a) or a “Restricted Appraisal Report” pursuant to SR 2-2(b) that will be accompanied with the appraisal work file. 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 alternative methodologies include, but are not limited to, Restricted Use Reports when used as part of a 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 of Appraiser 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 the tribal appraisal report past due information on a fiscal year quarterly basis on: January 15, April 15, July 15, and October 15, during this current fiscal year and 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 Tribe shall 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 Tribe is conducting 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 fee 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 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. Such transactions requiring appraisals are limited to: negotiated sales, advertised sales, leases, home site or residential leases, gift deeds, subdivisions and partitions, property exchanges, damage estimates for trespass settlements, various types of easements and rights-of-way, special use permits, removal of restrictions, certificate of competency, or fee patents.
- 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 examples are 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 election records

- ii) Make available to the Secretary of the Interior (Secretary) all IFTR 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 records without tribal approval.
- iii) Store and permanently retain all inactive 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); and if applicable:

**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; or

**B.)** Allow such records to be returned back to the custody of the OST-OAS to be transferred, treated as Federal Records, and stored at the AIRR in Lenexa by entering into an agreement with OST-OAS for the purposes of transferring legal custody of the Tribe's IFTR back to the Federal government, provided that the Tribe wishes to relinquish legal custody of IFTR for storage at the AIRR.

**iv)** Return all active and inactive IFTR 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 Appraisal Program shall be treated as Federal Records.

**v)** 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 OST-OAS 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 Tribe agrees that its employees and employees of its contractors must undergo the appropriate clearance as determined by the position sensitivity rating process, but at a minimum, a National Agency Check with Inquiries and Credit Check (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's employees 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 Tribe agrees 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 Tribe will 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's employees must successfully complete the Federal Information System Security Awareness training (and complete annually thereafter to 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**

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

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

## **10. Single Audit Act 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 Tribe of training provided or hosted by OAS, related to management of the Tribe's appraisal 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 do the following:
- 1.** If Tribe's appraisal report did not require changes or corrections, the RSA will obtain three (3) additional original appraisal reports with original signatures; and will submit two (2) appraisal reports, two (2) review reports, and two (2) appraisal requests for each report to the BIA Superintendent and/or designee for processing.
  - 2.** If the Tribe's appraisal report required changes or corrections, the RSA will obtain three (3) original appraisal reports of the final approved appraisal report with original signatures; and will submit two (2) appraisal reports, two (2) review reports, and two (2) appraisal requests for each report to the BIA Superintendent and/or designee for processing.
- 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.** Once the appraisal report is reviewed and approved, the OST-OAS RSA will provide the appraisal report and review report to the appropriate tribal official, BIA Superintendent and/or designee.

**F. 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 statement-of-work 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. Statements-of-work may be coordinated with the third party, but ultimate responsibility for the document remains with OAS;
  - b.** The third party consults with the OST-OAS RSA prior to the initiation of the appraisal on the statement of work for the appraisal, and on a list of recommended fee 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 general appraiser, competent to appraise the subject property at issue, and meets applicable appraisal standards for the intended use of the appraisal.

**G.** 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 2015, 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 \_\_\_\_\_, 2015, and will become effective on October 1, 2015, (if FY tribe) or January 1, 2016 (if CY tribe), and remain in effect unless modified and such modification is agreed to in writing by the parties.

### **TRIBE**

\_\_\_\_\_  
Designated Tribal Official's signature

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Title

Date

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

---

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

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Print Name

---

Date

# DRAFT TEMPLATE - 2016 OST SELF- GOVERNANCE BENEFICIARY PROCESSES PROGRAM MOU

## MEMORANDUM OF UNDERSTANDING BETWEEN THE \_\_\_\_\_ TRIBE AND THE DEPARTMENT OF THE INTERIOR OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS FOR BENEFICIARY PROCESSES PROGRAM CALENDAR YEAR OR FISCAL YEAR 2016

### I. 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 a compact initiated under Title IV of the Indian Self-Determination and Education Assistance Act (P.L. 93-638), as amended.

### II. PURPOSE

The purpose of this MOU is to detail the coordination, implementation, duties and responsibilities of each party for the Tribe's operation of the OST Beneficiary Processes Program (BPP) for the designated Calendar Year (CY) or Fiscal Year (FY) 2016. Pursuant to the CY or FY 2016 Annual Funding Agreement (AFA) or Multi-Year Funding Agreement (MYFA), this MOU is an attachment to the CY or FY 2016 AFA or MYFA and is incorporated into and made a part of the CY or FY 2016 AFA or MYFA as if set out in full in the AFA or MYFA.

This MOU shall be incorporated as an addendum agreement to the AFA or MYFA 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 BPP FUNCTIONS

#### A. Program Guidance

All BPP functions will be performed and all transactions will be processed in accordance with applicable laws and regulations, as well as OST policies and procedures, directives, the Bureau of Indian Affairs (BIA) - OST Interagency Handbook and Desk Operating Procedures Manual.

**B. The Tribe agrees to:**

- 1. Assume the OST functions for receipting, disbursing and account maintenance for trust accounts;**
  - a. Transmit all necessary data to OST such that OST can create the beneficiary Statements of Performance in accordance with the requirements of the American Indian Trust Fund Management Reform Act of 1994;**
  - b. Not to include Tribal Trust accounts in the Tribe's execution of the BPP function;**
  - c. To process to the Solicitor's Office, Power of Attorney documents for review/determination by the Solicitor's Office;**
  - d. Comply with OST requirements and processes for Indian trust account updates;**
  - e. Coordinate with your BIA agency's respective OST Fiduciary Trust Officer (FTO) regarding the disposition of Suspense Collections Account and Limited Pay processes; and**
  - f. Coordinate with your BIA agency's Fiduciary Trust Officer regarding account clean-up and clearing items from the discrepancy/anomaly reports.**
- 2. Provide effective customer friendly services to all beneficiaries;**
- 3. Record all beneficiary contacts (walk-in, faxes, mail and phone calls) utilizing Service Center software;**
- 4. Utilize OST accounting system databases available for processing receipting, disbursing and account maintenance of Indian trust funds;**
- 5. Package documents for the FTO in support of receipting, disbursing and account maintenance as required to process within established timeframes;**
- 6. Take appropriate action, within established timeframes, to resolve any rejected transactions;**
- 7. Abide by the Privacy Act as it relates to the release of financial trust information understanding that such compliance is mandatory; and**

8. Avoid potential, as well as actual, conflicts of interest and to not process transactions involving relatives to avoid the appearance of impropriety.

### **C. Reporting**

The Tribe agrees to:

1. Forward all BPP-related Freedom of Information Act of 1966, as amended, (P.L. 89-544) [FOIA] requests to the OST FOIA Officer. The Tribe can directly coordinate with OST's FOIA Officer to process FOIA requests; and
2. Work with the FTO to identify and provide applicable data and information pursuant to the Government Performance and Results Act (GPRA) of 1993 (P.L. 103-62) and the Government Performance and Results Modernization Act of 2010 (P.L. 111-352).

### **D. OMB Circulars**

The Tribe agrees to comply with OMB circulars and revisions, pursuant to 25 C.F.R. section 1000.395, except for:

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

### **E. Records Management**

1. The Tribe agrees to:
  - a. 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 BPP.

*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 examples are 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

- b. Make available to the Secretary of the Interior (Secretary) all IFTR 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.
- c. Store and permanently retain all inactive 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); and, as applicable,
  - i. allow such records to be returned back to the custody of the BPP to be transferred, treated as Federal Records, and stored at the AIRR in Lenexa by entering into an agreement with BPP for the purposes of transferring legal custody of the Tribe's IFTR back to the Federal government, provided that the Tribe wishes to relinquish legal custody of IFTR for storage at the AIRR, or
  - ii. 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.
- d. Return all active and inactive IFTR to the Secretary in the event the Tribe retrocedes the Beneficiary Processes Program, or in the event the Secretary reassumes operations of the BPP. Records returned to the custody of the BPP shall be treated as Federal Records.
- e. Attend OST and/or BIA records management training.

**2. The Secretary agrees to:**

- a. 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;
- b. 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;
- c. 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 BPP for storage. The records will then be treated as Federal records;
- d. Manage a single tribal storage and retrieval system for all tribal fiduciary trust records stored at AIRR;
- e. Provide technical assistance and records management training for the Tribe to preserve, protect and manage its IFTR from available funds appropriated for this purpose.

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

Any computer hardware, including printers and software required to access OST systems shall be provided by OST.

**G. System Security Access**

**1. Security Requirements for Access to DOI IT Systems**

- a. Prior to being granted access to DOI IT systems and DOI IFTR in any electronic data or hardcopy format, the Tribe agrees that its employees and employees of its contractors must undergo the appropriate clearance as determined by the position sensitivity rating process but, at a minimum, a National Agency Check with Inquiries and Credit Check (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's employees and employees of its contractors must also successfully undergo a Personal Identity Verification process prior to being granted access to DOI IT systems. OST will incur any Personal Identity Verification costs.

- b.** 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 guidance.
- c.** The Tribe agrees 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 BPP, the Tribe also agrees to notify the OST at [OST\\_security@ost.doi.gov](mailto:OST_security@ost.doi.gov), within 24 hours of discovery of the incident.
- d.** The Tribe will 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.

## **2. Training**

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

## **H. General**

The Tribe agrees to:

- 1.** Attend OST or BIA training, workgroups, IT records management training and other training sessions to maintain current knowledge of trust funds systems and services.
- 2.** Establish and/or maintain appropriate management controls, including maintaining:
  - a.** An adequate system of internal controls in accordance with 25 C.F.R. Part 900, Subpart F, Standards for Tribal or Tribal organization management systems.

3. Work in partnership with OST on financial audit issues including the implementation of corrective actions.

#### **I. Single Audit Act Audit**

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

### **IV. OST DUTIES AND RESPONSIBILITIES**

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

OST agrees to:

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

#### **B. Reporting**

Make available all necessary reports to complete the BPP function.

#### **C. IT Including Software and Hardware Necessary to Access OST Systems**

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

#### **D. System Security Access**

1. The Office of Information Resources shall process and maintain requests for systems access or revocation.
2. The Office of Information Resources shall be responsible for equipment software maintenance for Government furnished equipment.

#### **E. General**

1. OST agrees to:
  - a. Provide technical assistance in relation to the BPP;
  - b. Provide technical assistance with risk management efforts upon request;
  - c. Make available training required for operating the BPP
  
2. Primary OST oversight and monitoring will be performed through review of electronic transactions in the systems, review of documents and packages presented for approval and encoding, analysis of reconciliation provided by the Tribe, internal reconciliation performed at OST and results from ITE's. The Tribe will be notified of any findings requiring corrective action or other resolution.
  
3. OST will work in partnership with the Tribe on financial audit issues, including implementation of corrective actions.

**V. SIGNATURES**

The foregoing is hereby agreed to as stated on this \_\_\_\_\_ day of \_\_\_\_\_, **2015**, and will become effective on **October 1, 2015**, (if FY tribe) or **January 1, 2016** (if CY tribe), and remain in effect unless modified and such modification is agreed to in writing by the parties.

**TRIBE**

\_\_\_\_\_   
 Designated Tribal Official's signature

\_\_\_\_\_   
 Print name

\_\_\_\_\_   
 Title

\_\_\_\_\_   
 Date

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

---

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

---

Print Name

---

Date

## ATTACHMENT 9

### (Subject to Revision Based on Congressional Action)

#### **PROCESS FOR NEGOTIATING TRIBAL TRANSPORTATION 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 Tribal Transportation Program (TTP) 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 TTP 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 TTP program under a Tribal Self-Governance funding agreement for a particular year;
- (3) The BIA Regional Office contact shall indicate to the OSG negotiator the response of the Tribe/Consortium to provisions found in 25 CFR 170.600;
- (4) The BIA and the OSG shall respond to the Tribe's/Consortium's letter of interest and written request to negotiate in accordance with 25 CFR Parts 1000.172 and 1000.174, respectively;
- (5) Negotiations shall be held between Tribal/Consortium and Federal representatives in accordance with 25 CFR Parts 1000.175-176;
- (6) Using the TTP Model Addendum in Attachment 9 as a guide, the OSG Negotiator shall submit the negotiated TTP Addendum to the OSG Director for signature through the approved surname process. The approved surname process may include the BIA Regional

Director, OSG Negotiator, OSG Director, Office of the Solicitor, Chief of the BIA Division of Transportation, BIA Regional Roads Administrator, and Director, Bureau of Indian Affairs;

(7) One original signed TTP Addendum will be retained by the OSG, and one original sent to the Tribe/Consortium. In addition to the copies stipulated in 25 CFR § 1000.177, copies shall also be sent to the respective BIA Regional Office, and BIA Division of Transportation; and

(8) MAP-21 authorization expires on May 31, 2015. Currently, there is no authorization for a Tribe/Consortium to operate its TTP Program for any portion of the 2016 fiscal or calendar year until Congress either extends MAP-21 or enacts a new authorization.



## ATTACHMENT 10a/Single Tribe

*[Note: A new transportation authorization, “Moving Ahead for Progress in the 21<sup>st</sup> Century “ (MAP-21), Pub. L. 112-141 (July 6, 2012), has been enacted until May 31, 2015. At the time this Guidance was published, there is no authorization for a Tribe to operate under the provisions of this Model Agreement beyond May 31, 2015. The use of this TTP MODEL ADDENDUM beyond this date can only occur if the MAP-21 authorization is extended. A standard amendment process may need to be used to revise the term of the TTP Addendum. If a different transportation authorization is enacted, a new addendum will need to be developed for use.]*

**[SELECT: FY OR CY] 2016  
TRIBAL TRANSPORTATION PROGRAM (TTP) ADDENDUM  
TO THE  
[SELECT: ANNUAL OR MULTI-YEAR] FUNDING AGREEMENT  
BETWEEN THE  
[NAME OF TRIBE]  
AND THE  
UNITED STATES OF AMERICA**

### **Section 1. Authority**

This Addendum to the [SELECT: Annual OR Multi-Year] Funding Agreement [SELECT: AFA or MFA] is entered into by and between the [Name of Tribe] (“Tribe”) and the United States of America (“United States”), acting through the Secretary of the Interior or an authorized designee (“Secretary”), pursuant to the authorities set forth in the Tribal Self-Governance Act of 1994, Title IV of Public Law 93-638, as amended, (“Act”); Title 23 of the United States Code, as amended by “Moving Ahead for Progress In The 21<sup>st</sup> Century (MAP-21), Public Law 112-141 (July 6, 2012), 25 C.F.R. Part 170; and 25 C.F.R. Part 1000. Except where otherwise noted herein, this Addendum is subject to all provisions of the Tribe’s [SELECT: AFA OR MFA] and the Compact of Self-Governance between the Tribe and the Secretary (“Compact”).

### **Section 2. Effective Date**

This addendum shall become effective as of the date it is executed by authorized representatives of the Tribe and the Secretary and attached and incorporated into the Tribe’s [SELECT: AFA OR MFA]. It shall remain in effect until it is terminated, renegotiated by mutual agreement, the [SELECT: AFA OR MFA] expires, or the Tribal Transportation Program is no longer authorized by MAP-21.

### **Section 3. Purpose**

The Tribe’s [SELECT: AFA or MFA] and this Addendum transfer to the Tribe all the funding

and the responsibility for its share of the Tribal Transportation Program, including all highway and bridge programs authorized to be assumed under the Act; 25 C.F.R. Part 170; and Chapter 2 of Title 23 of the United States Code, as amended, (hereafter collectively referred to as the “TTP”), including those programs, functions, services, and activities, or portions thereof (collectively, “PFSAs”) which are specifically or functionally related to the administration of the TTP and are otherwise provided by the Secretary to the Tribe. In the event of a conflict between this Addendum and the Tribe’s [SELECT: AFA or MFA], the provisions of this Addendum shall control solely with respect to the PFSAs authorized to be assumed under this Addendum.

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

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

Subject to a Transportation Improvement Program approved by the Federal Highways Administration (“FHWA-approved TIP”), the Tribe may make available facilities and equipment that it owns, at industry standard lease or rental rates, in order to carry out the purposes of this Addendum. The Parties agree that, subject to an FHWA-approved TIP, the Tribe shall be permitted to utilize TTP and other FHWA funds awarded under the Tribe’s [SELECT: AFA OR MFA] to pay such lease/rental rates and to maintain such equipment when performing PFSAs under this Addendum. For purposes of this Addendum, in those cases where the Tribe reasonably determines that the purchase of equipment is more cost effective than the leasing of equipment, the Parties agree that, subject to an FHWA-approved TIP, the purchase of equipment shall be an allowable cost to the Tribe. The purchase of road maintenance equipment shall be subject to the limitations provided by 23 U.S.C. § 202 (a) (8) (A), to wit, the Tribe shall not use an amount more than the greater of 25% of its annual TTP share or \$500,000, for road maintenance activities, including the purchase of road maintenance equipment.

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

*[Note to Tribal and Federal Negotiators: At the Tribe’s option, this section may be deleted if the Tribe’s [SELECT: AFA OR MFA] already includes similarly protective language.]*

The Tribe shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds awarded under the Tribe’s [SELECT: AFA OR MFA] to perform the PFSAs authorized under this Addendum.

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

*[Note to Tribal and Federal Negotiators: The Tribe should specifically list in its [SELECT: AFA OR MFA] or reprogramming report all the funds to be paid within this 30-day timeframe. Depending on which TTP PFSAs the Tribe has chosen to assume and whether it has special non-recurring TTP funding in a given year, the funding items may include the following: TTP*

*Relative Need Distribution Factor Funds, TTP Bridge Program Funds, Tribal Transportation Planning Funds, Population Adjustment Factor Funds, TTP High Priority Project Funds and other specific Title 23 program funds.]*

In accordance with 23 U.S.C. § 202(b)(6), as amended by MAP-21 § 1119(a), the Secretary, acting at the option of the Tribe through the Office of Self Governance (“OSG”) as sub-allottee, shall pay to the Tribe or its designee, through an electronic fund transfer in a single annual lump sum, all the TTP and related transportation program funds identified in the Tribe’s [SELECT: AFA OR MFA] within 30 days after the funds are made available to the Secretary from the FHWA. Upon the receipt of funds from the FHWA, the Secretary shall notify the Tribe or its designee in writing that the funds are available for payment.

The total funds awarded under the Tribe’s [SELECT: AFA OR MFA] for PFSAAs authorized to be performed under this Addendum will be adjusted to reflect all funding in the TTP authorized by MAP-21 and any eligible appropriations made available to the Secretary or passed through to the BIA from the FHWA for transportation projects identified for the Tribe. In addition, the Tribe will receive:

- (1) all supportive administrative funds in accordance with 23 U.S.C. § 202 (b) (7) (B), and;
- (2) special allocations attributable to any TTP and TTP Bridge Program funds, TTP High Priority Project funds identified for the Tribe if any such funds become available during the effective term of this Addendum.

The Tribe shall be eligible to receive additional TTP funds on the same basis as other Indian tribes according to the provisions of 23 U.S.C. § 202(b), as well as other eligible funds available to the Tribe on a competitive, formula, or other basis.

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

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

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

- A. Payments to the Tribe shall be subject to the availability of the appropriation of funds by the Congress of the United States. Pursuant to 23 U.S.C. § 202 (b) (6) (B), all funds shall be paid to the Tribe without regard to the organizational level at which the Department of the Interior has previously carried out the PFSAAs involved.

- B. The Tribe shall use the TTP funds advanced under the Tribe's [SELECT: AFA OR MFA] to perform eligible PFSAs authorized under 23 U.S.C. § 202 (a) (2) (B) and 25 C.F.R. Part 170, as amended by MAP-21, other applicable laws, and as authorized under this Addendum. The Tribe reserves the right to reprogram funds among the eligible projects identified on an FHWA-approved TTP Transportation Improvement Program (TTP-TIP), so long as such funds are used in accordance with Federal appropriations law.
- C. The Tribe may use TTP funds provided under the Tribe's [SELECT: AFA OR MFA] for flexible financing as provided in 23 U.S.C. § 122, 25 C.F.R. §§ 170.300-170.303, and other applicable laws, provided that the Tribe enters into an Advance Construction Agreement and Project Agreement, when applicable.
- D. The Tribe may issue bonds or enter into other debt financing instruments under 23 U.S.C. § 122 with the expectation of payment of TTP Program funds to satisfy the instruments. The Parties acknowledge that this Addendum does not create a commitment, guarantee, or obligation on the part of the United States to provide for payment of debts of the Tribe to third parties for loan principal or interest on any debt financing instrument that the Tribe may enter into, nor does this Addendum create any right of a third party against the United States for payment under any debt financing instrument that the Tribe may enter into.
- E. The Tribe may use TTP Program funds awarded under the Tribe's [SELECT: AFA OR MFA] to meet matching or cost participation requirements for any Federal or non-Federal transit grant or program.

### **Section 9. Reporting**

The Tribe will provide the Secretary with an annual financial status report within 90 calendar days after the end of the [SELECT: FY OR CY] year. This report will contain a recording of obligations and expenditures for the work accomplished to date, based on activity.

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

- A. Buyback of Services: The United States may, at its option, accept and utilize funds returned by the Tribe as a payment for services rendered or through some other funding arrangement as a buyback of services to perform PFSAs for the benefit of the Tribe. In the event that the buyback of services option is employed, the Secretary shall, upon written request from the Tribe, promptly report to the Tribe in writing on the accomplishments of the Secretary and the obligation/expenditure of the funds and return to the Tribe's any unobligated or unexpended funds.
- B. Retained Funds: Through the Tribe's [SELECT: AFA OR MFA] or reprogramming documents, the Tribe and the Secretary may negotiate and agree to an amount of funds to be retained by the Secretary to perform any PFSAs identified in writing.

1. Upon written request, the Secretary shall provide the Tribe with a project/program accounting and accomplishment report for the PFSAs performed.
2. Upon written notice, the Tribe may choose to perform any or all PFSAs previously identified for performance by the Secretary. The Secretary will provide a project/program accounting to the Tribe and immediately return any unobligated or unexpended funds to the Tribe.
3. No later than *[insert appropriate date here]*, the Secretary shall reconcile all of its expenditures incurred on behalf of the Tribe through the end of *[insert appropriate date here]* and estimate its projected expenditures on behalf of the Tribe through the end of the Federal fiscal year. In the event that unexpended retained funds are projected to remain at the end of the Federal fiscal year, the Secretary shall return the projected unexpended funds to the Tribe no later than *[insert appropriate date here]*.

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

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

*[Note to Tribal and Federal Negotiators: In this section, the Tribes and the Secretary may specifically identify all the PFSAs which the Tribe intends to perform itself and the contractible PFSA which the Tribe, at its option, chooses to leave with the BIA to perform on the Tribe's behalf. Among the PFSAs that the Tribe may wish to perform itself are: Transportation Planning; Program Management and Administration; Project Development, including, but not limited to, Plans, Specifications and Estimates ("PS&E") Development and Approval; Construction; Construction Management; Construction Engineering; Road Maintenance as authorized under MAP-21 section 1119(a) (not more than the greater of 25% of the funds allocated to a Tribe or \$500,000 may be expended for the purpose of maintenance, excluding road sealing which shall not be subject to any limitation); development and negotiation of Tribal-State road maintenance agreements authorized under 23 U.S.C. § 202 (a) (8) (C); public transit services, including capital purchase, operations, and maintenance; and other TTP Program-eligible activities authorized under Chapter 2 of Title 23 United States Code or 25 C.F.R. Part 170, as each may be amended by MAP-21, or other applicable law.]*

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

- A. Agrees to carry out a transportation planning process for the BIA to maintain an inventory of roads and bridges for the Tribe, and to support funding, prioritization, and

programming of TTP projects by implementing a current Control Schedule and Transportation Improvement Program (TIP); and

- B. Assures the Secretary that it will meet or exceed applicable health and safety standards related to the administration, planning, design, and construction PFSA assumed under this Addendum. To this end, and within available funding, the Tribe will provide all necessary qualified personnel (including licensed engineers to perform the design phase), equipment, materials, and services necessary to administer the PFSA in compliance with 25 C.F.R. Part 170, as modified by MAP-21. In the event that the above-cited regulatory provisions conflict with the provisions of MAP-21, the provisions of MAP-21 shall govern. The Tribe may, at its option, choose to apply certain other guidelines upon prior written notice to the Secretary, including but not limited to, the October 28, 1987 draft or the most recent revision of 57 BIAM; the Program Agreement between the BIA and FHWA; and other Federal directives, program memoranda or regulations (including Federal Acquisition Regulations). Additionally, the Tribe may, at its option, develop Tribal policies, procedures, program guidelines and memoranda which meet or exceed federal standards to facilitate operation of any aspect of the TTP assumed by the Tribe under this Addendum; and
- C. Agrees to perform all Plan, Specification and Estimate (PS&E) review and approvals for projects developed under this Addendum in accordance with 23 U.S.C. § 202 (b) (5) and provide a file copy of the approved PS&E to the BIA or the facility owner, in full compliance with the statutory and quality assurance requirements made applicable under this Addendum; and
- D. Agrees to obtain all right-of-way and utility agreements necessary for construction. The Tribe further agrees to prepare all environmental and archaeological documents necessary for approval in accordance with applicable laws. Nothing in this Addendum, or performed pursuant to this Addendum, shall act to diminish the inherent sovereign governmental authority and jurisdiction of the Tribe over its members and trust, restricted, or allotted land within its territory. At the option of the Tribe, all recorded deeds or other instruments transferring title to real property acquired in whole or in part with Addendum funds shall include a written statement that the deed or other instrument shall not be construed to diminish the Tribe's inherent sovereign governmental authority and jurisdiction over its members and trust, restricted, or allotted land within its territory; and
- E. Assures the United States that all TTP projects constructed under this Addendum will comply with the approved PS&E and the construction standards set forth in this Addendum.

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

The Secretary shall:

- A. Administer this Addendum in compliance with the Act, MAP-21, 25 C.F.R. Part 1000 and 25 C.F.R. Part 170. In event that the above-cited regulatory provisions conflict with the provisions of MAP-21, the BIA and OSG shall comply with the provisions of MAP-21; and
- B. Through the BIA, participate in a final inspection of construction projects, in accordance with 25 C.F.R. § 170.473 *[Note to Tribal and Federal Negotiators: The Tribe and the Secretary may also agree to one or more project monitoring visits to be paid for from the BIA's own project-related administrative funds];* and
- C. Upon the request of the Tribe, promptly advise the Tribe of the status of the BIA's updates of the TTP Inventory and the TTP-TIP approval process and make copies of this information available to the Tribe; and
- D. Through the BIA, satisfactorily perform all retained functions as follows: *[Note to Tribal and Federal Negotiators: If there are retained functions, list them here. If there are no retained functions, put "None" here and delete Sections 10.B.2. and 10.B.3.]*

[Name of Tribe]

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

\_\_\_\_\_  
Date

UNITED STATES OF AMERICA

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

\_\_\_\_\_  
Date

## ATTACHMENT 10b/Tribal Consortium

### TTP MODEL ADDENDUM

#### [Model Agreement – Tribal Consortium]

*[Note: A new transportation authorization, “Moving Ahead for Progress in the 21<sup>st</sup> Century” (MAP-21), Pub. L. 112-141 (July 6, 2012), has been enacted until May 31, 2015. At the time this Guidance was published, there is no authorization for a Tribal Consortium to operate under the provisions of this Model Agreement beyond May 31, 2015. The use of this TTP MODEL ADDENDUM beyond this date can only occur if the MAP-21 authorization is extended. A standard amendment process may need to be used to revise the term of the TTP Addendum. If a different transportation authorization is enacted, a new addendum will need to be developed for use.]*

[SELECT: FY OR CY] 2016  
TRIBAL TRANSPORTATION PROGRAM ADDENDUM  
TO THE  
[SELECT: ANNUAL OR MULTI-YEAR] FUNDING AGREEMENT  
BETWEEN THE  
[NAME OF CONSORTIUM]  
AND THE  
UNITED STATES OF AMERICA

#### Section 1. Authority

This Addendum to the [SELECT: AFA OR MFA] Funding Agreement [SELECT: AFA or MFA] is entered into by and between the [Name of Consortium] (“Consortium”) and the United States of America (“United States”), acting through the Secretary of the Interior or an authorized designee (“Secretary”), pursuant to the authorities set forth in the Tribal Self-Governance Act of 1994, Title IV of Public Law 93-638, as amended, (“Act”); Title 23 of the United States Code, as amended by the “Moving Ahead for Progress In The 21<sup>st</sup> Century (MAP-21) Public Law 112-141 (July 6, 2012), 25 C.F.R. Part 170; and 25 C.F.R. Part 1000. Except where otherwise noted herein, this Addendum is subject to all provisions of the Consortium’s [SELECT: AFA or MFA] and the Compact of Self-Governance between the Consortium and the Secretary (“Compact”).

#### Section 2. Effective Date

This Addendum shall become effective as of the date it is executed by authorized representatives of the Consortium and the Secretary and attached and incorporated into the Consortium’s [SELECT: AFA OR MFA.] It shall remain in effect until it is terminated or renegotiated by mutual agreement, the [SELECT: AFA OR MFA] expires, or the Tribal Transportation Program



(TTP) is no longer authorized by MAP-21.

### **Section 3. Purpose**

The Consortium's [SELECT: AFA OR MFA] and this Addendum transfer to the Consortium all the funding and responsibility for its member tribes' share of the Tribal Transportation Program, including all highway and bridge programs authorized to be assumed under the Act; 25 C.F.R. Part 170; and Chapter 2 of Title 23 of the United States Code, as amended, (hereafter collectively referred to as the "TTP"), including those programs, functions, services, and activities, or portions thereof (collectively, "PFSAs") which are specifically or functionally related to the administration of the TTP and are otherwise provided by the Secretary to the Consortium. In the event of a conflict between this Addendum and the Consortium's [SELECT: AFA OR MFA], the provisions of this Addendum shall control solely with respect to the PFSAs authorized to be assumed under this Addendum. The following tribes are included in this Addendum: *[Note: Identify the tribes that have authorized and are participating in this Addendum.]*

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

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

Subject to a Transportation Improvement Program approved by the Federal Highways Administration ("FHWA-approved TIP"), the Consortium or its member tribes may make available facilities and equipment that it owns, at industry standard lease or rental rates, in order to carry out the purposes of this Addendum. The Parties agree that, subject to an FHWA-approved TIP, the Consortium shall be permitted to utilize TTP and other FHWA funds awarded under the Consortium's [SELECT: AFA OR MFA] to pay such lease/rental rates and to maintain such equipment when performing PFSAs under this Addendum. For purposes of this Addendum, in those cases where the Consortium reasonably determines that the purchase of equipment is more cost effective than the leasing of equipment, the Parties agree that, subject to an FHWA-approved TIP, the purchase of equipment shall be an allowable cost to the Consortium. The purchase of road maintenance equipment shall be subject to the limitations provided by 23 U.S.C. § 202(a) (8) (A), to wit, the Tribe shall not use an amount more than the greater of 25% of its annual TTP share or \$500,000, for road maintenance activities, including the purchase of road maintenance equipment.

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

*[Note to Tribal and Federal Negotiators: At the Consortium's option, this section may be deleted if the Consortium's [SELECT: AFA OR MFA] already includes similarly protective language.]*

The Consortium shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds awarded under the Consortium's [SELECT: AFA OR MFA] to perform the PFSAs authorized under this Addendum.

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

*[Note to Tribal and Federal Negotiators: The Consortium should specifically list in its [SELECT: AFA OR MFA] or reprogramming report all the funds to be paid within this 30-day timeframe. Depending on which TTP PFSAs the Consortium has chosen to assume and whether it has special non-recurring TTP funding in a given year, the funding items may include the following: TTP Relative Need Distribution Factor Funds, TTP Bridge Program Funds, Tribal Transportation Planning Funds, Population Adjustment Factor Funds, TTP High Priority Project Funds and other specific Title 23 program funds.]*

In accordance with 23 U.S.C. § 202 (b) (6), the Secretary, acting at the option of the Consortium through the Office of Self Governance ("OSG") as sub-allottee, shall pay to the Consortium or its designee, through an electronic fund transfer in a single annual lump sum, all the TTP and related transportation program funds identified in the Consortium's [SELECT: AFA OR MFA] within 30 days after the funds are made available to the Secretary from the FHWA. Upon the receipt of funds from the FHWA, the Secretary shall notify the Consortium or its designee in writing that the funds are available for payment.

The total funds awarded under the Consortium's [SELECT: AFA OR MFA] for PFSAs authorized to be performed under this Addendum will be adjusted to reflect all funding in the TTP authorized by MAP-21 and any eligible appropriations made available to the Secretary or passed through to the BIA from the FHWA for transportation projects identified for the Consortium. In addition, the Consortium will receive:

- (1) all supportive administrative funds in accordance with 23 U.S.C. § 202 (b) (7) (B) ;  
and
- (2) special allocations attributable to any TTP and TTP Bridge Program funds, TTP High Priority Project funds, or other funds identified for the Consortium if any such funds become available during the effective term of this Addendum.

The Consortium shall be eligible to receive additional TTP funds on the same basis as other Indian tribes according to 23 U.S.C. § 202(b), as well as other eligible funds available for the Consortium's member tribes on a competitive, formula, or other basis.

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

Pursuant to 25 C.F.R. §§ 170.607-170.608, Contract Support Costs ("CSCs") are an eligible item out of a Consortium's TTP allocation and need to be included in a Consortium's program budget. The Parties acknowledge that no additional TTP funds are available to pay CSCs to the

Consortium with regard to the PFSAs assumed under this Addendum.

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

- A. Payments to the Consortium shall be subject to the availability of the appropriation of funds by the Congress of the United States. Pursuant to 23 U.S.C. § 202 (b) (6) and 25 U.S.C. § 450j-1(a)(1), all funds shall be paid to the Consortium without regard to the organizational level at which the Department of the Interior has previously carried out the PFSAs involved.
- B. The Consortium shall use the TTP funds advanced under the Consortium's [**SELECT:** AFA OR MFA] to perform eligible PFSAs authorized under 23 U.S.C. § 202 (a) (2) (B) and 25 C.F.R. Part 170, as amended by MAP-21, other applicable laws, and as authorized under this Addendum. The Consortium reserves the right to reprogram funds among the eligible projects identified on an FHWA-approved TTP Transportation Improvement Program (TTP-TIP), so long as such funds are used in accordance with Federal appropriations law.
- C. The Consortium may use TTP funds provided under the Consortium's [**SELECT:** AFA or MFA] for flexible financing as provided in 23 U.S.C. § 122, 25 C.F.R. §§ 170.300-170.303, and other applicable laws, provided that the Consortium enters into an Advance Construction Agreement and Project Agreement, when applicable.
- D. The Consortium may issue bonds or enter into other debt financing instruments under 23 U.S.C. § 122 with the expectation of payment of TTP Program funds to satisfy the instruments. The Parties acknowledge that this Addendum does not create a commitment, guarantee, or obligation on the part of the United States to provide for payment of debts of the Consortium to third parties for loan principal or interest on any debt financing instrument that the Consortium may enter into, nor does this Addendum create any right of a third party against the United States for payment under any debt financing instrument that the Consortium may enter into.
- E. The Consortium may use TTP funds awarded under the Consortium's [**SELECT:** AFA OR MFA] to meet matching or cost participation requirements for any Federal or non-Federal transit grant or program.

### **Section 9. Reporting**

The Consortium will provide the Secretary with an annual financial status report within 90 calendar days after the end of the [**SELECT:** FY or CY] year. This report will contain a recording of obligations and expenditures for the work accomplished to date, based on activity.

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

- A. Buyback of Services: The United States may, at its option, accept and utilize funds returned by the Consortium as a payment for services rendered or through some other funding arrangement as a buyback of services to perform PFSAs for the benefit of the Consortium. In the event that the buyback of services option is employed, the Secretary shall, upon written request from the Consortium, promptly report to the Consortium in writing on the accomplishments of the Secretary and the obligation/expenditure of the funds and return to the Consortium any unobligated or unexpended funds.
- B. Retained Funds: Through the Consortium's [**SELECT: AFA OR MFA**] or reprogramming documents, the Consortium and the Secretary may negotiate and agree to an amount of funds to be retained by the Secretary to perform any PFSAs identified in writing.
1. Upon written request, the Secretary shall provide the Consortium with a project/program accounting and accomplishment report for the PFSAs performed.
  2. Upon written notice, the Consortium may choose to perform any or all PFSAs previously identified for performance by the Secretary. The Secretary will provide a project/program accounting to the Consortium and immediately return any unobligated or unexpended funds to the Consortium.
  3. No later than *[insert appropriate date here]*, the Secretary shall reconcile all of its expenditures incurred on behalf of the Consortium through the end of *[insert appropriate date here]* and estimate its projected expenditures on behalf of the Consortium through the end of the Federal fiscal year. In the event that unexpended retained funds are projected to remain at the end of the Federal fiscal year, the Secretary shall return the projected unexpended funds to the Consortium no later than *[insert appropriate date here]*.

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

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

*[Note to Tribal and Federal Negotiators: In this section, the Consortiums and the Secretary may specifically identify all the PFSAs which the Consortium intends to perform itself and the contractible PFSAs which the Consortium, at its option, chooses to leave with the BIA to perform*

*on the Consortium's behalf. Among the PFSAs that the Consortium may wish to perform itself are: Transportation Planning; Program Management and Administration; Project Development, including, but not limited to, Plans, Specifications and Estimates ("PS&E") Development and Approval; Construction; Construction Management; Construction Engineering; Road Maintenance as authorized under MAP-21, 23 U.S.C. § 202 (a) (not more than 25% of the funds allocated to a Consortium for its member tribes may be expended for the purpose of maintenance, excluding road sealing which shall not be subject to any limitation); development and negotiation of Tribal-State road maintenance agreements authorized under 23 U.S.C. § 202 (a) (8) (C); public transit services, including capital purchase, operations, and maintenance; and other TTP-eligible activities authorized under Chapter 2 of Title 23 United States Code or 25 C.F.R. Part 170, as each may be amended by MAP-21, or other applicable law.]*

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

- A. Agrees to carry out a transportation planning process for the BIA to maintain an inventory of roads and bridges for the Consortium, and to support funding, prioritization, and programming of TTP projects by implementing a current Control Schedule and Transportation Improvement Program (TIP); and
- B. Assures the Secretary that it will meet or exceed applicable health and safety standards related to the administration, planning, design, and construction PFSAs assumed under this Addendum. To this end, and within available funding, the Consortium will provide all necessary qualified personnel (including licensed engineers to perform the design phase), equipment, materials, and services necessary to administer the PFSAs in compliance with 25 C.F.R. Part 170, as modified by MAP-21. In the event that the above-cited regulatory provisions conflict with the provisions of TTP, the provisions of TTP shall govern. The Consortium may, at its option, choose to apply certain other guidelines upon prior written notice to the Secretary, including but not limited to, the October 28, 1987 draft or the most recent revision of 57 BIAM; the Program Agreement between the BIA and FHWA; and other Federal directives, program memoranda or regulations (including Federal Acquisition Regulations). Additionally, the Consortium may, at its option, develop Tribal policies, procedures, program guidelines and memoranda which meet or exceed federal standards to facilitate operation of any aspect of the TTP assumed by the Consortium under this Addendum; and
- C. Agrees to perform all Plan, Specification and Estimate (PS&E) review and approvals for projects developed under this Addendum in accordance with 23 U.S.C. § 202 (b) (5) and provide a file copy of the approved PS&E to the BIA or the facility owner, in full compliance with the statutory and quality assurance requirements made applicable under this Addendum; and

- D. Agrees to obtain all right-of-way and utility agreements necessary for construction. The Consortium further agrees to prepare all environmental and archaeological documents necessary for approval in accordance with applicable laws. Nothing in this Addendum, or performed pursuant to this Addendum, shall act to diminish the inherent sovereign governmental authority and jurisdiction of the Consortium's member tribes over their members and trust, restricted, or allotted land within their territory. At the option of the Consortium, all recorded deeds or other instruments transferring title to real property acquired in whole or in part with Addendum funds shall include a written statement that the deed or other instrument shall not be construed to diminish the respective member tribe's inherent sovereign governmental authority and jurisdiction over its members and trust, restricted, or allotted land within its territory; and
- E. Assures the United States that all TTP projects constructed under this Addendum will comply with the approved PS&E and the construction standards set forth in this Addendum.

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

The Secretary shall:

- A. Administer this Addendum in compliance with the Act, MAP-21, 25 C.F.R. Part 1000 and 25 C.F.R. Part 170. In event that the above-cited regulatory provisions conflict with the provisions of MAP-21, the BIA and OSG shall comply with the provisions of MAP-21; and
- B. Through the BIA, participate in a final inspection of construction projects, in accordance with 25 C.F.R. § 170.473 [*Note to Tribal and Federal Negotiators: The Consortium and the Secretary may also agree to one or more project monitoring visits to be paid for from the BIA's own project-related administrative funds*]; and
- C. Upon the request of the Consortium, promptly advise the Consortium of the status of the BIA's updates of the TTP Inventory and the TTP-TIP approval process and make copies of this information available to the Consortium; and
- D. Through the BIA, satisfactorily perform all retained functions as follows: [*Note to Tribal and Federal Negotiators: If there are retained functions, list them here. If there are no retained functions, put "None" here and delete Sections 10.B.2. and 10.B.3.*]

[Name of Consortium]

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

\_\_\_\_\_  
Date

UNITED STATES OF AMERICA

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

\_\_\_\_\_  
Date

**MEMORIALIZATION OF MATTERS REMAINING IN DISPUTE**

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

**A. Item Remaining in Dispute**

**B. Item Remaining in Dispute**

**C. Item Remaining in Dispute**

**D. Item Remaining in Dispute**

**E. Item Remaining in Dispute**



**Guidelines for Tribally Operated Wildland Fire  
Management Programs**

**Memorandum from the Deputy Commissioner of  
Indian Affairs  
April 6, 2001**



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Washington, D.C. 20240

IN REPLY REFER TO:

Division of Forestry

APR 6 2001

## Memorandum

To: All Regional Directors

From: 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.

Attachment

3/20/01

## **GUIDELINE FOR TRIBALLY OPERATED SELF-GOVERNANCE AND SELF-DETERMINATION WILDLAND FIRE MANAGEMENT PROGRAMS**

Information in this guideline is intended for use by the Bureau of Indian Affairs and Tribes when negotiating annual funding agreements with self-governance tribes and when developing self-determination contracts with tribes who have contracted for wildland fire management programs.

### **Guiding Principles**

1. Tribal fire management programs will be held to standards no more stringent than BIA fire management programs. Both BIA and Tribal Programs will strive to achieve excellence.
2. Tribal and BIA fire management programs will receive equal consideration for available budget and resources.
3. The BIA is committed to working with Tribes to ensure the success of their Fire Management Programs.
4. Tribes desiring to compact or contract for National, Regional or multi-tribe agency fire program functions or services provided by BIA employees to benefit more than one tribe must have a plan to provide comparable functionality or services and the agreement of other affected tribes.

### **Inherently Federal Activities**

1. Hiring, firing and paying Federal employees including Emergency Firefighters, Administrative Pay Team (APT), or Administrative Disbursing Officer (ADO) functions or actions. However, Tribes may designate a Tribal Official to sign as Time Officer on the Emergency Firefighter Timesheet (OF-288) when such Tribal Officials are designated in a Memorandum of Agreement or Understanding or Contract Scope of Work Statements between the Tribe and the BIA, when the OF-288s are to be paid by an APT.
2. Approval, consolidation and submission of budget requests.
3. Obligating Federal government funds.
4. Approval of Resource Management or Land Use Plans, Fire Management Plans, Fire Management Program Analysis (FMPA) documents, NEPA documents, Wildland Fire Situation Analyses (WFSA) documents, Burned Area Emergency Stabilization/Rehabilitation Plans. To fulfill its trust responsibility in resource protection, BIA must approve the documents in the preceding sentence. Even though Tribal approval of the foregoing documents cannot be in lieu of BIA approval, it is strongly

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

by tribes in such projects may be authorized. Tribal and BIA programs will be given equal consideration for non-recurring preparedness funding.

- Facilities Construction – (92120 for projects valued at less than \$50,000; 92150 for projects valued at more than \$50,000) - all projects for construction of fire facilities valued at greater than \$10,000 must be included in the 5-year DOI Facilities Construction Plan and identified as part of the Wildland Fire annual budget appropriation. Funding is obtained by tribes through BIA Regional Offices via cooperative agreements or contracts or through agreements with other Federal agencies to reimburse tribes for facilities construction costs on a project-by-project basis. Indirect costs for facilities construction projects are not authorized.

#### *Operations Activity*

1. Suppression sub-activity (92310) – includes all fire suppression activities.
  - Funding is obtained by tribes through agreements established by BIA Regional Offices or other Federal agencies to reimburse tribes for fire costs on a fire-by-fire basis. Indirect costs for fire suppression are not authorized.
  - Tribes and BIA may negotiate to establish an escrow account based on historical fire suppression costs. This is a one-time expense. The account will be reimbursed on a fire-by-fire basis. If a tribe should retrocede or the BIA reassumes suppression responsibilities the account will be reimbursed to BIA.
2. Burned Area Emergency Stabilization/Rehabilitation sub-activity (92320) – includes all post-fire burned area stabilization/rehabilitation activities covered by approved emergency stabilization/rehabilitation plans.
  - Funding is obtained by tribes through agreements established by BIA Regional Offices or other Federal agencies to reimburse tribes for fire costs on a project-by-project basis. Indirect costs for emergency stabilization/rehabilitation projects are not authorized, however reasonable administrative and overhead costs incurred by tribes in such projects may be authorized within stabilization/rehabilitation plans.
3. Hazard Fuel Reduction, Fire Use sub-activity (92330) – includes costs associated with planning and the operational implementation of hazardous natural fuel reduction projects and restoration of fire to the ecosystem through the use of prescribed fire except prescribed fire fuel treatment projects specifically planned to treat hazardous fuels adjacent to “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, fire use projects and authorized fuels personnel 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.

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.

- Funding may be applied for and, if a Tribe's RFD Assistance proposal is approved by BIA, will be distributed to tribes through BIA Regional Offices via cooperative agreements or contracts. These are project-based one-time transfers of funds. Indirect costs for Rural Fire Assistance funding are not authorized.

#### **Program Operational Standards**

Unless waivers to the following standards are explicitly approved pursuant to self-governance in Annual Funding Agreements or in Self Determination Contracts, the following standards will apply to Tribal Fire Management Programs. In the case of Self-Governance Compacts, alternative standards may be approved by Regional Directors and, in the case of Self-Determination Contracts, alternative standards may be approved by Self-Determination Contracting Officers.

1. Fire program personnel that will be assigned to wildland fire incidents or prescribed fire projects must meet the National Wildland Fire Coordinating Group (NWCG) standards for the positions held and functions performed. Tribal Fire Management Officers are responsible for certifying tribal program employee qualifications and maintaining records of their employee qualifications. They may use the Firefighter Qualifications/Certification Component of the Shared Application Computer System (SACS) located at the National Interagency Fire Center (NIFC) if they choose to do so, but are not required to use that system.
  - NWCG position standards are considered the "industry standard" in the United States wildland fire community and are essential for safe operations in the hazardous wildland fire environment. Failure to meet the standard will prohibit participation in off reservation fire activities and could put tribal fire fighters at personal risk.
2. Fire Occurrence reports will be encoded to the Shared Application Computer System (SACS) located at the National Interagency Fire Center (NIFC) within two weeks after a fire is declared out.
  - Obligating government funds is an inherently Federal activity and fire reports are an essential element in accounting for the obligation of Federal funds.
3. Placing resource orders for: Incident Management Teams to manage extended, large fire operations, Administrative Payment Teams (APT) to pay firefighters or vendors used on incidents, or for Burned Area Stabilization/Rehabilitation Teams requires the involvement of BIA.
  - All three actions require that BIA approve delegations of authority to teams, because they involve the commitment to obligate large amounts of Federal funds and/or involve operations critical to meeting the BIA trust responsibility on Indian land.

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**

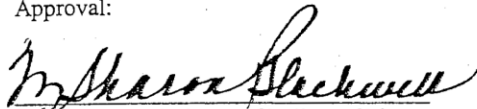
The minimum topics that are recommended to be included in self-determination contracts and self-governance annual funding agreements follow:

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



2. Estimated amount of Indirect Cost Funding with language subjecting the final amount to the process identified in the foregoing Indirect Cost Rates section.
3. When applicable, the identity of fire program components or functions to be retained by BIA.
4. When applicable, the identity of fire program tasks or functions to be performed by the tribe.
6. When applicable, the identity of any fire program operational standards waived by the tribe and the identity of the alternative standard to be used.

Approval:

  
Deputy Commissioner of Indian Affairs

4-6-01  
Date

**Motor Vehicle Operation Policy for the BIA**

**and**

**Executive Order No. 13513**  
**Federal Leadership on Reducing Text Messaging**  
**While Driving**



THE ASSOCIATE DEPUTY SECRETARY OF THE INTERIOR  
WASHINGTON, DC 20240

**MAY - 3 2006**

Memorandum

To: Deputy Assistant Secretaries  
Director, Bureau of Indian Affairs  
Director, Office of Indian Education Programs  
All Central Office Directors  
All Regional Directors  
All Education Line Officers

From: Associate Deputy Secretary

Subject: Motor Vehicle Operation Policy

In compliance with the requirements of 5 CFR 930 and the Department's Motor Vehicle Safety Policy, 485 DM 16, this Motor Vehicle Operation Policy (Policy) is to establish clear responsibilities for employees, supervisors, and managers, and to promote the safe and prudent operations of motor vehicles while performing assigned duties in support of Indian Affairs (IA). This Policy supersedes the New Motor Vehicle Operation Policy for the Bureau of Indian Affairs (BIA) signed by the Assistant Secretary – Indian Affairs on March 19, 2004.

**I. Definitions**

- A. Employee. All permanent, temporary, intermittent, and contract employees; interns; student teachers; and administratively determined (AD) emergency workers as defined in 5 U.S.C. 2105.
- B. Motor Vehicle. A Government owned, rented or leased motor vehicle and/or privately owned, rented or leased motor vehicle, with a gross vehicle weight (GVW) of less than 26,000 pounds, designed to transport less than 15 people, and which does not haul hazardous materials or tow vehicles with a GVW of 10,000 pounds or more (e.g. sedans, light trucks, sports utility vehicles (SUVs) and all terrain vehicles (ATVs).
- C. Motor Vehicle Operator. An employee who drives a motor vehicle, including commercial motor vehicles, in the performance of their duties and responsibilities.
- D. Commercial Operator. An employee who operates a commercial vehicle and is required to possess a Commercial Driver's License (CDL).
- E. Commercial Motor Vehicle. A vehicle having a GVW rating of more than 26,000 pounds, a vehicle towing a trailer weighing 10,000 pounds or more, a vehicle hauling hazardous material which requires display signs noting the hazardous material content

of the vehicle, a vehicle designed to transport 15 or more people including the driver, or a school bus. Operators of these vehicles must have a valid CDL.

## **II. Driver Qualifications**

An employee may be authorized to drive on Indian Affairs business if he or she satisfies the following requirements:

- A. Be 18 years of age or older;
- B. Has a valid State driver's license
- C. Has the requisite experience needed to drive the type of vehicle being assigned or used;
- D. Has no convictions or uncontested citations within the three-year period immediately preceding their submittal of GSA Form 3607, Motor Vehicle Operator's License and Driving Record, for Reckless Driving, Driving While Intoxicated (DWI), Driving Under the Influence (DUI) or Leaving the Scene of an Accident;
- E. Has not demonstrated a pattern of unsafe driving or behaviors (e.g. drug or alcohol abuse, unusual aggression, etc.) that would cause a supervisor to question the likelihood that the individual will drive safely and prudently while on Indian Affairs business; and
- F. Possesses current Motor Vehicle Operators Authorization from his/her supervisor.

## **III. Roles and Responsibilities**

- A. Deputy Assistant Secretaries, BIA Director, Deputy Directors and Regional Directors, and Director, Office of Indian Education Programs (OIEP) are responsible for carrying out the requirements of this policy within their areas of responsibility.
- B. Managers, supervisors, contracting officers and awarding officials must:
  - 1. Carefully consider whether duties and responsibilities assigned to an employee require the operation of a government-owned or government-leased motor vehicle, commercial motor vehicle, rental motor vehicle, or privately-owned or privately-leased motor vehicle in the performance of official or contractual duties, responsibilities or activities, including duties of record and other duties assigned or historically assigned to such positions or activities;
  - 2. Ensure that each IA Motor Vehicle Operator under their supervision possesses a valid driver's license that indicates State authorization to operate the class of vehicle required in the performance of duties. This responsibility is met by ensuring each employee completes the annual Authorization Process

described in Section 7 of this memorandum, which includes a requirement to conduct an annual review of the employee's current license and a current motor vehicle driving record. If at any time the supervisor has a concern with an employee's driving record, he or she will initiate a review of the employee's driving record. Failure to meet this responsibility may result in disciplinary action against the supervisor;

3. Ensure that all term contracts and commercial contracts under their administration, at the time of contract renewal, include certification from the contractors certifying that they will self-administer and ensure compliance with the requirements of this policy;
4. Based on available information, ensure no authorization is given to individuals with restricted driving privileges (i.e., home to work licenses);
5. Ensure that no Motor Vehicle Operator is permitted to operate a government owned or leased motor vehicle, commercial motor vehicle, rental motor vehicle and/or privately owned or leased motor vehicle in the performance of official duties while: (a) intoxicated by ingesting controlled substances or consuming intoxicating beverages, including any impairment resulting from the use of prescription or over-the-counter drugs; or (b) impaired by a medical or physical condition, or other factor that affects his/her motor skills, reaction time, or concentration;
6. Immediately terminate driving privileges for a Motor Vehicle Operator who is:
  - a. Arrested for, charged with, or convicted of Reckless Driving, Driving While Intoxicated (DWI), or Driving Under the Influence (DUI);
  - b. Arrested for, charged with, or convicted of a criminal offense related to a traffic incident involving alcohol or drugs, including but not limited to vehicular homicide, vehicular manslaughter, or endangerment;
  - c. Disqualified from holding a State driver's license, including restriction, suspension, revocation, or cancellation of a State driver's license for the type and class of vehicle operated;
  - d. Upon request, fails to provide a valid CDL medical certificate;
  - e. Not in possession of a current IA/BIA/OIEP Motor Vehicle Operator Authorization Card;
7. As directed in 5 CFR 930.113, take appropriate action when a Motor Vehicle Operator:

- a. Is convicted for operating a motor vehicle under the intoxicating influence of alcohol, narcotics, or pathogenic drugs;
  - b. Is convicted of leaving the scene of an accident without making his or her identity known;
  - c. Is not qualified to operate a Government owned or leased vehicle safely because of a physical or medical condition;
  - d. No longer possesses a State license by revocation or suspension;
  - e. Fails to report incidences noted in paragraph 6 above to his or her supervisor; and
  - f. Exhibits behaviors inconsistent with the safe and prudent operation of a motor vehicle;
8. Where appropriate, recommend the Employee Assistance Program (EAP) and other programs to employees whose performance appears impaired by the use of controlled substances, prescription drugs, or intoxicating beverages; and
9. Take appropriate actions to investigate allegations of employee's alcohol or drug abuse problem or a history of unsafe driving, regardless of whether or not the employee has ever been charged with an offense. Supervisors may at their discretion, consider a pattern of unsafe driving acts as a factor in determining whether an employee meets driver qualifications. (For example, an employee is convicted of DWI or other unsafe driving practices over a 10-year period, with DWI arrest longer than three-years preceding their submittal of GSA Form 3607, Motor Vehicle Operator's License and Driving Record).
- C. The Division of Safety and Risk Management will
- 1. Receive and process Motor Vehicle Operator License and Driving Record forms (GSA Form 3607) for their service area.
    - a. The Division of Safety and Risk Management is responsible for Central Office West Programs in Albuquerque, NM; Lakewood, CO; Boise, ID (NIFC). The Division is also responsible for Office of Law Enforcement Services (OLES) and Office of Indian Education Programs (OIEP) Central Office West;
    - b. The Central Office East Collateral Duty Safety Officer is responsible for Central Office East Programs in Washington, DC; Reston, VA; and Herndon, VA; and
    - c. Regional Safety Managers are responsible for all regional programs, including OIEP within the region.

2. Conduct the annual evaluation of the applicant's driving record.
  3. Return GSA Form 3607 with certification to the supervisor after processing.
  4. Document any conflicts or concerns with respect to an employee's driving qualifications.
- D. Employees, generally, have responsibility to inform supervisors of operator incidences or behaviors that would be considered covered by this policy or represent unsafe driving behavior. All employees share an affirmative duty to ensure our vehicles are used properly by responsible individuals who have a high regard for both personal and public safety while operating a government vehicle. Employees may report any suspected violations to the Indian Affairs Motor Vehicle Hotline: (505) 563-5460.

#### **IV. Operator Requirements**

Motor Vehicle Operators must:

- A. Comply with State, local and tribal traffic laws and the lawful instruction of emergency and law enforcement personnel;
- B. Abstain from ingesting controlled substances, intoxicating beverages, prescription drugs or other medications that caution against operating a motor vehicle when taken, to avoid being impaired;
- C. Not transport intoxicating beverages, controlled substances, or any passenger who is in possession of intoxicating beverages or controlled substances without written approval of immediate supervisor. Exceptions to this prohibition are allowed for social services, emergency, and law enforcement personnel whose duties and responsibilities require otherwise;
- D. Not transport unauthorized passengers in a Government owned or leased motor vehicle;
- E. Report to his/her supervisor any medical or physical condition, including the use of controlled substances, prescription or over-the-counter drugs, which may impair the driver from the safe operation of a motor vehicle;
- F. Successfully complete motor vehicle safety training at least every three years;
- G. Notify their supervisor if their State driving privileges are restricted, suspended, revoked, or canceled, or if they have been otherwise disqualified from holding a license. Employees are also responsible for reporting any situation that may alter

their authorization or ability to operate a motor vehicle, such as any legal or court ordered suspension of driving privileges or any limiting medical condition;

- H. Report all incidents involving a Government owned or leased motor vehicle, commercial motor vehicle, rental motor vehicle, or a privately owned or leased motor vehicle that occur during the performance of their official duties;

Report all on-duty incidents involving a Government owned or leased motor vehicle, commercial motor vehicle, rental motor vehicle, or a privately owned or leased motor vehicle that could result in a violation, citation, charge, arrest, warrant, or civil action;

- J. Report all incidents involving a Government owned or leased motor vehicle, commercial motor vehicle, rental motor vehicle, or privately owned or leased motor vehicle and the use of controlled substances or intoxicating beverages; impairment resulting from prescription or over-the-counter drugs, illness, or medical condition; or other factors that impair concentration, motor skills or reaction time;
- K. Report any restriction, suspension, revocation, or cancellation of their driver's license, for any length of time, or any disqualification from holding a State, commercial, or international operator's license; and
- L. Notify supervisors of these incidents no later than the following business day after their occurrence. Failure to inform the supervisor of any such situation may subject employees to disciplinary action.

**V. Authorization Procedures**

- A. All employees and term contract employees whose job requires operation of a motor vehicle must annually request authorization to operate a motor vehicle in carrying out the duties of their positions.
- B. All employees and term contract employees must annually submit to their supervisor GSA Form 3607, Motor Vehicle Operator's License and Driving Record to renewal. In completing the form, individuals will provide a response to all questions (Section II) and certify that their statements are true and correct to the best of their knowledge (Section III).
- C. Supervisors will review the GSA Form 3607 for accuracy and completeness, complete and sign Section IV – Supervisory Review, and forward to the appropriate safety office for the receipt of application for their regions.
- D. The appropriate safety office will review the submitted forms and request a copy of the applicant's driving record from the appropriate State motor vehicle office(s) and if appropriate and where feasible, the tribal court where employees primarily operate motor vehicles within that tribal jurisdiction.



- E. Upon a receipt of a favorable review of the driving record, the safety officer will complete Section V – Certification of Eligibility and Authorization, sign and date, certifying that the individual meets his IA driver qualifications.
- F. With the safety officer's certification, the supervisor may issue a Motor Vehicle Operator authorization Card (Attachment 2). The Card will be issued for a period of five years.
- G. Based on the safety officer's report that the applicant is not qualified, the supervisor will not issue or will revoke a Motor Vehicle Operator Authorization Card. Supervisors are reminded that they may be personally liable if they authorize an employee to operate a motor vehicle on government business if an employee is determined not to be qualified by virtue of failing to meet qualification standards.

**VI. Failure to Report Incidents Involving Motor Vehicles**

Failure of the motor vehicle operator to report such incidents of traffic citations or accident violations to the supervisor as soon as possible after the occurrence, but no later than the next business day, may result in disciplinary or other adverse action.

Attachments

THE WHITE HOUSE

Office of the Press Secretary

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For Immediate Release

October 1, 2009

EXECUTIVE ORDER

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**FEDERAL LEADERSHIP ON REDUCING TEXT MESSAGING WHILE DRIVING**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7902(c) of title 5, United States Code, and the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 101 et seq., and in order to demonstrate Federal leadership in improving safety on our roads and highways and to enhance the efficiency of Federal contracting, it is hereby ordered as follows:

Section 1. Policy. With nearly 3 million civilian employees, the Federal Government can and should demonstrate leadership in reducing the dangers of text messaging while driving. Recent deadly crashes involving drivers distracted by text messaging while behind the wheel highlight a growing danger on our roads. Text messaging causes drivers to take their eyes off the road and at least one hand off the steering wheel, endangering both themselves and others. Every day, Federal employees drive Government-owned, Government-leased, or Government-rented vehicles (collectively, GOV) or privately-owned vehicles (POV) on official Government business, and some Federal employees use Government-supplied electronic devices to text or e-mail while driving. A Federal Government-wide prohibition on the use of text messaging while driving on official business or while using Government-supplied equipment will help save lives, reduce injuries, and set an example for State and local governments, private employers, and individual drivers. Extending this policy to cover Federal contractors is designed to promote economy and efficiency in Federal procurement. Federal contractors and contractor employees who refrain from the unsafe practice of text messaging while driving in connection with Government business are less likely to experience disruptions to their operations that would adversely impact Federal procurement.

Sec. 2. Text Messaging While Driving by Federal Employees. Federal employees shall not engage in text messaging (a) when driving GOV, or when driving POV while on official Government business, or (b) when using electronic equipment supplied by the Government while driving.

Sec. 3. Scope of Order. (a) All agencies of the executive branch are directed to take appropriate action within the scope of their existing programs to further the policies of this order and to implement section 2 of this order. This includes, but is not limited to, considering new rules and programs, and reevaluating existing programs to prohibit text messaging while driving, and conducting education, awareness, and other outreach for Federal employees about the

safety risks associated with texting while driving. These initiatives should encourage voluntary compliance with the agency's text messaging policy while off duty.

(b) Within 90 days of the date of this order, each agency is directed, consistent with all applicable laws and regulations: (i) to take appropriate measures to implement this order, (ii) to adopt measures to ensure compliance with section 2 of this order, including through appropriate disciplinary actions, and (iii) to notify the Secretary of Transportation of the measures it undertakes hereunder.

(c) Agency heads may exempt from the requirements of this order, in whole or in part, certain employees, devices, or vehicles in their respective agencies that are engaged in or used for protective, law enforcement, or national security responsibilities or on the basis of other emergency conditions.

Sec. 4. Text Messaging While Driving by Government Contractors, Subcontractors, and Recipients and Subrecipients. Each Federal agency, in procurement contracts, grants, and cooperative agreements, and other grants to the extent authorized by applicable statutory authority, entered into after the date of this order, shall encourage contractors, subcontractors, and recipients and subrecipients to adopt and enforce policies that ban text messaging while driving company-owned or -rented vehicles or GOV, or while driving POV when on official Government business or when performing any work for or on behalf of the Government. Agencies should also encourage Federal contractors, subcontractors, and grant recipients and subrecipients as described in this section to conduct initiatives of the type described in section 3(a) of this order.

Sec. 5. Coordination. The Secretary of Transportation, in consultation with the Administrator of General Services and the Director of the Office of Personnel Management, shall provide leadership and guidance to the heads of executive branch agencies to assist them with any action pursuant to this order.

Sec. 6. Definitions.

(a) The term "agency" as used in this order means an executive agency, as defined in 5 U.S.C. 105, except for the Government Accountability Office.

(b) "Texting" or "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of SMS texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

(c) "Driving" means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light or stop sign, or otherwise. It does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

Sec. 7. General Provisions.

- (a) Nothing in this order shall be construed to impair or otherwise affect or alter:
- (i) Authority granted by law or Executive Order to an agency, or the head thereof;
  - (ii) Powers and duties of the heads of the various departments and agencies pursuant to the Highway Safety Act of 1966, as amended, 23 U.S.C. 402 and 403, section 19 of the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 668, sections 7901 and 7902 of title 5, United States Code, or the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 101 et seq.;
  - (iii) Rights, duties, or procedures under the National Labor Relations Act, 29 U.S.C. 151 et seq.; or
  - (iv) Functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
- (b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.
- (c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA

THE WHITE HOUSE,

October 1, 2009.