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2023 SELF-GOVERNANCE NEGOTIATION GUIDANCE FOR BIA PROGRAMS

Office of Self Governance

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2023 DRAFT SELF-GOVERNANCE

NEGOTIATION GUIDANCE

FOR BIA PROGRAMS

Office of Self Governance

I. Purpose

This document is prepared as a tool to guide Federal Negotiators in Indian Affairs, including the Office of Self Governance (OSG), Office of Facilities, Property, and Safety Management (OFPSM), Office of Indian Energy and Economic Development (OIEED), Appraisal and Valuation Services Office (AVSO), Bureau of Trust Funds Administration (BTFA), the Bureau of Indian Education (BIE), the Bureau of Indian Affairs (BIA), (including the Office of Justice Services) (OJS), Office of Indian Services (OIS), and the Office of the Solicitor (SOL), in conducting, on a government-to-government basis, the 2023 self-governance (SG) negotiations. This final guidance is provided to Tribes/Consortia for informational purposes. 2023 negotiations will be conducted telephonically/electronically. Based on recent coronavirus conditions, travel to conduct face-to-face negotiations is not being approved in areas with high coronavirus conditions based on local and CDC guidance.

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. When OJS and OFPSFM funds are involved, OJS and OFPSFM have requested that their representatives be contacted so that they may be present during self-governance negotiations. AVSO has also requested that its representatives be contacted so that they may participate in self-governance negotiations on an as needed basis.

The Regional Director and the OSG Negotiator will surname and date the Final Report of a Tribe's/Consortium's 2023 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). In instances where the Tribe has elected to retain their prior executed funding agreement, a reprogramming document/worksheet for 2023 will be completed by the assigned OSG Compact Negotiator, the BIA Regional Director, signed, and posted in the Self Governance Database (SGDB) as a recordkeeping document. 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 are Education or Law Enforcement, Detention/Corrections, and Tribal Courts program issues or funding changes from the previous funding agreement. The OSG Director will sign funding agreements and amendments after surname by these directors. Comments on program issues are provided to the OSG Compact Negotiator to share with the Tribe. Subject to revision by Congressional action, when negotiations include a newly enacted authorization for the operation of the Tribal Transportation Program (TTP) Addendum in 2023, 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 the TTP Addenda after considering any comments received from the BIA Director and Chief, BIA Division of Transportation, and Solicitors Office for those Tribes receiving TTP funding through a Self-Governance funding agreement.

It is the intent of the OSG to have 2023 negotiations completed for fiscal year Tribes/Consortia and for calendar year Tribes/Consortia as soon as possible to avoid further delays resulting from coronavirus conditions to comply with Section 403 (f) of P.L. 93-638, as amended, 25 U.S.C. Section 5363(f). Not later than 90 days before the proposed effective date, the BIA region or agency office is tasked with sharing a copy of the self governance funding agreement with each Indian tribe that is served by the agency serving the tribe that is a party to the agreement. Funding agreements completed 90 days before the effective date, under normal budget and appropriation circumstances, allows OSG to obligate funds to Self-Governance Tribes/Consortia on a more efficient, effective, and timely basis. This is also needed to base transfer funds as soon as possible so that Tribes/Consortia can receive the funds without further interruption and avoid the cost of borrowing other funds.

Pursuant to 25 U.S.C. Section 5363(p), Tribes that were participating in self governance on the date of enactment of PROGRESS Act shall have the option to retain its existing funding agreement to the extent that the provisions of that funding agreement are not directly contrary to any expressed provision of Title IV or may decide to negotiate a new funding agreement.

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 into the Tribal Priority Allocation (TPA) portion of the FY 2023 President's Budget Request to Congress, base budget adjustments are governed by 25 USC 5363(m)(3): "...subject to annual adjustment only to reflect changes in congressional appropriations." 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.¹

When a tribe is requesting to base transfer a Consolidated Tribal Government Program amount, it is recommended that the total amount should be identified in one amount, in one line, with a corresponding footnote. That footnote should itemize each program and each amount in the Consolidated Tribal Government Program. The breakout amounts in the footnote should balance with the total amount requested for the Consolidated Tribal Government Program. This same process is to be utilized in instances where a tribe has multiple programs merged in Aid to Tribal Government or Other Aid to Tribal

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

Government.

Examples of funds from sources other than the OIP accounts include but are not limited to Fire Preparedness funding, newly authorized Tribal Transportation Program (TTP) funds from the Department of Transportation, as well as Indian Employment, Training and Related Services Consolidation Act of 2017 (Public Law 115-93) Permanent 477 Program funds from the Departments of Agriculture, Commerce, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, Interior, Justice, Labor, Transportation, and Veteran Affairs. 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) and may have certain applicable conditions.

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 from 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 and additional information may identify a return to the BIA or appropriate DOI program office. In instances where funding for a program is to be base transferred into the base budget, the following footnote shall be applied to that program line:

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

In instances where funding for a program is to be 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 out of the [**SELECT:** Tribe's OR Consortium's] Self-Governance TPA Base Budget as soon as possible.”

In 2022, it is estimated that OSG will distribute more than \$602,595,144 million in funding to 287 Tribes covered by 137 Self-Governance Funding Agreements. Fiscal Year 2023 Total Self-Governance TPA Base Funding was requested in the amount of \$187,813,000. TPA Base totals do not include FY 2023 Pay Cost Adjustments which will be incorporated upon enactment at a later date.

IV. Tribal Shares

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

The FY 2023 President's Budget Request to Congress contains proposed appropriation language that “notwithstanding any other provision of law, no funds available to the Bureau of Indian Affairs or the Bureau of Indian Education for central office oversight and Executive Direction and Administrative Services

(except executive direction and administrative services funding for Tribal Priority Allocations, 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).”

v. Negotiations Process

25 CFR 1000 Subpart G of the Self-Governance regulations describes the process for negotiating funding agreements. Generally, that 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(m)(2) of Title IV of P.L. 93-638 (25 U.S.C. § 5363(m)(2)), as amended, requires that self-governance funding agreements specify the Programs, Services, Functions, and Activities (PSFAs) 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. Please see Section XI. Programs Requiring Special Attention, A. Trust Programs, 1. Identification of Trust PSFAs which addresses the required specificity for Trust PSFAs. 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 consolidate/redesign programs as authorized by Title IV of P.L. 93-638, as amended, except for PSFAs restricted by statute or by a joint agreement for a non-continuing purpose.

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 Regional Director, AVSO, and BTFA depending on the program involved 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 and suggested funding agreement (FA) language prior to final signature of the BIA MOU and FA. The BIA MOU will be signed by the BIA Director and the Tribe.

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 2023 President's Budget Request to Congress. A Self-Governance Negotiations Checklist to help participants through the 2023 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

If, during negotiations, the policies and/or 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 try and 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). If there is an inability to agree on the funding agreement terms, the tribe may submit a final offer pursuant to 25 U.S.C. § 5366(c).

Disputes concerning negotiation of the compact, funding agreement or other matters involving the funding agreement will be addressed through the appropriate dispute resolution process referenced in 25 U.S.C. § 5366(c) and 25 CFR Part 1000 Subpart R – Appeals.

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 is considered to be dispute language. A “Memorialization of Matters Remaining in Dispute” may be provided to the OSG Director when there are disagreements or the Tribe and the Department have differing viewpoints. Any Memorialization of Matters Remaining in Dispute must state that it is not part of the funding agreement. See Attachment 12.

VII. Amendments

If either the Tribe/Consortium or Department wishes to amend a funding agreement, then the amendment process as prescribed by each respective funding agreement shall be used. Negotiations of the amendment shall be completed and executed.

BIA (including OJS, as well as all regional and central offices), BIE, OIEED, OFPSM, the Public Law 102-477 Office (now implementing Public Law 115-93), AVSO, and BTFA 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. Occasionally additional programs and funds may be added to the FA. Some may require amendments.

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 are required on a quarterly basis. 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 2023 operating year. It should be noted 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, or other sources.

Funding for FY 2023 is dependent upon the data associated with the following major reports: Contract Support Costs; Child Abuse and Neglect (per 25 U.S.C. § 2434); 638 Pay Costs; Financial Assistance and Social Services Report (FASSR) (will not receive current year Welfare Assistance funding), and Office of Justice Services (OJS) monthly Crime Reports (will not receive additional OJS funding distributions if not received).

The current DOI Strategic Plan has an item being compiled by OSG headquarters for GPRA purposes: the percent of Single Audit Act reports submitted during the reporting year for which management action decisions on audit or recommendations are made within 180 days.

IX. BIA Responsibilities

A. Budget Formulation

The BIA Central and Regional Offices are responsible for budget formulation for all Tribes, including Direct Service, 638 Contract, and Self-Governance Tribes. Self-Governance Tribes are strongly encouraged to participate in all Regional Budget meetings and the BIA Regions are strongly encouraged to include Self Governance tribes in budget meetings. The 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 all Tribes In their region.

B. 638 Pay Cost Information

The 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 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 the portions of 25 CFR Part 1000 that are not inconsistent with the Practical Reforms and Other Goals to Reinforce the Effectiveness of Self Governance and Self Determination for Indian Tribes (PROGRESS) Act. 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. Prior to final signature the Tribe/Consortium should check with the OSG Compact Negotiator for direction on the date and time-line for the Assistant Secretary – Indian Affairs signature.

Negotiations to reach agreement on compact language should be scheduled as needed. If there is an inability to agree on the compact terms, the tribe may submit a final offer pursuant to 25 U.S.C. § 5366(c). One unsigned version of the compact as agreed to at the field negotiation level 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, 2023, when the initial payments for 2023 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 web site www.osgdb.org. OSG requests that the Tribe/Consortium assume the responsibility for preparing the funding agreement and 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 may submit one electronically signed funding agreement and reprogramming document. Some tribes may elect to submit

two signed original funding agreements, along with two signed original reprogramming requests as agreed to at the negotiation, to the OSG Negotiator or in some cases, as agreed, to the Regional Office for further processing.

C. Proposed Effective Date

Section 403(f) of Title IV of Public Law 93-638, 25 USC § 5363(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. For annual funding agreements, the following language shall be included:

“Section (xxx) --- Proposed Effective Date. The proposed effective date of this Agreement will be [SELECT: October 1 OR January 1, (INSERT: year)]. Ninety days prior to the planned ending date of this Agreement, the Secretary and the Tribe shall determine whether negotiations for the subsequent funding agreement will occur.

This agreement shall remain in full force and effect until a subsequent funding agreement is executed, with funding paid annually for each fiscal year the agreement is in effect; and the term of the subsequent funding agreement shall be retroactive to the end of the term of the preceding funding agreement for the purposes of calculating the amount of funding to which the Indian Tribe is entitled, unless:

- (a) The Tribe provides notification that it is withdrawing, or retroceding the operation of one or more programs identified in a funding agreement, or
- (b) Unless otherwise agreed to by the parties to the funding agreement, or
- (c) By the nature of any noncontinuing PSFA contained in this Agreement.”

25 U.S.C § 5363(p)(4) 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 [SELECT: October 1 OR January 1, (INSERT: year)]. Ninety days prior to the planned ending date of this Agreement the Secretary and the Tribe shall determine whether negotiations for the subsequent funding agreement will occur.

This agreement shall remain in full force and effect until a subsequent funding agreement is executed, with funding paid annually for each fiscal year the agreement is in effect; and the term of the subsequent funding agreement shall be retroactive to the end of the term of the preceding funding agreement for the purposes of calculating the amount of funding to which the Indian Tribe is entitled, unless:

- (a) The Tribe provides notification that it is withdrawing, or retroceding the operation of one or more programs identified in a funding agreement, or

(b) Unless otherwise agreed to by the parties to the funding agreement, or

(c) By the nature of any noncontinuing PSFA contained in this Agreement.

The parties agree to negotiate an amendment to this Agreement 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 2023 Funding Agreement – Annual Reprogramming Request Worksheet

The key financial document to be completed at negotiations is the Self-Governance 2023 Funding Agreement – annual reprogramming request worksheet. The reprogramming request data entry table is available online via the Internet located on the OSG Website www.osgdb.org.

OSG Financial Management will pre-load 2023 Self-Governance base budget data into each Tribe’s/Consortium’s annual reprogramming request. Negotiated amounts and associated footnotes will be entered into the annual reprogramming request via the Internet.

For Tribes/Consortia negotiating their first Self-Governance agreements, 2023 budget information will be provided prior for 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. Only the OSG Negotiators will enter the online data. Tribal employees may have access to the Self-Governance Data Base on a READ ONLY capacity.

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 recommended 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/Consortium and the OSG Director. The Tribe/Consortium should provide a copy of completed documents to the OSG Compact Negotiator and the BIA regional 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/Consortium may or may not receive an award or the amount to be awarded is not certain. Footnotes shall not be used to document disagreements of the Tribe's/Consortium's and the Department's differing positions. Often footnotes will document estimated amounts.

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 2023. Tribes/Consortia, including those negotiating their first funding agreement, should provide to the OSG Negotiator at the time of negotiations the tribal resolution being used to authorize the negotiation of the 2023 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 Compact Negotiator and the BIA Regional 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 Compact Negotiator and the BIA Regional self-governance coordinator in advance of obtaining Tribal signatures.

Once the funding agreement with the Tribe's/Consortium's signature and the signed Final Report for Federal Negotiators are received in Central Office, a review period of 7 to 10 days 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 these Final Report Forms.

I. Incorporation of Title I Self-Determination Provisions

25 USC 5363 (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/Consortium."

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.”

Attachment 7 is now a list of Title I provisions automatically incorporated into Title IV by the PROGRESS Act. All Title I provisions referenced in the funding agreement must now include the new United States Code citations.

xi. Programs Requiring Special Attention

A. Trust Programs

1. Trust Evaluations and Identification of Trust PSFAs

Pursuant to 25 U.S.C. § 5363(d) and 25 U.S.C. § 5366 (a) and (b) and applicable regulations found in 25 C.F.R. § 1000 Subparts O Trust Evaluation Review and M Reassumption, Compacts and/or Funding Agreements negotiated between the Secretary and an Indian tribe shall include provisions (1) to monitor the performance of trust functions by the tribe through the annual trust evaluation, and (2) for the Secretary to reassume PSFAs, or portions thereof, if there is a finding of imminent jeopardy to a physical trust asset, natural resources, or public health and safety. An addition to the model funding agreement includes trust evaluation language. The appropriate Reprogramming Request line items should contain provisions that identify the respective trust PSFAs to be performed by the Tribe.

For example, if the Tribe agrees to assume responsibility for Real Estate Services, the Tribe is expected to perform all real estate services unless otherwise identified in the Funding Agreement, an MOU, Amendment, or Reprogramming Request footnote. In situations where the Tribe has assumed Regional/Agency shares of a Trust PSFA, those circumstances should be identified in the Funding Agreement, or Reprogramming Request footnote.

Examples of services the Tribe may perform when compacting certain Trust PSFAs include the following:

Real Estate Services

- Business Leases
- Oil & Gas
- Residential Leases
- Rights-of-Way
- Sand & Gravel
- Acquisitions & Disposals (including Fee to Trust)
- Gift Conveyances
- Negotiated Sales
- Advertised Sales

Natural Resources

- Forestry
 - Forestry Development
 - Pre-Sales
 - Timber Sales
- Wildland Fire Pre-Suppression
- Fish Hatchery
 - Operations and Maintenance
- Wetlands/ Waterfowl Management
- Tribal Management/Development,
Environmental Management
- Agriculture
 - Grazing
 - Leases
- Irrigation
 - Safety of Dams
 - Dam Maintenance

Social Services/Beneficiary Processes Program

- Supervised Accounts

Probate

Land Titles and Records Office

Real Estate Appraisal Services

2. Real Estate Appraisal Services and Beneficiary Processes

The Real Estate Appraisal Services program is managed by the Appraisal and Valuation Services Office (AVSO) and the Beneficiary Processes Program is now managed by BTFA. As appropriate, negotiations with Tribes/Consortia for these programs will involve AVSO or BTFA participation in conjunction with BIA and OSG Negotiators. Tribes/Consortia that currently perform these programs will be contacted by AVSO or BTFA to negotiate a separate MOU between the Tribe/Consortium and AVSO or BTFA that outlines the roles and responsibilities for management of these programs. Attachment 8 contains a draft template for an MOU for the Real Estate Appraisal Services Program. Attachment 9 contains a draft template for an MOU for the Beneficiary Processes Program. For more information, please contact the AVSO in Albuquerque, New Mexico [(505) 816-1318] or the BTFA Office of External Affairs in 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 [**SELECT:** Appraisal and Valuation Services Office (AVSO) or Bureau of Trust Funds Administration (BTFA)] [**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.”

3. 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)]. AVSO or BTFA should be referenced accordingly 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

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/or AVSO and/or BTFA].”

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 AVSO and/or BTFA programs, the AVSO and/or BTFA 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 AVSO and/or BTFA) 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 AVSO or BTFA 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 AVSO and/or BTFA 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 AVSO and/or BTFA]** 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 AVSO and/or BTFA 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 2022 funding agreement, then the following disclaimer shall be included:

“The Department and the [**SELECT:** Tribe OR Consortium] mutually agree that for 2022, 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.”

4. 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 2023 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 Records 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 asses; 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 written advance request to the [**SELECT:** Tribe OR Consortium] pursuant to 25 U.S.C. § 5365(g)(2)(b). 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 may 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), as amended, prior to being authorized to perform services, functions and activities that involve regular contact with or control over Indian children, Tribal program staff, volunteers, and foster parents 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). The Native American Children’s Safety Act (NACSA), P.L. 114-165, enacted June 3, 2016, amends the Indian Child Protection and Family Violence Prevention Act to require background checks before foster care placements are ordered in tribal court proceedings, and other purposes.

C. Contract Support Costs

The President's 2023 Budget Request to Congress supports the principles of Tribal Self-Governance and strengthening tribal communities across Indian country by fully funding Contract Support Costs (CSC). Funding CSC enables tribes to assume responsibilities for operating Federal programs. Subject to Congressional action, the proposed 2023 budget for the Contract Support Costs (CSC) account is \$404 million. The payment of CSC from a separate indefinite current account ensures full funding for this priority. No amounts made available may be transferred to another budget account.

As included in Self-Governance Funding Agreements (FAs), Contract Support Costs payments are made to cover the following recurring costs: (1) indirect costs (costs incurred for a common or joint purpose benefiting more than one FA); and (2) direct costs of the activities that are not provided in program funding or indirect funding.

Self-Governance Tribes are not required to submit program budgets. As a result, OSG relies on Self-Governance Tribes to furnish data on an annual basis to aid OSG in calculating CSC need. Failure to respond to this CSC data request in a timely manner will result in a delay of the CSC payment.

In order to be able to calculate the full 2023 Contract Support Costs of Self-Governance Tribes, a letter will be sent by the OSG Director to Self-Governance Tribal Leaders requesting data to be received by OSG no later than early August 2023.

Consistent with BIA CSC policy, OSG has been directed to close out CSC payments on September 30, 2023 for Fiscal Year Agreements and December 31, 2023 for Calendar Year Agreements. OSG requires each Self-Governance Tribe's/Consortium to provide the required CSC information by the established deadline.

A copy of the existing BIA Contract Support Policy effective January 10, 2017, can be obtained by downloading the CSC Manual 13 IAM Part 7 from the Indian Affairs, Division of Self-Determination Website. The following language may be used as a footnote and as an acceptable section in a funding agreement:

"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, as amended. Contract Support Costs funding will be calculated in accordance with the BIA's Contract Support Costs Policy and the calculation of the CSC payment shall be based upon data requested annually of the Tribe by OSG and provided to OSG by the Tribe, for the sole purpose of the annual CSC calculation."

D. Welfare Assistance

In 2022, the Welfare Assistance Program was funded at a level of \$78.4 million. Implementation of the National Distribution Methodology has required all participating BIA and Tribal/Consortium to submit their Welfare Assistance Financial Assistance Social Services Report (FASSR) and Narrative Reports in a timely manner as indicated in the Welfare Assistance Funding Distribution Methodology approved by the Assistant Secretary – Indian Affairs. A copy of the approved Distribution Methodology and associated FASSR and Narrative Report will be posted in the file library of the OSG Website www.osgdb.org when they are made available for use by the Tribe/Consortium. The FASSR and Narrative Reports are to be

completed and electronically certified by the Tribe/Consortium and sent to the OSG by October 31st for Fiscal Year Tribes and January 31st for Calendar Year Tribes.

If a Tribe/Consortium projects a potential shortfall in welfare assistance funds for 2023 and wants to request additional welfare assistance funds, it must submit its package to OSG. OSG will then submit a Request for Additional Funds (RAF) package to the BIA, Office of Indian Services (OIS). The RAF package must demonstrate how the level of expenditures for 2023 is expected to be greater than the Tribe's/Consortium's reported expenditures in 2022. Additionally, the RAF must describe what would happen if the Tribe/Consortium was to experience a shortfall in funding.

The reports are required so BIA can determine whether the full need welfare assistance payment level can be distributed, or some pro rata reduction is required to stay within any capped national welfare assistance appropriation enacted by Congress. 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/Consortium 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.

For the first year after a Tribe/Consortium informs the OSG Compact Negotiator in writing that it no longer wants to operate the General Assistance program under its approved Tribal Redesign Plan, it will receive the associated fixed amount of General Assistance funding and thereafter will receive the amount generated pursuant to the national Welfare Assistance distribution methodology.

E. Johnson O'Malley

On December 31, 2018, the President signed into law S. 943, the "Johnson O'Malley Supplemental Indian Education Program Modernization Act" which requires the Secretary of the Interior to conduct and maintain an updated count of American Indian and Alaska Native students in public schools who qualify for supplemental Federal assistance under the Johnson O'Malley (JOM) program. Under the newly enacted law, eligible applicants are tribal organizations, Indian corporations, school districts, or States with eligible American Indian and Alaska Native children attending their schools or public school districts that benefit American Indian and Alaska Native students. Eligible American Indian and Alaska Native students are enrolled members of a federally recognized tribe, or at least one-fourth or more degree of Indian blood descent of a member of a federally recognized Indian tribal government eligible for services from the Bureau of Indian Education (BIE). In addition, eligibility requires these children to be between age 3 through grades 12, with priority given to children residing on or near an Indian reservation. Given that each year's funding is dependent on the latest student count, the amount of JOM funding and associated Education Line Officers funding is expected to vary each year. However, pursuant to Section 7(e)(b) of the Act, hold harmless provisions included in the Act remain effective 4 years after the date of enactment. As a result, JOM and associated Education Line Officers program funding are not expected to necessarily change until 2024. Tribes may decide to move the JOM funding amount into a single line item in the reprogramming document to accommodate the upcoming change in 2024.

F. Road Maintenance

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 the applicable Transportation Act for the upkeep of these roads.

G. Law Enforcement

The FY 2023 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. 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.

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.

Estimates of Base FY 2023 Public Safety and Justice Funding for Self-Governance Tribes are provided in Appendix 1 – 9, 1 – 10, and 1- 11 of the President's FY 2023 Green Book. In addition, estimates of Detention and Corrections Base Public Safety and Justice funding for Self-Governance Tribes are provided in Appendix 1 – 3 and 1 – 4 of the President's FY 2023 Green Book.

Estimated amounts should be included in column D of the annual reprogramming request and described in the associated footnote either as estimates or base amounts with the possibility of additional Law Enforcement non-recurring funding being provided on the referenced line item. Estimates of non-recurring Law Enforcement funding may be included in Column D of the annual reprogramming request but should be identified in a footnote as such. An approved list of Law Enforcement programs and recurring funding estimates to be included in the 2023 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. OSG Compact 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.

The following footnote provisions shall be used for those tribes receiving Law Enforcement program funding:

“Any new eligible Law Enforcement program funding will be determined and added to the funding agreement based on a determination by BIA OJS. The amount identified in Column D is [**SELECT:** \$_____ and is an estimate **OR** \$_____ a base amount]. The possibility of additional Law Enforcement non-recurring funding may be added to this line. The Tribe agrees to provide monthly uniform crime data reports pursuant to 25 CFR § 12.41. The monthly reports are due by the 5th of each month and shall be submitted to the BIA District Office in the Tribe's area.”

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 may be included in the FY 2023 President's Budget Request to Congress.

H. Indian Employment, Training and Related Services Consolidation Act of 2017 Public Law 115-93) Permanent 477 Program

Public Law 115-93 was enacted on December 18, 2017 to amend the Indian Employment, Training and Related Services Demonstration Act of 1992 (Public Law 102-477, as amended), to facilitate the ability of Indian tribes to integrate the employment, training, and related services from diverse Federal sources, and for other purposes. Section 2 of the Act expands the 477 program to include funds from the Departments of Agriculture, Commerce, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, Interior, Justice, Labor, Transportation, and Veteran Affairs.

Under the new law, the Secretary of the Interior was required to negotiate a Memorandum of Agreement (MOA) with these twelve federal departments before December 18, 2018. The MOA is currently available for use in 2023.

A funding agreement that includes P.L. 115-93 477 program funds shall include a section with the following language:

“To the extent this Agreement includes Indian Employment Training and Related Services Consolidation Act funds pursuant to P.L. 115-93, as amended, 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. 115-93 Plan, including compliance with existing P.L. 115-93 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 received under this program 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, as amended, and legislation related to funding origin).

The following language should be included in calendar year agreements to ensure that non-DOI P.L. 115-93 477 program 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]** approved P.L. 115-93 477 program 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 [the appropriate Federal Agency] pursuant to an approved P.L. 115-93 477 Program 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 [the appropriate Federal Agency].”

The following footnote 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 [the appropriate Federal Agency] pursuant to an approved P.L. 115-93 477 Program 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 [the appropriate Federal Agency].”

I. Tiwahe Initiative

As part of a nationwide Tiwahe Initiative, all Tribes who were able to demonstrate that they had Social Services and/or Indian Child Welfare Act base funding in their 2014 Tribal Priority Allocation (TPA) base were eligible for and provided a recurring base funding increase (approximately .0807 percent of their Social Services TPA base and approximately .2154 percent of their Indian Child Welfare Act TPA base). For the most part, Social Services and Indian Child Welfare Act recurring Tiwahe Initiative Program funding has already been base transferred. However, as discussed in the Formula Matrix Tribal/Federal Workgroup, some aggregate net adjustments remain to be implemented. When applicable, the OSG Negotiator will identify and confirm the Tribe’s/Consortium’s aggregate net adjustment to be included in Column D of the negotiated 2023 Reprogramming Request. Final adjustments to Tiwahe Initiative Social Services and/or Indian Child Welfare Act Program base funding amounts should be identified and requested to be approved for base transfer by Congress as part of a future budget cycle for the Self Governance Compacts Program TPA Base Funding.

Some Self-Governance Tribes/Consortia have consolidated program funding into a single line item (such as Consolidated Tribal Governments and Other Aid to Tribal Government). In order to facilitate eligibility determinations for future TPA base funding increases, as part of the 2023 Self-Governance Negotiations, if there is no existing breakout of the consolidated program funding, OSG Compact Negotiators should propose the option for consideration by the Tribe/Consortium of including on the 2023 reprogramming request a footnote that identifies the specific programs and associated funding amounts that are consolidated in such line items.

The following Tiwahe Initiative footnote may need to be included for existing Self-Governance Tribes/Consortium on applicable Social Services and/or Indian Child Welfare Act TPA Line Items:

Under the Tiwahe Initiative, the [**INSERT**: Name of the Tribe OR Consortium] has been determined to be eligible to receive recurring [**SELECT**: Social Services OR Indian Child Welfare Act] program funding.

Subject to Congressional action, the amount shown in Column A includes the **[SELECT: Tribe's OR Consortium's]** base program funding.

The following Tiwahe Initiative footnote may be included for new Self-Governance Tribes on applicable Social Services and Indian Child Welfare Act TPA Line Items:

“Under the Tiwahe Initiative, the Tribe has been determined to be eligible to receive recurring **[SELECT: Social Services OR Indian Child Welfare Act]** program funding. Subject to Congressional action, the amount shown in Column D is the estimated amount of funding to be provided to the Tribe in 2023.”

J. 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 in Column D 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). 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 13.

The provisions 25 U.S.C. § 5367 of the PROGRESS Act, and based on tribal election, all or part of 25 U.S.C. § 5324(m) Title I Pub.L.93-638, as amended, now set forth requirements for construction projects, programs, and activities. For each program, project, and activity, a Regional BIA Engineer/Project Manager will be assigned to work with the Tribe/Consortium on statutory deliverables. For each construction project, program, and activity an amendment to the FA shall be developed in negotiation with the Tribe/Consortium that meets the requirements of the law.

K. Tribal Transportation Program (TTP)

The authorization of the FAST Act expired on September 30, 2021. In order to be valid, the program Addendum must conform to the existing authorization statute that governs. A new transportation reauthorization, the “Surface Transportation Reauthorization Act of 2021” (STRA-21), Div. A of Pub. L. 117-58 (November 15, 2021), also colloquially known as the “Bipartisan Infrastructure Law,” has been enacted for FYs 2022 through FY2026. The use of this TTP MODEL ADDENDUM is limited to negotiations for applicable FY(s)/CY(s) 2022 thru 2026. Estimates of TTP and TTP Planning amounts may be included in 2023 reprogramming requests if desired.

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 in [**SELECT:** FY 2023 OR CY 2023]. A transportation Addendum based on the enacted authorization [**SELECT:** has been OR will be] attached and incorporated into the funding agreement. [The amount shown in Column D is an estimate.] The actual 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 Tribal Transportation Planning Program 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 2023 OR CY 2023]. [The amount shown in Column D is an estimate.] The actual 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 2023/CY 2023:

“The [SELECT: Tribe or Consortium] has elected to receive Tribal Transportation Program funding directly from the Federal Highway Administration during [SELECT: FY 2023 OR CY 2023]. Project work or activities funded by [SELECT: FY OR CY] 2022 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.”

See Section 9 of Attachment 11a/Single Tribe or Attachment 11b/Tribal Consortium for applicable TTP Reporting Requirements.

L. 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 break out of all negotiated shares included in the funding agreement. (See attachment A & B models on the OSG website: www.osgdb.org.)

M. Program Funding Levels Reduced in the 2023 President's Budget Request to Congress

With regard to programs for which the FY 2023 President's Budget Request to Congress proposes to reduce funding, the following footnote language may be included on respective Reprogramming Request program lines:

“The amount for this line item is derived from the 2023 President's Budget Request to Congress and may be adjusted in accordance with 25 CFR § 1000.104.”

N. 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 14. 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.

O. Single Audit Copies

The OSG Compact Negotiator shall advise the Tribe that the Office of the Inspector General (OIG) National Single Audit Coordinator Memorandum dated July 1, 2009 regarding the Suspension of Single Audit Extension Policy dated July 1, 2009 disallows extensions of the date by which single audits must be filed. Audits that are late will be subject to sanction in accordance with OMB Uniform Guidance, Title 2, Subtitle A, Chapter II, Part 200, Subpart F Sanctions.

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 § 5305(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.”

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 Uniform Guidance is implemented effective December 26, 2014.

With regard to future audit reports, it is important to note that should the threshold of \$500,000 not be met in future years, although a Single Audit report is not required, a financial statement audit is to be conducted and a “Certification – Single Audit Report Not Required” form must be completed and submitted to the OSG Director to comply with Department of the Interior policies. The same is applicable to Tribes applying to begin participating in Tribal Self Governance.

The Good Accounting Obligation in Government Act (GAO - IG Act. P.L. 115-414) was enacted on January 3, 2019 and requires that the Department of the Interior report the status of each open audit recommendation issued more than one year prior to the submission of the Agency budget justification to Congress. The Act requires Federal Agencies to include the current target completion date, implementation status, and any discrepancies on closure determinations.

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 (One electronic signature file of the following items will be accepted in lieu of two original signed funding agreements and TTP):

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

XIII. List of Attachments

- Attachment 1:** [Self-Governance Negotiations Process Checklist](#)
- Attachment 2:** [List of BIA Regional Office GPRA Contacts](#)
- Attachment 3:** [List of BIA Tribal Resilience Regional Points of Contact](#)
- Attachment 4:** [Reporting Requests](#)
- Attachment 5:** [Model Funding Agreement](#)
- Attachment 6:** [Final Reports for Federal Negotiators](#)
- Attachment 7:** [Provisions of Title I of P.L. 93-638, as amended, that are now incorporated by § 201\(d\) of the PROGRESS for Indian Tribes Act into Self Governance Compacts and Funding Agreements](#)
- Attachment 8:** [MOU Template for the Real Estate Appraisal Services Program](#)
- Attachment 9:** [MOU Template for the Beneficiary Processes Program](#)
- Attachment 10:** [Process for Negotiating Tribal Transportation Program into Funding Agreement](#)
- Attachment 11:** Tribal Transportation Program Templates for Self-Governance [Tribes](#) and [Consortia](#) (2 Documents)
- Attachment 12:** [Memorialization of Matters Remaining in Dispute](#)
- Attachment 13:** [Guidelines for Tribally Operated Wildland Fire Management Programs, April 6, 2001 Memorandum from the Deputy Commissioner of Indian Affairs](#)
- Attachment 14:** [Motor Vehicle Operation Policy for the BIA](#)