

**MODEL [PROGRESS Act]**

**[SELECT ANNUAL OR MULTI-YEAR] FUNDING AGREEMENT FOR [SELECT: FY OR CY] [INSERT APPLICABLE YEAR(S)]**

**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 through which the Tribe is authorized to plan, conduct, consolidate, and administer programs, services, functions, and activities (PSFAs), or portions thereof, as specified in this Agreement. This Agreement includes PSFAs administered by the Secretary through Indian Affairs for the benefit of the Tribe.

**Section 2**

**Programs, Services, Functions, and Activities Assumed By the Tribe** - The Tribe agrees to implement the PSFAs, subject to the terms of the Compact and this Agreement, identified in the attached REPROGRAMMING REQUEST for which funds are transferred to the Tribe and which are subject to 25 U.S.C. § 5365(f) (Nonduplication) and 25 U.S.C. § 5368(l) (Limitation of Costs). The Tribe has broad authority to consolidate and redesign the programs and to reallocate funding between PSFAs without further approval from the Secretary unless otherwise indicated in this Agreement.

**Section 3**

The Tribe's Budget Categories are listed below.

(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. Economic 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 4**

**Special Projects or Earmarked Programs, Services, Functions, and Activities** - The Tribe is not authorized to consolidate, redesign or reallocate funds provided through this agreement for PSFAs which are subject to special restriction imposed by statute, or which are awarded to the Tribe on a competitive basis; or awarded for 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 that Self-Governance Tribes, other Tribes, and BIA Agencies are treated similarly.

The OSG's Authority to Obligate (ATO) award documents will identify funds that are awarded on a non-recurring, one-time basis, and are not guaranteed to be funded in subsequent years. The following programs which meet these criteria are included in this Agreement:

(SAMPLE)

- (a) Certain Individual Identified Facilities Major and Minor Improvement and Repair Projects
- (b) Welfare Assistance
- (c) Certain Criminal Investigations/Police Service
- (d) Certain Detention/Corrections
- (e) Wetlands/Waterfowl Management

- (f) Certain Fish Hatchery Operations
- (g) Certain Fish Hatchery Maintenance
- (h) Forestry Development
- (i) Forest Inventories and Plans
- (j) Wildland Fire Preparedness
- (k) Wildland Fire Prevention
- (l) Certain Wildland Fire Special Projects
- (m) Water Management, Planning and Pre-Development
- (n) Certain Environmental Management
- (o) Certain Other Indian Rights Protection Categories
- (p) Unresolved Hunting and Fishing Rights
- (q) Mineral Assessments
- (r) Certain Real Estate Services Projects
- (s) Tribal Transportation Program
- (t) Tribal Transportation Planning
- (u) Specific Construction Projects (may require additional provisions pursuant to 25 U.S.C. § 5367)

Other funds not identified in this section may be separately negotiated and included in this Agreement as provided for in Section 9 – Amendment or Modification of this Agreement.

## **Section 5**

**Programs, Services, Functions, and Activities Retained by the BIA** – The Secretary is prohibited from waiving, modifying, or diminishing in any way the trust responsibility of the United States with respect to Indian Tribes and individual Indians that exists under treaties, Executive orders, court decisions, and other laws. Any PSFA 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 6**

**Amount of Funds** - Subject to Congressional action and the terms of this Agreement, the Secretary shall make available to the Tribe the funds identified in the attached REPROGRAMMING REQUEST for **[SELECT: fiscal year 20\_\_ OR each fiscal year]**.

## **Section 7**

**Contract Support Costs** – Subject to applicable federal laws, the **[INSERT: Tribe OR Consortium]** is eligible for Contract Support Costs (CSC) funding on the same basis as Tribes which contract with the BIA under P.L. 93-638, as amended. CSC funding will be calculated in accordance with the BIA's CSC 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.

### **Section 8**

**Payment** - In accordance with 25 U.S.C. § 5363(g), the Tribe chooses to receive advance payments in the form of **[INSERT: annual or semi-annual]** installments. Funds not available for the advance annual installment will be awarded to the Tribe as soon as possible after the amounts due are known and deliverable. In accordance with 25 U.S.C. § 5368(i), the Prompt Payment Act shall apply to the transfer of funds due under this Agreement.

### **Section 9**

**Amendment or Modification of this Agreement** - In accordance with 25 U.S.C. § 5363(n), the Secretary shall not revise, amend, or require additional terms in a new or subsequent funding agreement without the consent of the Tribe, unless such terms are required by Federal law. 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 10**

**No Reduction in Programs, Services, or Funds of Other Tribes** - Nothing in this Agreement limits or reduces any programs, services, or funds of, or provided to another Indian Tribe.

### **Section 11**

**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 12**

**Establishment of Self-Governance Base Budget** - The Tribe elects to establish and maintain a self-governance stable base budget for its operations under self-governance pursuant to 25 U.S.C. § 5363(m)(3). Adjustments to stable base budgets will be in accordance with 25 U.S.C. § 5363(m)(3)(A).

### **Section 13**

**Incorporated Title I Provisions of P.L. 93-638, as Amended -**

- (a) The provisions of Title IV of P.L. 93-638, as amended, and the provisions of Title I of P.L. 93-638, as amended, that are incorporated by § 201(d) of the PROGRESS for Indian Tribes Act are incorporated in this agreement. **[See Negotiation Guidance Attachments]**
- (b) The Tribe chooses to incorporate the following provisions from Title I of P.L. 93-638, as amended, and such provisions shall be subject to, and not conflict with, § 101(a) of the PROGRESS for Indian Tribes Act.
  - 1. **[List here]**

***[The list of provisions to be included here is to be provided using current U.S.C. code citations.]***

**Section 14**

**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 15**

***[FOR ANNUAL FUNDING AGREEMENTS ONLY:]***

**Effective Date** - The effective date of this Agreement is **[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.

***[FOR MULTI-YEAR FUNDING AGREEMENTS ONLY:]***

**Effective Date** – The effective date of this Agreement is **[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.

### **Section 16**

**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**: AVSO and/or OST/BTFA].

### **Section 17**

**Employee Security** - Prior to being granted access to DOI automated information technology systems and DOI Trust Records in any electronic data or hardcopy format, the [**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 [**INSERT IF APPLICABLE**: AVSO and/or OST/BTFA 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 AVSO and/or OST/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 the [SELECT: Tribe OR Consortium] will continue to carry out BIA [INSERT IF APPLICABLE: AVSO and/or OST/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: AVSO and/or OST/BTFA 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 [INSERT APPLICABLE YEAR(S)], 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 18

[SELECT: Real Estate Appraisal Services OR Beneficiary Processes]

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

## Section 19

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

(a) The [SELECT: Tribe OR Consortium] agrees to:

1. 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.)
2. 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
3. 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].

(b) The Secretary agrees to:

1. 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.
2. 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];
3. 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
  4. 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 20

**Trust Evaluation and Reassumption** – The Secretary shall monitor through an annual trust evaluation the performance of trust functions by the Tribe. Further, the Secretary may reassume any PSFA, or portions thereof, subject to the provisions set forth at 25 U.S.C. § 5366(b) (Reassumption).

## Section 21

**Single Audit Copies** - In addition to the required copy to the Federal Audit Clearing House pursuant to 25 U.S.C. § 5365(c), the [SELECT: Tribe OR Consortium] agrees 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 22

*[Please include this section to reduce potential liability issues in the operation of PSFAs under this FA.]*

**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 23

**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.

## Section 24

*[Please include this section when the Tribe chooses to include funding under an approved P.L. 102-477 Plan.]*

**Indian Employment Training and Related Services Consolidation Act of 2017 (Public Law 115-93)** - To the extent this Agreement includes Indian Employment Training and Related Services Consolidation Act funds pursuant to P.L. 102-477, as amended, the **[SELECT: Tribe OR Consortium]** agrees that:

- (a) 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.
- (b) 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.
- (c) No program funds received under this permanent 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.)

**[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 25

***[OPTION:** Please include this section to reduce potential liability issues in the operation of PSFAs under this FA.]*

**Programs Involving Contact With 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 by a background check and criminal investigation and a final favorable suitability determination issued. Minimum standards of character must be established and implemented in accordance with 25 CFR Part 63.

## Section 26

*[OPTION: If Construction PSFAs are included in this Agreement additional provisions shall be included pursuant to 25 U.S.C. § 5367.]*

## Section 27

*[OPTION: This Section is for Self Governance Tribes that have entered into 105(L) lease(s)]*

P.L. 93-638, Section 105(l) Leases – Subject to the provisions of Section 105(l) of P.L. 93-638, as amended, the **[SELECT: Tribe/Consortium]** and the Secretary have negotiated leases which are incorporated into this Agreement for all purposes. Section 105(l) lease compensation received by the **[SELECT: Tribe/Consortium]** under this Agreement shall be paid in accordance with the payment provision(s) of each respective Section 105(l) lease, as may be amended or renegotiated from time to time. Except as otherwise provided under each respective Section 105(l) lease, funds due to the **[SELECT: Tribe/Consortium]** pursuant to the Section 105(l) lease constitute the full, reasonable, and non-duplicative compensation for the use of the respective facility and no additional compensation is due for that purpose. The following Section 105(l) facility lease(s) and successor lease agreement(s) is/are hereby incorporated into this Agreement and shall remain part of this Agreement until such time as the lease expires without renewal or is otherwise terminated by either party in accordance with the terms of such lease:

- A. (Name of leased facility)
- B. (Name of leased facility)
- C. (Name of leased facility)
- D. Etc.”

ABC TRIBE

BY: \_\_\_\_\_  
Chair/Authorized Executive

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

UNITED STATES OF AMERICA

BY: \_\_\_\_\_  
Director, Office of Self Governance

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