



**FISCAL YEARS 2013–2016 ANNUAL FUNDING AGREEMENT
BETWEEN THE
UNITED STATES DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
AND THE
CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION**

March 8, 2012 draft reflecting technical corrections through April 12, 2012

Section 1. Nature of Document, Parties

This is an annual funding agreement (“AFA”) between the United States Fish and Wildlife Service (“Service”, or “FWS”), a bureau of the United States Department of the Interior (“Department”), and the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation (“CSKT”) (hereinafter referred to collectively as the “Parties”). The CSKT is a Federally-recognized Indian Tribe represented by its Tribal Council, participating in the Tribal Self-Governance Program established by the Secretary of the Interior (“Secretary”) under the Indian Self-Determination and Education Assistance Act (“ISDEAA”), 25 U.S.C. §§ 450-450n, as amended by § 204 of the Tribal Self-Governance Act of 1994 (“TSGA”), now codified at 25 U.S.C. §§ 458aa-458hh.

The Parties will work together, and the CSKT will perform each Activity covered by this AFA, to ensure that the National Bison Range Complex (“NBRC”) is managed as part of the National Wildlife Refuge System (“NWRS”) and consistent with: the National Wildlife Refuge System Administration Act (“NWRSA”), 16 U.S.C. §§ 668dd and 668ee, as amended; NWRS regulations found at 50 C.F.R. Chapter 1, Subchapter C; the policies of the Service as found in the Service Manual and Refuge Manual; and the Operational Standards provided by Service line officers responsible for administration of the NWRS within the Mountain-Prairie Region (Region 6) of the Service.

Section 2. Purpose

A. Recognize Partnership; Fund and Perform Activities. The purpose of this AFA is to recognize and formalize the partnership between the Service and the CSKT in operating and maintaining all programs of the NBRC. The Parties are committed to a partnership that: 1) is an on-the-ground partnership with Service and CSKT Employees working together on the NBRC to accomplish common goals and objectives to benefit wildlife, habitat and people; 2) provides the CSKT with a substantive role in the day-to-day operations and maintenance of programs of the NBRC under overall administration and management by the Service, thereby furthering Federal Tribal Self-Governance policy; and 3) leverages the complementary resources and abilities of the Parties to manage the NBRC as a unit of the NWRS, and better serve the natural resources of the NBRC, the people of the CSKT, and all Americans. This partnership facilitates achievement of Departmental and Congressional objectives for both its NWRS and Tribal Self-Governance programs. This AFA establishes the responsibilities of the Parties and the terms and conditions



under which the Service will fund and the CSKT will perform programs, services, functions, and activities, or portions thereof (Activities) at the NBRC. The Secretary has identified some of the programs which may be eligible for inclusion in an AFA at the NBRC in the list published in the Federal Register at 76 F.R. 57068 (September 15, 2011).

B. Recognize and Further Relationship; Significance. This AFA recognizes and furthers: 1) the government-to-government relationship that exists between the Federal government and the recognized Indian Tribes of the United States generally, and the CSKT specifically; and 2) the special geographic, historical, and cultural significance to the CSKT of the NBRC, including CSKT's ownership of the land upon which the Ninepipe and Pablo National Wildlife Refuges are located.

C. Benefits to the Parties:

1. The Service benefits from this AFA because it:

- a. furthers the mission of the Service which is: "Working with Others to conserve, protect, and enhance fish, wildlife, plants and their habitat for the continuing benefit of the American people";
- b. helps the Service achieve both the mission of the NWRS and the intent of Congress in the National Wildlife Refuge System Improvement Act of 1997, which states at Section 5(a)(4)(E):

"In administering the System, the Secretary shall . . . -

ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges and the fish and wildlife agency of the States in which units of the System are located";
- c. helps the Service comply with Executive Order 12996 ("Management and General Public Use of the National Wildlife Refuge System"), which establishes Guiding Principles for management of the System, including:

"Partnerships. America's sportsmen and women were the first partners who insisted on protecting valuable wildlife habitat within wildlife refuges. Conservation partnerships with other Federal agencies, State agencies, Tribes, organizations, industry and the general public can make significant contributions to the growth and management of the Refuge System."
- d. improves the ability of the NBRC to discharge its responsibilities to protect the cultural resources of the NBRC, through close collaboration with the Native people in whose homeland the NBRC is located;



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- e. provides the Service with closer cooperation with its professional peers employed by the CSKT Division of Fish, Wildlife, Conservation and Recreation, who have extensive scientific knowledge, significant traditional ecological knowledge, and a long and successful history of conserving, managing, and restoring the fish, wildlife, and habitat resources of the Flathead Reservation; and
 - f. furthers and supports the Department's statutory responsibility under the Tribal Self-Governance Act, and the policy of the United States regarding Tribal Self-Governance. This participation fulfills Congressional and Departmental objectives as set forth in 25 C.F.R. §§ 1000.4(b) and (c).
2. The CSKT benefits from this AFA because the agreement:
- a. provides Tribal participation in Federal programs within the exterior boundaries of the Flathead Indian Reservation, consistent with the Tribal Self-Governance Act (25 U.S.C. §§ 458cc-458hh), and House Report No. 103-653 (page 10 of which stated that the House Natural Resources Committee intends the Self-Governance legislation "to ensure that any federal activity carried out by the [Interior] Secretary within the exterior boundaries of the reservation shall be presumptively eligible for inclusion in the Self-Governance funding agreement.");
 - b. provides CSKT with the ability to more effectively help the Service manage Refuge lands which CSKT beneficially owns (Ninepipe and Pablo National Wildlife Refuges), as well as lands adjoining the National Bison Range which CSKT owns either beneficially or in fee;
 - c. better enables CSKT to holistically address natural resources management issues on its Reservation, due to the NBRC's central location within the Reservation;
 - d. improves CSKT's ability to help protect the cultural resources of the NBRC, through closer collaboration with the Service;
 - e. improves upon CSKT's history of, and ongoing commitment to, assisting the Service with fire suppression and fire management issues at the NBRC; and
 - f. furthers Tribal capacity-building with respect to Reservation natural resources management, consistent with Federal objectives for the Tribal Self-Governance program.

Section 3. Authority, Interpretation and Compliance

A. *Authority.* This AFA is authorized by:

1. Title IV of the ISDEAA, 25 U.S.C. §§ 458aa–hh, as amended by Section 204 of the TSGA, as amended;
2. Section 403(c) of the Tribal Self-Governance Act, codified at 25 U.S.C. § 458cc(c), which authorizes tribal contracting of Interior programs, services, functions or activities which are of special geographical, historical, or cultural significance to a tribe; and
3. Section 403(i)(1) of the Tribal Self-Governance Act, 25 U.S.C. § 458cc(i)(1), which, except as otherwise provided by law, requires the Secretary to interpret each Federal law,



including the NWRSAA, as amended, and each Federal regulation in a manner that will facilitate the inclusion of programs, services, functions, and activities in an AFA and the implementation of an AFA.

B. Interpretation. This AFA shall be interpreted consistent with applicable Federal laws and regulations including Title IV of the ISDEAA and the Tribal Self-Governance Regulations, and as provided below in this AFA in Sections 3.C (Compliance); Section 19.C (Tribal Administrative Procedures); and Section 19.D (Indian Preference).

C. Compliance. In conducting any Activity covered by this AFA, the CSKT will comply with all applicable Federal and Tribal laws and regulations, and all Departmental and Service Operational Standards guiding the management of the NWRS. This provision is not intended to expand the applicability of any Federal or Tribal law or regulation. In case of any conflict between a Federal law or regulation and a Tribal law or regulation, Federal law will govern.

Section 4. Definitions

The following terms and their derivatives have the meanings specified within this Section:

Activity, when capitalized, means a program, service, function, activity, or portion thereof, which the Service agrees to fund and the CSKT agrees to perform under this AFA.

AFA means an annual funding agreement, including all recited attachments, under Title IV of the Indian Self-Determination and Education Assistance Act (“Act”).

Affected Federal Employee means a career or career-conditional Service employee at the NBRC:

- A. Who was employed by the Service to perform an Activity as of the date of the last approving signature on this AFA; and
- B. Whose duties are contracted by CSKT under this AFA.

Chairman means the Chairman of the CSKT Tribal Council.

CSKT Employee means a person employed by the CSKT to perform an Activity, including a Service employee assigned to work for CSKT under an Intergovernmental Personnel Act (“IPA”) assignment.

IPA means Intergovernmental Personnel Act, codified at 5 U.S.C. §§ 3371-76.

IPA Employee means any Service employee assigned to work for CSKT through an IPA agreement.



National Bison Range means the unit of the National Wildlife Refuge System authorized by Congress in Chapter 192 of the Act of May 23, 1908, at 35 Stat. 267.

National Bison Range Complex, or NBRC, includes the following units of the National Wildlife Refuge System: National Bison Range, Ninepipe National Wildlife Refuge, Pablo National Wildlife Refuge, and the Northwest Montana Wetland Management District in Lake County.

Ninepipe National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3504 on June 25, 1921.

Operational Standard means a requirement of a law, regulation, written policy, approved written plan, or published Service standard, whether or not existing on the date of execution of this AFA, that governs the performance of an Activity, and which the Service would have to meet if the Service itself performed the Activity.

Pablo National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3503 on June 25, 1921.

Plan: see “*Work Plan*”

RAPP means Refuge Annual Performance Plan, a database reporting system that forecasts planned, and reports actual, accomplishments for each unit of the National Wildlife Refuge System for each fiscal year.

Refuge Leadership Team means the following team of officials: FWS Refuge Manager; FWS Deputy Refuge Manager; Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation; and the CSKT Wildlife Refuge Specialist.

Refuge Manager means the FWS line officer in charge of the National Bison Range Complex.

Refuge Supervisor means the FWS line officer, located in the Mountain and Prairie Regional Office, with direct supervisory authority over the Refuge Manager.

Region or *Region 6* means the Mountain and Prairie Region of the U.S. Fish and Wildlife Service, which includes the states of Montana, Wyoming, Utah, Colorado, Kansas, Nebraska, South Dakota and North Dakota.

Regional Director means the Director of the Mountain and Prairie Region, U.S. Fish and Wildlife Service.

Secretary means the Secretary of the Interior or her or his authorized representative.

Volunteer means any person who performs work at the NBRC with no, or only nominal, pay, benefits, or other commonly accepted attribute of employment.



Work Plan or Plan means the jointly-developed and mutually-agreed upon document that identifies the work and projects to be performed to accomplish each Activity for each fiscal year.

Section 5. Physical Area Covered

The physical area covered by this AFA consists of those parts of the NBRC that lie entirely within the boundaries of the Flathead Indian Reservation. Specifically, the NBRC consists of the following units of the NWRS:

- A. National Bison Range (Org. Code 61540);
- B. Ninepipe National Wildlife Refuge (Org. Code 61541);
- C. Pablo National Wildlife Refuge (Org. Code 61542); and
- D. Northwest Montana Wetland Management District in Lake County (Org Code 61544).

As of April 1, 2012, the NBRC Refuge Manager will also administer the following units of the NWRS as part of the NBRC. This AFA does not include any programs located on these units:

- Lost Trail National Wildlife Refuge (Org. Code 61545); and
- Northwest Montana Wetland Management District in Flathead County (Org. Code 61546)

Section 6. Activities Covered

A. *Five Categories.* The CSKT will perform Activities in five categories:

1. Management of Contracted Activities. CSKT shall contract a new Wildlife Refuge Specialist position to oversee Activities contracted under this AFA. The Service shall retain the Refuge Manager and Deputy Refuge Manager positions, and their associated activities, subject to this AFA;
2. Biological Program (including Habitat Management);
3. Fire Program;
4. Maintenance Program; and
5. Visitor Services Program, including all Activities except: environmental education, cooperating association oversight, and Volunteer coordination activities.

The Activities in the above five categories will be more fully described in the Work Plan as set forth in Section 7.E below.

B. *Redesign and Reallocation.* In accordance with 25 U.S.C. § 458cc(b)(3), CSKT may redesign any Activity or reallocate funding between Activities with the prior written approval of, and subject to any conditions imposed by, the Refuge Manager.



C. *Activities Retained by the Service.* The Service retains all activities not explicitly covered by this AFA. Subsequent AFAs may include some of these retained activities. The Service will negotiate with the CSKT in good faith to explore and implement opportunities for adding activities to subsequent AFAs.

D. *Absence of Activity from AFA.* The absence from this AFA of any activity at the NBRC is not intended to denote or imply that the activity is, or is not, an inherently Federal function within the meaning of Section 403k of the Act, codified at 25 U.S.C. § 458cc(k), and does not preclude negotiation by the Parties for inclusion of additional non-inherently-Federal activities in a subsequent AFA.

Section 7. Management, Direction, and Control

A. *CSKT.* Subject to the final authority of the Refuge Manager, the CSKT will perform the Activities contracted under this AFA.

B. *Refuge Manager.* The Refuge Manager will retain final responsibility and authority for managing, directing, controlling and administering the operation of the NBRC. The Deputy Refuge Manager, in accordance with Service policy (030 FW 1.9.D), exercises all authority delegated to the Refuge Manager that is not restricted to the Refuge Manager. This authority will be exercised in a collaborative fashion, with full and objective consideration of CSKT recommendations, through the work of the Refuge Leadership Team (see Section 7.D, below). The Refuge Manager (or, consistent with 030 FW 1.9.D, the Deputy Refuge Manager) shall retain sole and final authority with respect to the following actions for the NBRC:

1. Setting work priorities through the NBRC Work Plan;
2. Approval of any uses of the NBRC by third parties, including secondary uses and economic uses;
3. Signature authority for Appropriate Use Determinations and Compatibility Determinations;
4. Signature authority for Special Use Permits;
5. Expenditure of Federal funds allocated to the NBRC, but not transferred to the CSKT under this AFA;
6. Supervision of Service personnel performing activities retained by the Service;
7. Establishment or modification of regulations for public use that can be accomplished at the field level under 50 C.F.R. Chapter 1, Subchapter C;
8. Final field-level approval of: environmental compliance documents (including NEPA and Intra-Service Section 7 consultations required by the Endangered Species Act) and refuge management plans, including: Comprehensive Conservation Plans; step-down management plans; prescribed fire burn plans and GO/ NO GO checklists;
9. Final field-level approval of: emergency operations documents, including Delegations of Authority and Return of Delegated Authority letters associated with incident management and investigation team activities; Wildland Fire Situation Analysis; and Wildland Fire Cost Share agreements;



10. Final field-level approval of implementation of any actions concerning necessary security issues and concerns; and
11. Any action which is an inherently Federal function.

C. Wildlife Refuge Specialist.

1. The CSKT Wildlife Refuge Specialist will:

- a. Supervise all CSKT Employees and direct the day-to-day work of CSKT Employees and Volunteers in the Biological, Maintenance, and Fire Programs and those Activities of the Visitor Services Program that are the responsibility of the CSKT. In the absence of the CSKT Wildlife Refuge Specialist, a CSKT-designated official will provide day-to-day direction to CSKT Employees and Volunteers. Personnel actions for Service employees assigned to CSKT, including management of performance and conduct, will be handled in accordance with AFA Sections 13.B.1, 13.F.5.c, and 13.G;
- b. From the pool of qualified applicants, select Volunteers to work in Activities for which the CSKT is responsible; and
- c. Perform additional specific duties as negotiated by the Refuge Leadership Team.

D. *Refuge Leadership Team*: Subject to the final authority of the Refuge Manager, the Parties will collaborate in the management of the NBRC through the Refuge Leadership Team.

1. The Refuge Leadership Team shall be comprised of the following officials:

- a. Refuge Manager;
- b. Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation, Natural Resources Department (or designee);
- c. Deputy Refuge Manager; and
- d. CSKT Wildlife Refuge Specialist

2. Subject to the final authority of the Refuge Manager, the Refuge Leadership Team will jointly write the Work Plan, set work priorities, and prepare the periodic status reports required under Section 12.C and all other reports required by this AFA or by Service Operational Standards.

3. The Parties recognize that it is impossible to include in the Work Plan every detail and decision necessary to achieve NBRC goals and objectives. The Refuge Leadership Team will meet as needed.

4. The Refuge Leadership Team and the CSKT Tribal Council shall meet at least quarterly to discuss the performance of both Parties under this AFA. The Refuge Supervisor shall meet with the Tribal Council at least twice a year unless otherwise



agreed to by the parties. At least once a year, the Regional Director will meet with the Tribal Council.

5. The Parties expect the Refuge Leadership Team to work in a cooperative, collaborative and consultative process. The Refuge Leadership Team will develop and use consensus decision-making in all of its work together. If the Refuge Leadership Team cannot reach consensus, the decision of the Refuge Manager will prevail. The Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation can invoke the dispute resolution process in Section 20.A if the Refuge Manager has decided not to accept a CSKT recommendation and, upon request, has failed to provide a reasonable explanation for the decision, and the CSKT believes the Refuge Manager's decision is arbitrary or capricious. Upon mutual agreement, the Parties may also utilize the dispute resolution procedures for any other issue.

E. *Work Plan (Plan).*

1. The Service and CSKT will work jointly to develop and establish a mutually agreed-upon Plan, to be amended as necessary to reflect current needs, priorities and available resources. The Plan shall include Activities to be performed taking into account the resources which the Service is providing CSKT. The Refuge Manager will order, or memorialize in writing within a reasonable amount of time, any significant change or reduction in CSKT duties under the Plan. The Refuge Manager shall prioritize Plan activities according to available resources.
2. *Work Plan Preparation.* The Parties will jointly develop the Work Plan. The Refuge Leadership Team will prepare the Plan as a narrative document to accompany the annual submission of the NBRC RAPP. Each fiscal year, typically in the August – September time frame, the Service will provide the NBRC with a budget forecast for the following fiscal year. Based on that budget forecast, the Refuge Leadership Team will prepare the RAPP, reporting accomplishments for the current fiscal year, and planning accomplishments for the next. While the RAPP itself is a database and is not conducive to communicating planned work to the staff, the RAPP Workbook provides a foundation for the Plan. The Refuge Leadership Team will further develop information from the RAPP Workbook into the Plan. In concise narrative format, the Plan will describe the routine, on-going and project-specific work to be accomplished in the following fiscal year. It will establish priorities, project completion dates, and any quality requirements for work, and will assign responsibilities for accomplishing work to individuals and teams of CSKT and Service employees. The Plan will include all significant planned work in the areas of wildlife monitoring, habitat management, facility and equipment maintenance and construction, and visitor services.

F. *Safety.* Nothing in this AFA shall be interpreted as restricting the authority of any employee (federal or tribal) to take immediate steps to address any safety concerns.



Section 8. Fire Program Guidance

A. *Responsibility & Intent.* CSKT responsibility for the contracted Fire Program at NBRC will be managed through the CSKT Fire Program in coordination with the Service's District and Zone Fire Management Officers, and the Refuge Manager, under the approved Fire Management Plan for the NBRC. It is the Parties' intent to integrate fire management on Refuge System lands within the Flathead Indian Reservation into CSKT's highly skilled professional wildland fire management program.

B. *Meetings & Coordination.* The Parties agree to hold planning meetings at least twice a year (usually pre- and post-fire season) to coordinate NBRC fire program operations, assess needs, and schedule projects.

C. *Fuels Treatments & Prescribed Fire.* The Parties agree that CSKT will perform prescriptive work to the extent funds are available under the AFA or from other sources.

1. The Service will recommend fuels projects and plan for them 2-5 years out.
2. CSKT will develop and submit project requests and data entry to the National Fire Plan Operating and Reporting System (NFPORS) to compete for, and receive, National Fire Plan funding.
3. CSKT will perform planning, including writing of burn plans.
4. CSKT will perform pre- and post-burn monitoring to its standard, with the exception of monitoring in the grasslands which will be done by the Service.
5. National Environmental Policy Act (NEPA) requirements for fire projects will be the responsibility of the Service.
6. Smoke management requirements will be the responsibility of the CSKT.
7. CSKT will get credit for acreage in NFPORS but the Service will enter reports into Fire Management Information System (FMIS) for Service requirements.
8. CSKT will notify the Service of any impending project/burn and the GO/NO GO decision will be signed by the Service's NBRC Agency Administrator (Refuge Manager).

D. *Wildfire Suppression & Initial Attack*

1. The CSKT will provide Initial Attack (IA) to the NBRC as it does on all Tribal land. This does not preclude Incident Qualification Certification System (IQCS)-qualified Service firefighters from conducting IA activities on Service lands.
2. The CSKT will open a Firecode for all IA fires.
3. The CSKT will input all fires into the Wildland Fire Decision Support System (WFDSS). The Service will provide a profile for CSKT to access WFDSS for the NBRC.



4. The CSKT, with the Refuge Manager's concurrence, will provide all support for extended attack and large fire operations.
5. The CSKT will generate a fire report for any fire and submit it to the Service within 10 days of the fire being declared out. The Service will enter a fire report into FMIS.
6. The Parties will coordinate in preparing Severity requests. Generally, CSKT's Severity requests will include coverage of the NBRC. The Service will make the request for any Severity resources to specifically be stationed on the NBRC.

E. Preparedness

1. The Service will provide the equivalent dollar amount of 0.25 FTE of a GS-7 salary to be used by the CSKT to support the Service's fire preparedness program.
2. The CSKT will administer IQCS for CSKT Employees (excluding Federal employees assigned to CSKT under an IPA agreement). The Service will do the same for Federal employees, including those assigned to CSKT under an IPA agreement.
3. The Service will pay for fire training as needed for Service employees and CSKT Employees. Local or in-house training will be complimentary.
4. The Service will status Service employees in the Resource Ordering Supply System (ROSS).
5. The six man fire cache at the NBRC will be maintained by the Service.
6. The fire engine at the NBRC will be maintained by the Service.
7. Fire Program Analysis (FPA) tasks will be a joint effort as the NBRC and the CSKT are in the same Fire Planning Unit (FPU).

Section 9. Healthy and Safe Workplace

A. Zero Tolerance for Discrimination and Harassment

1. The Parties are committed to providing a healthy work environment free from discrimination, retaliation and harassment of any type based upon race, color, national origin, sex, age, mental or physical disability, or sexual orientation. It is the policy of the Service and the CSKT that discrimination, harassment, and retaliation in any of their various forms will not be tolerated at the NBRC. The Refuge Leadership Team is responsible for ensuring that this zero tolerance policy is enforced.
2. Employees of both Parties are required to treat all other people in the workplace with dignity and respect, including Service and CSKT Employees, Volunteers, and third parties.
3. All members of the Refuge Leadership Team will foster a work environment that facilitates communication within the Service/CSKT partnership. They will all maintain an "open door" policy allowing employees and Volunteers of either Party to



have reasonable access to them to express any concerns about the work environment, or report any allegations of discrimination or harassment.

4. Once reported, any allegations of discrimination or harassment shall become a top priority for investigation and resolution by the Refuge Leadership Team. Any investigation will be conducted jointly by a Service and CSKT member of the Refuge Leadership Team. It shall be the responsibility of the Refuge Leadership Team to jointly resolve any allegations or incidents that occur, with the assistance of Service and CSKT Human Resources personnel, as appropriate, and either take corrective action or refer the allegations or incidents to higher authorities within the Parties, as appropriate.
 5. Within ten working days of any report of discrimination or harassment, the Refuge Manager and CSKT Wildlife Refuge Specialist will make a joint written report to the Refuge Supervisor and the CSKT Natural Resources Department Head. This report shall include the facts, including: the allegation(s) raised; the Refuge Leadership Team's assessment of the allegation(s); and its assessment of whether the allegation(s) or incident can be resolved and appropriate action taken at the field level.
 6. Any incidents or threats of physical violence must be reported to Service and CSKT leadership immediately, by the most expeditious means available.
 7. Not less than annually, the Parties will provide jointly agreed-upon training to all NBRC employees to foster a workplace free of discrimination and harassment. Topics of these trainings may include, but are not limited to: cultural awareness; team building; and communications skills.
 8. Nothing in this AFA diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies, including, but not limited to: the right to file grievances; EEO complaints; and whistleblower complaints, as may be applicable.
- B. *Safety*. The Parties are committed to providing a safe workplace for all employees and Volunteers. In addition to Operational Standards and CSKT policies related to health and safety in the workplace, the following safety rules apply at NBRC:
1. All employees and Volunteers have the responsibility and authority to stop any work or project in progress and immediately notify a member of the Refuge Leadership Team when they observe unsafe working conditions or practices. Work will resume when the Refuge Leadership Team has determined, and notified the employees and/or Volunteers, that the safety concerns have been resolved.
 2. All employees and Volunteers have the right to refuse work on the basis of safety if they have not received:



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- a. adequate training or instructions to perform the assigned task(s) safely; or
 - b. the proper tools, supplies or equipment, including personal protective equipment, necessary to perform the assigned work safely.

Section 10. Performance Standards

A. *Operational Standards.* The CSKT will perform each Activity covered by this AFA in compliance with all applicable Operational Standards, as defined in Section 4, subject to the Refuge Manager's prioritization as provided in Section 7.E.

B. *Waivers.* The TSGA authorizes the Secretary to waive regulations in accordance with the procedures in § 403(i)(2) of that Act, 25 U.S.C. § 458cc(i)(2), and the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart J. However, CSKT agrees to consult with the Refuge Manager prior to making any request for the Secretary to waive a regulation

C. *Environmental Compliance.* In conducting an Activity, the CSKT will comply with all applicable Operational Standards concerning the environment, with the following stipulations:

1. *National Environmental Policy Act of 1969 (NEPA)*, 42 U.S.C. §§ 4321–4335. The Refuge Manager will identify any Activity that will require NEPA compliance documents. The Parties will work together to complete any necessary NEPA process for the Activity.
2. *Historic Preservation.* The Refuge Manager will identify any Activity that will require compliance with the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470-470mm, or another cultural resource law, regulation, or policy. The Parties will work together to complete any necessary process for the Activity.
3. *Endangered Species Act.* The Refuge Manager will identify any Activity that will require compliance with the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*, including Intra-Service Section 7 consultations. The Parties will work together to complete any necessary process for the Activity.

D. *Construction Review and Inspection.*

1. *Addition of Funding.* Upon agreement of the Parties, the budget in Attachment B may be amended to include construction and/or deferred maintenance funding for work to be performed by CSKT.
2. *Review and Approval of Plans, Specifications, and Drawings.* The CSKT will not begin any construction covered by this AFA without prior written approval from the Refuge Manager of all associated design, engineering, and construction plans, specifications, and drawings. The Refuge Manager will be responsible for obtaining



necessary approvals from the Service's Regional Engineer. To the extent the CSKT is responsible for preparing or providing design, engineering, construction plans, specifications, or drawings for any construction covered by this AFA, the CSKT will consult with, and incorporate or otherwise adequately respond to the comments of, the Refuge Manager. This includes, but is not limited to, seeking the Refuge Manager's review and tentative approval at approximately the 25% and 75% stages of completion.

3. *Inspection and Reporting System.* The CSKT will use an inspection and reporting system, implemented by appropriate professionals, adequate to verify and document to the Service that any construction was performed to all applicable Operational Standards.

E. *Use of CSKT Performance Standards.* With the prior written approval of the Refuge Manager, the CSKT may substitute for an Operational Standard a written performance standard that is at least as protective of the NBRC resources and equipment as the corresponding Operational Standard.

F. *Disclaimer.* Nothing in this AFA is intended to exempt the CSKT from complying with any Federal law, regulation, or other provision otherwise applicable to the CSKT.

Section 11. Records and Other Information

A. *General Requirement.* The CSKT will collect, maintain, and provide to the Service all records and other information specified in this AFA or the Work Plan which the Service needs in order to comply with requirements imposed by law or policy with regard to any Activity, including but not limited to: construction; finance; environmental compliance; performance of IPA Employees; and claims based on property damage, injury, or death.

B. *Activity Records.* The Parties will set forth in the Work Plan an explanation of any Activity record CSKT will need to maintain as part of its performance of the Activity. Each Activity record will contain information sufficient to document the nature of the Activity and when, where, and by whom it was performed. The Refuge Manager and the CSKT Wildlife Refuge Specialist will cooperate to ensure that the level of detail in Activity records is adequate for Service purposes without imposing an undue administrative burden on the CSKT. Upon request, and with reasonable advance notice, the CSKT will provide to the Service a copy of any Activity record.

C. *Financial Records and Reports.*

1. *Records of Expenditures.* Using standard accounting practices, the CSKT will maintain financial records of its expenditures of Service-provided funds under this AFA. The CSKT will provide those financial records to the Service to the extent the Service



requires them for its budget appropriation and apportionment processes, or in the event of retrocession or reassumption under AFA Sections 18.B or 18.C.

2. *Financial Status Reports.*

- a. *Annual Report and Carry-Over.* The CSKT will provide the Service a complete financial status report within 90 days of the close of each fiscal year. At a minimum, this report will identify CSKT expenditures for the fiscal year in the following categories: permanent staff salaries and benefits; temporary staff salaries and benefits; travel; training; itemized contracts with third party vendors; itemized specific projects with costs exceeding \$5,000; itemized equipment purchases, and equipment or facility repairs exceeding \$3,000; and general supplies and equipment for each program (biology, maintenance, visitor services). This report will be used by both Parties to reconcile the status of ongoing projects and Activities. Any funds remaining with the CSKT at the end of a fiscal year may be retained by CSKT and used on future projects at the NBRC (*see also* Section 21.B.2 of this AFA).

The Parties recognize that funds must be available to CSKT on October 1st annually. The Parties acknowledge that, since it is generally not possible for the Service to provide funds on the first day of a new fiscal year, it is both necessary and appropriate for CSKT to carry-over funds to cover, for example, payroll in the new fiscal year.

- b. *Other Reports.* Within 180 days of the effective date of any retrocession or reassumption under Section 18.B or 18.C of this AFA, the CSKT will provide the Service a complete financial status report concerning the funds the Service provided to the CSKT under this AFA and the CSKT expended through the effective date of the retrocession or reassumption.

D. *Inapplicability of the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a).* As authorized by 25 U.S.C. §§ 450l(b), 450l(c)(1)(b)(7)(A), 458cc(l), and 25 C.F.R. § 1000.392, except for previously provided copies of Tribal records that the Secretary demonstrates are clearly required to be maintained as part of the record keeping system of the Department, records of the CSKT shall not be considered Federal records for the purpose of the FOIA. The FOIA does not apply to records maintained solely by CSKT. As authorized by 25 C.F.R. § 1000.393, CSKT records shall not be considered Federal records for the purposes of the Privacy Act.

E. *Conflicting Requirement.* The CSKT must not take any action under this Section 11 that would conflict with any Federal law or regulation applicable to the CSKT and governing audits and administrative records.



Section 12. Performance Assessment, Reporting, and Review

A. *Monitoring, Evaluation, and Notice of Performance Concerns.*

1. *Joint Monitoring.* The Service and CSKT will jointly monitor NBRC operations and provide timely notice to each other of any concerns. In accordance with this Section, the Service will notify the CSKT in writing of any performance concern or perceived deficiency in work performed under this AFA.
2. *Evaluation.* In the event the Parties do not agree on any portion of any evaluation, assessment or report, such document shall include the relevant views of each party, presented together for ease of reference by any reader of the document.
3. *Notice to CSKT.* The Service will notify the CSKT concerning its performance under this AFA as follows:
 - a. *Comments.* The Service promptly will notify the Manager of the CSKT Division of Fish, Wildlife, Recreation and Conservation in writing of each written comment and documented oral comment received from third parties concerning the CSKT's performance of any Activity. The Service will promptly provide to the CSKT a copy of each written comment or documented oral comment without requiring any request from CSKT, in accordance with disclosure practices under FOIA and the Privacy Act. The Service will not take any action regarding the CSKT's performance on the basis of any oral comment that the Service did not document in writing, or any comment the Service did not promptly provide to the Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation.
 - b. *Performance Deficiency Concerns.* If the Service perceives a deficiency in the performance of the CSKT, the Service will notify the CSKT of the perceived deficiency, as follows:
 - i. *Emergency.* If the perceived performance deficiency is of an emergency nature, the Refuge Manager shall notify the Manager of the CSKT Division of Fish, Wildlife, Recreation and Conservation orally and follow up with a written notification to that Division Manager within one week from the date of oral notice.
 - ii. *Notice of Significant Perceived Deficiencies.* With prior approval from the Refuge Supervisor, the Refuge Manager will notify the Tribal Council in writing of any significant perceived performance deficiency, including one which potentially constitutes grounds for reassumption under Section 18.C. The written notice will identify the Activity and describe: the performance deficiency at issue; the applicable baseline data; Operational Standard; approved Work Plan provision; or term or condition of this AFA; and why the



performance of the CSKT does not meet that requirement. The notice will give the CSKT a reasonable amount of time either to remedy the performance deficiency or demonstrate to the Refuge Manager that no performance deficiency exists. The amount of time allowed for remediation or such demonstration will be set by the Refuge Manager depending on the nature of the deficiency. Prior to providing written notice of a perceived performance deficiency that the Service believes could be the basis for reassumption, the Service shall consult with CSKT, the Assistant Regional Director - Refuges and the Regional Director and provide CSKT with an opportunity to respond.

iv. *Failure to Provide Notice.* If the Refuge Manager does not follow the notice procedures outlined in this subsection “b”, the Service may not cite such perceived deficiency as a basis for any action concerning CSKT or this AFA.

B. *Reports.* If either Party chooses to draft an evaluation or similar report concerning this AFA, it will first consult with the other Party to discuss the subjects to be covered in the report and how the Service and the CSKT can work jointly to ensure that both Parties’ positions are included.

C. *Periodic Status Reports.*

1. Upon implementation of this AFA, periodic status reports will be prepared quarterly. The Refuge Manager shall endeavor to submit the status reports to the FWS Refuge Supervisor and the CSKT Tribal Council by the 15th day of January, April, July, and October. The Parties may agree to submit the status reports on a more or less frequent basis.
2. The Refuge Leadership Team jointly will prepare and approve the status reports. At minimum, reports will include any significant concerns either Party has regarding the performance of the other Party that, if unresolved, could potentially result in Service reassumption, or CSKT retrocession of any Activity or Activities contracted under this AFA. If the Parties disagree on any part of the report, the relevant views of each Party will be included. The status reports will be signed by the Refuge Manager.

Section 13. Personnel

A. *General Staffing.*

1. Consistent with the funding level provided in this AFA, the CSKT will perform the Activities covered by this AFA using the services of CSKT Employees, contractors and/or Volunteers.
3. To perform the work under this AFA, CSKT will fill vacant positions with well-qualified CSKT Employees. The Service will provide funds for, and CSKT will hire, employees to fill seasonal positions in the biological and visitor services program,



which may not be included on the Service's NBRC organizational chart, but which are necessary to accomplish the annual Work Plan.

3. Except for the positions of Refuge Manager, Deputy Refuge Manager, and Refuge Law Enforcement Officer, as other staff positions on the Service's NBRC organizational chart are vacated by Service-employed incumbents, those positions will be filled by CSKT with well-qualified CSKT Employees. If the Service staff position vacated was not originally included in work included in this AFA, work performed by that position that is not inherently Federal will also be transferred to CSKT, and the budget in Attachment B will be amended to provide CSKT with the funding associated with the position.
4. Each Party agrees to allow the other Party to participate in all staffing actions taken to fill permanent and temporary position vacancies at the NBRC, to the extent that such participation is authorized by the personnel policies and regulations of the hiring Party. Federal personnel rules allow for the CSKT to participate in the interview process when the Refuge Manager is hiring a new Service employee, and to make recommendations to the Selecting Official. The Service agrees to that authorized level of CSKT participation in the Federal hiring process, and the CSKT agrees to reciprocate, as allowed by CSKT's Ordinance 69C, as amended..

B. Supervision, Direction and Off-Station Duty Assignments of NBRC employees.

1. *Supervision.* Each Party will administer, for their respective NBRC employees, individual performance planning and evaluation, standards of conduct enforcement and disciplinary actions, and other personnel actions such as promotions, awards, and training. The Service will administer the above categories of actions for any of its employees assigned to CSKT under IPA agreements.
2. *Direction of Day-to-Day Work Activities.* The Refuge Manager shall provide day-to-day direction to the CSKT Wildlife Refuge Specialist, who shall be supervised by the Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation. The CSKT Wildlife Refuge Specialist will provide day-to-day direction to the program leads in the Biology, Maintenance, Fire, and Visitor Service Programs (except for the Outdoor Recreation Planner, unless that position is contracted to CSKT), as well as to CSKT Employees, contractors and Volunteers performing work contracted under this AFA.
3. *Off-Station Duty Assignments of NBRC employees.* The Parties agree to provide NBRC employees, whether Federal or Tribal, with the same training and career building experience opportunities available to other Federal employees employed with Region 6 refuges. The Parties further agree that NBRC employees, whether Federal or Tribal, will generally be available to assist other National Wildlife Refuges with specific work projects as needed. The Service may detail Service or CSKT NBRC employees to work



at other units of the Refuge System, including units of the NBRC not covered by this AFA. The Service may detail employees from other Service duty stations to assist with work at NBRC without restriction and subject to agreements between the NBRC Refuge Manager and refuge managers of the other Service field stations involved. NBRC employees of either Party who are qualified for the assignment may be made available for inter-agency fire suppression assignments, or for other all-hazard emergency responses.

C. Management; Office Space. At a minimum, the Service will provide secure, private office space for the CSKT Wildlife Refuge Specialist. CSKT agrees to fund a dedicated phone line and computer lines using the operational budget provided in this AFA. The Service will provide access to its Information Technology staff to assist with the technology issues involved.

D. Training and Skill. CSKT will staff and oversee the Activities under this AFA through the professional staff of its Natural Resources Department. The Service will provide access to, and funding for, FWS training for CSKT Employees (or Volunteers, if appropriate) for work performed under this AFA in the same manner it would have provided training for its own staff if Service employees were performing the same work. The Service will provide resident training to CSKT Employees at the National Conservation Training Center on the same basis as it provides training to Service employees, without charging tuition, room and board. As is the normal practice with Service employees, CSKT Employees' training will be funded from the operational budget transferred to the CSKT under the AFA.

E. Uniform. While on duty, each CSKT Employee will wear a uniform that clearly identifies her or him as a CSKT Employee. As part of the consideration described in the Attachment B budget, FWS will provide uniform allowance funding to CSKT in an amount equal to that which the Service would have allocated to its own employees who would have performed the Activities in the absence of this AFA.

F. Affected Federal Employees.

- 1. Information.* Promptly after executing this AFA, the Service and the CSKT will discuss with each Affected Federal Employee all available options for her or his employment under this AFA.
- 2. Opportunity to Elect.* Each Affected Federal Employee has the following options and must select an employment option no later than thirty (30) days after the last date of signature for this AFA. Each Affected Federal Employee shall have one additional opportunity to choose a different employment option during the term of this AFA.
- 3. Available Options.* The options available to each Affected Federal Employee for continued employment at the NBRC under this AFA are:



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- a. *Assignment to the CSKT under the Intergovernmental Personnel Act (IPA), 5 U.S.C. §§ 3371-3376.* Continued employment by the Service with an assignment to the CSKT under an IPA Agreement;
 - b. *Employment by CSKT with CSKT Benefits.* Direct employment by the CSKT as a CSKT employee with CSKT benefits;
 - c. *Employment by CSKT with Federal Benefits.* Upon the election of both the Affected Federal Employee and the CSKT, as provided by § 104 of the Act, 25 U.S.C. § 450i, direct employment by the CSKT as a CSKT employee with Federal benefits; or
 - d. *Reassignment.* Affected Federal Employees have the same ability as other Service employees to request reassignment at any time. If requested, and where practicable, reassignment by the Service to another duty station may be possible.
4. If all of the above options are unsuccessful, the work performed by an Affected Federal Employee's position that is not inherently Federal will be transferred to CSKT, and Attachment B will be amended to provide CSKT with the funding associated with the position.
5. *Assignment to the CSKT under an IPA Agreement.*
- a. *Execute IPA Agreement.* After any Affected Federal Employee has chosen to work under an IPA assignment, the Service and the CSKT will promptly execute an IPA agreement for that employee.
 - b. *Continuation of Employment.* In the case of an assignment of a Federal employee to an Indian tribe, the IPA authorizes the Service, under delegation from the Secretary, to "extend an initial period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization." See 5 U.S.C. § 3372(a). The Service and the CSKT agree that extending the initial period of assignment for each Affected Federal Employee will continue to benefit the Service and the CSKT for the full term of this AFA and each subsequent AFA, except for a retrocession or reassumption under AFA Sections 18.B or 18.C below, or cancellation for cause in accordance with Section 13.F.5.c below.
 - c. *IPA Employee Performance and Conduct.*
 - i. If CSKT perceives a deficiency in the performance or conduct of an IPA Employee, the Refuge Manager and the CSKT Wildlife Refuge Specialist will confer, and the Service will apply Federal personnel procedures to address any such deficiency.



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- ii. CSKT may terminate an IPA agreement only for cause, with cause being defined as one of the following:
 - aa. The IPA employee is determined by the Service, in a disciplinary action, to have engaged in misconduct resulting in adverse action of suspension of 14 days or longer, or termination, as prescribed in 370 DM 752. CSKT can, but is not required to terminate the assignment of an IPA employee who receives disciplinary action from the Service that is less than termination;
 - bb. The IPA employee is determined to perform at a less-than-fully-satisfactory level and fails to successfully complete a Performance Improvement Plan, as prescribed in 224 FW 2;
 - cc. The IPA employee is referred to a medical professional for a fitness for duty determination and is determined by a physician or other approved medical professional to be physically unable to perform the work described in the employee's position description; or
 - dd. Any other cause as agreed to by the Service.
 - iii. Upon termination of an IPA agreement for cause, the Activities that had been performed by that IPA Employee will remain the CSKT's responsibility under this AFA. The Service will transfer to CSKT the balance of salary and benefits for that position in the current and subsequent fiscal years covered by this AFA.
 - iv. CSKT may invoke the dispute resolution process (see Sec. 20.A of this AFA) up to the Regional Director level to resolve issues related to IPA assignments.
 - v. Consistent with 5 C.F.R. § 334.107(a), CSKT may terminate an IPA agreement at any time and for any reason, including for cause other than as defined in this AFA. However, in the event CSKT terminates an IPA agreement for a reason other than cause as defined above in this AFA , the Service will retain funding for the salary and benefits for such position and the Service shall assume responsibility for any Activities performed by such position.
- d. *Holidays.* On Federal holidays, IPA Employees will either be excused from duty without charge to leave or receive holiday premium pay for work performed. The Service will provide funds from its operational budget to cover any holiday premium owed to IPA Employees for Columbus Day or Presidents' Day.

6. *Direct Employment by the CSKT.*



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- a. *Employment Election.* At its discretion, the CSKT may directly employ each Affected Federal Employee who elects that option. As agreed by the Affected Federal Employee and the CSKT, either CSKT benefits or Federal benefits will be provided.
 - b. *Continuation of Employment.* The CSKT will give each Affected Federal Employee directly employed by the CSKT the highest level of protection of continued employment and retention of benefits afforded to any other employee of the CSKT.

7. *Nondiscrimination.* The Parties will not tolerate unlawful discrimination against any CSKT or Service employee, contractor, or Volunteer. The NBRC shall be a workplace free of unlawful harassment and employees shall be provided a civil work environment.

G. *Performance and Conduct.*

1. The Parties are committed to a strong partnership and appreciate the challenges and the benefits of leading an integrated team of Service and CSKT employees to accomplish a common mission at NBRC. To support that goal, each Party will include in the individual performance plans of its own employees, as a requirement of successful employee performance, a critical element providing that the employee work cooperatively with the other Party and its employees and work to successfully implement this AFA.
2. Each Party will supervise its own employees for purposes of maintaining standards of conduct and administration of disciplinary action in accordance with the personnel regulations and policies of the Department and CSKT, respectively.
3. In the event that either Party believes that the performance or conduct of an employee of the other Party is negatively impacting its ability to effectively perform its own work, the matter will be referred to the Refuge Leadership Team for resolution. If the Refuge Leadership Team is unable to resolve the issue, the alternative dispute resolution process described in Section 20.A below will be used to resolve the issue.

H. *Personnel Records.* The Service will maintain the official personnel records and files of its own employees, including employees assigned to work for CSKT under an IPA agreement, in accordance with the personnel regulations and policies of the Department. CSKT will maintain the official personnel records and files of its own employees in accordance with its own personnel regulations and policies. Access to and release of personnel records of one Party, to the other Party or to any other person/entity, will be governed by the statutes, regulations and policies of the Party maintaining those records.



I. *Volunteers*. The Parties recognize that the service of Volunteers is an important resource for accomplishing goals and objectives throughout the NWRS, including at the NBRC. When properly trained and qualified, Volunteers may perform any approved work function at NBRC except for: management/supervision; law enforcement; fire suppression; and prescribed burning.

1. *Qualifications and Training*:

- a. Prior to implementation of this AFA, the Parties will mutually develop standard Volunteer Position Descriptions (VPDs) for the duties historically performed by Volunteers at NBRC. The VPDs will include the general duties and qualification standards, including safety trainings and certifications required for each Volunteer position. The VPDs will include lists of any required personal protective equipment that must be provided to the Volunteer.
- b. Prior to being assigned duties, all Volunteers will attend an NBRC Volunteer orientation training program. The orientation training will be developed jointly by the Service's Outdoor Recreation Planner and the CSKT Wildlife Refuge Specialist (or designee), and will be offered to Volunteer applicants not less than semi-annually, or as often as requested by either Party.
- c. The orientation training program will include at a minimum: the Parties' expectations for a safe workplace; the Parties' zero tolerance policy for discrimination or harassment of any kind; the history and culture of the CSKT; the history and mission of the NWRS and NBRC; and the Tribal Self-Governance Act laws and policies. Upon completion of the orientation, Volunteers will be required to sign statements acknowledging their training. Once applicant Volunteers have completed any trainings or certifications identified in their VPDs, they will be qualified for duty at NBRC.

2. *Volunteer Program Administration*. The Parties agree to assist in recruiting, training and referring Volunteer candidates.

- a. All NBRC Volunteers must sign the standard Volunteer Service Agreement, with attached VPD, and will work under the general oversight of the Refuge Manager.
- b. From the pool of qualified Volunteers, the CSKT will select and direct the day-to-day work of Volunteers working in the Activities which the CSKT has contracted. The Service will select and direct the day-to-day work of Volunteers working in activities remaining with the Service.
- c. Volunteer records, including signed Volunteer Service Agreements, VPD's, and certificates of training, will be retained by the Service's Volunteer Coordinator throughout the service of each Volunteer, with copies to CSKT for any Volunteer directed by CSKT, except that personal information protected by the Privacy Act will not be released to CSKT without permission from the Volunteer. The CSKT will provide the Service's Volunteer



Coordinator with data on the number of Volunteers employed by the CSKT, and number of hours worked by Volunteers annually, for preparation of required Volunteer reports and the RAPP.

- d. NBRC Volunteers are considered to be employees for the purposes of the Service's and CSKT's respective workers' compensation coverage. All NBRC Volunteers are protected by the Federal Tort Claims Act and/or by liability insurance purchased by the Bureau of Indian Affairs, consistent with 25 U.S.C. § 450f(c) and Sections 16.A and 16.D below.
3. *Suspension and Termination of Volunteers.* Any NBRC Volunteer may be unilaterally suspended from duty for alleged misconduct. Alleged misconduct upon which a suspension may be directed includes suspected safety violations or suspected violation of the zero tolerance policy for discrimination and harassment. Suspended Volunteers will not be allowed to work at the NBRC while the Refuge Manager completes an investigation and makes a determination for final disposition. The Refuge Manager shall consult with the Refuge Leadership Team prior to making a determination for final disposition. Final disposition may include: no action – return to duty; counseling; training; or termination.
4. *Volunteers for Round-Up.* The Parties jointly will select Volunteers to participate in the annual Round-Up events.

K. *Background Checks.* The Parties understand that background checks may be required for NBRC employees. Such background checks will be consistent with, and implemented in accordance with, Homeland Security Presidential Directive #12 which outlines Federal standards for identification and obtaining these credentials. To the extent possible, the Service agrees to assist in expediting the processing of any such background checks. Any associated costs will be addressed through Attachment B. Employees may report to work pending completion of any background check.

Section 14. Consideration

A. *Base Funding; Non-Recurring Funding.* Base funding for this AFA will be identified annually in Attachment B. The Parties hereby agree that the funding will not be reduced from the base funding level except for the reasons specified in 25 U.S.C. 450j-1(b). Attachment B will also identify one-time, non-recurring funding for special projects such as Deferred Maintenance, vehicle replacement, Challenge Grant Cost Share Agreements and other flexible funding. For the first year of this AFA, Attachment B will reflect that the Service will transfer funds to CSKT in an amount pro-rated to reflect the [phasing-in of performance as mutually-agreed upon per Section ____ of this AFA] or [implementation of this AFA at a mid-point in the fiscal year].

B. *Funding.* In return for the CSKT performing the Activities, and subject to the terms and conditions in this Section, the Service will provide the CSKT the consideration specified in



Attachment B. Attachment B will be revised for each fiscal year, and will be prepared by August 31st annually for the following fiscal year. Consistent with Section 25.A below, for FY 2013 the Parties may agree to phase in Activities and their associated funding over the [first quarter] of that fiscal year.

1. The Service will retain funding and responsibility for administering and paying general fixed operational costs, except for those costs that can be processed with greater efficiency and cost-effectiveness by CSKT, as jointly determined by the Refuge Manager and the Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation. Transfer of funds to CSKT for such costs will be reflected annually in Attachment B.
2. The Service will provide funding for, and CSKT will be responsible for, hiring seasonal staff in the biological, visitor services and maintenance programs.
3. The Service may either retain or transfer to CSKT funding for acquisition of goods and services necessary for the following operations for which CSKT is responsible: maintenance of facilities and equipment (including care and feeding of animals); execution of the Biological Program (including habitat management); and Visitors Services Programs. Division of funds for these operations and maintenance requirements will be jointly determined by the Refuge Manager and the Manager of the CSKT Division of Fish, Wildlife, Recreation and Conservation and will be reflected annually in Attachment B.
4. The Service will provide CSKT with funding equivalent to 0.25 of a GS-7 Technician position for implementation of the Fire Program responsibilities outlined in Section 8 of this AFA.
5. Generally, Attachment B specifies the following types of consideration:
 - a. *IPA Employees.* Assignment by the Service to the CSKT of those Affected Federal Employees who elect to continue Federal employment under this AFA pursuant to an IPA Agreement; and
 - b. *Appropriated Funds.*
 - i. *Program Funds.* The Program funds that the Service would allocate to performance of the Activities if performed by the Service (less the salary and benefits of IPA Employees and the fixed costs identified in Subsections 14.B.1 and 14.B.3 above) including: salary and benefits for organizational chart permanent positions filled by CSKT, (including those existing at the time of implementation of this AFA, and positions that may be vacated by Service employees and later filled by CSKT employees during the period covered by this AFA); funds for



employment of seasonal employees; funds for travel and training of CSKT Employees; funds to compensate CSKT for time worked in support of NBRC by employees of the CSKT Division of Fish, Wildlife, Conservation and Recreation who are not assigned permanently to NBRC (e.g. participation in the Refuge Leadership Team by the Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation); funds for acquisition of supplies and services to support programs, as agreed upon by the Refuge Manager and Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation; and other fixed costs jointly identified as being transferred to CSKT in Subsections 14.B.1 and 14.B.3 above; and

ii. *Contract Support Costs.*

C. Cost of IPA Employees. The Service will pay the salary and benefits of each IPA Employee. To cover those costs, the Service will reduce the funds it otherwise would pay to the CSKT under this Section by an amount equal to the salary and benefits of that position. If an IPA Employee is reassigned outside of the NBRC or his/her employment with the Service is terminated, or if CSKT terminates the IPA agreement in accordance with Section 13.F.5.c above, the assignment of that employee and the obligations of the CSKT under that IPA agreement will end. At the end of the IPA assignment, the Service will transfer funds to the CSKT in the amount the Service would have spent on the salary and benefits of the IPA Employee from the date of termination of her or his employment or IPA assignment through the last date of the term of this AFA or the effective date of any applicable retrocession or reassumption, using the payment procedures in Section 14.E.2 below.

D. Contract Support Costs. During this AFA, the Service will provide contract support costs as required by 25 U.S.C. § 458cc(g)(3) and 25 C.F.R. § 1000.137(b). CSKT will provide the Service with all necessary information, including CSKT's indirect cost rate approved by the Department's National Business Center (NBC rate), in accordance with 25 C.F.R. § 1000.138.

In lieu of full contract support cost reimbursement using CSKT's federally-approved indirect cost rate, and in recognition of the Service's anticipated budget reductions, the Parties agree that the Service will pay CSKT a flat rate equivalent to \$5000.00 per fiscal year for each Service full-time equivalent (FTE) staff position filled by CSKT. For positions that CSKT fills for less than one full fiscal year, the Service shall prorate the flat rate reimbursement accordingly. Similarly, for positions that constitute less than 1.0 FTE, the Service shall prorate the flat rate accordingly.

Under this formula, the Service's indirect costs reimbursement to CSKT shall not exceed \$40,000.00 during any one fiscal year. However, the Parties agree that, prior to the third fiscal year of this AFA, they will revisit the issue and discuss amending the AFA to provide full reimbursement of indirect costs, using CSKT's federally-approved indirect cost reimbursement rate.

1. All direct and indirect costs will be negotiated and agreed upon by the Parties prior to initiation of funds transfers.



2. Prior to submission of cost proposals and requests for projects outside the base budget as represented by Attachment B, the Refuge Leadership Team will ensure that all necessary indirect costs to support CSKT administrative functions are included.
3. Per longstanding practice in the Department's cooperative agreements with Tribes, indirect costs will not be assigned in support of wildfire suppression/rehabilitation activities.

E. Transfer of Consideration.

1. Affected Federal Employees.

- a. *IPA Employees.* The Service will assign each IPA Employee to the CSKT on the effective date of this AFA.

2. Payment of Funds.

- a. *Annual Base Payment.* Subject to final Federal appropriation, within 10 calendar days of the beginning of each fiscal year, the Service will pay to the CSKT 100% of the funds identified in Attachment B. The Service's Regional Office will initiate funds transfers and will include all funds that Congress has appropriated and that are available for expenditure by the Service on the Activities covered by this AFA and that are due to the CSKT as consideration under this AFA. The Attachment B budget will be adjusted annually thereafter to a mutually agreed-upon amount prior to funds transfer.
- b. *Additional Payments.* The Service's Regional Office may effect additional funds transfers that are not described in Attachment B as warranted for Activities covered by this AFA. Such amounts will be mutually agreed upon by the Parties in advance and will be transferred within ten calendar days of receipt of the request. In addition, if at any time Congress has appropriated to the Service, and as a result the Service has paid the CSKT, less than all of the funds due to the CSKT under this AFA, the Service will pay the CSKT the balance due only to the extent additional appropriations and allocations become available.
- c. *Application of Congressional Rescissions.* The Service shall apply congressional appropriation rescissions to funds allocated to CSKT in the same manner as the Service applies them to its own funds (e.g., if the Service does not make staff salaries subject to rescissions, it shall not deduct any amount from the funds it provides to CSKT for staff salaries).

F. No Reallocation or Reprogramming of Consideration. Consistent with 25 C.F.R. §§ 1000.397–399, the CSKT will use the funds provided by the Service, and any interest earned on those funds, to perform only Activities covered by this AFA.



G. *Funding Errors or Omissions.* In the event of errors or omissions necessitating adjustment of funds provided by the Service, the Parties will amend this AFA as provided in Section 22.A below.

H. *Antideficiency Act.* This AFA is subject to the requirements of the Antideficiency Act, 31 U.S.C. § 1341. Nothing in this AFA shall be construed as requiring the Service to obligate, or the Service to provide, any consideration in advance or in excess of funds appropriated by Congress for expenditure on Activities.

I. *Lobbying.* No funds provided under this AFA may be used for lobbying Congress or any other entities. 18 U.S.C. § 1913.

J. *Rights in Data.* Each Party shall have complete and unlimited access to use, modify, copy, and disseminate all research data collected or produced under this AFA, including original data sheets, without notice to or approval from the other Party. Neither Party will withhold any such data; each will ensure timely transmission of all data to the other Party so it may be stored at the NBRC and CSKT offices for future use. Original data sheets will also be stored at the NBRC. Any research conducted at NBRC which collects Protected Personal Information (PPI) from individual people must be approved under U.S. Office of Management and Budget (OMB) guidelines, and any such PPI that is collected will be protected from unauthorized disclosure per OMB guidelines and the Privacy Act.

K. *Recognition of Service Funding; Use of Logos.* Recognition of Service funding is required on any product, material, or publication produced under this AFA. The CSKT is encouraged to use the Service's logo/images on all materials and publications produced under this AFA. However, prior approval of the Refuge Manager is required for use of Service-owned images not available to the general public, and proper crediting of those images must be given to the Service.

Section 15. Property

A. *Availability and Use; Access to Property and Facilities.* The Service will make available to the CSKT, for non-exclusive use in performing Activities, all personal and real property currently on hand or subsequently acquired by the Service. The Service will make such property and equipment available to CSKT staff on the same basis as to Service staff, and the property shall be equivalent in quality. Significant changes in the use of buildings or other real property of NBRC are subject to approval of the Refuge Manager.

B. *Inventories of Personal Property and Real Property.* Attachment C is the Service's inventory of personal property (including condition) and sensitive or controlled items. Attachment D is an inventory of real property (including condition). The Service will update these inventories to reflect any changes, and will provide to the CSKT copies of such updates.



C. *NBRC Data*. The CSKT shall have ongoing reasonable access to data and the right to copy it.

D. *Title and Ownership; Protection*. All personal property and real property (including natural resources), owned by the United States, will remain Federal property. The United States will hold title to any equipment, materials, or supplies the CSKT purchases with funds provided by the Service under this AFA. Keys will be assigned to the CSKT on a Standard Form DI-105, Receipt for Property. The CSKT will take reasonable steps to protect all such property from fraud, theft, abuse, damage, or loss.

E. *Disposal*. With the prior written approval of the Refuge Manager, the CSKT may dispose of any item of Federal property in accordance with Federal property procedures.

F. *Excess Property*. At CSKT's request, the Service may transfer to the CSKT ownership of any Federal property that is not needed by the Service. Pursuant to 25 U.S.C. § 458ff(c), which incorporates 25 U.S.C. § 450j(f), the Service will facilitate transfer of any such property to the CSKT in accordance with Federal property procedures.

G. *Use of CSKT Equipment*. The CSKT may elect to perform any Activity using equipment owned or otherwise available to it. The Service will supply fuel and lubricating oil for any such equipment.

Section 16. Claims and Liability

A. *Federal Tort Claims Act*. In performing Activities, the CSKT will be covered by: the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671–2680, as provided by 25 U.S.C. § 450f(c); § 314 of Pub. L. No. 101-512 (*reprinted at* 25 U.S.C.A. § 450f, note); and applicable Tribal Self-Governance Regulations at 25 C.F.R. §§ 1000.270-283. Except as otherwise provided by Federal law and Section 16.D below, the CSKT accepts any risk not covered by the FTCA in performing Activities.

B. *Notice of Incident or Claim*.

1. *Notice of Incident*. The CSKT promptly will notify the Refuge Manager in writing of any incident involving personal injury, death, or property damage resulting from the performance by the CSKT of an Activity covered by this AFA.
2. *Notice of Claim*. The CSKT and the Service promptly will notify each other in writing of any claim received from a third party for damage, injury, or death at, or involving, the NBRC.

C. *Unemployment and Workers' Compensation Insurance*. The CSKT will provide unemployment and workers' compensation insurance for each CSKT Employee other than an IPA Employee, and workers' compensation insurance for each CSKT-directed Volunteer, commensurate with that provided to other CSKT Tribal government employees. The CSKT will



ensure that each CSKT contractor is covered by workers' compensation insurance commensurate with that provided to CSKT Tribal government employees. The CSKT will hold the United States harmless from any unemployment or workers' compensation claim made by a CSKT contractor or CSKT Employee, other than an IPA Employee, in connection with the performance of any Activity.

D. Liability Insurance for Volunteers. In accordance with 25 U.S.C. § 450f(c), the Bureau of Indian Affairs will purchase insurance protecting CSKT-directed Volunteers from liability for potential claims based upon their activities involving the NBRC. This insurance is supplementary to any coverage afforded the Volunteers by the FTCA.

Section 17. Emergencies and Unusual Events

A. Notice. Where practicable, after learning of any emergency or other unusual event at the NBRC, or involving its staff, either Party will orally notify the other Party promptly. The Service and the CSKT will give each other the name, address, and telephone number of one or more persons to receive such notice in the absence of the Refuge Manager or the CSKT Wildlife Refuge Specialist.

B. Temporary Operation and Control. In accordance with Section 7.F above, nothing in this Section shall be interpreted to limit the ability of either Party to respond to emergency safety concerns. Where necessary to deal with an emergency, including any situation which the CSKT determines it cannot resolve independently, the Service temporarily may assume operation and control of any Activity, including supervising any CSKT Employee engaged in the Activity. When the emergency ceases to exist, the Service will return operation and control of the Activity to the CSKT. Nothing in this Section shall be interpreted as authorizing the Service to reassume an Activity without complying with the provisions of Section 18.C below and Federal regulations governing reassumption.

C. Emergency Procedures. In an emergency, the Parties will use the following procedures:

1. *Determination by Refuge Manager.* The Refuge Manager will determine when an emergency exists and when it has ended.
2. *Notice to CSKT Employees.* The Refuge Manager will notify the CSKT Wildlife Refuge Specialist or another available CSKT Employee that an emergency exists, as provided in Section 17.A above.
3. *CSKT Response.* Following notice of an emergency under Sections 17.A and 17.C.2 above, at the oral request of the Refuge Manager any CSKT Employee performing an Activity will:
 - a. relinquish operation and control of the Activity to the Service;



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- b. assist the Service in responding to the emergency; and
 - c. follow any related instructions issued by the Refuge Manager.
4. *CSKT Employee Not Available.* Where neither the CSKT Wildlife Refuge Specialist nor another CSKT Employee is available to receive notice of an emergency, the Service will, without notice, take over operation and control of any Activity that is, or may become, involved. Upon later receiving notice of the emergency, each CSKT Employee responsible for performing the Activity will respond as provided in Section 17.C.3 above.
 5. *Emergency Has Ceased to Exist.* When the Refuge Manager determines that an emergency has ceased to exist, she or he orally will notify the CSKT Wildlife Refuge Specialist or, where such official is not available, the employee designated in Section 17.A above. At that time, the Refuge Manager will relinquish to the CSKT operation and control of any Activity over which she or he had taken operation and control.
 6. *Report and Adjustments.* Following any emergency, the Refuge Leadership Team will prepare any required reports and review the Work Plan to determine if any adjustments are needed due to impacts on available resources.

Section 18. Retrocession, Reassumption, and Expiration

A. *Technical Assistance.* Both Parties wish to avoid the need for retrocession or reassumption of any Activity. The Service will provide the CSKT reasonable technical assistance to try to avoid reassumption or retrocession of any Activity.

B. *Retrocession by the CSKT.* At its option, the CSKT may retrocede and cease performing any or all of the Activities in accordance with Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart N, using the procedures below. Unless the Service has not provided sufficient funding for CSKT to perform under the AFA, or unless there are exigent circumstances, CSKT shall provide at least 90 days advance notice prior to a retrocession taking effect.

1. *Notice.* CSKT will provide to the Refuge Manager 30 days advance written notice of intent to retrocede (Notice of Retrocession);
2. *Orderly Transition.* From the date of Notice of Retrocession to the Refuge Manager, through the effective date of the retrocession, CSKT will work with the Refuge Manager to ensure an orderly transition in returning to the Service responsibility for performing each Activity retroceded;



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3. *Property.* On the effective date of the retrocession, CSKT will return all Federal property which is not needed for performance of a retained Activity;
 4. *Return of Funds.* Within 30 days after the effective date of the retrocession, CSKT will return to the Service any remaining funds that the Service has provided for performing the retroceded Activity and that the CSKT has not expended in performing the retroceded Activity; and
 5. *Final Report.* Within thirty days after the effective date of the retrocession, CSKT will submit to the Service a final report of work accomplished for each retroceded Activity from the beginning of the fiscal year through the date of retrocession (see also Section 11.C.2 of this AFA regarding a financial status report).

C. Reassumption by the Service.

1. *Tribal Self-Governance Regulations.* Subject to Section 18.A above and this Section 18.C, the Service may reassume any or all of the Activities covered by this AFA in accordance with the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart M.
2. *Criteria for Reassumption.* In accordance with the regulations cited in Section 18.C.1 above, the Service may reassume any or all of the Activities in the event the Director, on behalf of the Secretary, finds, and notifies the CSKT in writing, that its performance is causing imminent jeopardy to natural resources or public health and safety.
3. *CSKT Response to Reassumption.* Upon receiving a Notice of Reassumption of any Activity as provided in the Tribal Self-Governance Regulations at 25 C.F.R. § 1000.313, the CSKT will comply with the following procedures:
 - a. From the date of receipt of the Notice of Reassumption, through the effective date of the reassumption, CSKT will work with the Service to ensure an orderly transition in returning responsibility for performing the reassumed Activity to the Service;
 - b. On the effective date of the reassumption, CSKT will cease performing the reassumed Activity;
 - c. On the effective date of the reassumption, CSKT will return all Federal property which it does not need for performance of a retained Activity;
 - d. Within 30 days after the effective date of the reassumption, CSKT will return to the Service any funds that the CSKT has not expended in per-



forming the Activity from the effective date of this AFA through the effective date of the reassumption; and

- e. Within 30 days after the effective date of the reassumption, CSKT will submit a final report of work accomplished for each reassumed Activity from the beginning of the fiscal year through the date of reassumption (also see Section 11.C.2.b above concerning a financial status report).

D. *Expiration.* Due to the occurrences under the extended FY 2005-06 AFA, the Parties agree that CSKT will not perform work under an extension to this AFA but will perform work only under a successor AFA. The Parties therefore agree that they will commence negotiations for a successor AFA no later than February 1, 2016, with any signed successor AFA to be delivered to Congress prior to July 1, 2016. This schedule will allow such successor AFA to be effective on October 1, 2016, thereby accommodating the 90 day period required prior to the effective date of any AFA (*see* 25 U.S.C. § 458cc(f)). A Party opting to cease negotiations for a successor AFA will provide thirty days' written notice to the other Party, subject to the provisions of 25 C.F.R. § 1000.179(b) with respect to any last and best offer.

In the event that the Parties do *not* negotiate a successor AFA covering an Activity:

1. *Transition.* In the last month of the term of this AFA, the CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the Activity; and
2. *Property.* On the last day of the term of this AFA, the CSKT will return all Federal property not needed by the CSKT to perform the Activity or Activities for which the Parties are negotiating, or have executed, a successor AFA.

Section 19. Other Tribal Rights and Administrative Remedies

A. *No Effect on Trust Responsibility.* Nothing in this AFA is to be interpreted as waiving, modifying, or diminishing the trust responsibility of the United States under treaties, executive orders, and other laws with respect to any Indian Tribe or individual Indian.

B. *No Waiver of Sovereign Immunity.* Nothing in this AFA shall be construed as waiving or otherwise affecting the CSKT's sovereign immunity.

C. *Tribal Administrative Procedures.* In addition to any other available right or remedy provided by law, under CSKT Tribal Administrative Procedures Ordinance No. 86B (as amended), CSKT Tribal law and forums provide administrative due process rights to all persons with respect to Activities performed by CSKT under this AFA, except to the extent CSKT is covered by the FTCA, 28 U.S.C. §§ 2671–2680.



D. *Indian Preference*. In the administration of this AFA, the provisions of 25 U.S.C. §§ 450e(b) and (c) shall apply with respect to Indian preference, with the term “contract” interpreted as meaning this AFA.

Section 20. Dispute Resolution and Appeals

A. Dispute Resolution.

1. At all levels, the Parties may use written correspondence, e-mail, telephone conferences or face-to-face meetings to conduct good faith dispute resolution. For any dispute elevated, the Parties jointly will prepare a written summary of the resolution/decision to provide to the Refuge Leadership Team.
2. The Refuge Leadership Team is empowered and encouraged to informally resolve all disputes between the Parties at the field level. If the Refuge Leadership Team is unable to reach consensus, the decision of the Refuge Manager will prevail. The Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation may invoke the dispute resolution process in the event CSKT disagrees with the Refuge Manager’s decision for reasons outlined in Section 7.D.5 above. If a dispute involves an ongoing operational issue, the work will continue as decided by the Refuge Manager while the issue is in dispute.
3. To invoke the dispute resolution process, the Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation and the Refuge Manager will notify the Refuge Supervisor and the CSKT Natural Resources Department Head of the dispute issue. The notification shall be in writing and identify the issue in dispute. The notification shall also include a statement of the Refuge Manager’s decision and the Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation’s statement explaining why the decision is unacceptable to the CSKT. Once notified, the CSKT Natural Resources Department Head and Refuge Supervisor will make a good faith effort to resolve the dispute within ten working days. If they are unable to reach consensus, the decision of the Refuge Supervisor will prevail. However, if the Refuge Supervisor’s decision is unacceptable to the CSKT Natural Resources Department Head, she or he may elevate the dispute to the CSKT Tribal Council and the Regional Director.
4. To elevate the issue, the Refuge Supervisor and the CSKT Natural Resources Department Head jointly will prepare a written summary of the dispute issue for transmission to the Tribal Council and Regional Director, who will make a good faith effort to resolve the dispute within fifteen working days. If the dispute cannot be resolved by the Tribal Council and Regional Director, either may request the assistance of a mediator acceptable to both Parties. The Tribal Council and Regional Director will agree on a timeframe for the mediated dispute resolution process. If the Parties cannot reach consensus through the mediation, the decision of the Regional Director shall prevail. However, if that



decision is not acceptable to the Tribal Council, it may appeal to the FWS Director. If a mediator was used by the Parties at the Regional Director/Tribal Council level, elevation of the dispute to the FWS Director shall be through the mediator.

5. For any dispute handled under this subsection involving a personnel issue, including one involving an IPA Employee, CSKT will substitute for the Tribal Council its Executive Secretary (or equivalent position in the event of any reorganization to the CSKT executive staff structure).
6. Due to the uniqueness of this AFA, the officials identified in this Section may not delegate their responsibilities under this Section.
7. Nothing in this Section diminishes or replaces the existing rights and responsibilities of the Parties or their employees under their respective personnel laws and policies.

B. *Appeals.* Resolution of disputes arising under this AFA shall be governed by the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart R (“Appeals”), and section 450m-1 of the ISDEAA (“Contract disputes and claims”). Nothing in this Section precludes either Party from availing itself of the informal dispute resolution procedures identified in Section 20.A above. However, neither Party shall be required to use those procedures prior to engaging in any appeals under this Section 20.B.

Section 21. Indian Self-Determination and Education Assistance Act’s Title I Provisions

A. In accordance with 25 U.S.C. §§ 450j(k) and 458cc(l), in performing the Activities covered by this AFA the CSKT will have access to Federal sources of supply. Nothing in this AFA is intended to limit the availability, or use by the CSKT, of technical or financial assistance that may be available from any other Federal agency, including from the Bureau of Indian Affairs under 25 U.S.C. § 450h.

B. The Parties agree that this AFA incorporates the following provisions from Title I of ISDEAA, as authorized by 25 U.S.C. § 458cc(l):

1. 25 U.S.C. § 450j(a): applicability of federal contracting laws and regulations
2. 25 U.S.C. § 450j-1(a): amounts of funds provided; carry-over
3. 25 U.S.C. § 450j-1(b): reductions and increases
4. 25 U.S.C. § 450j-1(d): treatment of shortfalls
5. 25 U.S.C. § 450j-1(f): limitation on remedies for cost disallowances
6. 25 U.S.C. § 450j-1(g): addition to contract of full amount contractor entitled
7. 25 U.S.C. § 450j-1(h): indirect costs for construction programs
8. 25 U.S.C. § 450j-1(j): use of funds for matching or cost participation requirements
9. 25 U.S.C. § 450j-1(k): allowable uses of funds
10. 25 U.S.C. § 450j-1(m): use of program income earned
11. 25 U.S.C. § 450j-1(o): re-budgeting



12. 25 U.S.C. § 450k(e): exceptions in, or waiver of, regulations
13. 25 U.S.C. §§ 450l(b) and 450l(c)(1)(b)(7)(A): Tribal records not considered Federal records for purposes of chapter 5 of Title 5 of United States Code.

Section 22. Modification and Correction

A. Modification of AFA. Consistent with 25 U.S.C. § 450m-1(b), the Parties may modify this AFA only by amendment executed in the same manner as this AFA (but requiring only three originals rather than five), except as provided in the following AFA provisions: Section 10.B (Secretarial waiver of regulations); Section 10.E (use of CSKT performance standards); and in Section 22.B (correction of minor, non-substantive errors or omissions). Provided, however, that the Parties may execute modifications involving augmentation of funds or resources under Attachment B upon approval by the Refuge Supervisor and the Tribal Chairman. The Parties agree that, in the event the Tribal Self-Governance Act is amended, the provisions contained in this AFA shall remain in effect until the Parties jointly execute any amendments or modifications as a result of changes in the Tribal Self-Governance Act statutes or accompanying regulations.

B. Minor Errors or Omissions. The Parties may correct minor, non-substantive errors or omissions in this AFA that do not affect funding, by means of an errata sheet signed and dated by the Refuge Manager and the Tribal Council Chairman.

Section 23. Structure and Severability

A. Structure. Except as used to cross-reference sections of this AFA, the section numbers and headings and the other structural elements of this AFA are for convenience only and have no bearing on the interpretation of this AFA.

B. Severability. If any provision of this AFA is found to be invalid by operation of law or otherwise, the remainder of this AFA will remain in full force and effect.

The Parties have reviewed relevant legal authorities and guidance on what may constitute an “inherently Federal function” within the meaning of the Tribal Self-Governance Act, including, but not limited to, the NWRSA (as amended), other federal statutes, federal court decisions, and Interior Solicitor opinions. The Parties believe that this AFA: 1) is consistent with those legal authorities; and 2) does not contract any “inherently Federal functions” to CSKT. In the event a federal court were to determine that one or more of the Activities contracted to CSKT was “inherently Federal”, it is the intent of the Parties that the remainder of this AFA shall remain in effect and the AFA shall be reformed to exclude such function(s) from the Activities contracted to CSKT.

Section 24. Entire Agreement

This AFA, including Attachments A-D, sets out the entire agreement between the Parties concerning the terms and conditions under which the Service will fund and the CSKT will



perform Activities at the NBRC. This AFA supersedes any and all previous, express or implied, oral or written understandings and/or agreements for funding and performing those Activities. However, nothing in this AFA shall be interpreted to supersede or nullify any Annual Fire Management Operating Plan in effect between the Parties.

Section 25. Dates of Performance

A. *Effective Date.* The effective date of this AFA shall be no earlier than ninety days after the date the Secretary submits this signed AFA to Congress, as provided in 25 U.S.C. § 458cc(f); provided that if, prior to commencement or completion of such ninety-day period, the Tribal Self-Governance Act is amended to eliminate the ninety-day congressional review period, this AFA may become effective immediately upon signature by all Parties. In order to provide time for CSKT to hire necessary staff, the effective date for CSKT performance of Activities will be [phased in, as mutually agreed-upon by the Parties, during FY 2013. This AFA will be fully effective, and CSKT will be fully performing contracted Activities, by no later than _____, 20__].

B. *Commencement of Activities.* The CSKT may commence performing any Activity on the effective date, and in accordance with the terms and conditions, of this AFA. Any payment to the CSKT for performing any such Activity shall be subject to compliance with the Antideficiency Act, as provided in Section 14.H above, and other applicable laws and regulations. If the Service has reason to anticipate that Congress will not appropriate sufficient funds to pay the CSKT for performing any Activity covered by this AFA, the Service will give the CSKT prompt written notice.

C. *Term.* This AFA covers funding and Activities from its effective date through September 30, 2016. All of the terms and conditions of this AFA will apply during any extension of the term of this AFA. The Parties may modify the Activities covered by this AFA only by amending this AFA as provided in Section 22.A.

THE FOREGOING PROVISIONS OF THIS FUNDING AGREEMENT FOR FY 2013-2016 ARE HEREBY AGREED TO ON THE DATES INSCRIBED BELOW, EXECUTED IN FIVE ORIGINALS.

CONFEDERATED SALISH AND KOOTENAI TRIBES, BY:

 Joe Durglo
 Chairman, CSKT Tribal Council

 Date



UNITED STATES DEPARTMENT OF THE INTERIOR, BY:

Dan Ashe, Director, U.S. Fish & Wildlife
Service

Date

_____, Assistant Secretary
for Fish, Wildlife and Parks

Date

Mike Black, Director, Bureau of Indian Affairs

Date