



**FISCAL YEARS 2007-2011 ANNUAL FUNDING AGREEMENT
BETWEEN THE
UNITED STATES FISH AND WILDLIFE SERVICE
AND THE
CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION**

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Section 1. Nature of Document, Parties

This is a funding agreement (AFA)¹ between the United States Fish and Wildlife Service (FWS) and the Confederated Salish and Kootenai Tribes of the Flathead Reservation (CSKT) for fiscal years 2007 through 2011. The FWS is an agency of the United States Department of the Interior, acting under delegation from the Secretary of the Interior (Secretary). The CSKT is a federally-recognized Indian Tribe represented by its Tribal Council, participating in the Tribal Self-Governance Program established by the Secretary under § 401, 25 U.S.C. § 458aa, of the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, as added by § 204 of the Tribal Self-Governance Act of 1994, Pub. L. 103-413. Under 25 C.F.R. § 1000.146, the FWS has authority to enter into a multi-year funding agreement, subject to the Anti-Deficiency Act (31 U.S.C. § 1341).

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Section 2. Intent and Purpose

A. Tribal Self-Governance Contracting of a National Wildlife Refuge's Local Operations. The intent of the parties is to achieve Tribal Self-Governance Act objectives by contracting local management of the National Bison Range Complex (NBRC) to the Confederated Salish and Kootenai Tribes through a process to be fully implemented by fiscal year 2010. All activities and their associated staff positions, listed in Section 2.C below, will be fully transferred by the beginning of fiscal year 2009. The National Bison Range Complex will continue to be owned by the federal government (with the exceptions of the Pablo and Ninepipe National Wildlife Refuges, which are located on Tribally-owned land). The NBRC will continue to be operated as a National Wildlife Refuge by CSKT under the supervision of the U.S. Fish & Wildlife Service and according to applicable federal laws and regulations.

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¹ Due to the original funding agreement between FWS and CSKT (which also included multiple fiscal years) being referred to as an "Annual Funding Agreement" or "AFA", and due to the federal Code of Federal Regulations referring to the agreements as "AFA's" (see Part 100 of Title 25 of the C.F.R.), the parties will refer to this agreement as an "AFA" even though it includes more than one fiscal year.

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B. Recognize Partnership: Fund and Perform Activities. The purpose of this AFA is to recognize and formalize the partnership between FWS and CSKT in performing activities at the NBRC. This AFA also establishes the terms and conditions under which the FWS will fund and the CSKT will perform programs, services, functions, and activities, or portions thereof (Activities) at the National Bison Range Complex in Montana. The Secretary, by a list published in the *Federal Register* at 70 F.R. 53680, 53683 (September 9, 2005), has identified some of the programs at the NBRC which are eligible for inclusion in an AFA. The Secretary has established a policy that all bureaus of the Interior Department are to interpret Federal law and regulations in a manner that will facilitate the inclusion of programs into authorized AFA's whenever possible (see 25 C.F.R. § 1000.4(c)(5)).

C. Phase-in of Tribal Contracting. Over the first three fiscal years covered under this AFA, CSKT will gradually increase the scope of contracting it performs at the National Bison Range Complex. The schedule for phasing in additional contracting will be as follows:

February 1, 2007 (or effective date of this AFA, whichever is later): CSKT contracts the activities performed by the NBR's Wildlife Biologist.
March 1, 2007: CSKT contracts the activities performed by the NBR's Maintenance Foreman.
July 1, 2007: CSKT contracts the activities performed by the NBR's Outdoor Recreation Supervisor.
October 1, 2007: CSKT contracts the activities performed by the NBR's two Park Rangers (Law Enforcement).
January 1, 2008: CSKT contracts the activities performed by the NBR's Deputy Refuge Manager.
October 1, 2008: CSKT contracts the activities performed by the NBR's Refuge Manager, Administrative Support Assistant, and Clerk.

For the activities performed by each of the above-referenced positions, CSKT will provide qualified staff at the date mentioned above. The employment options for Affected Federal Employees contained within Section 11.E ("Personnel") of this AFA shall be available for each of the above-referenced positions, with the exception of the Refuge Manager (see Section 2.D, below). CSKT will ensure that its staff is able to conduct all of the contracted activities in accordance with applicable federal statutes and regulations. FWS will ensure that any necessary training, equipment or other resources are provided to such staff on the same basis as they would have been provided if the positions were filled by FWS employees.

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FWS will ensure that budgeting is in place to transfer the associated funding to CSKT on or around the above-referenced dates, and funding shall be transferred in accordance with Section 12 ("Consideration") of this AFA. Prior to each of the above-referenced dates, FWS and CSKT will execute amendments to Attachments A and B of this AFA to reflect the additional contracted activities, in accordance with Sections 6.A and 12.A of this AFA. Annual reports and performance reviews shall be conducted as set forth in Section 10.B ("Annual Report and Review") of this AFA.

D. BIA-funded Position. In support of this Tribal Self-Governance agreement, and consistent with Section 19 of this AFA, the Bureau of Indian Affairs (BIA) has agreed to fund a new, temporary FWS position at the National Bison Range Complex which would be filled by FWS with a CSKT employee through an Intergovernmental Personnel Act (IPA) agreement with CSKT. This temporary position will be at the deputy refuge manager-level. Within 30 days of the effective date of this AFA, FWS will provide CSKT with a final position description for the new position, at which time CSKT will begin the process for selecting an individual to fill the position through the IPA agreement with FWS. FWS will consult with CSKT in developing the position description. The position is to be filled and funded by FWS in FY 2007 as soon as the IPA agreement is finalized.

This position is intended to facilitate transition into CSKT contracting of the Refuge Manager position in fiscal year 2009, at which time the existing Refuge Manager will be transferred by FWS to another position within the National Wildlife Refuge System and this temporary BIA-funded position will terminate. BIA funding of the position allows the federal/tribal partners to better accomplish: 1) full contracting of the activities authorized by the Tribal Self-Governance Act; 2) a smoother transition to the full-contracting stage; and 3) additional cooperation between FWS and BIA, the two Interior agencies charged with natural resource protection within the Flathead Indian Reservation. The existing Coordinator position, which was created by FWS due to the fact that none of the NBRC supervisory positions were initially contracted to CSKT, will be phased out by CSKT during fiscal years 2007-2008 with termination of the position no later than September 30, 2008.

E. Off-Reservation NBRC Activities. Those NBRC activities and job positions which are currently wholly based at off-Reservation portions of the National Bison Range Complex (e.g., Lost Trail NWR), and which are currently under the direct management of the National Bison Range Complex's Refuge Manager, may also be contracted by CSKT during the effective period of this AFA at a time mutually agreed upon by the parties.

F. Recognize and Further Relationship and Significance. This AFA recognizes and furthers:

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1. *Government-to-Government Relationship.* 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

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2. *Special Significance.* The special geographic, historical, and cultural significance to the CSKT of the National Bison Range Complex,

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Section 3. Authority and Interpretation

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

1. *Title IV of the Act.* Title IV of the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, as added by § 204 of the Tribal Self-Governance Act of 1994, Pub. L. 103-413, and particularly § 403(c) of the Act, 25 U.S.C. § 458cc(c), which concerns additional activities administered by the Secretary, and § 403(i)(1) of the Act, 25 U.S.C. § 458cc(i)(1), which, except as otherwise provided by law, requires the Secretary to interpret each Federal law and regulation in a manner that will facilitate the inclusion of programs, services, functions, and activities, or portions thereof, in an AFA, as well as overall implementation of an AFA; and

2. *Tribal-Self Governance Regulations.* The Department of the Interior regulations at 25 C.F.R. Part 1000—Annual Funding Agreements Under the Tribal Self-Government [(sic)] Act Amendments to the Indian Self-Determination and Education [sic] Act (Tribal Self-Governance Regulations).

B. *Federal and Tribal Laws and Regulations*

1. *Interpretation.* Except as provided in section 3.B.2 of this section of this AFA for compliance with Federal and Tribal laws and regulations, in section 17.C of this AFA for Tribal Administrative Procedures, and in section 17.D of this AFA for Indian preference, this AFA shall be interpreted solely under, and consistent with, Title IV of the Act, the Tribal Self-Governance Regulations, and other applicable Federal laws and regulations

2. *Compliance.* In conducting any Activity covered by this AFA, the CSKT will comply with all applicable Federal and Tribal laws and regulations. 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, the Federal provision will govern.

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Section 4. Definitions

In this annual funding agreement, the following terms and their derivatives have the meanings specified in this section 4 of this AFA. As appropriate to the context in this AFA, the use of any defined or undefined term in the singular includes the plural, and vice versa.

Act, when capitalized, means the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, as amended by the Tribal Self-Governance Act of 1994, Pub. L. 103-413.

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

Activity Record means an accurate written record of CSKT's performance of an Activity.

AFA means an annual funding agreement under Title IV of the Act. *This AFA* means this specific AFA between the FWS and the CSKT, including all recited attachments.

Affected Federal Employee means an FWS Employee who:

A. Prior to the date of execution of this AFA was employed by the FWS to perform an Activity;

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B. But for this AFA would continue to perform the Activity during the term of this AFA; and

C. Whose employment the FWS would terminate in the absence of continued employment with the FWS or the CSKT as provided in this AFA.

Available Property means any equipment, material, or supply the FWS makes available for use by the CSKT in performing an Activity, including any horse owned by the United States.

Chairman means the Chairman of the Tribal Council of the Confederated Salish and Kootenai Tribes of the Flathead Reservation.

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Contract Support Costs means indirect costs incurred by the CSKT in administering this AFA and performing the Activities covered by it. *Contract Support Costs* do not include any management or support funds from any FWS regional or central office.

Contracting Officer means the contracting officer who executes this AFA, or any other person the FWS later designates to act as the contracting officer under this AFA.

Coordinator means the person designated by the CSKT to manage the CSKT's performance of the Activities covered by this AFA, and to manage the CSKT Employees who perform those Activities.

CSKT means the Confederated Salish and Kootenai Tribes of the Flathead Reservation.

CSKT Contractor means a contractor hired by the CSKT to perform an Activity, and each employee of a CSKT Contractor who performs an Activity.

CSKT Employee means a person employed by the CSKT directly to perform an Activity, or an IPA Employee.

CSKT Volunteer means a volunteer enlisted by the CSKT to perform an Activity.

Department means the United States Department of the Interior.

Emergency means a serious unexpected situation that threatens the health or safety of any person or the viability of any property or other resource in the physical area covered by this AFA, and that urgently requires action.

Equipment means any tool or other personal property, and includes vehicles.

Flathead Reservation means the area in Montana reserved by Article II of the Treaty between the United States and the Flathead, Kootenai, and Upper Pend d'Oreilles Indians; concluded at Hell Gate in the Bitter Root Valley on July 16, 1855; ratified by the United States Senate on March 8, 1859; proclaimed by the President of the United States on April 18, 1859; and published at 12 Stat. 975.

FOIA means the Freedom of Information Act, 5 U.S.C. § 552.

FWS means the United States Fish and Wildlife Service in the United States Department of the Interior.

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FWS Employee means a person employed by the FWS.

FY means fiscal year.

IPA means the Intergovernmental Personnel Act, 5 U.S.C. §§ 3371-3376.

IPA Agreement means an agreement under the IPA, assigning an FWS Employee to the CSKT to perform one or more Activities.

IPA Employee means an Affected Federal Employee assigned to the CSKT under an IPA Agreement to perform any Activity.

Must, shall, and will have the same meaning, indicating a requirement to perform as specified.

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 means the National Bison Range and all other units of the National Wildlife Refuge System and associated areas in Montana administered by the FWS in connection with the National Bison Range.

NBRC means the National Bison Range Complex.

NBRC Baseline Data means written or other tangible data that documents the existence and state:

A. Of each natural resource and item of real property that is within the physical area covered by this AFA, and that could be affected by the CSKT's performance of an Activity covered by this AFA;

B. As of or shortly before the effective date of this AFA, or on or shortly before the date when the CSKT begins to perform the Activity.

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.

Notice of Reassumption means a written notice of reassumption or notice of imminent jeopardy under the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart

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M, concerning the reassumption by the FWS of one or more Activities covered by this AFA.

Notice of Retrocession means a written notice under the Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart N, concerning the retrocession by the CSKT of one or more Activities covered by this AFA.

NWR means National Wildlife Refuge.

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

Physical area covered by this AFA means that part of the National Bison Range Complex that lies within the boundaries of the Flathead Reservation, as further defined in section 5 of this AFA.

Privacy Act means the Privacy Act, 5 U.S.C. § 552a.

Published FWS standard means a written guideline, procedure, or other document that governs how the FWS performs an Activity, whether published by the FWS or another entity.

Real Property means land and improvements, including facilities and fixtures, the FWS makes available for use by the CSKT in performing an Activity.

Reassumption means the FWS reassuming performance of and ceasing to fund any or all of the Activities covered by this AFA, as provided in section 16.C of this AFA.

Refuge Manager means the Refuge Manager of the National Bison Range Complex, including any acting Refuge Manager and any other FWS Employee who the Refuge Manager designates to act on behalf of the Refuge Manager for a specific purpose.

Region means the Mountain and Prairie Region, United States Fish and Wildlife Service.

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Regional Director means the Regional Director, Mountain and Prairie Region, United States Fish and Wildlife Service.

Retrocession means withdrawal by the CSKT from this AFA with regard to, and the CSKT ceasing to perform, any or all of the Activities covered by this AFA, as provided in section 16.B of this AFA.

RIF means a reduction in force to eliminate an employment position under Federal personnel procedures.

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

Sensitive property means binoculars and spotting scopes, cameras, firearms, laptop and personal computers (and associated modems, monitors, printers, etc.), motor vehicles (including tractors, all-terrain vehicles, motorcycles, etc.), mowers, and radio equipment.

Subsequent AFA means an AFA entered into by the FWS and the CSKT for a term subsequent to the term of this AFA, and covering Activities which are the same or similar to the Activities covered by this AFA.

Tribal, except as otherwise obvious from the context, means of or relating to the Confederated Salish and Kootenai Tribes of the Flathead Reservation.

Tribal Council means the Tribal Council of the Confederated Salish and Kootenai Tribes of the Flathead Reservation.

Tribal Self-Governance Regulations means 25 C.F.R. Part 1000—Annual Funding Agreements Under the Tribal Self-Government [(sic)] Act Amendments to the Indian Self-Determination and Education [(sic)] Act.

Visitor means any person who is on the National Bison Range Complex and is not:

A. An FWS Employee, contractor, or volunteer acting within the course and scope of her or his employment, contract, or volunteer agreement with the FWS; or

B. A CSKT Employee, CSKT Contractor, or CSKT Volunteer who is on the NBRC to perform an Activity covered by this AFA.

Volunteer means any person who performs an Activity with no, or only nominal, pay, benefits, or other commonly accepted attribute of employment.

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WMD means wetland management district.

WPA means waterfowl production area.

Section 5. Physical Area Covered

The physical area covered by this AFA is the National Bison Range Complex. The activities contracted and identified in Attachment A are those activities on the sites that lie within the boundaries of the Flathead Reservation, primarily consisting of the following units of the National Wildlife Refuge System and associated areas:

- A. The National Bison Range;
- B. The Ninepipe National Wildlife Refuge;
- C. The Pablo National Wildlife Refuge; and
- D. All waterfowl production areas.

Nothing in this Section prevents CSKT from administering, overseeing, or contracting NBRC activities located outside of the Flathead Indian Reservation, consistent with the provisions of this AFA.

Section 6. Activities Covered

A. Six Categories. Under this AFA, the CSKT will perform Activities in six categories:

- 1. Management and Administration;
- 2. Biological Program (including Habitat Management);
- 3. Fire Program;
- 4. Law Enforcement;
- 5. Maintenance Program; and
- 6. Visitor Services.

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Those six categories, the Activities in each category, and what each Activity specifically includes are described in detail in Attachment A of this AFA.

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B. *Redesign and Reallocation.* The 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. *Programs, Services, Functions, and Activities Retained by the FWS.* The FWS retains all programs, services, functions, and activities, and portions thereof, at the National Bison Range Complex and elsewhere in the FWS and the Department that are not explicitly covered by this AFA. Subsequent AFA's may include some of those retained programs, services, functions, and activities, or portions thereof. The FWS will negotiate with the CSKT in good faith to explore and implement opportunities for adding activities to subsequent AFA's.

D. *Absence of Activity from AFA.* The absence from this AFA of any program, service, function, or activity, or portion thereof, at the NBRC is not intended to denote or imply that the program, service, function, or activity, or portion thereof, is an inherently Federal function within the meaning of § 403k of the Act, 25 U.S.C. § 458cc(k), and does not preclude subsequent negotiation by the FWS and the CSKT for inclusion of the program, service, function, or activity, or portion thereof, in a Subsequent AFA.

E. *Additional Activities.* In addition to the Activities identified in subsection 6.A of this section of this AFA, the CSKT may elect to perform, and the FWS may fund, additional Activities under this AFA. The FWS and the CSKT will document any additional funding and Activities by amending this AFA as provided in section 20.A of this AFA.

Section 7. Management, Direction, and Control

A. *CSKT.* Subject to the final authority of the Refuge Manager, as identified in subsection 7.B of this section of this AFA, the CSKT will manage the Activities performed by the CSKT under this AFA, and each CSKT Employee, CSKT Contractor, and CSKT Volunteer who perform those Activities.

B. *Refuge Manager.* Under this AFA, the Refuge Manager will retain final responsibility and authority for directing and controlling the operation of the National Bison Range Complex and the CSKT's performance of the Activities covered by this AFA. In exercising such authority, the Refuge Manager shall, to the extent practicable, consult with CSKT as a partner in the performance of Activities contracted under this AFA. The

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Refuge Manager shall provide reasonable notice to CSKT of any changes in direction or prioritization of duties.

C. *Priorities.* As deemed necessary or appropriate by the Refuge Manager in consultation with the Coordinator, the Refuge Manager will set and revise written priorities for the CSKT to follow in performing the Activities covered by this AFA. The CSKT will follow those priorities in performing the Activities.

D. *Consistency.* The CSKT will perform each Activity covered by this AFA at a time and in a manner consistent with the purposes of the National Bison Range Complex and the missions of the FWS and the National Wildlife Refuge System.

E. *Safety.* Nothing in this Agreement shall be interpreted as restricting the authority of either the Refuge Manager or the Coordinator to take immediate steps to address any safety concerns.

Section 8. Performance Standards

A. *Generally.* The CSKT will perform each Activity covered by this AFA in a manner that supports and otherwise is compatible with the National Wildlife Refuge System Administration Act, 16 U.S.C. §§ 668dd and 668ee, as amended, and with the purposes of the National Bison Range Complex; the protection and enhancement of fish and wildlife resources, the natural environment, public health and safety, and positive visitor experience; and the public images and missions of the National Bison Range Complex, the National Wildlife Refuge System, and the FWS.

B. *Operational Standards.* The CSKT will perform each Activity covered by this AFA in compliance with all applicable Operational Standards.

C. *Waivers.* The CSKT may request, after consulting with the Refuge Manager, that the Secretary waive a regulation in accordance with the procedures in § 403(i)(2) of the Act, 25 U.S.C. § 458cc(i)(2), and the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart J.

D. *Interpretation.* For purposes of compliance by the CSKT with an Operational Standard:

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1. *Refuge Manager.* The Refuge Manager's interpretation of the Operational Standard will govern; and

2. *CSKT.* Where the CSKT is required to comply with an Operational Standard that does not literally apply to the CSKT, the CSKT will comply with the Operational Standard as though it specifically named the CSKT as a person required to comply.

E. *Environmental Compliance.* In conducting an Activity, the CSKT will comply with all applicable Operational Standards concerning the environment, except that:

1. *National Environmental Policy Act of 1969.* The FWS will determine when it must comply with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4335, for an Activity. The Refuge Manager will give the CSKT written notice of, and the FWS will complete, the NEPA process for the Activity.

2. *Historic Preservation.* The FWS will determine when an Activity implicates the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470-470mm, or another cultural resource law, regulation, or policy. The Refuge Manager will give the CSKT written notice of, and the FWS will complete, any associated administrative compliance process.

3. *Clearance to Proceed.* After receiving written notice from the Refuge Manager under subsection 8.E.1 or 8.E.2 of this section of this AFA, the CSKT will refrain from performing any part of the Activity until the Refuge Manager gives the CSKT written clearance and, where applicable, instructions on how to proceed.

F. *Construction Review and Inspection.*

1. *Review and Approval of Plans, Specifications, and Drawings.* To the extent the CSKT is responsible for preparing or providing design, engineering, or 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 concerning those plans, specifications, or drawings, including review and tentative approval of them by the Refuge Manager at approximately the 25% and 75% stages of their completion. The CSKT will not start 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.

2. *Inspection System.* The CSKT will use an inspection and reporting system, implemented by appropriate professionals, adequate to verify and document to the FWS

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that any construction covered by this AFA was performed to all applicable Operational Standards.

G. Use of CSKT Performance Standards.

1. *Equally Protective.* With the prior written approval of the Refuge Manager, where the CSKT is required to comply with an Operational Standard in performing an Activity the CSKT may substitute for the Operational Standard a written performance standard used by the CSKT in performing a similar activity for CSKT purposes as long as the CSKT standard is equally, or more, protective of the resources and equipment of the National Bison Range Complex as the corresponding Operational Standard.

2. *Refuge Manager Oversight.* If the Refuge Manager finds that the CSKT's performance of an Activity in compliance with a CSKT performance standard would cause, or is causing, less protection of the resources or equipment of the National Bison Range Complex than would result from compliance with the applicable Operational Standard, the Refuge Manager will give the CSKT written notice of that finding, including, where appropriate, a suggested revised performance standard. Upon receiving such notice, the CSKT will either adopt and perform the Activity in compliance with the suggested revised performance standard, or will perform the Activity in compliance with the applicable Operational Standard.

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

Section 9. Records and Other Information

A. *General Requirement.* The CSKT will collect, maintain, and provide to the FWS all records and other information the FWS needs to comply with all requirements imposed on the FWS by statute or regulation with regard to any Activity, including but not limited to records and information concerning construction, finance, environmental compliance, the performance of IPA Employees, and claims based on property damage, injury, or death. Also see section 8.F.2 of this AFA concerning reporting associated with construction.

B. *Activity Records.* To the extent the FWS requires a written record for its budget appropriation and apportionment processes, and the FWS informs the CSKT in writing of that requirement and how it applies to an Activity, the CSKT will maintain an accurate written record of the CSKT's performance of the Activity (Activity Record). Upon re-

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quest and with reasonable advance notice, the CSKT will provide to the FWS a copy of any Activity Record. 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 Coordinator will cooperate to ensure that the level of detail in Activity Records is adequate for FWS purposes without imposing an undue administrative burden on the CSKT.

C. Financial Records and Reports.

1. *Records of Expenditures.* Using standard accounting practices, the CSKT will maintain financial records of its expenditures of the funds the FWS provides to the CSKT under this AFA. The CSKT will provide those financial records to the FWS to the extent the FWS requires them for its budget appropriation and apportionment processes, or in the event of a retrocession or reassumption under section 16.B or 16.C of this AFA.

2. *Financial Status Report.*

a. *Final Report.* Within 90 days after the last date of the term of this AFA, the CSKT will submit to the Contracting Officer a completed Standard Form 269, Financial Status Report (Long Form), or its successor, concerning the funds the FWS provided to the CSKT under this AFA.

b. *Interim Report.* Within 90 days after the effective date of a retrocession or reassumption under section 16.B or 16.C of this AFA, the CSKT will submit to the Contracting Officer a completed Standard Form 269, Financial Status Report (Long Form), or its successor, concerning the funds the FWS provided to the CSKT under this AFA and the CSKT expended through the effective date of the retrocession or reassumption.

D. *Consistency with FWS Needs and Practice.* The CSKT will provide to the FWS all records and other information covered by this section 9 of this AFA in a manner and format consistent with FWS needs and practice.

E. *Inapplicability of FOIA and the Privacy Act.* As provided by the Tribal Self-Governance Regulations at 25 C.F.R. § 1000.392, FOIA does not apply to records maintained solely by the CSKT under this AFA. As authorized by the Tribal Self-Governance Regu-

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lations at 25 C.F.R. § 1000.393 and as elected by the CSKT, records maintained by the CSKT under this AFA are not subject to the Privacy Act.

F. *Conflicting Requirement.* The CSKT need not take any action under this section 9 of this AFA that would conflict with any Federal law or regulation applicable to the CSKT and governing audits and administrative records.

Section 10. Performance Assessment, Reporting, and Review

A. Monitoring, Evaluation, and Notice of Performance.

1. *Monitoring.* The FWS, at such times and places as it deems appropriate, will monitor and evaluate the performance of the CSKT under this AFA, and will notify the CSKT of any deficiency in that performance. Monitoring by the FWS may include:

a. *Direct Observation.* Direct observation and written documentation by the FWS of the performance of an Activity by the CSKT;

b. *Review of Activity Records.* Review of Activity Records provided to the FWS by the CSKT under section 9.B of this AFA; and

c. *Comments.* Review of written and documented oral comments received by the FWS concerning the performance of any Activity by the CSKT.

2. *Evaluation.* The FWS will evaluate the performance of the CSKT under this AFA by analyzing the information gathered in the monitoring process in relation to applicable Operational Standards, terms and conditions of this AFA, and baseline information.

3. *Notice to CSKT.* The FWS will notify the CSKT concerning the performance of the CSKT under this AFA, as follows:

a. *Comments.* The FWS promptly will notify the Coordinator in writing of each written comment and documented oral comment received by the FWS concerning the CSKT's performance of any Activity. The FWS will provide that information to the CSKT in accordance with FOIA and the Privacy Act. The FWS will provide that information to the CSKT on its own initiative, without receiving a FOIA request from the CSKT. If the FWS withholds any information from the CSKT concerning a comment, the CSKT may seek disclosure of that information in accordance with FOIA. The FWS will not take any action regarding the CSKT's performance under this AFA on the basis

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of any oral comment that the FWS did not document in writing, or any comment that the FWS did not promptly provide to the Coordinator.

b. *Performance Deficiency.* Where the FWS finds a deficiency in the performance of the CSKT under this AFA, the FWS will notify the CSKT of the deficiency, as follows:

(1) *Oral Notice.* The Refuge Manager orally will notify the Coordinator of any performance deficiency that is minor, an obvious oversight, or of an emergency nature.

(2) *Written Notice.* The Refuge Manager will notify the Tribal Council in writing of any other performance deficiency, including any performance deficiency that constitutes grounds for reassumption under section 16.C of this AFA. The written notice will identify the Activity and describe the performance deficiency at issue, the applicable Operational Standard or term or condition of this AFA, and why the performance of the CSKT does not meet the Operational Standard or term or condition. The notice will give the CSKT a reasonable amount of time to either remedy the performance deficiency or demonstrate to the Refuge Manager that no performance deficiency exists, the amount of time to be set by the Refuge Manager depending on the nature of the deficiency.

B. *Annual Report and Review.*

1. *Annual Reports.* Except as provided in sections 16.B.5 and 16.C.3.e for a retrocession or reassumption, within 45 days of the end of each fiscal year covered under this AFA, the CSKT, in consultation with the Refuge Manager, will prepare and submit to the Refuge Manager a final report on each Activity performed by the CSKT under this AFA. The report will include an introduction, major accomplishments, and status of resources. The report will reference, and will describe the CSKT's performance of each Activity in relation to, all applicable NBRC Baseline Data, and will contain information sufficient for the Refuge Manager, the FWS, and the Secretary to prepare any required report concerning this AFA. See section 9.C.2 of this AFA concerning the requirement for the CSKT to submit a financial status report. [NOTE: we may want to discuss revising these Sections 10.B.1 and 10.B.2 to provide for a joint CSKT/FWS annual report, which I understand Mitch King and Dale Becker may have discussed at some point earlier this year.]

2. *Annual Performance Reviews.* For each fiscal year covered under this AFA, after the CSKT submits its annual report to the Refuge Manager, but prior to the end of each calendar year, the Coordinator will meet with the Refuge Manager to discuss the performance of the CSKT under this AFA, and any problem the FWS foresees in the

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administration or implementation of contracted activities in either subsequent fiscal years, or under a Subsequent AFA.

Section 11. Personnel

A. *General Staffing.* The CSKT will perform the Activities covered by this AFA employing the services of CSKT Employees, CSKT Contractors, or CSKT Volunteers. The CSKT will manage each CSKT Employee, CSKT Contractor, and CSKT Volunteer to comply with this AFA.

B. *Coordination.* The CSKT will designate a Coordinator to manage the performance of the Activities covered by this AFA, and to manage each CSKT Employee, CSKT Contractor, and CSKT Volunteer performing those Activities. The FWS will provide secure, private office space for the Coordinator by either procuring a new facility or by constructing an addition to the existing trailer facility which is currently used by the Coordinator. Such addition or procurement shall be completed no later than the effective date of this AFA.

C. *Training and Skill.* The CSKT will ensure that each CSKT Employee, CSKT Contractor, and CSKT Volunteer has sufficient knowledge, skills, and abilities to properly and safely perform each Activity the CSKT assigns her or him to perform.

D. *Uniform.* While performing an Activity:

1. *CSKT Employee.* Each CSKT Employee will wear a uniform that clearly identifies her or him as a CSKT Employee. As part of the consideration described in Attachment B to this AFA, FWS will provide uniform allowance funding to CSKT in an amount equal to what FWS would have allocated to its own employees in the absence of this AFA.

2. *CSKT Contractor and CSKT Volunteer.* Each CSKT Contractor and CSKT Volunteer will display an identification card, arm band, or other readily visible indication that she or he is a CSKT Contractor or CSKT Volunteer.

E. *Affected Federal Employees.*

1. *Information.* Promptly after executing this AFA, the FWS and the CSKT will discuss with each Affected Federal Employee all available options for her or his employment under this AFA.

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2. *Opportunity to Elect.* Promptly after executing this AFA, and at the request of an Affected Federal Employee at one additional time for each Affected Federal Employee during the term of this AFA, the FWS and the CSKT will give each Affected Federal Employee an opportunity to elect from the available options for employment under this AFA.

3. *Available Options.* The options available to each Affected Federal Employee for employment under this AFA are:

a. *IPA Agreement.* Continued employment by the FWS 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.* Where practicable, reassignment by the FWS to another duty station.

4. *Reduction in Force.* The FWS will conduct a reduction in force to eliminate the position of any Affected Federal Employee who rejects all of the available options for employment under this AFA or, where applicable, who the FWS cannot reassign to another duty station.

5. *Employment Under an IPA Agreement.*

a. *Execute IPA Agreement.* Promptly after executing this AFA, the FWS and the CSKT will execute an agreement under the Intergovernmental Personnel Act (IPA), 5 U.S.C. §§ 3371-3376, and any applicable implementing regulations and procedures, covering each Affected Federal Employee who elects to continue employment by the FWS with an assignment to the CSKT under an IPA Agreement.

b. *Continuation of Employment.* In the case of an assignment of a Federal employee to an Indian tribe, the IPA at 5 U.S.C. §§ 3372(a)(2) authorizes the FWS, 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." The FWS and the CSKT agree that extend-

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ing the initial period of assignment for each Affected Federal Employee will continue to benefit the FWS and the CSKT for the full terms of this AFA and each Subsequent AFA. Except for a retrocession or reassumption under section 16.B or 16.C of this AFA, where the FWS extends the assignment of an Affected Federal Employee under an IPA Agreement the CSKT will continue to retain the Affected Federal Employee under the IPA Agreement for the full terms of this AFA and each Subsequent AFA.

c. *Performance and Conduct.* If the CSKT finds a deficiency in the performance or conduct of an IPA Employee, the Refuge Manager and the Coordinator will confer, and the FWS will apply Federal personnel procedures to correct any such deficiency.

d. *Seasonal IPA Employees.* Contingent upon funding provided by FWS, the IPA Agreement of any seasonal Affected Federal Employee may be extended beyond the original timeframe provided in the IPA Agreement, provided that such extension does not result in such employee working more than fifty (50) weeks of the year, in which case the employee would no longer have seasonal status.

6. *Direct Employment by the CSKT.*

a. *Employment Election.* The CSKT will employ directly as a CSKT Employee each Affected Federal Employee who elects that option. As elected by the Affected Federal Employee, the CSKT will provide to the Affected Federal Employee either CSKT benefits or Federal benefits.

b. *Continuation of Employment.* The CSKT will give each Affected Federal Employee who elects direct employment by the CSKT as a CSKT Employee the highest level of protection of continued employment and retention of benefits afforded to any other employee of the CSKT.

7. *Duties and Responsibilities.* The CSKT will assign each Affected Federal Employee solely to perform one or more Activities covered by this AFA, with duties and responsibilities commensurate with her or his training, experience, and salary, and reasonably equivalent to her or his position with the FWS.

8. *Nondiscrimination.* The CSKT will not in any way discriminate against any Affected Federal Employee.

Section 12. Consideration

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A. *Attachment B.* In return for the CSKT performing the Activities covered by this AFA in accordance with the terms and conditions of this AFA, and subject to the terms and conditions in this section 12 of this AFA, the FWS will provide the CSKT the consideration specified in Attachment B of this AFA. Generally, Attachment B specifies two types of consideration:

1. *IPA Employees.* Assignment by the FWS to the CSKT of those Affected Federal Employees who elect to continue Federal employment under this AFA pursuant to an IPA Agreement; and

2. *Appropriated Funds.* Appropriated funds, as follows:

a. *Program Funds.* The program funds, less the salary and benefits of IPA Employees, that the FWS would allocate to performing the Activities covered by this AFA if the FWS itself performed those Activities, including applicable wage and step increases for the employee positions being contracted; and

b. *Contract Support Costs.* Any contract support costs the FWS provides to the CSKT under subsection 12.C of this section of this AFA.

B. *Cost of IPA Employees.* The FWS will pay the salary and benefits of employing each IPA Employee. To cover those costs, the FWS will reduce the funds the FWS otherwise would pay to the CSKT under this section 12 of this AFA by an amount equal to the salary and benefits of the IPA Employee. If an IPA Employee resigns or otherwise terminates employment with the FWS, the assignment of that employee under the IPA and the obligations of the CSKT under the corresponding IPA Agreement will end. At the end of the IPA assignment, the FWS will pay the CSKT the amount the FWS would have spent on the salary and benefits of the IPA Employee from the date of termination of her or his employment 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 subsection 12.D.2.b of this section of this AFA.

C. *Contract Support Costs.* The parties acknowledge that CSKT performed work under the original FY 2005-2006 AFA with no Contract Support Costs being provided by FWS, resulting in CSKT subsidization of those costs. The parties further acknowledge that, as a result of CSKT contracting NBRC activities, FWS saves indirect costs associated with those activities and that this savings should be passed on to CSKT. In FY 2007, FWS will work with its sister Interior agencies to: 1) determine how those agencies have provided Contract Support Costs to tribal governments under other Tribal Self-Governance Act funding agreements; and 2) find a way to provide CSKT with the

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Contract Support Costs required under the Tribal Self-Governance Act for this AFA. In FY 2008 and subsequent fiscal years, FWS will provide Contract Support Costs as required by 25 U.S.C. § 458cc(g)(3) and 25 C.F.R. § 1000.137(b)(ii). CSKT will continue to provide all necessary information to FWS for the provision of Contract Support Costs under this AFA, including CSKT's indirect cost rate approved by the Interior Inspector General.

D. Transfer of Consideration.

1. Affected Federal Employees.

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

b. *Reduction in Force.* Pending the completion of any reduction in force under section 11.E.4 of this AFA, the FWS will continue to perform all Activities, or portions thereof, associated with each position covered by the RIF. Upon completion of the RIF, the FWS will pay the CSKT the balance of the salary and benefits of each position covered by the RIF, from the effective date of the RIF through the remainder of the term of this AFA, using the payment procedures in subsection 12.D.2.b of this section of this AFA.

2. Payment of Funds.

a. *Initial Payment.* Within 30 calendar days of receiving from the CSKT a completed Standard Form 270, Request for Advance or Reimbursement, or its successor, dated on or after the effective date of this AFA, the Contracting Officer will obligate and the FWS will pay the CSKT all funds that:

(1) *Appropriated.* Congress has appropriated and are available for expenditure by the FWS on the Activities covered by this AFA;

(2) *Allocated.* The FWS has allocated to the Region for expenditure on the Activities covered by this AFA; and

(3) *Due.* Are due to the CSKT as consideration under this AFA.

b. *Additional Payments.* If at any time Congress has appropriated to the FWS or the FWS has allocated to the Region, and as a result the FWS has paid the CSKT, less than all of the funds due to the CSKT under this AFA, the Contracting Officer will

Deleted: The FWS will not provide the CSKT any funds or other consideration to pay for indirect costs associated with performing the Activities covered by this FY 2005 AFA. For Subsequent AFA's, the CSKT will develop a budget and justification for Contract Support Costs, will document the indirect cost rate approved by the Interior Inspector General, as provided in the Tribal Self-Governance Regulations at 25 C.F.R. § 1000.138, and will identify the portion of that indirect cost rate that applies to Contract Support Costs. The CSKT will give that information to the FWS during negotiations for each Subsequent AFA, and will update that information as necessary for use by the FWS in seeking funds for Contract Support Costs in accordance with section 403(g)(3) of the Act, 25 U.S.C. § 458cc(g)(3).¶

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obligate and the FWS will pay the CSKT the balance due only to the extent additional appropriations and allocations become available. The Contracting Officer will obligate and the FWS will pay any such additional funds within 30 days after Congress appropriates and the FWS allocates the funds for expenditure on Activities.

E. *No Reallocation or Reprogramming of Consideration.* Consistent with 25 C.F.R. §§ 1000.397–1000.399 and 402, the CSKT will use the funds the FWS provides to the CSKT under this AFA, and any interest the CSKT earns on those funds, only to perform the Activities covered by this AFA.

F. *Lobbying.* The CSKT will not use any of the funds the FWS pays the CSKT under this AFA to lobby Congress or any other government entity in any manner prohibited by Federal law.

G. *Funding Errors or Omissions.* There may be errors or omissions that necessitate adjustment of the funds the FWS provides to the CSKT under this AFA. The FWS and the CSKT will make any such adjustment of funds by amending this AFA as provided in section 20.A of this AFA.

H. *Anti-Deficiency Act.* The performance of the FWS under this AFA is subject to compliance by the FWS with the requirements of the Anti-Deficiency Act, 31 U.S.C. § 1341. The Contracting Officer has executed this AFA solely for the purpose of approving the procedures of this AFA that govern the subsequent obligation and payment of funds. Nothing in this AFA shall be construed as requiring the Contracting Officer to obligate, or the FWS to provide to the CSKT, any consideration for which Congress has not appropriated funds to the FWS, or the FWS has not allocated funds to the Region, for expenditure on the Activities covered by this AFA.

Section 13. Property

A. *Availability and Use.* On the date of execution of this AFA or as otherwise appropriate, the FWS will make available to the CSKT for non-exclusive use in performing the Activities covered by this AFA, all equipment, materials, and supplies (Available Property) and Real Property that currently are used or may be acquired by the FWS for performing those Activities. Upon request by the FWS, the CSKT will make all Available Property and Real Property readily accessible to the FWS.

B. *Inventories of Available Property and Real Property.* Attachment C is an inventory of existing Available Property, including the nature, condition, and each item that cost \$500.00 or more, or which the FWS otherwise considers sensitive property. Attachment

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D is an inventory of existing Real Property, including an assessment of the condition of each item that cost \$5,000.00 or more. The FWS will update these inventories as needed to reflect any change in Available Property or Real Property, and will provide to the CSKT a copy of the updated inventory.

C. *NBRC Baseline Data.* On or before the effective date of this AFA, the FWS will provide to the CSKT all NBRC Baseline Data.

D. *Title and Ownership.* All Available Property, Real Property, natural resources for which title is held by the United States, and other property at the National Bison Range Complex will remain Federal property. The United States will hold title to any equipment, materials, or supplies the CSKT purchases with funds the FWS provides to the CSKT under this AFA.

E. *Repair, Replacement, and Disposal.* Subject to the availability of funds and the prior written approval of the Refuge Manager, the CSKT may repair or replace any item of Available Property as necessary for the CSKT to perform the Activities covered by this AFA. With the prior written approval of the Refuge Manager, the CSKT may dispose of any item of Available Property.

F. *Materials and Supplies.* Using funds the FWS provides to the CSKT under this AFA, the CSKT will acquire and pay for all materials and supplies the CSKT needs to perform the Activities of cleaning the office and visitor center under this AFA. Except as provided in subsection 13.H of this section of this AFA for the use of CSKT equipment, the FWS will provide to the CSKT all other materials and supplies needed to perform the Activities covered by this AFA.

G. *Duty to Protect.* The CSKT will take reasonable steps to protect all Available Property, Real Property, natural resources, and other Federal property in the area covered by this AFA from fraud, theft, abuse, damage, or loss.

H. *Use of CSKT Equipment.* The CSKT may, without additional funding from the FWS, perform any Activity using any equipment owned or otherwise available to the CSKT. The CSKT may use fuel and oil supplied by the FWS to fuel and lubricate that equipment. The Refuge Manager may restrict or prohibit such use of fuel or oil if the Refuge Manager finds that the use is being abused. The Refuge Manager will inform the Coordinator in writing of any such restriction or prohibition.

I. *Excess Property.* At the request of the CSKT, the FWS may transfer to the CSKT ownership of any facility, equipment, or other Federal property that is not needed for use

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by the FWS. Pursuant to Title IV of the Act and the Tribal Self-Governance Regulations, the FWS will facilitate transfer of any such property to the CSKT in accordance with Federal property procedures.

Section 14. Claims and Liability

A. *Federal Tort Claims Act.* In performing Activities under this AFA, 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. §§ 1000.270–1000.283. Except as otherwise provided by Federal law, in performing Activities under this AFA the CSKT accepts any risk not covered by the FTCA.

B. Notice of Incident or Claim.

1. *Notice of Incident.* The CSKT promptly will notify the Refuge Manager in writing of any incident resulting from the performance by the CSKT of an Activity covered by this AFA and involving personal injury, death, or property damage.

2. *Notice of Claim.* The CSKT and the FWS promptly will notify each other in writing of any claim that either party receives from a third party for damage, injury, or death resulting from or relating to any Activity covered by this AFA.

C. *Unemployment and Worker's 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 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 Employee, other than an IPA Employee, or by a CSKT Contractor or CSKT Volunteer in connection with performing any Activity covered by this AFA.

Section 15. Emergencies and Unusual Events

A. *Notice.* The Coordinator promptly and orally will notify the Refuge Manager or, where the Refuge Manager is not available, another FWS Employee of any emergency or other unusual event a CSKT Employee, CSKT Contractor, or CSKT Volunteer observes

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in the physical area covered by this AFA. Where practicable, after otherwise learning of an emergency or other unusual event in the physical area covered by this AFA and affecting an Activity, the Refuge Manager promptly and orally will notify the Coordinator or, where the Coordinator is not available, another available CSKT Employee of the emergency or other unusual event, and of how the Activity is affected. The FWS 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 Coordinator.

B. Temporary Operation and Control. Where necessary to deal with an emergency within the physical area covered by this AFA, the FWS 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 FWS will return operation and control over the Activity to the CSKT.

C. Emergency Procedures. In an emergency, the FWS and the CSKT will use the following procedures:

1. *Determination by Refuge Manager.* The Refuge Manager will determine when an emergency exists and when it has ceased to exist.

2. *Notice to CSKT Employees.* The Refuge Manager will notify the Coordinator or another available CSKT Employee that an emergency exists, as provided in subsection 15.A of this section of this AFA.

3. *Response of the CSKT.* Following notice of an emergency under subsection 15.C.2 of this section of this AFA, at the oral request of the Refuge Manager any CSKT employee performing an Activity will:

a. *Relinquish Operation and Control.* Relinquish operation and control of the Activity to the FWS;

b. *Provide Assistance.* Assist the FWS with responding to the emergency; and

c. *FWS Supervision.* Follow any related instruction issued by the Refuge Manager.

4. *CSKT Employee Not Available.* Where neither the Coordinator nor another CSKT employee is available to receive notice of an emergency, the FWS 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 who is responsible

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for performing the Activity will respond as provided in subsection 15.C.3 of this section of this AFA.

5. *Emergency Has Ceased to Exist.* When the Refuge Manager determines that an emergency has ceased to exist, the Refuge Manager orally will notify the Coordinator or, where the Coordinator is not available, another available CSKT employee, of that fact, and orally will relinquish to the CSKT operation and control of any Activity over which the Refuge Manager had taken operation and control.

6. *Written Report, Negotiation, and Adjustment.* Promptly after giving oral notice under subsection 15.C.5 of this section of this AFA that an emergency no longer exists, the Refuge Manager will submit to the CSKT a written report of the emergency, including a brief description of what happened, each Activity involved, and the participation of the FWS and the CSKT in dealing with the emergency. The FWS and the CSKT will then meet as necessary to negotiate any increase in funding or Activities covered by this AFA that may be appropriate as a result of any work done by the CSKT during the emergency. For any adjustment of funding, the FWS and the CSKT will amend this AFA as provided in section 20.A of this AFA.

Section 16. Retrocession, Reassumption, and Expiration

A. *Technical Assistance.* Upon request by the CSKT, the FWS will give the CSKT reasonable technical assistance in an attempt to avoid a need for the CSKT to retrocede, or for the FWS to reassume, an Activity.

B. *Retrocession by the CSKT.* At its option, the CSKT may retrocede and cease performing 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 N, except that the CSKT will:

1. *Written Notice.* Provide to the Refuge Manager 30-days advance written notice of the CSKT's intent to retrocede (Notice of Retrocession) and—

2. *Transition.* From the date the CSKT provides a Notice of Retrocession to the Refuge Manager, through the effective date of the retrocession, work with the Refuge Manager to ensure an orderly transition in returning to the FWS responsibility for performing each Activity to which the Notice of Retrocession applies;

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3. *Available Property.* On the effective date of the retrocession, return to the FWS all Available Property provided to the CSKT by the FWS, and not needed by the CSKT to perform an Activity to which the Notice of Retrocession does not apply;

4. *Return of Funds.* Within 30 days after the effective date of the retrocession, return to the FWS any funds that:

a. *Provided by the FWS.* The FWS has provided to the CSKT under this AFA for performing the retroceded Activity; and

b. *Not Expended.* The CSKT has not expended in performing the retroceded Activity, consistent the work actually done by the CSKT in performing the Activity from the effective date of this AFA through the effective date of the retrocession; and

5. *Final Report.* Within 30 days after the effective date of the retrocession, submit to the FWS the final report required by section 10.B.1 of this AFA, complete for each retroceded Activity through the date of retrocession (also see section 9.C.2.b of this AFA concerning a financial status report).

C. *FWS Reassumption.*

1. *Tribal Self-Governance Regulations.* Except as otherwise provided in subsection 16.A and this subsection 16.C of this section of this AFA, the FWS 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.* The FWS may reassume any or all of the Activities covered by this AFA if the Regional Director, on behalf of the Secretary, finds and notifies the CSKT in writing that the performance of the CSKT under this AFA is causing imminent jeopardy to natural resources or public health or safety, or that the CSKT is in material-breach of this AFA.

3. *CSKT Response to Reassumption.* Upon receiving from the FWS a notice as provided in the Tribal Self-Governance Regulations at 25 C.F.R. § 1000.313 concerning any Activity, the CSKT will:

a. *Transition.* From the date the FWS provides the Notice of Reassumption to the CSKT, through the effective date of the reassumption, work with the FWS to ensure an orderly transition in returning to the FWS responsibility for performing the reassumed Activity;

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b. *Cease Activities.* On the effective date of the reassumption, cease performing the reassumed Activity;

c. *Available Property.* On the effective date of the reassumption, return to the FWS all Available Property provided by the FWS to the CSKT, and not needed by the CSKT to perform an Activity to which the Notice of Reassumption does not apply; and

d. *Return of Funds.* Within 30 days after the effective date of the reassumption, return to the FWS any funds that:

(1) *Provided by the FWS.* The FWS has provided to the CSKT under this AFA for performing the reassumed Activity; and

(2) *Not Expended.* The CSKT has not expended in performing the reassumed Activity, consistent with the work actually done by the CSKT in performing the Activity from the effective date of this AFA through the effective date of the reassumption.

e. *Final Report.* Within 30 days after the effective date of the reassumption, submit to the FWS the final report required by section 10.B.1 of this AFA, complete for each reassumed Activity through the date of reassumption. Also see section 9.C.2.b of this AFA concerning a financial status report.

D. *Expiration.* In accordance with the Tribal Self-Governance Regulations at 25 C.F.R. § 1000.148, where the FWS and the CSKT are negotiating a Subsequent AFA covering an Activity, with the prior written approval of the FWS and subject to any terms the FWS and the CSKT previously agree to in writing, the CSKT may continue to perform the Activity pending negotiation of a Subsequent AFA. To the extent the CSKT and the FWS are *not* negotiating a Subsequent AFA covering an Activity:

1. *Transition.* In the last month of the term of this AFA, the CSKT will work with the FWS to ensure an orderly transition in returning to the FWS responsibility for performing the Activity; and

2. *Available Property.* On the last day of the term of this AFA, the CSKT will return to the FWS all Available Property provided by the FWS to the CSKT, and not needed by the CSKT to perform an Activity for which the FWS and the CSKT are negotiating or have executed a Subsequent AFA for the next fiscal year.

Section 17. Other Tribal Rights and Administrative Remedies

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A. *No Effect on Trust Responsibility.* Nothing in this AFA is to be interpreted as in any way waiving, modifying, or diminishing the trust responsibility of the United States that exists 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 sovereign immunity of the CSKT.

C. *Tribal Administrative Procedures.* In addition to any other available right or remedy, 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 the Activities performed by the CSKT under this AFA, except to the extent the CSKT is covered by the Federal Tort Claims Act, 28 U.S.C. §§ 2671–2680, in performing the Activity.

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 phrase “contract . . . pursuant to this subchapter” in § 450e(b) and the phrase “self-determination contract” in § 450e(c) interpreted to mean this AFA.

Section 18. Appeals

The Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart R—Appeals, and section 450m–1 of the Act, Contract disputes and claims, 25 USC § 450m–1, govern the resolution of disputes arising under this AFA.

Section 19. Title I Provisions

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 assistance from the Bureau of Indian Affairs under 24 U.S.C. § 450h.

Section 20. Amendment and Correction

A. *Modification of AFA.* Except as provided in section 8.C of this AFA for waiver of regulations by the Secretary, in section 8.G of this AFA for the use of CSKT performance

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standards, in subsection 20.B of this section of this AFA for the correction of minor, non-substantive errors or omissions, and in section 23.C of this AFA for extending the term of this AFA, the FWS and the CSKT may modify this AFA only by amendment executed in the same manner as this AFA, except that for an amendment only three originals are required.

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

Section 21. 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 or part thereof is found to be invalid by operation of law or otherwise, the remainder of this AFA will remain in full force and effect.

Section 22. Entire Agreement

This AFA, including all recited attachments, sets out the entire agreement between the FWS and the CSKT concerning the terms and conditions under which the FWS will fund and the CSKT will perform Activities at the National Bison Range Complex during the term of this AFA. This AFA supersedes any and all previous, express or implied, oral or written understandings and agreements of the FWS and the CSKT concerning the terms and conditions for funding and performing those Activities.

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Section 23. Dates of Performance

A. *Effective Date.* Except as otherwise directed by Congress, the effective date of this AFA will be 90 days after the date the Secretary submits the signed AFA to Indian tribes and Congress, as provided in section 403(f) of the Act, 25 U.S.C. § 458cc(f).

B. *Commencement of Activities.* The CSKT may, on the effective date of this AFA, commence performing any Activity covered by this AFA in accordance with the terms and conditions of this AFA. Commencement of work may begin on the effective date of this AFA, with the understanding that no liability for payment is created thereby. Any payment by the FWS to the CSKT for performing any such Activity will be subject to compliance by the FWS with the Anti-Deficiency Act, as provided in section 12.H of this AFA, and other applicable laws and regulations. If the FWS has reason to anticipate that Congress will not appropriate sufficient funds to pay the CSKT for performing any Activity covered by this AFA, the FWS promptly will give the CSKT written notice of that anticipated deficiency.

C. *Term.* This AFA covers funds to be provided by the FWS and Activities to be performed by the CSKT from October 1, 2007, through September 30, 2011, inclusive. As provided by the Tribal Self-Governance Regulations at 25 C.F.R. §§ 1000.146 and 1000.148, and subject to applicable laws and regulations, the FWS and the CSKT may agree in writing to extend to a date after September 30, 2011, the term for performing any Activity covered by this AFA, including an extension pending negotiation of a successor AFA in accordance with Section 16.D of this AFA. All of the terms and conditions of this AFA will apply during any extension of the term of this AFA. The FWS and the CSKT may modify the Activities covered by this AFA or the consideration paid by the FWS to the CSKT for performing an Activity only by amending this AFA as provided in section 20.A of this AFA.

THE FOREGOING PROVISIONS OF THIS FISCAL YEARS 2007-2011 ANNUAL FUNDING AGREEMENT, INSOFAR AS ALLOWED BY TITLE IV OF THE ACT, OTHER LAWS OF THE UNITED STATES, AND THE CODE AND LAWS OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, ARE HEREBY AGREED TO ON THE DATES INSCRIBED BELOW. EXECUTED IN FIVE ORIGINALS.

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CONFEDERATED SALISH AND KOOTENAI TRIBES,
BY:

James Steele, Jr. _____ Date _____
Chairman
Confederated Salish and Kootenai Tribal Council
The Confederated Salish and Kootenai Tribes of the Flathead Reservation

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UNITED STATES FISH AND WILDLIFE SERVICE,
BY:

J. Mitch King _____ Date _____
Regional Director
Mountain and Prairie Region
United States Fish and Wildlife Service

Deleted: Ralph O. Morgenweck

John D. Peters _____ Date _____
Contracting Officer, FWS-69001
Mountain and Prairie Region
United States Fish and Wildlife Service

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