



**RESOLUTION OF THE GOVERNING BODY
OF THE
THREE AFFILIATED TRIBES
OF THE
FORT BERTHOLD INDIAN RESERVATION**

A Resolution entitled, "*Approval of Cooperative Agreement for the Hazardous Fuels Program within Three Affiliated Tribes Fire Management*"

WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act and having adopted a Constitution and By-laws pursuant to said Act; and

WHEREAS, The Constitution and By-laws of the Three Affiliated Tribes was adopted by membership of the Tribes on May 15th, 1936 pursuant to the Indian Reorganization Act of 1934 and duly approved by the Secretary of Interior; and

WHEREAS, Article III of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council is the governing body of the Tribes; and

WHEREAS, The Constitution of the Three Affiliated Tribes authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

WHEREAS, The Three Affiliated Tribes Fire Management Program provides comprehensive wildland fire protection services for the Ft. Berthold Indian Reservation; and

WHEREAS, The Bureau of Indian Affairs through the Natural Resources Division provides non-recurring funding for Tribal programs to conduct Prescribe Fire programs within the Great Plains Region and requires an authorized Tribal Resolution for implementation of the program by the Three Affiliated Tribes Fire Management Program; and

NOW THEREFORE BE IT RESOLVED, that the Tribal Business Council of the Three Affiliated Tribes hereby approves and agrees with the attached Cooperative Agreement for non-recurring funds as available by appropriation. Said Cooperative Agreement will be conducted by the Three Affiliated Tribes Fire Management Program.

(SIGNATURE PAGE TO FOLLOW)



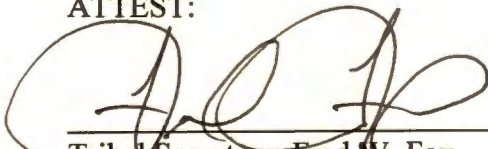
CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 7 were present at a Regular Meeting thereof duly called, noticed, convened and held on the 11th day of August, 2016, That the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 7 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.


Chairman Voting. Not Voting.

Dated this 28th day of March, 2017.

ATTEST:



Tribal Secretary, Fred W. Fox
Tribal Business Council



Chairman, Mark N. Fox
Tribal Business Council



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, DC 20240

SEP 06 2013

IN REPLY REFER TO:

Memorandum

To: All Regional Directors

From: Director, Bureau of Indian Affairs

Subject: Notification of Required Use of Cooperative Agreement Template in response to Office of Inspector General's Independent Report on the "Bureau of Indian Affairs Wildland Fire Suppression" (Report No. ER-IN-BIA-0016-2009)

Purpose:

With this memorandum, completion of the attached standardized cooperative agreement template is required by the Bureau of Indian Affairs (BIA). Cooperative agreements will be used when fire management services are provided by P.L. 93-638 and Title IV self-governance tribes for non-recurring funds.

Background:

OIG Report No. ER-IN-BIA-0016-2009 identified deficiencies in BIA control over its use of wildland fire funds specific to P.L. 93-638 and Title IV self-governance tribes. The OIG report identified the implementation of six recommendations to resolve these deficiencies. Currently, Recommendations 3, 4, and 5 have been closed. This memo addresses Recommendations 1, 2, and 6 which are:

Recommendation 1:

BIA, in coordination with the Office of the Solicitor, should determine when to use each of the following agreements with tribes: P.L. 93-638 self-determination contracts, P.L. 93-638 cooperative agreements, and non-P.L. 93-638 cooperative agreements, as well as when to use other funding mechanisms. BIA should then establish and implement appropriate policy.

Recommendation 2:

BIA should develop and require the use of a standardized template for each type of tribal agreement (funding mechanism). Each template should provide clear instructions to ensure consistency and must identify, at a minimum:

- a. Which responsibilities are to be performed by a tribe and which by BIA;
- b. How and when the responsibilities of each party are to be carried out;
- c. What costs can be charged to the agreement;

- d. What invoicing and billing procedures to follow, including timing of invoice submission; and
- e. What documentation/support is to be provided and maintained.

Recommendation 6:

BIA should develop and implement policy and procedures to ensure prompt recording of wildland fire suppression obligations/expenses and prompt payment of expenses. At a minimum, such policy and procedures should:

- a. Outline clear responsibilities and establish time frames for BIA review and approval of financial documents; and
- b. Ensure that tribal agreements reflect the established time frames (see recommendation no. 2).

Policy:

All tribal programs that receive recurring (base) hazardous fuels reduction, preparedness, and suppression funding from the BIA will continue to use P.L. 93-638 contracts or Title IV self-governance compacts to identify how these funds will be managed.

All tribal programs that receive non-recurring (non-base) hazardous fuels reduction, preparedness, and suppression funding are now required to use the attached cooperative agreement. This is authorized by the National Indian Forest Resources Management Act, 25 U.S.C. § 3115(a)(1)(C). In addition, 25 CFR Part 163 Subpart E, *General Forestry Regulations, Cooperative Agreements* regulate the management and disbursement of funds.

The cooperative agreement will outline the management and disbursement of non-recurring funds including invoice submission and payment timeframes. The BIA and the tribe will negotiate the non-required provisions in the cooperative agreement. However, the cooperative agreement includes many non-negotiable requirements. Among these is the requirement that invoices will be processed by the BIA no later than 90 days from receipt of an approved tribal invoice.

All P.L. 93-638 or Title IV self-governance tribes who manage a wildland fire program must have a cooperative agreement approved by September 30, 2014. Please direct any questions to Lyle Carlile, Division of Forestry and Wildland Fire Management, Branch of Wildland Fire Management, (208) 387-5697.

Attachment

COOPERATIVE AGREEMENT
BETWEEN
BUREAU OF INDIAN AFFAIRS, GREAT PLAINS REGION
AND
THE THREE AFFILIATED TRIBES
FOR
WILDLAND FIRE /FUELS MANAGEMENT PROGRAM - NON-RECURRING FUNDS
(Based on grants/reimbursements)

This cooperative agreement (Agreement) is entered into by the Bureau of Indian Affairs, Great Plains Region, an executive agency of the U.S. Department of the Interior, hereinafter referred to as the "BIA," and the Three Affiliated Tribes (an organized tribal government), hereinafter referred to as the "Tribe".

ARTICLE I – BACKGROUND AND OBJECTIVES

- A. Under this agreement, the parties will cooperate in wildland fire management activities related to national, regional and field programs, including activities occurring on trust lands under the BIA's jurisdiction for which the BIA has wildland fire management responsibilities and where approved interagency or mutual aid agreements are in place. The suppression of structural fires, vehicle fires, or hazardous-materials fires is not included in this agreement.
- B. This agreement will provide a mechanism to reimburse the Tribe for non-recurring expenditures for actual costs. For purposes of this agreement these categories of funds will hereinafter be referred to as non-recurring funds.
- C. In order for the Tribe to maintain an adequate level of readiness and capability on Indian land, tribal wildland firefighters and fuels crewmembers who carry out this agreement must meet the national qualification standards for wildland firefighting positions that appear in the current National Wildfire Coordination Group (NWCG) 310-1 Wildland Fire Qualifications System Guide.
 1. Implementation of this agreement requires the Tribe to maintain a cadre of qualified wildland firefighters. If the availability of local training and qualifying wildfire management experience is limited, the off-reservation dispatch of Tribal wildland firefighters under approved interagency or mutual aid cooperative agreements is necessary, reasonable, and allowable for the purpose of breadth of experience, depth of qualified fire staff, training, and obtaining and maintaining NWCG qualifications and standards.
 2. Further, no single agency, including the Tribe carrying out this agreement, has sufficient resources to manage large, extended attack wildland fires. Only through cooperative, reciprocal interagency management are wildland fire management agencies able to suppress large, extended attack wildland fires or manage public safety incidents. Through this agreement, the Tribe participates in that portion of the interagency large fire, extended attack management capacity the BIA would make available to support national efforts. Without participation in interagency support agreements, the BIA cannot fulfill its commitments, and, without the support of its interagency partners and other tribes, the BIA cannot provide sufficient large-incident wildland fire management to the Tribe. Therefore, the Tribe assumes responsibility to supply qualified fire management staff, when they are not needed for local fire suppression management, for national dispatch under the direction of the BIA, when requested by the BIA or through resource orders issued by a dispatch center. Further, the Tribe assumes responsibility to train and qualify fire management staff to large incident NWCG skill positions, even though those positions may rarely be used for local fires.

D. The objectives of this agreement are

1. To participate in and administer the wildland fire management program for activities paid for by non-recurring funds;
2. To administer the fuels management program including RTRL (Reserved Treaty Rights Lands) and complete projects for non-recurring funds on and off the reservation;
3. To train and maintain qualified tribal employees in order to build the depth and breadth of experience needed to develop NWCG skill positions to perform as fully functional firefighters managing wildland fire within BIA jurisdictional boundaries and, when available, supporting the national effort in regarding wildland fire.
4. To designate procedures to reimburse the Tribe for the cost of providing wildland fire operational management (both suppression and fuels management) and other incident management services or support for non-recurring funds.

ARTICLE II - AUTHORITY

BIA enters into this Agreement pursuant to:

- A. National Indian Forest Resources Management Act, 25 U.S.C. § 3115(a)(1)(C), and 25 C.F.R. Part 163 Subpart E, *General Forestry Regulations, Cooperative Agreements*. The National Master Interagency Agreement for Wildland Fire Management, National Interagency Fire Center, BIA Agreement No. AGFIRE10K101 authorizes tribes to support the national fire effort by providing services under this agreement.
- B. Tribal Resolution No. xxxxxxx, dated xxxxxxx

ARTICLE III – SCOPE AND STATEMENT OF WORK

- A. Substantial involvement by the BIA is anticipated during the performance of activities funded under this cooperative agreement.
- B. The parties agree that the Tribe will perform or support Bureau functions in the following areas:
 1. The tasks to be accomplished under this agreement include fire management activities that use non-recurring funds such as suppression funds, and one-time Fuels management funds. These two categories include one-time project funds associated with burned area rehabilitation, emergency stabilization, hazardous fuels reduction, prevention, and other related programs. Base or recurring funding is generally disbursed under P.L. 93-638 contracts or Title IV compacts for Tribes that manage the preparedness/ hazardous fuels reduction program.
- C. The Parties to this agreement agree to conduct all wildland fire suppression activities as requested by BIA under this agreement in accordance with Department of Interior Manual (DM) 620 (4/10/98), 90 Indian Affairs Manual (90 IAM, Wildland Fire Management) and the most current version of the BIA Wildland Fire and Aviation Operations Guide (Blue Book) or succeeding Operations Guide(s), the current National Interagency Mobilization Guide and National Wildfire Coordination Group (NWCG) standards and guidance including Inter-agency Fire Program Management (IFPM) standards for fire qualifications.
- D. Specific responsibilities, duties and activities to be provided by the Tribe will be documented and mutually agreed to, in written proposals and incorporated as an appendix to this agreement (for example, the Annual Work Plan format or Task Orders may be used). Appendices will include an activity description, objectives and role of each party, operating plan, costs and reporting

requirements. The operating plan will be modified by mutual consent as the scope of activities increases or decreases.

E. BIA Obligations – Federal Assistance to Tribe:

1. The BIA retains authority to:
 - a. Approve Resource Management and Land Use Plans, Fire Management Plans, Fire Program Management documents, Prescribed Fire Plans, Mechanical Treatment plans, National Environmental Policy Act documents, and appropriate Wildland Fire Decision Support System (WFDSS) decision documents.
 - b. Delegate authority to Incident Management Teams and Burned Area Stabilization/Rehabilitation Teams
 - c. Hire, fire and pay Emergency Fire Fighters

2. The BIA shall furnish the Tribe with the following assistance to accomplish the functions outlined in the appendices:
 - a. Serve as the technical program contact to provide technical supervision, coordination, direction, and implementation of the cooperative program.
 - b. Serve as technical advisor in fire suppression to the Tribe. Technical supervision can also be provided during an emergency situation, when supervision is executed through the designated Incident Command System (ICS) chain of command or if another delegation of authority exists.
 - c. Coordinate, notify or make available wildland fire management training to tribal employees sufficient for the tribe to fulfill the agreed upon responsibilities under this agreement. Additional wildland fire management qualifications to support the Bureau's interagency incident management commitments are encouraged.

The Tribe shall furnish the BIA with the assistance outlined in the appendices. In so doing, the Tribe will:

1. Manage and carry out all administrative functions associated with the provisions of services under this agreement.
 - a. Provide qualified personnel to perform and meet wildland fire and other funded incident management needs within the reservation boundaries, and as requested by the BIA or other cooperating federal or state agency outside of reservation boundaries.
 - b. Personnel performing activities under this agreement shall meet the requirements in the current Bureau of Indian Affairs/Tribal Medical Standards Program and work capacity test. They shall meet the minimum training requirements for NWCG-ICS positions, as prescribed by the BIA and Wildland and Prescribed Fire Qualifications Guide (PMS 310-1) and the Inter-agency Fire Program Management (IFPM) standards for fire qualifications.
 - c. Provide supplies, equipment, facilities, and related services, when available; in order to assist and help meet incident needs.
 - d. Follow administrative procedures identified in the NWCG Interagency Incident Business Management Handbook.
 - e. Certify that it will self-administer a motor vehicle operation policy that promotes the safe operation of motor vehicles while performing duties to implement the terms and conditions of this agreement. The Tribe's policy shall be comparable or superior, to the motor vehicle operation policy for the BIA issued by the Assistant Secretary – Indian Affairs.

- f. Follow contractual requirements on the use of National Wildfire Resources used on trust lands.

ARTICLE IV – TERM OF AGREEMENT

The Agreement will become effective upon the date of the last signature and will expire September 30, xxxx, unless terminated earlier per Article XII. The period from the effective date to the expiration date is the period of performance for the Agreement.

ARTICLE V – KEY OFFICIALS

- A. Key officials are essential to ensure maximum coordination and communications between the parties and the work being performed. They are:

For the DOI:

Awarding Official:

Name: Yvonne LaRocque
Title: Self Determination Officer/Senior Awarding Official
Address: 115 Fourth Ave SE – Suite 400, Aberdeen, SD 57401
Phone: (605) 226-7426
E-Mail: yvonne.larocque@bia.gov

Awarding Official Technical Representative (AOTR):

Name: Diane Mann-Klager
Title: Natural Resource Director
Address: 115 Fourth Ave SE – Suite 400, Aberdeen, SD 57401
Phone: (605) 226-7621
E-Mail: diane.mann-klager@bia.gov

Key Personnel for Tribe:

Name: Marle Baker
Title: Director, Fire Management
Phone: (701) 627-2897
E-Mail: marlebaker@mhanation.com

- B. **Communications** - The Tribe will address any communication regarding this agreement to Yvonne LaRocque, Self Determination Officer/Senior Awarding Official, Branch of Self Determination. The Awarding Official is the only BIA official that may change the terms and conditions of this agreement through written modification. Communications that relate solely to technical matters may be sent to the Awarding Official Technical Representatives representing the BIA.
- C. **Changes in Key Officials** - The Tribe may not make any permanent change in a key official without written notice to the Awarding Official in advance of the proposed change. The notice will include a justification with sufficient detail to permit evaluation of the impact of such a change on the scope of work specified within this agreement. Any permanent change in key officials will be made only by modification to this Agreement.

ARTICLE VI – DISPUTE RESOLUTION

If the key officials are unable to resolve a dispute concerning implementation of this agreement within 30 days, they shall refer the dispute to the Interior Board of Indian Appeals, who will confer within 15 days of the referral in order to resolve the dispute:

“Within 30 days of the receipt of this decision, you may request an informal conference under 25 CFR 900.154, or appeal this decision under 25 CFR 900.158 to the Interior Board of Indian Appeals (IBIA). Should you decide to appeal this decision, you may request a hearing on the record. An appeal to the (IBIA) pursuant to 25 CFR 900.158 shall be filed with the IBIA by certified mail or by hand delivery at the following address: Board of Indian Appeals, U.S. Department of the Interior, 801 Quincy Street, Suite 300, Arlington, Virginia 22203. You shall serve copies of your Notice of Appeal on the Secretary and on the official whose decision is being appealed. You shall certify to the IBIA that you have served these copies”.

ARTICLE VII – AWARD AND PAYMENT

- A. All activities pursuant to this agreement are subject to the availability of Federal funds.
- B. Tribal resources or services provided off-reservation can only be utilized, and costs reimbursed, when ordered by the BIA or other cooperating federal or state agencies or authorized under a mutual aid agreement. Tribal resources will be ordered through an established dispatch center or designated representative. Resource orders are required for significant incidents such as a large fire or an off-reservation dispatch.
- C. This agreement may be terminated as provided in attached OMB Circular A-102 or by either party upon 30 days written notice to the other party. Any termination shall not affect any obligations of the BIA to pay for costs incurred by the Tribe for supplies or services ordered hereunder prior to such termination.
- D. Each party will be solely responsible for the acts and omissions of its officers and employees resulting in damage or injuries to third parties to the same extent that such party is responsible under its applicable laws and regulations.
- E. This agreement in no way obligates BIA to order any quantities of service during the period of this Agreement.
- F. OMB Circular A-87, cost principles are applicable to this agreement.
- G. The BIA shall reimburse the Tribe for direct wildland fire non-recurring expenditures provided for by this agreement and incurred by the Tribe, in accordance with Federal procedure and regulations. Appropriate expenditures will be determined on a case-by-case basis in accordance with federal procedures and appropriation language. Guidance can be found in the BIA Wildland Fire and Aviation Program Management and Operations Guide – Chapter 17, Tribal Compacts/Contracts and 90 Indian Affairs Manual (90 IAM, Wildland Fire Management), Guideline for Tribally Operated Wildland Fire Management Programs memo dated April 6, 2001 or succeeding direction. Reimbursements will be handled by direct billing between the Tribe and the BIA. The BIA will act as the administrative agent for other cooperating agencies.
- H. The BIA will reimburse the Tribe for authorized, actual salary costs including regular pay (except for base 8 for personnel paid from preparedness funding), overtime pay, holiday, hazardous duty pay, etc., for tribal employees engaging in non-recurring activities such as fire suppression, prescribed fire, and all risk management work approved and requested through a Resource or Task Order under this Cooperative Agreement.
- I. Authorized travel, tuition, registration costs and per diem expenses of tribal employees are included in preparedness funding provided under this agreement. However, the BIA will reimburse the Tribe for authorized travel, and per diem expenses of all such persons engaged in appropriate and approved emergency response activities under this Agreement.
- J. Reimbursement for supplies and expenses to the Tribe not covered under Section VII. a., b., and c., above will be on an actual cost basis or replacement in kind, as authorized by the Regional Fire Management Officer.
- K. Reimbursement for use of appropriate tribal-owned equipment within the boundaries of the reservation will be documented through an Emergency Equipment Rental Agreement (EERA), OF-294 or equivalent form, and accompanying documents such as Emergency Equipment Shift Tickets (EEST), OF-297, and Emergency Equipment Fuel and Oil issue (EEFOI), OF-304. Rental agreements between the Tribe and other cooperating agencies should be established before the fire season. Equipment available for off-reservation dispatches will be through national incident procurement processes.
- L. The final approval for all charges to suppression funding remains the responsibility of the BIA. The Tribe agrees to follow all procedures for hiring, dispatching, and documenting time that are outlined in the current emergency firefighter crew plan, current Interagency Incident Business Management Handbook, current Interagency Standards for Fire and Fire Aviation Operations handbook, and the current National Mobilization Guide.
- M. Invoices will be submitted every 90 days, as a minimum. Monthly invoicing is encouraged.
- N. The Tribe will submit documentation for all suppression expenditures under this agreement, to include salary costs, training and travel cost, equipment cost and purchases.
- O. Any award beyond the current fiscal year is subject to availability of funds; funds may be provided in subsequent fiscal years if current work is satisfactory.
- P. Allowable and Eligible Costs: Expenses charged against awards under the Agreement may be incurred only as necessary to carry out the approved objectives, scope of work, and budget.

- Q. Travel costs: For travel costs charged against awards under the Agreement, the Tribe and its officers, employees, or representatives shall follow the travel policies in the Federal Travel Regulation, and may not be reimbursed for travel costs that exceed the standard rates. All charges for travel must conform to the applicable cost principles.
- R. The Tribe, in coordination with the Bureau, is authorized to drug test BIA Administratively Determined (AD) fire personnel under established Tribal drug testing policies and procedures. These costs are reimbursable under this agreement.

ARTICLE VIII – BUDGET REVISION

The Tribe shall follow criteria and procedures at 25 C.F.R 276.14 in order to:

- (a) Report deviations from cooperative agreement budgets and
- (b) Request approval for budget revisions.

ARTICLE IX – INSURANCE AND LIABILITY

Tribe agrees:

- A. To indemnify, save and hold harmless, and defend the United States against all fines, claims, damages, losses, judgments, and expenses arising out of, or from, any act or omission of the Tribe or Tribal personnel or members, participants, agents, or representatives arising out of or in any way connected to activities authorized pursuant to this Agreement. This obligation shall survive the termination of this Agreement.
- B. To cooperate with the BIA in the investigation and defense of any claims that may be filed with the BIA arising out of the activities of the Tribe or Tribal cooperator, its agents or personnel.

BIA agrees:

- C. To provide worker's compensation protection and coverage to the Tribe's personnel or members, participants, agents or representatives working within the scope of this Agreement and follow all United States Department of Labor rules regarding worker's compensation. Pursuant to 25 USC 3115, Tribal employees are deemed employees of the BIA when performing work under the supervision of the Department of the Interior in emergencies or otherwise as mutually agreed to for the purposes of the Federal Employment Compensation Act and shall be covered accordingly for any injuries sustained during such work.

ARTICLE X – REPORTS AND/OR DELIVERABLES

- A. Specific projects or activities for which funds are advanced will be tracked and reported by annual submission of a SF-425 Federal Financial Report (FFR) due 90 days after September 30 of each calendar year. A final SF-425 shall be submitted at the completion of the Agreement. For a final SF-425, the reporting period end date shall be the end date of the agreement. Final reports shall be submitted no later than 90 days after the end period date.
- B. Tribe will provide an annual performance reports in accordance with 2 CFR 215.51.
- C. The Secretary of the Interior and the Comptroller General of the United States, or their duly authorized representatives, will have access for the purpose of financial or programmatic review and examination to any books, documents, papers, and records that are pertinent to the Agreement at all reasonable times during the period of retention in accordance with 2 CFR 215.53.

ARTICLE XI – PROPERTY UTILIZATION

All tools, equipment, and facilities loaned the by BIA, under this agreement, such as tools, equipment, and facilities will be returned in the same condition received except for normal wear and tear in project use. Property management standards set forth in 2 CFR 215.33 through 35 applies to this Agreement.

ARTICLE XII – MODIFICATION AND TERMINATION

- A. This Agreement may be modified only by a written instrument executed by the parties. Modifications will be in writing and approved by the appropriate BIA Official and the authorized representative of the Tribe.
- B. This agreement may be terminated consistent with applicable termination provisions for Cooperative Agreements found in 2 CFR 215.61.

ARTICLE XIII – GENERAL AND SPECIAL PROVISIONS**A. General Provisions**

OMB Circulars and Other Regulations – The following OMB Circulars and other regulations are incorporated by reference into this Agreement:

1. Determination of Allowable Costs:

2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments. (*OMB Circular A-87*)

2. Audit Requirements:

OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.

3. Code of Federal Regulations/Regulatory Requirements: (as applicable):

- a. 43 CFR Part 12 Subpart A, *Administrative and Audit Requirements and Cost Principles for Assistance Programs*
- b. 43 CFR Part 12 Subpart C, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*
- c. [43 CFR Part 12 Subpart E, Buy American Requirements for Assistance Programs](#)
- d. ~~25 CFR Part 236, Uniform Administrative Requirements for Grants~~
- e. [43 CFR Part 43, Government wide Requirements for Drug-Free Workplace \(Financial Assistance\)](#)
- f. 2 CFR Part 1400, *NonProcurement Debarment and Suspension* [43 CFR Part 18, New Restrictions on Lobbying](#)
- g. [2 CFR Part 175, Award Term for Trafficking in Persons](#)
- h. FAR Clause 52.203-12, Paragraphs (a) and (b), “Limitation on Payments to Influence Certain Federal Transactions.”

- 4. **Non-Discrimination:** All activities pursuant to this Agreement shall be in compliance with the requirements of Executive Order 11246, as amended; Title VI of the Civil Rights Act of 1964, as amended, (78 Stat. 252; 42 U.S.C. §§2000d *et seq.*); Title V, Section 504 of the Rehabilitation Act of 1973, as amended, (87 Stat. 394; 29 U.S.C. §794); the Age Discrimination Act of 1975 (89 Stat. 728; 42 U.S.C. §§6101 *et seq.*); and with all other federal laws and regulations prohibiting discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex.

- 5. **Lobbying Prohibition:** 18 U.S.C. §1913, Lobbying with Appropriated Moneys, as amended by Public Law 107-273, Nov. 2, 2002 - No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by

vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such members or official, at his request, or to Congress or such official, through the proper official channels, requests for legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31. In addition to the above, the related restrictions on the use of appropriated funds found in Div. F, § 402 of the Omnibus Appropriations Act of 2008 (P.L. 110-161) also apply.

6. **Anti-Deficiency Act:** Pursuant to 31 U.S.C. §1341 nothing contained in this Agreement shall be construed as binding the BIA to expend in any one fiscal year any sum in excess of appropriations made by Congress, for the purposes of this Agreement for that fiscal year, or other obligation for the further expenditure of money in excess of such appropriations.
7. **Assignment:** No part of this Agreement shall be assigned to any other party without prior written approval of the BIA and the Assignee.
8. **Member of Congress:** Pursuant to 41 U.S.C. § 22, no Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or adopted by or on behalf of the United States, or to any benefit to arise thereupon.
9. **Non-Exclusive Agreement:** This Agreement in no way restricts the Tribe or BIA from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.
10. **Survival:** Any and all provisions which, by themselves or their nature, are reasonably expected to be performed after the expiration or termination of this Agreement shall survive and be enforceable after the expiration or termination of this Agreement. Any and all liabilities, actual or contingent, which have arisen during the term of and in connection with this Agreement shall survive expiration or termination of this Agreement.
11. **Partial Invalidity:** If any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to the parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
12. **No Employment Relationship:** This Agreement is not intended to and shall not be construed to create an employment relationship between BIA or any bureau thereof and the Tribe or its Members. No Member shall perform any function or make any decision properly reserved by law or policy to the federal government.
13. **No Third-Party Rights:** This Agreement creates enforceable obligations between only BIA and the Tribe. Except as expressly provided herein, it is not intended nor shall it be construed to create any right of enforcement by or any duties or obligation in favor of persons or entities not a party to this Agreement.
14. **Captions and Headings:** The captions, headings, article numbers and paragraph numbers appearing in this Agreement are inserted only as a matter of convenience and in no way shall

be construed as defining or limiting the scope or intent of the provision of this Agreement nor in any way affecting this Agreement.

B. Special Provisions

1. **Retention and Access Requirements for Records:** All recipient financial and programmatic records, supporting documents, statistical records, and other grants-related records shall be maintained and available for access in accordance with 43 CFR 12.82 for State, local and Indian tribal governments or 43 CFR 12.953 for institutions of higher education, hospitals, other non-profit and all other organizations.
2. **Audit Requirements:**
 - a. Non-Federal entities that expend \$500,000 or more during a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, which is available at http://www.whitehouse.gov/omb/grants/grants_circulars.html.
 - b. Non-Federal entities that expend less than \$500,000 for a fiscal year in Federal awards are exempt from Federal audit requirements for that year, except as noted in A-133, § 215(a), but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).
 - c. Audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits. Additional audit requirements applicable to this agreement are found at 43 CFR 12.66 or 43 CFR 12.926, as applicable. General guidance on the single audit process is included in a pamphlet titled, "Highlights of the Single Audit Process" which is available on the internet at <http://www.dot.gov/ost/m60/grant/sincontact.html>. Additional information on single audits is available from the Federal Audit Clearinghouse at <http://harvester.census.gov/sac/>.
3. **Procurement Procedures:** It is a national policy to place a fair share of purchases with minority business firms. The Department of the Interior is strongly committed to the objectives of this policy and encourages all recipients of its grants and cooperative agreements to take affirmative steps to ensure such fairness. Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal:
 - a. Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
 - b. Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
 - c. Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
 - d. Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
 - e. Use the services and assistance, as appropriate, of such organizations as the Small Business Development Agency in the solicitation and utilization of small business, minority-owned firms and women's business enterprises.

- 4. **Prohibition on Text Messaging and Using Electronic Equipment Supplied by the Government while Driving:** Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, was signed by President Barack Obama on October 1, 2009 (ref.: <http://edocket.access.gpo.gov/2009/pdf/E9-24203.pdf>). This Executive Order introduces a Federal Government-wide prohibition on the use of text messaging while driving on official business or while using Government-supplied equipment. Additional guidance enforcing the ban will be issued at a later date. In the meantime, please adopt and enforce policies that immediately ban test messaging while driving company-owned or –rented vehicles, government-owned or leased vehicles, or while driving privately owned vehicles when on official government business or when performing any work for or on behalf of the government. (Comply with the most recent version).

In WITNESS WHEREOF, the parties hereto have executed this agreement on the date of the final signature shown below:

Approved: _____
 Mark N. Fox Date
 DUNS Number: 104605407

Approved: _____
 Superintendent, Fort Berthold Agency Date
 Bureau of Indian Affairs

Approved: _____
 Contracting Officer, Date

Appendix 1:
Invoice Administrative Requirements.

- A. The BIA Awarding Official (AO) will determine who will review the invoice.
- B. The AO will appoint a Designated Representative (DR) for each agreement. (This DR may be a Awarding Officials Technical Representative (AOTR), RFMO etc.) It will be the responsibility of the DR to approve invoices received and forward them to the appropriate Regional Fire Management Officer for payment.
- C. Invoices will be submitted on official stationery of the organization. The invoice will indicate the amount to be reimbursed. If in-kind contributions are required, the amount of in-kind contribution will be noted. A faxed invoice is acceptable but an original must be made available for field review. The invoice itself will contain the statement:

“I certify that this invoice and supporting data are accurate and complete to the best of my knowledge and belief; that the amount of this invoice accurately represents the expenditures on the project(s) identified in this invoice; and that I am duly authorized to make the above certification on behalf of (name of organization)”

Signature: _____ Title: _____ Date: _____

The invoice will contain a project name, agreement number and other specific identification to tie it to a particular treatment plan or scope of work under the agreement. A project funding code will be included when applicable. The invoice will indicate if this is a “**partial**” or “**final**” invoice for the project.

- 1. Supporting Documentation. Invoices will require different amounts of supporting documentation appropriate to the program, scope of work, work plan or other enabling agreement. At a minimum, the invoice will have supporting documentation that shows:
 - a. A cost summary that breaks the invoiced costs into line items from each incident. Total costs will receive final approval from Regional Fire Management staff.
 - b. A map of where the work was done or a progression map for partial payments. This is not required for suppression reimbursements
 - c. Who responded to the incident performed the associated suppression work.
 - d. The date(s) or period when the work was done.
 - e. Who verified that the work was accomplished and complete. This may be a signature on the invoice or a signature on inspection reports.
 - f. The invoice will state whether it is a “PARTIAL” or “FINAL” invoice.
 - g. Invoice will be submitted at least monthly.

2. **Suppression Invoice.** Suppression invoices will contain the same basic information as other invoices except a Resource Order can be substituted for off-reservation dispatches for items b, c, d, and e, above. However, the DI 1202, Fire Report, encoded into the Wildland Fire Management Information (WFMI) or its replacement will serve in place of items b, c, d, and e, above. A suppression invoice will not be processed without the Fire Report being encoded into the WFMI.
- D. **BIA Invoice Approval.** The approval that an invoice contains proper documentation, allowable costs and that the work performed was satisfactory is the responsibility of the DR. (Only a Regional CO or delegated COTR has the authority to authorize payment of an invoice.) The DR will:
1. Date stamp the invoice for reimbursable expenditures when received. Invoices shall be processed within 30 days of this date stamp.
 2. If the Tribe submits invoices within thirty days of the completion of the activity, BIA will, within 30 days, determine whether the invoice is acceptable and return promptly if it is not acceptable. See section E below. If invoice submission is delayed beyond the 30 days the BIA will be allowed an additional 30 days for each additional 30 days delay to process invoices. The BIA will be limited to a maximum of 90 days to process invoices.
 3. Review the invoice for administrative accuracy.
 4. For a suppression invoice, verify that the DI 1202 has been entered into the WFMI or a Resource Order is provided. Otherwise, the invoice is unacceptable.
 5. Verify that the expenditure is appropriate and within the scope of the approved project. This may require a field inspection.
 6. Review supporting documentation for accuracy, appropriateness and reasonable cost.
 7. Check the accounting codes.
 8. Prepare a cover memo with the invoice to the Regional CO or Fire Management office for payment processing. Include the statement, "The attached invoice and documentation have been reviewed by me and I recommend payment in the amount of \$_____." Sign and date the cover memo. Forward the cover memo and invoice through the Regional fire program manager.
- E. **Unacceptable Invoices.** The Prompt Payment Act does not apply to cooperative agreements under this authority. However, the BIA will issue a notice of intent to disallow costs (FAR Subpart 42.8) within 30 days of receipt of the invoice. When an invoice is disallowed within the 30 days, the Prompt Pay Act timelines will not apply for that invoice. An invoice can be unacceptable for the following reasons.
1. **Insufficient Documentation.** The invoice will be returned for insufficient documentation if an initial review reveals an error or lack of sufficient supporting documentation. The DR will forward the invoice, with an indication of the missing documentation under a cover letter to the invoicing party.
 2. **Invoice Submitted, Work Not Acceptable.** The DR will forward the package for action to the Regional CO, through the appropriate Regional fire program manager, under a cover memo indicating that the work is unacceptable and that payment is not warranted.
 3. **Invoice Submitted, Charge Excessive.** The DR will forward the package for action to the Regional CO, through the appropriate Regional forestry program manager, under a cover memo indicating that the work is acceptable but that the payment requested is excessive.
 4. **Invoice Submitted, Work Not Performed.** The DR will forward the package for action to the Regional CO, through the appropriate Regional forestry/fire program manager, under a cover memo indicating that the invoice appears fraudulent as the work, or some portion thereof, has been invoiced but has not been performed.
 5. **Unauthorized or Inappropriate Charges.** Charges do not meet guidelines, policy, or were not agreed upon charges.

- F. **General.** To avoid multiple billing, or double payments for the same costs the DR is responsible to:
1. Keep track of invoices submitted for payment by project or program and by fiscal year.
 2. Notify the Regional CO via memo, through the appropriate Regional forestry/fire program manager, when an invoiced cost is appropriate and indicating that it should be paid by forwarding the invoice and supporting documentation for processing or recommending that the payment be disallowed and forwarding a draft of the appropriate notification letter to the CO through the appropriate Regional fire program manager.
 3. Notify the Regional CO following the "final" invoice and recommending that the CO issue a release of claims so that any remaining unspent money may be de-obligated or that a bill be issued for excess funds if an advance was made.
 4. Inform the appropriate Regional forestry/fire program manager and CO when an invoice is being paid that was previously disallowed. The notification is to correctly date stamp the invoice that was previously disallowed. This avoids the appearance of a late payment or late invoice processing by the BIA.
 5. Maintain a record of the invoice to aid in tracking missing payments.

APPENDIX 3
2016 Annual Budget and Operations Plan

- A. **Fuels Management (AF3102H00.999900)**
The Tribe will receive Fuels Management funding to maintain a fire management organization to fulfill the designated fire management responsibilities for fuels management listed below: Programmatic Staffing is the only recurring funding in fuels. The other aspects of the program are considered non-recurring and the following shall apply (Fuels funding will be allocated by Project Cost Accounting Code and can't be redirected to pay for non-fuels program related expenditures):
1. The Tribe understands and accepts that the funds are offered for one year only and that the Secretary does not commit to providing additional funds after that year;
 2. The Tribe understands and accepts that indirect costs will be paid as calculated by the Regional/National Office;
 3. Program will be managed according to current BIA fuels handbooks.
 4. The Tribe will employ a properly qualified individual to conduct fuels reduction activities.
 5. The Bureau will develop all planning and treatment documents for the fuels program.
 9. The Bureau will enter fuels treatments in National Fire Plan Operations Reporting System (NFPORS).
 10. The Tribe will implement only BIA approved and funded fuels treatments and activities.
 11. Program will be managed according to current BIA fuels handbooks.

APPENDIX 4
2016 Annual Budget and Operations Plan

- B. Emergency Stabilization/Burned Area Rehabilitation (ES/BAR) – The Tribe will receive the following ES/BAR funding to maintain a fire management organization to fulfill the designated fire management responsibilities for ES/BAR activities listed below (ES/BAR funding assigned project codes for all elements, will need to be itemized below):
1. Emergency Stabilization/Burned Area Rehabilitation funding is non-recurring funding;
 2. The Tribe contractor understands and accepts that the funds are offered for one year only and that the Secretary does not commit to providing additional funds after that year.
 3. The Tribe understands and accepts that funds are offered on a cost-reimbursable, fire-by-fire basis;
 4. The Tribe understands and accepts that no indirect costs will be paid;
 5. Even without funding for indirect costs, the Tribe desires to contract the activity and has the capacity to accomplish it.

Burned Area Rehabilitation (AF3202B00.ABCX00)

- a. Plan Development
- b. Treatments (Individual treatments listed by project code)
Example 2012 Fire 1 Complex BAR

Emergency Stabilization (AF2202020.ABCX00)

- a. Plan Development
- b. Treatments (Individual treatments listed by project code)

- The Tribe will develop ES/BAR plans when appropriate for BIA approval.
- The Tribe will enter ES/BAR treatments into NFPORS.
- The Tribe will implement approved ES/BAR treatments.
- The Tribe will enter ES/BAR accomplishments into NFPORS.

**UNITED STATES DEPARTMENT OF THE INTERIOR
ASSISTANCE AGREEMENT**

1A. AGREEMENT NUMBER		1B. MOD NUMBER		2. TYPE OF AGREEMENT [X] GRANT [] COOPERATIVE AGREEMENT		3. CLASS OF RECIPIENT					
4. ISSUING OFFICE (NAME, ADDRESS)				5. RECIPIENT (NAME, ADDRESS, TELEPHONE)							
								EIN #:		County:	
								DUNS #:		Congress. Dist:	
6. ADMINISTRATIVE POINT OF CONTACT (NAME, ADDRESS, TELEPHONE, E-MAIL)				7. RECIPIENT PROJECT MANAGER (NAME, ADDRESS, TELEPHONE, E-MAIL)							
8. GRANTS OFFICER TECHNICAL REPRESENTATIVE (NAME, ADDRESS, TELEPHONE, E-MAIL)				9A. INITIAL AGREEMENT EFFECTIVE DATE:		9B. MODIFICATION EFFECTIVE DATE:					
				10. COMPLETION DATE							
11. PROGRAM STATUTORY AUTHORITY											
12. FUNDING INFORMATION		<u>RECIPIENT/OTHER</u>		<u>DEPARTMENT OF THE INTERIOR</u>		13. REQUISITION NUMBER					
Total Estimated Amount of Agreement						14A. ACCOUNTING AND APPROPRIATION DATA					
This Obligation											
Previous Obligation											
Total Obligation						14B. TREASURY ACCOUNT FUNDING SYMBOL					
Cost-Share %											
15. PROJECT TITLE AND BRIEF SUMMARY OF PURPOSE AND OBJECTIVES OF PROJECT											
16a. Acceptance of this Assistance Agreement in accordance with the terms and conditions contained herein is hereby made on behalf of the above-named Recipient				17a. Award of this Assistance Agreement in accordance with the terms and conditions contained herein is hereby made on behalf of the United States of America							
BY: _____				BY: _____							
DATE: _____				DATE: _____							
16b. NAME, TITLE, AND TELEPHONE NUMBER OF SIGNER				17b. NAME OF GRANTS OFFICER							
<input type="checkbox"/> Additional signatures are attached											



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, DC 20240

SEP 06 2013

IN REPLY REFER TO:

Memorandum

To: All Regional Directors

From: Director, Bureau of Indian Affairs

Subject: Notification of Required Use of Cooperative Agreement Template in response to Office of Inspector General's Independent Report on the "Bureau of Indian Affairs Wildland Fire Suppression" (Report No. ER-IN-BIA-0016-2009)

Purpose:

With this memorandum, completion of the attached standardized cooperative agreement template is required by the Bureau of Indian Affairs (BIA). Cooperative agreements will be used when fire management services are provided by P.L. 93-638 and Title IV self-governance tribes for non-recurring funds.

Background:

OIG Report No. ER-IN-BIA-0016-2009 identified deficiencies in BIA control over its use of wildland fire funds specific to P.L. 93-638 and Title IV self-governance tribes. The OIG report identified the implementation of six recommendations to resolve these deficiencies. Currently, Recommendations 3, 4, and 5 have been closed. This memo addresses Recommendations 1, 2, and 6 which are:

Recommendation 1:

BIA, in coordination with the Office of the Solicitor, should determine when to use each of the following agreements with tribes: P.L. 93-638 self-determination contracts, P.L. 93-638 cooperative agreements, and non-P.L. 93-638 cooperative agreements, as well as when to use other funding mechanisms. BIA should then establish and implement appropriate policy.

Recommendation 2:

BIA should develop and require the use of a standardized template for each type of tribal agreement (funding mechanism). Each template should provide clear instructions to ensure consistency and must identify, at a minimum:

- a. Which responsibilities are to be performed by a tribe and which by BIA;
- b. How and when the responsibilities of each party are to be carried out;
- c. What costs can be charged to the agreement;

- d. What invoicing and billing procedures to follow, including timing of invoice submission; and
- e. What documentation/support is to be provided and maintained.

Recommendation 6:

BIA should develop and implement policy and procedures to ensure prompt recording of wildland fire suppression obligations/expenses and prompt payment of expenses. At a minimum, such policy and procedures should:

- a. Outline clear responsibilities and establish time frames for BIA review and approval of financial documents; and
- b. Ensure that tribal agreements reflect the established time frames (see recommendation no. 2).

Policy:

All tribal programs that receive recurring (base) hazardous fuels reduction, preparedness, and suppression funding from the BIA will continue to use P.L. 93-638 contracts or Title IV self-governance compacts to identify how these funds will be managed.

All tribal programs that receive non-recurring (non-base) hazardous fuels reduction, preparedness, and suppression funding are now required to use the attached cooperative agreement. This is authorized by the National Indian Forest Resources Management Act, 25 U.S.C. § 3115(a)(1)(C). In addition, 25 CFR Part 163 Subpart E, *General Forestry Regulations, Cooperative Agreements* regulate the management and disbursement of funds.

The cooperative agreement will outline the management and disbursement of non-recurring funds including invoice submission and payment timeframes. The BIA and the tribe will negotiate the non-required provisions in the cooperative agreement. However, the cooperative agreement includes many non-negotiable requirements. Among these is the requirement that invoices will be processed by the BIA no later than 90 days from receipt of an approved tribal invoice.

All P.L. 93-638 or Title IV self-governance tribes who manage a wildland fire program must have a cooperative agreement approved by September 30, 2014. Please direct any questions to Lyle Carlile, Division of Forestry and Wildland Fire Management, Branch of Wildland Fire Management, (208) 387-5697.

Attachment