

APPENDIX B

CARRYFORWARD TEMPLATE REVISIONS

Exhibit 1 appended to this Appendix B contains the existing single-rate carryforward template used by NBC. An electronic version of this existing template (Excel spreadsheet) will be filed separately as part of this PSA III. Under the existing carryforward template, where under-recoveries result from under-payments of indirect costs (i.e., where the amount of indirect costs paid in a given year is less than the product of Rate X Base) such under-recoveries are currently set forth in a “shortfall column” and are not carried forward to adjust the rate.

Under this PSA III, the underpayment amounts captured in the existing shortfall column will be retained under a different name called the “Under-Funded” Column in the new carryforward templates. The amounts to be set forth in the “Under-Funded” column may, but will not necessarily be, due to shortfalls in congressional appropriations. Continuing existing practice, under this PSA III, these amounts of under-payments (relative to the Rate X Base amount) set forth in the new “Under-Funded” Column will not be carried forward as an under-recovery to adjust the rate.

The new carryforward templates under this PSA III will also contain a new “Over-Funded” column. That column will capture the amounts paid in a given year to the Plaintiffs for indirect costs that exceed the estimated indirect cost need (Rate x Base amount) for the same year. As a change from existing carryforward practices, under this PSA III, that category of over-recoveries (due to over-payments) will not be carried forward to affect the rate. However, with the exception of theoretical over-recoveries prohibited by 25 USC 450j-§1(d)(1), all over-recoveries and under-recoveries that are due to variances between the estimated indirect cost need (the Rate x Base amount) and the actual indirect cost incurred for that period (pool allocation)

will be carried forward to affect future rates, as per current practice.

Exhibit 2 to this Appendix is the modified single-rate carryforward template implementing the agreed-upon changes. An electronic version of this modified template (Excel spreadsheet) containing the formulas underlying the template set forth in Exhibit 2 will be filed separately as part of this PSA III.

Exhibit 3 to this Appendix illustrates the results of the agreed-upon changes to the treatment of over-recoveries in the carry forward process, considering all possible variations in the relative amounts of the indirect cost incurred, the Rate x Base amount and the indirect cost recovered amount in a given year. An electronic version of this illustrative template (Excel spreadsheet) will be filed separately as part of this PSA III.

The presence of an amount in the “indirect under-funded” column or the “indirect over-funded” column does not constitute a determination or admission that either the government or the contractor is liable to the other for any amount. Resolution of such issues will be the responsibility of the contractor and the funding agency.

**Tribal Organization
Indirect Cost Rate Proposal
For The Year Ending September 30, 2008**

Note: This is an example of the of the current 'Fixed with Carryforward' template.

FY 2008 Carryforward Computation

Program	FY 2008 Actual Direct Costs	% of Total	FY 2008 Indirect Cost Pool	Indirect Rate at 9.50%	Indirect Costs Collection	Shortfall	Carryforward
BIA (638)	\$585,369	12.75%	\$53,479	\$55,610	\$58,845	\$0	-5,366
BIA (100-297)	228,320	4.97%	20,846	21,690	1/		
IHS (638)	487,955	10.63%	44,586	46,356	40,288	4,298	0
HHS (Non-638)	218,744	4.76%	19,965	20,781	15,877	4,088	0
EPA	202,847	4.42%	18,539	19,270	19,270	0	-731
Agriculture	86,185	1.88%	7,885	8,188	8,188	0	-303
Education	4,000	0.09%	377	380	380	0	-3
Justice	46,425	1.01%	4,236	4,410	0	4,236	0
Commerce	83,740	1.82%	7,634	7,955	7,250	384	0
State	65,845	1.43%	5,998	6,255	5,789	209	0
Tribal	<u>2,581,948</u>	<u>56.23%</u>	<u>235,851</u>	<u>245,285</u>	<u>2/</u>		
Totals	<u>\$4,591,378</u>	<u>100.00%</u>	<u>\$419,440</u>	<u>\$436,180</u>	<u>\$155,887</u>	<u>\$13,216</u>	<u>-\$6,402</u>

1/ Over or underrecovery from BIA is not included in the carryforward computation according to Public Law 100-297 Section 1128A, (d) (3):
"Funds received as grants under this section for Bureau funded programs operated by a tribe or tribal organization under a contract or agreement shall not be taken into consideration for purposes of indirect cost underrecovery and overrecovery determinations by any Federal agency for any other funds, from whatever source derived."

2/ Over or underrecovery from Tribal accounts is internal and therefore not included in the carryforward computation.

3/ The reported FY 2008 indirect costs of \$419,440 was adjusted to include the previously negotiated FY 2006 underrecovery carryforward to FY 2008 of \$8,457.

4/ Program shortfalls should be reported to the respective granting agencies.

Note: The amounts shown as Indirect Costs Collections are based on the Tribe's audited financial statements.

Example of Revised Fixed with Carryforward Schedule

**Tribal Organization
Indirect Cost Rate Proposal
For The Year Ending September 30, 2008
FY 2008 Carryforward Computation**

Note: This is an example of the 'Fixed with Carryforward' template with the agreed upon changes.

Program	FY 2008 Actual Direct Costs	% of Total	FY 2008 Indirect Cost Pool	Indirect Rate at 9.50%	Indirect Costs Recovered/Collected	Underfunded Indirect	Overfunded Indirect	Carryforward
BIA (638)	\$585,369	12.75%	\$53,479	\$55,610	\$58,845	\$0	3,235	-2,131
BIA (100-297)	228,320	4.97%	20,846	21,690	1/			
IHS (638)	487,955	10.63%	44,586	46,356	40,288	4,298	0	0
HHS (Non-638)	218,744	4.76%	19,965	20,781	15,877	4,088	0	0
EPA	202,847	4.42%	18,539	19,270	19,270	0	0	-731
Agriculture	86,185	1.88%	7,885	8,188	8,188	0	0	-303
Education	4,000	0.09%	377	380	380	0	0	-3
Justice	46,425	1.01%	4,236	4,410	0	4,236	0	0
Commerce	83,740	1.82%	7,634	7,955	7,250	384	0	0
State	65,845	1.43%	5,998	6,255	5,789	209	0	0
Tribal	<u>2,581,948</u>	<u>56.23%</u>	<u>235,851</u>	<u>245,285</u>	<u>2/</u>			
Totals	<u><u>\$4,591,378</u></u>	<u><u>100.00%</u></u>	<u><u>\$419,440</u></u>	<u><u>\$436,180</u></u>	<u><u>\$155,887</u></u>	<u><u>\$13,216</u></u>	<u><u>\$3,235</u></u>	<u><u>-\$3,167</u></u>
			3/		4/	5/		

1/ Over or underrecovery from BIA is not included in the carryforward computation according to Public Law 100-297 Section 1128A, (d) (3): "Funds received as grants under this section for Bureau funded programs operated by a tribe or tribal organization under a contract or agreement shall not be taken into consideration for purposes of indirect cost underrecovery and overrecovery determinations by any Federal agency for any other funds, from whatever source derived."

2/ Over or underrecovery from Tribal accounts is internal and therefore not included in the carryforward computation.

3/ The reported FY 2008 indirect costs of \$419,440 was adjusted to include the previously negotiated FY 2006 underrecovery carryforward to FY 2008 of \$8,457.

4/The amount of "Indirect Cost Collection" need not include direct funds (including direct program funds, direct CSC, or indirect CSC funds lawfully redirected to pay for unfunded direct CSC), private funds, or tribal funds diverted to pay indirect costs in the pool, provided that the amount listed is consistent with the tribal contractors' audited financial statements or post-audit statements, pursuant to Section III.B.1(a) and (b) of PSA III.

5/ Underfunded indirect should be reported to the respective granting agencies. Underfunded amounts may be, but are not necessarily, due to shortfalls in appropriations. The presense of an amount in either of these columns does not constitute a determination or admission that either the government or the contractor is liable to the other for any amount.

Note: The amounts shown as Indirect Costs Collections are based on the Tribe's audited financial statements.

Illustration of the Agreed Upon Changes to the Fixed with Carryforward Schedule

Note: The schedule below illustrates the affects that the agreed upon changes to the 'Fixed with Carryforward' schedule will have on the treatment of overrecoveries. As highlighted, the changes affect five overrecovery situations. Over recoveries will not be carried forward when indirect costs recovered (Column F) are in excess of the indirect cost rate generated amount (Column E). Overrecoveries will only be carried forward when the rate generated amount (Column E) exceed the pool amount (Column D).

Programs	FY 2001	%	Indirect	Indirect	Indirect	Under	Over	Carryforward	Current	Affected
	Actual Direct	of	Cost	Rate @	Costs					
	Costs	Total	Pool	Recovered/Collected	Recovered/Collected					Situations
			D	E	F					
			\$90	\$90	\$90	\$0	\$0	\$0	0	
			90	90	100	0	10	0	-10	1
			90	90	150	0	60	0	-60	2
			90	100	90	0	0	0	0	
			90	100	100	0	0	-10	-10	
			90	100	150	0	50	-10	-60	3
			90	150	90	0	0	0	0	
			90	150	100	0	0	-10	-10	
			90	150	150	0	0	-60	-60	
			100	90	90	0	0	10	10	
			100	90	100	0	0	0	0	
			100	90	150	0	50	0	-50	4
			100	100	90	10	0	0	0	
			100	100	100	0	0	0	0	
			100	100	150	0	50	0	-50	5
			100	150	90	10	0	0	0	
			100	150	100	0	0	0	0	
			100	150	150	0	0	-50	-50	
			150	90	90	0	0	60	60	
			150	90	100	0	0	50	50	
			150	90	150	0	0	0	0	
			150	100	90	10	0	50	50	
			150	100	100	0	0	50	50	
			150	100	150	0	0	0	0	
			150	150	90	60	0	0	0	
			150	150	100	50	0	0	0	
			150	150	150	0	0	0	0	
Total						\$140	\$220	\$80	-\$140	

1/

1/ Underpayments should be reported to the Funding Agency. Under funded amounts may be, but are not necessarily, due to shortfalls in appropriations. The presence of an amount in either the under-funded column or the over-funded column does not constitute a determination or admission that either the government or the contractor is liable to the other for any amount.

Electronic Versions of Exhibits 1, 2 & 3 to Appendix B

Carryforward Template Revisions

Electronic Version of Exhibit 1 to Appendix B:

The electronic form of the document appended as Exhibit 1 to Appendix B to the Third Partial Settlement Agreement Settling all Claims for Equitable Relief is an Excel spreadsheet containing the underlying formulas which generate the hard copy of Exhibit 1 as attached to Appendix B. That electronic version of Exhibit 1 is on a CD-ROM which has been filed with the Clerk. That spreadsheet contains the existing single-rate carryforward template used by NBC.

Electronic Version of Exhibit 2 to Appendix B:

The electronic form of the document appended as Exhibit 2 to Appendix B to the Third Partial Settlement Agreement Settling all Claims for Equitable Relief is an Excel spreadsheet containing the underlying formulas which generate the hard copy of Exhibit 2 as attached to Appendix B. That electronic version of Exhibit 2 is on a CD-ROM which has been filed with the Clerk. That spreadsheet contains the modified single-rate carryforward template implementing the agreed-upon changes.

Electronic Version of Exhibit 3 to Appendix B:

The electronic form of the document appended as Exhibit 3 to Appendix B to the Third Partial Settlement Agreement Settling all Claims for Equitable Relief is an Excel spreadsheet containing the underlying formulas which generate the hard copy of Exhibit 3 as attached to Appendix B. That electronic version of Exhibit 3 is on a CD-ROM which has been filed with the Clerk. That spreadsheet illustrates the results of the agreed-upon changes to the treatment of over-recoveries in the carry forward process, considering all possible variations in the relative amounts of the indirect cost incurred, the Rate x Base amount and the indirect cost recovered amount in a given year.