

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

RAMAH NAVAJO CHAPTER,  
OGLALA SIOUX TRIBE, and  
PUEBLO OF ZUNI, for themselves, and  
on behalf of others similarly situated,

Plaintiffs

v.

SALLY JEWELL, Secretary of the  
Interior, *et al.*,

Defendants.

No. 1:90-CV-957-JAP/KBM

**FINAL SETTLEMENT AGREEMENT**

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**APPENDIX 1 NOTICE OF FINAL SETTLEMENT**

**APPENDIX 2 DISTRIBUTION PERCENTAGES FOR EACH CLASS MEMBER**

**APPENDIX 3 SETTLEMENT CLAIM FORM**

This Final Settlement Agreement (“FSA”) contains the agreement reached by the Parties to settle and resolve all remaining claims in this action.

**I. INTRODUCTION**

WHEREAS, in this class action the Plaintiff Class makes various claims under the Contract Disputes Act (“CDA”), 41 U.S.C. § 7101 *et seq.*, and the Indian Self-Determination Act (“ISDA”), 25 U.S.C. § 450 *et seq.*, concerning contract support costs (“CSC Claims”); and

WHEREAS, on May 25, 1999, the Court approved a partial settlement of a portion of the Class’s CSC Claims for years prior to 1994, but reserved for further litigation other CSC Claims (Dkt. No. 287); and

WHEREAS, on December 6, 2002, the Court approved a second partial settlement of additional CSC Claims, but reserved for further litigation any monetary claims for years 1994 forward concerning indirect CSC Claims, any monetary claims for years 1995 forward concerning direct CSC Claims, and all claims for equitable relief (Dkt. No. 731); and

WHEREAS, on August 27, 2008, the Court approved a third partial settlement of all of the Class’s CSC claims seeking equitable (declaratory and injunctive) relief (Dkt. No. 1159); and

WHEREAS, by Opinion issued June 18, 2012 (*Salazar v. Ramah Navajo Chapter*, 132 S. Ct. 2181 (2012)), the United States Supreme Court held Defendants could not justify the failure to pay in full the contract support costs of an individual Tribal Contractor on the ground that Congress did not appropriate sufficient funds to meet the total contract support cost requirement of all Tribal Contractors, so long as the appropriation was sufficient to cover the contract support cost requirement of that individual Tribal Contractor, and remanded this action to the district court for further proceedings consistent with that opinion; and

WHEREAS, the Settlement Amount to be paid by Defendants under § II.M. of this FSA will be paid from the Judgment Fund established by 31 U.S.C. § 1304, as occurred in the prior partial settlements; and

WHEREAS, in *Ramah Navajo Chapter v. Babbitt*, 50 F. Supp. 2d 1091, 1095 (D.N.M. 1999), U.S. District Judge Hansen observed that, although the Contract Disputes Act requires that the Judgment Fund be reimbursed after an award “by the agency whose appropriations were used for the contract out of available funds or by obtaining additional appropriations for such purposes,” repaying judgments awarded to the Class in this action out of appropriations to the Bureau of Indian Affairs (BIA) for the operation of programs would be “inequitable” and therefore retained jurisdiction to ensure that no such inequity would occur; and

WHEREAS, in the Appropriations Act for Fiscal Year 2015, Congress in section 407 prohibited any appropriations made to the BIA from being used “for repayments of payments for settlements or judgments awarding contract support costs for prior years;” and

WHEREAS, the Parties now wish to avoid the expense, delay, risk, and inconvenience of further litigation over damages for CSC Claims remaining in this action;

NOW THEREFORE, in reliance upon the representations, mutual promises, covenants, releases, and obligations set out in this FSA, and for good and valuable consideration also set out below, the Plaintiff Class and Defendants in this action, by and through their respective counsel, now hereby stipulate and agree to finally settle and resolve all remaining CSC Claims in this action.

## **II. DEFINITIONS**

The following terms, as they are used in this FSA, shall have the meanings stated below:

### **A. Parties**

#### **1. Plaintiffs, the Class, Class Members, or Tribal Contractors**

“Plaintiffs,” “the Class,” “Class Members” or “Tribal Contractors” are, unless context demands otherwise, interchangeable terms and consist of the named Plaintiffs Ramah Navajo Chapter, Oglala Sioux Tribe, and Pueblo of Zuni, and all Indian Tribes and tribal organizations that have contracted or entered into self-governance funding agreements with the Secretary of the Interior through the BIA or the Office of Self Governance (“OSG”) (collectively hereafter, “BIA”) under the ISDA during any year between fiscal years 1994 through 2013. The Class includes the following Tribes which at one time opted out of the Class, but were thereafter permitted to re-enter the Class by Orders dated September 22, 1998 (Dkt. No. 198), December 3, 1998 (Dkt. No. 247), December 8, 1998 (Dkt. No. 250), August 1, 2000 (Dkt. No. 462): the Navajo Nation, the White Mountain Apache Tribe, the Eastern Shoshone Tribe, and the Confederated Tribes of Siletz Indians of Oregon. In the event a Class Member no longer exists, such Class Member’s rights under this FSA shall belong to such Class Member’s successor entity or, in the event no such entity exists, then the Tribe or Tribes by whose authority such non-existent Class Member contracted or entered into a self-governance funding agreement as defined above.

#### **2. Defendants**

For purposes of this settlement, “Defendants” are: Sally Jewell, Secretary of the Interior, in her official capacity, and her successors; Kevin Washburn, Assistant Secretary-Indian Affairs, in his official capacity, and his successors; and the United States of America.

**B. Class Counsel**

The term “Class Counsel” as used herein are the Counsel listed in Section XXII.A., below, and their respective firms.

**C. BIA ISDA Contract**

The term “BIA ISDA Contract” means (1) a self-determination contract with the BIA awarded under Title I of ISDA as defined in section 4(j) of the ISDA (25 U.S.C. § 450b(j)), including grants and cooperative agreements, (2) a funding agreement awarded under 25 U.S.C. § 450l(c) of the ISDA, and (3) a compact or funding agreement with OSG awarded under Title III of Pub. L. 93-638, as added Pub. L. 100-472, Title II, § 209, 102 Stat. 2296 (1988) (repealed), or under section 403(b)(1) of Title IV of the ISDA, 25 U.S.C. § 458cc(a).

**D. Contract Support Costs**

“Contract support costs” (CSC) are defined by the Indian Self-Determination Act, 25 U.S.C. § 450j-1(a)(2), as “an amount for the reasonable costs for activities which must be carried on by a tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management . . . .” Pursuant to 25 U.S.C. § 450j-1(a)(3)(A), CSC “include the costs of reimbursing each tribal contractor for reasonable and allowable costs of — (i) direct program expenses for the operation of the Federal program that is the subject of the contract, and (ii) any additional administrative or other expense related to the overhead incurred by the tribal contractor in connection with the operation of the Federal program, function, service, or activity pursuant to the contract, except that such funding shall not duplicate any funding provided [under section 106(a)(1) of the Act].” CSC are “administrative expenses.” *Cherokee v. Leavitt*, 543 U.S. 631, 634-35 (2005). “Indirect” contract support costs (“indirect CSC”) are administrative costs that are shared among various contracted tribal programs and other tribal

programs, such as legal, personnel, accounting and financial support. “Direct” contract support costs (“direct CSC” or “DCSC”) are specific administrative and other costs that are associated with a particular BIA program under contract, and are not part of the undifferentiated indirect cost pool supporting all tribal activities. DCSC include direct costs such as workers’ compensation insurance, which are not included in the amount that the BIA would have spent to operate a particular program under contract.

#### **E. CSC Claims**

The CSC claims are defined as follows:

##### **1. Calculation Claim**

The “Calculation Claim” refers to any claim for relief in connection with a BIA ISDA contract, but for purposes of this FSA, also includes any claims challenging the Interior Business Center’s (IBC) (formerly the National Business Center) or Department of the Interior (“DOI”) Office of Inspector General’s carryforward templates, policies, and practices previously in effect or in effect as of the date of execution of this FSA. PSA-I, Section 3.a.i, provides as follows:

“Plaintiffs’ Cause of Action” is the Plaintiffs’ claim stated in the First Amended Complaint filed January 2, 1991. The claim sought monetary and equitable relief based on shortfalls in payment of indirect costs associated with contracts entered into under the [ISDA] arising from Defendants’ use of a method based on OASC-10 and [Office of Management and Budget] Circular A-87 for determining indirect cost rates or their equivalent and payments thereon which: (a) included funding provided by Other Federal Agencies in the direct cost base (b) resulting in a lower indirect cost rate which was then (c) applied only to the BIA’s portion of the direct cost base resulting in (d) determination of BIA contract support (indirect cost) entitlements which were lower in amount than required by [ISDA] because (e) Other Federal Agencies did not fully pay, and were known not to fully pay, supplemental indirect costs (f) which caused lower contract support (indirect cost) recoveries by the Class. [Inserts added]

This claim encompasses all the variations of this claim that have been asserted in this case.

## **2. Shortfall Claim**

The “Shortfall Claim” refers to any claim for relief, in connection with a BIA ISDA contract, alleging that the BIA and DOI failed to pay Plaintiffs the amount generated by multiplying each Plaintiff’s indirect cost rate by the BIA’s direct program base, less passthroughs and exclusions, pursuant to Office of Management and Budget (“OMB”) Circular A-87, 2 C.F.R. Part 225, OMB Circular A-21, 2 C.F.R. Part 220, and OMB Circular A-122, 2 C.F.R. Part 230, and other applicable law, or the full amount of any negotiated contract support costs.

This claim also includes damages for Defendants’ alleged failure to pay indirect CSC on the portion of Direct Contract Support Costs (“DCSC”) that were not paid to Plaintiffs.

## **3. The Direct Contract Support Cost Claim**

The “DCSC Claim” refers to any claim for relief in connection with a BIA ISDA contract alleging that Defendants failed to comply with 25 U.S.C. § 450j-1(a)(3)(A)(i) of the ISDA as regards DCSC. This claim has already been resolved for the 1994 fiscal year pursuant to the Parties’ Second Partial Settlement Agreement, as defined below in Section II.G.

## **4. The Remaining Contract Support Cost Claims**

The Remaining CSC Claims are all additional claims for damages arising out of the Defendants’ alleged failure either (1) to properly calculate or (2) to pay in full, either indirect CSC or DCSC, including without intending any limitation, all claims portions of which were settled in PSA I, PSA II and PSA III, except for reserved claims.

### **F. PSA I**

The Parties’ first partial settlement agreement, approved by this Court on May 25, 1999 (Dkt. No. 287), is hereinafter referred to as “PSA I.”

**G. PSA II**

The Parties' second partial settlement agreement, approved by this Court on December 6, 2002 (Dkt. No. 731), is hereinafter referred to as "PSA II."

**H. PSA III**

The Parties' third partial settlement agreement, approved by this Court on August 27, 2008 (Dkt. No. 1138), including its Appendices A through G, is hereinafter referred to as "PSA III."

**I. Final Settlement Agreement**

"Final Settlement Agreement" or "FSA" means this agreement and all of its Appendices.

**J. Settled Years**

"Settled Years" means fiscal years 1994 through 2013.

**K. Final Approval**

"Final Approval" is the entry of the Final Judgment by the Court approving this FSA after notice and hearing.

**L. Effective Date**

"Effective Date" of this FSA shall be (1) the date upon which the Final Judgment approving this FSA becomes non-appealable, or (2) in the event of an appeal by a Class Member based upon a timely-filed objection to this FSA, upon the date of final resolution of said appeal (absent a Court order disapproving this FSA). In the event of a final Court order disapproving this FSA (and absent an appellate ruling vacating or reversing that disapproval), this FSA shall be null and void.

**M. Settlement Amount**

The “Settlement Amount” is \$940,000,000.00, plus post-judgment interest as specified in Section VII.B, below.

**N. Net Settlement Amount**

The “Net Settlement Amount” or “NSA” is the amount available for Distribution to Tribal Contractors after the Reserve Account and attorneys’ fees, costs, and other expenses have been deducted from the “Settlement Amount,” as provided in Section VIII.A, below.

**O. Reserve Account**

The “Reserve Account” is an account established and funded for the costs of distributing the Net Settlement Amount to Class Members and as otherwise authorized in this FSA.

**P. Settlement Administrator**

“Settlement Administrator” is a person or firm responsible for managing the allocation and distribution of the Settlement Amount as set forth in this FSA, and who has been approved by the Court.

**Q. Class Monitor**

“Class Monitor” is a person or firm charged with the duty to independently review and confirm or correct the work of the Settlement Administrator, and who has been approved by the Court.

**R. Claims Period**

The Claims Period is the time set by the Court, including any extension of time, for the submission of Claim Forms attached hereto as Appendix 3.

**S. Distribution**

“Distribution” is the process in which Tribal Contractors will receive a portion of the “Settlement Amount.” This process is further defined in section VIII.D below.

**T. Distribution Percentage**

Subject to Section VII.C, the term “Distribution Percentage” refers to each Class Member’s share of the Net Settlement Amount, as defined in Section VIII.D.1, and of any residual balance in the Reserve Account, as defined in Section VIII.C.5. The Distribution Percentage is based on the amount of CSC already paid to each Class Member during the period 1994 through 2013, provided, however, that each Class Member shall receive a minimum payment of approximately \$8,000 for each year that it had a BIA ISDA contract during the fiscal years 1994 through 2013. Each Class Member’s Distribution Percentage is set out in Appendix 2.

**U. Treasury Debt Collection Authorities**

“Treasury Debt Collection Authorities” are established by 31 U.S.C. § 3716 as part of the Debt Collection Improvement Act, and 26 U.S.C. § 6331(h) of the Internal Revenue Service Tax Code. Payments to each Tribal Contractor from the Judgment Fund as a result of this FSA are subject to United States Department of the Treasury Debt Collection Authorities. Subject to Section VII.B, the Bureau of Fiscal Service will offset and/or levy any delinquent debt of a Tribal Contractor from that Tribal Contractor’s share of the Settlement Amount and will notify that Tribal Contractor of that debt.

**V. Designated Bank**

“Designated Bank” means a bank that has a Veribanc ([www.veribanc.com](http://www.veribanc.com)) rating of Green with at least one star and one for which neither the bank nor any of its senior officers

appear in the Excluded Parties List System ([www.epls.gov](http://www.epls.gov)), which is a list of entities and individuals suspended or debarred from doing business with the Federal Government. For purposes of this FSA, the Designated Bank will be Wells Fargo Bank, N.A., or such other bank as is approved by the Court if acceptable terms and conditions with the Wells Fargo Bank cannot be reached.

**W. Designated Account**

“Designated Account” means either

(1) A fully collateralized commercial public funds bank depository account at the Designated Bank. That account shall be established by Class Counsel by means of (i) a standard bank customer account agreement, and (ii) a collateral security agreement to be approved by the Court and executed by the Designated Bank, any custodial bank contracted to hold the pledged collateral, and the Class Representatives acting for the Class. Class Counsel are authorized to instruct the Designated Bank to invest some of the deposited funds into U.S. Treasury investments when not needed to cover checks drawn on the account, pursuant to an investment plan approved by the Court; or

(2) A non-collateralized commercial bank depository account at the Designated Bank to be administered by Class Counsel in coordination with an investment plan limited to U.S. Treasury investments for funds not needed to cover checks drawn on the account, all to be approved by the Court.

For the account arrangement selected, the named Class Representatives will be the account holders acting for the Class, and Class Counsel will be the designated signatories appointed by the Class Representatives to approve dispersals from the account, all subject to approval of the Court.

**X. Fairness Hearing**

Fairness Hearing means the hearing at which the Court will hear objections, if any, to the settlement and fee application and thereafter render a ruling approving or declining to approve the settlement, and acting upon the fee application.

**III. NO ADMISSION OF LIABILITY**

Defendants expressly deny any wrongdoing or liability. This FSA represents the compromise of disputed claims. It reflects the Parties' recognition that litigation of these claims would severely burden all concerned and require a massive commitment of time and resources. The FSA does not constitute, and will not under any circumstances be deemed to constitute, an admission by either Party as to the merits, validity, or accuracy, or lack thereof, of any of the claims or defenses in this case. The terms of this FSA; the negotiations leading up to this FSA; the data, documents, filings, statements made in connection herewith; and the information exchanged between the Parties in the course of those negotiations, may not be offered, taken, construed, or introduced as evidence of liability or as an admission or statement of wrongdoing by the Defendants; nor shall any fact, matter or proposition be used in any manner or for any purpose, in any subsequent proceedings in this action or in any other action, whether judicial or administrative, except that the documents and information may be presented to the Court by the Parties to this FSA solely to obtain the Court's final approval of this FSA. This Section shall not bar any court's right to interpret the scope of this FSA in this or any other proceeding.

**IV. SETTLED AND RESERVED CLAIMS**

In consideration for Defendants' promises as set forth herein in Sections VII and IX, Plaintiffs agree as follows:

**A. Settled Claims**

1. This FSA resolves and extinguishes any and all claims, demands, rights, causes of action, and counts for money damages and/or specific monetary relief under any theory of recovery encompassed by the CSC Claims defined in section II.E that were or could have been raised in this action in connection with BIA ISDA contracts awarded for fiscal years 1994 through 2013. This includes CSC Claims asserted by individual Class Members in separate contract disputes.

2. This FSA also resolves and extinguishes any and all claims, demands, rights, causes of action, and counts for money damages and/or specific monetary relief under any theory of recovery encompassed in the CSC Claims that any individual Class Member could have raised against Defendants in connection with BIA ISDA contracts for fiscal years 1994 through 2013.

3. This FSA also resolves and extinguishes any and all claims, counterclaims, demands, rights, causes of action, and counts for money damages and/or specific monetary relief under any theory of recovery that Defendants could have raised or asserted against the Class or any Class Member, arising from or related to any payment, overpayment, nonpayment, or underpayment of contract support costs in connection with BIA ISDA contracts for fiscal years 1994 through 2013.

4. Release of the above-described claims, counterclaims, demands, rights, causes of action and counts for money damages and/or specific monetary relief is effective on Defendant's payment of the Settlement Amount as described in VII.A.

5. Nothing in this FSA shall limit the rights of any Party to enforce this FSA as set forth in Section X.

**B. Reserved Claims and Defenses**

Notwithstanding any other provision in this FSA, the Parties agree that the following claims and defenses are not settled, dismissed, released, or otherwise extinguished, and are expressly reserved:

**1. Individual Claims**

a. Any pending or future claim or challenge to any individual cost determinations made by Defendants relating to whether a particular cost is allowable or reasonable under applicable OMB Circulars or under any other provision of law, and any claim relating to mathematical, computational, clerical or input errors in the calculation of indirect cost rates which has occurred or may occur for a particular Class Member, and which is not the result of a government policy, practice or procedure applicable to all Tribal Contractors, are expressly reserved and may be pursued by a Tribe or tribal organization in a separate proceeding, except that such reserved claim shall not include claims for monetary relief for the settled years;

b. Any individual claims for pre-award or start-up costs under 25 U.S.C. § 450j-1(a)(5) or (6) which arose in the settled years are expressly reserved and may be pursued by a Tribe or tribal organization in a separate proceeding;

c. Any CSC claims arising in or relating to fiscal year 2014 or thereafter, except as foreclosed by PSA III, are expressly reserved and may be pursued by a Tribe or tribal organization in a separate proceeding;

d. Any individual Class Member claim that Defendants or any of them have failed or refused to pay a previously agreed amount for contract support costs to a BIA ISDA contract, but not paid, which is not the result of a BIA policy, practice or procedure

applicable to all Tribal Contractors, are expressly reserved and may be pursued by a Tribe or tribal organization in a separate proceeding.

**2. Interior CSC Policy Challenges**

Any claim which challenges (i) any aspect of the Interior CSC Policy as defined in PSA-III or (ii) the legality of any rescission, amendment or change of that policy, except that such reserved claim shall not include claims for monetary relief for the settled years;

**3. Other Reserved Claims**

a. All claims arising from contracts awarded by any Federal agency other than BIA ISDA contracts;

b. All claims unrelated to direct and indirect CSC under the ISDA;  
and

c. All claims to enforce the terms of PSA I, PSA II, or PSA III.

**4. Reservation of Government Defenses and Counterclaims**

Defendants reserve the right to raise any defenses or counterclaims not barred by Section IV.A.3 against any claim that has been reserved by Plaintiffs in this Section.

**5. Statute of Limitations**

Nothing in this FSA shall be construed to waive or extend the statute of limitations for pursuing in any proceeding any claims or counterclaims reserved in this FSA.

**6. Reservation of Government Fraud Claims**

Defendants reserve the right to assert any claim or claims for fraud that they have or may have against any Tribal Contractor or its officers, agents, or employees arising out of or relating to this action, the claims, or performance of the BIA ISDA contracts, regardless of whether they were included in the pleadings. Plaintiffs reserve the right of Class Members to raise any

defenses or counterclaims against any claim of fraud that has been reserved by Defendants in this Section.

**V. PROCEDURES GOVERNING SETTLEMENT APPROVAL**

The Parties agree that this FSA shall be implemented in the following manner:

**A. Request for Preliminary Approval and Permission to Publish Notice to Class**

Upon execution, the Parties shall jointly and promptly file this FSA and request that the Court enter an Order Granting Preliminary Approval of the FSA, Directing Notice to the Class, and Setting a Date for the Fairness Hearing.

**B. Distribution of the Notice to Class Members**

1. Upon entry of the Order Granting Preliminary Approval of the FSA and Directing Notice to the Class, Class Counsel shall cause a Class Notice, substantially in the form of the “Notice of Final Settlement To All Members of the Ramah Class” (“Class Notice”) attached as Appendix 1, to be mailed to all Class Members by first-class mail; shall submit the summary Class Notice for publication in either Indian Country Today or News From Indian Country and to at least one internet website focused on providing news and information to Indian country; and shall post the Class Notice on the Class website at [www.rncsettlement.com](http://www.rncsettlement.com). Class Counsel shall mail and publish the Class Notice no later than the date specified in the Court’s Order granting preliminary approval of this FSA. Defendants shall assist Class Counsel in securing accurate addresses for all Class Members and in sending the Class Notice to the Class.

2. Defendants shall make best efforts to send a copy of the same notice to each and every Tribe and tribal organization by first-class mail and, where available, by email, within 30 days of the Court’s Order granting preliminary approval of this FSA, provided that failure to timely mail shall not constitute a reason to delay the Fairness Hearing.

3. Defendants agree to publish the Class Notice on the IBC Indirect Cost website, [http://www.doi.gov/ibc/services/Indirect\\_Cost\\_Services/indian\\_tribes.cfm](http://www.doi.gov/ibc/services/Indirect_Cost_Services/indian_tribes.cfm), if operational, and on the BIA's website, <http://www.bia.gov/>, if operational, within 30 days of the Court's Order granting preliminary approval of this FSA, provided that failure to publish, or to timely publish, this notice on the IBC or BIA websites shall not constitute a reason to delay the Fairness Hearing.

**C. Agreement to Bear Cost of Providing Notice**

Class Counsel agree to initially bear the cost of providing notice to the Class, subject to reimbursement from the Reserve Account described in Section VIII.C, except for those costs associated with the publication of the Class Notice on the IBC and BIA websites and those costs associated with the mailing or emailing of the Class Notice pursuant to Section V.B.2 above, which costs shall be borne by Defendants.

**D. Objections**

1. Any Class Member that wishes to object to the proposed settlement or attorneys' fee application must file a Notice of Intention to Appear and Object (Objection) with the Clerk of the Court and deliver it to all listed Counsel, and must appear at the Fairness Hearing described in Section V.F, below. If more than one Class Member makes the same objection, the Court may designate one of them to present the objection at the Fairness Hearing.

2. Objections must be sent to the Clerk of Court, 333 Lomas NW, #270, Albuquerque, New Mexico 87102. Each Objection must include (i) a reference to the case number, "No. 90-CV-957;" (ii) a statement of each reason for the Objection; (iii) the specific ground(s), if any, for each reason, including any legal support, evidence, papers or briefs the Class Member wishes the Court to consider; (iv) the person or persons who will present the

Objection at the hearing; and (v) the signature of the responsible official or attorney for the Class Member making the Objection. All Objections must be sent to the attorneys listed in Section XXII.

3. Objections and any other motions or applications for relief must be filed with the Court and served within the time specified in the Class Notice, which date shall be not less than 45 days after the postmark date of the Class Notice mailed by Class Counsel. Within 30 days of the expiration of the period for Class Members to file Objections, Class Counsel may file a Supplemental Memorandum responding to any such Notices of Objections or other motions or applications. Within 45 days of the expiration of the period for Class Members to file Objections, Defendants may file a response.

**E. Limited Opportunity to Request Exclusion from the Class**

1. As noted in Section II.A.1, the Class consists of all Indian Tribes and tribal organizations that have entered into BIA ISDA contracts, including those Tribes which at one time opted out of the class action but were thereafter permitted to re-enter the Class by Orders dated September 22, 1998 (Dkt. No. 198), December 3, 1998 (Dkt. No. 247), December 8, 1998 (Dkt. No. 250), and August 1, 2000 (Dkt. No. 462). Pursuant to Fed. R. Civ. P. 23(b), and by Orders dated September 30, 1999 (Dkt. No. 347) and March 27, 2002 (Dkt. 634), additional opt out opportunities were afforded to all Class Members, and no Member of the Class opted out of the Class within the time required by those Orders. However, a Class Member that has not previously had an opportunity to opt out from the Class may file with the Court a written request to be excluded from the Class by the deadline set by the Court. In the event the Court permits a Class Member to opt out of this Settlement, such Class Member's share of the Settlement Amount, as reflected in the Distribution Percentages attached to this FSA as Appendix 2, shall be

retained by Defendants and the Settlement Amount specified in Section II.M. of this FSA shall be reduced accordingly, provided that in such event the Distribution Percentage for each remaining Class Member set out in Appendix 2 shall be adjusted accordingly to remove the share previously allocated to the withdrawing Class Member.

2. In the event the Court authorizes 15 or more Class Members to opt out and the amount that shall be retained by Defendants exceeds 15 percent of the Settlement Amount, the Defendants shall have the exclusive right to declare this FSA null and void. Defendants will notify Class Counsel in writing of any such declaration no more than 15 business days after the Court's decision granting such Opt Outs. Absent such notice, defendants' right shall expire at the end of the 15-business-day period, and the Court may grant final approval of this FSA.

3. If an individual Class Member appeals a Court decision regarding the right to opt out, such Class Member's share of the Settlement Amount, as reflected in the Distribution Percentages attached to this FSA as Appendix 2, shall be retained by Defendants and the Settlement Amount specified in Section II.M. of this FSA shall be reduced accordingly, provided that in such event the Distribution Percentage for each remaining Class Member set out in Appendix 2 shall be adjusted accordingly to remove the share previously allocated to the withdrawing Class Member. The portion of the Settlement Amount that is not disputed shall be distributed as set forth in Section VIII.D. In the event that any appeal challenging a Class Member's right to opt out also challenges the overall validity of the FSA, the provisions in Section VI shall apply.

**F. Fairness Hearing**

At the Fairness Hearing the Parties shall request the Court's final approval of this FSA and shall present such evidence and arguments as may be appropriate. Class Counsel and

Defendants shall also be heard at the Fairness Hearing on Class Counsel's application for attorneys' fees and costs. The Court has the right to reschedule or adjourn and reconvene the Fairness Hearing, and no such rescheduling or adjournment shall affect the validity of this FSA.

**VI. APPEALS**

In the event of an appeal by a Class Member from the final judgment approving this FSA, the allocation and distribution of the Settlement Amount and implementation of the related provisions of this FSA shall be stayed in full or in part, as directed by the Court, pending final determination of any and all such appeals.

**VII. AMOUNT AND TIMING OF PAYMENT**

**A. Settlement Amount and Completion of Defendants' Duties**

In consideration of this FSA, Defendants shall pay the Class the Settlement Amount, subject to the requirements of Treasury Debt Collection Authorities, and shall use their best efforts to do so expeditiously. Upon payment of the Settlement Amount, Defendants' duties under this FSA shall be deemed completed. No offset and/or levy made consistent with this Section shall be deemed a breach of this FSA.

**B. Timing and Manner of Payment of Settlement Amount to the Class**

1. Subject to the requirements of Treasury Debt Collection Authorities, the Settlement Amount shall be Direct Deposited by the Treasury Department from the Judgment Fund, 31 U.S.C. § 1304, into the Designated Account established by Class Counsel. Payments to each Tribal Contractor as a result of this FSA are subject to Treasury Debt Collection Authorities, as defined in Section II.U. The U.S. Treasury Department, Bureau of Fiscal Service will offset and/or levy any delinquent debt of a Tribal Contractor to the United States from that Tribal Contractor's share of the Settlement Amount and will notify that Tribal Contractor of that

debt. Defendants or the Department of Justice will exercise their best efforts to ensure that information about such offsets and/or levies is also timely sent to Class Counsel and to the Settlement Administrator to enable the Settlement Administrator to carry out those duties set out at Section VIII.D.3.

2. The Treasury Department will make an initial deposit of the portion of the Settlement Amount that includes amounts for Distribution to those Tribal Contractors that do not have debts that must be offset and/or levied pursuant to Treasury Debt Collection Authorities, for Class Counsel's Attorneys' Fees and Costs, and for the Reserve Account. For the remaining portion of the Settlement Amount, the Treasury Department will make separate deposits reflecting the net amount due to each Tribal Contractor following any offset and/or levy made pursuant to Treasury Debt Collection Authorities.

3. Class Counsel shall establish the Designated Account within ten (10) working days of the date on which the Final Approval becomes final and is not subject to further review by appeal or by writ of certiorari, whichever is later. Subject to the requirements of Treasury Debt Collection Authorities, the Settlement Amount shall be deposited as set forth in the preceding paragraph without requirement for further notice to the Class regarding the place or conditions of said deposit, provided said deposit conforms to the terms of this FSA. After the initial deposit of the Settlement Amount, a separate Reserve Account shall be established as set forth in Section VIII.C, below.

### **C. Interest**

Post-judgment interest on the Settlement Amount shall accrue consistent with 25 U.S.C. § 450m-1 and 41 U.S.C. § 7109 from the date final judgment is entered by the District Court

until the dates of any payments, described in Section VII.B. above, by Defendants to the Designated Account.

**VIII. DEDUCTIONS FROM AND DISPOSITION OF THE SETTLEMENT AMOUNT**

**A. Deductions from the Settlement Amount**

From the Settlement Amount, the following amounts shall be deducted and paid as follows:

1. Four Million Dollars (\$4,000,000.00) to the Reserve Account as defined and provided for in Section VIII.C; and
2. The amount awarded to Class Counsel for attorneys' fees and costs as provided for in Section IX.

As provided in Section II.N, above, the amount of the Settlement Amount remaining after these deductions is the "Net Settlement Amount."

**B. Interest Earned**

Interest earned on the investment of the Net Settlement Amount, after deduction of bank, broker, and custodial charges, shall be paid to the Reserve Account, as defined below.

**C. The Reserve Account**

**1. The Amount Distributed to the Reserve Account**

Four Million Dollars (\$4,000,000.00) as referred to in Section VIII.A.1, above shall be deducted from the Settlement Amount and shall be placed in a separate account in the Designated Bank using the same collateral security or investment arrangements as apply to the Designated Account for the costs of distributing the Net Settlement Amount to Class Members and as otherwise authorized in this FSA. Unless the United States Department of the Treasury determines otherwise, the Reserve Account may be subject to offset and/or levy pursuant to the

requirements of Treasury Debt Collection Authorities should the debt of a Class Member to the United States exceed that Class Member's share of the Net Settlement Amount. Such offset and/or levy shall be limited to a Class Member's share of the Reserve Account based on that Class Member's Distribution Percentage. All interest that accrues on the Net Settlement Amount shall be paid into the Reserve Account.

## **2. Timing of Funding of the Reserve Account**

The Reserve Account shall be established by Class Counsel and funded within ten (10) working days of the date Defendants make the payment required by Section II.M.

## **3. Purpose of the Reserve Account**

The Reserve Account shall be used for the payment or reimbursement of expenses associated with the implementation of the Distribution Methodology as set forth in Appendix 2 and for the reimbursement of costs of Class Counsel, the Settlement Administrator, the Class Monitor, and the costs identified in Section IX.A in connection with this FSA. Class Counsel may apply periodically to the Court, upon notice to the Defendants, for reimbursement or advance payment of such expenses of Class Counsel, the Settlement Administrator, and/or the Class Monitor, and, upon approval by the Court, they shall be paid from the Reserve Account.

## **4. Interest Earned**

Interest earned on the investment of the Reserve Account, after deduction of bank, broker, and custodial charges, shall be kept in the Reserve Account.

## **5. Disposition of Reserve Account Balance and Unclaimed Funds**

Any amounts remaining in the Reserve Account after distribution is complete shall be paid to Class Members in the same manner as the Net Settlement Amount, except that, should

the amount remaining be too small to justify the expense of distribution, Class Counsel may request approval from the Court to donate the remaining funds to a charitable organization.

**6. Sampled Tribal Contractors' Costs and Class Representative Costs**

a. As part of the settlement negotiations in this case, certain Tribal Contractors participated in a sampling exercise. Tribal contractors that participated in this exercise shall be eligible to be reimbursed their reasonable out-of-pocket costs incurred in producing documents required for the sampling exercise. Tribal contractors seeking reimbursement of such costs shall submit invoices detailing such costs to Class Counsel within 60 days after Final Approval of this FSA. The Settlement Administrator shall make the final determination on the eligibility and reasonableness of such costs. Such costs shall be paid from the Reserve Account.

b. The Class Representatives shall be eligible to be reimbursed their reasonable out-of-pocket travel and related costs incurred in participating in the litigation and settlement process from the conclusion of PSA III to the present. Class Representatives seeking reimbursement of such costs shall submit invoices detailing such costs to Class Counsel within 60 days after Final Approval of this FSA. The Settlement Administrator shall make the final determination on the eligibility and reasonableness of such costs. Such costs shall be paid from the Reserve Account.

**D. Distribution of Net Settlement Amount**

**1. Class Member Shares**

Subject to the requirements of Treasury Debt Collection Authorities, each Class Member shall receive a share of the Net Settlement Amount according to the Distribution Percentage set forth in Appendix 2. Class Members' Distribution Percentages may be subject to adjustment by

agreement of the Parties: (i) pursuant to Section V.E. of the FSA; (ii) if additional Class Members are later identified; and (iii) to correct potential calculation errors. The Named Class Representatives shall, subject to the requirements of Treasury Debt Collection Authorities, receive their share of the Net Settlement Amount according to the procedure and formula set forth in Section VIII.D.2, below.

## **2. Named Class Representatives' Shares**

In recognition of their unique contributions in initiating the claims in this litigation, the Named Class Representatives, for bearing the duties of Class Representative, for their public service in protecting the rights of Tribal Contractors under the ISDA, and for their time and effort over many years in prosecuting this litigation and in participating in negotiations, advising Class Counsel and achieving this FSA, shall have their shares of the Net Settlement Amount (as defined in Section II.N, above) multiplied by a factor of 1.20, after the shares of all Tribal Contractors have been determined by the methodology set out in Section VIII.D.1, above. Thus, when computing each Tribal Contractor's share of the Net Settlement Amount, the shares of the Named Class Representatives shall be multiplied by 1.20 and all shares shall then be adjusted proportionately so that the total shares of all Tribal Contractors equal one hundred percent (100%) of the Net Settlement Amount.

## **3. Need to Submit a Claim; Disposition of Net Settlement Amount Balance**

a. In order for a Class Member to receive payment of its share of the Net Settlement Amount pursuant to the Distribution Percentage, the Class Member shall return a signed copy of the Claim Form provided by the Settlement Administrator. The Court will set the deadline for submission of Claim Forms. Subject to subparagraph (b), if by the end of the Claims Period, any Class Member has not timely submitted a claim form through the Settlement

Administrator, or has disclaimed in writing its share of the Net Settlement Amount pursuant to the Distribution Percentage, that Class Member's share of the Net Settlement Amount shall be reallocated to all other Class Members that have timely submitted claims in proportion to each such Class Member's share of the total Net Settlement Amount, subject to subparagraph (b) below and as set forth in Section VIII.D.1. The failure to submit a claim form shall not affect the release of claims specified in Section IV.A.

b. The portion of any unclaimed amounts exceeding in the aggregate \$10,000,000 shall be paid to the Treasury within 60 days of the end of the Claims Period. For purposes of this subparagraph, unclaimed amounts shall not include amounts disclaimed by a Class Member in writing. The portion of any unclaimed amounts not exceeding in the aggregate \$10,000,000 shall be added to the Reserve Account and shall be administered as specified in Section VIII.C.5.

#### **4. Settlement Administrator**

Class Counsel shall, with approval of the Court, engage a Settlement Administrator to manage the allocation and distribution of the Net Settlement Amount. The Settlement Administrator shall review and pay the eligible costs of the sampled Tribal Contractors and Class Representatives as provided in Section VIII.C.6. The Settlement Administrator shall be responsible for completing an individualized copy of the Claim Form attached hereto as Appendix 3 for each Class Member, including identifying the Class Member on each Claim Form and stating on the Form the amount of money each Class Member is entitled to receive from the Net Settlement Amount pursuant to Section VIII.D.1, prior to offsets and/or levies, if any, pursuant to Treasury Debt Collection Authorities. The Settlement Administrator shall also cause the individualized Claim Form to be provided to each Class Member. After the Settlement

Administrator provides the Claim Form to each Class Member, Class Counsel shall notify the Court. Within 30 days of the deadline set by the Court, the Settlement Administrator will provide a copy of all Claim Forms received to Defendants. On receipt of a Claim Form from a Class Member, the Settlement Administrator will pay the Class Member the amount it is entitled to receive from the Net Settlement Amount as defined in Section VIII.D.1, less offsets and/or levies, if any, pursuant to Treasury Debt Collection Authorities. The Settlement Administrator shall also be responsible for calculating and paying to each Class Member that submits a Claim Form additional funds that may be reallocated as provided in Section VIII.D.3 above or may be available in the Reserve Account as provided in Section VIII.C.5 above. The Settlement Administrator shall provide to the Court and Parties periodic reports and a final accounting of the distribution of the Net Settlement Amount, the Reserve Account, and costs incurred by Class Counsel and the Settlement Administrator.

**E. Leadership Conflict within a Class Member**

Neither the Class, Class Counsel, the Settlement Administrator, the Defendants nor the Class Monitor shall be liable to any person or entity for any distribution of funds made pursuant to this FSA as approved by the Court. In the event Class Counsel or the Settlement Administrator becomes aware that more than one individual or entity claims the right to act on behalf of a Class Member or to receive funds on behalf of that Class Member, then Class Counsel shall file an appropriate action in the nature of an interpleader in the Court to resolve such conflict. The Settlement Administrator shall deposit such Class Member's share of the Net Settlement Amount into the registry of the Court pursuant to Rule 22, Federal Rules of Civil Procedure, provided that in filing any such action Class Counsel shall serve all persons and entities whom Class Counsel or the Settlement Administrator are aware claim an interest in such

Class Member's share. Neither Defendants, the Settlement Administrator nor Class Counsel shall have any affirmative responsibility to make any inquiry with any Class Member concerning the possibility of such conflicts.

**F. Class Monitor**

Class Counsel shall, with the approval of the Court, appoint an independent certified public accountant as a Class Monitor. The Class Monitor shall report to Class Counsel and Defendants, and shall be charged with the duty to independently review and confirm or correct the work of the Settlement Administrator, including to confirm or correct the accuracy of the Settlement Administrator's individualized Class-Member share calculations before any payments are made to Class Members. The Class Monitor shall also verify that the Claim Form as defined in Section VIII.D.3 submitted by each Class Member was properly filled out and executed, and shall verify that each Class Member that files a Claim Form is paid its Share as defined in Section VIII.D.1 and VIII.C.5. The Class Monitor shall have access to all pertinent records of the Settlement Administrator necessary to perform Class Monitor's functions. All costs for the Class Monitor shall be paid from the Reserve Account.

**IX. ATTORNEYS' FEES AND COSTS**

**A. Allowable Fees and Costs**

Subject to the approval of the Court, Class Counsel shall file an application for attorneys' fees of not more than 8.5 percent of the amount(s) paid by the Judgment Fund, and necessary costs incurred, to reflect their reasonable contingent fees in achieving this FSA and for services anticipated to be rendered through the management and distribution of the FSA, exclusive of services agreed to be performed without additional compensation by PSA I, PSA II and PSA III. Defendants agree that an 8.5 percent fee is fair and reasonable and support Class Counsel's fee

application. Allowable costs shall include, but not be limited to: (1) those items identified in Section 10.a. of PSA I; in Section VII.A. of PSA II; in Section VIII.A. of PSA III; and in this Section; and (2) applicable New Mexico state gross receipts tax on attorneys' fees. Attorneys' fees and costs, as approved by the Court, shall be paid from the Settlement Amount. Unless the United States Department of the Treasury determines otherwise, these attorneys' fees and costs may be subject to offset and/or levy pursuant to the requirements of Treasury Debt Collection Authorities should the debt of a Class Member to the United States exceed that Class Member's share of the Net Settlement Amount. Such offset and/or levy shall be limited to a Class Member's share of these attorneys' fees and costs based on that Class Member's Distribution Percentage.

**B. Application and Notice**

Class Counsel's application must be filed on or before distribution of the Class Notice to the Class. The Notice shall include the percentage amount of the agreed-upon fees to be paid, and the amount of the requested reimbursable costs to be paid as of the date of the filing of the application. Class Counsel's application; objections to the application by Class Members, if any; the Government's response to the fee application, if any; and Class Counsel's reply, if any, shall be considered at the time set by the Court for the Fairness Hearing on this FSA.

**C. Proceedings Regarding Attorneys' Fees and Costs.**

Except as provided in this Section IX, the substance of Class Counsel's application for attorneys' fees and costs is not part of this FSA, and shall be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of this FSA. Any proceedings related to Class Counsel's application for attorneys' fees and costs shall not terminate or cancel this FSA, or otherwise affect the finality of the Court's Final Approval. In

the event that Class Counsel or any timely objector appeal the Court's decision on attorneys' fees and costs, the amount of fees and costs approved by the Court and not in dispute shall be distributed to Class Counsel within ten (10) working days after the date on which Defendants make the first payment of the Settlement Amount to the Designated Account. The portion of fees requested by Class Counsel that are not approved by the Court and that are subject to an appeal by Class Counsel, or the portion of fees requested and approved by the Court which are subject to an appeal by a timely and qualified objector, shall, within ten (10) working days after the date on which Defendants make the first payment of the Settlement Amount to the Designated Account following the Final Approval, be placed in a segregated account in the Designated Bank using the same collateral security or investment arrangements as apply to the Designated Account until such appeal is resolved, and such funds shall then be distributed in accordance with the decision of the Court. Any such appeal shall not delay the distribution of the undisputed Net Settlement Amount to the Class Members. In the event that any appeal challenging fees also challenges the overall validity of the FSA, the provisions in Section VI shall apply.

**D. Timing of Payment of Attorneys' Fees and Costs**

Subject to Section IX.A, the amounts awarded for costs and attorneys' fees shall be paid from the Designated Account within fourteen (14) days of when the Judgment Fund payment(s) required to cover those costs and fees are paid to the Designated Account. The Court shall reserve from the approved attorneys' fee award no more than ten percent (10%) of the total fee award to assure that Class Counsel shall responsibly oversee the administration of the Net Settlement Amount. Upon completion of their duties and application by Class Counsel, the

Court shall by Order declare that Class Counsel's duties have ended and pay to Class Counsel any amount of the total attorneys' fee award which has been reserved.

**E. Stipulations as to Attorneys' Fees and Costs**

The award of attorneys' fees and costs shall be in lieu of any request, application, or award of attorneys' fees or costs against the Defendants under the Equal Access to Justice Act, 28 U.S.C. § 2412, or any other authority. The award of attorneys' fees shall be for services of Class Counsel rendered to date with respect to all of the Settled Claims, and for services to be rendered in connection with the distribution of the Net Settlement Amount. All rights to any alternative bases for recovering fees and costs are hereby waived. Nothing in this FSA is intended to preclude or to constitute a waiver of rights by Class Counsel for attorneys' fees or costs for services performed or costs incurred on any of the Reserved Claims. Nothing in this FSA shall be construed to, or is intended to, compensate or reimburse, or to bar compensation, reimbursement or application for, attorneys' fees and costs by Class Counsel for services they perform in any other case or proceeding.

**X. RIGHT TO CHALLENGE BREACHES OF THIS FSA**

**A. Written Notice on the Other Party**

1. Before seeking adjudication of any allegation or complaint that Defendants have failed to comply with any provision of this FSA, Class Counsel shall serve a written notice upon the Director of the Federal Programs Branch, Civil Division, United States Department of Justice, and the Solicitor of the Department of the Interior. Such notice shall specify which term(s) of this FSA allegedly has (have) been violated, shall describe all the facts and circumstances then known supporting the claim that Defendants have violated the FSA, and

shall state that Plaintiffs intend to seek an Order from the District Court to enforce compliance with this FSA.

2. If any Class Member or if Defendants, through counsel, allege that Class Counsel, the Settlement Administrator, and/or the Class Monitor has failed to comply with any provision of this FSA, such Class Member or counsel for Defendants shall serve a written notice upon Class Counsel. Such notice shall specify which term(s) of this FSA allegedly has (have) been violated, shall describe all the facts and circumstances then known to the Class Member or Defendants supporting the claim that Class Counsel, the Settlement Administrator, and/or the Class Monitor has (have) violated this FSA, and shall state that the Class Member or Defendants intend to seek an Order from the District Court to enforce compliance with this FSA.

**B. Sixty-Day Meet and Confer Period**

Class Counsel and Defendants shall have a period of sixty days after receipt of the notice described in Section X.A, above, to take appropriate action to resolve any claims of noncompliance. If such claims are not resolved after consultation within that sixty-day period, or if, prior to the expiration of such sixty-day period, Class Counsel or Defendants notify Class Counsel, Defendants, and/or Class Members that no further action will be taken, then Class Counsel, the Class Member, and/or Defendants may apply to the District Court for an Order compelling compliance with this FSA.

**C. Not Initially Enforceable Through Contempt**

The Parties hereby waive and disclaim any initial right to seek enforcement of this FSA through contempt sanctions. However, if after a Party seeks an Order compelling compliance with this FSA, the Court issues such Order, any future violation of any such Order may give rise to contempt sanctions as in any other case, as may otherwise be found warranted by the Court.

**XI. CONCLUSION OF CLASS COUNSEL'S DUTIES AND OF THIS CLASS ACTION**

A. Class Counsel's duties and this Class Action shall terminate once all settlement funds have been distributed and a final accounting has been furnished to and approved by the Court.

B. No additional fees beyond those awarded under this FSA shall be paid to Class Counsel for post-settlement services. Class Counsel may recover from the Reserve Account their additional out-of-pocket costs incurred in excess of those costs reimbursed pursuant to Section VIII.C.3 of this FSA, including such other experts as may be necessary to implement this FSA, all upon proper application to and approval by the Court.

**XII. JURISDICTION OF THE COURT TO ENFORCE THIS FSA**

The Parties hereby stipulate and agree to entry of a Final Judgment dismissing all of Plaintiffs' claims in this action with prejudice, except that the Court shall retain limited jurisdiction for the sole purpose of enforcing compliance with the terms and conditions of this FSA. The parties agree that any Order of the Court granting judicial approval of this FSA does not render the terms and conditions of this FSA subject to the contempt powers of the Court except as set forth in Section X.C. However, this provision shall not be construed to limit the power of the Court to enforce the terms of this FSA through a separate Order that may be issued by the Court after the conditions set forth in Sections X.A and X.B have been satisfied. Applications for Orders seeking to enforce this FSA may be brought by Class Counsel, Defendants' counsel or by any Class Member.

**XIII. INTERPRETATION**

Nothing contained in this FSA shall be deemed to be an approval or adoption by any Party of any Party's rationale or justification for entering into this FSA. This FSA shall be

deemed to have been drafted jointly by the Parties, and no alleged ambiguity shall be construed against any Party as the drafter.

**XIV. PARTIES BOUND BY THIS FSA**

This FSA binds each and every Defendant as defined in Section II.A.2, above. This FSA also binds the Class, including each of the Named Plaintiffs and each and every Class Member. This FSA shall be binding upon and inure to the benefit of the Parties and their respective predecessors, successors, agents, and assigns.

**XV. INTEGRATION**

This FSA is the integrated understanding of the Parties and replaces and supersedes any prior agreement, understanding, or contract between them regarding settlement of this dispute, except that PSA I, PSA II, and PSA III shall remain in full force and effect.

The terms of this FSA shall constitute the entire settlement agreement between the Parties regarding both the final disposition of the claims and the Parties' respective rights and obligations under the Agreement. Any prior oral or written statement, representation, agreement, or understanding that is not expressly contained herein, shall have no force or effect whatsoever.

**XVI. COOPERATION**

The Parties agree to exchange information and to prepare and execute such instruments as may reasonably be necessary to effectuate this FSA.

**XVII. MODIFICATION**

This FSA may be modified only with the written approval of Class Counsel (acting on behalf of the Class and the Named Class Representatives), and Defendants and with the approval of the Court, upon such notice to the Class, if any, as the Court may require.

**XVIII. COUNTERPARTS**

This FSA may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same FSA. A facsimile or other duplicate of a signature shall constitute an acceptable, binding signature for purposes of this FSA.

**XIX. PROTECTIVE ORDER**

The Parties, their retained experts, their attorneys and persons regularly in the employ of such attorneys who have a need for the information in the performance of their duties will continue to be bound, and the Settlement Administrator and Class Monitor will agree to be bound, by the terms of the Protective Order entered by the Court on April 9, 2013. The Parties agree that the Protective Order will continue to govern the use of any materials, including documents and information that have been or may hereafter be provided to Class Counsel by Defendants for purposes related to this Settlement Agreement. Class Counsel will be responsible for advising their experts, the Settlement Administrator and Class Monitor, and any other individuals acting for, on behalf of, or at the request or direction of Class Counsel, of the provisions of the Protective Order and will require that each such individual sign the Acknowledgment of Protective Order, attached as Exhibit A to the Order of April 9, 2013, and return the Acknowledgment to Defendants.

**XX. TAX LAWS**

Nothing in this FSA shall be construed as amending or altering the application, if any, of any tax law to any entity concerning any funds, including any funds paid or distributed pursuant to this FSA.

**XXI. OTHER FEDERAL CLAIMS**

Nothing in this FSA shall be construed to alter or impair the right of any federal agency to pursue any claim not released in this FSA against any entity under any applicable law.

Nothing in this FSA shall be construed to alter or impair the right of any Class Member to pursue any claim against the United States or any federal agency or official not released in the FSA under any applicable law.

**XXII. NOTICES**

Notices required under this FSA shall be sent to:

**A. Counsel for Plaintiffs**

Class Counsel:  
Michael P. Gross  
M.P.GROSS LAW FIRM, P.C.  
460 St. Michael's Drive, Suite 401  
Santa Fe, New Mexico 87505-7602  
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Co-Class Counsel for the Direct CSC Claim:  
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**B. Counsel for Defendants:**

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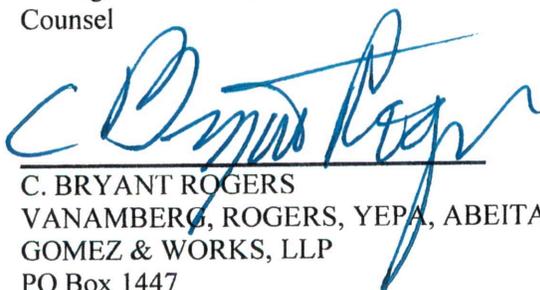
James D. Todd, Jr.  
UNITED STATES DEPARTMENT OF JUSTICE  
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By their signatures below the Parties, by and through counsel, indicate their consent to the terms and conditions set forth above.

Respectfully Submitted,



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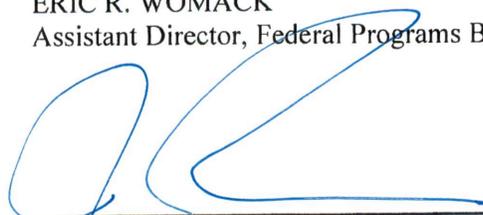


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