

# **COMPACT OF SELF-GOVERNANCE**

## **BETWEEN THE DUCKWATER SHOSHONE TRIBE AND THE UNITED STATES OF AMERICA**

### **ARTICLE I AUTHORITY AND PURPOSE**

**SECTION 1 - AUTHORITY.** This agreement, which became effective March 1, 1992, and which is now amended and restated, denoted a Compact of Self-Governance (hereinafter referred to as the "Compact"), is entered into by the Secretary of the Interior (hereinafter referred to as the "Secretary"), for and on behalf of the United States of America pursuant to the authority granted by Title II of P.L. 103-413, and by the Duckwater Shoshone Tribal Council by the authority of the Constitution of the Duckwater Shoshone Tribe of the Duckwater Shoshone Indian Reservation (hereinafter referred to as the "Tribe"). This Compact is and shall be enforceable at law and in equity to the same extent and pursuant to the same remedies as provided for in Public Law 93-638 contracts in Title III, Section 303(d) of P.L. 100-472. Actions and proceedings to enforce the Duckwater Shoshone Tribe's rights and the government's obligations under this Agreement shall be subject to the Equal Access to Justice Act, Public Law 96-481 as amended, to the same extent as are actions and proceedings involving P.L. 93-638 contracts.

**SECTION 2 - PURPOSE.** This Compact shall be liberally construed to achieve these purposes:

(a) This Compact is to carry out Self-Governance as authorized by Title II, P.L. 103-413, III, P.L. 100-472, which built upon the Self-Governance Demonstration Project and transfers control to tribal governments, upon tribal request, over funding and decision making of Federal programs, activities, functions, and services as an effective way to implement the federal policy of government- to-government relations with Indian Tribes and to promote the perpetuation of the Duckwater Shoshone Tribe.

(b) This Compact is to enable the Duckwater Shoshone Tribe to redesign programs, activities, functions, and services of the Bureau of Indian Affairs (hereinafter referred to as "BIA"); to reallocate funds for such programs, activities, functions, or services according to its Tribal priorities; to provide such programs, activities, functions, and services, as determined by its Tribal priorities; to enhance the effectiveness and long term financial stability of its Tribal government; to plan, conduct, consolidate, and administer programs, activities, functions and services, or portions thereof, administered by the Department of the Interior, other than through the BIA as provided in the annual funding agreement applicable to such non-BIA programs, activities, functions and services and to reduce the Federal-Indian service bureaucracy.

(c) This Compact is to enable the United States to maintain and improve its unique and continuing relationship with and responsibility to the Duckwater Shoshone Tribe through Self-Governance as proposed by the Duckwater Shoshone Tribe which will allow the Tribe to: take its rightful place in the family of governments in the federal constitutional system; remove federal obstacles to effective self-governance; reorganize tribal government programs and services; and provide a documented example for the development of future Federal-Indian Policy. This policy of Tribal Self-Governance shall permit an orderly transition from federal domination of programs and services to allow Duckwater Shoshone Tribe meaningful authority to plan, conduct, and administer those programs and services to meet the needs of their people. To implement Self-

Governance, the Department of the Interior is also expected to reorganize to provide the same level of service to other Tribal governments and implement new policies and methods to provide improved service delivery to address Tribal needs.

In fulfilling its responsibilities under the Compact, the Secretary hereby pledges that the Department will conduct all relations with the Duckwater Shoshone Tribe on a government-to-government basis.

**SECTION 3 - TRIBAL LAW AND FORUMS.** The duly enacted laws of the Duckwater Shoshone Tribe shall be applied in the execution of this Compact and the powers and decisions of the Duckwater Shoshone Tribal Court shall be respected, to the extent that federal law, construed in accordance with the applicable canons of construction and Title II of P.L. 103-413 is not inconsistent.

**SECTION 4 - COMPACT MODIFICATIONS ON ACCOUNT OF EXTRAORDINARY OR UNFORESEEN EVENTS.** The parties agree that this Compact is intended to obligate the Tribe to carry out all usual and ordinary functions respecting the programs it is undertaking to relieve the BIA of responsibility for pursuant to this Compact. The parties further agree that in the event there occurs major unforeseen or extraordinary events as jointly identified by the Tribe and Secretary with cost consequences beyond the control of the Tribe, that the funding amount for the associated Annual Funding Agreement will be subject to renegotiation. In particular, the parties intend that the Tribe shall have the right to participate in or utilize Interior funds, supplemental appropriations, reprogramming or reallocations and any other "emergency" funds of any kind, nature or category whatsoever, all to the same extent that the Tribe could have had access to such additional funds if it were not a Self-Governance Tribe.

## **ARTICLE II TERMS, PROVISIONS AND CONDITIONS**

**SECTION 1 - TERMS.** The term of this Compact began upon its effective date under Section 2 of this Article and shall extend thereafter throughout the time period authorized by Title II of P.L. 103-413, and any subsequent amendments thereto.

**SECTION 2 - EFFECTIVE DATE.** This Compact shall be effective when signed by the Secretary or an authorized representative and the Duckwater Shoshone Tribe. The Annual Funding Agreement required by P.L. 103-413 and this Compact shall be signed by the Duckwater Shoshone Tribe and the Secretary or an authorized representative and be forthwith submitted by the Secretary or an authorized representative and the Duckwater Shoshone Tribe to the Committee on Indian Affairs of the United States Senate, the Committee on Natural Resources of the United States House of Representatives and to the Tribes served by the Eastern Nevada Agency. The funding agreement shall be effective ninety days after such submission, unless otherwise provided by law. Successor Annual Agreements shall be likewise submitted.

**SECTION 3 - FUNDING AMOUNT.** Subject only to the appropriation of funds by the Congress of the United States and to otherwise lawful adjustments pursuant to Section 403(g) of P.L. 103-413, the Secretary or an authorized representative shall provide to the Duckwater Shoshone Tribe the total amount specified as the Tribe's share in the Annual Agreement incorporated by reference in Article VI, Section 2.

**SECTION 4 - PAYMENT.** Payments shall be made as expeditiously as possible in compliance

with applicable Treasury Department regulations and shall include financial arrangements to cover funding during periods under continuing resolutions to the extent permitted by such resolutions. Payments shall cover all Program and Contract Support funding (Indirect Cost) as specified in the Annual Funding Agreement. For each year covered by the Compact, the Secretary or an authorized representative will pay to the Duckwater Shoshone Tribe the funds specified for that year under the Annual Agreement by paying to the Duckwater Shoshone Tribe the total amount provided for in the Annual Agreement for that year. Payment shall be made by using an instrument such as Letter of Credit, or other method authorized by law, or combination thereof, as may be specified in the Annual Agreement. The annual payment shall be made on the first day of the first quarter for which funds are due under the Annual Funding Agreement, except that payments due on the first day of the first quarter of the federal fiscal year shall be made on or before ten calendar days of the date on which the Office of Management and Budget apportions the appropriations for that fiscal year for the programs, activities, functions and services subject to the Compact and Annual Funding Agreement.

**SECTION 5 - REPORTS TO CONGRESS.** In order to implement Section 405 of Title III of P.L. 103-413, on each January 1 throughout the period of the Compact, the United States shall make written report to the Congress, which shall separately include the views of the Duckwater Shoshone Tribe, concerning the matters encompassed in

Section 405(b) - (g). Funds to complete the Tribal portions of these reports may be covered by shortfall funding as such funds become available.

**SECTION 6 - AUDITS.**

(a) The Duckwater Shoshone Tribe shall provide to the Designated Official an annual single organization-wide audit prescribed by the Single Audit Act of 1984, 31 U.S.C. 7501, et seq., and shall adhere to generally accepted accounting principles and Circular A-128 of the Office of Management and Budget as follows:

(I) The costs of this Compact consist of the direct and support costs, including indirect costs, actually incurred in the performance of this Compact, determined in accordance with the cost principles set forth in the OMB Circular A-87 in effect as of the effective date of this Compact, except as modified by Section 106(k) of P.L. 93-638, as amended, or by any exemption to applicable cost principles that may be subsequently granted by OMB; provided, however, that if the Office of Management and Budget revises any provisions of such Circular;

- 1.
2. Other revisions shall not apply to the Compact unless agreed to by the Tribe and until the Secretary determines applicability as provided below.
3. The Secretary shall immediately review the revisions in consultation with the Tribe to determine if the revisions are detrimental to Self-Governance or inconsistent with the intent of the Act.
4. If the revision is determined by the Secretary to be neither detrimental nor inconsistent with the intent of the Act, the Secretary and the Tribe may amend this Compact to include those revisions.

(II) Allowable costs may be incurred without secretarial approval, and shall include all costs that are reasonably necessary for proper administration and delivery of the Compact programs,

services, or functions and that do not violate any relevant statutes.

(b) No other audit or accounting standards, except as specified in Article IV, Section 2, shall be required by the Secretary or an authorized representative of the Duckwater Shoshone Tribe. Any claim by the Federal government against the Duckwater Shoshone Tribe based on any audit under this section shall be subject to the provisions of Section 106(f) of P.L. 93-638, as amended.

**SECTION 7 - RECORDS.** The following provisions will supplement tribal law on document disclosure and will govern record keeping associated with this Compact:

(a) Except for previously provided copies of Duckwater Shoshone Tribal records which the Secretary or an authorized representative demonstrates are clearly required to be maintained as part of the Department of the Interior's record keeping system, Duckwater Shoshone Tribal records shall not be deemed federal records, and shall not be considered federal records for the purposes of Chapter 5 of Title 5, United States Code.

(b) Any of the Duckwater Shoshone Tribal records that are currently held in custody by the Bureau of Indian Affairs, or any Duckwater Shoshone Tribal records that may come into the custody of the Bureau of Indian Affairs shall be treated as confidential records and will not be released without the written consent of the Duckwater Shoshone Tribal Council.

(c) The Duckwater Shoshone Tribe shall maintain a record keeping system, and provide reasonable access to records to the Secretary or an authorized representative, for audit purposes which permits the Department of the Interior to meet its minimum legal record keeping program requirements under the Federal Records Act, 44 U.S.C. s 3102, et seq., and which will allow for retrocession of this Compact in whole or in part pursuant to Section 13 of this Article.

(d) The Duckwater Shoshone Tribe shall maintain in its record keeping system all documents necessary for the annual audit requirement at Section 6 of this Article, and shall provide reasonable access to records to the Secretary or an authorized representative for audit purposes for a period of three years after the Audit is submitted and accepted.

**SECTION 8 - PROPERTY.**

(a) At the request of the Duckwater Shoshone Tribe, the Secretary or an authorized representative shall make available to the Duckwater Shoshone Tribe reasonably divisible real property, facilities, equipment, and personal property that the Department had previously utilized to provide the programs, activities, functions and services now consolidated by the Duckwater Shoshone Tribe pursuant to Article III of this Compact. A mutually agreed upon list specifying the property, facilities, and equipment to be utilized shall also be prepared and periodically revised so that such property can be properly recorded in the Bureau of Indian Affairs Property Inventory.

(b) The Secretary hereby delegates to the Duckwater Shoshone Tribe the authority to acquire such surplus or "excess" property as may be appropriate in the judgment of the Duckwater Shoshone Tribe to support the programs, activities, functions, and services designated under Article III of this Compact. The Secretary shall designate an authorized representative in his office who shall make best efforts to assist the Tribe in obtaining such confiscated, surplus, or excess property as may become available to tribes or local governments. A Screener Identification Card (General Services Administration Form 2946) shall be issued to the Tribe and renewed as necessary. The

designated official shall upon request assist the Duckwater Shoshone Tribe in securing the use of this Card and in gaining the requested property.

(c) The Duckwater Shoshone Tribe shall determine what capital equipment, leases, rentals, property or service, it shall require to perform its obligations under Title III of this Compact, and shall acquire and maintain records of such capital equipment, property rentals, leases, property or services through Tribal procurement procedures.

(d) Unless otherwise requested by the Tribe, title of property and equipment furnished by the federal government for use in the performance of the Compact and funding agreement or purchased in whole or in part with funds under any funding agreement that is utilized by the Tribe in performance of the Compact shall vest in the Duckwater Shoshone Tribe and shall remain eligible for replacement on the same basis as if title to such property were vested in the United States.

(e) Property and equipment described in the preceding paragraph that was fully obtained with BIA funding and which has a value in excess of \$5,000 at the time of retrocession, rescission or termination of a program or programs under this Compact, and is not donated and is not used by the Tribe in a P.L. 93-638 contract, shall be subject to reversion with title reverting to the Secretary, at the option of the Secretary.

**SECTION 9 - SAVINGS.** If it becomes apparent that funds allocated by the Duckwater Shoshone Tribe pursuant to its budget process, to any activity as defined in the Annual Agreement are in excess of that needed for such activity, the Tribe may reallocate that excess to any other activity under this Compact.

(a) Any funds not expended during the term of any of the fiscal years of this Compact may be carried over to the succeeding fiscal year, but such carry-over shall not diminish the amount of funds that the Duckwater Shoshone Tribe is authorized to receive in that succeeding fiscal year or in any subsequent fiscal year.

(b) All provisions of Section 106 of P.L. 93-638 as amended by Section 205 of the P.L. 100-472 shall likewise apply to funds allocated to the Duckwater Shoshone Tribe under this Compact.

**SECTION 10 - USE OF MOTOR VEHICLES.** The Secretary hereby authorizes the Duckwater Shoshone Tribe to obtain Interagency Motor Pool vehicles and related services for performance of any activities under this Compact.

**SECTION 11 - REGULATORY AUTHORITY.** The Secretary and the Duckwater Shoshone Tribe agree to utilize the following procedures governing the establishment and application of regulations under this compact:

(a) Program Guidelines. The Tribe is not required to abide by federal program guidelines, manuals, policy directives, etc., except for those to which it specifically agrees. The Tribe may adopt its own guidelines to be used in place of the existing federal guidelines.

(b) Federal Regulations. Subject to Section 403(I)(2) of Title II, P.L. 103-413, the Duckwater Shoshone Tribe agrees to abide by all federal regulations as published in the Federal Register.

(c) Waiver of Federal Regulations. In order to put to good use the Secretary's waiver authority as authorized by Section 403(I)(2) of Title II, P.L. 103-413, the Secretary will seek to expedite the waiver of any federal regulation which the Secretary or the Tribe determine presents an obstacle to the carrying out of the Compact, its purposes, and the programs, activities, functions, and services pursuant to the Compact and Annual Funding Agreement, under the following procedures:

(I) prior to the effective date of the Compact, the Secretary or an authorized representative and the Tribe will seek to identify any federal regulations that may require waiver in order effectively to carry out the Compact;

(II) if at any time the Tribe determines that one or more specific federal regulations requires waiver to effectively carry out the Compact or Annual Funding Agreement, the Tribe may submit a written request for waiver to the Designated Official, identifying the regulation(s) sought to be waived and the basis for the request;

(III) not later than 60 days after receipt by the Secretary of a written request by the Duckwater Shoshone Tribe to waive application of a federal regulation(s) for the Compact or a Compact program, service, function, or activity, the Secretary shall either approve or deny the requested waiver in writing to the Tribe. A denial of a request may be made only upon a specific finding by the Secretary that identified language in the regulation may not be waived because such waiver is prohibited by Federal law.

## **SECTION 12 - DISPUTES.**

(a) Section 110 of P.L. 93-638, as amended, shall apply to disputes under this Compact and any Annual Funding Agreement.

(b) In addition or as an alternative to remedies and procedures prescribed by Section 110 of P.L. 93-638, as amended, the parties jointly may:

(I) Submit disputes under this Compact to third- party mediation, which for purposes of this Section means that the Secretary or his authorized representative and the Tribe nominate third parties who together choose a third party mediator ("third party" means a person not employed by or significantly involved with either the Tribe or the Secretary or the Department of the Interior); or

(II) Submit the dispute to the Tribe's Court; or,

(III) Submit the dispute to mediation processes provided for under the Tribe's law; or,

(IV) The Secretary shall accept decisions reached by mediation processes or the Tribal Court, but the Secretary shall not be bound by any which might be in conflict with the interests of the Indians or the United States.

## **SECTION 13 - RETROCESSION.**

(a) The retrocession provisions of Section 105(e) of P.L. 93638, as amended, and any regulations thereunder, are herein adopted, except that the effective date of such retrocession of this

Compact, in whole or in part, shall be 45 calendar days from the date of request by the Tribe unless the Tribe requests an effective date that is more than 45 calendar days, in which case the Tribe's requested date shall be the effective date of such retrocession, if the Tribe and the United States mutually agree to an effective date.

(b) The parties further agree that the funds which the Duckwater Shoshone Tribe has remaining unexpended shall be made available to the United States to provide services to the Duckwater Shoshone Tribe for those programs retroceded to the government pursuant to this clause.

(c) Nothing in this Compact shall be construed as preventing the Duckwater Shoshone Tribe from submitting an application under P.L. 93-638 for grants or contracts to operate any of the programs governed by this Compact or otherwise, even if this Compact is retroceded to the United States under this provision.

(d) At the Duckwater Shoshone Tribe's option, it may elect to retrocede only a portion of the program and service responsibilities it has undertaken to carry out under this Compact and the Annual Funding Agreement. In that instance, the amount of funds and the property remaining in the Duckwater Shoshone Tribe's hands for purposes of carrying out that program or function shall be returned to the government under this retrocession procedure and the procedure in Section 8 of this Article for property.

**SECTION 14 - TRIBAL ADMINISTRATIVE PROCEDURES.** Duckwater Shoshone Tribal Law and Tribal Forums shall provide administrative due process rights pursuant to the Indian Civil Rights Act of 1968, 25 U.S.C. 1301, et seq., that persons, or groups of persons, may have with respect to services, activities, programs, and functions that are provided by the Duckwater Shoshone Tribe pursuant to this Compact.

**SECTION 15 - SUCCESSOR ANNUAL AGREEMENT.**

(a) Pursuant to Section 403(b) and (g) of P.L. 103-413 the Secretary shall continue to promote Self-Governance in preparing budgets for subsequent years.

(b) The Secretary shall use the Duckwater Shoshone Tribe's budget request in preparing the Secretary's budget to the Congress.

(c) Future funding of successor Annual Agreements shall be reduced only pursuant to the provisions of Section 106(b) of P.L. 93-638, as amended.

(d) The Tribe and the United States shall annually meet and reach negotiated agreements on the Annual Funding Agreement. The Tribe's Compact shall continue from year-to-year and negotiations regarding the Compact shall be limited to revisions. Unless changed because of otherwise lawful Congressional action, funding levels shall not be less than provided for in the prior year's Annual Funding Agreement.

(e) Negotiations for a successor Annual Agreement, as provided for in Article VI, Section 2, shall begin no later than 120 days in advance of the conclusion of the preceding Annual Agreement.

(f) The Secretary or an authorized representative agrees to prepare and supply relevant information and promptly to comply with the Duckwater Shoshone Tribe's request for

information reasonably needed to determine the funds that may be available for a successor Annual Agreement as provided for in Article VI, Section 2 of this Compact. Such information shall be provided to the Tribe within 30 days of its request. For each day that the government fails to provide this information to the Tribe, the terms of the then existing Annual Agreement and this Compact shall, at the election of the Duckwater Shoshone Tribe, be deemed automatically extended by each such additional day, and the government shall be obliged to provide proportionate greater funding to the Tribe on a pro rata daily basis in accordance with such extension and this Compact. This Compact extension option shall not be construed as in derogation of any other enforcement options of the Duckwater Shoshone Tribe under the Compact or other federal law.

(g) If the parties are unable to conclude negotiation of a successor Annual Funding Agreement, the terms of this Compact and the existing Annual Funding Agreement shall, at the option of the Duckwater Shoshone Tribe, continue on in 30 to 90 day increments until a successor Annual Funding Agreement is agreed to. Any increases in funding to which the Tribe is entitled by statute, or increases which the Tribe subsequently negotiates, shall be included, at the Tribe's request, in the funding increments or in the successor Annual Funding Agreement.

#### **SECTION 16 - CONTRACTS.**

(a) Every contract entered into by the Duckwater Shoshone Tribe in connection with a program, activity, function, or service encompassed by this Compact shall be developed in compliance with the Tribe's procurement procedures, applicable federal laws, and Single Audit Act requirements. Each contract shall be in writing, identify the interested parties, their authorities and purposes, state the work to be performed, the basis for any claim, the payments to be made, and the term of the contract which shall be fixed.

(b) If any power or act of the Duckwater Shoshone Tribe, including amendments to the Tribe's Constitution relevant to this Compact, is subject to the approval of the United States, under the Tribes' Constitution and Bylaws, and a written request for such approval is neither granted nor denied within forty-five days following the making of such request, such approval shall be deemed to have been granted.

**SECTION 17 - MATCHING FUNDS.** All funds provided under this Compact and any annual funding agreement entered into pursuant to Title II of P.L. 103-413, and all funds provided under contracts or grants made pursuant to P.L. 93-638, as amended, shall be treated as non-Federal funds for purposes of meeting matching requirements under any federal law.

### **ARTICLE III OBLIGATIONS OF THE TRIBE**

#### **SECTION 1 - CONSOLIDATION.**

(a) With the exception of the specific responsibilities of the United States identified and retained in Article IV, Section 3, and the programs, activities, functions and services funded as provided in Section 403(b)(4) of P.L. 103-413, the Duckwater Shoshone Tribe alleviates the United States of the responsibility for the programs, activities, functions and services as provided for in the Annual Agreement, as provided for in Article VI, Section 2 of this Compact.

(b) To the extent a program, activity, function or service included within such Annual Agreement was included within a contract or grant entered into pursuant to P.L. 93- 638, as amended, or is subject to any obligation arising from such contract or grant, that contract or grant is terminated and the parties' obligations shall be governed by this Compact.

## **SECTION 2 - AMOUNT OF FUNDS.**

(a) The total amount of funds covered by the consolidated and redesign provided for in Section 1 of this Article that the Secretary or an authorized representative shall make available to the Duckwater Shoshone Tribe shall be determined in an Annual Agreement between Secretary and the Duckwater Shoshone Tribe, which shall be incorporated in its entirety to this Compact and attached hereto as provided for in Article VI, Section 2.

(b) This amount shall cover all program, administrative, indirect and contract support funds.

(c) The Secretary pledges to use utmost good faith in making available to the Duckwater Shoshone Tribe the funds contemplated by this Compact and in negotiating the amount of such funds.

**SECTION 3 - TRIBAL PROGRAMS.** The Duckwater Shoshone Tribe agrees to relieve the United States of the responsibility to provide such programs, activities, functions and services that are identified in the Annual Agreement except for the responsibilities retained by the United States. The Duckwater Shoshone Tribe pledges to practice utmost good faith in upholding its responsibility to provide programs, activities, functions and services. The Duckwater Shoshone Tribe may revise the plans for delivery services, programs, activities and functions set out in the Annual Agreement at any time during the year.

**SECTION 4 - TRUST SERVICES FOR INDIVIDUAL INDIANS.** To the extent that the Annual Agreement endeavors to provide trust services to individual Indians that the Secretary is authorized to provide, the Duckwater Shoshone Tribe pledges to practice utmost good faith in upholding its responsibility to provide such services. Trust Services for individual Indians means only services that pertain to land or financial management connected to individually held allotments or judgments.

**SECTION 5 - REALLOCATION.** Reallocation of funds from one program, activity, function or service to another within a General Budget Category, or from one General Budget Category to another shall be governed only by Duckwater Shoshone Tribal law and procedure and shall not require Secretarial consent. In the event a reallocation involves 30% or more, on a cumulative annual basis, of funds for a physical resource trust fund management function performed by the Tribe, the Duckwater Shoshone Tribe shall provide notice to the Secretary's designated official, together with an explanation of how the Duckwater Shoshone Tribe's responsibilities will continue to be fulfilled.

**SECTION 6 - MERGING WITH OTHER PROGRAMS.** The Duckwater Shoshone Tribe may merge programs, functions, activities, or services provided under this Compact with other programs, functions, activities, or services provided by the Tribe with its own funds or funds from other sources so long as such actions are approved by the other funding source(s).

## **ARTICLE IV**

## **OBLIGATIONS OF THE UNITED STATES**

**SECTION 1 - TRUST RESPONSIBILITY.** The United States reaffirms its trust responsibility to Duckwater Shoshone Tribe of the Duckwater Shoshone Indian Reservation to protect and conserve the trust resources of the Duckwater Shoshone Tribe and of individual Indians of the Duckwater Shoshone Indian Reservation. Nothing in this Compact is intended to, nor should be interpreted, to terminate, waive, modify or reduce the Trust responsibility of the United States to the Duckwater Shoshone Tribe or individual Indians. The Secretary pledges to practice utmost good faith in upholding said Trust responsibility.

### **SECTION 2 - TRUST EVALUATION.**

(a) Pursuant to P.L. 103-413, Section 403(d), the Secretary shall monitor through an annual trust evaluation the trust management functions being performed by the Duckwater Shoshone Tribe pursuant to Article III and the Annual Agreement and may, at the Secretary's option, reassume a program, service, function, or activity, portions thereof, if there is a finding of imminent jeopardy to a physical trust asset, natural resource, or public health and safety.

In the absence of a definition of imminent jeopardy pursuant to negotiated rulemaking, "imminent jeopardy" shall mean significant devaluation and/or loss of physical trust asset or natural resource or the intended benefit from such asset resource, or significant danger to public health and safety caused by the Duckwater Shoshone Tribe, that will occur as a result of immediate action or inaction by the Tribe.

(b) For purpose of this section, a Trust Evaluation may include:

(I) A review of trust and resource transactions;

(II) On site inspections of those trust resources

(III) A review of tribal trust resource management practices;

(IV) Any other criteria, processes or appropriate practices as may be negotiated in the Annual Agreement.

(c) Information and analysis obtained in the performance of such evaluations shall be immediately provided to the Duckwater Shoshone Tribe's designated representative. The Duckwater Shoshone Tribe agrees to cooperate in Trust Evaluations.

(d) If the United States' Designated Official determines from such monitoring, or from any other source, and makes findings which indicate a risk of imminent jeopardy the United State's Designated Official shall immediately notify the Tribe of its specific concerns relative to the Tribe.

(e) Unless there is imminent jeopardy, the United States shall not take back the responsibility for management of that program, activity, function, or service, or portion thereof. However, to the extent resources are available, the United States shall provide sufficient and appropriate assistance to the Duckwater Shoshone Tribe to enable the protection, and conservation of Trust

assets, natural resources, and preservation of public health and safety.

(f) If there is imminent jeopardy that the Duckwater Shoshone Tribe is unable to alleviate, even with the assistance of the United States under subsection (e), the United States may, at the Secretary's option, upon no less than two (2) days advance written notice to the Duckwater Shoshone Tribe, take over the responsibility for the management of such endangered physical trust asset, natural resource, or project related to public health and safety, and may use a reasonable portion of the unobligated funds remaining available for such program for that purpose, notwithstanding any other provisions of this Compact.

(g) The evaluations required by this section shall not be burdensome and shall be conducted on a cost effective basis.

**SECTION 3 - PROGRAMS RETAINED.** Amended Wording. The United States hereby retains the programs, services, functions, duties, and responsibilities, obligations, and activities with respect to the Duckwater Shoshone Tribe that are not specifically assumed by the Duckwater Shoshone Tribe in this Compact or the Annual Agreement. The Secretary agrees that a Program Outcome Evaluation shall be performed by a Compact Evaluation Team annually as to each program, activity, function or service which is retained by the United States pursuant to this Section. Evaluations shall not be burdensome and shall be conducted on a cost effective basis. The findings and recommendations of the Evaluation Team shall be reported to the Duckwater Shoshone Tribe and the Secretary or an authorized representative. The Duckwater Shoshone Tribe will be given the opportunity to submit ideas to the Secretary for designing and budgeting corrective actions.

**SECTION 4 - FINANCIAL AND OTHER INFORMATION.**

(a) The Duckwater Shoshone Tribe shall be eligible for new programs, activities, services and functions on the same basis as other tribes and the Secretary or an authorized representative shall advise the Duckwater Shoshone Tribe of the funding available for such programs, To assist the Duckwater Shoshone Tribe in monitoring compliance with Section 403(b)(8)(A) of P.L. 103-413, the United States shall provide:

(I) monthly copies of Bureau of Indian Affairs' Status of Obligations reports of the Central Office concerning Phoenix and Sacramento (education) Areas' obligations;

(II) monthly Status of Obligations reports of the Area Office concerning programs, activities, functions, and services performed in the Phoenix and Sacramento (education) Areas which are comparable to those performed by the Tribe under this Compact; and,

(III) revisions in such program plans, guidelines or budgets as those are made.

(b) The Duckwater Shoshone Tribe and the United States shall jointly develop reporting formats for providing relevant and usable financial information. Those formats shall link to the format used for negotiating Compact Funding Agreements. Using those formats, the United States shall provide:

(I) quarterly financial reports from the Central Office that presents the status of Phoenix and

Sacramento (education) Area obligations in relation to budgets;

(II) quarterly financial reports from the Area Offices concerning programs, activities, functions, and services performed in the Phoenix and Sacramento (education) Areas and associated Agency offices; and

(III) information on new programs, appropriation levels on direct and flowthrough programs, budget and program plan revisions, and other data that is relevant to tribal decision making about its current and future Compact programs and funding.

(c) Responses providing other information which may be requested by the Duckwater Shoshone Tribe shall be made within ten (10) working days.

## **ARTICLE V OTHER PROVISIONS**

**SECTION 1 - DESIGNATED OFFICIALS.** On or before the effective date of this Compact, both the United States and the Duckwater Shoshone Tribe shall provide each other with a written designation of a senior official as its representative/liaison official for notices, proposed amendments to the Compact and other purposes for this Compact.

**SECTION 2 - INDIAN PREFERENCE IN EMPLOYMENT, CONTRACTING AND SUB-CONTRACTING.** The Duckwater Shoshone Tribal law shall govern the provisions of Indian Preference in Employment, contracting, and Subcontracting pursuant to this Compact. Section 104 of P.L. 93-638 as amended, shall apply to individuals who leave federal employment for tribal employment.

**SECTION 3 - INSURANCE.** The Duckwater Shoshone Tribe shall be fully covered by such liability insurance or equivalent coverage that the Secretary or an authorized representative provides or obtains pursuant to Section 102 (c) of P.L. 93-638 as amended. Additionally, the Duckwater Shoshone Tribe shall be fully covered by all liability coverage under the Federal Tort Claims Act that is made available to the Secretary or an authorized representative or to P.L. 93-638 contractors and their employees under federal law, as the same may be amended from time to time, and shall be responsible in the same manner as P.L. 93-638 contractors.

**SECTION 4 - COMPACT MODIFICATIONS OR AMENDMENTS.** To be effective, any modifications of this Compact shall be in the form of a written amendment to the Compact, and shall require the written consent of the Duckwater Shoshone Tribe and the United States.

**SECTION 5 - CONSTRUCTION.** In the implementation of this Compact, the Secretary, to the extent feasible, shall interpret Federal Laws and regulations in a manner that facilitates this Compact in accordance with Section 403(i) of P.L. 103-413.

**SECTION 6 - OFFICIALS NOT TO BENEFIT.** No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of any contract executed pursuant to this Compact, or to any benefit that may arise therefrom; but this Provision shall not be construed to extend to any contract under this Compact if made with a corporation for its general benefit.

**SECTION 7 - COVENANT AGAINST CONTINGENT FEES.** The parties warrant that no

person or selling agency has been employed or retained to solicit or secure any contract executed pursuant to this Compact upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to deny any contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

**SECTION 8 - PENALTIES.** The parties agree that the criminal penalties set forth in 25 U.S.C. 450 (d) apply to all activities conducted pursuant to this Compact.

**SECTION 9 - WAGE AND LABOR STANDARD.** The parties agree that the wage and labor provisions set forth in 25 U.S.C. 450 (e) apply to all laborers and mechanics employed by contractors or subcontractors in the construction, alteration, or repair, including painting or redecorating of buildings or other facilities in connection with this Compact.

**SECTION 10 - COMPACT TERMINATION.** Should the Tribe elect to convert all or some of the programs operated under the Compact, back to contract status under P.L. 93-638, the Tribe may do so without losing its status as a Mature Contractor. Such conversion would occur only at the end of the Compact term or another date mutually acceptable to the parties and will be implemented in a manner which avoids any interruption of services to individual tribal members.

**SECTION 11 - NON-BIA PROGRAMS.** Subject to the provisions of the regulations promulgated pursuant to Section 407 of P.L. 103-413, the administration of programs, activities, functions, and services, or portions thereof, under Section 403(b)(2) and (3), or 403(c), shall be subject to such terms as have been agreed to in this Compact and such funding and responsibilities as may be mutually agreed to in the applicable Annual Funding Agreement.

## **ARTICLE VI ATTACHMENTS**

**SECTION 1 - APPROVAL OF COMPACT.** The Resolution of the Duckwater Shoshone Tribal Council approving this Compact is attached hereto as Attachment #1.

**SECTION 2 - ANNUAL AGREEMENT.** The negotiated and duly approved Annual Agreement with respect to Duckwater Shoshone Tribe identifying those programs, services, functions, and activities, to be performed, the responsibilities of the Tribe and the responsibilities retained by the United States, the general budget category assigned, and the funds to be provided to the Tribe as the Tribe's share is hereby incorporated in its entirety in this Compact and attached hereto as Attachment #2. This Compact shall be in effect only during the term of any such Annual Agreement, or any extension of said term effected under the terms of this Compact or otherwise.

DATED THIS \_\_\_th DAY OF September, 1995.

Duckwater Shoshone Tribe

BY: \_\_\_\_\_ Keith Honaker, Tribal Chairman

United States of America - Department of Interior

BY: \_\_\_\_\_ Assistant Secretary - Indian Affairs

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