KNF Agreement No.	08-MU-11050500-007
SRF Agreement No.	08-MU-11051000-001
	4/16/2008

MEMORANDUM OF UNDERSTANDING
Between
THE KARUK TRIBE OF CALIFORNIA
And
USDA-FOREST SERVICE
SIX RIVERS AND KLAMATH NATIONAL FORESTS

This Memorandum of Understanding (MOU) is entered into by the Karuk Tribe, here after referred to as the Tribe, and the United States Department of Agriculture - Forest Service, Six Rivers and Klamath National Forests, here after referred to as the Forest Service.

I. PURPOSE:

The purpose of this MOU is to continue the governmental cooperation between the parties concerning wildland fire and wildland fire use management activities on the Six Rivers and Klamath National Forests. This cooperation provides for the protection of significant cultural resources important to the Tribe, Forest Service, and the public. This agreement also gives clear direction to the Tribe and Forest Service for purposes of "rates of pay" that are commensurate to the complexity of Incident Management Organizational Roles & Responsibilities for assigned Tribal resources as outlined in Attachment "A" of this MOU. It further provides for the Tribe to be contacted, allows for expedient consultation with the Tribe, and for Tribal concerns to be considered in the management of wildland fire while providing for safe, effective, and cost efficient wildland fire and wildland fire use management activities.

II. STATEMENT OF MUTUAL BENEFITS AND INTERESTS:

The Tribe and the Forest Service through an established Government-to-Government protocol agreement, the National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, American Indian Religious Freedom Act, Sacred Sites Executive Order 13007, Executive Order No. 13175 on Consultation and Coordination with Indian Tribal Governments and other statutes and regulations, share mutual interests related to the effects of wildland fire management on significant cultural resources and properties.

The Parties will work within a cooperative approach to incident management that provides safe and effective wildland fire management activities within the area of mutual interest identified in the Government-to-Government protocol agreement.

Protecting cultural resources while providing a fire management environment, which fosters focused attention to safety, incident objectives, and firefighting fundamentals, will be furthered when all parties work together to understand one another's priorities and responsibilities.

The demands of incident management require that firm planning and activity schedules be maintained and often preclude lengthy consideration of long term issues during the management of the incident. It is in the best interest of all parties to identify and address these types of concerns through the process established in the formal Government-to-Government protocol agreement.

In consideration of the above premises, the parties agree as follows:

III. TRIBE SHALL:

A. Identify annually by May 1, with a letter to the Forest Supervisors from the Tribal Council, the identification and contact information of the Tribal Duty Officer(s) who will serve as the single point of contact for the Tribe for wildland fire notification. Included in this letter will be a list of authorized Designated Tribal Government Representative(s) and the delegated authorities extended to the Designated Tribal Government Representative on behalf of the Tribal Council. For the purpose of this agreement the letter will also include a list of the names of individuals who are qualified to perform the duties and responsibilities of Heritage Consultant Coordinator(s) and Heritage Consultant(s) Level 1 and 2, as outlined in the position descriptions of Attachment "A".

The Tribal Duty Officer(s) will have the responsibility to notify the Designated Tribal Government Representative(s).

B. Ensure all individuals identified by the Tribe to be hired by the Forest Service shall meet the requirements of the Administratively Determined (AD) hiring authority established in the Forest Service Handbook (FSH) 5109.34, Interagency Incident Business Management Handbook, Chapter 10 – Personnel.

C. Ensure all individuals identified by the Tribe will meet all the requirements of the Interagency Standards for Fire and Aviation Operations (red book or blue book) for fire line duty commensurate of the position descriptions outlined in Attachment "A" of this MOU.

D. Maintain a list of individuals who have received certification of successfully completing required fire training and the Work Capacity Test (WCT) at the required level for the position, and maintain those individual's records in the Incident Qualifications and Certification system (IQCS) program maintained by the Bureau of Indian Affairs.

IV. FOREST SERVICE SHALL:

A. From the list identified in the annual letter, contact the Tribal Duty Officer as soon as possible after suppression forces are dispatched to an incident within or directly adjacent to the identified area of mutual interest.

B. Consult with the Designated Tribal Government Representative assigned to the incident, to coordinate information and engage in consultation of incident management objectives. Consider the information provided by the Designated Tribal Government Representative on cultural or other concerns when developing the initial action tactics provided to suppression resources.

C. The Forest Supervisor will initiate a delegation of authority to the Incident Commander that specifies which Line Officer(s) will be the Forest Supervisor's Tribal Government Liaison to the Tribe for the incident, identify any specific known concerns, identify the names of the Tribal Government Official(s), designated representative(s), identify any management direction, and provide a copy of this MOU.

D. The Forest Supervisor or designated Forest Service Agency Administrator Representative, in consultation with the Heritage Resource Advisor and the Designated Tribal Government Representative will determine the need to hire Heritage Consultants, to work with the Forest

Service Heritage Resource Advisor to locate and protect significant archaeological, cultural, and/or spiritual resources.

E. The Forest Supervisor(s) shall ensure that the Forest's fire organization, including any relevant Incident Management Team, is aware of this MOU, and how it is to be implemented.

F. Provide necessary personal protective equipment (PPE) to line going personnel that are hired under the authorities of the AD hiring process. <3>

G. Allow the tribe to participate in training opportunities for those positions that require specific fireline training to meet the intent of this MOU.

H. The Forest Supervisor's official representative that coordinates with the Tribe is the designated Forest Supervisor Tribal Liaison identified in the current government-to-government protocol agreement or as otherwise provided in the "Letter of Delegated Authority" to Incident Management Teams.

V. IT IS MUTUALLY AGREED AND UNDERSTOOD:

A. The Tribal Council and the Forest Supervisor(s) maintain their distinctive responsibilities as the primary decision-makers for their respective entities.

B. The Forest Supervisor(s) and the Tribal Council shall be responsive to communications and interactions through the formal consultation process as defined in the Government-to-Government protocol agreement throughout the incident and as needed after the incident.

C. The emergency nature of the incident may necessitate an immediate decision by the Forest Supervisor or Incident Commander that may preclude formal Government-to-Government consultation or coordination with the Tribe prior to the decision being implemented. In such cases, consultation with the Tribe will be initiated as soon as practical thereafter.

E. In addition to consultation with the Tribe and the Heritage Consultants, the Forest Service will make every attempt to meet various heritage and natural resource laws by consulting with other interested traditional practitioners and publics regarding heritage resources on National Forest System lands.

F. The Tribe will identify in an annual letter by May 1, to the Forest Supervisors, qualified individuals to perform duties outlined in this MOU.

G. Cooperation and consultation between the parties of this MOU shall be integrated into the Forest Service's Incident Management Organization.

H. Initial Attack Fires.

Every effort will be made to insure that the Tribal Duty Officer is notified by Agency Dispatch as soon as possible of incidents that are identified in the area of mutual interest identified in the Government to Government protocol agreement.

Consultation on initial attack incidents may be implemented through notification by Agency Dispatch to the designated Tribal Duty Officer, who will notify the Designated Tribal Government

Representative. If, after being notified the Designated Tribal Government Representative feels that there is a need to provide information about archaeological, cultural, spiritual or other concerns, such information will be addressed when developing the initial action tactics provided to suppression resources (see Section IV. B). On Initial Attack, this information may be given to the appropriate Forest Supervisor's Tribal Government Liaison, Incident Commander and/or District Duty Officer.

The Incident Commander or District Duty Officer will determine the need for the addition or reduction of personnel, as it relates to this MOU, after consultation with the Forest Supervisor's Tribal Government Liaison and the Designated Tribal Government Representative.

I. Extended Attack or Large Fires.

Tribal representation will be incorporated into Incident Management Organizations as appropriate to the size and complexity of the incident. Assigned personnel in the positions described in Attachment "A" will participate in the planning and implementation phases as appropriate, and will interact with all relevant resource personnel. The Incident Commander or District Duty Officer will determine the need for the addition or reduction of personnel, as it relates to this MOU, after consultation with the Forest Supervisor's Tribal Government Liaison and the Designated Tribal Government Representative. The number and types of resource personnel assigned will be appropriate for the incident size and complexity.

The timeframes employed on extended attack fires and wildland fire use allow for formal Government-to-Government consultation to take place, which should be documented as part of the incident record provided the information is not confidential in nature.

The incident management system is a prescribed organization with roles, responsibilities, and relationships defined in FSH 5109.17 Fire and Aviation Management Qualifications Handbook. A full description of all incident positions may be found in that manual. The incident management system is as charted below. Specific positions added to the organization in relation to this MOU are in bold and italicized.

The Incident Management Organization under this MOU:

Forest Supervisor (Agency Administrator)
Incident Commander
Safety Officer
Information Officer
Liaison Officer
Forest Supervisor's Tribal Government Liaison
Designated Tribal Government Representative

Operations	Planning	Logistics	Finance
	Resources Unit		
	Situation Unit		
	Documentation Unit		
	FS Heritage Resource Advisor		
	Heritage Consultant Coordinator		
	Heritage Consultant(s)		

J. Incident Management Guidelines.

Cooperative and consultative processes will be used during incident management and planning. The Forest Service has the final responsibility to make the decisions in areas of incident management such as incident objectives, development of strategies and tactics, cost containment and obligating federal government dollars, approving mobilization and de-mobilization plans, approving the Wildland Fire Situation Analysis (WFSA) and the Wildland Fire Implementation Plan (WFIP), Post Wildfire Activities, Burned Area Emergency Response Plan (BAER), delegating authority to Incident Management Teams, and implementing the AD Pay Plan hiring authority.

Suppression and associated resources will be requested and mobilized through established dispatch channels; procedures for doing so may be found in the California Mobilization Guide and the National Mobilization Guide. More specific guidelines for implementation under current policy and law are provided in the Interagency Incident Business Management Handbook.

K. Post Wildfire Activities

The Tribal Council will be requested to designate a representative(s) to participate in the planning and implementation of Post Wildfire Activities. These activities are identified in Chapter 11 of the Interagency Standards for Fire and Aviation Operations (Red Book) as Wildfire Suppression Activity Damage Repair, Emergency Stabilization, Rehabilitation (Emergency Stabilization and Rehabilitation are to be included in the BAER documentation), and Restoration.

L. Where more than one Federally Recognized Tribe has identified an area of mutual interest that overlaps on National Forest System lands, the Forest Service will honor the assertions of each of the Federally Recognized Tribe(s).

M. MODIFICATION. Modifications within the scope of the instrument shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by all parties, prior to any changes being performed.

N. FREEDOM OF INFORMATION ACT (FOIA). Any information furnished to the Forest Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552).

O. Archaeological Site Records, maps with site locations and pictures of sites generated or utilized by Heritage Consultants or others will be deposited in Forest Service and Tribal heritage resource archives, per current Memorandum of Understanding with the Tribe. The records are maintained in the Forest Heritage Resource Program offices and in the Tribe's Heritage Archives with restriction to access to such records being to those individuals who have a need to know the information as per current agreement between the Six Rivers and Klamath National Forests' and the Karuk Tribe. All parties follow the same legal process regarding the denial of release of information about the nature and location of cultural resources that is controlled under the FOIA 5 U.S.C. 552 by reference to the Archaeological Resources Protection Act (16 U. S. C. 470hh (ARPA) Section 9(a), 36 CFR 297.18(a)).

In order to promote meaningful consultation, the parties intend to keep certain information shared under this MOU confidential and will seek to protect such information from disclosure

and discovery through the use of various exceptions, such as that provided by law in the National Historic Preservation Act.

P. TERMINATION. Any of the parties, in writing, may terminate the instrument in whole, or in part, at any time before the date of expiration.

Q. In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability.

R. Determination of work assignments and work locations by gender is prohibited as discussed in Section Q above.

S. All hiring will be pursuant to 5 USC 5102 (c)(19), 7 USC 2225 and 2226, 16 USC 544e and 43 USC 1469. All conditions of hire (OF-288) will be strictly adhered to. All personnel hiring, equipment rental and contracting, etc. conducted by the Forest Service must follow all Federal laws, Executive Orders, rules, regulations and policies as discussed in Section Q above regardless of where said activities occur.

This does not prohibit the Tribe from preferential hiring in favor of Indian Preference to the extent such hiring is authorized under the law for tribal positions identified in this MOU.

T. PARTICIPATION IN SIMILAR ACTIVITIES. This instrument in no way restricts the Forest Service or the Tribe from participating in similar activities with other public or private agencies, organizations, and individuals.

U. COMMENCEMENT/ EXPIRATION DATE. This instrument is executed as of the date of last signature and is effective through **December 31, 2012** at which time it will expire unless extended.

V. All party(s) shall review any press releases regarding this MOU, or the relationship established between the parties to this MOU, before release.

W. PRINCIPAL CONTACTS. The principal contacts for this instrument are:

Forest Fire Chief
USDA Forest Service
Six Rivers National Forest
1330 Bayshore Way
Eureka, CA 95501
(707) 441-3615

Director of Natural Resources
Karuk Tribe of California
P.O. Box 282
Orleans, CA 95556
(530) 627-3446

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Forest Fire Chief
USDA Forest service
Klamath National Forest
1312 Fairlane Road
Yreka, CA 96097
(530) 841-4442

X. NON-FUND OBLIGATING DOCUMENT. This instrument is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

Y. Meetings may be scheduled periodically to review the implementation and effectiveness of this MOU, as well as, discuss and identify opportunities for mutually beneficial activities that meet the intent of this MOU.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the last written date below.

Date 4-21-08

ARCH SUPER, Chair
Karuk Tribe of California

Date April 17, 2008

TYRONE KELLY, Forest Supervisor
Six Rivers National Forest

Date 4.21.08

PATRICIA A. GRANTHAM, Acting Forest Supervisor
Klamath National Forest

The authority and format of this agreement has been reviewed and approved for signature.

Date 4/16/08

Janet A. Boomgarden, Agreements Coordinator
Six Rivers & Klamath National Forests

ATTACHMENT "A"
Incident Management Organization Roles & Responsibilities

Following are descriptions of the roles, responsibilities of the Forest Service as well as those positions for the Tribe, and AD pay plan identifiers of each tribal position. These pay plan identifiers are commensurate with positions outlined in the Interagency Incident Business Management Handbook and supported with authorization of the Regional Forester, Pacific Southwest Region.

Agency Administrator (Forest Supervisor)

The Agency Administrator (Forest Supervisor) is the line officer responsible for the management, protection, development, and administration of the National Forest. The Agency Administrator (Forest Supervisor) is responsible for establishing and maintaining formal Government-to-Government relations and consultation with the Tribe's elected officials regarding planning, policy, significant issues, and governmental cooperation.

The Agency Administrator (Forest Supervisor) considers the information obtained through the consultation process with the Tribal Government before making decisions that affect management of National Forest System lands or any federally reserved trust resource and includes specific direction related to these decisions in the Delegation of Authority letter to the Incident Commander. The delegation letter will address the number and types of tribal positions that should be filled in the fire organization.

Incident Commander

The Incident Commander is responsible for overall incident activities and decision-making, including the development and implementation of strategic decisions consistent with land management direction and delegations of authority. The Incident Commander approves the mobilization and release of incident resources. Reporting directly to the Incident Commander are the Command and General Staffs. The Forest Supervisor's Tribal Government Liaison and the Designated Tribal Government Representative positions, described below, work under the Incident Liaison Officer in the Incident Command System (ICS) organization or the Incident Commander in the Liaison Officer's absence.

Forest Supervisor's Tribal Government Liaison.

A Forest Line Officer designated by the Forest Supervisor as the Liaison to the Tribe representing the Forest Supervisor for coordination and work with the Tribal staff and the Designated Tribal Government Representative(s) regarding day-to-day operations and implementation of agreements reached in the formal Government-to-Government consultation.

The Forest Supervisor's Tribal Government Liaison reports to the Incident Liaison Officer or the IC in absence of the Liaison Officer and is responsible to consult and coordinate with the Designated Tribal Government Representative and the Forest Service Heritage Resource Advisor, if one is present.

Planning Section Chief

Works with the Forest Service Heritage Advisor and Designated Tribal Government Representative to develop mitigation measures for the protection of cultural resources from direct and indirect effects related to wildland fire management.

Forest Service Heritage Resource Advisor

The Forest Service will assure that personnel filling the position are familiar with this MOU, the relationships with the parties, and the incident organization. Technical archeological expertise will be required of individuals filling this position. If assigned, the Forest Service Heritage Resource Advisor will be assigned to the Planning Section Chief, a Forest Service employee, as needed, will fill this position, to coordinate heritage resource concerns and interactions, including heritage tribal concerns, priorities, and spiritual areas. The position directs the work of the Heritage Consultant Coordinator and Heritage Consultants. The Forest Service Heritage Resource Advisor is responsible for obtaining heritage resource input from the Heritage Consultants, Forest Supervisor's Tribal Government Liaison, the Designated Tribal Government Representative, and interested traditional practitioners. The position provides advice to the Incident Management Team through the Planning Section Chief for planning purposes regarding the protection of cultural resources from direct and indirect effects related to wildland fire management.

Designated Tribal Government Representative.

This will be the first position filled as needed and determined by the Agency Administrator (Forest Supervisor), Incident Commander or District Duty Officer in consultation with the Tribe. An individual to whom the Tribe has formally delegated the authority to represent the Tribe's interests pertaining to incident activities shall fill this position. The Designated Tribal Government Representative reports to the Incident Liaison Officer or the Incident Commander in absence of the Liaison Officer and shall be readily accessible to the Tribal Government, the Forest Supervisor's Tribal Government Liaison, and to the Incident Commander.

Additionally, the Designated Tribal Government Representative may communicate directly with the Forest Supervisor(s) with respect to the incident. Should any modifications in incident activity or priorities be agreed to by such contact, they will be binding upon the Incident Commander only after a new or amended delegation of authority is prepared and conveyed to the Incident Commander. Such formalization is necessary to clarify what may otherwise be conflicting direction.

The Designated Tribal Government Representative plays a critical role in the coordination with Forest Supervisor's Tribal Government Liaison, Forest Service Heritage Resource Advisor, Tribe, and incident personnel, which is essential for focused action on the incident.

Pay plan: AD-K (Exception Position 5) <1> (INCS)
Physical fitness requirement: None (This is not a fireline assignment.)
Training: Annual Fire Refresher (red or blue book standards)

Heritage Consultant Coordinator

This position will be filled if the number of Heritage Consultant(s) exceeds the effective supervisory span-of-control, commonly 3 to 5. The responsibility of this position is to coordinate the activities and input of the Heritage Consultant(s) assigned to the incident with the Planning Section Chief and Forest Service Heritage Resource Advisor. This position works for and is directed by the Forest Service Heritage Resource Advisor, if present, or the Planning Section Chief while remaining in close contact with the Designated Tribal Government Representative.

Pay plan: AD-I <1> (CULS)
Physical fitness requirement: Light
Training: Annual Fire Refresher (red or blue book standards)
Personal Protective Equipment required <3>

Heritage Consultant(s), Level 1

Heritage Consultant(s) are charged with conveying specific heritage concerns to the Forest Service Heritage Resource Advisor, if assigned, or the Heritage Consultant Coordinator, if assigned, or to the Planning Section Chief. Consultants work for and are directed by the Forest Service Heritage Resource Advisor, if present, or the Planning Section Chief. Work location and hours of work will be determined based upon incident needs and will be coordinated with operational activities.

Pay plan: AD-F<1> (CULS)
Physical fitness requirement: Light <2>
Training: Annual Fire Refresher (red or blue book standards)
Personal Protective Equipment required <3>

Heritage Consultant(s), Level 2

Heritage Consultant, Level 2 are often elders, ceremonial leaders and others who have significant knowledge and whose input is critical. These positions will be filled based on fire location and limited to those the Tribe determines as having specific information relating to the area in question at any given time. These individuals do not need to be deployed in the field to participate as a Heritage Consultant. As with those Heritage Consultants that are deployed to the field, non-field going Heritage Consultants work for and are directed by the Forest Service Heritage Resource Advisor if present, or the Planning Section Chief. Work location and hours of work will be determined based upon incident needs and will be coordinated with operational activities.

Pay plan: AD-F <1> (CULS)
Physical fitness requirement: None
Training: None

Endnotes

<1> AD pay rates are defined in FSH 5109.34 (Chapter 10, Exhibit 01, amended and published annually).

<2> Physical fitness requirements are defined in FSH 5109.17, Section 23.

<3> Personal Protective Equipment (PPE). All personnel assigned to fire line duties must wear and use all personal protective equipment required for fire line duty. The Forest Service does not provide boots.