

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT is entered into by and between the U.S. Department of the Interior (the “Department”) Land Buy-Back Program for Tribal Nations (the “Buy-Back Program”) and the [insert TRIBE] (the “Participating Tribe”) (collectively the “Parties”) to describe the collaborative land consolidation implementation activities for the [insert RESERVATION] (the “Reservation”).

I. RECITALS

- a. The Settlement Agreement in Cobell v. Salazar, as confirmed by the Claims Resolution Act of 2010, Public Law 111-291 (the “Settlement”), establishes a \$1.9 billion Trust Land Consolidation Fund (the “Fund”) to purchase fractional interests in trust or restricted land.
- b. The Secretary of the Interior (the “Secretary”) established the Buy-Back Program on December 17, 2012, to manage the Fund and implement the land consolidation program called for by the Settlement, published an Updated Implementation Plan dated November 23, 2013 (“Implementation Plan”) and a Status Report dated November 20, 2014 (the “Status Report”), which are intended to be flexible, and which the Department may update from time-to-time.
- c. Under the Settlement, after ten years, commencing on November 24, 2012, any monies remaining in the Fund shall be returned to the U.S. Department of Treasury; thus, the success of the Buy-Back Program, and the full expenditure of the Fund, depend upon the identification and consent of willing sellers to sell their fractional interests within a limited time period.
- d. The Status Report identifies purchase estimates (“Purchase Estimate”) that estimate a portion of the Fund that may be used on a particular reservation to acquire fractional interests from willing sellers.
- e. The Settlement limits the amount of the Fund that can be used for the administrative costs to implement the Buy-Back Program to fifteen percent of the \$1.9 billion.
- f. The Participating Tribe represents that it has staff possessing the expertise, experience and knowledge about allotted trust land ownership on its Reservation, which will facilitate the implementation of the Settlement and Buy-Back Program in a manner that reflects the priorities and enhances the sovereignty of the Participating Tribe.
- g. Under the 2000 Indian Land Consolidation Act (ILCA) Amendments, 25 U.S.C. § 2212 (b)(3)(C), the Secretary, to the extent practicable, may enter into agreements with the tribal government that exercises jurisdiction over the land involved or a subordinate entity of the tribal government to carry out some or all of the Secretary’s land acquisition program, which agreements are not subject to the provisions of the Indian Self-Determination and Assistance Act (ISDEAA), 25 U.S.C. § 450 *et seq.*

- h. An initial Purchase Estimate of \$_____ has been identified for the Reservation, which will be available for a limited time for payment directly to landowners of fractional interests by posting to Individual Indian Money (IIM) accounts following approval of sales. As described in the Status Report, within the Reservation there are approximately _____ fractionated tracts of land (the “Fractionated Tracts”), comprising _____ acres with _____ purchasable fractional interests (the “Fractional Interests”) and _____ associated unique landowners (the “Owners”).
- i. The Buy-Back Program will purchase Fractional Interests from Owners who voluntarily decide to sell (i) following an offer to purchase and (ii) within a specified time (as may be designated in this Cooperative Agreement). If the response of all such Owners within the Reservation is less than the Purchase Estimate, the Buy-Back Program may in its discretion make the remaining funds available for payment to Owners of interests at different locations.
- j. The Participating Tribe’s participation in the Buy-Back Program has been authorized through the adoption of a resolution of the Tribe’s governing body, or other means by which duly authorized Tribal business is conducted.
- k. [ENCOURAGED: Pursuant to 25 U.S.C. § 2216(e), the Tribal Authorization contains the Participating Tribe’s request for a list of names and mailing addresses of the Owners and information on the location of the tracts and the percentage of undivided interest(s) held by each Owner.]
- l. Following consultation and joint planning with the Buy-Back Program, the Participating Tribe has submitted a Cooperative Agreement Application that has been approved by the Buy-Back Program Manager (as identified herein). The Scope of Work Checklist and Application Narrative submitted as part of the Cooperative Agreement Application detail the Participating Tribe’s proposed involvement in the Buy-Back Program, including the phases identified in the Status Report that the Participating Tribe proposes to perform.
- m. The Participating Tribe represents that it has the administrative and substantive capability to perform any and all requirements set forth in this Cooperative Agreement.

BASED ON THE ABOVE RECITALS, the Parties enter into the following Cooperative Agreement.

II. AUTHORITY

This Cooperative Agreement is entered into under the Settlement and ILCA, 25 U.S.C. § 2212(b)(3)(C). It is not subject to the provisions of the Indian Self-Determination and Education Assistance Act of 1974 (25 U.S.C. § 450 et seq.).

III. PURPOSE

This Cooperative Agreement is designed to facilitate a collaborative, government-to-government implementation of the Buy-Back Program. It also provides a common understanding between the Buy-Back Program and the Participating Tribe regarding important goals, objectives, activities, products, services, and associated timetables necessary to acquire as many of the Fractional Interests as possible through cooperative implementation efforts.

Substantial involvement by the Buy-Back Program is anticipated during the performance of activities funded under this Cooperative Agreement. The Buy-Back Program will:

- a. Participate and collaborate jointly with the Participating Tribe in carrying out the scope and objectives.
- b. Review and approve modifications or sub-grants, prior to award.
- c. Have close operational involvement during performance of this Cooperative Agreement and of all phases of the Buy-Back Program.

IV. SCOPE

Funding made available through this Cooperative Agreement may only be used for the tasks and activities detailed in the Scope of Work Checklist and the Application Narrative submitted as part of the Participating Tribe's Cooperative Agreement Application and approved by the Buy-Back Program in accordance with the terms and conditions stated herein.

- a. **SCOPE OF WORK CHECKLIST.** The Participating Tribe's [INSERT DATE] Scope of Work Checklist, which is incorporated herein, summarizes the agreed upon roles, responsibilities, and tasks for the Buy-Back Program and the Participating Tribe throughout the four phases of the Buy-Back Program: Outreach, Land Research, Valuation, and Acquisition. The Participating Tribe will perform [INSERT TASK(s)]
- b. **APPLICATION NARRATIVE.** The Application Narrative is a more detailed document that expands upon and details the roles, responsibilities and tasks agreed upon in the Scope of Work Checklist. The Participating Tribe's [INSERT DATE] Application Narrative, incorporated herein, describes the requirements, anticipated deliverables, tasks, costs, and other appropriate, specific details of activities to be undertaken with the funds provided through this Cooperative Agreement.
 - i. The Buy-Back Program currently estimates sending purchase offers to Owners in _____. The Participating Tribes' proposed timeline, as detailed in the Application Narrative, may need to be adjusted to align with this offer schedule. Should the Buy-Back Program's valuation and acquisition schedules require adjustment, the Buy-Back Program will work cooperatively with the Participating Tribe to adjust the overall schedule as necessary.

V. OBJECTIVES

The objectives of this Cooperative Agreement, as further described in the Scope of Work Checklist, are for the Participating Tribe to:

- a. Conduct pre-offer outreach.
- b. Conduct post-offer outreach.
- c. Identify interested sellers.
- d. Notify Owners, including whereabouts unknown Owners, of the opportunity to sell.
- e. Identify addresses and updated Owner contact information.

[INSERT ADDITIONAL OBJECTIVES AS APPLICABLE]

VI. TERM/PERIOD OF PERFORMANCE AND AVAILABILITY OF FUNDING

- a. This Cooperative Agreement becomes effective on the date of signature by the Buy-Back Program Manager and will remain in effect, subject to the terms and conditions of this Cooperative Agreement and the funding made available herein, and because time is of the essence, until _____, 20____ [INSERT DATE]. The Parties may extend this term/period of performance by mutual agreement.
- b. Pursuant to 2 C.F.R. § 200.343, the Buy-Back Program may closeout the Cooperative Agreement when it determines that all required work has been completed. Full utilization of the Reservation’s Purchase Estimate amount prior to end of the period of performance may result in closeout of this Cooperative Agreement.
- c. The Participating Tribe may only incur costs pursuant to this Cooperative Agreement during the period of performance.

VII. TRIBAL PRIORITIES AND ACQUISITION OF FRACTIONAL INTERESTS

The Participating Tribe will identify those Fractional Interests within the Reservation that are priorities for potential purchase by providing the Buy-Back Program with a priority list by _____, 20____ (“Tribal Priority Fractional Interests”).

- a. The Buy-Back Program will work in good faith and consultation with the Participating Tribe to acquire the Tribal Priority Fractional Interests to the extent feasible and cost effective. The Participating Tribe recognizes that the Owners’ decision to sell is voluntary and that the Buy-Back Program cannot guarantee that the Tribal Priority Fractional Interests will be acquired.
- b. The Participating Tribe recognizes and agrees that the Buy-Back Program may acquire any other Fractional Interests on the Reservation in order to utilize the Purchase Estimate. If there are any particular Fractional Interests that the Participating Tribe would like to

exclude from the Buy-Back Program, it must specifically identify such interests by providing a written notice to the Buy-Back Program, within 30 days after the effective date of this Cooperative Agreement, to the Buy-Back Program for its consideration.

- c. All of the Fractional Interests acquired will be held in trust by the United States for the benefit of the Participating Tribe.

VIII. KEY OFFICIALS

- a. **TRIBAL CONTACT.** The Participating Tribe hereby designates _____ [INSERT CONTACT INFORMATION] as the Tribe's Point of Contact for all matters related to this Cooperative Agreement. The Participating Tribe shall notify the Department's Point of Contact (as identified below) in writing of any change in its Tribe's Point of Contact.
- b. **BUY-BACK PROGRAM TRIBAL RELATIONS ADVISOR.** The Department hereby designates _____ [INSERT CONTACT INFORMATION] as the Point of Contact for all programmatic matters related to this Cooperative Agreement. The Buy-Back Program shall notify the Tribe's Point of Contact in writing of any change in its point of contact.
- c. **BUY-BACK PROGRAM MANAGER.** The Program Manager of the Buy-Back Program is the only official with legal delegated authority to make decisions regarding the Buy-Back Program. The Program Manager's responsibilities include, but are not limited to, the following:
 - i. Obligate the Buy-Back Program to expend funds, approve pre-award costs, or change the funding level of this Cooperative Agreement;
 - ii. Approve, in writing, any proposed changes to the scope of the Cooperative Agreement submitted by the Participating Tribe;
 - iii. Approve, in writing, changes to the Scope of Work Checklist submitted by the Participating Tribe;
 - iv. Approve, in writing, any change in the period of performance of this Cooperative Agreement;
 - v. Approve, in writing, changes in any of the expressed terms, conditions, or specifications of this Cooperative Agreement; and
 - vi. Be responsible for the overall administration and management of this Cooperative Agreement for the Department.
- d. **BUY BACK PROGRAM COOPERATIVE AGREEMENT SPECIALIST.** The Buy-Back Program hereby designates Faride Kraft (1849 C Street, N.W., Washington, D.C.,

20240, (202) 219-1335, faride_kraft@ios.doi.gov) as the Cooperative Agreement Specialist for all financial and administrative matters related to this Cooperative Agreement. The Department shall notify the Tribe's Point of Contact in writing of any change in the designated Cooperative Agreement Specialist.

IX. FUNDING AND PAYMENT

- a. The Buy-Back Program will make available up to \$_____ of the Fund to the Participating Tribe to cover allowable costs incurred to implement the Buy-Back Program as set forth in this Cooperative Agreement and summarized below:

[INSERT FUNDING SUMMARY TABLE]

- i. All costs incurred for the performance of this Cooperative Agreement must be allowable, allocable and reasonable pursuant to 2 CFR § 200 Subpart E – Cost Principles. In addition, the Participating Tribe must manage administrative expenses in the most cost-efficient manner possible, in accordance with ILCA, 25 U.S.C. § 2212(b)(4).
 - ii. In no event shall costs be incurred in performance of this Cooperative Agreement in excess of the awarded amount. Nor shall the Participating Tribe use any of the funding made available by this Cooperative Agreement to pay for or support any bonus or other compensation to landowners.
- b. The Buy-Back Program agrees to advance or reimburse, pursuant to 2 C.F.R. § 200.305, funds to the Participating Tribe for costs in accordance with the Scope of Work, Statement(s) of Work, and the SF-424A Budget Information for Non-Construction Programs form submitted as part of the Participating Tribe's application for funding.
- c. The Participating Tribe must seek pre-approval from the Buy-Back Program for any costs not detailed in the approved documents; otherwise, the Buy-Back Program may recoup advanced funds or refuse payment for that expense.
- d. The Buy-Back Program agrees to reimburse any pre-award costs that the Buy-Back Program has approved in writing.
- e. The Participating Tribe must enroll in, and utilize, the Department of Treasury's Automated Standard Application for Payments (ASAP) system to request payments under this Cooperative Agreement. If not already enrolled under the Office of the Secretary's Agency Location Code, 14010001, the Participating Tribe must successfully enroll with ASAP in order to receive Cooperative Agreement funding.
- f. The Participating Tribe may request payments in ASAP on an as needed basis, however, pursuant to 2 C.F.R. § 200.305, its methods and procedures for payments must minimize the time elapsing between the transfer of funds from ASAP and their disbursement by the Participating Tribe.

- g. Pursuant to 2 C.F.R. § 200.305, the Participating Tribe shall be paid in advance provided that it maintains or demonstrates the willingness to and ability to maintain procedures minimizing the time elapsing between the transfer of funds from ASAP and their disbursement by the Participating Tribe.

X. PERFORMANCE REPORTS

- a. The Participating Tribe must submit quarterly performance reports to the Buy-Back Program pursuant to 2 C.F.R. § 200.328. The quarterly reports shall, at a minimum, include the following:
 - i. A comparison of actual accomplishments to the objectives (see Section V) established for the period, including a computation of the cost per unit of output where the output of the project can be quantified;
 - ii. The reasons for slippage if established objectives were not met; and
 - iii. Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.
 - iv. Detailed performance information on the outreach activities conducted, such as the number of:
 - 1. Outreach events held.
 - 2. Outreach event attendees.
 - 3. Individual Owner name and address updates made.
 - 4. Calls made to Owners.
 - 5. Notary actions completed.
 - 6. Media events and activities held.
 - 7. Whereabouts unknown identified.
 - 8. Willing sellers identified.
 - 9. Mailings (e.g., postcards) sent.

The Buy-Back Program may provide templates to facilitate performance reporting.

- b. Pursuant to 2 C.F.R. § 200.328, if events occur between scheduled performance reporting dates which have significant impact upon the project, the Participating Tribe must inform the Buy-Back Program as soon as the following types of conditions become known: (1) problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the project; (2) favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned. This disclosure must include a statement of the action taken, or contemplated, and steps necessary to resolve the situation.

- c. Quarterly performance reports are due for the following reporting periods:
 - i. Beginning October 1 and ending December 31
 - ii. Beginning January 1 and ending March 31
 - iii. Beginning April 1 and ending June 30
 - iv. Beginning July 1 and ending September 30
- d. Performance reports are due within 30 calendar days of the end of the reporting period.
- e. The first performance report is due 30 calendar days after the end of the reporting period in which this Cooperative Agreement becomes effective.
- f. A final performance report is required within 90 calendar days after the expiration or termination of the Cooperative Agreement.

XI. FINANCIAL REPORTS

- a. In addition to the required performance reports, the Participating Tribe must submit quarterly financial reports utilizing the SF-425 Federal Financial Report to the Buy-Back Program pursuant to 2 C.F.R. § 200.327.
- b. Reports are due for the following reporting periods:
 - i. Beginning October 1 and ending December 31
 - ii. Beginning January 1 and ending March 31
 - iii. Beginning April 1 and ending June 30
 - iv. Beginning July 1 and ending September 30
- c. SF-425 Federal Financial Reports are due within 30 calendar days of the end of each reporting period.
- d. The first SF-425 Federal Financial Report is due 30 calendar days after the end of the period in which the Cooperative Agreement becomes effective.
- e. A final SF-425 Federal Financial Report is required within 90 calendar days after the expiration or termination of the Cooperative Agreement.

XII. REMEDIES FOR NONCOMPLIANCE

Pursuant to 2 C.F.R. § 200.338, if the Participating Tribe fails to comply with any term of this Cooperative Agreement, whether stated in a Federal statute or regulation, an assurance, recital, or elsewhere, the Buy-Back Program may take one or more of the following actions, as appropriate in the circumstances:

- a. Temporarily withhold cash payments pending correction of the deficiency by the Participating Tribe;

- b. Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;
- c. Wholly or partly suspend or terminate the current award;
- d. Initiate suspension or debarment proceedings;
- e. Withhold further awards for the program; and/or
- f. Take other remedies that may be legally available.

Pursuant to 2 C.F.R. § 200.341, upon taking any remedy for non-compliance, the Participating Tribe will have an opportunity for such hearing, appeal, or other administrative proceeding to which the Participating Tribe is entitled under any statute or regulation applicable to the action involved.

XIII. SEPARATION OF FUNDS/ACTIVITIES

The Participating Tribe must be able to account for the receipt, obligation and expenditure of funding provided under this Cooperative Agreement pursuant to 2 C.F.R § 200.305. The Participating Tribe recognizes and agrees that it must continue to fulfill the terms of any contract or compact operated by the Participating Tribe in accordance with the Indian Self-Determination Education and Assistance Act, 25 U.S.C. § 450 *et seq.*, and that no funds awarded pursuant to this Cooperative Agreement may be reprogrammed or utilized to fulfill the terms of those contracts or compacts.

XIV. RETENTION OF FIDUCIARY TRUST RECORDS

The Participating Tribe agrees to preserve, protect, and manage all records created and/or maintained by the Participating Tribe during its participation in the Buy-Back Program. The Participating Tribe agrees to make available to the Department all records pertaining to the administration of the Buy Back Program. Any records relating to the Buy Back Program held by the Department will be considered Indian Fiduciary Trust Records and will be maintained as defined by Department of the Interior Manual Part 303 Chapter 6, which is based on U.S.C. 44 Chapter 31. The Participating Tribe agrees to store and permanently retain all records relating to the Buy Back Program, active and inactive, at the Participating Tribe's expense and with full unlimited access thereto by the Department, or allow such records to be removed and stored at the applicable office at the Department of the Interior for active records, and then transferred to the American Indian Records Repository (AIRR) in Lenexa, Kansas for inactive records.

XV. MODIFICATION AND TERMINATION

- a. Pursuant to 2 C.F.R. § 200.308, certain types of post-award programmatic and budget changes require prior written approval from the Buy-Back Program Manager.
- b. The terms of this Cooperative Agreement may be modified only by written agreement of the Parties through their duly authorized representatives. Notwithstanding the foregoing, the Buy-Back Program may make changes to this Cooperative Agreement by means of a

unilateral modification to address administrative matters, such as changes in address, no-cost time extensions at the Participating Tribe's request, the addition of funding at the Participating Tribe's request, or de-obligation of excess funds at the end of this Cooperative Agreement, provided that no unilateral modification will in any manner change any material term of the Cooperative Agreement. The Buy-Back Program will notify the Participating Tribe of such changes, as appropriate, within 30 calendar days.

- c. Either party may terminate this Cooperative Agreement upon thirty (30) days written notice. In the event the Cooperative Agreement is terminated, the Parties will comply with the requirements in 2 C.F.R. § 343 and 2 C.F.R. § 344.
- d. The Participating Tribe shall submit any requests to extend the period of performance of this Cooperative Agreement no later than sixty days before the date of expiration.

XVI. NO EFFECT ON SOVEREIGN IMMUNITY

Nothing in this Cooperative Agreement shall be construed to limit, alter, waive, or modify the legal rights, interests, benefits, privileges, or immunities possessed by either party.

XVII. AGENCY AND TORT LIABILITY

The Participating Tribe is not an agent or representative of the United States, and neither the Buy-Back Program nor the Participating Tribe will represent the Participating Tribe as such to third parties. Buy-Back Program employees are not agents of the Participating Tribe and will not act on behalf of the Participating Tribe. Employees of the Participating Tribe are not agents of the Buy-Back Program and will not act on behalf of the Buy-Back Program. Members and employees of the Participating Tribe are not considered U.S. Government employees, officers, or agents, and are not covered under the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., or the Federal Employee Compensation Act, 5 U.S.C. 8101 et seq.

XVIII. APPLICABLE REGULATIONS AND OTHER PROVISIONS

- a. 2 C.F.R. § 200, "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards" is hereby incorporated by reference and made a part of this Cooperative Agreement.
- b. **Departmental Standard Terms and Conditions.** The following Departmental standard terms and conditions, to the extent that they are applicable to the Participating Tribe, are hereby incorporated by reference and made a part of this Cooperative Agreement:
 - i. 2 C.F.R. § 1400 Nonprocurement Debarment and Suspension
 - ii. 2 C.F.R. § 25 Central Contractor Registration and Data Universal Numbering System (Appendix A)
 - iii. 2 C.F.R. § 170 Reporting Subawards and Executive Compensation (Appendix B)

- iv. 2 C.F.R. § 175 Trafficking Victims Protection Act of 2000 (Appendix C)
- v. 2 C.F.R. § 1401 Requirements for a Drug-Free Workplace
- vi. 43 C.F.R. § 18 Restrictions on Lobbying
- vii. Recipient Employee Whistleblower Rights and Requirements to Inform Employees of Whistleblower Rights pursuant to the 2013 National Defense Authorization Act, P.L. 112-239.
 - 1. This Cooperative Agreement award and employees working on this Cooperative Agreement award will be subject to the whistleblower rights and remedies in the pilot program on Award Recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (P.L. 112-239)
 - 2. The Participating Tribe shall inform its employees in writing, in the predominant language of the workplace, of employee whistleblower rights and protections under 42 U.S.C. 4712.
 - 3. The Participating Tribe shall insert the substance of this clause, including this paragraph (3) in all subawards or subcontracts over the simplified acquisition threshold. 42 C.F.R. § 52.203-17 (as referenced in 42 C.F.R. § 2.908-9).
- viii. **Conflict of Interest.** The Participating Tribe must establish safeguards to prohibit its employees and subrecipients from using their positions for purposes that constitute or present the appearance of a personal or organizational conflict of interest. The Participating Tribe is responsible for notifying the Buy-Back Program in writing of any actual or potential conflicts of interest that may arise during the life of this award. Conflicts of interest include any relationship or matter which might place the Participating Tribe or its employees in a position of conflict, real or apparent, between their responsibilities under the Cooperative Agreement and any other outside interests. Conflicts of interest may also include, but are not limited to, direct or indirect financial interests, close personal relationships, positions of trust in outside organizations, consideration of future employment arrangements with a different organization, or decision making affecting the Cooperative Agreement that would cause a reasonable person with knowledge of the relevant facts to question the impartiality of the Participating Tribe and/or the Participating Tribe's employees and Sub-recipients in the matter. The Program Manager and the servicing Department of the Interior Ethics Counselor will determine if a conflict of interest exists. If a conflict of interest exists, the Program Manager will determine whether a mitigation plan is feasible. Mitigation plans must be approved by the Program Manager in writing. Failure to resolve conflicts of interest in a manner that satisfies the government may be

cause for termination of the Cooperative Agreement Award. Failure to make required disclosures may result in any of the remedies described in 2 C.F.R. § 200.338, *Remedies for Noncompliance*, including suspension or debarment (see also 2 C.F.R. § 180).

c. Other Provisions

- i. **Privacy Act.** The Privacy Act, 5 U.S.C. § 552a, applies to all activities under this Cooperative Agreement and the Participating Tribe agrees to protect personally identifiable information and other privileged and confidential information as defined under that Act and other applicable federal laws. In order to receive access to personally identifiable information, the Participating Tribe and its individual staff may be required to sign a non-disclosure agreement and/or take Privacy Act and information security training.
- ii. **Non-Exclusive Agreement.** This Cooperative Agreement in no way restricts the Buy Back Program from entering into similar agreements, or participating in similar activities or arrangements, with other tribes, public or private agencies, organizations, or individuals.
- iii. **Survival.** Any and all provisions which, by their nature, are reasonably expected to be performed after the expiration or termination of this Cooperative Agreement shall survive and be enforceable after the expiration or termination of this Cooperative Agreement. Any and all liabilities, actual or contingent, which have arisen during the term of and in connection with this Cooperative Agreement shall survive the expiration or termination of this Cooperative Agreement.
- iv. **Partial Invalidity.** If any provision of this Cooperative Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Cooperative Agreement, shall not be affected thereby and each provision of this Cooperative Agreement shall be valid and be enforced to the fullest extent permitted by law.
- v. **No Employment Relationship.** This Cooperative Agreement is not intended to and shall not be construed to create an employment relationship between the Department or any bureau thereof and the Participating Tribe or its members, employees or contractors. No Participating Tribe or its member, employee or contractor shall perform any function or make any decision reserved by law or policy to the federal government.
- vi. **No Third-Party Rights.** This Cooperative Agreement creates enforceable obligations between only the Department and the Participating Tribe. Except as expressly provided herein, it is not intended nor shall it be construed to create any right of enforcement by or any duties or obligation in favor of persons or entities not a party to this Cooperative Agreement.

- vii. **Captions and Headings.** The captions, headings, article numbers and paragraph numbers appearing in this Cooperative Agreement are inserted only as a matter of convenience and in no way shall be construed as defining or limiting the scope or intent of the provisions of this Cooperative Agreement or in any way affecting this Cooperative Agreement.
- viii. **Conflict.** In the event of a conflict between the Scope of Work Checklist, the Application Narrative, or other Cooperative Agreement Application materials and the Cooperative Agreement, the Updated Implementation Plan or the Status Report, the Cooperative Agreement, the Implementation Plan and the Status Report shall prevail.

XIX. EXECUTION OF COOPERATIVE AGREEMENT

Authorized Tribal Official:

Name

Title

Signature

Date

Land Buy-Back Program for Tribal Nations:

John H. McClanahan
 Program Manager
 Land Buy-Back Program for Tribal Nations
 U.S. Department of the Interior

Date

APPENDIX A (Departmental Standard Terms and Conditions)

2 C.F.R. Part 25 Central Contractor Registration and Data Universal Numbering System

The Central Contractor Registration (CCR) has been migrated to the System for Award Management (SAM). Recipients must continue to comply with the CCR requirements below by maintaining current registration within www.SAM.gov.

A. Requirement for Central Contractor Registration (CCR)

Unless you are exempted from this requirement under 2 C.F.R. § 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) Numbers

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (*see* definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions

For purposes of this award term:

1. *Central Contractor Registration (CCR)* means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).
2. *Data Universal Numbering System (DUNS) number* means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).
3. *Entity*, as it is used in this award term, means all of the following, as defined at 2 C.F.R. Part 25, subpart C:
 - a. A Governmental organization, which is a State, local government, or Indian Tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;
 - d. A domestic or foreign for-profit organization; and
 - e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. *Subaward*:

- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, *see* Sec. II.210 of the attachment to OMB Circular A-133, ‘‘Audits of States, Local Governments, and Non-Profit Organizations’’).
- c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. *Subrecipient* means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

APPENDIX B (Departmental Standard Terms and Conditions)

REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

A. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph D. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery Act funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph E. of this award term).
2. Where and when to report.
 - i. You must report each obligating action described in paragraph A.1. of this award term to <http://www.fsrc.gov>.
 - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. What to report. You must report the information about each obligating action that the submission instructions posted at <https://www.sam.gov> specify.

B. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
 - i. the total Federal funding authorized to date under this award is \$25,000 or more;
 - ii. in the preceding fiscal year, you received—
 - (a) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (b) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
2. Where and when to report. You must report executive total compensation described in paragraph A.1. of this award term:
 - i. As part of your registration profile at <https://www.sam.gov>.
 - ii. By the end of the month following the month in which this award is made, and annually thereafter.

C. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph D. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
 - i. in the subrecipient's preceding fiscal year, the subrecipient received—
 - (a) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (b) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

- i. To the recipient.
- ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

D. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards, and
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

E. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:
 - i. A Governmental organization, which is a State, local government, or Indian tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization;
 - iv. A domestic or foreign for-profit organization;
 - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
2. Executive means officers, managing partners, or any other employees in management positions.
3. Subaward:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - ii. The term includes your procurement of property and services needed to carry out the project or program. The term does not include procurement

of incidental property and services needed to carry out the award project or program.

- iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

- i. Receives a subaward from you (the recipient) under this award; and
- ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax-qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

APPENDIX C (Departmental Standard Terms and Conditions)

2 C.F.R. Part 175 Trafficking Victims Protection Act of 2000

This term of award is pursuant to paragraph (g) of section 106 of the Trafficking Victims Protections Act of 2000, as amended (22 USC 7104).

(a) *Provisions applicable to a recipient that is a private entity.*

(1) You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—

(i) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

(ii) Procure a commercial sex act during the period of time that the award is in effect; or

(iii) Use forced labor in the performance of the award or subawards under the award.

(2) We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —

(i) Is determined to have violated a prohibition in paragraph a.1 of this award term; or

(ii) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either

(A) Associated with performance under this award; or

(B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 C.F.R. part 1400.

(b) *Provision applicable to a recipient other than a private entity.* We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

(1) Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

(2) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either:

- (i) Associated with performance under this award; or
- (ii) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 C.F.R. part 1400.

(c) *Provisions applicable to any recipient.*

- (1) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
- (2) Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - (i) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - (ii) Is in addition to all other remedies for noncompliance that are available to us under this award.
- (3) You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

(d) *Definitions.* For purposes of this award term:

- (1) “Employee” means either:
 - (i) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - (ii) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- (2) “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- (3) “Private entity:”
 - (i) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. 175.25.

(ii) Includes:

(A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. 175.25(b).

(B) A for-profit organization.

(4) “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).