

## MEMORANDUM OF AGREEMENT

**THIS MEMORANDUM OF 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 [TRIBE] (the “Participating Tribe”) (collectively the “Parties”).

### I. PURPOSE

This Memorandum of Agreement (sometimes “Agreement”) is entered into by the Parties for the purpose of defining the Parties’ working relationship during implementation of land consolidation activities at the [RESERVATION] (the “Reservation”).

### II. 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. Under the Settlement, the Secretary of the Interior (the “Secretary”) retains the authority to acquire, at the discretion of the Secretary, any fractional interests in trust or restricted land.
- c. 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.
- d. 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.
- e. The Buy-Back Program published a Status Report dated November 1, 2016 and amended November 7, 2016 (the “Status Report”), which summarizes the key parameters of the Settlement and the corresponding implementation approach and processes of the Buy-Back Program. A July 28, 2017 letter from Associate Deputy Secretary James E. Cason (the “July 2017 Letter”) describes the results of the 2017 strategy review of the Land Buy-Back Program, including a revised implementation strategy.
- f. 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.*

- g. Within the Reservation, there are approximately \_\_\_\_\_ fractionated tracts of land (the “Fractionated Tracts”), comprising \_\_\_\_\_ acres with \_\_\_\_\_ purchasable Fractional Interests and \_\_\_\_\_ associated unique landowners, some of which may be members of different tribal nations (the “Owners”).
- h. 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.
- i. The Participating Tribe’s participation in the Buy-Back Program has been authorized through the adoption of [TRIBAL AUTHORIZATION NUMBER AND/OR DATE, AS APPLICABLE].
- j. Pursuant to 25 U.S.C. § 2216(e), the Participating Tribe has submitted a request [TRIBAL AUTHORIZATION NUMBER AND/OR DATE, AS APPLICABLE] 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.
- k. This Memorandum of Agreement is neither a fiscal nor a funds obligation document, and the Program will not be providing any funds to the Participating Tribe. 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.

**BASED ON THE ABOVE RECITALS**, the Parties enter into the following Memorandum of Agreement.

### **III. AUTHORITY**

This Memorandum of Agreement is entered into under the Settlement and ILCA. It is not subject to the provisions of the ISDEAA.

### **IV. BUY-BACK PROGRAM RESPONSIBILITIES**

- a. The Buy-Back Program will be responsible for all phases of the land consolidation process; outreach, land research, valuation and acquisition; at the Reservation in accordance with standard operating procedures and processes.
- b. Valuations will not necessarily occur for all tracts, especially for tracts where the following exists: (1) a tract has only one Owner; (2) a tract does not have at least one trust or restricted interest; (3) a tract where the Participating Tribe does not exercise jurisdiction over the tract; (4) a tract that is not mappable (i.e., legal description of a tract requires further research); and (5) a tract that is 100 percent comprised of ineligible interests. Purchase offers (“offers”) will be mailed to fractional interest Owners in one

or more groups or “waves,” after values for the appraised tracts are determined and approved. No offers will be made to Owners that are estates, Owners whose whereabouts are unknown without a recorded birthdate, Owners that are under a legal disability (e.g., minors), and Owners of beneficial interests (e.g., life estates).

- c. The Buy-Back Program intends to send offers to certain Owners in one mailing, currently estimated to be mailed at approximately [INSERT TIMEFRAME]. However, the Buy-Back Program may in its discretion adjust this schedule and/or the number of offers to be made. The Bureau of Indian Affairs (BIA) Acquisition Center will receive, process, review, and approve complete, accepted offers, and the Office of the Special Trustee for American Indians (OST) will post payments directly to Owner accounts.
- d. The Buy-Back Program and OST will make informational materials (e.g., frequently asked questions documents, scripts, fact sheets) available to the Participating Tribe. The Buy-Back Program will also make outreach training available to the local BIA Agency staff and the Participating Tribe’s staff, if necessary.

## V. PARTICIPATING TRIBE RESPONSIBILITIES

- a. **External Communications.** The Participating Tribe will obtain prior approval from the Buy-Back Program for all press releases, published advertisements, or other statements intended for the public that refer to this Agreement or to the Department or the Buy-Back Program, or the name or title of any employee of the Department in connection with this Agreement. To support collaborative outreach and information sharing, the Participating Tribe should share copies of developed outreach materials and advertisements with the Buy-Back Program. This may include, but is not limited to, newspaper advertisements, radio advertisements, television advertisements, flyers, brochures, postcards and letters to Owners. Outreach materials and advertisements shared by the Participating Tribe will be provided to the Trust Beneficiary Call Center to ensure that Owners receive the most current and accurate information on implementation of the Buy-Back Program on the Reservation
- b. [IF APPLICABLE] **Tracts with Improvements.** If the Participating Tribe recommends offers to be made for interests in tracts with unleased improvements, the Participating Tribe must pass a timely Tribal Resolution (or take equivalent action under the Participating Tribe’s normal operating procedure) stating that “[Participating Tribe] acknowledges that the Land Buy-Back Program for Tribal Nations may extend offers for fractional land interests on trust tracts with improvements at the Reservation if a lease is recorded in the BIA title system. While the improvements themselves will not be acquired, their existence will be considered in determining the fair market value of the underlying tract of land. [Participating Tribe] acknowledges that all Program transfers into Tribal trust ownership are subject to the terms of existing leases and encumbrances on the land. For tracts at the Reservation with improvements, but without a lease recorded by the BIA, [Participating Tribe] requests that the Program include offers for fractional interests on such tracts. [Participating Tribe] will provide lease

opportunities to individuals living on tracts with improvements but without a recorded lease.” The Program excludes tracts or interests held in restricted fee status where there is an improvement.

## **VI. TRIBAL PRIORITIES AND ACQUISITION OF FRACTIONAL INTERESTS**

The Participating Tribe may identify those Fractionated Tracts or Fractional Interests within the Reservation that are priorities for potential purchase by providing the Buy-Back Program with a priority list (“Tribal Priority Fractional Interests”) by no later than [DATE].

- a. The Buy-Back Program will select tracts and interests to receive offers consistent with the Buy-Back Program’s priorities and informed by the Tribal Priority Fractional Interests. 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 or other interests will be acquired, in part because some Fractionated Interests or Fractionated Tracts may be ineligible for acquisition by the Buy-Back Program (e.g., some tracts are currently unmappable or require resolution of one or more mapping process codes) as described in the Status Report.
- b. The Participating Tribe recognizes and agrees that the Buy-Back Program may acquire any other Fractional Interests on the Reservation. If there are any particular Fractionated Tracts or 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, by no later than [DATE], to the Buy-Back Program for its consideration.
- c. The Participating Tribe acknowledges that implementation results at preceding locations and available funding may affect the scope of offers that the Buy-Back Program can make to landowners at the Reservation.
- d. Due to funding and time constraints of the Settlement, the Buy-Back Program may make approval of offers contingent on available funds.

## **VII. MUTUALLY AGREED UPON TERMS**

It is mutually agreed and understood by the Parties that:

- a. The Parties agree to communicate regularly throughout the implementation of land consolidation activities on the Reservation and inform each other if events occur which may have a significant impact on land consolidation activities or this Memorandum of Agreement.
- b. Each Party shall be solely responsible for the acts and omissions of its employees, agents, and contractors in the performance of this Memorandum of Agreement or any subsidiary agreement hereto. Accordingly, the Participating Tribe shall indemnify and

hold the Department harmless against all liabilities, claims for damages, suits, losses, and expenses by reason of injury to any person or property arising out of or connected with any act or omission of the Participating Tribe arising from activities in pursuance of this Memorandum of Agreement.

- c. Nothing in this Agreement may be construed to obligate the Department to any current or future expenditure of resources in advance of the availability of appropriations from Congress nor does this Agreement obligate the Department to expend funds on any particular project or purpose, even if funds are available.
- d. All activities pursuant to this Memorandum of Agreement shall be in compliance with the requirements of Executive Order 11246, as amended; Title VI of the Civil Rights Act of 1964, as amended, (78 Stat. 252; 42 U.S.C. § 2000d et seq.); Title V, Section 504 of the Rehabilitation Act of 1973, as amended, (87 Stat. 394; 29 U.S.C. §794); the Age Discrimination Act of 1975 (89 Stat. 728; 42 U.S.C. § 6101 et seq.); and with all other federal laws and regulations prohibiting discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex.
- e. This Memorandum of Agreement is intended to lay out the Buy-Back Program's activities at the Reservation and is not intended to create any right or benefit, trust responsibilities, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, its officers, or any person.
- f. No Party shall be considered an employee, agent, partner or fiduciary of the other except for such purposes as may be specifically enumerated herein, nor shall anything contained in this Memorandum of Agreement be construed to create any partnership or joint venture between the Parties.
- g. The Parties will carry out their own activities and use their own resources, including the expenditure of their own funds, in pursuing the objectives enumerated in this Memorandum of Agreement.
- h. Other than the Department's support of the principles in this Memorandum of Agreement, nothing in this Memorandum of Agreement constitutes or shall be interpreted to imply an endorsement by the United States of any product, service, or opinion of the Participating Tribe or its officers, employees, or contractors.
- i. Nothing on this Memorandum of Agreement is intended to alter, limit, or expand the Department's statutory and regulatory authorities.
- j. Pursuant to Federal Law, no member of, or delegate to, Congress may benefit from this Memorandum of Agreement either directly or indirectly.
- k. Any information furnished by the Parties to one another under this Memorandum of Agreement may be subject to the Freedom of Information Act, 5 U.S.C. § 552.

1. The Parties will comply with the Federal Advisory Committee Act to the extent that it applies.

## **VIII. KEY OFFICIALS**

- a. TRIBAL CONTACT. The Participating Tribe hereby designates \_\_\_\_\_ [CONTACT INFORMATION] as its Point of Contact for all matters related to this Memorandum of Agreement. The Participating Tribe shall notify the Department's Point of Contact (as identified below) in writing of any change in its Point of Contact.
- b. BUY-BACK PROGRAM TRIBAL RELATIONS ADVISOR. The Buy-Back Program Director hereby designates \_\_\_\_\_ [CONTACT INFORMATION] as the Point of Contact for all programmatic matters related to this Memorandum of Agreement. The Buy-Back Program shall notify the Tribe's Point of Contact in writing of any change in its Point of Contact.

## **IX. 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 44 U.S.C. 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 in Lenexa, Kansas for inactive records.

## **X. MODIFICATION, TERMINATION, AND DISPUTES**

- a. The terms of this Memorandum of Agreement may be modified at any time, in writing, by mutual agreement of the Parties. A Party must respond to a request for modification(s) within thirty (30) calendar days of receipt.
- b. The term of this Agreement will be from the date of the signatures of both Parties through [DATE]. Completion of the objectives of the Buy-Back Program, including exhaustion of available resources, or an end to a supply of willing sellers selling their fractional interests within a limited time period, may be events for terminating this Agreement before the end of the term.
- c. The Parties to this Agreement may suspend, terminate or revoke this Agreement upon thirty (30) days written notice to the other, except that all then in-process work required to complete specific objectives or activities under this Agreement will be continued until completion or in a manner to avoid a waste of efforts or loss of important information.

An attempt first to resolve any disputes, however, is the preferred approach rather than a notification of termination.

- d. Should disagreement arise as to the interpretation of the provisions of this Agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, each Party shall reduce the area(s) of disagreement to writing and present to the other Party for consideration. If agreement on interpretation is not reached within 30 days, the Parties shall forward the written presentation of the disagreement to respective higher-level officials for appropriate resolution.

## **XI. NO EFFECT ON SOVEREIGN IMMUNITY**

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

## **XII. 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 Employees' Compensation Act, 5 U.S.C. § 8101 et seq.

## **XIII. OTHER PROVISIONS**

- a. **Privacy Act.** The Privacy Act, 5 U.S.C. § 552a, applies to all activities under this Memorandum of 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's staff must sign a non-disclosure agreement and take Privacy Act and information security training.
- b. **Non-Exclusive Agreement.** This Memorandum of 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.
- c. **Survival.** Any and all provisions which, by their nature, are reasonably expected to be performed after the expiration or conclusion of this Memorandum of Agreement shall survive and be enforceable after the expiration or conclusion of this Memorandum of Agreement. Any and all liabilities, actual or contingent, that have arisen during the term of, and in connection with, this Memorandum of Agreement shall survive the expiration or termination of this Memorandum of Agreement.

- d. **Partial Invalidity.** If any provision of this Memorandum of 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 Memorandum of Agreement, shall not be affected thereby, and each provision of this Memorandum of Agreement shall be valid and be enforced to the fullest extent permitted by law.
- e. **No Employment Relationship.** This Memorandum of Agreement is not intended, 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.
- f. **No Third-Party Rights.** This Memorandum of 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 duty or obligation in favor of persons or entities not a party to this Memorandum of Agreement.
- g. **Captions and Headings.** The captions, headings, article numbers and paragraph numbers appearing in this Memorandum of 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 Memorandum of Agreement or in any way affecting this Memorandum of Agreement.
- h. **Conflict.** In the event of a conflict between the Memorandum of Agreement, and the Status Report, and the July 2017 Letter, the Status Report and the July 2017 Letter shall prevail.

**XIV. EXECUTION OF MEMORANDUM OF AGREEMENT**

Authorized Tribal Official:

_____	_____
Name	Title
_____	_____
Signature	Date

Land Buy-Back Program for Tribal Nations:

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