MEMORANDUM OF UNDERSTANDING BETWEEN AND AMONG THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS

AND

THE UNITED STATES DEPARTMENT OF AGRICULTURE, FARM PRODUCTION AND CONSERVATION MISSION AREA

AND ITS AGENCIES THE FARM SERVICE AGENCY

AND THE

NATURAL RESOURCES CONSERVATION SERVICE,

RELATIVE TO PLANNING AND IMPLEMENTING CERTAIN UNITED STATES DEPARTMENT OF AGRICULTURE PROGRAMS ON INDIAN LANDS

This Memorandum of Understanding (MOU) is made and entered into by and between and among the United States Department of the Interior (DOI), Bureau of Indian Affairs (BIA); and the United States Department of Agriculture Farm Production and Conservation (USDA-FPAC), Farm Service Agency (FSA) and Natural Resources Conservation Service (NRCS).

I. PURPOSE

The BIA, USDA-FPAC, FSA and NRCS have common objectives of communication, collaboration, cooperation, and consultation with agricultural producers, Indian landowners, and Indian tribes for the development, conservation and sustainable use of natural resources on Indian lands. The parties, therefore, enter this MOU for the coordination, planning, and implementation of certain USDA programs on these lands held in trust in an environmentally, culturally, and economically sound manner.

The Federal Government operates within a government-to-government relationship with federally recognized Indian tribes. This agreement recognizes the role of Indians and Indian tribes as landowners, land users, and as sovereign governmental entities with authority and responsibility for the management of agricultural land and natural resource conservation programs on Indian lands. Actions taken by the signatory agencies are subject to their respective tribal consultation policies.

The parties to this MOU recognize the differences in how the agencies are organized, staffed, and funded to carry out their trust responsibility to tribes. While these differences in no way reflect disparity in dedication to the trust responsibility, it is mutually acknowledged that implementation of this MOU will be affected by these variables.

Definitions for the purposes of this MOU:

1. *ARMP* means Agricultural Resource Management Plan, which is a 10-year agricultural resource management and monitoring plan developed in accordance with the American Indian Agricultural Resource Management Act (P.L. 103-177, 25 U.S.C. § 3701 *et. seq.*).

2. *BIA* means the Bureau of Indian Affairs within the Department of the Interior.

3. *Conservation District* means a political subdivision of a state, Indian tribe(s) / reservations, or territory, organized pursuant to the state, tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program.

4. *Conservation Plan* means a management tool that, based on an evaluation of the soil, water, air, plant and animal resources associated with an individual agricultural production unit, describes conservation practices designed to address management objectives and concerns, a schedule for applying those systems, and a plan for operations and maintenance. A conservation plan developed for Indian lands is anticipated to address the objectives and concerns of the beneficial owner along with those of the authorized land user.

5. *Conservation Practice* means a management action to protect, conserve, utilize, and maintain the sustained-yield productivity of Indian agricultural land.

6. *Conservation System* means the combination of conservation practices and resource management for the treatment of soil, water, air, plant, animal, and/or energy resource concerns.

7. *Contracting/Compacting Tribes* means Indian tribes that have assumed BIA programs, functions, services or activities under P.L. 93-638, Indian Self-Determination and Education Assistance Act, as amended.

8. *FSA* means the U.S. Department of Agriculture's Farm Service Agency.

9. *Indian* means an individual who is a member of an Indian tribe as defined in item 10, below.

10. *Indian lands* means all:
    a. Lands held in trust by the United States for individual Indians or Indian tribes; or
    b. Lands, the title to which is held by individual Indians or Indian tribes subject to federal restrictions against alienation or encumbrance; or
    c. A combination of one or more of the lands listed above.

11. *Indian tribe* means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. §3703 (10)).

12. *IRMP* means Integrated Resource Management Plan, a document that describes a tribe's long-term goals for coordinated and comprehensive multiple resource management.
13. *NRCS* means the U.S. Department of Agriculture's Natural Resources Conservation Service.

14. *P.L. 93-638* means the Indian Self-Determination and Education Assistance Act of 1975, Public Law 93-638, as amended, is codified at 25 U.S.C. § 5301 et seq., and authorizes the Secretary of the Interior to enter into contracts and compacts with Indian tribes and tribal organizations, as the latter term is defined in 25 U.S.C. § 5304(l), enabling them to administer certain federal programs, functions, services, and activities, or portions thereof, including construction programs.

15. *Signatory parties, signatory agencies* or *signatories* means, collectively, the Bureau of Indian Affairs within the Department of the Interior; and the Farm Service Agency and the Natural Resource Conservation Service, agencies within the Farm Production and Conservation mission area of the United States Department of Agriculture.

16. *Tribal Entity* means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of the Interior by virtue of its status as an Indian tribe.

17. *USDA-FPAC* means the U.S. Department of Agriculture Farm Production and Conservation mission area with leadership and oversight of the FSA and NRCS.

II. BACKGROUND

This MOU establishes a foundation for improved coordination, planning, and implementation of USDA programs on Indian lands. In addition, the signatories seek to improve assistance to American Indians and Alaska Natives in identifying and addressing the comprehensive agricultural, conservation, and economic needs of rural American Indian and Alaska Native communities on Indian lands. Assistance to producers is provided through the authorities and resources available to each respective Agency.

The BIA is responsible for administration and management of the nearly 56 million acres of surface interest and 59 million acres of mineral interest held in trust, or restricted against alienation, by the United States for American Indians, Indian tribes, and Alaska Natives. BIA maintains the official record of ownership and encumbrances to title for these land interests while federal statutory and regulatory authority to approve encumbrances to title to Indian lands is generally delegated from the Secretary of the Interior to the BIA. Directly and through P.L.

93-638 contracts, grants, or compacts, BIA provides resource inventory, planning, and management and development assistance along with leasing and permitting services to Indian tribes, individual Indian landowners and land users.

The NRCS provides conservation planning along with technical and financial assistance to farmers, ranchers and forest managers in order to maintain, conserve and improve natural resources on private, Indian, and other non-federal lands. Common technical assistance includes resource assessment, practice design, and resource monitoring. Services are provided both directly and in partnership with conservation districts, technical service providers, and other federal, tribal, state, and local entities.

The FSA administers programs that support economic stability, and helps farmers and ranchers conserve land, air, wildlife, and water resources. FSA also provides credit to farmers and ranchers and helps farm operations recover from the effects of disaster. FSA operates under a unique system where federal farm programs are administered locally. This grassroots approach gives farmers a much needed say in how federal actions affect their communities and their individual operations.

III. STATEMENT OF MUTUAL BENEFIT

The BIA, USDA-FPAC, FSA, and NRCS have common objectives of consulting with Indian landowners and Indian tribes on Indian lands to promote best management/conservation practices for Indian lands including the development of rural business opportunities, management of farm and ranching operations, infrastructure development, and stewardship of environmental, cultural and natural resources on Indian lands. These objectives are carried out through a government-to-government relationship with tribes.

This MOU is made and entered into by and amongst the BIA, USDA-FPAC, FSA, and NRCS to:

1. Help ensure a clear understanding of applicable federal and tribal laws, policies and regulations and to clarify the roles and responsibilities of the signatory parties in order to improve delivery of USDA programs on Indian lands.

2. Define areas of mutual interest and assistance relative to managing and conserving natural resources on lands held in trust administered by the BIA, and to the delivery of federal programs by the BIA, FSA, and NRCS on such Indian lands.

3. Effectively utilize the available resources of each signatory agency, including personnel, time, conservation technology, equipment, office space, and funds made available for the delivery of programs and services on Indian lands.

4. Increase efficiency and reduce redundancy by sharing pertinent data, as authorized by federal law, to facilitate conservation, development, and management on Indian lands.

Therefore, the DOI, BIA, USDA-FPAC, FSA, and NRCS find it mutually beneficial to cooperate in this undertaking and hereby agree as follows:

IV. RESPONSIBILITIES

A. As authorized by law, each and all signatories will:

1. Ensure that appropriate agency staff have sufficient understanding of each other signatory agency's programs and services, statutory and regulatory authorities and constraints, policies and procedures, and administrative structure to advise Indian tribes, land owners, and land operators on Indian lands of opportunities to participate in current programs and to assist the other agencies and participants with implementation and administration of relevant federal programs on Indian lands.

2. Provide training and other learning opportunities to appropriate agency staff, both internally and to other signatory agencies, describing agency programs and services, authorities and constraints on Indian lands, policies and procedures, and administrative structures, as they apply to the purposes of this MOU, and inform of changes in these areas as appropriate.

3. Prioritize efforts to increase knowledge across Indian country of signatory agency programs and services available to Indian tribes, Indian landowners and land operators on Indian lands, and prioritize the collaboration needed to implement and administer these programs and services on Indian lands.

4. Ensure that all staff providing services to Indian tribes and individual Indian land owners and operators on Indian lands are trained in the principles and implications of federal Indian trust responsibility, tribal sovereignty and land tenure in Indian country.

5. Act, with respect to the program areas within its specific jurisdiction, as lead agency for analyses of all federal actions taken to implement its particular programs and services on Indian lands to ensure that any and all requirements under the National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act (NHPA), the Native American Graves Protection and Repatriation Act (NAGPRA), Section 7 of the Endangered Species Act, and any and all other applicable environmental laws are fully met; and, participate on inter-agency interdisciplinary teams as necessary and appropriate.

6. Work with Indian tribes, individual landowners, and cooperating and subsequent lessees/permittees on Indian lands to ensure that conservation practices and/or improvements constructed and/or maintained under FSA, and/or NRCS programs are properly maintained through the specified lifetime of the practice.

7. Encourage, where appropriate, the development of supplementary cooperative working agreements between tribal governments, BIA Regional Offices, and state-level FSA and NRCS agency offices.

8. Within ninety (90) days of execution of this MOU, designate a point of contact at the BIA Central and Regional/ FSA and NRCS State Office levels to coordinate implementation and periodic review of this MOU and promote a culture of mutual respect and cooperation between the agencies.

B. The BIA will:

1. Work with NRCS and Indian tribes to schedule and maintain soil surveys on Indian lands under the National Cooperative Soil Survey (NCSS) Program.

2. Subject to applicable tribal and federal policy, make resource surveys and conservation - related materials and documents available to the NRCS, along with improvement inventories and current programmatic planning documents, to support initial stocking rate and other sustained-resource-use recommendations and to design conservation systems for qualifying cooperators.

3. Work with the FSA and NRCS to assess the need for and feasibility of implementing USDA conservation and agricultural support programs on Indian lands.

4. Work with Indian landowners and land operators, FSA and NRCS, as indicated, to develop conservation plans that meet FSA and NRCS conservation planning process and content requirements for each agricultural lease and permit on Indian lands, where participation in USDA Farm Bill programs is anticipated; and review and incorporate conservation plans written by the NRCS in cooperation with Indian landowners, land users and tribal entities into BIA-approved agricultural leases and permits on Indian lands.

5. Assist the FSA and NRCS to verify the legal status of lands proposed for USDA programs on Indian lands; verify, to the best of its ability, whether an applicant has a controlling ownership or authorized-use interest in the Indian land parcel to ensure that the proposed USDA program activity is not at variance with any current or publicly proposed plans and/or zoning and/or conflicting use-authorizations and/or encumbrances to title to the parcel; and inform the FSA and NRCS of any changes in any of the foregoing factors.

C. The NRCS will:

1. Provide outreach to Indian tribes, Indian landowners, and Indian-land users, including non-Indian producers that are leasing Indian lands, in order to inform the respective tribe(s) or person(s) of NRCS program opportunities and facilitate and encourage participation in NRCS programs.

2. Encourage the development of tribal conservation districts and district associations and work collaboratively with such districts, traditional knowledge holders, and other parties to encourage the adoption of appropriate conservation practices on Indian lands.

3. Under the NCSS program or other appropriate program, and in cooperation with BIA and subject tribes, conduct and maintain soil surveys on Indian lands.

4. In cooperation with BIA and tribal resource management programs on Indian lands, assist Indian landowners and land users with the development of conservation plans and conservation systems; integrate the provisions of available tribal programmatic resource plans, where such provisions do not violate any applicable federal law in the implementation of NRCS programs; and where applicable and appropriate, review the design and implementation of conservation practices delivered through NRCS-administered conservation programs.

5. Coordinate with BIA and tribes to help to ensure that, to the extent practicable, applicants for NRCS programs on Indian lands, have a controlling ownership or authorized-use interest in an Indian land parcel; and work to help ensure, to the extent practicable, that the proposed NRCS program activity is not at variance with any current or publicly proposed plans and/or zoning and/or conflicting use-authorizations and/or encumbrances to title to the parcel. NRCS will inform BIA within a reasonable time of when a contract has been finalized.

6. Provide an annual report to the BIA Director summarizing, by region, NRCS program assistance to Indians, Indian tribes, and non-Indians operating on Indian lands. This report by NRCS would provide summative or aggregate information, not specifics details of program assistance to individual tribes. This report will generally be submitted to the BIA Director 120 days following the end of the fiscal year.

D. The FSA will:

1. Provide outreach to Indian tribes, Indian landowners and Indian-land users, including non-Indian producers that are leasing Indian lands, in order to inform the respective tribe(s) or person(s) of the FSA program opportunities and facilitate and encourage participation in FSA programs.

2. Provide training and other opportunities for BIA staff to be knowledgeable of FSA programs and administrative structure.

3. Accept eligible applications for its programs and maintain a record of referrals for projects on Indian lands. Work with BIA to inform tribes and Indians of FSA programs available on Indian lands.

4. Maintain farm records and update program eligibility information as necessary and appropriate for tribes, tribal producers, and NRCS.

5. Coordinate with BIA to ensure that applicants for FSA programs have a qualifying legal interest in Indian lands and confirm eligibility for participation in FSA programs on lands held in trust.

6. Transmit completed offers to participate in FSA conservation programs on lands held in trust, as appropriate, to the indicated NRCS District Conservationist and BIA office.

7. Provide program benefits, including payments to approved program participants, consistent with program rules and regulations.

8. Perform contract compliance oversight during the term of FSA-administered contracts.

9. Inform BIA and NRCS personnel of available programs and technical requirements on Indian lands to enable outreach to Indians and Indian tribes.

10. Inform BIA and Indian landowners and land users on Indian lands of FSA programs, notices of county committee elections, and other special events of interest to Indian landowners.

11. Develop a shared process with BIA to monitor approved activities and loan servicing by FSA where the agencies, as permitted by federal law, can accept each other's chattel and other security inspection reports.

IV. IT IS MUTUALLY AGREED AND UNDERSTOOD BY, BETWEEN, AND AMONG THE PARTIES THAT:

1. Section 1619 (b)(2) of the Food, Conservation, and Energy Act of 2008, Pub. L. 110-234, 7 U.S.C. § 8791, ("Section 1619") limits the disclosure of certain information that has been provided by agricultural landowners and producers to participate in USDA programs or disclosing geospatial information about those producers' or owners' agricultural land or operations. The Act, however, authorizes limited disclosure of agricultural landowner or producer information to cooperating federal agencies provided the disclosure of such information is to facilitate technical or financial assistance to be provided to USDA program participants. The signatories agree that the BIA, as stewards of the official record of title to Indian lands, will be consulted as appropriate and as authorized by law on all applications for FSA and NRCS programs on Indian lands and will be informed as soon as practicable of all awarded contracts for USDA Farm Programs to be implemented on Indian lands. The BIA affirms that it will abide fully by the privacy provisions of Section 1619 and use related information disclosed by NRCS or FSA only for the purposes described in this memorandum. Further, the BIA agrees to keep all data protected by section 1619 in a secure site.

2. This MOU is not intended to, and does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or any person.

3. None of the provisions of this MOU shall affect other programs or activities carried out by BIA, FSA, or NRCS.

4. Nothing in this MOU shall obligate the signatory parties to obligate or transfer any funds. Specific work projects or activities that could reasonably be construed to fall within the scope of this MOU and that involve the transfer of funds, services, or property between or among the agencies shall require the execution of separate agreements, if applicable, and shall be contingent upon the appropriate authorization by law and the availability of funds. Any such transfer of funds, services, or property that could reasonably be construed to fall within the scope of this MOU shall be independently authorized by appropriate statutory or regulatory authority. This MOU does not provide any such authority. Negotiation, execution, and administration of any such agreement shall comply with all applicable statutes and regulations. Each party will carry out its separate activities under this MOU in a coordinated and mutually beneficial manner.

5. This MOU takes effect upon the signatures of the Assistant Secretary - Indian Affairs, U.S. Department of Interior; the Director of BIA; the Under Secretary for Farm Production and Conservation; the Administrator of FSA, and the Chief of NRCS, and shall remain in effect for five (5) years from the date of execution. This MOU may be extended or modified upon written request of any of the agencies and the subsequent written concurrence of the other(s). BIA, USDA-FPAC, FSA, and NRCS, may terminate its participation in this MOU with a sixty (60)-day written notice to the other(s).

6. The BIA, USDA-FPAC, FSA, and NRCS, personnel will work to develop a process to perform quality reviews on conservation practices on Indian lands, as determined by the specific conservation programs, during the lifespan of the specific program.

7. With respect to any applicable lands held in trust, the BIA, FSA, and NRCS will work to conduct regular meetings, at appropriate times between USDA field staff, BIA representatives, and tribal leadership of any lands held in trust and for which USDA conservation programs are either requested or being delivered.

APPROVAL:

Tara Sweeney
Assistant Secretary - Indian Affairs
U.S. Department of the Interior

Date: NOV 0 6 2019

William Northey
Under Secretary
Farm Production and Conservation
U.S. Department of Agriculture

Date: 11/06/2019

Darryl LaCounte
Director, Bureau of Indian Affairs
U.S. Department of the Interior

Date: 11/6/2019

Richard Fordyce
Administrator, Farm Service Agency
U.S. Department of Agriculture

Date: 11/6/2019

Matthew Lohr
Chief, Natural Resources Conservation Service
U.S. Department of Agriculture

Date: 11/6/2019