



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

July 2, 2015

Tribal Council
Lower Brule Sioux Tribe
187 Oyate Circle
Lower Brule, SD 57548

Subject: Memorandum of Agreement with the U.S. Department of the Interior (DOI)
Land Buy-Back Program for Tribal Nations

Dear Lower Brule Sioux Tribal Council:

The Land Buy-Back Program for Tribal Nations (Buy-Back Program, Program) would like to thank the Lower Brule Sioux Tribe (Tribe) for submitting a cooperative agreement application and a listing of Tribal priority tracts for implementation of land consolidation activities at the Lower Brule Reservation. I am writing to lay out some suggested next steps to ensure timely implementation of the Program at Lower Brule. Because purchase offers to eligible landowners are currently scheduled to be sent in early 2016, it is important for us to diligently pursue implementation activities.

As an immediate next step forward, the Buy-Back Program proposes a Memorandum of Agreement with the Lower Brule Sioux Tribe to ensure that the implementation of land consolidation activities can continue to move forward in a timely manner. It would not be appropriate for the Buy-Back Program to enter into a cooperative agreement with the Lower Brule Sioux Tribe to provide federal funding at this time, given recent developments - particularly Vice Chairman Kevin Wright's April 23, 2015, letter to Assistant Secretary Kevin Washburn indicating that serious internal control weaknesses may exist regarding the Tribe's management of Federal funds.

The enclosed Memorandum of Agreement is intended to outline the roles, responsibilities, and activities for implementation of the Buy-Back Program at the Lower Brule Reservation. The Program will have responsibility for all phases of the land consolidation process, however, the Memorandum of Agreement provides for continued collaboration with the Lower Brule Sioux Tribe on the planning of outreach activities as well as an opportunity for the Lower Brule Sioux Tribe to update the Tribe's priority tract listing, if necessary. Please note that this Memorandum of Agreement requests that the Lower Brule Sioux Tribe identify a Tribal Point of Contact for the Buy-Back Program to work with moving forward, within a week of signature.

To accept this Memorandum of Agreement, please sign on page eight and return the original, signed document to the Buy-Back Program by July 10, 2015, if possible. Upon receipt, the Memorandum of Agreement will be signed by the Buy-Back Program and a copy will be provided to the Lower Brule Sioux Tribe.

We look forward to working closely with the Lower Brule Sioux Tribe to successfully consolidate fractional interests at the Lower Brule Reservation. Katy Grounds, Senior Advisor on Tribal Relations, is available for a conference call or an in-person briefing to answer any questions the Tribal Council may have, as well as to discuss next steps. The Buy-Back Program also plans to hold one or more community meetings to provide information to landowners in the coming months. Moving forward with implementation would allow for up to approximately \$12,262,618 in payments to Lower Brule Reservation landowners for fractionated interests as early as 2016. Ms. Grounds can be reached by telephone at (202) 208-2632 or by email at katherin_grounds@ios.doi.gov.

Sincerely,



John H. McClanahan
Program Manager
Land Buy-Back Program for Tribal Nation

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 Lower Brule Sioux 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 Lower Brule 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. 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. 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. A Purchase Estimate of \$12,262,618 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 596 fractionated tracts of land (the "Fractionated Tracts"), comprising 76,637 acres, with 30,530 purchasable fractional interests (the "Fractional Interests") and 4,963 associated unique landowners (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 (as may be designated in this Memorandum of 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.
- i. 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.
- j. 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.
- k. This Memorandum of Agreement 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.

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, 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.).

IV. BUY-BACK PROGRAM RESPONSIBILITIES

- a. The Buy-Back Program will be responsible for all four phases of the land consolidation process, Outreach, Land Research, Valuation and Acquisition, at the Reservation in accordance with standard operating procedures and processes. Valuations will not occur 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 does not require further research); and (6) a tract that is 100 percent comprised of ineligible interests. As soon as possible after values for the appraised tracts are determined and approved, purchase offers ("offers") will be mailed to fractional interest owners in one or more groups or "waves," except no offers will be made to owners that are estates, owners whose whereabouts are unknown, owners that are under a legal disability (e.g., minors), and owners of beneficial interests (e.g., life estates).

- b. The Buy-Back Program intends to send purchase offers to the Reservation's landowners in one mailing currently estimated to be mailed in early 2016; however, the Buy-Back Program may in its discretion adjust this schedule or the number of offers to be made. If the Purchase Estimate is not met in the first wave, the Program uses the actual response rate from the first wave and considers other factors to determine a value for a second wave of offers that may be needed to meet the Purchase Estimate. The Buy-Back Program may send a second wave of offers, but this depends on whether the Purchase Estimate has been met, among other factors. 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.
- c. 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. 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.
- b. Each Party shall be solely responsible for the acts and omissions of its employees, agents, and contractors in the performance of this 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 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. The Participating Tribe will obtain prior approval of 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.
- e. 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.
- f. 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, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person.
- g. 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.
- h. 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.
- i. 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.
- j. Nothing on this Memorandum of Agreement is intended to alter, limit, or expand the Department's statutory and regulatory authorities.
- k. This Memorandum of Agreement is not intended to and does not create any rights, benefits, or trust responsibilities, substantive or procedural or enforceable at law or equity, by a party against the Department, its agencies, its officers, or any person.
- l. Pursuant to Federal Law, no member of, or delegate to, Congress may benefit from this Memorandum of Agreement either directly or indirectly.
- m. 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.

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

VI. TRIBAL PRIORITIES AND ACQUISITION OF FRACTIONAL INTERESTS

The Participating Tribe has identified those Fractional Interests within the Reservation that are priorities for potential purchase by providing the Buy-Back Program with a priority list dated December 12, 2014. ("Tribal Priority Fractional Interests"). Should the Participating Tribe need to update its Tribal Priority Fractional Interests, a revised list must be provided to the Buy-Back Program no later than August 31, 2015.

- 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, in part because some Fractionated Interests or Fractionated Tracts may be ineligible for acquisition by the Buy-Back Program (e.g., some tracts may lack "clean" mapping) 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 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 Memorandum of 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.

VII. KEY OFFICIALS

- a. **TRIBAL POINT OF CONTACT.** The Participating Tribe will identify a Tribal Point of Contact for this Agreement within a week (seven calendar days) of the Agreement's signature by both Parties. The Participating Tribe shall notify the Department's Point of Contact (as identified below) in writing of any change in its Tribal Point of Contact.
- b. **BUY-BACK PROGRAM TRIBAL RELATIONS ADVISOR.** The Department hereby designates Katy Grounds, Senior Advisor on Tribal Relations (1849 C Street NW, Washington, DC 20240, Katherin_Grounds@ios.doi.gov, 202-208-2632) 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.

VIII. 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 (AIRR) in Lenexa, Kansas for inactive records.

IX. MODIFICATION, TERMINATION, AND DISPUTES

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.

- a. The term of this Agreement will be from the date of the signatures of all Parties through May 1, 2016. Completion of the objectives of the Buy-Back Program, including exhaustion of the Purchase Estimate, or any remaining available portion thereof, 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.
- b. The Parties to this Agreement may suspend, terminate or revoke this Agreement upon sixty (60) 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.
- c. 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.

X. 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.

XI. 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.

XII. 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 and its individual staff may be required to 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, which have arisen during the term of and in connection with this Memorandum of Agreement, shall survive the expiration or conclusion 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 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.
- 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 in the Memorandum of Agreement, the Updated Implementation Plan or the Status Report, the Status Report shall prevail.

XIII. EXECUTION OF MEMORANDUM OF 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