MEMORANDUM OF UNDERSTANDING
among the
DEPARTMENT OF AGRICULTURE,
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,
DEPARTMENT OF THE INTERIOR,
and the
ENVIRONMENTAL PROTECTION AGENCY
to better coordinate the
FEDERAL GOVERNMENT EFFORTS IN PROVIDING INFRASTRUCTURE AND PROMOTING SUSTAINABLE PRACTICES TO SUPPORT THE PROVISION OF SAFE DRINKING WATER AND BASIC SANITATION IN AMERICAN INDIAN AND ALASKA NATIVE COMMUNITIES

WHEREAS, the Department of Agriculture (USDA), Department of Health and Human Services (DHHS), Department of Housing and Urban Development (HUD), Department of the Interior (DOI) and the Environmental Protection Agency (EPA), referred to collectively as the "parties," to this MOU share a common goal to assist tribes in improving quality of life by providing infrastructure and promoting sustainable practices to support the provision of safe drinking water and basic sanitation for tribal communities, and

WHEREAS, this common goal can be more readily achieved with an efficient and integrated utilization of available programs and expertise, and

WHEREAS, this Memorandum of Understanding (MOU) replaces the two previous MOUs listed below that expired June 2012:

- MOU among the USDA, DHHS, HUD, DOI and EPA to better coordinate the Federal Government Efforts in the Delivery of Infrastructure Services and Financial Assistance in Indian Country in Support of Tribal Communities
- MOU among the USDA, DHHS, HUD, DOI and EPA for Cooperation in the Development of a Federal Strategy to Meet the Commitments Made by the U.S. Under the United Nations Millennium Development Goals for Improved Access to Safe Drinking Water and Basic Sanitation in Indian Country Including Use of a Cooperative System to Share Data and Information

WHEREAS, all the parties will cooperate for this effort under their authorities listed in Section II through their headquarters and regional/area/state offices, and

WHEREAS, this new MOU will maintain a framework for all parties to enhance interagency coordination and to cultivate greater cooperation in carrying out their authorized federal government responsibilities, and

WHEREAS, the parties continue to commit to the principles of working together with tribal governments on a government-to-government basis, mindful of the federal trust responsibility to federally recognized tribes, and the desire to promote self-governance, and

WHEREAS, the parties believe an essential element of any success in federal infrastructure endeavors in Indian country is tribal consultation to the extent permitted or required by law when promulgating rules, developing programs, or taking actions that have substantial direct effects on one or more Indian tribes, and

WHEREAS, all parties will continue to coordinate, with a full understanding of each party's existing water and waste disposal infrastructure and technical assistance programs in Indian country (including solid waste management programs), to provide improved access to safe drinking water and basic sanitation, and

WHEREAS, the parties will continue to make available technical assistance and operator training opportunities to the tribes to assist tribes in providing or sustaining improved access to safe drinking water and basic sanitation to their people, and

NOW, THEREFORE, the parties enter into this Memorandum of Understanding for the following purposes.

I. Purposes:

A. To maintain the structures and procedures necessary to have a common understanding of the programs and policies of each party as they pertain to funding for infrastructure construction, solid waste management efforts and technical assistance to tribes.

B. To work together to improve the capacity of American Indian and Alaska Native communities to operate, manage, and maintain sustainable infrastructure.

C. To enhance the efficient leveraging of funds, on federal, tribal, state, and local levels.

D. To work collectively and collaboratively with tribes to promote an understanding of federal programs that contributes to tribal water and waste disposal infrastructure.

E. To identify and address programs, initiatives, and other issues that will improve planning, construction, operation, and maintenance of sustainable infrastructure.

F. To continue the structures and procedures necessary to allow and facilitate the exchange of data and information in the most appropriate manner.

II. Authorities

A. Authorities of Specific Parties

Department of Agriculture — Rural Development is authorized through the Water and Environmental Programs to provide financial and technical assistance for the development and operation of safe and affordable drinking water and waste disposal systems. Loans and grants are made to public bodies, and not-for-profit corporations including cooperatives and Indian tribes in rural areas and towns of under 10,000 people for new construction, replacement, expansion or other improvements to drinking water and waste facilities. The programs are administered at the local level by USDA-RD State Offices and Area Offices.

- Consolidated Farm and Rural Development Act, as amended; (7 U.S.C. 1921, *et seq*.)

Department of Housing and Urban Development — Public and Indian Housing (PIH) is authorized, under the Native American Housing Assistance and Self-Determination Act (NAHASDA) and the Indian Community Development Block Grant Program, to provide financial and technical assistance for the development and management of low-income housing and community development projects in American Indian and Alaska Native communities. The role of HUD's Office

of Native American Programs (ONAP) within PIH is to ensure safe, decent and affordable housing is available to Native American families, to facilitate the development of viable communities, to create economic opportunities for Indian housing residents, and to ensure fiscal integrity in the operation of the programs. HUD provides Federal assistance in a manner that recognizes the right of Indian self-determination and tribal self-governance by making such assistance available directly to the Indian tribe or its tribally designated housing entity (TDHE).

- Native American Housing Assistance and Self-Determination Act of 1996, as amended (25 U.S.C. 4101 *et seq.*)
- Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*)

Department of Health and Human Services — Indian Health Service is authorized to provide a comprehensive primary and preventative health services delivery system for American Indians and Alaska Natives. The Office of Environmental Health and Engineering is the environmental health/engineering component of IHS, and it assists tribal communities in the development/construction of health care facilities and sanitation facilities infrastructure (water, wastewater, solid waste, and technical assistance on operation and maintenance). IHS has the primary responsibility and authority to provide American Indian and Alaska Native homes and communities with the necessary sanitation facilities, health care and associated facilities, and related services.

- Snyder Act, 25 U.S.C. 13
- "Transfer Act", 42 U.S.C. 2001 *et seq*.
- Public Law 86-121, 42 U.S.C. 2004a (Section 7 of the Transfer Act)
- Indian Self-Determination and Educational Assistance Act, Public Law 93-638, as amended (25 U.S.C. 450 *et seq*.)
- Indian Health Care Improvement Act, Public Law 94-437, as amended (25 U.S.C. 1601 *et seq*.)
- Indian Lands Open Dump Cleanup Act of 1994, Public Law 103-399, (25 U.S.C. 3901 *et seq.*)

Environmental Protection Agency is authorized to make grants to American Indians and Alaska Natives that address the most significant public health threats associated with drinking water and wastewater systems that serve tribes. The grants may be used for the planning, design, and construction of public water systems and wastewater treatment systems to serve tribes. EPA has authority to assist tribes by providing technical assistance to managers and operators of public water systems and conducting sanitary surveys of public water systems. EPA is authorized to make grants to federally recognized tribes and tribal consortia for developing and implementing solid waste programs. EPA cooperates with IHS in their responsibility to study and inventory open dumps. EPA's primary solid waste focus is to assist the tribes with development of integrated waste management plans to address open dumps, rank the relative risk of open dumpsites and prioritize them for closure.

- Safe Drinking Water Act of 1974, (42 U.S.C. 300f et seq.), specifically Sections 1443(a) and 1452(i)
- Clean Water Act of 1977, (33 U.S.C. 1251 *et seq.*), specifically Section 518
- Resource Conservation and Recovery Act of 1976, (42 U.S.C. 321 et seq.), specifically Section 8001
- Indian General Assistance Program Act of 1992, Public Law 102-497, (42 U.S.C. 4368b)

- Indian Lands Open Dump Cleanup Act of 1994, Public Law 103-399, (25 U.S.C. 3901 *et seq.*)

Department of the Interior — Bureau of Indian Affairs is authorized, pursuant to 25 CFR parts 162, 169, and 170, to assist in the preparation of appropriate lease documents for housing sites and required easements; to review, approve and record all required trust or restricted fee land lease and easement documents; to develop access roads to housing sites in accordance with tribal road priorities; to provide maintenance services for those roads and streets accepted into the BIA road systems; and to assist with other support, when available, that may be necessary for the timely development of housing.

Department of the Interior — Bureau of Reclamation is authorized pursuant to the Reclamation Act of 1902, as amended and supplemented, and other applicable federal law, to construct, operate, and maintain water resources projects in the 17 Western States, and as applicable, the State of Hawaii.

B. General Authorities

Data and Information — The Information Technology Management Reform Act (Clinger-Cohen Act) and the Office of Management and Budget Circular A-16 (revised November 2010) mandate that all federal agencies, including the partners, develop common data standards and protocols for the efficient sharing of information.

C. Effect of MOU on Authorities of Parties

Nothing in this MOU alters the statutory authorities or any other authorities of the parties. This MOU is intended to facilitate cooperative efforts for the mutual provision of services, support, and technical assistance by the parties in the conduct of their official business.

III. Responsibilities

A. Each party commits at the highest appropriate level to implement agreed upon activities, to the extent practicable and permitted by its authorities, to help successfully meet the purposes of this MOU.

B. Each agency will comply with its own tribal consultation policy for impacted federal program changes that may result from MOU related discussions and decisions.

C. Each party, to the extent legally appropriate and practicably feasible, will provide the other signatories with access to relevant data related to the identified programmatic activities to help successfully meet the purposes of this MOU.

D. The parties will convene on a regular basis to discuss issues within the scope of and related to the purposes of this MOU.

IV. Rights in Data

Data that is provided to the coordinating Agency/Department in furtherance of the activities under this MOU will be exchanged to the extent consistent with each party's authority without use and disclosure restrictions unless the parties decide to impose restrictions on specifically designated data or information.

V. Responsible Officers

A. The following are the responsible officers, at the time of this signing, for each party to this MOU:

Department of Agriculture:
Assistant Administrator for Water and Environmental Programs
Rural Utilities Service

Department of Health and Human Services:
Director, Division of Sanitation Facilities Construction
Indian Health Service

Department of Housing and Urban Development:
Deputy Assistant Secretary
Office of Native American Programs

Department of Interior:
Director Bureau of Indian Affairs

Environmental Protection Agency:
Deputy Assistant Administrator
Office of Water

B. The Environmental Protection Agency will coordinate with the other signatory agencies on regular meetings intended to scope out future activities pursuant to this MOU.

VI. Limitations

A. All commitments made pursuant to this MOU are subject to the availability of appropriated funds and each party's budget authorities and priorities. Nothing in this MOU, in and of itself, requires the parties to commit, obligate, or expend their appropriations.

B. Any endeavor involving the transfer of funds between the parties to this MOU will be executed in separate agreements between or among the participating parties.

C. This MOU does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity against any of the parties, their officers or employees, or any other person. This MOU does not direct or apply to any person outside of the named parties.

VII. Duration

This MOU becomes effective on the date of final signature and will remain in effect for an 8-year term from the effective date. Any party upon 90-day notice to the other parties may suggest amending this MOU. The MOU, however, can only be amended through a written agreement signed by all parties.

IX. Termination

Any party upon 90-day written notice to the other parties may terminate this agreement, at any time and for any reason it deems substantial.

This Memorandum of Understanding is signed FOR:

Under Secretary for Rural Development
United States Department of Agriculture

2/25/13
Date

Director, Indian Health Service
Department of Health and Human Services

3/12/2013
Date

Assistant Secretary
Public and Indian Housing
Department of Housing and Urban Development

12/28/2012
Date

Assistant Secretary – Indian Affairs
Department of the Interior

3/28/13
Date

Acting Assistant Administrator for Water
U.S. Environmental Protection Agency

2/13/2013
Date