U.S. DEPARTMENT OF AGRICULTURE **NRCS-LTP-43C**
Natural Resources Conservation Service **2/2015**

NRCS Agreement Number: _____for Tribal Trust Lands

Agricultural Conservation Easement Program - Wetland Reserve Easements (ACEP-WRE)

CONTRACT FOR 30-YEAR LAND USE

THIS PROGRAM CONTRACT is made by and between _____ ("Landowner"), and the Natural Resources Conservation Service ("NRCS"), on behalf of the Commodity Credit Corporation ("CCC"). The Landowner is the beneficial owner of land held in trust by the United States. The Landowner agrees to comply with all terms and conditions of this Contract. The Landowner and NRCS are collectively referred to as "the Parties."

PART I. Authority.

Authority of NRCS. NRCS enters this Contract pursuant to the authorities of Subtitle H of Title XII of the Food Security Act of 1985, as amended, for the Agricultural Conservation Easement Program - Wetland Reserve Easements, funded through the Agricultural Act of 2014.

Authority of the Tribe. The Landowner enters this Contract pursuant to the authority of _____ [Insert Tribal Resolution, etc.].

Authority of the Bureau of Indian Affairs (BIA). The BIA approves this Contract pursuant to 25 U.S.C. 81, and implementing regulations set forth at 25 CFR Part 84.

PART II. Property

The Property is comprised of _____ acres more or less, and is more fully described by the legal description and GPS spatial data of the Property set forth at EXHIBIT A, appended hereto;

TOGETHER, with any associated rights-of-way, waters, minerals, oil, gas, geothermal resources, and ingress/egress to the Property as described on EXHIBIT B, appended hereto.

PART III. Purpose

The purpose of ACEP-WRE is to assist landowners in restoring and protecting the wetland functions and values of their properties. The Landowner agrees that by signing this contract, the Landowner agrees to the restoration and maintenance of the Property for the duration of this Contract in accordance with the Wetland Reserve Plan of Operations ("WRPO"). A copy of the WRPO is appended to this contract as EXHIBIT D.

PART IV. Contract Payment

In consideration for the Landowners' agreement to restore and manage the land for the 30-year contract period, and consistent with the previously executed Agreement to Enter Contract for 30-Year Land Use at EXHIBIT E, NRCS will make a single lump-sum payment at contract closing in the amount of_____ unless the Landowner has previously requested installment payments, as specified by EXHIBIT F, if applicable. Landowner must select below the method through which payment will be made, any payments will be made using Electronic Fund Transfers (EFT) to either:

☐ The Office of the Special Trustee (such Contract is subject to requirements and instructions of the Office of the Special Trustee (OST), and the Bureau of Indian Affairs).

☐ A bank account designated by the Tribe, and NRCS will provide proof of payment to BIA.

The Landowner agrees and understands that the contract payment is based on the approved Geographic Area Rate Cap in effect when the Agreement (EXHIBIT E) was signed. Payment will be 75 percent of the rate provided for a permanent ACEP-WRE easement as required by statute.

The Landowner agrees and understands that 25 percent of the projected restoration costs will be withheld from the contract payment by NRCS to cover the Landowner's share of the restoration costs. The Landowner agrees and understands that the actual cost of restoration may vary from the original projection. Because NRCS cannot cost-share more than 75 percent of the total restoration cost, the Landowner agrees to be responsible for any increase over the original 25 percent projection and; conversely, the Landowner will receive a refund, reflecting their 25 percent cost-share from withheld funds, should restoration costs be less than the original projection.

The Landowner must choose and initial the method through which NRCS will provide restoration cost-share assistance below.

Method: ☐ Landowner Agreement _____

☐ Federal Contract _____

☐ Partner Agreement _____

PART V. Duration of contract

The Contract is for a term of 30 years, to commence on the date the contract is signed by NRCS. NRCS will only execute the contract once approval has been obtained from BIA. NRCS will send a copy of the executed contract to the designated BIA official.

PART VI. Management and Restoration Responsibilities of the Landowner.

A. By signing this Contract, the Landowner agrees to the restoration and management of the Property in accordance with the attached WRPO and consistent with the provisions of this Contract.

B. In the event the Landowner transfers the Property to another person, legal entity, or Indian Tribe, prior to the Landowner fulfilling the requirements of the WRPO and the person, legal entity, or Indian Tribe, refuses to allow restoration of the Property in accordance with the approved WRPO, the Landowner agrees to repay to NRCS the contract fair compensation with interest from the date contract is commenced.

PART VII. Permitted Uses of the Property During the Term of this Contract.

The Landowner may conduct the following activities and uses on the Property consistent with the terms of this Contract:

A. Control of Access. The right to prevent trespass and control access by the general public subject to the operation of Tribal and Federal law.

B. Recreational Uses. The ability to engage in undeveloped recreational uses, including undeveloped hunting and fishing and leasing of such rights for economic gain, pursuant to applicable Tribal and Federal regulations that may be in effect at the time. Undeveloped recreational uses must be consistent with the long-term protection and enhancement of the wetland and other natural values of the Property. Undeveloped recreational use may include hunting equipment, such as, tree stands and hunting blinds that are rustic and customary for the locale as determined by NRCS.

C. Traditional Cultural Uses. The ability to engage in non-commercial traditional cultural activities is permitted to the extent that such activities do not interfere with the long-term protection and enhancement of the wetland and other natural values of the Property.

D. Subsurface Resources. The ability to explore or exploit any owned rights to oil, gas, minerals, and geothermal resources underlying the Property area, provided that any drilling or mining activities are to be located outside the boundaries of the Property. In addition, specified exploration activities may occur if permitted in accordance with the terms and conditions of EXHIBIT C, which is appended to and made part of this Contract, if applicable.

PART VIII. Obligations of the Landowner.

The Landowner agrees to comply with all terms and conditions of this Contract, including the following:

A. Prohibitions. The Landowner understands and agrees that by signing this Contract, the Landowner will not engage in, or allow others to engage in, the following uses and activities on the Property, unless authorized by NRCS under Part VII or specifically permitted in the WRPO:

1. haying, mowing or seed harvesting for any reason;
2. altering of grassland, woodland, wildlife habitat or other natural features by burning, digging, plowing, disking, cutting or otherwise destroying the vegetative cover;
3. dumping refuse, wastes, sewage or other debris;
4. harvesting wood products;
5. draining, dredging, channeling, filling, leveling, pumping, diking, impounding or related activities, as well as altering or tampering with water control structures or devices;
6. diverting or causing or permitting the diversion of surface or underground water into, within or out of the Property by any means;
7. building, placing, or allowing to be placed structures on, under, or over the Property, except for structures for undeveloped recreational use or traditional cultural uses or as provided in EXHIBIT C for mineral development;
8. planting or harvesting any crop;
9. grazing or allowing livestock on the Property;
10. disturbing or interfering with the nesting or brood-rearing activities of migratory birds;
11. use of the Property for developed recreation. These uses include but are not limited to, camping facilities, recreational vehicle trails and tracks, sporting clay operations, skeet shooting operations, firearm range operations and the infrastructure to raise, stock, and release captive raised waterfowl, game birds and other wildlife for hunting or fishing;
12. any activities which adversely impact or degrade wildlife cover or other habitat benefits, water quality benefits, or other wetland functions and values of the Property.

B. Noxious plants and pests. The Landowner is responsible for noxious weed control and emergency control of pests as required by all applicable Federal, Tribal, and local laws. A plan to control noxious weeds and pests must be approved in writing by NRCS prior to implementation by the Landowner.

C. Fences. Except for installation cost incurred by NRCS and replacement cost not due to the Landowner's negligence or malfeasance, all other costs involved in maintenance of fences and similar facilities to exclude livestock shall be the responsibility of the Landowner.

D. Reporting. The Landowner shall report to NRCS any conditions or events which may adversely affect the wetland, wildlife, and other natural values of the Property.

E. Survival. Notwithstanding any violations by the Landowner of the terms of this Contract or the WRPO, the Contract survives for its duration.

PART IX. Rights of NRCS. The Landowner agrees that NRCS has the following rights related to the Property for the duration of this Contract:

A. Management activities. NRCS has the right to enter on to the Property to undertake, on a cost-share basis with the Landowner or other entity, any activities to restore, protect, manage, maintain, enhance, and monitor the wetland and other natural values of the Property.

B. Access. NRCS has a right of reasonable ingress and egress to the Property over other property held by the Landowner, whether or not the property is adjacent or appurtenant to the Property, for the exercise of any of the rights of NRCS under this Contract, as described on EXHIBIT B. The authorized representatives of NRCS may utilize vehicles and other reasonable modes of transportation for access purposes.

C. Property Management. The Secretary of Agriculture, by and through the NRCS, may, in consultation with the Landowner, delegate all or part of the management, monitoring, or enforcement responsibilities under this Contract to any entity authorized by law that the NRCS determines to have the appropriate authority, expertise and resources necessary to carry out such delegated responsibilities. Federal agencies may utilize their general statutory authorities in the administration of any delegated management, monitoring or enforcement responsibilities for this Property. The authority to modify or terminate this Contract is reserved to the Secretary of Agriculture in accordance with applicable law.

D. Violations and Remedies. Enforcement. The Parties agree that this Contract may be introduced in any enforcement proceeding as the stipulation of the Parties hereto. If NRCS determines that a Landowner is in violation of the terms of this Contract, or the terms of documents incorporated by reference into this Contract, the Landowner shall be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of notice, or such additional time as the State Conservationist determines is necessary to correct the violation. If there is a continued failure of the Landowner to comply with any of the provisions of this Contract, NRCS or other delegated authority shall have any legal or equitable remedy provided by law and the right:

1. To enter upon the Property to perform necessary work for prevention of or remediation of damage to wetland or other natural values; and,

2. To assess all expenses incurred by NRCS (including any legal fees or attorney fees) against the Landowner, to be owed immediately to the United States.

PART X. General Provisions

A. Landowner agrees that officers and authorized agents of NRCS have, at all reasonable times, the right to enter upon the Property, with advance notice, for any purpose related to the implementation of this Contract, including inspection of the Property and the resources upon it, restoration planning, survey, and other due diligence work related to this Contract.

B. Landowner agrees not to do or authorize others to do any act by which the value to the Property may be diminished or devalued, including the extraction of resources or materials (for example, oil, gas, minerals, timber), except as otherwise provided in this Contract; the manipulation of topography; or the release of hazardous materials or substances.

C. In the event of any violation of any of the terms of this Contract, and following the notice and opportunity to cure specified in Part IX, NRCS may cancel this contract and require repayment by Landowner of costs incurred by NRCS in furtherance of this Contract.

D. Upon notice to the Landowner, NRCS may, at its discretion and without liability, terminate this Contract at any time due to the lack of availability of funds, risk of hazardous substance contamination, or other reason.

E. The Parties agree that this Contract may not be assigned in whole or in part, except with advance permission of NRCS.

F. The Parties agree that no Member or Delegate to Congress or Resident Commissioner shall be a party to any share or part of this Contract.

G. Any changes to this Contract or the WRPO will require an amendment of this agreement and must be consistent with the ACEP-WRE regulations and any applicable Bureau of Indian Affairs regulations. Contract or WRPO amendment requires the approval of the Parties and the designated BIA official.

H. Exhibits appended hereto are fully incorporated into and made part of the terms of this Contract.

Dated this_____ day of _____, 20__.

Landowner(s): _____

_____

ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____)

On this _____day of _____in the year 20___, before me personally appeared _____, a single person, known to me to be the person who is described in and who executed the within instrument, and acknowledged to me that she/he executed the same.

(SEAL)

_____
Notary Public

_____County, _____

My commission expires: _____

APPROVAL BY BUREAU OF INDIAN AFFAIRS:

I _____ (Name), _____(Title), being the duly authorized representative of the United States Department of Interior, Bureau of Indian Affairs, do hereby approve this Contract for use with the _____(Tribe).

Dated this _____ day of _____, 20__.

_____
Signature

_____
Title

ACCEPTANCE BY NATURAL RESOURCES CONSERVATION SERVICE:

I _____(Name), _____(Title), being the duly authorized representative of the United States Department of Agriculture, Natural Resources Conservation Service, do hereby accept this Contract with respects to the rights and duties of the United States of America.

Dated this _____ day of _____, 20__.

_____
Signature

_____
Title

NONDISCRIMINATION STATEMENT

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its program and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (1202) 720-2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 705-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

PRIVACY ACT STATEMENT

The above statements are made in accordance with the Privacy Act of 1974 (U.S.C. 522a). Furnishing this information is voluntary; however, failure to furnish correct, complete information will result in the withholding or withdrawal of such technical or financial assistance. The information may be furnished to other USDA agencies, the Internal Revenue Service, the Department of Justice, or other State or Federal Law enforcement agencies, or in response to orders of a court, magistrate, or administrative tribunal.