

MEMORANDUM OF AGREEMENT
BETWEEN THE
DEPARTMENT OF DEFENSE
AND THE
**** TRIBE OF ****

SECTION I
PURPOSE

This Memorandum of Agreement is entered into between the Department of Defense (DoD) and the **** Indian Tribe of **** (**** Indian Tribe). It is the intent of the parties to this Agreement, that this document, in conjunction with approved cooperative agreement applications (which will include yearly work plans) and the award of funds there under, will be the vehicle by which the **** Indian Tribe will receive financial assistance and technical support from the DoD. This support will enable the **** Indian Tribe to develop a comprehensive plan (Strategic Project Implementation Plan (SPIP)) to address the environmental impacts from former DoD activities on the tribe's lands. In addition, this support will enable the **** Indian Tribe to participate directly or in assistance to the United States Army Corps of Engineers (USACE) and its contractor(s) in the potential remediation of the DoD environmental impacts.

SECTION II
STATEMENT OF PRINCIPLES

- A. In its dealings with the **** Indian Tribe, the Department of Defense shall respect the **** Indian Tribe's sovereign authority over its members and lands.
- B. The Department of Defense shall work with the **** Indian Tribe to achieve the purposes of this Agreement, and shall consult, to the greatest extent practicable, with the **** Indian Tribe leaders regarding any DoD activities that may affect tribal rights, resources, customs and traditions.
- C. The Department of Defense acknowledges the federal trust responsibility arising from treaties¹, statutes, Executive Orders, and the historical relationship between the United States and the **** Indian Tribe, and shall be guided by a respect for this responsibility in all its dealings with the **** Indian Tribe.
- D. Consistent with the protection of human health and the environment, the Department of Defense supports the principle of tribal self-government and is committed to assisting the **** Indian Tribe in its efforts to develop within its federally recognized tribes, the capacity to manage and conduct, either directly or through contracting or other mechanisms, its own environmental programs.

¹ In working with tribes in Alaska, inclusion of this reference to "treaties" may not be appropriate.

SECTION III
AWARD AND PAYMENT OF FUNDS

A. This Agreement is neither a fiscal nor a funds obligation document. Nothing in this Agreement shall be interpreted to require any obligation or payment of funds in violation of the Anti-Deficiency Act (31 U.S.C. 1341). Any activity, action, endeavor or undertaking, involving reimbursement or contribution of funds by DoD to the **** Indian Tribe will be handled in accordance with and subject to applicable laws, regulations and procedures. The **** Indian Tribe will submit yearly cooperative agreement applications for approval of work plans and award of related costs. The USACE, as the executing agent for the Department of Defense under this Agreement, will work with the **** Indian Tribe to develop and negotiate the proposed cooperative agreement applications and work plans, and will oversee the **** Indian Tribe's activities under this Agreement. The USACE will accept the applications, review them, and approve the work plans and award of funds.

B. Nothing in this Agreement shall obligate DoD to approve any cooperative agreement application and work plan or to award any funds hereunder. Nor, is there anything in this Agreement that restricts DoD from participating in similar activities or arrangements with other tribes.

C. (1) Payment of funds to the **** Indian Tribe will be accomplished, using Federal procedures for cooperative agreements. Eligible activities are limited to those contained in approved cooperative agreements applications and yearly work plans. Administration of the cooperative agreements and awards will be in accordance with this Agreement and 32 CFR Part 33 (Department of Defense, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), OMB Circular A-87 (Cost Principles for State, Local, and Indian Governments), OMB Circular A-102, (Grants and Cooperative Agreements with State and Local Governments and Non-Profit Organizations), and OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). Where there is a difference between the provisions of 32 CFR Part 33 and OMB Circulars A-87, A-102 and A-133, then, 32 CFR Part 33 shall control and reference herein to such Circulars shall be deemed to mean as implemented by 32 CFR Part 33.

(2) After a cooperative agreement is approved and funds are awarded, the **** Indian Tribe may, in accordance with OMB Circular A-102, submit a request to the DoD for advancement or reimbursement on a quarterly basis. The Department of Defense will process the request and transfer funds in accordance with OMB Circular A-102. Within thirty (30) days after the end of each quarter, the **** Indian Tribe shall submit to DoD a status report, including cost summaries, which directly relate allowable costs actually incurred by the **** Indian Tribe under this Agreement during the quarter for services. Allowable costs shall be determined in accordance with this Agreement and OMB Circular A-87. The Department of Defense shall reconcile continuing awards and close out completed awards in accordance with OMB Circular A-102. Auditing of the **** Indian Tribe's program shall be accomplished in accordance with OMB Circular A-133.

SECTION IV
PROGRAM MANAGERS

The Department of Defense and the **** Indian Tribe shall each designate a program manager as the single point of contact for coordinating all activities under this Agreement. Until otherwise changed by written notice to the other party, the following are designated as the initial program managers:

For the Department of Defense:

Donna Right, FUDS/NALEMP Program Manager
United States Army Corps of Engineers, **** District
P.O. Box 2711
****, ** *****
(**) ***_****
e-mail: Donna Right@***.usace.army.mil

For the **** Indian Tribe:

John Jones
**** Indian Tribe of ****
37 Main Street
Pine Woods, ** *****
(**) *** ****
e-mail: JJones@***.****

SECTION V
DISPUTE RESOLUTION

A. The Project Managers shall be the primary points of contact to coordinate all activities under this Agreement, including the resolution of disputes. It is the intention of the parties that all disputes shall be resolved at the lowest possible level of authority as expeditiously as possible within the following framework. All time frames for resolving disputes below may be lengthened by mutual consent.

(1) Should the Project Managers be unable to agree, the matter shall be referred in writing as soon as practicable, but in no event to exceed thirty (30) working days after the failure to agree, to the Commander, United States Army Corps of Engineers, Los Angeles District and the Chairperson, **** Indian Tribe, or their mutually agreed upon representatives designated in writing.

(2) Should the Commander, Los Angeles District and the Chairperson, **** Indian Tribe, or their mutually agreed upon representatives designated in writing be unable to agree within thirty (30) working days, the matter shall be elevated to the Chief,

Environmental Division, Directorate of Military Programs, Headquarters, United States Army Corps of Engineers and the Executive Staff, **** Indian Tribe, or their mutually agreed upon representatives designated in writing.

(3) Should the Chief, Environmental Division, Directorate of Military Programs, Headquarters, United States Army Corps of Engineers and the Executive Staff, **** Indian Tribe, or their mutually agreed upon representatives designated in writing be unable to agree within thirty (30) working days, the matter shall be elevated to the Assistant Deputy Under Secretary of Defense (Environment) and the **** Indian Tribal Council.

B. It is the intention of the parties that all disputes shall be resolved in this manner. Alternative dispute resolution methods may be used. In the event that the Assistant Deputy Under Secretary of Defense (Environment) and the **** Indian Tribal Council are unable to resolve a dispute, the Department of Defense and the **** Indian Tribe retain any rights they may otherwise have to seek resolution of this issue under applicable law.

SECTION IV AMENDMENTS

This Agreement may be modified, or amended, only upon written consent of the Department of Defense and the **** Indian Tribe.

SECTION VII TERMINATION

This Agreement may be terminated by either party at the expiration of any cooperative agreement award entered into pursuant to the Agreement if the party seeking termination has notified the other party in writing at least ninety (90) days prior to the expiration of the cooperative agreement award.

Heidi Health
Title: Chairperson, **** Indian Tribal Council
Secretary of Defense
**** Indian Tribe
Occupational Health)

Date: _____

Alex Beehler
Title: Assistant Deputy Under
(Environment, Safety &

Date: _____