SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between Plaintiffs Stephen C., Anna D., Durell P., Taylor P., Levi R., Leo R., Freddy P., Moana L., Olaf D., and the Native American Disability Law Center (NADLC); and Defendants the Bureau of Indian Education (BIE), United States Department of the Interior (DOI), and Debra Haaland, in her official capacity as Secretary of the Interior (collectively, the Parties), in *Stephen C., et al. v. Bureau of Indian Education, et al.*, No. 3:17-cv-08004-SPL (D. Ariz.).

The Parties believe this Settlement Agreement (Agreement) is fair, reasonable, and adequate to protect the interests of all parties.

The only claims remaining in the case are Plaintiffs' claim for compensatory damages and the claims set forth in the First Cause of Action (Count One) of the Third Amended Complaint for Declaratory and Injunctive Relief (Complaint).

The "[p]laintiffs identify [in Count One of the Complaint] thirteen regulations [from 25 C.F.R. Part 36] under the Indian Education Act that Defendants have [allegedly] 'unlawfully withheld or unreasonably delayed'" at Havasupai Elementary School (HES), *Stephen C. v. BIE*, No. 21-15097, slip op. at 3 (9th Cir. March 16, 2022).

The aforesaid thirteen regulations cited in the Complaint are 25 C.F.R. §§ 36.11, 36.20, 36.21, 36.22, 36.23, 36.30, 36.31, 36.40, 36.41, 36.42, 36.43, 36.50, 36.51, *see* Complaint ¶¶ 235-239.

The Parties now mutually desire to resolve all of the claims asserted by Plaintiffs in Count One of the Complaint and for compensatory damages, without the need for further litigation, and without any admission of liability.

The Parties hereby agree to compromise, settle, and resolve all of the claims asserted by Plaintiffs in Count One of the Complaint and for compensatory damages, including Plaintiffs' attorney's fees and costs, on the following terms and conditions:

I. Principles of Settlement Agreement:

This Settlement Agreement will be guided by the following principles:

A. As recognized by federal policy, there is no resource more vital to the Havasupai Tribe than its young people and the Federal government has a direct interest, as trustee, in protecting Havasupai children, including their education.

B. BIE's mission is to provide quality education opportunities from early childhood through life in accordance with its trust responsibility and the Tribe's needs for cultural and economic well-being.

II. Dismissal and Non-Released Claims:

A. Dismissal: Within 5 calendar days of the Effective Date (as defined in paragraph XI), the Parties will execute and jointly cause to be filed, in the United States District Court for the District of Arizona, a Joint Stipulation of Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii); a copy of the Joint Stipulation of Dismissal to be filed is attached as Exhibit 1. Subject to Section X below, the Parties agree that this dismissal will extinguish, with no possibility of revival, Plaintiffs' right to seek relief under Count One of the Complaint or to seek compensatory damages. The Parties agree to cease further litigation as to Count One of the Complaint and any claim for compensatory damages, including further discovery or trial preparations, as of the Effective Date.

B. No Release of Future Claims: Nothing in this Agreement shall be deemed a release, settlement, or waiver of claims by Plaintiffs related to or arising out of acts or omissions by Defendants after the Effective Date of this Agreement.

C. Duties Consistent with Federal Law: Nothing contained in this Settlement Agreement shall impose on Defendants any duty, obligation, or requirement, the performance of which would be inconsistent with federal statutes or federal regulations in effect at the time of such performance.

D. No Limitation on NADLC's Duties Under Federal Law: Nothing in this Agreement shall be deemed to limit NADLC's ability to fulfill its duties or roles under federal law, as set forth in 42 U.S.C. § 15041 et seq., 42 U.S.C. § 10801, et seq., and the regulations promulgated thereto, 42 C.F.R. § 51, et seq., and 29 U.S.C. § 794e.

III. Relief:

A. Facilitator

BIE agrees to contract with a Facilitator with experience in fostering communications within indigenous communities. In making a determination about whom to hire, BIE will seek recommendations from Bill Thorne, the Plaintiffs, and the Tribe, and will accept comments from them about proposed candidates. If Bill Thorne is unavailable, Michael Lewis will substitute for him. After consideration of any recommendations proposed by Bill Thorne, the Plaintiffs, and the Tribe, BIE will propose at least two names to Bill Thorne, who will make a selection from the two provided or, with supporting rationale, will indicate to BIE that neither of the proposed candidates is acceptable, and that BIE should propose alternative candidates.

The Facilitator's responsibility will be to facilitate communications among the Tribe, community, and HES, and to support the community engagement necessary for BIE to meet its obligations under the 13 regulations at issue. BIE will enter into the contract with the Facilitator and pay the Facilitator a reasonable hourly rate, for a maximum total of no more than $150,000 per year. With that sum, the Facilitator may hire individuals to assist in discharging the Facilitator's responsibilities under this Agreement. If the Facilitator deems certain additional assistance beyond the amount allotted is essential and justifies that need to BIE's satisfaction,

BIE will consider a short term contract to meet the need. All communications from the Facilitator to BIE shall come directly from the Facilitator and not from any such individuals.

BIE will reimburse necessary transportation and lodging costs at the Federal standard per diem rate and will reimburse for helicopter transportation into Supai at the standard Tribal Air West rates. However, it remains the sole responsibility of the Facilitator and any individuals working with the Facilitator to make their own travel arrangements and to plan their own travel. Travel time hours will be paid at the maximum rate of $80 per hour, not the standard hourly rate. The term of the Facilitator's role will be five (5) years from the Effective Date of this Agreement. BIE has sole discretion as to whether to extend the Facilitator's role beyond the five (5) years.

1. Duties: The Facilitator's duties may include, as appropriate, working with the Tribe, the HES principal, the HES School Board (upon the establishment of a School Board), BIE, and the community; identifying actions to improve BIE and community relations and obtaining community input with respect to actions necessary to come into full compliance with the 13 regulations at issue; participating in BIE's weekly HES status meetings; and serving as a liaison between BIE and the Tribe regarding issues affecting HES. The Facilitator may make recommendations to BIE and the Tribal Council; the Facilitator is not authorized to make decisions that legally bind BIE or HES, proscribe BIE's or HES's discretion in any way, require BIE or HES to take specific action(s), or incur expenses in addition to the fees and costs delineated in this Agreement.

2. Community Engagement: The Facilitator will work with BIE to identify any volunteers from HES staff and from Tribal members to assist with communications between BIE and the Tribe in furtherance of BIE's compliance with the 13 regulations at issue. Such volunteers may include the principal of HES, the HES Education Programs Administrator, and Tribal members appointed by the Tribal Council, to the extent agreed to by the Tribal Council and the Tribal member, and in compliance with any applicable BIE or regulatory requirements, including the volunteer requirements found at 25 C.F.R. § 38.14. The volunteers may also include parents of students at HES and other community members or HES staff members who agree to participate.

3. Meeting Requirements: The Facilitator will schedule quarterly meetings with BIE and appropriate school staff and volunteers for BIE to discuss its compliance with the 13 regulations at issue. Meeting logistics are to be decided depending on travel costs, accessibility, and any applicable Tribal orders related to travel.

4. Stipend Availability: BIE will provide school staff members with stipends to attend scheduled meetings with the Facilitator or to provide specific feedback to the Facilitator for school improvement efforts. BIE will determine stipends for staff volunteers in accordance with 25 C.F.R. § 38.6(f)(4). BIE will also provide stipends to community members who volunteer for ongoing activities and will confer with the Facilitator regarding BIE's decision as to which volunteer activities require stipends. If a background check is required for any activities, BIE will identify a staff member who can assist any interested community member(s) in filling out background check materials, including sending staff to Supai to assist, if necessary,

and BIE will pay standard costs associated with completing an Office of Personnel Management (OPM) background check. None of the stipends in this paragraph will count against the $150,000 annual budget for the Facilitator.

5. Access to Information: With the exception of student personally identifiable information or other information that is protected under the law, and subject to availability, the Facilitator may have access to such BIE data and personnel as are necessary to perform the functions of the Facilitator. BIE will provide input regarding what data and personnel may help inform the Facilitator. The Facilitator will review and consider any information provided by BIE. The Facilitator will not disclose any information protected under the law, including but not limited to the Privacy Act, except pursuant to all applicable legal requirements. The Facilitator will not disclose any information from either DOI, the Tribe, or any other stakeholder that such entity designates as confidential or privileged without that entity's consent.

6. Facilitator Report: The Facilitator will report to BIE and the Tribal Council regarding the Facilitator's duties identified in section III.A.1-3 every six months. The report will also include a break down of the Facilitator's hours and the Facilitator's rates and travel related expenses during the time covered by the report. The Facilitator will make this report available to the Plaintiffs' Counsel and the Tribal Council.

BIE will be provided an opportunity to comment on each of the Facilitator's six month reports at least 7 days before the report is provided to the Tribal Council and Plaintiffs, and may request that the Facilitator revise the document for the limited purpose of ensuring that no information protected by a specific law or the Privacy Act is inadvertently included. The Facilitator's report on its activities and recommendations are public.

7. Facilitator Replacement: In the event that the Facilitator is unavailable to serve in this role, becomes unable to serve in this role during the term of this Agreement, has been unable to improve the relationship between BIE and the Tribal community, or is in substantial and material violation of the terms of the contract with BIE, any replacement will be chosen in accordance with the same process that the original Facilitator was selected.

If the Facilitator and a subsequent replacement Facilitator have not been able to deliver an improved relationship between BIE and the Tribe, BIE retains the discretion either to replace the Facilitator again or to eliminate the position after consultation with the community.

8. Facilitator Recruitment of Native Language and Culture Instructor: The Facilitator will communicate with and aid the Tribe, to help the Tribe identify someone to assist the school with language and culture staffing and programs for the school. BIE will identify a staff member to assist any interested community members in filling out any required background check materials, including sending staff to Supai to assist if necessary, and BIE will pay the standard costs associated with completing an OPM background check.

B. HES Education Specialist for Compliance

1. Creation of a Compliance Specialist Position: BIE will create a position of Compliance Specialist with responsibility for ensuring that HES is meeting its regulatory obligations with respect to the 13 regulations at issue in this litigation. The Compliance Specialist will have no responsibilities outside of HES and will report to the Chief Performance Officer and the BIE Director. The responsibilities of the Compliance Specialist include overseeing implementation of new or existing measures at HES that are related to compliance with the 13 regulations at issue. The position of Compliance Specialist will exist for at least five (5) years from the Effective Date of this Agreement, to be extended at BIE's sole discretion.

2. Transparency Requirements

a. Initial Assessment

The Compliance Specialist will issue an initial assessment of BIE's compliance with the 13 regulations at issue within three months of the date on which they assume this position. The initial assessment will be published online within thirty (30) days of completion.

b. Written Work Plan

Within thirty (30) days of the initial assessment, the Compliance Specialist will draft a written work plan for complying with the 13 regulations at issue. The Compliance Specialist will post the initial work plan online within thirty (30) days of its drafting. The Compliance Specialist will be responsible for updating the work plan as necessary to further the goal of HES' regulatory compliance with the 13 regulations at issue, including recommendations regarding any expenditures outside of the existing HES budget that would be necessary to bring HES into full compliance with the 13 regulations. The Compliance Specialist will request and consider in good faith technical assistance, including any of its recommendations regarding possible additional expenditures, from WestED, the successor comprehensive center assigned to BIE by the U.S. Department of Education, or any comparable educational improvement organization(s), to assist with the development of the work plan and annual report for the first two years from the date on which the Compliance Specialist assumes this position. The Compliance Specialist will exercise professional judgment to integrate the technical assistance into the work plan. The work plan in effect will be updated on an ongoing basis and posted online every ninety (90) days from the date the first work plan is posted.

The work plan will also be provided directly to the Assistant Secretary-Indian Affairs, the BIE Director, the Facilitator, Plaintiffs, and the Tribal Council within seven (7) business days of its completion. The work plan will include a description of the relevant work, including financial and operational recommendations, of WestED or any other contractor that contributed to the work plan.

c. Annual Report

Beginning one year from the date of the initial assessment, the Compliance Specialist will issue an annual report on the status of BIE's compliance with the 13 regulations at issue. The annual report will be issued each subsequent year for the duration of this agreement.

The annual report will be posted online within thirty (30) days of completion. A copy of the annual report will also be provided directly to the Assistant Secretary-Indian Affairs and the BIE Director within three (3) business days after its completion, and to the Facilitator, Plaintiffs, and the Tribal Council within seven (7) business days after its completion.

C. Additional Staffing and School Supports

1. Contractual Staffing Support: Within 30 business days of the Effective Date of this Agreement, BIE will advertise for either a new position(s) or new contract(s) to provide additional staffing support for certain educational functions at HES. The contract(s) or position(s) shall include: one (1) part time special education teacher, one (1) part time Physical Education (PE) and student activities teacher, and one (1) librarian for the amount of time necessary based upon student enrollment and the regulatory requirements set forth in 25 C.F.R. § 36.40. BIE will inform the Tribal Council in writing of all new hires and will seek approval for their physical attendance at the school, including addressing any transportation or health requirements. Physical attendance of these personnel at the school is subject to any relevant Tribal orders regarding travel to Supai or other restrictions or occurrences that would impede their physical attendance, including but not limited to the availability of housing, any related public health orders, and coordination of transportation with the Tribe.

2. Staff Recruitment and Retention Incentives: BIE will offer the following HES staff recruitment and retention incentives, all of which are available to each staff member:

a. Recruitment Differential: BIE will issue a 25% staffing recruitment differential (25% of base pay) to be paid to each HES staff member (inclusive of all positions on the HES organizational chart) and to all future and current HES employees. BIE will issue the 25% staffing recruitment differential in a prorated amount on the bi-weekly paychecks for the first four (4) years of employment for each staff member.

b. 1. Retention Incentive: All current and future staff positions (inclusive of all positions on the HES organizational chart) will have an option to enter into an incentive agreement for a 25% retention incentive (25% of base pay) at the end of each school year(s) for four (4) years. The incentive agreement will set forth clear information about the incentive terms, including when the incentive expires.

2. Additional Stipend: All teachers, counselors, and school administrators will be provided a $5,000 stipend.

3. Shared Housing Incentive: All teachers, counselors, and school administrators who agree to share a double occupancy housing unit will receive a $2,500 stipend at the end of each semester.

D. Housing

Contingent on obtaining Tribal consent and upon execution of a mutually agreeable lease with the Tribe, BIE agrees to construct additional housing units for HES staff in accordance with all applicable federal rules and regulations. BIE will submit a written statement quarterly to the Tribal Council on the status of the tasks necessary to obtain additional necessary housing for BIE staff.

E. Facilities

1. Disclosure of Reviews, Inspections, and Audits

BIE agrees to timely complete the facility assessment condition report that is due this year and to disclose the results to Plaintiffs, the Tribal Council, and the public. Within 30 days of completion of the facility assessment condition report, BIE will specify the actions it will take to target the correction of any problems with the facility that are identified in the review/inspection/audit and to provide a projected timeline for such measures.

2. Maintenance Worker Position

BIE has created a position of maintenance worker, specifically to care for the grounds of HES. If there is a vacancy in this position once the Facilitator is selected, BIE agrees to confer with the Facilitator and will solicit input from the Tribal Council, to develop and implement activities necessary to recruit for this position within the local community to the extent feasible. Such solicitation will occur within 30 days of the Effective Date of this Agreement. BIE agrees annually to allocate funds for grounds and facilities maintenance for at least five (5) years. BIE has sole discretion as to the allocation of funds for this position beyond the five (5) years. BIE will identify a staff person who will assist any interested community members in filling out any required background check and application materials, including sending staff to Supai to assist if necessary. BIE will pay standard costs associated with completing an OPM background check, and to the extent feasible, will facilitate review of background check and application materials submitted.

F. Staffing and Teachers/Collaboration with Educational Entities

BIE agrees to support the Facilitator in an effort to engage institutions of higher education to identify resources that might be developed to enhance the education of HES students with respect to the 13 regulations at issue. Within 30 days of the Effective Date of this Agreement, BIE agrees to initiate a request to Teach For America and AmeriCorps to explore avenues to work collaboratively to recruit, orient, and retain staff at HES, and to develop or utilize educational programs directed to the betterment of educational opportunities for HES students with respect to the 13 regulations at issue. BIE agrees to identify university and other programs or individual experts with expertise in indigenous education, as well as other relevant

teacher training and professional development programs, and attempt to initiate discussions about recruiting, training, orienting, supporting, and retaining staff in HES. Within 60 days of the Effective Date of this Agreement, BIE will provide Plaintiffs' counsel, the Facilitator, the Compliance Specialist, and the Tribal Council with a list of which individuals and programs it has identified and what discussions it has had.

G. Coordination with the Tribe regarding Public Health

Throughout the term of this Agreement, the Facilitator will engage the Tribe in addressing how any relevant public health orders or mandates impact travel into the canyon and communicate that information to BIE. The Facilitator will engage the Tribe in addressing and planning for any needed COVID testing requirements for any contractors who wish to travel into the canyon, and the Facilitator will communicate the Tribe's related requirements and information to BIE.

H. Staff Support

BIE agrees to make available via electronic means, experienced BIE educational staff members to mentor and support the HES teachers remotely, as frequently as determined necessary by each individual educator and BIE. The Facilitator will gather feedback from the teachers and principal about what additional support(s) they would like to have, if any, and will communicate that information to BIE and the community.

I. Internet Access

BIE agrees to consult with the Tribal leadership and the community through the Facilitator, to determine the viability of increased internet accessibility in the students' homes or other community areas. If Tribal leaders decide that access in the homes is desirable but needs improvements, BIE will be available at the Tribe's request, to assist in obtaining the necessary funding, subject to availability, applicable law, and Tribal approval. BIE agrees to confer with the Facilitator, as necessary, concerning ways to engage the community in determining whether remote instruction should be provided through internet in homes or a hub at HES or elsewhere, where students can be proctored. At the request of the Tribe, BIE will assist the Tribe with technical papers, should the Tribe request that the FCC allow school internet to be used in homes to facilitate education.

J. Tribal Council Approval of Native Culture and Content

With the Facilitator's assistance, BIE will make efforts to recruit and hire a cultural instructor from the Tribal community. BIE agrees to consult with the cultural instructor regarding integrating Tribal culture, content, and language into the curriculum. BIE agrees to present its recommendation regarding the curriculum content to the school board (if/when one is established) at the open meeting to solicit input, and to the Tribal Council for input and approval. BIE will identify a person who will assist any interested community members in filling out any required background check and application materials, including sending BIE staff to Supai if

necessary. To the extent feasible, BIE will facilitate review of background check and application materials submitted.

K. Textbook Review Committee and School Board

With the Facilitator's assistance, BIE agrees to develop a textbook review committee composed of interested teachers, parents, students, and school board members, and to establish a functioning school board, contingent on participation of the Tribe and the necessary individuals. BIE will identify a person who will assist any interested community members in filling out any required background check and application materials, including sending a BIE staff person to Supai if necessary, and to the extent feasible, BIE will facilitate review of background check and application materials submitted for this work.

L. Compensatory Education

Funding: BIE agrees to make available $850,000 for qualified individuals to use for extracurricular activities, vocational activities, summer camps, and educational programs and any equipment, travel, or other costs associated with approved activities as compensatory education. The funding will be available for six (6) years from the Effective Date of this agreement. The funding will be allocated pro rata to each of the Qualifying Individuals. After three years, $30,000 of the remaining funds will be set aside for use by Qualified Individuals who have not yet used the funding, and the remaining funds will be reallocated pro rata to each of the Qualifying Individuals who has made a claim for money from the funding made available under this paragraph. Any unspent funds at the end of six years, up to $250,000, will be available to HES to support tutoring and enrichment programs and may not be used for any other purpose. If, at the expiration of six years, more than $250,000 remains unspent, BIE will first allocate all of the unspent funds to serve existing unmet needs, as determined by BIE taking into account the survey of expenditures for improvement, at HES, and if any unspent funds are not used for HES, BIE may then repurpose them at its discretion.

1. Qualifying Individuals: This compensatory education fund is available to BIE current and former students who have attended HES within the last ten school years (beginning with the 2011-2012 school year) during BIE's operation of the school, regardless of whether the student was involved in the *Stephen C.* litigation and regardless of disability status.

2. Funding Administrator: BIE will identify a position for purposes of administering this funding and providing reimbursement and/or funding in a timely fashion.

3. Compensatory Education Advisor: BIE will contract with an education advisor, or if doing so is not feasible, identify a BIE staff member with experience helping individuals identify education programs to meet specified needs. This individual is the "Compensatory Education Advisor." The Compensatory Education Advisor will work with qualified students and families, upon the request of such students and families, to help them identify compensatory services based on their individual interests and needs, and to assist eligible parties with obtaining those services.

The Compensatory Education Advisor will, upon request, provide assistance in applying for compensatory services as needed. Neither BIE nor the Compensatory Education Advisor will be responsible for ensuring that the Qualifying Individual avails himself or herself of the approved compensatory education services. The Facilitator will develop a community engagement plan related to the compensatory services to share information with the community about the compensatory education that is available under this Agreement and how to request and receive such services.

4. Identification of Services: Eligible compensatory services are limited to state certified or licensed programs; non-public academic or therapeutic programs or services; camps; post-secondary educational programs; college preparation programs, tutoring or counseling services, extracurricular or athletic activities, technical or vocational programs; or other eligible activities, that are educational in nature. Qualifying Individuals' requests for a specific eligible compensatory service must be submitted to the Funding Administrator at least 60 days prior to the day services are to start. Program and activity costs shall include all reasonable costs, including equipment, books and other materials, software applications, testing and certification costs, application costs, any other program related costs, and travel costs such as transportation, food, and lodging. To be granted, the request must contain enough information about the program or activity for the Funding Administrator to confirm it meets the scope of eligible compensatory services as described above; a request that does not contain sufficient information shall be returned documenting the information still required in order to be processed. A request that does not meet the scope of eligible compensatory services as described above will be denied with written notice provided as set forth below. Upon receiving the request, the Funding Administrator will have 5 business days to provide written notice of acceptance, denial, or the additional information needed for the Qualifying Individual's request.

5. Payment Process: If the Funding Administrator accepts a request, Defendants will timely pay the selected program, camp, or activity directly for services rendered. No Qualifying Individual shall receive a direct cash payment, except as required to reimburse reasonable costs associated with an approved program or activity, or to reimburse the Qualifying Individual for an approved program or activity when Defendants have failed to provide payment directly to the program or activity within 60 days of the request. In such a circumstance, the Qualifying Individual shall provide the Funding Administrator with records of payment for such reasonable costs or approved program or activity.

6. Denial of Request: If the Funding Administrator denies the request, the Funding Administrator will provide written notice to the Qualifying Individual and the Compensatory Education Advisor, explaining the reason for the denial. The Qualifying Individual will have 5 business days to respond to any denial. The Funding Administrator will then make a final decision within 5 business days from receipt of the Qualifying Individual's response. Qualifying individuals will have 30 days to submit a written appeal to the Funding Administrator's supervisor, whose contact information will be included on any denial notification. The Funding Administrator's supervisor will issue a final written decision within 20 days. Any decision denying a request will be provided to the Qualifying Individual.

7. Extension: BIE agrees to extend access to the compensatory education funds already agreed to in the September 24, 2020 Settlement Agreement in this matter for the individual named Student plaintiffs for an additional three (3) years due to the ongoing impact of COVID. These funds are now available to the individual named Student plaintiffs until the end of September 2026.

IV. Attorneys' Fees and Costs:

A. Attorneys' Fees Up to the Effective Date: Defendants agree to pay to Plaintiffs the sum of $250,000.00 in full and final settlement of any and all attorneys' fees through the Effective Date of this Agreement.

B. Costs Up to the Effective Date: Defendants agree to pay to Plaintiffs the sum of $86,647.48 in costs through the Effective date of this Agreement.

C. Payment: Defendants will submit the necessary paperwork to process the above payments within 21 days of receipt of Plaintiffs' W-9 payable to: Native American Disability Law Center, 905 W. Apache Street, Farmington, NM 87401. Defendants will make good-faith efforts to provide for payment to be made within 90 days from when Defendants submit the necessary paperwork.

D. Release: Upon receipt of payment for attorneys' fees and costs, Plaintiffs shall release and forever discharge all claims against Defendants for attorneys' fees and costs that have accrued in this litigation, including but not limited to attorneys' fees and costs for the negotiation of this Agreement. Defendants shall be responsible for the payment of their own attorneys' fees and costs incurred in the negotiation of this Agreement.

E. Attorneys' Fees and Costs for Mediation: The Parties shall equally share the costs of the mediator(s) with respect to any dispute under this Agreement.

F. Tax Requirements: Compliance with all applicable Federal, State, and local tax requirements shall be the sole responsibility of Plaintiffs and their counsel. Nothing in this Settlement Agreement waives or modifies Federal, State, or local law pertaining to taxes, offsets, levies, and liens that may apply to money paid under this Agreement, and Plaintiffs are executing this Agreement without reliance on any representation by Defendants as to the application of any such law.

V. Releases:

A. Release Regarding All Claims in the Complaint: Subject to the terms of this Agreement, Plaintiffs hereby waive, release and forever discharge Defendants, all of the Department of the Interior's agencies, components, offices or establishments, and any officers, employees, agents, or successors, either in their official or individual capacities, of any such department, agency, component, office or establishment, from any and all claims, demands and causes of action of every kind, nature or description, whether known or unknown, which have

been or could have been asserted in this action, or any other administrative or judicial proceeding against Defendants, arising out of or in connection with events alleged the Complaint.

B. No Release of Future Claims: Nothing in this Agreement shall be deemed a release, settlement, or waiver of claims by the Plaintiffs related to or arising out of acts or omissions by Defendants after the Effective Date of this Agreement.

VI. No Admission of Liability: This Agreement is not and shall not be construed as an admission by Defendants of the truth of any allegation or the validity of any claim asserted in this action, or Defendants' liability therein. Nor is it a concession or an admission of any fault or omission in any act or failure to act. Nor shall any of the terms hereof be offered or received in evidence or in any way referred to in any civil, criminal, or administrative action (except in an action to enforce its terms), or construed for any purpose whatsoever as an admission or presumption of wrongdoing on the part of Defendants.

VII. Entire Agreement: The terms of the Agreement, and the attachments thereto, constitute the entire agreement of the Parties entered into in good faith, and no statement, remark, agreement or understanding, oral or written, which is not contained therein, shall be recognized or enforced, except as indicated herein; nor does the Agreement reflect any agreed-upon purpose other than the desire of the Parties to reach a full and final conclusion of this action and to resolve the matter without the time and expense of further litigation.

VIII. Rule of Construction: This Agreement shall be considered a jointly drafted agreement and shall not be construed against any Party as the drafter.

IX. Authority to Execute: Each person signing this Agreement, whether signed individually or on behalf of any person or entity, warrants and represents that he or she has full authority to so execute the Agreement on behalf of the Party on whose behalf they so sign.

X. Dispute Resolution Process:

The Parties agree that the process set forth in this Section is the exclusive process for remedying alleged violations of this Settlement Agreement, following the filing of the joint stipulation of dismissal. The Parties further agree that following the filing of the stipulation of dismissal described in Section II, no other litigation action in the case pertaining to the enforcement of this Agreement, including but not limited to the filing of any motions or pleadings, may be taken except as set forth in this Section.

A. Notice of Non-Compliance: If a Party to this Settlement Agreement ("Initiating Party") believes that any other Party ("Responding Party") has not complied with any of the provisions of this Agreement, the Initiating Party shall provide the Responding Party with a written Notice of Non-Compliance containing the following information: (i) the alleged act of non-compliance; (ii) a reference to the specific provision(s) of this Agreement that the Initiating Party alleges the Responding Party has not complied with; (iii) a statement of the remedial action sought by the Initiating Party; (iv) a brief statement of the specific facts, circumstances, and legal argument supporting the position of the Initiating Party; and (v) any reasonably available, non-

privileged information that supports the alleged failure to comply. The Notice of Non-Compliance must be served promptly, and no later than 30 days after the Initiating Party becomes aware, or reasonably should have become aware, of a potential violation.

B. Response: Within 30 days of receipt of a Notice of Non-Compliance, the Responding Party shall respond to the Initiating Party in writing. The Responding Party may request that the Initiating Party provide to the Responding Party any additional non-privileged information in the Initiating Party's possession that may assist investigation of the alleged failure to comply. The Parties agree to work in good faith to exchange information that will assist with early resolution of the concern.

C. Meet and Confer: Within 14 days after the deadline to provide the response described in paragraph B above or at a mutually agreeable time, representatives of the Parties shall informally meet, either in person or via videoconference, and confer and attempt to resolve the issues raised in the Notice of Non-Compliance.

D. Referral to Mediation: If the matters raised in the Notice of Non-Compliance are not resolved within 45 days of the date of the initial meet and confer, the Parties will, within 30 days, arrange for the matter to be resolved through mediation. The parties agree to appoint Michael Lewis and Bill Thorne as the mediators under this Agreement. In the event that Mr. Lewis and Mr. Thorne are unable or unwilling to serve in this role together during the term of the Agreement, the Parties will agree to appoint a mutually-agreed upon mediator or pair of mediators, who are not employed by and are otherwise not under contract with Defendants or Plaintiffs, to serve as the mediator(s). The Responding Party may at any time take the remedial action sought by the Initiating Party in its Notice of Non-Compliance to cure the alleged violation, in which case no mediation will occur.

E. Request for Judicial Enforcement: If the Parties are unable to reach a mutually acceptable resolution through mediation, the Initiating Party may seek judicial relief as provided in this paragraph. The Parties agree to engage in the above dispute resolution procedures to resolve any dispute relating to the interpretation or implementation of this Settlement Agreement before bringing the matter to the Court's attention. In the event that the Initiating Party seeks judicial enforcement of the provisions of this Agreement, the Initiating Party shall either (a) file a motion pursuant to Fed. R. Civ. P. 60(b)(6) seeking relief from the stipulation of dismissal or (b) file a new action for breach of contract or other appropriate relief. The Parties agree not to dispute that the filing of such a motion or new action constitutes an appropriate mechanism to seek enforcement of the provisions of this Agreement. However, the Responding Party shall not be deemed to have waived any available defenses to the substance of such motion or action, and any right or authority to contend that no violation of this Settlement Agreement has occurred. The Court shall be empowered to award attorneys' fees to a prevailing party as permitted under federal law.

XI. Effective Date: This Agreement shall take effect upon execution by all signatories below and, except as otherwise provided in the Agreement, will expire five (5) years after the date of execution unless extended by the Parties' mutual agreement.

XII. Counterparts and Delivery: The Agreement may be signed in any number of counterparts, all of which together shall constitute one and the same instrument. The Agreement may be executed and delivered by transmission in PDF or similar electronic document format with the same force and effect as an executed original of the Agreement.

XIII. Modification and Amendment: This Agreement cannot be modified or amended except by an instrument in writing signed by the Party to be charged therewith; nor shall any provision hereof be waived other than by a writing setting forth such waiver and signed by the Party to be charged with such waiver.

XIV. Notice to the Parties: All notices required or permitted hereunder shall be in writing and shall be served on the Parties at the U.S. mail and email addresses set forth below. A Party's email address or mailing address may be changed by written notice to the other Party.

To Plaintiffs:

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Kathryn Eidmann
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tford@publiccounsel.org
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With a copy to:

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tyanan@nativedisabilitylaw.org

Bryan H. Heckenlively
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To the Defendants:

Jennifer Wiginton
Claudette Rushing
Division of Indian Affairs
Office of the Solicitor
U.S. Department of the Interior
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jennifer.wiginton@sol.doi.gov
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With a copy to:

Carlotta Wells
Lisa A. Olson
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Civil Division
1100 L Street NW
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Telephone: (202) 514-5633
Carlotta.wells@usdoj.gov
Lisa.olson@usdoj.gov

XV. Knowing Agreement: Each Party acknowledges that they are represented by counsel and that they have reviewed, and had the benefit of legal counsel's advice concerning, all of the terms and conditions of this Settlement Agreement.

ACKNOWLEDGMENT OF SETTLEMENT

By their signatures below, the Parties, by and through counsel, indicate their consent to the terms and conditions set forth above.

Date:_____ Digitally signed by Bryan Heckenlively Date: 2023.05.08 12:27:00 -07'00'

_____
BRYAN H. HECKENLIVELY

Date: _____ LISA OLSON Digitally signed by LISA OLSON Date: 2023.04.13 15:38:54 -04'00'

_____
LISA A. OLSON