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The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Ave, SW
Washington, DC 20407

Dear Secretary Becerra,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Nation-to-Nation Dialogue on COVID-19 held on October 27 and 28, 2021. This dialogue was hosted by the Health Subcommittee of the White House Council on Native American Affairs (WHCNA) for federal agencies to share their resources, demonstrate inter-agency response efforts, and hear from Tribal Leaders on how to improve federal resource and assistance response to support Tribal Nations to respond to the COVID-19 pandemic. This dialogue was also meant to inform the work of WHCNA to develop an interagency plan to improve health systems and infrastructure to address the ongoing COVID-19 pandemic and prepare for future public health emergencies in Indian Country. USET SPF's comments will focus on key issues discussed during the Nation-to-Nation Dialogue on COVID-19, including infrastructure, testing and supplies, Tribal economies, and short- and long-term solutions for future public health (and other) emergency response efforts in Indian Country.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

Native peoples experience some of the greatest disparities among all populations in this country—including those in health, economic status, education, infrastructure, and housing. Funding of the federal trust

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe—Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

responsibility and obligations remains grossly inadequate and is a barely discernable and decreasing percentage of department and agency budgets. This chronic underfunding of federal Indian programs has contributed to the disastrous impacts of the COVID-19 pandemic on Tribal governments and Native peoples. These chronic failures have persisted throughout changes in Administration and Congress, and the COVID-19 pandemic has only served to compound these budget and service delivery deficits. It is through the lens of this public health emergency that the failure of the federal government to uphold its most basic trust and treaty obligations has become ever more apparent.

Throughout the COVID-19 public health emergency, we have witnessed the failure of the federal government to effectively coordinate and support Indian Country's response to the pandemic. There have been numerous instances where vital COVID-19 funds, supplies, and services were withheld or delayed from being delivered to Indian Country because of bureaucratic hurdles or because of an unwillingness of certain agencies to coordinate response efforts to support Tribal Nations. The implementation of the various COVID-19 relief laws, including the American Rescue Plan Act (ARPA), has not always fully upheld Tribal sovereignty and self-governance or federal trust and treaty obligations. Federal agencies have issued guidance and reporting requirements that are overly burdensome for Tribal governments and/or do not fully take into account the uniqueness and diversity of Indian Country. While we acknowledge this Administration's efforts to improve on many levels, as well as the historic levels of funding directed to Tribal Nations, more action is required from the federal government to support Indian Country's continued response to the pandemic.

Short-term solutions to address the issues arising from the implementation of CARES Act and ARPA funding and program service delivery should translate into long-term protections for Tribal Nations to ensure we are prepared for future public health emergencies. In the instances where federal departments and agencies have revised policies and procedures to address these bureaucratic barriers in program and service delivery to Indian Country, the federal government must retain and build upon these actions. Furthermore, WHCNA and the federal government must continue to engage and consult with Tribal Nations to identify issues and barriers with program and service delivery to Indian Country as a part of the ongoing response to COVID-19 and related recovery efforts. Ultimately, this Administration must focus its efforts on "building back better" for Indian Country in recognition of trust and treaty obligations. The following sections of our comments are focused on some of the persistent issues and barriers Tribal Nations experience in accessing vital federal funds and services that contribute to delays in response efforts to public health emergencies.

Comments to the Department of Health and Human Services

For generations, the federal government – despite abiding trust and treaty obligations – has substantially under-invested in Indian Country's health care infrastructure. While much has been reported upon regarding the American health system's lack of capacity to handle a surge in infection-related hospitalizations, the Indian Health System (IHS), in many cases, does not have the capacity to treat severe, or even moderate, cases of COVID-19 at all. Chronic and extreme underfunding leaves Indian Country without much of the health care infrastructure available to the rest of America. While there are 605 health facilities serving 574 federally recognized Tribal Nations and our citizens across the country, just 46 of those facilities are hospitals, with 13 meeting the criteria to be designated as Critical Access Hospitals. A scant 46 facilities have emergency rooms, while 20 have operating rooms and none offer tertiary care such as open-heart surgery or neonatal intensive care. The entire Indian Health System has just 37 ICU beds, 1,257 hospital beds, and 81 ventilators, with few personnel trained in their operation.

Full and Mandatory Funding for IHS Can Address Deficiencies in Tribal Health Care Infrastructure and Operating Budgets

The IHS Nashville Area has just two Tribal hospitals, leaving a majority of our citizens to be served by Tribal health clinics, which lack the capacity to treat all but the most mild COVID-19 cases. Our clinics do not have emergency rooms and intensive care units, and some do not have a full-time physician on staff. Many of these clinics also do not have negative pressure isolation rooms, resulting in employees and other patients becoming automatically exposed should a COVID-19 patient arrive at the clinic. Additionally, our clinics provide mainly primary care and community health services. Much of the secondary care, and nearly all of the tertiary care needed, must be purchased from non-IHS facilities with limited Purchased/Referred Care (PRC) dollars. With many of our Tribal Nations located in rural areas, many of the facilities outside of the Indian Health System were at capacity and/or experiencing staffing shortages and not able to take our patients, resulting in our patients traveling several hundreds of miles to receive care. While the PRC budget line has received a significant infusion of funding through coronavirus relief legislation, even this level of funding is likely to be surpassed by the impacts of COVID-19 if we're sending patients further to access care. At the height of the pandemic and prior to the availability of vaccines, due to the dangers associated with the disease, many USET SPF Tribal Nations reported operating health centers with just a 'skeleton crew' and a high number of staff on furlough. This caused a higher number of patients to be referred out for care.

Throughout the pandemic, many Tribal Nations, including USET SPF member Tribal Nations, reported steep declines in 3rd party reimbursements for care provided to our patients. With our clinics operating at a staffing deficit, along with the cancelation of non-essential procedures and visits, we are unable to bill sources of federal and private insurance and receive critical reimbursements for the provision of care. This shortfall represents an existential threat to continuity of operations, given the role that third party billing (especially Medicaid and Medicare) plays in providing further resources in the face of chronic underfunding on the part of the federal government. For some Tribal Nations, 3rd party reimbursements comprise 50-60% of total operating budgets.

- *Recommendations:* Provide for full and mandatory funding for IHS. Current estimates place the full obligation for IHS funding at \$48 billion. However, this figure is not comprehensive, as it does not include, for example, public health. In order to determine the level of funding necessary to provide for a robust IHS, as well as the structure for mandatory funding, we urge the establishment of a joint Tribal-federal workgroup. This workgroup should have access to a range of supports, including a health economist and/or the Centers for Medicare and Medicaid Services Office of the Actuary, as it seeks to arrive at a comprehensive number for IHS that reflects the full scope of its charge and circumstances. The workgroup's draft recommendations should then be subject to consultation and review by Tribal Nations.

In addition, while these comments are specific to full and mandatory funding for the IHS system, it is important to acknowledge that there are other federal entities who are part of the public health and direct health services system who are equally deserved of full and mandatory funding as we comprehensively address health and wellness across Indian Country. It is important that the Tribal-federal workgroup include these components as well.

Finally, we note that for the duration of the Public Health Emergency, the Centers for Medicare and Medicaid Services (CMS) has facilitated continued access to care and 3rd party revenue by allowing

Medicare and Medicaid reimbursement for telehealth services on a temporary basis. Access to telehealth not only reduces the risk of exposure to COVID-19, but helps to address chronic provider shortages within Indian Country and increase access to care for those who face difficulties getting to IHS or Tribal healthcare facilities. In a post-COVID world, continued telehealth flexibilities offer hope in beginning to address these long-standing issues. We strongly urge that these flexibilities be made permanent.

Tribal Public Health Entities Must Have Access to Surveillance Data

Our ability to respond to this public health crisis is further stymied by the lack of access to quality public health data at the federal and state levels. While the chronic underfunding of the Indian Health System has played a significant role in preventing the development of a robust Tribal public health infrastructure, states have cultivated extensive public health infrastructure. This includes the establishment of reportable disease and vital statistics reporting mechanisms, outbreak investigation, contact tracing, data collection, and quarantine measures for all residents, including Native people. This data is then shared with the Centers for Disease Control and Prevention (CDC) through cooperative agreements with each of the states.

In recognition of this lack of public health infrastructure at the Tribal level, the 1996 reauthorization of the Indian Health Care Improvement Act (IHCIA) established 12 Tribal Epidemiology Centers (TECs) across Indian country, one of which is housed at USET. In 2010, the permanent reauthorization of IHCIA designated TECs as Public Health Authorities and further compelled the Secretary of Health and Human Services (HHS) to share any and all health data with Tribal Nations. However, this directive has not been honored, for the most part, and Tribal Nations and TECs continue to experience frequent challenges in accessing data on both the federal and state level—including vital COVID-19 data—on top of the consistent lack of investment in TECs and Tribal public health capacity. TECs continue to petition both the CDC and state public health departments for this vital information, but have only received state data where there are positive Tribal-state relationships and some extremely limited COVID-19 testing data from CDC. This hinders the work of TECs and, in turn, COVID-19 response at the Tribal level, as we are without an accurate picture of the reach of the disease into our communities.

- *Recommendations:* TECs have provided invaluable support and services to Indian Country during the COVID-19 pandemic. However, the lack of quality data provided to TECs has led to severe gaps in understanding and addressing COVID-19 in our communities. CDC must ensure that TECs have access to critical public health data from federal and state governments. Both should be statutorily required to share all available public health data with TECs and Tribal Nations. This should be made a requirement of state cooperative agreements with CDC.

In addition, CDC must take steps to improve the quality of public health data shared with TECs and Tribal Nations. This includes requiring states to collect race/ethnicity data, as well as working with states and Tribal Nations to correct racial misclassification. Now and after the pandemic, CDC must work with TECs and Tribal Nations on an ongoing basis to ensure quality public health data, including health data related to the COVID-19 pandemic, is provided to TECs and Tribal Nations.

Tribal Nations Must Have Full Access to the Strategic National Stockpile

While other units of government have access to the Strategic National Stockpile (SNS), this access is not guaranteed for Indian Country. During the 116th Congress, legislation was introduced that would have confirmed full Indian Health System access. Unfortunately, this legislation did not pass and has yet to be reintroduced in the 117th Congress. In the meantime, Tribal Nations must access PPE and other supplies through IHS' National Supply Service Center, which experiences issues with volume and delays, or through

the private market. USET SPF member Tribal Nations continue to report difficulties with access to PPE and reliable testing supplies.

- *Recommendation:* We call upon HHS to take steps to address this issue administratively. If this is not possible, the Administration must support reintroduction of *Tribal Medical Supplies Stockpile Access Act* to statutorily guarantee that the SNS deliver drugs, vaccines, medical devices, and other supplies directly to health programs or facilities operated by IHS, Tribal Nations, or Tribal organizations.

Comments to the Department of Housing and Urban Development

Lack of Housing Spreads Disease and Prevents Isolation of COVID Patients

The federal underinvestment in Indian Country's housing infrastructure, is contributing to the spread of COVID-19 in many Tribal Nations. The ongoing lack of affordable housing has led to overcrowded conditions, with multi-family and multi-generational households a common occurrence in Indian Country. Homelessness is also a problem, with citizens of some USET SPF member Tribal Nations without a permanent address, shuttling between the houses of friends and relatives. Both scenarios facilitate further COVID-19 infection, as those who are positive are unable to isolate themselves from other residents in the case of overcrowded conditions and homeless individuals are potentially infecting multiple households as they seek temporary lodging. Both allow the disease to have a greater reach into Tribal communities than it has in many non-Native communities.

While several rounds of funding seeking to address this issue have been made available via Native American Housing and Self-Determination Act (NAHASDA) mechanisms, NAHASDA formulas have not historically benefited many Tribal Nations in the USET SPF region and some of our members do not participate in NAHASDA. In addition, HUD's Indian Housing Block Grant (IHBG) program relies on data collected from the U.S. Census on the self-report of racial background (American Indian/Alaska Native only or in combination with one or more other races) to determine the population count of individuals residing within a given 'formula area.' This does not recognize the political identity of Tribal citizens and blatantly ignores the official enrollment numbers of Tribal Nations. Tribal Nations count citizens across the United States and not just within a particular service area. Many Tribal Nations provide essential governmental services to their citizens regardless of where they live and Tribal citizenship does not change based on an individual's location. The use of IHBG formula data sets by Treasury during the initial 60 percent distribution of the \$8 billion Tribal set aside in CARES Act funds led to litigation due to inaccurate Tribal Nation population counts. During this litigation, it was revealed that by Treasury's own estimate, the utilization of HUD data resulted in at least \$679 million in underpayments to Tribal Nations.

- *Recommendation:* Work to address inequities in NAHASDA formulas, especially those impacting smaller Tribal Nations. Take action to improve IHBG data and ensure it is not inappropriately utilized as a methodology for funding distribution, especially for programs outside of HUD.

Comments to the Department of Commerce and U.S. Department of Agriculture

Throughout Indian Country, the lack of reliable and affordable internet service for distance learning, telehealth, and remote work capabilities has become further evident during the COVID-19 pandemic. One example of this unmet infrastructure funding obligation is the recent Tribal Broadband Connectivity Program (TBCP) administered by the National Telecommunications and Information Administration (NTIA). The TBCP was established by the Consolidated Appropriations Act of 2021 (P.L. 116-260) with an appropriation of \$1 billion to fund the deployment of broadband infrastructure on Tribal Lands to address connectivity

issues exacerbated by the COVID-19 pandemic. Following closure of the application period on September 1, 2021, NTIA reported that it received over 280 applications requesting over \$5 billion in funding for broadband projects on Tribal Lands. The \$5 billion funding request in the TBCP program is but one example of the infrastructure disparities that have persisted throughout Indian Country.

Deference Should be Given to Tribal Nations on the Accuracy of Current Broadband Data and Maps of Broadband Availability on Tribal Lands

The Department of Commerce and U.S. Department of Agriculture (USDA) rely exclusively on data sets provided by the Federal Communications Commission (FCC) and its National Broadband Maps, as well as U.S. Census data. These maps and data sets are incomplete and, in many instances, inaccurate regarding the levels of broadband service on Tribal lands. Historically, these maps and data sets have been used against Tribal Nations to exclude our eligibility to federal broadband funding, such as USDA programs.

Many federal broadband programs have relied on Census blocks or tracts as the primary method for targeting funds to unserved and underserved areas. However, Census blocks and tracts do not conform to Tribal Nation jurisdictional boundaries and can include population centers outside these boundaries. This has proven problematic in other federal broadband programs because telecommunications companies will apply for funding to serve Census blocks or tracts that overlap Tribal Nation jurisdictional boundaries, and they will fulfill buildout requirements without providing any service in the blocks or tracts within our jurisdictional boundaries.

In other instances, Tribal Nations have been excluded from applying for some federal broadband programs because the Census block or tract is reported as fully served, or the population data exceeds population caps of certain programs. In several investigations, the Government Accountability Office has determined that Census blocks or tracts overlapping Tribal Nation jurisdictional boundaries can be reported as 100 percent served by broadband if just a single location within those areas is reported as having connectivity. Similarly, these Census areas can exceed population caps for certain broadband programs if much of the population resides outside of the Tribal Nation jurisdictional boundaries within Census blocks and tracts. These problems with federal broadband programs, which further exacerbate the connectivity divide in Indian Country.

- *Recommendations:* Tribal Nations should be the sole authority in identifying Tribal Lands that are unserved and underserved by high-speed broadband, especially during public health emergencies. Tribal Nations must be the final arbiters of data sets or measures used in broadband funding allocations and should be empowered to challenge any federal data sets.

In addition, Tribal Nations should have the authority to carve out Census blocks and tracts that overlap our jurisdictional boundaries. This would ensure that non-Tribal entities applying for and receiving federal funds cannot fulfill buildout requirements without providing service on Census blocks and tracts that overlap our jurisdictional boundaries.

Tribal Nation eligibility to apply for broadband programs should also not be limited by population size and density, land base size, or “shovel ready” requirements. Funds should be distributed equitably to ensure all Tribal Nations, regardless of population or land base size, have an opportunity to access federal funds to deploy affordable and reliable broadband services.

Comments to the Department of Homeland Security

ARPA provided \$59.1 billion to FEMA to reimburse governments for emergency protective measures to support COVID-19 response efforts related to vaccine distribution and testing. ARPA also expanded the federal cost share for FEMA Public Assistance programs to 100 percent, thereby waiving the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) 25 percent cost share requirement for governments requesting public assistance. However, there remain many barriers to Tribal Nation access to relief under the Stafford Act and other FEMA programs and services.

Permanently Waive the 25 Percent Cost Share for Tribal Nations Accessing FEMA Public Assistance Funds

Due to the federal government's trust and treaty obligations to Tribal Nations, FEMA should always be obligated to waive any 25 percent cost-share requirement for Tribal Nations to access Public Assistance funds – public health emergency or not. Additionally, these Public Assistance funds are provided to Tribal governments through a reimbursement process, which provides challenges for Tribal Nations whose economic enterprises are susceptible to impacts from public health emergencies and natural disasters. Tribal governments do not have substantial tax bases like other governments. This proves problematic for Tribal Nations to meet the cost-share requirement for Public Assistance funds in addition to operating under reimbursement procedures during a public health emergency. Providing up-front resources, instead of implementing reimbursement processes, also falls within FEMA's fiduciary obligation to disburse vital resources to Tribal Nations.

Both the cost-share and the nature of Category B funding distribution have been and continue to serve as barriers to Tribal Nations accessing this funding and, by extension, the emergency activities and resources they support. These include the purchase of emergency supplies and hiring of necessary emergency management personnel. Under the Stafford Act, the President has the authority to waive the cost-share, as well as provide up-front funding to Tribal governments during a public health emergency. It wasn't until February 2021, a year after the start of the COVID-19 pandemic, that a Presidential Memorandum was issued waiving the 25 percent cost share requirement and directing FEMA to provide a 100 percent federal cost share for all emergency protective measures under Category B Public Assistance. However, this directive expired September 30, 2021.

In addition, when a Tribal Nation submits a request for a major disaster or emergency declaration, FEMA often takes an inordinate amount of time to send the request and recommendation to the President, costing valuable time to seek waivers or relief from Congress. Finally, the FEMA review process for major disaster or emergency declaration requests is not transparent, which makes it almost impossible for Tribal Nations to successfully appeal the decision if their request is denied.

- *Recommendation:* We urge FEMA to immediately eliminate any agency-imposed non-federal match requirement for Tribal Nations to receive federal assistance, which includes any existing or proposed regulations, policies, grant applications, or other guiding documents. And in the spirit of a transparent Nation-to-Nation relationship, we further urge FEMA to immediately establish a policy to forward any and all Tribal emergency or major disaster declaration requests without cumbersome administrative requirements or any other complex application processes imposed, and to submit these requests to the President with a recommendation of the FEMA Administrator within 10-working days and forward a copy of the recommendation to the submitting Tribal Nation.

Further, the Department of Homeland Security must urge Congressional action to amend the Stafford Act and remove the 25 percent cost share requirement imposed on Tribal Nations to access FEMA Public Assistance Funds. The federal government has unique trust and treaty obligations to Tribal Nations, and as a unit of the federal government FEMA has a fiduciary obligation to expand all avenues of access for Tribal Nations to FEMA programs and resources.

Remove Burdensome Application Requirements and Establish Uniform Common Practices Across All FEMA Regions

Another barrier to Tribal Nation access to FEMA programs and services are the burdensome application requirements and inconsistent practices within the different FEMA regions. To access COVID-19 disaster Funding, FEMA Headquarters has required Tribal Nations to execute a FEMA Tribal Agreement, confirm activation of their Tribal emergency operations plan, and submit a Tribal Public Assistance Administrative Plan. The Public Assistance Administrative Plan is essentially a lengthy grants management plan that has little relation to the immediate and ongoing nature of public health emergencies. While FEMA has spent the last several years working directly with states to set up their plans, FEMA has not invested the time and resources necessary to provide the same technical assistance to Tribal Nations prior to the onset of COVID-19. Some FEMA regions have not required the plan be completed before sending Tribal Nations funding, while other regions have not been flexible to Tribal Nation funding and service requests during this pandemic. Moreover, Tribal Nations reported that certain FEMA regions added region specific requirements to their application process. This lack of uniform guidance and practice throughout the FEMA regions has created unnecessary constraints on Tribal Nations and has led to the delay of vital funds and services being delivered to Indian Country during the COVID-19 pandemic.

- *Recommendation:* FEMA Headquarters, in consultation with Tribal Nations, must create uniform procedures for its regions to engage and coordinate with Tribal Nations on developing Tribal Public Assistance Administrative Plans. Additionally, FEMA must work with Tribal Nations to remove any unnecessary and burdensome requirements currently in place that prohibit or delay Tribal Nation access FEMA programs and resources.

Comments to the Department of the Treasury

As we recover from the economic and governmental impacts of the once-in-a-generation pandemic, Treasury must prioritize its trust and treaty obligations to Tribal Nations. Although Treasury administers programs aimed at providing relief to all units of U.S. government, it has unique obligations to Tribal Nations, including an obligation to uphold Tribal sovereignty and self-determination, as well as facilitate the rebuilding of our Tribal Nations. Rebuilding of our Tribal Nations includes rebuilding of our Tribal economies as a core foundation of healthy and productive communities.

With this in mind, eligibility, reporting, and compliance requirements must be tailored to our unique circumstances and with the express purpose of streamlining and simplifying access to recovery programs delivered in recognition of the trust obligation. If administered correctly, these programs could make significant inroads in Tribal Nation rebuilding. This involves ensuring Treasury's approach to Tribal Nations fully recognizes its broader, diplomatic obligations, including deferring to our sovereign decisions and waiving burdensome requirements it may deem appropriate for other units of government.

Despite Treasury's trust obligation to Tribal Nations and its historic and increasing involvement in matters of importance to our governments, its relationship with Indian Country continues to feel strained. We can point to several recent examples of failures to properly consult, guidance issued that does not reflect our

governmental structures and/or unique circumstances, and other missteps that fall short of upholding the Department's sacred responsibilities. We believe that much of this is due to a lack of education and familiarity with Indian Country, the history of U.S.-Tribal relations, and federal Indian law, as well as the division of responsibilities and lack of investment in Tribal Affairs thus far [i.e. only one staff].

Earlier this year, Treasury issued an Interim Final Rule (IFR) on implementation of the ARPA Fiscal Recovery Fund (FRF). The FRF provides \$20 billion to Tribal governments to respond to the devastating effects of the COVID-19 public health emergency. As the IFR acknowledges, Tribal Nations, and our citizens, have been disproportionately affected by the COVID-19 pandemic. However, as drafted, the IFR does not reflect a full understanding of the federal government's trust and treaty obligations, including the obligation to promote Tribal sovereignty and self-determination. USET SPF urges Treasury to uphold its obligations to Tribal Nations by ensuring that under the FRF and other Treasury programs, reporting is streamlined, compliance requirements reflect our sovereign, political status, and maximum deference is given to Tribal decision-making as we seek to recover from the devastating effects of COVID-19 and build a better future for our people.

Maximum Deference to Tribal Nations

Whenever possible, Treasury and other federal agencies should defer to Tribal Nations to set standards for the implementation of laws and the expenditure of funds. Indeed, E.O. 13175, on which Treasury was recently required to consult, instructs agencies to provide Tribal Nations with the "maximum administrative discretion possible" and "defer to Indian Tribes to establish standards" in order promote self-governance and deliver upon trust and treaty obligations. However, the IFR further narrows the types of expenditures allowable under the FRF. Given the unique status of Tribal Nations among the American family of governments, as well as the diversity found across Indian Country, eligible uses of FRF should be as broad as possible. While we recognize that the lists provided in the IFR are non-exclusive, the IFR implicitly limits Tribal discretion and/or fails to reflect the realities found within Indian Country. We urge Treasury to ensure that Tribal Nations are fully empowered to implement spending plans under the FRF that respond to our individual circumstances and do not involve restrictions beyond those found in the law. In addition, we provide the following specific, but non-exhaustive, recommendations regarding eligible uses to ensure that the IFR better incorporates the structure and role of Tribal Nations. In addition to these, Treasury should ensure the IFR is crafted in a way that confirms the broadest authority possible for Tribal Nations to determine the best use of FRF funds

Treasury Must Establish a Tribal Affairs Office

All federal departments should have a Tribal Affairs Office to inform the Department on issues relevant to and affecting Tribal Nations. Too often our issues and concerns must navigate a complex bureaucracy to receive attention.

- *Recommendation:* Establish a Tribal Affairs Office within the Office of the Secretary. This Office must have the unfettered ability to communicate and relay recommendations directly to the Secretary on issues affecting Tribal Nations. This Office should also take the lead on communication and coordination with Tribal Nations regarding Treasury's actions and activities prior to Treasury enacting rules and regulations that affect us. Treasury's Internal Revenue Service (IRS) should also communicate and coordinate with the Tribal Affairs Office to ensure that any IRS rules and regulations that may affect Tribal Nations are appropriately communicated to us.

Additional Recommendations to Prepare Indian Country for Future Public Health Emergencies

Deep and chronic failures require bold, systemic changes. Centuries of neglect and dishonorable dealings, as well as a relationship predicated on the demise of our governments, cannot be wiped away by working within the parameters of a system built to work against our interests. This reality is intensifying as Tribal Nations have been forced to fight COVID-19 from a position of extreme deficiency. To address these systemic failures, short- and long-term solutions must be designed and implemented to ensure the federal government better honors its promises to Tribal Nations.

USET SPF is seeking fundamental and lasting change to U.S.-Tribal Nation relations in order to truly improve the delivery of federal trust and treaty obligations. This includes the removal of existing barriers that interfere with our ability to implement our inherent sovereign authority to its fullest extent which, in turn, will allow Indian Country to realize its great potential. Although WHCNA's potential has yet to be fully realized, it should take a primary role in addressing federal failures and working to more meaningfully deliver upon trust and treaty obligations. The following are recommendations that WHCNA can and should coordinate across the federal family.

Address the Findings of *Broken Promises* and Beyond

The United States must address ongoing failures to honor its sacred promises to Tribal Nations, many of which have been outlined in detail by the U.S. Commission on Civil Rights in its 2018 *Broken Promises* report, as well as the *Quiet Crisis* report in 2003. As you are well aware, the pandemic has exposed the chronic and ever-widening gap between the trust obligation owed to Tribal Nations and the execution of that obligation. Though these failures have persisted throughout changes in Administration and Congress, it is time that both the legislative and executive branches confront and correct them. As the Commission states in *Broken Promises*, "the United States expects all nations to live up to their treaty obligations; it should live up to its own."

The time is long overdue for a comprehensive overhaul of the trust relationship and obligations, one that results in the United States finally keeping the promises made to us as sovereign nations in accordance with our special and unique relationship. Deep and chronic failures require bold, systemic changes. Centuries of neglect and dishonorable dealings, as well as a relationship predicated on the demise of our governments, cannot be wiped away by working within the parameters of a system built to work against our interests. While USET SPF endorses and supports many of the recommendations in *Broken Promises*, we are also seeking fundamental and lasting change to U.S.-Tribal Nation relations in order to truly improve the delivery of federal trust and treaty obligations. This includes the removal of existing barriers that interfere with our ability to implement our inherent sovereign authority to its fullest extent which, in turn, will allow Indian Country to realize its great potential. We recognize an effort like this will take significant time and interagency collaboration, as well as outlast this Administration. However, this effort must begin and it should begin with the WHCNA.

A Marshall Plan for Indian Country

As the Biden Administration seeks to "build back better" and works to advance legislative packages aimed at recovery from the COVID-19 pandemic, the United States must commit to rebuilding the sovereign Tribal Nations that exist within its domestic borders. At the same time, any infrastructure build-out, in Indian Country and beyond, does not occur at the expense of Tribal consultation, sovereignty, sacred sites, or public health.

Much like the U.S. investment in the rebuilding European nations following World War II via the Marshall Plan, the legislative and executive branches should commit to the same level of responsibility to assisting in the rebuilding of Tribal Nations, as our current circumstances are, in large part, directly attributable to the shameful acts and policies of the United States. In the same way the Marshall Plan acknowledged America's debt to European sovereigns and was utilized to strengthen our relationships and security abroad, the United States should make this strategic investment domestically. Strong Tribal Nations will result in a strengthened United States. Recognizing the expansiveness and complexity of such a plan, the WHCNAA would be the most appropriate body to coordinate and oversee its design and implementation.

Full and Mandatory Funding for all Federal Indian Programs

Above all, the COVID-19 crisis is highlighting the urgent need to provide full and guaranteed federal funding to Tribal Nations in fulfillment of the trust obligation. In the long-term USET SPF is calling for a comprehensive reexamination of federal funding delivered to Indian Country across the federal government. Because of our history and unique relationship with the United States, the trust obligation of the federal government to Native peoples, as reflected in the federal budget, is fundamentally different from ordinary discretionary spending and should be considered mandatory in nature. Payments on debt to Indian Country should not be vulnerable to year to year "discretionary" decisions by appropriators and the Administration must urge Congress to move all federal funding for Indian programs to mandatory funding. This action would be consistent with the federal trust obligation by streamlining access to federal dollars and reflect true prioritization of and reverence for America's trust obligation to and special relationship with Tribal Nations.

Expansion of Self-Governance Contracting and Compacting and Interagency Transfer of Funds

Despite the success of Tribal Nations in exercising authority under the Indian Self-Determination and Education Assistance Act (ISDEAA), the goals of self-governance have not been fully realized. Many opportunities still remain to improve and expand upon its principles. An expansion of Tribal self-governance to all federal programs under ISDEAA would be the next evolutionary step in the federal government's recognition of Tribal sovereignty and reflective of its full commitment to Tribal Nation sovereignty and self-determination. In the case of COVID-19 response, it would provide for a streamlined and expeditious approach to the receipt and expenditures of funding from across the federal government, and ensure these resources can be utilized in ways that reflect the diversity of Tribal governments.

USET SPF, along with Tribal Nations and organizations, has consistently urged that all federal programs and dollars be eligible for inclusion in self-governance contracts and compacts. We must move beyond piecemeal approaches directed at specific functions or programs and start ensuring Tribal Nations have real decision-making in the management of our own affairs and assets. It is imperative that Tribal Nations have the expanded authority to redesign additional federal programs to serve best our communities as well as have the authority to redistribute funds to administer services among different programs as necessary.

Furthermore, Congress and the Administration should consider modifications to reporting requirements under ISDEAA and other methods of funding distribution. The administrative burden of current reporting requirements under ISDEAA including site visits, "means testing," or other standards developed unilaterally by Congress or federal officials are barriers to efficient self-

governance and do not reflect our government-to-government relationship. While obtaining data around Tribal programs is critical to measuring how well we as Tribal governments are serving our citizens and how well the federal government is delivering upon its obligations, Tribal Nations find themselves expected to report data in order to justify further investment in Indian Country. This runs counter to the trust obligation, which exists in perpetuity. The data collected by Tribal Nations must be understood as a tool to be utilized in sovereign decision-making, not to validate the federal government's fulfillment of its own promises.

Grant and Competitive Grant Processes Do Not Uphold the Federal Government's Trust and Treaty Obligations

Because funding for federal Indian affairs is provided in fulfillment of clear legal and historic obligations, those federal dollars should not be subject to a grant-based mentality. USET SPF points out that federal funding directed to foreign aid and other federal programs are not subject to the same scrutiny. Grant funding fails to reflect the unique nature of the federal trust obligation and Tribal Nations' sovereignty by treating Tribal Nations as non-profits rather than governments. We reiterate the need for the federal government to treat and respect Tribal Nations as sovereigns as it delivers upon the fiduciary trust obligation, as opposed to grantees. Similarly, awarding grant funds through a competitive application and award process undermines the federal trust obligation and inappropriately pits Tribal Nations against each other to compete for vital funds and resources.

No Pass-Through Funding to State Governments

All federal funding should be awarded directly to Tribal Nations, as opposed to being funneled through state governments. Too often federal funds are first awarded to state governments with the directive to award an amount or percentage to Tribal Nations. Too often we've witnessed that programmatic funds do not reach Indian Country and in the instances these funds are passed through to Tribal Nations the amounts are insufficient to address the program's intended purposes. Pass-through funding to state governments completely abrogates and undermines the federal trust and treaty obligations to Tribal Nations.

Federal Funds Should be Distributed Equitably Throughout Indian Country

Federal agencies must understand that a "one-solution fits all" approach to program awards and implementation does not work for Indian Country, especially USET SPF member Tribal Nations. Emphasis should be made on equitable disbursement of federal funds to ensure that all Tribal Nations, regardless of land base acreage, population size, and "shovel-ready" capabilities, are provided comparable opportunities to apply for and access broadband infrastructure funds. Considering the diversity of Tribal Land holdings resulting from hundreds of years of theft and loss, land base should not be a sole determining or disqualifying factor for awarding program funds.

Remove Matching Fund Requirements and Ease Reporting Requirements

Imposing a matching fund requirement on Tribal Nations does not uphold the federal government's trust and treaty obligations, especially during public health emergencies. The use of burdensome administrative and reporting requirements also do not support Tribal Nation response efforts to adequately address public health emergencies. These include application, reporting, audit, or other types of compliance requirements. Any reporting requirements mandated by law must be streamlined and only the minimum required, so that Tribal Nations may continue to focus on addressing public health emergencies.

Conclusion

We appreciate the focus of this consultation and its coordination through WHCNA. As we look toward recovery from the global pandemic, USET SPF asks that you join us in working toward a legacy of change for Tribal Nations, Native people, and the sacred trust relationship. This includes the enactment of policies that uphold our status as sovereign governments, our right to self-determination and self-governance, and honor the federal trust obligation in full. We look forward to continuing to work with you to improve interagency coordination, response, and support for Tribal Nations. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director