MEMORANDUM OF UNDERSTANDING BETWEEN ORGANIZED VILLAGE OF KASAAN AND UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE

THIS MEMORANDUM OF UNDERSTANDING is hereby entered into by and between the Organized Village of Kasaan, herein after referred to as the Tribe and the United States Department of Agriculture, Forest Service, (hereinafter the "Forest Service") on behalf of the United States Department of Agriculture (hereinafter the "Department").

A. PURPOSE:

This Memorandum of Understanding ("MOU") is established by the undersigned parties to document the cooperation between the parties on the establishment of rules governing the management of inventoried roadless areas located within the National Forests in Alaska. The Governor of the State of Alaska submitted a petition (per the requirements of § 553 of the Administrative Procedure Act) to the Secretary of Agriculture, seeking exemption from the nationwide rules governing management of inventoried roadless areas on the Tongass National Forest in Alaska. On June 1, 2018, the Secretary of Agriculture directed the Chief of the Forest Service to initiate a state-specific rulemaking for roadless management direction for the Tongass National Forest in Alaska on behalf of the Department.

In accordance with the Council on Environmental Quality regulations (40 C.F.R. §§ 1501.6, 1508.5), the Tribe is hereby established as a cooperating agency in the preparation of analysis and documentation under the National Environmental Policy Act ("NEPA") associated with this rulemaking. The state-specific rulemaking process will include publishing a proposed rule for public review and comment and preparing an Environmental Impact Statement.

For the purpose of this MOU, the applicable "inventoried roadless areas" are those in Alaska that are described and defined in the 2001 Roadless Area Conservation Rule (66 FR 3243, 3272, Jan. 12, 2001), and "Alaska roadless areas" are those in Alaska that an Alaska-specific roadless rule would apply.

B. AUTHORITY

This agreement is authorized pursuant to the Organic Administration Act of 1897, 16 U.S.C. §551; Multiple Use, Sustained Yield Act, 16 U.S.C. §§528-53 J; Forest and Renewable Resource Planning Act of 1974, as amended by the National Forest Management Act of 1976, 16 U.S.C. §§ 1601-1614; see also 23 U.S.C. 201,205, Administrative Procedure Act 5 U.S.C. §553, 7 C.F.R. §1.28; 40 C.F.R. Parts 1500-1508.

The Organized Village of Kasaan is authorized to enter into this agreement pursuant to FSH 1509.3 & FSM 1500.

C. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The USDA Forest Service manages National Forest System lands to maintain and enhance the quality of the environment to meet the Nation's current and future needs. Forest Service land management supports recreation, water, timber, fish, wildlife, wilderness, aesthetic

values and a variety of resource development activities for current and future generations. Currently there are over 21.9 million acres of National Forest in the State of Alaska, of which approximately 14.7 million acres are considered inventoried roadless areas as defined by the 2001 Roadless Area Conservation Rule.

The tribe is responsible for representing its citizens in matters affecting them. Tribes have specialized knowledge and expertise on land management, subsistence, natural resources, and potential impacts to specific communities within Alaska.

The Forest Service recognizes that it has a trust responsibility with American Indians and Alaska Natives derived from the historical relationship between the Federal government and Tribal governments as expressed in treaties, statutes, Executive Orders, Federal Indian case law, and inherent rights of Alaska Native people. Nothing listed in this MOU infringes or lessens the inherent rights of either party.

Both parties are committed to and will benefit by resolving conflicts over Alaska roadless area rulemaking through increased communication, sharing of information, participation, cooperation, and coordination in implementing their respective missions as part of the state-specific rulemaking process.

D. BOTH PARTIES SHALL:

1. Establish and maintain clear lines of communication, working through the principal contacts made in this MOU.
2. Cooperate in the development of specific regulatory language for a proposed state-specific rule to establish management direction for Alaska roadless areas.
3. Develop a detailed work plan that sets out required action steps, milestones, and timelines associated with all aspects of this rulemaking effort.
4. Cooperate in the preparation of analyses and documentation, development of the description of the proposed action and any alternatives, and the compilation of any resource information associated with this state-specific roadless rulemaking.

E. THE FOREST SERVICE SHALL:

1. Take the lead in preparation of analysis and required documentation for the rulemaking, including preparation of an Environmental Impact Statement.
2. Coordinate the logistics of the federal review and clearance process involved with rulemaking.
3. If the rule is determined by the Office of Management and Budget ("OMB") to be "significant" per Executive Order 12866, the Forest Service will take the lead in developing a civil rights impact analysis and benefit-cost analysis.
4. Assess responsibilities under the Tongass Timber Reform Act (TTRA), the Alaska National Interest Lands Conservation Act (ANILCA), and the ecological, social, and economic factors for Southeast Alaska, as requested by the State in its roadless petition.
5. Ensure the point of contact for the Tribe is regularly briefed to ensure the Tribe is aware of the progress, issues, and changes associated with the development of the final rule.
6. Designate a representative who will work with the Tribe to provide technical information and support as necessary for development and analysis of a proposed rule and alternatives.

F. THE TRIBE SHALL:

1. To the extent possible, perform the duties and obligations of a cooperating agency (40 C.F.R. § 1501.6) in the preparation of a final rule and associated documents.
2. Provide to the Forest Service input for a limited range of alternatives that would implement Alaska's preferred management direction for Alaska roadless areas.
3. Assist in public engagement.
4. Perform the duties and obligations of a cooperating agency in the preparation of the NEPA documentation associated with developing a rule for Alaska roadless areas.
5. Cooperate with the Forest Service in other procedures required in a rulemaking process (i.e., those procedures outside of the NEPA process).
6. Provide input at specific points in the rulemaking process, including but not limited to:
    - Review public input, key issues, and alternatives/rule language.
    - Review analysis for the draft environmental impact statement (DEIS) to review alternatives/rule language.
    - Review public input and any outstanding issues raised concerning the DEIS.
    - Review final EIS alternatives/and preferred alternative.

G. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

1. APPROVAL. The Secretary of Agriculture, or the Secretary's designee, shall make the final decision for any Alaska roadless area management rule.
2. FREEDOM OF INFORMATION ACT (FOIA). Any information furnished to the Forest Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. §552).
3. FEDERAL ADVISORY COMMITTEE ACT (FACA). In order to meet the intergovernmental committee exception to FACA, all participants of any NEPA ID team must be a full-time or part-time officer or employee of the Federal Government or elected officer of the State, local, or tribal government (or their designated employee with authority to act on their behalf), acting in their official capacity (41 C.F.R. 102-3.40(g)).
4. PARTICIPATION IN SIMILAR ACTIVITIES. This instrument in no way restricts the Forest Service or the Cooperator(s) from participating in similar activities with other public or private agencies, organizations, and individuals.
5. COMMENCEMENT/EXPIRATION/TERMINATION. This MOU takes effect upon the signature of the Forest Service and Tribe and shall remain in- effect until December 31, 2020 or until a state-specific roadless area management rule is approved by the Secretary of Agriculture, or the Secretary's designee. This MOU may be extended or amended upon written request of either the Forest Service or the Tribe and the subsequent written concurrence of the other. Either party may terminate this MOU with a 60-day written notice to the other party.
6. IMPLEMENTATION AND MONITORING. The Forest Service and the Tribe agree that there may be benefits to continuing the relationship represented by this MOU.
7. Both parties agree to consider extending this MOU or developing a new MOU once the State-specific rule is approved.
8. DISPUTES. Disputes between the Forest Service and the Tribe concerning any aspect of this rulemaking and associated environmental analysis will be resolved through good faith efforts

between the parties to the MOU. Nothing in this MOU or in this provision alters the legal rights of the parties to seek other means of resolving disputes including judicial review.

9. RESPONSIBILITIES OF THE PARTIES. The Forest Service and the Tribe and their respective agencies and officers will handle their own activities and contribute their own personnel and financial resources, in pursuing these objectives, with exception of any funding that might be provided the Tribe separately by the U.S. Department of Agriculture. Each party will carry out its separate activities in a coordinated and mutually beneficial manner..
10. PRINCIPAL CONTACTS. The principal contacts for this instrument are:

Forest Service Project Contact

Mary Snieckus
Project Lead Forest Service
Washington Office 202-205-0824
marysnieckus@fs.fed.us

Ken Tu
ID Team Lead Forest Service
Rocky Mountain Region 303-275-5156
kktu@fs.fed.us

Melinda Hernandez Burke
Forest Service Tribal Relation Program Manager
Alaska Region 907-586-7089
mhernandezburke@fs.fed.us

Cooperator Project Contact

Ronald Leighton
Tribal President
P.O. Box 26-KXA
Ketchikan, AK 99950-0340
907-542-2230 akdilligas060@gmail.com

11. NON-FUND OBLIGATING DOCUMENT. Nothing in this MOU shall obligate either the Forest Service or the State to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the Forest Service and the State will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each agreement must comply with all applicable statutes and regulations.
12. FUNDING ASSISTANCE TO THE STATE. The Forest Service may provide financial assistance to the State in association with actions undertaken pursuant to this MOU. However, those agreements will occur separately from this document
13. ESTABLISHMENT OF RESPONSIBILITY. This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.
14. ADMINISTRATIVE.
    - Nothing in this MOU will be construed to alter the legal rights and remedies that each party would otherwise have. The parties explicitly agree that participating as a cooperating agency under this MOU will not limit the right of the State to seek administrative and judicial review of any final rule promulgated in this rulemaking process.

- Nothing in this MOU will be construed to extend jurisdiction or decision- making authority to either party to this MOU, beyond that which exists under current law, regulations, or ordinances.
- Nothing in this MOU will be construed as limiting or affecting the authority or legal responsibilities of any party, or as hindering any party to perform beyond the responsive authority of each, or to require them to assume or expend any sum in excess of appropriation available.
- The provisions in this MOU are subject to the applicable laws and regulations of the State of Alaska, the applicable laws of the United States, and the applicable regulations of the Secretary of Agriculture.
- AUTHORIZED REPRESENTATIVES. By signature below, the coordinator certifies that the individuals listed in this document as representatives of the cooperator are authorized to act in their respective areas for matters related to this agreement.

15. AUTHORIZED REPRESENTATIVES. By signature below, the coordinator certifies that the individuals listed in this document as representatives of the cooperator are authorized to act in their respective areas for matters related to this agreement.

THE PARTIES HERETO have executed this agreement.

ORGANIZED VILLAGE OF KASAAN:

Tribal President – Organized Village of Kasaan
Ronald Leighton

USDA FOREST SERVICE

for Chief – USDA Forest Service
Victoria Christiansen