APPENDICES (Rule 14.1. (I))

Appendix A. Eighth Circuit Court of Appeals, Case No. 20-1484 (December 4, 2020) (2 pages)

Appendix B. Eighth Circuit Court of Appeals, Case No. 20-1484, Petition for Rehearing En Banc (January 26, 2021) (1 page)

Appendix C. Final Order: *White Face v. Great Plains Tribal Chairmen's Health Board,* Oglala Sioux Tribal Court, Case No. CIV-18-0409 (December 4, 2018) (2 pages)

Appendix D. Aberdeen Tribal Chairmen's Health Board Articles of Incorporation [By-Laws not included] (6 pages)

Appendix E. Self-Determination Contract between the Great Plains Tribal Chairmen's Health Board on behalf of the Cheyenne River Sioux Tribe and the Oglala Sioux Tribe, and the Secretary of the Department of Health and Human Services Rapid City Service Unit Contract Number: HHS-241-2019-01111 (33 pages)

Appendix F. Cheyenne River Sioux Tribe Resolutions: 104-2018-CR; 1-2019-CR (9 pages)

Appendix G. Oglala Sioux Tribal Resolution No. 19-02; 18-42 (9 pages)

Appendix H. Rosebud Sioux Tribal Resolution No. 2018-116; 2018-117 (10 pages)

Appendix I. Final Orders: *Gilbert v. Weahkee,* 441 F. Supp. 3d 799 (D.S.D. 2020) (36 pages)

Appendix A
(2 pages)

United States Court of Appeals
For the Eighth Circuit

No. 20-1484

Donna M. Gilbert; Julie Mohney; Charmaine White Face

Plaintiffs - Appellants

v.

RADM Michael D. Weahkee, Principal Deputy Director of Indian Health Service (IHS); James Driving Hawk, Great Plains IHS Area Director; William P. Barr, United States Attorney General

Defendants - Appellees

Appeal from United States District Court
for the District of South Dakota - Western

Submitted: December 1, 2020
Filed: December 4, 2020
[Unpublished]

Before COLLOTON, SHEPHERD, and KOBES, Circuit Judges.

PER CURIAM.

Donna Gilbert, Julie Mohney, and Charmaine White Face appeal the district court's[1] dismissal of their action challenging a tribal organization's contract with the Indian Health Service. Having carefully reviewed the record and the parties' arguments on appeal, we find no basis for reversal. See Jet Midwest Int'l Co. v. Jet Midwest Grp., LLC, 953 F.3d 1041, 1044 (8th Cir. 2020) (abuse of discretion review of denial of preliminary injunction; injunction cannot issue if there is no chance of success on merits); Montin v. Moore, 846 F.3d 289, 292 (8th Cir. 2017) (de novo review of Fed. R. Civ. P. 12(b) dismissal); Zimmerman v. HBO Affiliate Grp., 834 F.2d 1163, 1169-70 (3d Cir. 1987) (no abuse of discretion in finding class certification motion was mooted by dismissal of complaint).

The judgment is affirmed. See 8th Cir. R. 47B.

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[1]The Honorable Jeffrey L. Viken, United States District Judge for the District of South Dakota.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 20-1484

Appendix B
(1 page)

Donna M. Gilbert, et al.

Appellants

v.

RADM Michael D. Weahkee, Principal Deputy Director of Indian Health Service (IHS), et al.

Appellees

Appeal from U.S. District Court for the District of South Dakota - Western
(5:19-cv-05045-JLV)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

January 26, 2021

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

COPY

Appendix C
(2 pages)

OGLALA SIOUX TRIBAL COURT OGLALA LAKOTA TRIBE PINE RIDGE INDIAN RESERVATION	]]ss:]	IN CIVIL COURT PINE RIDGE
CHARMAINE WHITE FACE, Representative of RAPID CITY CONCERNED INDIAN COMMUNITY Plaintiff, v. GREAT PLAINS TRIBAL CHAIRMEN'S HEALTH BOARD, Defendant.	]]]]]]]]]	Case No.: CIV-18-0409 **ORDER OF DISMISSAL FOR LACK OF JURISDICTION**

This matter comes before the Court on Plaintiff's Petition for Temporary Injunction filed November 13, 2018 on the Pine Ridge Reservation. Pursuant to Section 20 of Chapter 2 of the Oglala Sioux Law and Order Code, this Court does not have jurisdiction the hear this matter and therefore the Petition for Temporary Injunction must be dismissed. After reviewing the file, all court pleadings, and being otherwise duly and fully advised of the premises, the Court FINDS, ORDERS, ADJUDGES, AND DECREES as follows:

1. The Oglala Sioux Tribal Court has jurisdiction of all suits wherein the defendant is a member of the Oglala Sioux Tribe and of all other suits between members and non-members who consent to the jurisdiction of the tribe.

2. Defendant, Great Plains Tribal Chairmen's Health Board, is not an individual member of the Oglala Sioux Tribe. Therefore, it must be determined whether Defendant has consented to the jurisdiction of the Tribe.

3. Section 20 of the OST Law and Order Code sets forth eight (8) actions that are deemed as having consented to the jurisdiction of the Oglala Sioux Tribe, none of which are applicable to Defendant.

4. Defendant is a nonprofit corporation registered with the State of South Dakota. It is an organization representing the eighteen (18) tribal communities in the four-state region of South Dakota, North Dakota, Nebraska, and Iowa. The purpose of the organization is to serve as a liaison between the Great Plains Tribes and the various Health and Human Services divisions within the area. Defendant is not an entity or organization of the Oglala Sioux Tribe.

5. Plaintiff's Petition alleges that Defendant is attempting to assume administrative functions of the Sioux San Indian Health Rapid City Service Unit and all allegations of the Petition relate directly to this initial allegation. Therefore, all actions of Defendant that Plaintiff seeks to restrain occurred or are occurring outside the exterior boundaries of the Pine Ridge Indian Reservation.

6. The Oglala Sioux Tribal Court does not have personal jurisdiction over Defendant.

7. The Oglala Sioux Tribal Court does not have subject matter jurisdiction over actions of Defendant occurring outside the exterior boundaries of the Pine Ridge Indian Reservation.

8. Plaintiff's Petition for Temporary Injunction is dismissed for lack of jurisdiction.

IT IS SO ORDERED.

Dated this 4th day of December, 2018.

Paula Langworthy

The Honorable Paula D. Langworthy
Court Appointed Special Judge

Appendix D
(6 pages)

STATE OF SOUTH DAKOTA

Secretary of State

Certificate of Incorporation
Non-Profit

I, JOYCE HAZELTINE, Secretary of State of the State of South Dakota, hereby certify that the Articles of Incorporation of THE ABERDEEN AREA TRIBAL CHAIRMEN'S HEALTH BOARD duly signed and verified, pursuant to the provisions of the South Dakota Nonprofit Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issue this Certificate of Incorporation of THE ABERDEEN AREA TRIBAL CHAIRMEN'S HEALTH BOARD and attach hereto a duplicate of the Articles of Incorporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital,

this 21st day of JANUARY A.D. 19 92

Joyce Hazeltine
Secretary of State

Deputy

APPENDIX A

State of South Dakota

OFFICE OF THE SECRETARY OF STATE

Certificate of Amendment

ORGANIZATIONAL ID #: NS009553

I, Chris Nelson, Secretary of State of the State of South Dakota, hereby certify that duplicate of the Articles of Amendment to the Articles of Incorporation of **ABERDEEN AREA TRIBAL CHAIRMEN'S HEALTH BOARD changing its name to: GREAT PLAINS TRIBAL CHAIRMEN'S HEALTH BOARD** duly signed and verified pursuant to the provisions of the South Dakota Corporation Acts, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issue this Certificate of Amendment to the Articles of Incorporation and attach hereto a duplicate of the Articles of Amendment.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this September 3, 2010.

Chris Nelson

Chris Nelson
Secretary of State

AmendCertificate Merge

ARTICLES OF INCOPORATION
OF
THE ABERDEEN AREA TRIBAL CHAIRMENS' HEALTH BOARD

ARTICLE I.

The Name of the Corporation shall be the Aberdeen Area Tribal Chairmens' Health Board.

ARTICLE II.

The Period of duration of this Corporation shall be perpetual.

ARTICLE III.

PURPOSE:

The stated policy of the Indian Health Service is to "encourage and increase Indian participation in every phase of the program; planning, operating, and evaluating service at all levels." The Aberdeen Area Tribal Chairmens' Health Board is established in order to provide the Indian people of the Aberdeen Area with a formal representative Board as a means of communicating and participation with the Aberdeen Area Indian Health Service and other health agencies and organizations on health matters. In pursuing this policy, the Board's objectives are:

1. To improve the effectiveness of the Indian Health program through responsible participation of the Indian people in making decisions about their health services, in order to improve their health status.

2. To assist the Indian Health Service in establishing program priorities and in distributing existing resources.

3. To advise and assist the Director, Aberdeen Area Indian Health Service, in developing long-range program plans.

4. To represent the Indian interests and desires at all levels for health related programs.

5. To assist in development of Indian responsibility for community activities affecting health.

6. To assist member tribes in the development of health programs that will be beneficial to the Tribes.

7. To establish participation in any meetings that will provide clear and concise information to the Tribes.

8. To represent the organization and member tribes in the Congress of the Unites States at any hearings and at National Organization meetings regarding health issues and care.

The board is organized exclusively for non-profit purposes and will qualify as an exempt organization under Sec. 501 (c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue law).

ARTICLE IV.

The voting members of this Board shall be the Chairman/President or their official designees, from each of the Reservations in South Dakota, North Dakota, Nebraska and Iowa, and the Chairman of the Rapid City Indian Health Advisory Board and the Chairman of the Trenton Indian Service Area Board. The voting members of the Board shall be selected according to the Constitution and By-laws of their governing bodies.

ARTICLE V.

The Officers of the Board shall be elected by the membership of the Aberdeen Area Tribal Chairmens' Health Board at the first meeting of the fiscal year. Officers of the Board shall be the Chairman, Vice-Chairman, Secretary and Treasurer. The Executive Committee shall consist of five (5) members and it shall include one (1) elected member of the Aberdeen Area Tribal Chairmens' Health Board.

ARTICLE VI.

The permanent address of the Board shall be:

Aberdeen Area Tribal Chairmens' Health Board
1770 Rand Rd.
Rapid City, SD 57702

ARTICLE VII.

The initial Board of Directors for this organization shall consist of the following:

1. Cheyenne River Sioux Tribe
   Eagle Butte, South Dakota 57625

2. Crow Creek Sioux Tribe
   Fort Thompson, South Dakota 57739

3. Devils Lake Sioux Tribe
   Fort Totten, North Dakota 58335

4. Flandreau-Santee Sioux Tribe
Flandreau, South Dakota 57028

5. Lower Brule Sioux Tribe
Lower Brule, South Dakota 57548

6. Oglala Sioux Tribe
Pine Ridge, South Dakota 57770

7. Rosebud Sioux Tribe
Rosebud, South Dakota 57570

8. Santee Sioux Tribe
Niobrara, Nebraska 68760

9. Sisseton-Wahpeton Sioux Tribe
Sisseton, South Dakota 57262

10. Standing Rock Sioux Tribe
Fort Yates, North Dakota 58538

11. Yankton Sioux Tribe
Marty, South Dakota 57361

12. Turtle Mountain Band of Chippewa
Belcourt, North Dakota 58316

13. Winnebago Tribe of Nebraska
Winnebago, Nebraska 68071

14. Fort Berthold, Three Affiliated Tribes
New Town, North Dakota 58763

15. Omaha Tribe of Nebraska
Macy, Nebraska 68039

16. Trenton Indian Service Area
Trenton, North Dakota 58853

17. Sac & Fox Tribe of Iowa
Tama, Iowa 52339

18. Ponca Tribe of Nebraska
Lake Andes, South Dakota 57356

ARTICLE VIII.

There will be no provisions for removal of any member. Appointment of members to the Board shall be made, in writing, by the appropriate Tribal of other related governing bodies. Members of this Board shall relinquish their position when they fail to be re-elected by their Tribal or other related governing body to be an official delegate to the Aberdeen Area Tribal Chairmens' Health Board.

ARTICLE IX.

Tribal governing bodies shall have the option for involvement in the Aberdeen Area Tribal Chairmens' Health Board. It is not mandatory for Tribal governing bodies to belong to the Aberdeen Area Tribal Chairmens' Health Board. However, decisions made by the Aberdeen Area Tribal Chairmens' Health Board on all on-going programs shall be final.

ARTICLE X.

In the event this Board accrues any net earnings, no part of the net earnings shall ensure to the benefit of , or be distributed to , the members, trustees, officers, or to other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered, and to make payments and distributions in furtherance of the purposed set forth in Article III hereof. No substantial part of the activities of the Board shall be the carrying on of propaganda or otherwise attempting to influence legislation, and the Board shall not participate or intervene in (including the publishing and distributing of statements) any political campaign on behalf of any candidate for public office. Not withstanding, any other activities not permitted to be carried on by (a) a Board exempt from Federal Income Tax under Section 501 (c) (3) of the Internal Revenue code of 1954, as amended, or as may be amended in the future, or by (b) a Board, contributions of which are deductible under Section 170 (c) (2) of the Internal Revenue Code of 1954, as amended, or as may be amended in the future.

Appendix E
(33 pages)

SELF-DETERMINATION CONTRACT
BETWEEN

THE GREAT PLAINS TRIBAL CHAIRMEN'S HEALTH BOARD

ON BEHALF OF
THE CHEYENNE RIVER SIOUX TRIBE AND THE OGLALA SIOUX TRIBE,

AND

THE SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

RAPID CITY SERVICE UNIT

Contract Number: HHS-241-2019-01111

ARTICLE 1 – POLICY, AUTHORITY, AND PURPOSE

Section 1.1 – Policy. This contract is entered into in furtherance of:

1.1.1 the commitment of Congress to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian Tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy which permits an orderly transition from the Federal domination of programs for, and services to the Great Plains Tribal Chairmen's Health Board (referred to in this Contract as the "Board" or "GPTCHB"), on behalf of the Cheyenne River Sioux Tribe and the Oglala Sioux Tribe in the Indian Health Service's ("IHS") Rapid City Service Unit ("RCSU") and their members, and to effective and meaningful participation by the GPTCHB in the planning, conduct, and administration of those programs and services consistent with 25 U.S.C. § 5302(b); and

1.1.2 the declaration of policy by the Congress, in fulfillment of the United States' special trust responsibilities and legal obligations to Indians to ensure the highest possible health status for Indians and to provide all resources necessary to effect that policy, to ensure the maximum Indian participation in the direction of health care services so as to render the persons administering such services and the services themselves more responsive to the needs and desires of Indian communities, to require active and meaningful consultation with Indian tribes and tribal organizations, to ensure that the United States and Indians tribes work in a government-to-government relationship to ensure quality health care for all tribal members, and to provide funding for programs and facilities operated by Indian tribes and tribal organizations in amounts that are not less than the amounts provided to programs and facilities operated directly by the Service. 25 U.S.C. § 1602.

Section 1.2 – Authority. This agreement, denoted a Self-Determination Contract (referred to in this agreement as the "Contract"), is entered into by the Secretary of Health and Human Services (referred to in this agreement as the "Secretary"), for and on behalf of the United States pursuant to Title I of the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, as amended, (hereafter the "Act") (25 U.S.C. § 5301 *et seq.*) and the authority of the GPTCHB pursuant to the resolutions of the Cheyenne River Sioux Tribe and Oglala Sioux Tribe, attached hereto as Attachment 1. The provisions of Title I of the Act are incorporated in this Contract.

Section 1.3 – Purpose. Each provision of the Act and each provision of this Contract shall be liberally construed for the benefit of the GPTCHB to transfer the funding and the related functions, services, activities, and programs (hereafter "PFSAs") (or portions thereof), identified in the Annual Funding Agreement incorporated by reference in section 6.2 [exhibits; annual funding agreements] (hereafter "AFA"), that are otherwise contractible under section 102(a) of such Act (25 U.S.C. § 5321(a)), including all related administrative functions, from the Federal Government to the GPTCHB.

ARTICLE 2 – TERMS, PROVISIONS AND CONDITIONS

Section 2.1 – Award Date and Term – This Contract is awarded on the date of the last signature applied to this Agreement. Pursuant to section 105(c)(1) of the Act (25 U.S.C. § 5324(c)(1)), the term of this Contract shall begin on July 21, 2019 and extend through September 30, 2022. Pursuant to section 105(d)(1) of such Act (25 U.S.C. § 5324(d)), upon the election by the GPTCHB, the period of this Contract shall be determined on the basis of a federal fiscal year.

Section 2.2 – Effective Date. This Contract shall become effective on July 21, 2019.

Section 2.3 – Program Standards. The GPTCHB shall strive at all times to provide the PFSAs identified in the Scope of Work attached to and incorporated by reference into the AFA in accordance with national and regulatory standards, as applicable, and in a manner that is considered culturally proper. GPTCHB will comply with applicable state and federal regulations and standards concerning safety, background investigations, professional licensing, certification, and credentialing, financial management, procurement and billing, and compliance activities.

Section 2.4 – Funding Amount. Subject to the availability of appropriations, the Secretary shall make available to the GPTCHB the total amount specified in the AFA. Such amount shall not be less than the applicable amount determined pursuant to section 106(a) of the Act (25 U.S.C. § 5325(a)).

Section 2.5 – Limitation of Costs. The GPTCHB shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds awarded under this Contract. If, at any time, the GPTCHB has reason to believe that the total amount required for performance of this Contract or a specific activity conducted under this Contract would be greater than the amount of funds awarded under this Contract, the GPTCHB shall provide reasonable notice to the Secretary. If the Secretary does not take such action as may be necessary to increase the amount of funds awarded under this Contract, the GPTCHB may suspend performance of the Contract until such time as additional funds are awarded.

Section 2.6 – Payment.

2.6.1 In General. Payments to the GPTCHB under this Contract shall:

2.6.1.1 be made as expeditiously as practicable; and

2.6.1.2 include financial arrangements to cover funding during periods covered by joint resolutions adopted by Congress making continuing appropriations, to the extent permitted by such resolutions.

2.6.2 Methods of Payment.

2.6.2.1 In General. Pursuant to section 108(b) of the Act (25 U.S.C. § 5329(b)), and notwithstanding any other provision of law, for each fiscal year covered by this Contract, the Secretary shall make available to GPTCHB the funds specified for the fiscal year under the AFA by paying to the GPTCHB in a lump-sum payment, or any other method of payment authorized by law if requested by the GPTCHB in its AFA.

2.6.2.2 Method of lump sum payment. Unless otherwise specified in the AFA, each payment due shall be made on the first day of the fiscal year, except that in any case in which the Contract year coincides with the Federal fiscal year, the annual lump sum payment shall be made not later than the date that is ten (10) calendar days after the date on which the Office of Management and Budget apportions the appropriations for the fiscal year for the PFSAs subject to this Contract.

2.6.2.3 Applicability. Chapter 39 of Title 31, United States Code, shall apply to the payment of funds due under this Contract and the AFA.

2.6.3 Withholding of Payments. Payments under this Contract may only be suspended, delayed, or withheld in compliance with section 106(*l*) of the Act (25 U.S.C. § 5325(*l*)).

Section 2.7 – Records and Monitoring.

2.7.1 In General. Except for previously provided copies of tribal records that the Secretary demonstrates are clearly required to be maintained as part of the recordkeeping system of the Department of Health and Human Services, records of the GPTCHB shall not be considered Federal records for purposes of Chapter 5 of Title 5, United States Code.

2.7.2 Recordkeeping System. The GPTCHB shall maintain a recordkeeping system and, upon reasonable advance request, provide reasonable access to such records to the Secretary.

2.7.3 Responsibilities of GPTCHB. The GPTCHB shall be responsible for managing the day-to-day operations conducted under this Contract and for monitoring activities conducted under this Contract to ensure compliance with the Contract and applicable Federal requirements.

2.7.4 Monitoring by the Secretary.

2.7.4.1 Generally. With respect to the monitoring activities of the Secretary, the routine monitoring visits shall be limited to not more than one performance monitoring visit for this Contract by the head of each operating division, departmental bureau, or departmental agency, or duly authorized representative of such head unless--

2.7.4.1.1 the GPTCHB agrees to one or more additional visits; or

2.7.4.1.2 the appropriate official determines that there is reasonable cause to believe that grounds for reassumption of the Contract, suspension of Contract payments, or other serious Contract performance deficiency may exist.

2.7.4.2 Limitation on Additional Monitoring. No additional visit referred to in section 2.7.4.1.2 shall be made until such time as reasonable advance notice that includes a description of the nature of the problem that requires the additional visit has been given to the GPTCHB.

Section 2.8 – Property.

2.8.1 In General. As provided in section 105(f) of the Act (25 U.S.C. § 5324(f)), at the request of the GPTCHB, the Secretary may make available, or transfer to the GPTCHB, all reasonably divisible real property, facilities, equipment, and personal property that the Secretary has used to provide or administer the PFSAs covered by this Contract. A mutually agreed upon list specifying the property, facilities, and equipment so furnished shall also be prepared by the Secretary, with the concurrence of the GPTCHB, and periodically revised by the Secretary, with the concurrence of the GPTCHB.

2.8.2 Records. The GPTCHB shall maintain a record of all property referred to in section 2.8.1 [property; in general] or other property acquired by the GPTCHB under section 105(f)(2)(A) of the Act (25 U.S.C. § 5324(f)) for purposes of replacement.

2.8.3 Real Property. The IHS and the GPTCHB have entered into a Use Agreement to address the shared use by the parties of real property and facilities or portions thereof, of the Rapid City Indian Health Center, also known as the Indian Health Service compound or Sioux San ("Facilities"). Pursuant to the Use Agreement, which is attached, but not incorporated, into the AFA, the GPTCHB will occupy the Facilities, except for those facilities that IHS will continue to occupy to carry out PFSAs on behalf of the Rosebud Sioux Tribe, Great Plains Area Office PFSAs, the SDPI Grant and those facilities occupied by the Oglala Sioux Tribe to carry out PFSAs under their Title I Contract, in connection with carrying out the PFSAs described in the AFA and the Scope of Work and shall perform such services in support of Facilities in cooperation IHS, as set forth under the Use Agreement.

2.8.4 Personal Property.

2.8.4.1 Generally. An IHS inventory of personal property, which is limited to certain types of property and property of a certain minimum value, will be provided to GPTCHB by the IHS. All personal property, including art and medical equipment, owned by the IHS and on the Sioux San compound, whether it appears in the inventory or not, other than personal property retained by the IHS to carry out PFSAs on behalf of the Rosebud Sioux Tribe, and to carry out Great Plains Area Office

PFSAs and the SDPI Grant, shall be made available to the GPTCHB consistent with 25 U.S.C. § 5324(f).

2.8.4.2 Acquisition of Property. The GPTCHB is granted the authority to acquire such excess property as the GPTCHB may determine to be appropriate in the judgment of the GPTCHB to support the PFSAs operated pursuant to this Contract.

2.8.4.3 Confiscated or Excess Property. The Secretary shall assist the GPTCHB in obtaining such confiscated or excess property as may become available to tribes, tribal organizations, or local governments.

2.8.4.4 Capital Equipment. The GPTCHB shall determine the capital equipment, leases, rentals, property, or services the GPTCHB requires to perform the obligations of the GPTCHB under this section 2.8.4.4, and shall acquire and maintain records of such capital equipment, property rentals, leases, property, or services through applicable procurement procedures of the GPTCHB.

Section 2.9 – Availability of Funds. Notwithstanding any other provision of law, any funds provided under this Contract –

2.9.1 shall remain available until expended; and

2.9.2 with respect to such funds, no further --

2.9.2.1 approval by the Secretary, or

2.9.2.2 justifying documentation from the GPTCHB shall be required prior to the expenditure of such funds.

Section 2.10 – Transportation. Beginning on the first day of the term of this Contract pursuant to section 2.1 [award date and term], the Secretary shall authorize the GPTCHB to obtain interagency motor pool vehicles and related services for performance of any activities carried out under this Contract.

Section 2.11 – Federal Program Guidelines, Manuals or Policy Directives. Except as specifically provided in the Act, the GPTCHB is not required to abide by guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the GPTCHB and the Secretary. or otherwise required by law.

Section 2.12 – Disputes.

2.12.1 Third-Party Mediation Defined. For the purposes of this Contract, the term 'third-party mediation' means a form of mediation whereby the Secretary and the GPTCHB nominate a third party who is not employed by or significantly involved with the Secretary or the GPTCHB to serve as a third-party mediator to mediate disputes under this Contract.

2.12.2 Alternative Procedures. In addition to, or as an alternative to, remedies and procedures prescribed by section 110 of the Act (25 U.S.C. § 5331), the parties to this Contract may jointly--

2.12.2.1 submit disputes under this Contract to third-party mediation;

2.12.2.2 submit the dispute to mediation processes provided for under the policies or procedures of the GPTCHB; or

2.12.2.3 use the administrative dispute resolution processes authorized in subchapter IV of chapter 5 of title 5, United States Code.

2.12.3 Effect of Decisions. The Secretary shall be bound by decisions made pursuant to the processes set forth in section 2.12.2 [alternative procedures], except that the Secretary shall not be bound by any decision that significantly conflicts with the interests of Indians or the United States.

Section 2.13 – Administrative Procedures of GPTCHB. Pursuant to the Indian Civil Rights Act of 1968 (25 U.S.C. § 1301 *et seq.*), the policies and procedures of the GPTCHB shall provide for administrative due process (or the equivalent of administrative due process) with respect to PFSAs that are provided by the GPTCHB pursuant to this Contract.

Section 2.14 – Successor Annual Funding Agreement.

2.14.1 In General. Negotiations for a successor AFA shall begin no later than 120 days prior to the conclusion of the preceding AFA. Except as provided in section 105(c)(2) of the Act (25 U.S.C. § 5324(c)(2)), the funding for each such successor AFA shall only be reduced pursuant to section 106(b) of such Act (25 U.S.C. § 5325(b)).

2.14.2 Information. The Secretary shall prepare and supply relevant information, and promptly comply with any request by the GPTCHB for information that the GPTCHB reasonably needs to determine the amount of funds that may be available for a successor AFA.

Section 2.15 – Contract Requirements; Approval by Secretary.

2.15.1 In General. Except as provided in section 2.15.2 [requirements] for the term of the Contract, section 2103 of the Revised Statutes (25 U.S.C. § 81) and section 16 of the Act of June 18, 1934 (48 Stat. 987, chapter 576; 25 U.S.C. § 5123), shall not apply to any contract entered into in connection with this Contract.

2.15.2 Requirements. Each contract entered into by the GPTCHB with a third party in connection with performing the obligations of the GPTCHB under this Contract shall--

2.15.2.1 be in writing;

2.15.2.2 identify the interested parties, the authorities of such parties, and purposes of the contract;

2.15.2.3 state the work to be performed under the contract; and

2.15.2.4 state the process for making any claim, the payments to be made, and the terms of the contract, which shall be fixed.

ARTICLE 3 – OBLIGATION OF THE GPTCHB.

Section 3.1 – Contract Performance. Except as provided in section 4.2 [good faith], the GPTCHB shall perform the PFSAs as provided in the AFA.

Section 3.2 – Amount of Funds. The total amount of funds to be paid under this Contract pursuant to section 106(a) of the Act (25 U.S.C. § 5325(a)) shall be determined in an AFA entered into between the Secretary and the GPTCHB and incorporated by reference into this Contract.

Section 3.3 – Contracted Programs. Subject to the availability of appropriated funds, the GPTCHB shall administer the PFSAs identified in this Contract and funded through the AFA.

Section 3.4 – Fair and Uniform Services. The GPTCHB shall provide services under this Contract in a fair and uniform manner and shall provide access to an administrative or judicial body empowered to adjudicate or otherwise resolve complaints, claims, and grievances brought by program beneficiaries against the GPTCHB arising out of the performance of the Contract.

Section 3.5 – Standards of Character. Pursuant to 25 U.S.C. § 3207, the GPTCHB, as a recipient of funds under the Act, shall—

3.5.1 conduct an investigation of the character of each individual who is employed, or is being considered for employment, by such tribe or tribal organization in a position that involves regular contact with, or control over, Indian children; and

3.5.2 employ individuals in those positions only if the individuals meet standards of character, no less stringent than those prescribed under section 3.5.1 [standards of character], as the GPTCHB shall establish.

ARTICLE 4 – OBLIGATIONS OF THE UNITED STATES

Section 4.1 – Trust responsibility.

4.1.1 In General. The United States reaffirms the trust responsibility of the United States to the authorizing tribes to protect and conserve the trust resources of the Indian tribe(s) and the trust resources of individual Indians.

4.1.2 Construction of Contract. Nothing in this Contract may be construed to terminate, waive, modify, or reduce the trust responsibility of the United States to the authorizing tribes, or individual Indians. The Secretary shall act in good faith in upholding such trust responsibility.

Section 4.2 – Good Faith. To the extent that health programs are included in this Contract, and within available funds, the Secretary shall act in good faith in cooperating with the GPTCHB to achieve the goals set forth in the Indian Health Care Improvement Act (25 U.S.C. § 1601 *et seq.*).

Section 4.3 – Programs Retained. As specified in the AFA, the United States hereby retains the PFSAs that are not specifically assumed by the GPTCHB in the AFA under section 6.2 [annual funding agreements].

Section 4.4 – Federal Tort Claims.

4.4.1 In General. For purposes of Federal Tort Claims Act coverage, the GPTCHB and its employees (including individuals performing personal services contracts with the GPTCHB to provide health care services) are deemed to be employees of the Federal government while performing work under this Contract. This status is not changed by the source of the funds used by the GPTCHB to pay the employee's salary and benefits unless the employee receives additional compensation for performing covered services from anyone other than the GPTCHB. Under this Contract, the GPTCHB's employee may be required as a condition of employment to provide health services to non-IHS beneficiaries in order to meet contractual obligations. These services may be provided in either GPTCHB or non-GPTCHB facilities.

4.4.2 Case-By-Case Determination. The GPTCHB understands that whether the Federal Tort Claims Act applies in any particular case is decided on an individual, case-by-case basis by the United States Department of Justice and subsequently by the Federal Courts.

ARTICLE 5 – OTHER PROVISIONS

Section 5.1 – Designated Officials. Not later than the effective date of this Contract, the United States shall provide to the GPTCHB, and the GPTCHB shall provide to the United States, a written designation of a senior official to serve as a representative for notices, proposed amendments to the Contract, and other purposes for this Contract.

Section 5.2 – Contract Modifications or Amendment.

5.2.1 In General. Except as provided in section 5.2.2 [exception], no modification to this Contract shall take effect unless such modification is made in the form of a written amendment to the Contract, and the GPTCHB and the Secretary provide written consent for the modification.

5.2.2 Exception. The addition of supplemental funds for PFSAs (or portions thereof) already included in the AFA, and the reduction of funds pursuant to section 106(b)(2), shall not be subject to section 5.2.1 [in general].

5.2.3 Officials Not to Benefit. No member of Congress, or resident commissioner, shall be admitted to any share of part of any contract executed pursuant to this Contract, or to any benefit that may arise from such contract. This paragraph may not be construed to apply to any contract with a third party entered into under this Contract if such contract is made with a corporation for the general benefit of the corporation.

5.2.4 Covenant Against Contingent Fees. The parties warrant that no person or selling agency has been employed or retained to solicit or secure any contract executed pursuant to this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the GPTCHB for the purpose of securing business.

ARTICLE 6 – ATTACHMENTS

Section 6.1 – Resolutions in Support of the Contract.

6.1.1 Resolutions of Authorizing Tribes. The Resolutions of the Two Tribes that have authorized the GPTCHB to assume the Rapid City Service Unit on their behalf are attached, but not incorporated, as Attachment 1:

Cheyenne River Sioux Tribe Resolution Numbers. 1-2019 (January 9, 2019) and 104-2018-CR (April 10, 2018); and
Oglala Sioux Tribe Resolution Numbers 19-02 (January 2, 2019) and 18-42 (April 4, 2018).

6.1.2 Approval of Contract. The Resolutions of the GPTCHB authorizing the contracting of the PFSAs identified in this Contract are attached, but not incorporated, as Attachment 2:

Resolution 2019-01, Adopted by the GPTCHB Executive Committee on January 18, 2019, and ratified by the full Board of Directors on April 17, 2019.

Section 6.2 – Annual Funding Agreements.

6.2.1 In General. The AFA under this Contract shall only contain--

6.2.1.1 terms that identify the PFSAs to be performed or administered, the general budget category assigned, the funds to be provided, and the time and method of payment; and

6.2.1.2 such other provisions, including a brief description of the PFSAs to be performed (including those supported by financial resources other than those provided by the Secretary), to which the parties agree.

6.2.2 Incorporation by Reference. The AFA is hereby incorporated in its entirety in this Contract and attached to this Contract as Attachment 3. Successor AFAs entered into under this contract shall be attached to this Contract as Attachment 3 with each identifying the fiscal year (or other period) to which the successor AFA applies.

GREAT PLAINS TRIBAL CHAIRMEN'S HEALTH BOARD

DATED THIS 31ST DAY OF MAY, 2019

BY: _____
JERILYN CHURCH, Chief Executive Officer

DEPARTMENT OF HEALTH AND HUMAN SERVICES
INDIAN HEALTH SERVICE

DATED THIS 31ST DAY OF MAY, 2019

BY: James R. Driving Hawk -S
Digitally signed by James R. Driving Hawk -S
Date: 2019.06.01 01:02:20 -05'00'

Awarding Official
JAMES DRIVING HAWK, Indian Health Service

Attachment 3 to Contract No. HHS-1-241-2019-01111
Annual Funding Agreement
between
The Secretary of the
United States Department of Health and Human Services
and the
Great Plains Tribal Chairmen's Health Board
on Behalf of
the Cheyenne River and Oglala Sioux Tribes

RAPID CITY SERVICE UNIT

Contract Number: HHS-1-241-2019-01111

Section 1 – AUTHORITY

Pursuant to Title I of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, 25 U.S.C. § 5301 *et seq.*), as amended (hereafter "ISDEAA" or "Act"), this Annual Funding Agreement ("AFA" or "Agreement") is entered into by the Great Plains Tribal Chairmen's Health Board, a tribal organization (hereafter "GPTCHB" or "Board" or "Contractor"), acting under the authority granted to it by the Cheyenne River and Oglala Sioux Tribes (hereafter "Two Tribes") pursuant to resolutions from each of the Two Tribes, and the Secretary of the Department of Health and Human Services, acting through the Indian Health Service (hereafter "IHS"). This AFA is incorporated into and attached to the Self-Determination Contract between the GPTCHB and the Secretary, Contract No. HHS-1-241-2019-01111. as Attachment 3 (hereafter "Contract").

SECTION 2 – PURPOSE

Pursuant to the terms of this Agreement, the GPTCHB is authorized to plan, conduct, operate, and administer the programs, functions, services and activities ("PFSAs") identified in Attachment A, Scope of Work to this AFA (hereafter referred to as "GPTCHB PFSAs"). All terms of this Agreement shall be governed by the ISDEAA, its implementing regulations, including IHS eligibility regulations, and, to the extent expressly agreed to by the parties hereto, applicable IHS policies.

SECTION 3 – EFFECTIVE DATE AND TERM

This AFA shall become effective July 21, 2019 and shall extend through September 30, 2019.

SECTION 4 – OBLIGATIONS OF THE INDIAN HEALTH SERVICE

4.1 Generally. Pursuant to this AFA, IHS shall provide funding, resources, and services identified herein and as provided in the Contract. The IHS shall remain responsible for performing all federal residual functions. In cases where a portion of tribal shares have been transferred to the GPTCHB under this AFA, the parties agree that IHS may provide a

correspondingly diminished level of service to the GPTCHB, subject to the terms of section 4.2 [retained PFSAs], which is carrying out RCSU PFSAs on behalf of the Two Tribes.

Except to the extent the GPTCHB has assumed PFSAs under this AFA, IHS's responsibilities under the Indian Health Care Improvement Act, as amended ("IHCIA"), the Act, and other applicable provisions of Federal law are unchanged by the Contract and AFA.

4.2 Retained PFSAs.

Any PFSA not assumed by the GPTCHB during the term of this AFA shall be carried out by the IHS in its discretion. The GPTCHB shall be eligible for new PFSAs and associated funding on the same basis as other tribes and tribal organizations and IHS directly-operated service units. When new PFSAs (or portions thereof) become available, the Secretary shall advise the GPTCHB.

IHS will provide reasonable notice to the GPTCHB of operational changes or reprograming that, in the opinion of the IHS, may impact accessibility, availability or delivery of PFSAs for which IHS retains responsibility under this AFA. To the extent the Great Plains Area Office retains funds that become available for Area-wide PFSAs or cost assessments, the GPTCHB shall be entitled to benefit to the same extent as other tribes and tribal organizations and IHS directly-operated service units in the Great Plains Area.

4.3 Other Federal Obligations.

4.3.1 HIPAA/HITECH Compliance. IHS retains the responsibility for complying with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health ("HITECH") for retained IHS health care component activities. The GPTCHB is also responsible for complying with HIPAA/HITECH. IHS and the GPTCHB will share patient information consistent with patient treatment, payment, health oversight and health care operations confidentiality exceptions under HIPAA/HITECH and other applicable law.

4.3.2 Intellectual Property. IHS, through contracts, grants, sub-grants, license agreements, or other agreements may have acquired rights or entered into license agreements directed to copyrighted material. The GPTCHB may use, reproduce, publish, or allow others to use, reproduce, or publish such material only to the extent that IHS's contracts, grants, sub-grants, license agreements, or other agreements provide that IHS has the right to allow a tribe or tribal organization to do so and IHS determines that it will extend its rights to the tribal organization. The GPTCHB's use of any such copyrighted material and licenses is limited to the scope of use defined in the agreements.

4.3.3 Reports. Any reports or information required under section 2.14.2 of the Contract [successor AFA; information] shall be provided within 60 days of the request by the GPTCHB, unless the parties mutually agree, or the law provides, that a longer amount of time is necessary to provide such reports or information.

4.3.4 Participation in "Project TransAm." Pursuant to section 2.8.5 of the Contract [confiscated or excess property], the GPTCHB shall be notified of and authorized (to the extent IHS has authority to provide authorization) to participate in property screenings associated with "Project TransAm" (or any similar successor project) by IHS Headquarters. Such notification may be by publication on a webpage available to the GPTCHB. Inventory of available assets may be published on the following webpage [illegible] or other TransAm webpage available to the GPTCHB.

4.3.5 Contract Health Emergency Fund.

4.3.5.1 Generally. The IHS administers the Catastrophic Health Emergency Fund (CHEF) for the benefit of all IHS and tribal health programs. The GPTCHB is eligible for payment from CHEF on the same basis as IHS directly operated service units and other tribal health programs. No part of CHEF is subject to contract or grant under any law including the Act. Nothing in the Contract or this AFA shall be construed as modifying or expanding the rights of the GPTCHB under the legal authority under which the IHS administers CHEF, 25 U.S.C. § 1621a.

4.3.5.2 CHEF Transition. The Great Plains Area Office will provide reports to the GPTCHB of Purchased/Referred Care (PRC) (formerly contract health services or CHS) costs incurred prior to July 21, 2019 that were insufficient to qualify for CHEF reimbursement in which the episode of care was not complete prior to July 21, 2019. The Great Plains Area Office will work with the GPTCHB to consolidate the pre-July 21, 2019 PRC costs with those incurred by the GPTCHB's PRC program on or after that date, so that the GPTCHB may submit the total PRC cost to CHEF for reimbursement.

SECTION 5 – OBLIGATIONS OF THE GPTCHB

Section 5.1 – In General. The GPTCHB agrees, subject to the availability of funding, to administer, provide and be responsible for the PFSAs identified in this AFA and the related Scope of Work in accordance with the Contract, this AFA and the agreed upon funding tables (*see* Attachment LIST). For the purposes of this AFA, and in accordance with 25 U.S.C. § 5325(o), the GPTCHB's general budget categories for the Rapid City Service Unit have been reallocated to support redesigned health PFSAs as described in this AFA and the Scope of Work (Attachment A). GPTCHB's general budget categories include the categories of funds transferred to the GPTCHB under this AFA.

Section 5.2 – Scope of Work. A brief description of the PFSAs to be performed or administered pursuant to the Contract and this AFA is attached to this AFA as Attachment A, which is incorporated by reference into this AFA.

Section 5.3 – Eligibility. Eligibility for services provided under the Contract and this AFA shall be determined in accordance with IHS eligibility regulations set forth at 42 C.F.R. Part 136, Subpart B (for direct care) and C (for PRC), Section 813 of the Indian Health Care Improvement Act (25 U.S.C. § 1680c), and any other applicable provisions of law.

Section 5.4 – Standards. The GPTCHB will satisfy the program standards in Contract Section 2.3 [program standards].

Section 5.5 – Rebudgeting. In the operation and administration of the PFSAs identified in the Scope of Work, the GPTCHB reserves the right to rebudget funds with respect to allocations within the approved budget of the Contract, if such rebudgeting would not have an adverse effect on the performance of the contract., pursuant to 25 U.S.C. § 5325(o).

SECTION 6 – FUNDING AMOUNTS AND OTHER RESOURCES

Section 6.1 – Generally. Pursuant to Contract Section 2.4 [funding amount], the annual amount due under this AFA shall be the amount required under Section 6 [funding amounts and other resources] as determined pursuant to 25 U.S.C. § 5325 or otherwise pursuant to the Act. The amounts due, as determined under 25 U.S.C.§5325(a), to the GPTCHB are subject to reduction in future years only in accordance with 25 U.S.C. § 5325(b). The total amount of funds associated with the GPTCHB PFSAs provided from July 21, 2019 through September 30, 2019, pursuant to the Contract, and which the Secretary or an authorized representative shall make available to the GPTCHB as provided in the Contract, shall be determined as provided in this Agreement.

Section 6.1.1 – 106(a)(1) Amount.

The total annualized amount of funding as determined pursuant to 25 U.S.C. § 5325(a)(1) for Fiscal Year ("FY") 2019 associated with the GPTCHB PFSAs is identified in Attachment B-1). The total amount of funding required pursuant to 25 U.S.C. § 5325(a)(1) for the term of this AFA, and associated with the GPTCHB PFSAs is $ 3,816,949 (*see* Attachments B-1). The amount of funding available for the term of this Agreement associated with the GPTCHB PFSAs is the pro-rated amount based on the term of this AFA under section 3 [effective date and term], which is July 21, 2019 through September 30, 2019. Additional amounts may be made available through appropriate modifications to this AFA. The attachments referenced in this section are funding tables, which are listed below, attached to this AFA, and incorporated by reference.

Attachment B-1 – "FY 2019 Annual Funding Agreement Table by Sub Sub Activity for with 78.13% Shares (dated May 31, 2019) with 72 days"
Attachment B-2 – Headquarters Table 4t, "HQ PFSAs for FY 2019 TSA and Program Formula Lines Eligible Shares and Transition Year Amounts; Interim Estimates Based on FY 2018 IHS Appropriations"
Attachment B-3 – Headquarters Tribal 4F, "Estimated Area and Headquarters Facilities Appropriation Funds for FY 2019 SD/SG Negotiations for FY 2019"

The annualized amounts, and the prorated amounts to be paid to GPTCHB for the term of this AFA, will be adjusted to reflect any additional FY 2019 funding amounts after final apportionment of the FY 2019 IHS appropriation.

Consistent with the terms of the Contract and this AFA, the parties will negotiate and agree on revisions to the Attachments, if necessary, at the earliest opportunity that information regarding

full FY 2019 funding is available, and the agreed upon tables will be modified into this AFA and will supersede the tables attached hereto.

6.1.2 IHS Headquarters and the Area Office Environmental Health and Engineering ("OEHE"). The amount of funds estimated to be available for OEHE will be identified in each Funding Agreement budget term based on the annual OEHE distribution methodology. The amount of funds available and the level of any retained shares will be updated before the end of FY 2019 and in each subsequent FY.

6.1.3 Other. Earmarked funds will be provided to the GPTCHB in the future, to the same extent as they have been provided, and consistent with applicable law and funding formulas agreed to by the Tribes in the Great Plains Area. IHS Headquarters shares are allocated according to IHS Headquarters' methodologies. In addition to the funding amounts, the GPTCHB is entitled to additional IHS Headquarters' tribal shares, to the extent that they are appropriated and allocated. Increases associated with pay costs, mandatories and other increases resulting from increases in appropriations shall be made available to GPTCHB on the same basis as other tribes and tribal organizations.

6.1.4 New Funds. New funds received during the term of this AFA will be added by modification.

6.1.5 Availability of Area Funds. If an amount of Area Office funds not presently available to the Tribe for assumption, including categories of funds labeled "Residual," "Commitments; Legislative Requirements," "Transitional" and "Field Pass-Through," becomes available for distribution to all tribes and tribal organizations and directly-operated service units in the Great Plains Area, the GPTCHB shall be entitled to receive a share of such funds on the same basis as the other tribes and service units in the Area.

6.2 Contract Support Costs. Contract support costs ("CSC") will be paid in accordance with 25 U.S.C. § 5325. The parties agree that, according to the best data available as of the date of execution of this AFA, the amount to be paid for FY 2019, which represents the parties' estimate of the GPTCHB's full CSC requirement pursuant to 25 U.S.C. § 5325, is set forth in paragraphs 6.2.1 [direct and indirect CSC] and 6.2.2 [pre-award and startup CSC]. The estimates for FY 2019 shall be recalculated as necessary as additional data becomes available including information regarding the direct cost base, pass-throughs and exclusions, and the indirect cost rates to reflect the full CSC required under 25 U.S.C. § 5325, and, to the extent not inconsistent with the Act, as specified in IHS Manual Part 6, Chapter 3 (updated Oct. 26, 2016 and as amended December 21, 2017). The parties will cooperate in updating the relevant data to make any agreed upon adjustments. In the event the parties disagree on the CSC amounts estimated and paid pursuant to this paragraph and the GPTCHB's full CSC requirement under the ISDEAA, the parties may pursue any remedies available to them under the Act, the Contract and the Contract Disputes Act, 41 U.S.C. §7101 et seq.

6.2.1 Direct and Indirect CSC. The following amounts represent the parties' estimates, as provided in subsection 6.2, of $2,942,420, including $57,170 for direct CSC

(excluding pre-award and startup costs, which are addressed in paragraph 6.2.2), and, $2,885,250 for indirect CSC. *See,* Attachment B-1.

6.2.2 Pre-Award and Startup CSC.

6.2.2.1 Pre-Award CSC. In addition to the direct and indirect contract support cost estimates agreed upon in section 6.2.1 [direct and indirect CSC], the following amounts represent the parties' estimates, as provided in section 6.2 [CSC], of $2,651,777 for pre-award costs. *See,* Appendix B-1. The amount of pre-award costs includes actual costs incurred as of the award date of the Contract, as described in section 2.1 of the Contract [award date and term], plus an estimate of pre-award costs to be incurred after the award date of the Contract but prior to July 21, 2019. By August 31, 2019, GPTCHB will provide documentation of actual pre-award costs incurred since the award date of the Contract, and if total allowed pre-award costs exceed the amount stated in this Section 6.2.2.1, within 30 days IHS shall pay GPTCHB the difference. If allowed pre-award costs are less than the amount stated in this Section 6.2.2.1, within 30 days GPTCHB shall pay IHS the amount of the overpayment. The IHS agrees to pay pre-award CSC, as contemplated in this paragraph, on the award date of the Contract. This section shall be modified at such time as the parties reach agreement of final pre-award CSC amounts.

6.2.2.2 Start-up CSC. In addition to the direct and indirect contract support cost estimates agreed upon in section 6.2.1 [direct and indirect CSC], the following amounts represent the parties' estimates, as provided in section 6.2 [CSC], of $1,962,654 for startup costs. Within 90 days after July 22, 2020, the GPTCHB will certify to IHS that it has fully obligated the start-up costs funding on the negotiated startup activities. If the GPTCHB's startup obligations were less than the negotiated amount, the GPTCHB shall repay any overpayment. If the GPTCHB has obligations for the negotiated startup activities in excess of the amounts funded by IHS, the GPTCHB will provide documentation of these costs and the additional amounts will be subject to negotiation between the parties.

6.3 Transfer of Current and Prior Years Funds.

6.3.1 Generally. IHS will make every reasonable effort to facilitate an orderly and timely transfer of current and prior years funds, including third-party revenues, associated with operation of the GPTCHB PFSAs of the Rapid City Service Unit and will provide all funding required by 25 U.S.C. § 5325(a)(1), and as otherwise provided in this AFA.

6.3.2 Initial Reserve. On the effective date of this AFA, the IHS shall retain $1,976,446 of the prior years and current year un-obligated balances of the GPTCHB PFSAs of the Rapid City Service Unit to closeout financial obligations. The sole purpose of this reserve is to provide IHS with sufficient funding for potential recorded financial obligations, including PRC referrals.

6.3.3 Carryover and Close Out Activity. Any prior years or current year funds (including PRC funds and any reimbursements from the Catastrophic Health Emergency Fund ("CHEF") received before July 21, 2019, for cases submitted prior to July 21, 2019, remaining

unobligated on the effective date of this AFA associated with the GPTCHB PFSAs of the Rapid City Service Unit, less the initial reserve under paragraph 6.3.2 [initial reserve], shall be paid by the IHS to GPTCHB on July 21, 2019. Closeout of obligated funds are subject to the following terms:

6.3.3.1 All contracts and obligating documents associated with single year (expendable within the appropriated budget fiscal year) and prior years or current year funds will be reviewed, and federal guidelines and statutes will be followed to close out and determine if any obligated balances can be de-obligated. Priority will be given to current prior years or current year funds, prior years or current year funds with significant sums, and cancelling single year funds

6.3.3.2 The IHS will provide an initial report on August 1, 2019, and a monthly report thereafter, on the status of obligations and undelivered orders associated with GPTCHB PFSAs. As funds associated with GPTCHB PFSAs are deobligated and become available, IHS shall pay such funds to GPTCHB as soon as feasible and no later than 30 days after each report that identifies such funds. GPTCHB and IHS will meet as frequently as necessary, in the view of either party, to ensure timely accountability and transfer of prior and current year funds and to review obligated, undelivered orders and unobligated balances that could potentially be transferred to the GPTCHB.

6.4 Funds Received by IHS on or after July 21, 2019 Related to Activities or Services Prior to that Date. The IHS shall transfer to the GPTCHB a share proportionate to the GPTCHB PFSAs of all CHEF reimbursements received on or after July 21, 2019, related to PRC services authorized prior to July 21, 2019, funds received under the Federal Medical Care Recovery Act ("FMCRA")) and reimbursements and recoveries received by the IHS on or after the effective date of this AFA from Medicare, Medicaid, and other third-parties responsible or liable pursuant to the Indian Health Care Improvement Act, Pub. L. 94-438, as amended, or any other applicable law, arising from care provided by the Rapid City Service Unit prior to the effective date of this AFA. The GPTCHB proportionate share of the funds described in this section received each month will be transferred within 30-days of the end of the month in which they were received.

6.5 Purchased/Referred Care.

6.5.1 Incorporation of Subpart I. For the purposes of being able to rely on the provisions of 42 C.F.R. Part 136, subpart I regarding payment for provider and supplier services purchased by Indian health programs, the GPTCHB agrees to be bound by Subpart I with regard to PRC claims from any provider of services or supplies other than those governed by or subject to 42 C.F.R. Part 136, subpart D.

6.5.2 Limitation of Charges to Patients. Eligible IHS beneficiaries who receive purchased and referred care services authorized by the GPTCHB are not liable for the payment of any charges or costs arising from the provision of such services.

6.5.3 Pre-Effective Date PRC Costs. The GPTCHB shall not be responsible for any costs associated with PRC approved by IHS prior to the effective date of this AFA. PRC closeout will be addressed in the same manner as described in section 6.3 [transfer of current and prior years funds] of this AFA.

6.6 Increases. The GPTCHB will receive all funding increases associated with the funding in Attachments B-[1.3, B-2, and B-4] on the same basis as other Tribes and tribal organizations and IHS directly-operated service units, for services, inflation, population growth, Indian Health Care Improvement Fund, all other increases associated with the funding identified in the funding tables, attached and incorporated in Section 6.1.1 [106(a)(1) amount], and any new funding categories for the IHS and tribal health programs that may from time to time be appropriated by Congress or allocated by IHS. The GPTCHB will be eligible for non-recurring and earmarked funds consistent with applicable law and on the same basis as tribes and tribal organizations and IHS directly-operated service units.

6.7 Other Funds Due the GPTCHB.

6.7.1 Reconciliation and Adjustment. For the reasons noted throughout section 6 [funding amounts] of this AFA, funds that have not been fully identified as of the time this AFA is being executed, all amounts to be paid in the FY 2019 based on prior year appropriations are subject to amendment to reflect the full amount due for this fiscal year. IHS will provide sufficient documentation to facilitate the GPTCHB's reconciliation of the amounts due under this AFA to the amount actually received by the GPTCHB.

6.7.2 Year End Resources. In addition to the amounts otherwise provided, the IHS shall provide the GPTCHB the opportunity to receive a share in any year-end resources of the IHS on the same basis as other tribes and tribal organizations. Resources referred to herein are those that were otherwise not available for tribal shares distribution.

6.8 Funding Adjustments Due to Congressional Actions. The parties to this AFA recognize that the total amount of the funding in this AFA is subject to adjustment due to Congressional action in appropriations acts. Upon enactment of relevant appropriation acts or other law affecting availability of funds to the IHS, the amounts of funding provided to the GPTCHB in this AFA shall be adjusted as necessary, and the GPTCHB has been notified of such action, subject to any rights which the GPTCHB may have under this AFA, the Contract, or the law.

6.9 Interest on Advances. The GPTCHB shall be permitted to retain interest earned on funds advanced by the Secretary to it while such funds are pending disbursement by the GPTCHB, as provided in 25 U.S.C. § 5324(b). The GPTCHB shall not be held accountable for interest earned on such funds, pending their disbursement by the GPTCHB.

6.10 Program Income. The program income earned by the GPTCHB in the course of carrying out the Contract and this AFA shall be used by the GPTCHB to further the general purposes of the Contract and this AFA; and shall not be the basis for reducing the amount of funds otherwise obligated to the Contract and this AFA. 25 U.S.C. § 5325.

6.11 Use of Federal Employees. Section 104 of the Act (25 U.S.C. § 5323) regarding retention of Federal employee coverage, rights and benefits by employees of tribal organizations shall apply.

6.12 Special Earmarked Programs, Services, and Functions. The GPTCHB is not authorized under this AFA to redesign, shift, or to transfer any of the funding for any programs, services, or functions which are subject to special restrictions imposed by Congress, except as may be permitted under such restrictions.

SECTION 7 – METHOD OF PAYMENT

Funds shall be paid as expeditiously as practicable, in accordance with Contract Section 2.6.2 [methods of payment] for the PFSAs identified in this AFA. The payment for the period covered by this AFA shall be made in lump sum payments through the system utilized by the IHS.

Specifically, except as otherwise provided in the Contract or this AFA, and subject to the provisions of section 6.2, the IHS shall provide payment for any PFSAs that the GPTCHB is assuming pursuant to the Contract and this AFA in accordance with the following payment process. IHS shall make a lump sum payment for the amount of funds associated with the PFSAs for the period July 21, 2019 through September 30, 2019, on the effective date of the AFA, provided that if any FY 2019 funds that may be due have not yet been apportioned by the Office of Management and Budget on the effective date of this AFA, the remaining amounts shall be paid to the GPTCHB within FY 2019 funding due under this Agreement in one lump sum payment due within twenty (20) calendar days of the apportionment of such funds. Funds subject to a Continuing Resolution shall be paid to the GPTCHB within twenty (20) calendar days after the date of allotment from Headquarters to the Area.

SECTION 8 – OTHER PROVISIONS

8.1 Financial Reports.

8.1.1 Single Audit. Pursuant to 25 U.S.C. § 5305(f)(1), the GPTCHB shall provide to the Federal Audit Clearinghouse (or its successor), an annual single organization-wide audit as prescribed by the Single Audit Act of 1984, as amended, 31 U.S.C. §§ 7501-7506. The IHS and GPTCHB shall apply the cost principles located in 45 C.F.R. Part 75 except as modified by 25 U.S.C. § 5325, other provisions of law, or any exemptions subsequently granted by the Office of Management and Budget. No other audit or accounting standards shall be required by the Secretary. Any claim by the Federal Government for disallowed costs against the GPTCHB relating to funds received under an AFA based on a single agency audit report required by 31 U.S.C. Chapter 75 shall be subject to the provisions of 25 U.S.C. § 5325(f).

8.1.2 Annual Financial Reports. The GPTCHB will submit an annual financial status report regarding receipt and expenditure of funds paid by IHS to the GPTCHB under this AFA within 180 days after the close of the federal fiscal year. This report is to be submitted to IHS Great Plains Area Contract Proposal Liaison Officer ("CPLO").

8.1.3 Program Report. The GPTCHB will provide a brief annual program report on or before ninety (90) days after the end of the federal fiscal year. 25 U.S.C. § 5305(f)(2), 25 C.F.R. § 900.65. This report is to be submitted to IHS Great Plains Area CPLO.

8.2 Records.

8.2.1 Incorporation of the Privacy Act. The records of the GPTCHB shall not be considered Federal records for the purpose of chapter 5 of title 5 of the United States Code, except that

8.2.1.1 Records Disclosure. Patient records, financial records and personnel records may be disclosed only in accordance with 5 U.S.C. § 552a(b) and other applicable law; and

8.2.1.2 Records Storage. Pursuant to 25 U.S.C. § 5324(o), the patient records generated by the GPTCHB may be stored, at the option of GPTCHB, at Federal Records Centers to the same extent and in the same manner as other Health and Human Services patient records.

8.2.2 Confidentiality Standards. The GPTCHB will maintain confidentiality in accordance with HIPAA and HITECH, the Federal Privacy Act of 1974 to the extent it is applicable, and other federal law and regulations are applicable.

8.2.3 EHR and RPMS. The GPTCHB will have access to use Electronic Health Record ("EHR") and Resource Patient Management System ("RPMS"). The GPTCHB will provide Tier I functions to maintain the RPMS Systems. IHS will setup a separate server to host the RPMS patient database. IHS will preload patient information for the OST and CRST members, which will include a complete copy of the electronic health record for these patients. IHS will work with the GPTCHB to export the Patient information for OST and CRST Tribal members. The Electronic Health Record will point to the newly setup RPMS Server to provide the Graphical User Interface. This process will also provide access to and use of the Health Information Exchange, the Continuity of Care Document ("CCD"), scanned records as a PDF, or a copy of the original paper record that is still on site. The CCD is an electronic document exchange standard for sharing patient summary information. The parties agree to enter into a data security agreement, and the MPA Joinder Agreement to engage in the Health Information Exchange (HIE).

8.2.4. Maintenance of Records. Pursuant to 25 U.S.C. § 5305(a), each recipient of federal financial assistance shall keep such records as the appropriate Secretary shall prescribe by regulation promulgated under sections 552 and 553 of title 5, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other information as will facilitate an effective audit. These records shall consist of

quarterly financial statements for the purpose of accounting for Federal funds, the annual single-agency audit required by chapter 75 of title 31 and a brief annual program report.

8.3 Exemption from Fees. The GPTCHB's health program employees shall be exempt from payment of licensing, registration and any other fees imposed by a Federal agency to the same extent that officers of the Public Health Service Commissioned Corps and other employees of the IHS are exempt from such fees pursuant to 25 U.S.C. § 1616q.

SECTION 9 – SUCCESSOR ANNUAL FUNDING AGREEMENTS

As provided in the Contract, Section 2.14 [successor AFA; in general], negotiations for a successor AFA shall begin no later than 120 days prior to the conclusion of the preceding AFA. The amount of funds required to be provided for each successor AFA shall only be reduced in compliance with the requirements of 25 U.S.C. § 5325(b).

SECTION 10 – MODIFICATION OF THIS AGREEMENT

10.1 Form of Modification. Except as otherwise provided in this AFA, the ISDEAA Contract or by applicable law, any modifications to this AFA shall be in the form of a written modification and signed by both the GPTCHB and the IHS.

10.2 Modification to Add Additional Programs. The GPTCHB reserves the right to identify other PFSAs that it wishes to include in this AFA by modification during the term of this AFA. If the Contractor's proposal(s) to include additional activities is approved by IHS, this AFA will be modified to include such PFSAs.

10.3 Funding Increases. Modifications to add funds to this AFA will not require written consent of the GPTCHB. Within two (2) calendar weeks after any increase in funding is provided to the GPTCHB, the IHS shall provide the GPTCHB written documentation of the sub activity source and distribution formula for the funding. The transfer of any increase in funding by the IHS to the GPTCHB through modifications without the written consent of the GPTCHB shall not be construed to limit or prejudice the rights of the Tribe to dispute the amount of the increase under Contract section 2.12 [disputes].

10.4 Decreases. Except as provided by 25 U.S.C. § 5325(b), and pursuant to section 6.8 [funding adjustments due to congressional actions], this AFA shall not be modified to decrease or delay any funding except pursuant to written agreement of the parties.

SECTION 11 – ATTACHMENTS.

The following documents are attached as Attachments to this AFA and hereby incorporated in their entirety in this AFA:

Attachment A – Scope of Work
Attachment B – Funding Tables listed in Section 6.1.1 [106(a)(1) amount]

GREAT PLAINS TRIBAL CHAIRMEN'S HEALTH BOARD,
CONTRACTOR

DATED THIS 31ST DAY OF MAY, 2019

BY: _____
JERILYN CHURCH
CHIEF EXECUTIVE OFFICER
GREAT PLAINS TRIBAL CHAIRMEN'S HEALTH BOARD

DEPARTMENT OF HEALTH AND HUMAN SERVICES,
INDIAN HEALTH SERVICE

DATED THIS 31ST DAY OF MAY, 2019

BY: James R. Driving Hawk -S

Digitally signed by James R. Driving Hawk -S
Date: 2019.06.03 18:25:31 -05'00'

JAMES DRIVING HAWK
AREA DIRECTOR
GREAT PLAINS AREA INDIAN HEALTH SERVICE

Attachment A to the FY 2019 Annual Funding Agreement of

the GREAT PLAINS TRIBAL CHAIRMEN'S HEALTH

BOARD

Rapid City Service Unit

Contract No. HHS -1-241-2019-1111

SCOPE OF WORK

Pursuant to the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, as amended, codified at 25 U.S.C. §§ 5301-5423 (hereinafter "ISDEAA"), the Great Plains Tribal Chairmen's Health Board ("GPTCHB") will plan, conduct, and administer the programs, functions, services, and activities (or portions thereof) ("PFSAs") of the Rapid City Service Unit ("RCSU") that are associated with the Oglala Sioux Tribe ("OST"), and Cheyenne River Sioux' Tribe ("CRST") (hereinafter "Two Tribes") program shares (including PFSAs to serve the RCSU Unaffiliated Indians associated with the shares of the Two Tribes) (hereinafter collectively referred to as "GPTCHB PFSAs"). These PFSAs are redesigned pursuant to 25 U.S.C. § 5325(o) and described in this Scope of Work ("SOW"), which is attached and incorporated by reference into the Annual Funding Agreement ("AFA") as Attachment A.

SECTION 1 – GENERAL CONDITIONS.

1.1 – Leadership and Direction. All PFSAs carried out by the GPTCHB are provided under the ultimate direction of the Board of Directors of the GPTCHB, which considers the advice and recommendations of the Mni Luzahan Wicozani Advisory Committee, which is comprised of two members and an alternate appointed by each of the Two Tribes that are served by the RCSU and have authorized program assumption and additional community members who reside in Rapid City and were selected by the tribally appointed members. Direction of the program is carried out by the executive staff of the GPTCHB as provided by the Board. Any GPTCHB PFSA described in this SOW may be performed by any organizational unit of the GPTCHB at its discretion

1.2 – Redesign. The GPTCHB has redesigned the GPTCHB PFSAs carried out by the IHS in the RCSU to maximize GPTCHB's potential to achieve the following goals consistent with the Healthy People 2020 to:

- attain high-quality, longer lives free of preventable disease, disability, injury, and premature death;
- achieve health equity, eliminate disparities, and improve the health of American Indians and Alaska Natives;
- create social and physical environments that promote good health; and
- promote quality of life, healthy development, and healthy behaviors across all life stages; and to meet the objectives of the Indian Health Care Improvement Act, Pub. L. 94-437, as amended. 25 U.S.C. § § 1602(2) and https://www.cdc.gov/oralhealth/about/healthy-people.html. The redesigned

GPTCHB PFSAs are modeled after the award-winning Southcentral Foundation Nuka System of Care that is a relationship-based approach to transforming health care, improving outcomes and reducing costs. As implemented by GPTCHB, the redesigned GPTCHB PFSAs will

- treat the whole person, not only the presenting health condition, where ever the beneficiary is in the health care continuum, including those who are totally disconnected;
- support a "person-first" approach that eliminates service delivery barriers;
- ensure highly coordinated care from outreach through follow-up; and
- encourage collaboration and coordination with other providers, agencies, and tribes to assure that a continuum of coordinated care as described in more detail in § 1.3 [coordination and collaboration].

The Indian Health Service ("IHS") agrees to the GPTCHB's proposal to redesign the GPTCHB PFSAs, as provided in this SOW, provided GPTCHB is able to carry out these redesigned PFSAs through rebudgeting and/or by using non-IHS provided funds and without reducing the resources and services associated with the GPTCHB PFSAs at the RCSU.

1.3 – Coordination and Collaboration.

1.3.1 Other Indian Health Programs.

1.3.1.1 Generally. The PFSAs under this SOW will be performed in coordination and collaboration with other health programs of the GPTCHB, the IHS and the Two Tribes on their respective reservations. To the extent any of the Two Tribes carries out RCSU PFSAs under a contract or compact with IHS, the GPTCHB will coordinate and collaborate, and may enter into cooperative agreements with them to ensure seamless delivery of coordinated and integrated PFSAs. Such coordination and collaboration includes making and receiving appropriate referrals to and from other health programs. GPTCHB will utilize a multidisciplinary team approach to the provision of health care services. Nothing in this SOW will diminish the funding associated with the PFSAs currently being carried out by the OST and the CRST on their respective reservations or by OST in the RCSU.

1.3.1.2 Collaboration with Services Carried Out on the Reservations of the Two Tribes. To the extent services and resources are available, GPTCHB may accept referrals to the Sioux San Community Health Center from IHS or tribal health programs operating on the reservations of the Two Tribes.. Under this SOW, GPTCHB may deliver services directly to health programs of the Two Tribes on a reservation of the Two Tribes, provided all such services must (1) have been authorized by the Tribe ; and (2) not diminish the resources available to serve IHS beneficiaries of the GPTCHB PFSAs at RCSU.

1.3.2 Others. To assure continuity of care, coordination of services, and to protect the right of Indian beneficiaries to receive high quality care and to obtain health services and

benefits to which they are entitled, the GPTCHB will collaborate with other governmental and private health programs and agencies and will provide outreach and services in locations throughout the area described in section 1.5 [facilities and locations].

1.4 – No Additional Funding. The GPTCHB agrees that the GPTCHB's decision to redesign and/or to carry- out additional PFSAs (*i.e.* PFSAs not provided by the IHS at the RCSU immediately before the GPTCHB's assumption of the GPTCHB PFSAs described herein), including PFSAs associated with coordination or collaboration under section 1.3 [coordination and collaboration], does not increase the amount of funding owed under the ISDEAA.

1.5 –Facilities and Locations. The principal location for delivery of services of the RCSU is the Sioux San Hospital and its campus. The GPTCHB provides the PFSAs described in this SOW, including preventative health and education services, out of more than one facility or location listed in Appendix A, Facilities and Locations.

1.5.1 Purchased/Referred Care ("PRC") Delivery Area ("PRCDA"). The PRCDA for the Rapid City Service Unit is Pennington County and does not include any area within the reservation boundaries of any Tribe.

1.6 – Modalities of Service. Subject to the availability of funding, the GPTCHB delivers the GPTCHB PFSAs through direct, telehealth, referral, and purchased services and through purchasing health coverage.

SECTION 2 – STANDARDS OF CARE

The GPTCHB shall administer and perform the GPTCHB PFSAs described in this SOW in accordance with the program standards set forth in Section 2.3 [program standards] of the Contract between the GPTCHB and the Secretary acting through the IHS.

SECTION 3 – HEALTH SERVICES

GPTCHB will provide comprehensive primary care, specialty services, and community-based services for the RCSU and in other locations as described in Section 1.5 [facilities and locations]. The GPTCHB will provide ambulatory care services and referral services to enhance the delivery of primary health care in the areas of health promotion and disease prevention.

GPTCHB is committed to and strives to provide a holistic, culturally competent health program that encourages wellness, addresses public health, is designed to improve health status, and assures quality health care services that meet applicable standards. The local, Area, regional, or national level departmental PFSAs to be contracted, including administrative functions, are as follows:

3.1 – Primary and Urgent Care Services will be provided to address acute, chronic, and preventive health needs. Disciplines include family practice, internal medicine, pediatrics, geriatrics, and women's health, including outpatient care in collaboration with OB/GYN providers. Services within these disciplines include screening, diagnosis and treatment

through physical examinations including well baby and child screening and exams, wellness examinations, sports and occupational physicals, and examinations necessary to diagnose and respond to illness and injury, and sexual assault examinations; minor outpatient surgical procedures such as incision and drainage of abscesses, biopsy and excision of skin lesions; musculoskeletal injections; prescribing or dispensing medications; immunizations and tracking; in-office labs; dietitian and nutrition services; health referral services, case management for chronically ill, high-risk, or others; and coordination among and support of clinical providers (including specialists), behavioral health, and social services.

3.2 –**Specialty Services** will be provided to complement and provide a fuller range of diagnostic and treatment options than may be available through primary and urgent care to address chronic and acute illnesses and diseases and consequences of injuries, and to achieve or sustain functioning. Specialized clinical emphases will include:

3.2.1 Podiatry Services will be provided to include examination, diagnosis, medical treatment, minor surgical treatment, and adjuvant treatment of any disease, injury, deformity, or other condition of the human foot and ankle, including prescription and administration of medications, referrals, or other forms of treatment. Podiatric services also include preventative care and hygiene/dietary information services.

3.2.2 Diabetes Services will be provided to include diabetes assessment, treatment, management, and prevention includes activities and services to encourage healthy lifestyles to reduce incidence and complications of diabetes, including prevention and exercise programs; registration of at-risk patients; blood screening; tobacco usage/exposure programs; nutritional counseling and education; dietician services; medication management; foot care assessment and treatment.

3.2.3 Dermatology Services will be provided to include diagnosis and treatment (including minor surgical procedures) of skin, hair, nail and mucous membrane disorders and conditions; and preventative skin care and education.

3.2.4 Eye and Vision Care Services will be provided to include eye care education and initial assessment and referral for additional services including optometric and ophthalmologic diagnostic examinations; treatment and management of diseases and disorders of the visual system, the eye, and related structures, including glaucoma, amblyopia, macular degeneration; treatment and diagnosis of related systemic conditions such as diabetes; and basic corrective eye treatment, including vision assessments, eye evaluations, retinal assessments, frame adjustments and repairs, contact lens fittings, and dispensing of frames, eyeglass lenses, contact lenses, and low vision aids.

3.2.5 Audiology Services will be provided to include ear care education; ear injury prevention education; initial assessment and referral for treatment of hearing loss or other disorder or diseases of the aural system and related structures; assistance to individuals affected by hearing loss; and dispensing of hearing and audio aids.

3.3 – Ancillary Services will be provided to support medical diagnosis and treatment and include well child and adult screening; physical examinations; diabetes and cancer screening; diagnostic radiography/imaging, including radiology, mammography, ultrasound, diagnostic laboratory services, bone density screening, and EKGs; microbiology; drug screening analysis; health information services; behavioral health; and medical supply and equipment distribution to patients.

3.4 – Pharmacy Services will be provided to include dispensing medications to patients; medication treatment and management; specialized or focused medications, including anti-coagulation therapies and oncology therapies to the extent feasible; patient care coordination through one-on-one consultations for patient medication management. The Contractor will participate in the IHS's medical supply and pharmaceutical system (including the VA CMOP service) as needed.

3.5 – Therapeutic Rehabilitation and Habilitation Services will include integrative and complementary health services such as acupuncture, chiropractic care, and massage therapy provided in accordance with applicable national professional certification and accreditation standards and professional licensing or certification requirements.

3.6 – Oral Health Services

3.6.1 Dental Services will include diagnosis, treatment, and prevention of dental problems and diseases. Services include oral health assessments; basic to comprehensive oral care for pediatric, adult, and geriatric patients. Services may include orthodontia, periodontics, endodontics, and prosthetics; restorative and preventative care.

3.6.2 Dental Hygiene provides dental care, prevention and educational services, including exams, outreach, hygiene instruction and diet counseling, pit and fissure sealants, oral hygiene instruction and dental prophylaxis. Services include specialized outreach and care for individuals and groups including school age children, adults, elders, and expectant mothers, and diabetic patients.

3.7 – Behavioral Health Services include screening, diagnosis and treatment of mental health and substance use disorders services and are provided in conjunction with primary and urgent care services and in other settings. Elements of behavioral health services include trauma-informed services and training; behavioral health case management; mental health evaluation and therapy; individual, family, and group counseling; marriage and couples therapy; parenting classes; anger management sessions; talking circles; crisis intervention services; psychotherapy; psycho-social assessments; medication management; substance use disorder and addiction screening, diagnosis and treatment, fetal alcohol spectrum disorder (FASD) identification and education; support groups; injury prevention services for the protection of individuals impaired by alcohol and substance abuse or mental health disorders; and social, recreational, and cultural activities that promote being drug and alcohol free, including sweat lodges, pow-wows; court-referred or court-ordered assessment and intervention services.

3.7.1 Youth Development Services are designed to promote and develop leadership skills, healthy lifestyles, and cultural pride, and self-confidence and self-esteem. These

services include culturally appropriate activities and services that give youth an opportunity to learn and practice healthy and functional life skills through their interactions; services that assist and support youth to lead healthy, productive lives and to engage fully in educational and other age-appropriate activities, including student support activities, career exploration and work experience, and life skills training; and child development services and family services.

3.7.2 Community Child Welfare and Family Services will include health, behavioral health, and preventive services that may include emotional support services; substance abuse counseling and other treatment; health information and education; prevention of and services that respond to child physical abuse, sexual abuse, neglect, and other conditions that place a child at physical or emotional risk; services to prevent and respond to domestic violence, advocacy; temporary shelter referral and support, counseling, health and educational services; foster home advocacy and supportive services; child development and family services, including, health-oriented education; socialization; and health screening. Services will also be provided to prevent and address abuse and exploitation of adults who are elderly, disabled, or otherwise at risk.

3.7.3 Community Safety and Violence Prevention includes comprehensive services to victims of domestic violence and sexual assault using a multi-disciplinary, culturally-specific, person centered confidential approach; identification of individual/family needs regardless of age, gender or sexual identity; short-term counseling; access to critical information; coordination of referrals; and/or individualized or community education and training events for community awareness. Additional services for prevention of domestic violence and care of individuals affected by domestic violence include safety planning; criminal justice advocacy and support; emergency needs resources including transportation, housing/shelter assistance referral and support; children supportive services; emotional and personal advocacy; and coordination with other regional and Tribal programs. Services will also be provided to beneficiaries who are incarcerated or placed at youth or adult detention or correctional facilities.

3.8 – Community Based Services

3.8.1 Health Education will include providing information, education, public service campaigns, activities, and programs that support community health, including indoor and outdoor wellness activities (including services and support to promote physical activity and fitness, and recreational activities); bicycle safety programs; development of Indian leadership; patient and group health education sessions; sex education; social support activities; nicotine control/cessation education; diabetes education and prevention; cardiovascular health promotion; injury prevention activities; cancer prevention; life skills training; healthy cooking and diet education; community gardening and greenhouse; nutrition services, including promotion of natural and traditional foods; screening and testing for tuberculosis and other contagious diseases; needlestick and blood-borne pathogen prevention and treatment; immunizations and vaccinations; community health consultation and coordination meetings; community assessment surveys; participation in local, regional, and state health fairs; joint elder/youth events and activities; integration of employee and community health programming at cultural-based activities and events; and assisting community

members in identifying resources for health maintenance.

3.8.2 Public Health Nursing will include direct and indirect patient care; health promotion and disease prevention, immunizations, sexually transmitted diseases and other infectious disease prevention, treatment and tracing; identification and surveillance of communicable diseases through active participation in local, regional and state initiatives and reporting requirements; intervention in other potential individual and community public health issues.

3.8.2 Home and Community-Based Services will include a broad array of care and other supportive services, including providing assistance with activities of daily living for individuals who are unable to perform activities of daily living on their own, or when the families are unable to meet all of their needs; assistance with making the client's home safe and accessible; chore services and personal care services; pharmacy delivery; and development of infrastructure for a long-term care program for the Tribal community as the Tribal population ages over time. To the extent applicable, these services are provided in accordance with 25 U.S.C. § 1621d.

3.8.3 Maternal and Child Health Services will include prenatal and early childhood in-home care visits; pre-natal and sudden infant death syndrome (SIDS) prevention education; immunizations; nutritional education; maternal and family counseling; assessments of at-risk families; escorts and rides to health appointments; and bonding and habilitation services.

3.8.4 Nutrition Services include nutrition/dietetic education, food supplements, counseling, and other nutritional services and support for women, infants, children, and others who are at nutritional risk.

3.8.5 Other Community Health Services provided by community health representatives and other providers include community-based and home-based healthcare services including well person and chronic care; prevented services; promotion of immunizations, family planning, prenatal care, pharmacy delivery service; patient care case management, home healthcare and monitoring of diabetic patients and others with chronic or acute illness or diseases; hospice counseling, early childhood and school-based health programs including screening, diagnosis, and treatment services; and promotion of ear, nose and throat and audiology screening; an oral health and hygiene awareness; sponsoring and participating in programs to increase physical activity, health fairs, and other programs designed to improve health and encourage prevention and early intervention.

3.9 – Traditional Health Care will be provided subject to 25 U.S.C. § 1680u.

3.10– Access to Care Services and Support

3.10.1 Transportation Services include coordination and support of and providing transportation services, including temporary lodging and meals, for individuals who

need assistance to get to and from health care appointments at Sioux San and other providers and for other health related activities. Transportation is also provided to other locations and activities that are necessary for or contribute to continued independent living, wellness, and quality of life, including injury prevention and reduction in social isolation and increasing opportunities for socialization and activities. Transportation services may include providing transportation for patient escorts pursuant to 25 U.S.C. § 1621*l*.

3.10.2 Care Coordination Services includes consulting, advocating, and assisting with coordinating patient case-management with other providers; coordination of care services for patients requiring special needs or services such as advanced directives to hospitals; assisting patients and families with advocacy for unmet needs; providing technical assistance to Tribal leadership and Administration with analysis and development of Tribal social welfare policy; and coordinating education and training related to community health needs and problems.

3.10.3 Benefit Outreach and Assistance will be provided to include assisting patients in determining and applying for health care benefits that may improve access to health services or quality of life; assisting individuals to purchase health insurance; assisting individuals in obtaining alternative funding for health care services; and assisting in forms processing and completion, and/or serving in a patient advocate role while working with benefit providers including third-party intermediaries, outside vendors or insurance companies.

3.10.4 Purchased/Referred Care provides referrals and, when appropriate, authorizes funds to support such referral of eligible patients, within medical priorities established by GPTCHB for the RCSU. Referral for PRC may be made to providers located outside the PRCDA and follow-up and supportive services may be provided in those locations.

3.10.5 Health Coverage will be provided. GPTCHB may utilize funds under this Annual Funding Agreement for the purchase of health services and health insurance benefits and to plan for implementation of a program provide premiums for health benefits coverage in accordance with 25 U.S.C. § 1642.

3.11 – Emergency and Disaster Preparedness and Response Services include mitigation and prevention of, preparation for, response to, and recovery from the effects of natural, man-made, and biological events, including mutual aid agreements with tribal, local, state and federal governments and operation and support of warning and evacuation systems; coordination with public and private fire and emergency medical transportation; emergency planning with other governments; civilian emergency response training; fire and health safety trainings.

3.12 – Environmental Health Program. The GPTCHB promotes comprehensive environmental health services that incorporate for all program elements the following common services: (1) monitoring environmental health status through survey, surveillance, and investigative programs; (2) providing training and educational materials to increase awareness of environmental health issues; (3) ensuring a competent workforce; (4)

evaluating programs; and (5) researching, developing and applying best practices and innovative approaches to reduce hazardous conditions and risk factors that could lead to environmentally-related illness or to injury.

The program elements associated with environmental health are air quality; community facilities and institutions; drinking water quality; emergency management; environmental sustainability; injury prevention, food safety to prevent foodborne illness and provide training and education regarding safe food; health care and residential institution safety; healthy housing; mass gathering and recreations site safety; occupational safety; vector borne and communicable disease control; and waste management.

The GPTCHB collaborates with IHS and other agencies to assure that the GPTCHB program staff are well informed about and able to promote environmental health within all of GPTCHB PFSAs among the agencies with which it collaborates to obtain services for and those that provide services and support to its beneficiaries, and among the patients served by GPTCHB.

3.12.1 Injury Prevention Services include home, work place, and community safety and injury prevention programs; participation in local first responder teams; providing health and medical services; liaising with tribal, local, state, and federal governments and agencies directed at preventing intentional and unintentional injuries and death; driver safety program; drunk and distracted driving prevention and education; home safety checks; cold and inclement weather injury prevention activities; child car seat programs and education; animal control; gun safety programs; emergency preparedness trainings; water safety programs; bicycle safety programs; bicycle helmets; and safety reporting programs.

3.12.2 Facilities Program provides technical advice, administration, assessments, surveys, management, direct maintenance and repair, improvement, construction, and professional engineering services to assure that all GPTCHB-owned, leased or operated facilities used by GPTCHB to provide PFSAs under the Contract and AFA meet applicable standards and are safe and appropriate for the delivery of the PFSAs described in this SOW. Services also include planning, managing and implementation of capital improvements to increase access to health care and improve facilities for the delivery of health care. Coordination with IHS will occur as required by applicable law.

3.13 – Health Services Training includes clinical rotations, mentoring, shadowing, training, and supervision of health care providers; offering sites for medical residents and other individuals obtaining training in the health professions, including behavioral and dental professions and community health representatives; providing direct support and orientation, training, and continuing education for providers, employees, Board and Advisory Committee members, and others with regard to their practices, roles, and responsibilities; concerning health care operations and clinic governance. To the extent applicable, GPTCHB will comply with 25 U.S.C. § 1665e.

3.14– Support Services

3.14.1 Generally includes providing direction, program and staff supervision, organizational and program planning, administrative support (including telemedicine and telecommunications), facilities and equipment management, maintenance and improvements; health facility support including housekeeping and security; mail room functions; inventory control; budget development and maintenance; coding health and third-party billing; grant writing; contract development and management; purchasing management; technology management; coding functions (such as ICD-9 and 10, CPT, HCPCS, and DSMIV); strategic planning; and reporting statistics, as appropriate.

3.14.2 Financial Management includes organizing, coordinating, and executing budget and financial operations and accounting; providing or enhancing tribal enterprise systems – including hardware, software, and policies and procedures; and developing specialized fiscal reporting for the successful operation of a comprehensive health system.

3.14.3 Human Resources includes personnel services, staffing, recruitment, retention, job classification, pay and benefits administration, training, continuing education and development, employee relations, human resources information systems and employee health.

3.14.4 Health Center and Other Program Facility Services include providing housekeeping, including waste, trash, and infectious waste removal, linen management, routine and urgent cleaning for the hospital and other facilities where health PFSA's occur; and infection control, including reduction of risks of endemic and epidemic nonsocial infections in patients, healthcare workers, and other accomplished through surveillance methodologies that include education, and reporting internally and, when appropriate to outside public health agencies.

3.14.5 Information Technology includes technical information management services, including hardware, software, licenses, applications development, telecommunications, remote data services, overall systems and operations management including senior leadership level information management. It further includes supporting, assembling, configuring, procuring, and providing electronic health record systems, health information exchange, patient portals, RPMS/PCC and other software applications; system implementation and support, including data entry and processing for RPMS/PCC, patient care and other medical record and billing systems; data management including clinical information systems and health information exchange interfaces coordination, integration and transmission of data, such as Medicaid and eligibility information, statistics and reports; RPMS and other technical manuals; compliance monitoring and response (including meaningful use, privacy and security best practices), workforce training, practitioner education and outreach, and accessing national health information resources adhering to industry best practices, which may include IHS/HHS Standard Operating Procedures.

3.14.6 Performance Improvement and Compliance includes monitoring and evaluating quality and value of services and includes providing education, coordination and support in areas of continuous quality improvement, health provider credentialing, risk management, patient surveys and issues related to complying with certifying and

regulatory agencies such as those for the Centers for Medicare & Medicaid Services ("CMS"). Utilization review functions are also provided. It also provides services including technical and professional consultation and direct services to all departments including safety management programs; hazard surveillance monitoring; hazardous materials and waste management; monitoring of contracts for pest control, regulated medical waste and hazardous waste, and activities involved with CMS survey and applicable OSHA requirements.

3.14.7 Business Office and other Operational Support functions include support and coordination of patient registration, patient benefits coordination, coding, third-party billing, review of aged accounts, revenue cycle management, debt management, and denial management, electronic health record ("EHR") implementation through a dedicated Resource and Patient Management System (RPMS).

3.14.8 Resource and Patient Management System (RPMS) or successor system used for patient data management, collecting data on reimbursable expenses incurred by patients, generating bills for collection from other payers (primarily Medicare, Medicaid, and private insurance), conducting utilization review, insurance verification, and collection activities.

3.15 - Tribal Leadership Representation will be provided. In support of the PFSAs identified in this Agreement, GPTCHB members, Mni Luzahan Wicozani Advisory Committee members, and other tribal leaders provide health care advocacy on an area, state, and national level, including participation in and serving on national, state, local and tribal health related committees, boards, and other groups.

3.16 Program Statistics produces statistical information and publications that measure and document the progress in assuring access to health care services and improving health status; generating and retaining historical and foundational documents that will support program evaluation and new health initiatives; facilitates exchange of health information among care providers; and maintains records and makes reports regarding disease, injury and vital events.

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Appendix F
(9 pages)

TRIBAL MEMORANDUM

DATE : 01/10/19

TO : SUPERINTENDENT, Cheyenne River Agency

FROM : Ev Ann White Feather, Tribal Secretary

SUBJECT : Resolution No. 1-2019-CR: that the authority invested in the GPTCHB in this Resolution shall continue, without regard to the decision to withdraw of any of the three tribes to initially authorize assumption, and shall include the following additional authority and conditions:

1. Any reference to the "Unified Health Board" or the "Unified Health Board Advisory Committee" that addresses providing advice to the GPTCHB with regard to the RCSU shall be replaced by the "Mni Luzahan Wicozani";
2. This Resolution is not dependent on the action of any other Tribe;
3. The Cheyenne River Sioux Tribe endorses construction of the new health facility in Rapid City at the Shepherd Hills site and the preservation of the Sioux San site under the operation of the GPTCHB;
4. No reference to a Tribe that has withdrawn from participation in the assumption of the RCSU or any construction activity shall have effect under this Resolution;
5. The GPTCHB is additionally authorized to provide services of the RCSU on the Cheyenne River Indian Reservation, with the agreement of the Cheyenne River Sioux Tribe, provided delivery of such services do not diminish the services available in Rapid City; and

****

Transmitted herewith are an original and two (2) copies of Resolution No. 1-2019-CR which was duly adopted by the Cheyenne River Sioux Tribal Council during its Special Session held on January 9, 2019.

EWF/kr

Cc: Chairman
Treasurer
Administrative Officer
Tribal Comptroller
Central Records
Committee Secretary
District Officers (6)
Health Committee Chair
File/2

The blue represents the thunderclouds above the world where live the thunder birds who control the four winds. The rainbow is for the Cheyenne River Sioux people who are keepers of the Most Sacred Calf Pipe, a gift from the White Buffalo Calf Maiden. The eagle feathers at th e edges of the rim of the world represent the spotted eagle who is the protector of all Lakota. The two pipes fused together are for unity. One pipe is for the Lakota, the other for all the other Indian Nations. The yellow hoops represent the Sacred Hoop, which shall not be broken. The Sacred Calf Pipe Bu ndle in red represents Wakan Tanka – The Great Mystery. All the colors of the Lakota are visible. The red, yellow, black and white represent the fo ur major races. The blue is for heaven and the green for Mother Earth.

RESOLUTION NO. 1-2019-CR

RESOLUTION OF THE CHEYENNE RIVER SIOUX TRIBAL COUNCIL
OF THE CHEYENNE RIVER SIOUX TRIBE
(An Unincorporated Tribe)

PURPOSE: A RESOLUTION OF THE CHEYENNE RIVER SIOUX TRIBAL COUNCIL OF THE CHEYENNE RIVER SIOUX TRIBE TO AMEND CHEYENNE RIVER SIOUX TRIBAL COUNCIL RESOLUTION No. 104-2018-CR.

WHEREAS, the Cheyenne River Sioux Tribe of South Dakota is an unincorporated Tribe of Indians, having accepted the provisions of the Act of June 18, 1934 (48 Stat. 984); and

WHEREAS, the Tribe, in order to establish its Tribal organization; to conserve its Tribal property; to develop its common resources; and to promote the general welfare of its people, as ordained and established a Constitution and By-Laws; and

WHEREAS, the Tribal Constitution authorizes the Tribal Council, in Article IV Section 1 (a) to negotiate with the Federal, State, and local governments on behalf of the Tribe, and in Section 1 (m) to protect and promote the health and welfare of the Tribe and its members; and

WHEREAS, the Indian Health Service administers the Rapid City Service Unit, including the Sioux San Hospital; and

WHEREAS, the Cheyenne River Sioux Tribal Council passed Resolution No. 104-2018-CR on April 5, 2018 to authorize the Great Plains Tribal Chairmen's Health Board (GPTCHB) to assume operation of and funding for programs, services, functions and activities (PSFAs) of the Indian Health Service (IHS) Great Plains Area Office Rapid City Service Unit (RCSU), including the Sioux San Hospital and related area and headquarters PSFAs (including tribal shares), and construction PSFAs and funding, pursuant to the Indian Self-Determination and Education Assistance Act, as amended, and

WHEREAS, during the GPTCHB negotiations with IHS pursuant to the ISDEAA and Cheyenne River Sioux Tribal Council Resolution No. 104-2018-CR, several issues have arisen, including a present change in position of a fellow Tribe that the RCSU also serves, and

WHEREAS, the Cheyenne River Sioux Tribe has determined that it must amend Resolution No. 104-2018-CR in certain respects to continue the efforts to have the GPTCHB assume the RCSU's PSFAs, knowing that such assumption may ultimately be only for two of the three Tribes served by the RCSU; now

THEREFORE, BE IT RESOLVED, that the Cheyenne River Sioux Tribe amends Resolution No. 104-2018-CR in three respects, as follows:

(1) Insert the following clauses after the last Whereas Clauses in Resolution No. 104-2018-CR:

WHEREAS, the Cheyenne River Sioux Tribe approves of and endorsed the creation of the Mni Luzahan Wicozani (MLW) as the successor to the Unified Health Board with regard to the assumption of the Rapid City Service Unit (RCSU) and construction of the new Sioux San health facility; and

WHEREAS, the MLW has been fully informed and provided recommendations regarding all aspects of the assumption of the RCSU, including the construction negotiations; and

WHEREAS, the negotiations for the assumption of the RCSU are nearly complete; and

WHEREAS, the Cheyenne River Sioux Tribe has been informed that the Rosebud Sioux Tribe may have taken action to withdraw its support for the assumption of the RCSU, including new construction, by the GPTCHB; and

WHEREAS, the Cheyenne River Sioux Tribe Tribal Council has determined that the assumption of the RCSU by the GPTCHB will benefit all of the Indian Health Service (IHS) beneficiaries of the RCSU and, through collaborative and shared services by GPTCHB with the Cheyenne River Sioux Tribe and the IHS through hospital, clinic, health stations on the Cheyenne River Indian Reservation, the assumption will benefit the members of the Cheyenne River Sioux Tribe; and

WHEREAS, the negotiations between GPTCHB and the IHS should not be disrupted, nor the dates for completing the negotiation of the design and construction project (the end of December 2018) and the planned program assumption date of February 17, 2019 should not be delayed; and

WHEREAS, the Cheyenne River Sioux Tribal Council has determined that Resolution No. 104-2018-CR should be amended to allow the negotiations and execution of GPTCHB contract(s) with the IHS to be completed on behalf of the Cheyenne River Sioux Tribe and one or more of the other two tribes for which IHS provides services.

(2) Delete Paragraph 6 under the BE IT FURTHER RESOLVED clause in Resolution No. 104-2018-CR and replace it with the following:

6. The authority granted herein shall take effect immediately upon the Tribe's adoption of this Resolution or, if later, upon the adoption of a resolution by the Oglala Sioux Tribe or the Rosebud Sioux Tribe that has substantially the same effect as this Resolution.

(3) Insert the following clause at the end of Resolution No. 104-2018-CR:

RESOLUTION NO. 3-2019-CR
Page Three:

BE IT FURTHER RESOLVED that the authority invested in the GPTCHB in this Resolution shall continue, without regard to the decision to withdraw of any of the three tribes to initially authorize assumption, and shall include the following additional authority and conditions:

1. Any reference to the "Unified Health Board" or the "Unified Health Board Advisory Committee" that addresses providing advice to the GPTCHB with regard to the RCSU shall be replaced by the "Mni Luzahan Wicozani";
2. This Resolution is not dependent on the action of any other Tribe;
3. The Cheyenne River Sioux Tribe endorses construction of the new health facility in Rapid City at the Shepherd Hills site and the preservation of the Sioux San site under the operation of the GPTCHB;
4. No reference to a Tribe that has withdrawn from participation in the assumption of the RCSU or any construction activity shall have effect under this Resolution;
5. The GPTCHB is additionally authorized to provide services of the RCSU on the Cheyenne River Indian Reservation, with the agreement of the Cheyenne River Sioux Tribe, provided delivery of such services do not diminish the services available in Rapid City; and

BE IT FINALLY RESOLVED, that nothing in this Resolution diminishes, divests, alters, or otherwise affects any inherent, treaty, statutory, or other rights of the Cheyenne River Sioux Tribe over the property or activities described herein. The Cheyenne River Sioux Tribe expressly retains all rights and authority over the property and activities described herein, including but not limited to legislative, regulatory, adjudicatory, and taxing powers.

CERTIFICATION

I, the undersigned, as Secretary of the Cheyenne River Sioux Tribe, certify that the Tribal Council is composed of fifteen (15) members, of whom 14, constituting a quorum, were present at a meeting duly and specially called, noticed, convened and held this 9th day of January 2019, Special Session; and that the foregoing resolution was duly adopted at such meeting by a roll call vote of 11 yes, 2 no, 1 abstaining, and 1 absent.

Ev Ann White Feather, Secretary
Cheyenne River Sioux Tribe

P.O. Box 590
Eagle Butte, South Dakota 57625
Phone: (605) 964-4155
Fax: (605) 964-4151

TRIBAL MEMORANDUM

DATE : 04/10/18

TO : SUPERINTENDENT, Cheyenne River Agency

FROM : Ev Ann White Feather, Tribal Secretary

SUBJECT : Resolution No. 104-2018-CR: That the Cheyenne River Sioux Tribe authorizes the GPTCHB (Great Plains Tribal Chairmen's Health Board) to:

1. Apply for, negotiate, and contract or compact with the Indian Health Services and/or United States Secretary of Health and Human Services to assume the PSFAs of the Rapid City Service Unit, including the Sioux San Hospital, and related IHS Area and Headquarters PSFAs and associated funding, and including construction related PSFAs and funding pursuant to the Indian Self-Determination and Education Assistance Act; and
2. Pursue funding through grants or contracts available from IHS or any other federal, state or private entity to supplement or support the objective of having the GPTCHB carry out the Rapid City Service Unit PSFAs or equivalent activities on behalf of authorizing Tribes to the greatest extent possible; and contains the provision.

****

Transmitted herewith are an original and two (2) copies of Resolution No. 104-2018-CR which was duly adopted by the Cheyenne River Sioux Tribal Council during its Special Session held on April 5, 2018.

Cc: Chairman
Treasurer
Administrative Officer
Tribal Comptroller
Central Records
Committee Secretary
District Officers (6)
Health Committee Chair
Health Department
File/2

The blue represents the thunderclouds above the world where live the thunder birds who control the four winds. The rainbow is for the Cheyenne River Sioux people who are keepers of the Most Sacred Calf Pipe, a gift from the White Buffalo Calf Maiden. The eagle feathers at th e edges of the rim of the world represent the spotted eagle who is the protector of all Lakota. The two pipes fused together are for unity. One pipe is for the Lakota, the other for all the other Indian Nations. The yellow hoops represent the Sacred Hoop, which shall not be broken. The Sacred Calf Pipe Bu ndle in red represents Wakan Tanka – The Great Mystery. All the colors of the Lakota are visible. The red, yellow, black and white represent the fo ur major races. The blue is for heaven and the green for Mother Earth.

RESOLUTION NO. 104-2018-CR

PURPOSE: To request the Great Plains Tribal Chairmen's Health Board (GPTCHB) to assume operation of and funding for programs, services, functions and activities (PSFAs) of the Indian Health Service Great Plains Area Office Rapid City Service Unit including the Sioux San Hospital and related Headquarters and Service Unit PSFAs (including tribal shares), and construction PSFAs and funding, pursuant to the Indian Self-Determination and Education Assistance Act, as amended, and to exercise any other legal authority under which the GPTCHB may receive and administer grants or compete for and administer contracts in support of the PSFAs it is authorized to assume under this resolution that would otherwise be carried out by the Indian Health Service.

WHEREAS, the Cheyenne River Sioux Tribe of South Dakota is an unincorporated Tribe of Indians, having accepted the provisions of the Act of June 18, 1934 (48 Stat. 984); and

WHEREAS, the Tribe, in order to establish its Tribal organization; to conserve its Tribal property; to develop its common resources; and to promote the general welfare of its people, as ordained and established a Constitution and By-Laws; and

WHEREAS, the Tribal Constitution authorizes the Tribal Council, in Article IV Section 1 (a) to negotiate with the Federal, State, and local governments on behalf of the Tribe, and in Section 1 (m) to protect and promote the health and welfare of the Tribe and its members; and

WHEREAS, the Indian Health Service administers the Rapid City Service Unit, including the Sioux San Hospital; and

WHEREAS, the Indian Health Service has announced its intention to close the emergency department of the Sioux San Hospital and to construct a new facility; and

WHEREAS, the Cheyenne River Sioux Tribe appoints members to the Unified Health Board on which appointees from the Oglala Sioux Tribe and Rosebud Sioux Tribes also serve to provide direction to the Indian Health Service, respond to concerns regarding the operation of the Rapid City Service Unit, and to consider and make recommendations regarding the future of the Rapid City Service Unit; and

WHEREAS, the Unified Health Board adopted a resolution recommending that tribal assumption of the Rapid City Service Unit should be undertaken; and

WHEREAS, the Cheyenne River Sioux Tribe agrees that tribal assumption should occur; and

WHEREAS, the Great Plains Tribal Chairmen's Health Board (GPTCHB) is a tribal organization (as that term is defined at 25 U.S.C. § 450b(*l*)) governed by members of the seventeen (17) Tribes and one (1) Indian Service Area, and that serves nearly 170,000 Indians in the IHS four-state region comprised of South Dakota, North Dakota, Nebraska and Iowa; and

WHEREAS, the GPTCHB is comprised of democratically elected leaders from each of the Tribes who provide direction and oversight regarding all activities of the Board; and

RESOLUTION NO. 104-2018-CR
Page Two:

WHEREAS, the GPTCHB has worked closely with the Unified Health Board and is committed to continuing to do so; and

WHEREAS, GPTCHB serves as a liaison between the Great Plains Tribes the U.S. Department of Health and Human Services and associated agencies, including Indian Health Service, and directly provides services and technical assistance to the Tribes of the Great Plains and works to promote the health and wellbeing of American Indian peoples in the Great Plains; and

WHEREAS, Tribal assumption of Indian Health Service PSFAs has proven throughout all Areas of the Indian Health Service to increase transparency and accountability to the Tribes served and;

WHEREAS, GPTCHB has proven experience and expertise in administrative and program administration; and

WHEREAS, The GPTCHB will continuously seek guidance in its activities and priorities from the Tribes that it is serving pursuant to this Resolution; and

WHEREAS, the IHS has given notice of its intention to build a new facility to replace the Sioux San Hospital and the Cheyenne River Sioux Tribe has determined that construction program functions, planning services and construction management services, and construction projects should be carried out pursuant to the Indian Self-Determination and Education Assistance Act, as amended, on behalf of the Cheyenne River Sioux Tribe, Oglala Sioux Tribe, and Rosebud Sioux Tribes; and

WHEREAS, GPTCHB will report directly, and though the Unified Health Board, to the Tribe on its performance of PSFAs and status of funding on a routine and regular basis; and

WHEREAS, The Unified Health Board is prepared to serve as an advisory body to the GPTCHB regarding planning and assumption of the Rapid City Service Unit, including construction related PSFAs and funding, and to provide program governance and recommendations to the GPTCHB to assure that decisions regarding the operation of the PSFAs of Service Unit, including the Sioux San Hospital, are made in both the best interests of the three Tribes that have authorized assumption of it and the needs of the GPTCHB to not diminish its capacity to serve all of the Tribes of the Great Plains Area; and

WHEREAS, The GPTCHB will not begin planning for or assume the PSFAs and funding for the Rapid City Service Unit until and unless the Oglala Sioux Tribe and Rosebud Sioux Tribe also authorize it to do so; and

WHEREAS, To assure continuity of care for the people served through the Rapid City Service Unit, including the Sioux San Hospital, orderly transition of programs and operations of the Great Plains Tribal Chairmen's Board, and orderly communication and transition with the Oglala Sioux Tribe and the Rosebud Sioux Tribe, withdrawal of this Resolution shall not be effective any earlier than thirty-six

months after notice is given to all parties, unless the Great Plains Tribal Chairmen's Board and all three Tribes agree to another time frame, provided that after the initial thirty-six month period after assumption, the notice requirement shall be reduced to eighteen months; now

THEREFORE, BE IT RESOLVED that the Cheyenne River Sioux Tribe authorizes the GPTCHB to:

1. Apply for, negotiate, and contract or compact with the Indian Health Services and/or United States Secretary of Health and Human Services to assume the PSFAs of the Rapid City Service Unit, including the Sioux San Hospital, and related IHS Area and Headquarters PSFAs and associated funding, and including construction related PSFAs and funding pursuant to the Indian Self-Determination and Education Assistance Act; and

2. Pursue funding through grants or contracts available from IHS or any other federal, state or private entity to supplement or support the objective of having the GPTCHB carry out the Rapid City Service Unit PSFAs or equivalent activities on behalf of authorizing Tribes to the greatest extent possible; now

BE IT FURTHER RESOLVED that the authority described above shall be carried out by the GPTCHB consistent with the following conditions:

1. During such time as this Resolution remains in effect, the Great Plains Tribal Chairmen's Health Board shall comply with all applicable law and current regulations under P.L. 93-638 and any other law applicable to the funding acquired from IHS or any other entity pursuant to this Resolution.

2. The Great Plains Tribal Chairmen's Health Board shall provide copies to the Tribe of any proposals, contracts, and compacts, including the addition of any PSFAs to any funding agreement the Board determines to pursue.

3. The Great Plains Tribal Chairmen's Health Board will provide to the Tribe copies of all final documents, and amendments thereto, which GPTCHB enters into pursuant to this Resolution.

4. The Great Plains Tribal Chairmen's Health Board shall provide routine and regular reports to the Tribe, directly and through the Unified Health Board, of the work it performs under this Resolution, and such reports shall contain both budget and program information.

5. Nothing in this Resolution shall be construed as affecting, modifying, or diminishing, or otherwise impairing the sovereignty of the Tribe or its sovereign immunity from suit or authorizing or requiring the termination of any existing treaty or trust responsibility of the United States with respect to the Indian People.

6. The authority granted herein shall take effect immediately upon the Tribe's adoption of this Resolution or, if later, upon the date of adoption of resolutions of the Oglala Sioux Tribe and the Rosebud Sioux Tribe that have substantially the same effect as this Resolution, provided that this Resolution has no effect unless all three Tribes (Cheyenne River Sioux

Tribe, Oglala Sioux Tribe and the Rosebud Sioux Tribe) pass this Resolution or resolutions that have substantially the same effect as this Resolution.

7. This Resolution shall remain in effect until and unless it is withdrawn by formal action of this Tribe, *provided* written notice of such action shall be given to the Oglala Sioux Tribe and Rosebud Sioux Tribe, the Great Plains Tribal Chairmen's Health Board, and the Indian Health Service and that any such withdrawal shall be effective no earlier than thirty-six months after the date on which occurred, unless all three Tribes and the Great Plains Tribal Chairmen's Health Board agree to another date.

8. After thirty-six months after the date on which assumption occurred, the Tribe may elect to withdraw this Resolution, or its share of any PSFA (or portion thereof) and shall be entitled to its tribal share of funds supporting those PSFAs (and portions thereof), *provided* written notice of such action shall be given to the Oglala Sioux Tribe and the Rosebud Sioux Tribe, the Great Plains Tribal Chairmen's Health Board, and the Indian Health Service and that any such withdrawal shall be effective no earlier than eighteen months after the date on which such notices are received.

9. This Resolution does not supersede or replace any other action by the Tribe to authorize the Great Plains Tribal Chairmen's Health Board to provide support or services on behalf of the Tribe.

BE IT FINALLY RESOLVED, that nothing in this resolution diminishes, divests, alters, or otherwise affects any inherent, treaty, statutory or other rights of the Cheyenne River Sioux Tribe over the property or activities described herein. The Cheyenne River Sioux Tribe expressly retains all rights and authority over the property and activities described herein, including but not limited to legislative, regulatory, adjudicatory, and taxing powers.

CERTIFICATION

I, the undersigned, as Secretary of the Cheyenne River Sioux Tribe, certify that the Tribal Council is composed of fifteen (15) members, of whom 12, constituting a quorum, were present at a meeting duly and specially called, noticed, convened and held this 5th day of April 2018, Special Session; and that the foregoing resolution was duly adopted at such meeting by a roll call vote of 10 yes, 1 no, 1 abstaining, and 3 absent.

Ev Ann White Feather, Secretary
Cheyenne River Sioux Tribe

Appendix G
(9 pages)

RESOLUTION NO. 19-02

RESOLUTION OF THE OGLALA SIOUX TRIBAL COUNCIL
OF THE OGLALA SIOUX TRIBE
(An Unincorporated Tribe)

RESOLUTION OF THE OGLALA SIOUX TRIBAL COUNCIL OF THE OGLALA SIOUX TRIBE TO AMEND OGLALA SIOUX TRIBAL COUNCIL RESOLUTION NO. 18-42.

WHEREAS, the Oglala Sioux Tribe adopted its Constitution and By-Laws by referendum vote on December 14, 1935, in accordance with Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. §5123), and under Article III of the Constitution, the Oglala Sioux Tribal Council is the governing body of the Oglala Sioux Tribe, and

WHEREAS, the Oglala Sioux Tribal Council passed Resolution No. 18-42 on April 4, 2018 to authorize the Great Plains Tribal Chairmen's Health Board (GPTCHB) to assume operation of and funding for programs, services, functions and activities (PSFAs) of the Indian Health Service (IHS) Great Plains Area Office Rapid City Service Unit (RCSU), including the Sioux San Hospital and related area and headquarters PSFAs (including tribal shares), and construction PSFAs and funding, pursuant to the Indian Self-Determination and Education Assistance Act, as amended, and

WHEREAS, during the GPTCHB negotiations with IHS pursuant to the ISDEAA and Oglala Sioux Tribal Council Resolution No. 18-42, several issues have arisen, including a present change in position of a fellow Tribe that the RCSU also serves, and

WHEREAS, the Oglala Sioux Tribe has determined that it must amend Resolution No. 18-42 in certain respects to continue the efforts to have the GPTCHB assume the RCSU's PSFAs, knowing that such assumption may ultimately be only for two of the three Tribes served by the RCSU; now

THEREFORE BE IT RESOLVED, that the Oglala Sioux Tribe amends Resolution No. 18-42 in three respects, as follows:

(1) Insert the following clauses after the last Whereas Clause in Resolution No. 18-42:

and,

WHEREAS, the Oglala Sioux Tribe approves of and endorsed the creation of the Mni Luzahan Wicozani Advisory Committee (MLWAC) as the successor to the Unified Health Board with regard to the assumption of the Rapid City Service Unit (RCSU) and construction of the new Sioux San health facility, and

WHEREAS, the MLWAC has been fully informed and provided recommendations regarding all aspects of the assumption of the RCSU, including the construction negotiations; and

WHEREAS, the negotiations for the assumption of the RCSU are nearly complete, and

WHEREAS, the Oglala Sioux Tribe has been informed that the Rosebud Sioux Tribe may have taken action to withdraw its support for the assumption of the RCSU, including new construction, by the GPTCHB, and

WHEREAS, the Oglala Sioux Tribe's Health and Human Services Committee has determined that the assumption of the RCSU by the GPTCHB will benefit all of the Indian Health Service (IHS) beneficiaries of the RCSU and, through collaborative and shared services by GPTCHB with the Oglala Sioux Tribe and the IHS through hospital, clinic, health stations on the Pine Ridge Indian Reservation, the assumption will benefit the members of the Oglala Sioux Tribe, and

WHEREAS, the negotiations between GPTCHB and the IHS should not be disrupted, nor the dates for completing the negotiation of the design and construction project (the end of December 2018) and the planned program assumption date of February 17, 2019 should not be delayed, and

WHEREAS, the Oglala Sioux Tribal Council has determined that Resolution No. 18-42 should be amended to allow the negotiations and execution of GPTCHB contract(s) with the IHS to be completed on behalf of the Oglala Sioux Tribe and of the other of the three tribes for which it provides services.

(2) Delete Paragraph 6 under the BE IT FURTHER RESOLVED clause in Resolution No. 18-42 and replace it with the following:

6. The authority granted herein shall take effect immediately upon the Tribe's adoption of this Resolution or, if later, upon the adoption of resolutions of the Cheyenne River Sioux Tribe and/ or the Rosebud Sioux Tribe that have substantially the same effect as this Resolution.

(3) Insert the following clause at the end of Resolution No. 18-42: BE IT FURTHER RESOLVED, that the authority invested in the GPTCHB in this Resolution shall continue, without regard to the decision to withdraw of any of the three tribes to initially authorize assumption, and shall include the additional authority and conditions:

1. Any reference to the "Unified Health Board" or the "Unified Health Board Advisory Committee" that addresses providing advice to the GPTCHB with regard to the RCSU shall be replaced by the "Mni Luzahan Wicozani Advisory Committee";

2. This Resolution is not dependent on the action of any other Tribe;

3. The Oglala Sioux Tribe endorses construction of the new health facility in Rapid City at the Shepard's Hills site and the preservation of the Sioux San site under the operation of the GPTCHB;

4. No reference to a Tribe that has withdrawn from participation in the assumption of the RCSU or any construction activity shall have effect under this Resolution;

The GPTCHB is additionally authorized to provide services of the RCSU on the Pine Ridge Indian Reservation, with the agreement of the Oglala Sioux Tribe, provided delivery of such services do not diminish the services available in Rapid City.

C-E-R-T-I-F-I-C-A-T-I-O-N

I, as the undersigned Secretary of the Oglala Sioux Tribal Council, of the Oglala Sioux Tribe hereby certify that this Resolution was adopted by a vote of: 11 For; 5 Against; 0 Abstain; and 2 Not Voting; during a REGULAR SESSION held on the 2ND day of JANUARY, 2019.

JENNIFER SPOTTED BEAR
Secretary
Oglala Sioux Tribe

A-T-T-E-S-T:

JULIAN R. BEAR RUNNER
President
Oglala Sioux Tribe

RESOLUTION NO. 18-42

RESOLUTION OF THE OGLALA SIOUX TRIBAL COUNCIL
OF THE OGLALA SIOUX TRIBE
(An Unincorporated Tribe)

RESOLUTION OF THE OGLALA SIOUX TRIBAL COUNCIL OF THE OGLALA SIOUX TRIBE TO AUTHORIZE THE GREAT PLAINS TRIBAL CHAIRMEN'S HEALTH BOARD (GPTCHB) TO ASSUME OPERATION OF AND FUNDING FOR PROGRAMS, SERVICES, FUNCTIONS AND ACTIVITIES (PSFAS) OF THE INDIAN HEALTH SERVICE GREAT PLAINS AREA OFFICE RAPID CITY SERVICE UNIT, INCLUDING THE SIOUX SAN HOSPITAL AND RELATED AREA AND HEADQUARTERS PSFAS (INCLUDING TRIBAL SHARES), AND CONSTRUCTION PSFAS AND FUNDING, PURSUANT TO THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT, AS AMENDED, AND TO EXERCISE ANY OTHER LEGAL AUTHORITY UNDER WHICH THE GPTCHB MAY RECEIVE AND ADMINISTER GRANTS OR COMPETE FOR AND ADMINISTER CONTRACTS IN SUPPORT OF THE PSFAS IT IS AUTHORIZED TO ASSUME UNDER THIS RESOLUTION THAT WOULD OTHERWISE BE CARRIED OUT BY THE INDIAN HEALTH SERVICE.

WHEREAS, the Oglala Sioux Tribe adopted its Constitution and By-Laws by referendum vote on December 14, 1935, in accordance with Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. § 5123), and under Article III of the Constitution, the Oglala Sioux Tribal Council is the governing body of the Oglala Sioux Tribe, and

WHEREAS, the Indian Health Service administers the Rapid City Service Unit, including the Sioux San Hospital, and

WHEREAS, the Indian Health Service has announced its intention to close the emergency department of the Sioux San Hospital and to construct a new facility, and

WHEREAS, the Oglala Sioux Tribe appoints members to the Unified Health Board on which appointees from the Cheyenne River Sioux Tribe, the Rosebud Sioux Tribe and Oglala Sioux Tribes also serve to provide direction to the Indian Health Service, respond to concerns regarding the operation of the Rapid City Service Unit, and to consider and make recommendations regarding the future of the Rapid City Service Unit, and

WHEREAS, the Unified Health Board adopted a resolution recommending that tribal assumption of the Rapid City Service Unit should be undertaken, and

WHEREAS, the Oglala Sioux Tribe agrees that tribal assumption should occur, and

WHEREAS, the Great Plains Tribal Chairmen's Health Board (GPTCHB) is a tribal organization (as that term is defined at 25 U.S.C. § 450b(*l*)) governed by members of the seventeen (17) Tribes and one (1) Indian Service Area, and that serves nearly 170,000 Indians in the IHS four-state region comprised of South Dakota, North Dakota, Nebraska and Iowa, and

WHEREAS, the GPTCHB is comprised of democratically elected leaders from each of the Tribes who provide direction and oversight regarding all activities of the Board, and

WHEREAS, the GPTCHB has worked closely with the Unified Health Board and is committed to continuing to do so, and

WHEREAS, GPTCHB serves as a liaison between the Great Plains Tribes the U.S. Department of Health and Human Services and associated agencies, including Indian Health Service, and directly provides services and technical assistance to the Tribes of the Great Plains and works to promote the health and wellbeing of American Indian peoples in the Great Plains, and

WHEREAS, Tribal assumption of Indian Health Service PSFAs has proven throughout all Areas of the Indian Health Service to increase transparency and accountability to the Tribes served, and

WHEREAS, GPTCHB has proven experience and expertise in administrative and program administration, and

WHEREAS, the Oglala Sioux Tribe has previously authorized the GPTCHB to assume Area PSFAs and funding (including related Headquarters and Service Unit PSFAs and funding) on its behalf. That resolution provided that the GPTCHB must obtain advance written authorization from the Oglala Sioux Tribe to assume any Service Unit PSFAs (including tribal shares and related funding), and

WHEREAS, the Oglala Sioux Tribe has determined that it is now in the best interests of the Tribe to grant the authorization to the GPTCHB to plan for and assume the PSFAs and funding (including related Area and Headquarters PSFAs and funding, and construction related PSFAs and funding) of the Rapid City Service Unit, including the Sioux San Hospital, on behalf of the Oglala Sioux Tribe, the Cheyenne River Sioux Tribe and the Rosebud Sioux Tribes, through contracting or compacting under the Indian Self-Determination and Education Assistance Act, or other means, which include applying for grants or competing for contracts from IHS and other federal, state and private entities, and

WHEREAS, the GPTCHB will continuously seek guidance in its activities and priorities from the Tribes that it is serving pursuant to this Resolution, and

WHEREAS, the IHS has given notice of its intention to build a new facility to replace the Sioux San Hospital and the Oglala Sioux Tribe has determined that construction program functions, planning services and construction management services, and construction projects should be carried out pursuant to the Indian Self-Determination and Education Assistance Act, as amended, on behalf of the Oglala Sioux Tribe, Cheyenne River Sioux Tribe, and the Rosebud Sioux Tribes, and

WHEREAS, GPTCHB will report directly, and through the Unified Health Board, to the Tribes on its performance of PSFAs and status of funding on a routine and regular basis, and

WHEREAS, the Unified Health Board is prepared to serve as an advisory body to the GPTCHB regarding planning and assumption of the Rapid City Service Unit, including construction related PSFAs and funding, and to provide program governance and recommendations to the GPTCHB to assure that decisions regarding the operation of the PSFAs of Service Unit, including the Sioux San Hospital, are made in both the best interests of the three Tribes that have authorized assumption of it and the needs of the GPTCHB to not diminish its capacity to serve all of the Tribes of the Great Plains Area, and

WHEREAS, the GPTCHB will not begin planning for or assume the PSFAs and funding for the Rapid City Service Unit until and unless the Cheyenne River Sioux Tribe, Oglala Sioux Tribe and Rosebud Sioux Tribe also authorize it to do so, and

WHEREAS, to assure continuity of care for the people served through the Rapid City Service Unit, including the Sioux San Hospital, orderly transition of programs and operations of the Great Plains Tribal Chairmen's Health Board, and orderly communication and transition with the Cheyenne River Sioux Tribe, the Oglala Sioux Tribe and the Rosebud Sioux Tribe, withdrawal of this Resolution shall not be effective any earlier than thirty-six months after notice is given to all parties, unless the Great Plains Tribal Chairmen's Health Board and all three Tribes agree to another time frame, provided that after the initial thirty-six month period after assumption, the notice requirement shall be reduced to eighteen months.

now,

THEREFORE, BE IT RESOLVED, that Oglala Sioux Tribe authorizes the GPTCHB to:

1. Apply for, negotiate, and contract or compact with the Indian Health Services and/or United States Secretary of Health and Human Services to assume the PSFAs of the Rapid City Service Unit, including the Sioux San Hospital, and related IHS Area and Headquarters PSFAs and associated funding, and including construction related PSFAs and funding pursuant to the Indian Self-Determination and Education Assistance Act.

2. Pursue funding through grants or contracts available from IHS or any other federal, state or private entity to supplement or support the objective of having the GPTCHB carry out the Rapid City Service Unit PSFAs or equivalent activities on behalf of authorizing Tribes to the greatest extent possible.

now,

BE IT FURTHER RESOLVED, that the authority described above shall be carried out by the GPTCHB consistent with the following conditions:

1. During such time as this Resolution remains in effect, the Great Plains Tribal Chairmen's Health Board shall comply with all applicable law and current regulations under P.L. 93-638 and any other law applicable to the funding acquired from IHS or any other entity pursuant to this Resolution.

2. The Great Plains Tribal Chairmen's Health Board shall provide copies to the Tribe of any proposals, contracts, and compacts, including the addition of any PSFAs to any funding agreement the Board determines to pursue.

3. The Great Plains Tribal Chairmen's Health Board will provide to the Tribe copies of all final documents, and amendments thereto, which GPTCHB enters into pursuant to this Resolution.

4. The Great Plains Tribal Chairmen's Health Board shall provide routine and regular reports to the Tribe, directly and through the Unified Health Board, of the work it performs under this Resolution, and such reports shall contain both budget and program information.

5. Nothing in this Resolution shall be construed as affecting, modifying, or diminishing, or otherwise impairing the sovereignty of the Tribe or its sovereign immunity from suit or authorizing or requiring the termination of any existing treaty or trust responsibility of the United States with respect to the Indian People.

6. The authority granted herein shall take effect immediately upon the Tribe's adoption of this Resolution or, if later, upon the date of adoption of resolutions of the Rosebud Sioux Tribe and the Cheyenne River Sioux Tribe that have substantially the same effect as this Resolution, provided that this Resolution has no effect unless all three Tribes (Oglala Sioux Tribe, Cheyenne River Sioux Tribe, and the Rosebud Sioux Tribe) pass this Resolution or resolutions that have substantially the same effect as this Resolution.

7. This Resolution shall remain in effect until and unless it is withdrawn by formal action of this Tribe, *provided* written notice of such action shall be given to the Cheyenne River Sioux Tribe, Rosebud Sioux Tribe, Great Plains Tribal Chairmen's Health Board, and the Indian Health Service and that any such withdrawal shall be effective no earlier than thirty-six months after the date on which assumption occurred, unless all three Tribes and the Great Plains Tribal Chairmen's Health Board agree to another date.

8. After thirty-six months after the date on which assumption occurred, the Tribe may elect to withdraw this Resolution, or its share of any PSFA (or portion thereof) and shall be entitled to its tribal share of funds supporting those PSFAs (and portions thereof), *provided* written notice of such action shall be given to the Cheyenne River Sioux Tribe and the Rosebud Sioux Tribe, the Great Plains Tribal Chairmen's Health Board, and the Indian Health Service and that any such withdrawal shall be effective no earlier than eighteen months after the date on which such notices are received.

9. This Resolution does not supersede or replace any other action by the Tribe to authorize the Great Plains Tribal Chairmen's Health Board to provide support or services on behalf of the Tribe.

C-E-R-T-I-F-I-C-A-T-I-O-N

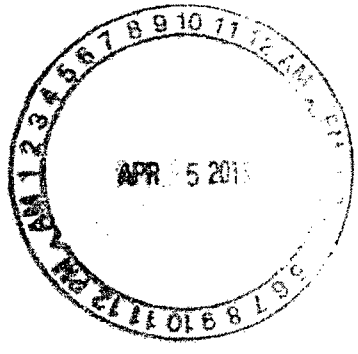
I, as the undersigned Secretary of the Oglala Sioux Tribal Council, of the Oglala Sioux Tribe hereby certify that this Resolution was adopted by a vote of: 15 For; 2 Against; 0 Abstain; and 0 Not Voting; during a REGULAR SESSION held on the 4TH day of APRIL, 2018.

RESOLUTION NO. 18-42
Page Six

Stephanie L. Yellow Hawk
STEPHANIE L. YELLOW HAWK
Recording Secretary
Oglala Sioux Tribe

A-T-T-E-S-T:

TROY S. WESTON
President
Oglala Sioux Tribe



ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2018-116
Reconsidered & Rescinded: 12-18-18

Appendix H
(10 pages)

PURPOSE: To request the Great Plains Tribal Chairmen's Health Board (GPTCHB) to assume operation of and funding for programs, services, functions and activities (PSFAs) of the Indian Health Service Great Plains Area Office Rapid City Service Unit including the Sioux San Hospital and related Headquarters and Service Unit PSFAs (including tribal shares), and construction PSFAs and funding, pursuant to the Indian Self-Determination and Education Assistance Act, as amended, and to exercise any other legal authority under which the GPTCHB may receive and administer grants or compete for and administer contracts in support of the PSFAs it is authorized to assume under this resolution that would otherwise be carried out by the Indian Health Service and authorizing support to the GPTCHB to do so.

WHEREAS, The Rosebud Sioux Tribe is a federally recognized Indian tribe organized pursuant to the Indian Reorganization Act of 1934 and pertinent amendments thereof; and

WHEREAS, The Rosebud Sioux Tribe is governed by a Tribal Council made up of elected representatives wo act in accordance with the powers granted to it by its Constitution and Bylaws; and

WHEREAS, The Rosebud Sioux Tribe enacted Resolution No. 2018-116 on April 19, 2018 authorizing the GPTCHB to plan for and assume the PSFAs and funding of the Indian Health Service's Rapid City Service Unit (including related Area and Headquarters PSFAs and funding, and construction PSFAs and funding); and

WHEREAS, The GPTCHB is a tribal organization (as that term is defined at 25 U.S.C. § 450b(*l*)) governed by members of the seventeen (17) Tribes and one (1) Indian Service Area and that serves nearly 170,000 Indians in the IHS four-state region comprised of South Dakota, North Dakota, Nebraska and Iowa; and

WHEREAS, The GPTCHB is comprised of democratically elected leaders from each of the Tribes who provide direction and oversight regarding all activities of the Board; and

WHEREAS, GPTCHB serves as a liaison between the Great Plains Tribes the US Department of Health and Human Services and associated agencies, including Indian Health Service, and directly provides services and technical assistance to the Tribes of the Great Plains and works to promote the health and wellbeing of American Indian peoples in the Great Plains; and

WHEREAS, It is critical to the Rosebud Sioux, Oglala Sioux, and Cheyenne River Sioux Tribes that assumption of direct program operations of the Rapid City Service Unit from IHS not disrupt the capacity and operations of the GPTCHB or diminish its effectiveness as an advocate and program support for the Tribes in the Great Plains Area of the IHS; and

Financial Resources

ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2018-116
Reconsidered & Rescinded: 12-18-18

WHEREAS, Planning and preparing for assumption of the Rapid City Service Unit and negotiating the Compact and Funding Agreement between the GPTCHB and IHS will demand time and financial resources that the GPTCHB currently does not have; and

WHEREAS, Pre-award and start-up costs to which a tribal organization is entitled upon assumption of IHS PSFAs and funding are not paid until and unless the assumption occurs; and

WHEREAS, The GPTCHB must have access to the necessary financial resources in order to effectively carry out the Resolutions authorizing it to assume the Rapid City Service Unit without jeopardizing the financial stability of the GPTCHB and its obligations to all of the Tribes it serves; and

Governance and Program Direction

WHEREAS, Guiding the planning and governance of the assumption and operation and construction PSFAs and funding of the Rapid City Service Unit, including the Sioux San Hospital, will be time consuming and require specialized knowledge of the Service Unit that is not generally available to all of the members of the GPTCHB and which could distract the members of the GPTCHB from their other responsibilities as Board members; and

WHEREAS, the Rosebud Sioux Tribe appoints members to the Unified Health Board on which appointees from the Oglala Sioux Tribe and Cheyenne River Sioux Tribes have served to provide direction to the Indian Health Service, respond to concerns regarding the operation and construction PSFAs of the Rapid City Service Unit, and consider and make recommendations regarding the future of the Rapid City Service Unit; and

WHEREAS, The Unified Health Board adopted a resolution recommending that tribal assumption of the Rapid City Service Unit should be undertaken; and

WHEREAS, The GPTCHB has worked closely with the Unified Health Board; and

WHEREAS, The Unified Health Board is prepared to serve as an advisory body to the GPTCHB regarding planning and assumption of the Rapid City Service Unit and to provide program governance and recommendations to the GPTCHB to assure that decisions regarding the operation of the PSFAs of Service Unit, including the Sioux San Hospital, are made in both the best interests of the three Tribes that have authorized assumption of it and the needs of the GPTCHB to not diminish its capacity to serve all of the Tribes of the Great Plains Area; and

ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2018-116
Reconsidered & Rescinded: 12-18-18

New ***Facility Design and Construction***

WHEREAS, The IHS has given notice to the Congress that it intends to close the inpatient and emergency departments of the Sioux San Hospital and operate the facility as an urgent care unit; and

WHEREAS, The IHS has obtained partial funding from the Congress for a replacement facility that will include urgent care services, but not hospital services; and

WHEREAS, The Rosebud Sioux, Oglala Sioux, and Cheyenne River Sioux Tribes have expressed their concerns about the decisions and planning by the IHS regarding the new facility and the Rosebud Sioux Tribe has authorized the GPTCHB to assume the Rapid City Service Unit and related Area and Headquarters' funds, and construction PSFAs and funding; and

---

WHEREAS, The ultimate responsibility and authority to make decisions regarding the Rapid City Service Unit rests with the Rosebud Sioux, Oglala Sioux, and Cheyenne River Sioux Tribes acting directly and through the Unified Health Board.

NOW, THEREFORE, BE IT RESOLVED that Rosebud Sioux Tribe requests that the Great Plains Tribal Chairmen's Health Board take action to accept the Resolutions of the Rosebud Sioux, Oglala Sioux, and Cheyenne River Sioux Tribes to:

1. Plan for, negotiate, and contract or compact with the Indian Health Services and/or United States Secretary of Health and Human Services to assume the PSFAs of the Rapid City Service Unit, including the Sioux San Hospital, and related IHS Area and Headquarters PSFAs and associated funding, including construction PSFAs and funding, pursuant to the Indian Self-Determination and Education Assistance Act; and

2. Pursue funding through grants or contracts available from IHS or any other federal, state or private entity to supplement or support the objective of having the GPTCHB carry out Rapid City Service Unit PSFAs or equivalent activities on behalf of authorizing Tribes to the greatest extent possible; and

3. Support efforts the three authorizing Tribes may undertake to charter the Unified Health Board as a not-for-profit, tribally controlled, corporation and assist the Unified Health Board to prepare to assume the PSFAs and funding for the Rapid City Service Unit independent from the Great Plains Tribal Chairmen's Health Board should the authorizing Tribes determine that should occur; and

4. *Provided,* that the Rosebud Sioux Tribe requests that no action be taken with regard to the assumption of the Rapid City Service Unit until and unless all three Tribes (Rosebud Sioux, Cheyenne River Sioux and Oglala Sioux) have enacted resolutions authorizing

assumption of the Rapid City Service Unit and requesting the Great Plains Tribal Chairmen's Health Board to accept the authorizing resolution.

NOW BE IT FURTHER RESOLVED, that in support of the request, the Rosebud Sioux Tribe will:

1. Make appointments to the Unified Health Board of members who will perform their responsibilities to provide routine guidance and direction to the Great Plains Tribal Chairmen's Health Board regarding the planning for and negotiation and operation of the Rapid City Service Unit, including the Sioux San Hospital, and any new facility construction undertaken to replace the Sioux San Hospital facility;

2. Review and respond to the regular reports that the GPTCHB will provide to it and communicate in a timely way any concerns about the planning for and operation of the Rapid City Service Unit, including the Sioux San Hospital, so that the GPTCHB and its employees can address them in an orderly way; and

3. Provide initial financial support to the GPTCHB for planning and negotiation activities in an amount of no less than fifty thousand dollars ($50,000) unless the GPTCHB determines that a smaller amount will suffice without jeopardizing the financial stability of the Board or diminishing its capacity to meet its other obligations to its other members and satisfy other program responsibilities it has assumed, *provided* that the Tribe understands that the GPTCHB will reimburse the Tribe for these amounts if the GPTCHB receives such costs from the IHS.;

4. Provide additional financial resources upon reasonable notice of the need for such funding, *provided* such notice must contain detailed explanation of the use of funds already being utilized by the GPTCHB related to pre-award and start-up and a budget for the remaining activity;

5. Forgive the obligation to repay the financial support provided to the GPTCHB under paragraphs 3 and 4, if the GPTCHB is not permitted to enter into a compact and funding agreement for assumption of the PSFAs and related funding, including pre-award and start-up costs, of the Rapid City Service Unit (and related Area and Headquarters PSFAs and funding);

6. Nothing in this Resolution shall be construed as affecting, modifying, or diminishing, or otherwise impairing the sovereignty of the Tribe or its sovereign immunity from suit or authorizing or requiring the termination of any existing treaty or trust responsibility of the United States with respect to the Indian People.

ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2018-116
Reconsidered & Rescinded: 12-18-18

7. The authority granted herein shall take effect immediately upon the Tribe's adoption of this Resolution or, if later, upon the date of adoption of resolutions of the Cheyenne

8. Sioux Tribe and the Oglala Sioux Tribe that have substantially the same effect as this Resolution; *provided* that this Resolution has no effect unless all three Tribes (Rosebud Sioux Tribe, Oglala Sioux Tribe, and Cheyenne River Sioux Tribe) pass this Resolution or resolutions that have substantially the same effect as this Resolution, and

9. This Resolution shall remain in effect until and unless it is withdrawn by formal action of this Tribe, *provided* written notice of such action shall be given to the Cheyenne River Sioux Tribe, the Oglala Sioux Tribe, and the Great Plains Tribal Chairmen's Health Board and shall have no effect on the obligations related to financial support provided to the GPTCHB under this Resolution.

10. This Resolution does not supersede or replace any other action by the Tribe to authorize the Great Plains Tribal Chairmen's Health Board to provide support or services on behalf of the Tribe.

CERTIFICATION

This is to certify that the above Resolution No. 2018-116 was duly reconsidered and rescinded by the Rosebud Sioux Tribal Council in session on December 18, 2018, by a vote of thirteen (13) in favor, zero (0) opposed and five (5) not voting. The said resolution was adopted pursuant to authority vested in the Council. A quorum was present.

ATTEST:

Linda L. Marshall, Secretary
Rosebud Sioux Tribe

Rodney M. Bordeaux, President
Rosebud Sioux Tribe

ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2018-117
Reconsidered & Rescinded: 12-18-18

PURPOSE: To authorize The Great Plains Tribal Chairmen's Health Board (GPTCHB) to assume operation of and funding for programs, services, functions and activities (PSFAs) of the Indian Health Service Great Plains Area Office Rapid City Service Unit, including the Sioux San Hospital and related Area and Headquarters PSFAs (including tribal shares), and construction PSFAs and funding, pursuant to the Indian Self-Determination and Education Assistance Act, as amended, and to exercise any other legal authority under which the GPTCHB may receive and administer grants or compete for and administer contracts in support of the PSFAs it is authorized to assume under this resolution that would otherwise be carried out by the Indian Health Service.

WHEREAS, The Rosebud Sioux Tribe is a federally recognized Indian tribe organized pursuant to the Indian Reorganization Act of 1934 and pertinent amendments thereof; and

WHEREAS, The Rosebud Sioux Tribe is governed by a Tribal Council made up of elected representatives wo act in accordance with the powers granted to it by its Constitution and Bylaws; and

WHEREAS, The Indian Health Service administers the Rapid City Service Unit, including the Sioux San Hospital; and

WHEREAS, The Indian Health Service has announced its intention to close the emergency department of the Sioux San Hospital and to construct a new facility; and

WHEREAS, The Rosebud Sioux Tribe appoints members to the Unified Health Board on which appointees from the Cheyenne River Sioux Tribe and Oglala Sioux Tribes also serve to provide direction to the Indian Health Service, respond to concerns regarding the operation of the Rapid City Service Unit, and to consider and make recommendations regarding the future of the Rapid City Service Unit; and

WHEREAS, the Unified Health Board adopted a resolution recommending that tribal assumption of the Rapid City Service Unit should be undertaken; and

WHEREAS, the Rosebud Sioux Tribe agrees that tribal assumption should occur; and

WHEREAS, The Great Plains Tribal Chairmen's Health Board (GPTCHB) is a tribal organization (as that term is defined at 25 U.S.C. § 450b(*l*)) governed by members of the seventeen (17) Tribes and one (1) Indian Service Area, and that serves nearly 170,000 Indians in the IHS four-state region comprised of South Dakota, North Dakota, Nebraska and Iowa; and

WHEREAS, The GPTCHB is comprised of democratically elected leaders from each of the Tribes who provide direction and oversight regarding all activities of the Board; and

ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2018-117
Reconsidered & Rescinded: 12-18-18

WHEREAS, The GPTCHB has worked closely with the Unified Health Board and is committed to continuing to do so; and

WHEREAS, GPTCHB serves as a liaison between the Great Plains Tribes the U.S. Department of Health and Human Services and associated agencies, including Indian Health Service, and directly provides services and technical assistance to the Tribes of the Great Plains and works to promote the health and wellbeing of American Indian peoples in the Great Plains; and

WHEREAS, Tribal assumption of Indian Health Service PSFAs has proven throughout all Areas of the Indian Health Service to increase transparency and accountability to the Tribes served; and

WHEREAS, GPTCHB has proven experience and expertise in administrative and program administration; and

WHEREAS, The Rosebud Sioux Tribe has previously authorized the GPTCHB to assume Area PSFAs and funding (including related Headquarters and Service Unit PSFAs and funding) on its behalf. That resolution provided that the GPTCHB must obtain advance written authorization from the Rosebud Sioux Tribe to assume any Service Unit PSFAs (including tribal shares and related funding); and

WHEREAS, The Rosebud Sioux Tribe has determined that it is now in the best interests of the Tribe to grant the authorization to the GPTCHB to plan for and assume the PSFAs and funding (including related Area and Headquarters PSFAs and funding, and construction related PSFAs and funding) of the Rapid City Service Unit, including the Sioux San Hospital, on behalf of the Rosebud Sioux Tribe, the Cheyenne River Sioux Tribe and the Oglala Sioux Tribes, through contracting or compacting under the Indian Self-Determination and Education Assistance Act, or other means, which include applying for grants or competing for contracts from IHS and other federal, state and private entities, and

WHEREAS, The GPTCHB will continuously seek guidance in its activities and priorities from the Tribes that it is serving pursuant to this Resolution; and

WHEREAS, the IHS has given notice of its intention to build a new facility to replace the Sioux San Hospital and the Rosebud Sioux Tribe has determined that construction program functions, planning services and construction management services, and construction projects should be carried out pursuant to the Indian Self-Determination and Education Assistance Act, as amended, on behalf of the Rosebud Sioux, Cheyenne River Sioux Tribe, and the Oglala Sioux Tribes; and

WHEREAS, GPTCHB will report directly, and through the Unified Health Board, to the Tribe on its performance of PSFAs and status of funding on a routine and regular basis; and

ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2018-117
Reconsidered & Rescinded: 12-18-18

WHEREAS, The Unified Health Board is prepared to serve as an advisory body to the GPTCHB regarding planning and assumption of the Rapid City Service Unit, including construction related PSFAs and funding, and to provide program governance and recommendations to the GPTCHB to assure that decisions regarding the operation of the PSFAs of Service Unit, including the Sioux San Hospital, are made in both the best interests of the three Tribes that have authorized assumption of it and the needs of the GPTCHB to not diminish its capacity to serve all of the Tribes of the Great Plains Area; and

WHEREAS, The GPTCHB will not begin planning for or assume the PSFAs and funding for the Rapid City Service Unit until and unless the Cheyenne River Sioux Tribe and the Oglala Sioux Tribe also authorize it to do so; and

WHEREAS. To assure continuity of care for the people served through the Rapid City Service Unit, including the Sioux San Hospital, orderly transition of programs and operations of the Great Plains Tribal Chairmen's Health Board, and orderly communication and transition with the Cheyenne River Sioux Tribe and the Oglala Sioux Tribe, withdrawal of this Resolution shall not be effective any earlier than thirty-six months after notice is given to all parties, unless the Great Plains Tribal Chairmen's Health Board and all three Tribes agree to another time frame, provided that after the initial thirty-six month period after assumption, the notice requirement shall be reduced to eighteen months.

NOW, THEREFORE, BE IT RESOLVED that Rosebud Sioux Tribe authorizes the GPTCHB to:

1. Apply for, negotiate, and contract or compact with the Indian Health Services and/or United States Secretary of Health and Human Services to assume the PSFAs of the Rapid City Service Unit, including the Sioux San Hospital, and related IHS Area and Headquarters PSFAs and associated funding, and including construction related PSFAs and funding pursuant to the Indian Self-Determination and Education Assistance Act; and

2. Pursue funding through grants or contracts available from IHS or any other federal, state or private entity to supplement or support the objective of having the GPTCHB carry out the Rapid City Service Unit PSFAs or equivalent activities on behalf of authorizing Tribes to the greatest extent possible.

NOW BE IT FURTHER RESOLVED that the authority described above shall be carried out by the GPTCHB consistent with the following conditions:

1. During such time as this Resolution remains in effect, the Great Plains Tribal Chairmen's Health Board shall comply with all applicable law and current regulations under P.L. 93-638 and any other law applicable to the funding acquired from IHS or any other entity pursuant to this Resolution.

2. The Great Plains Tribal Chairmen's Health Board shall provide copies to the Tribe of any proposals, contracts, and compacts, including the addition of any PSFAs to any funding agreement the Board determines to pursue.

3. The Great Plains Tribal Chairmen's Health Board will provide to the Tribe copies of all final documents, and amendments thereto, which GPTCHB enters into pursuant to this Resolution.

4. The Great Plains Tribal Chairmen's Health Board shall provide routine and regular reports to the Tribe, directly and through the Unified Health Board, of the work it performs under this Resolution, and such reports shall contain both budget and program information.

5. Nothing in this Resolution shall be construed as affecting, modifying, or diminishing, or otherwise impairing the sovereignty of the Tribe or its sovereign immunity from suit or authorizing or requiring the termination of any existing treaty or trust responsibility of the United States with respect to the Indian People.

6. The authority granted herein shall take effect immediately upon the Tribe's adoption of this Resolution or, if later, upon the date of adoption of resolutions of the Oglala Sioux Tribe and the Cheyenne River Sioux Tribe that have substantially the same effect as this Resolution, provided that this Resolution has no effect unless all three Tribes (Rosebud Sioux Tribe, Cheyenne River Sioux Tribe, and the Oglala Sioux Tribe) pass this Resolution or resolutions that have substantially the same effect as this Resolution.

7. This Resolution shall remain in effect until and unless it is withdrawn by formal action of this Tribe, *provided* written notice of such action shall be given to the Cheyenne River Sioux Tribe, Oglala Sioux Tribe, Great Plains Tribal Chairmen's Health Board, and the Indian Health Service and that any such withdrawal shall be effective no earlier than thirty-six months after the date on which assumption occurred, unless all three Tribes and the Great Plains Tribal Chairmen's Health Board agree to another date.

8. After thirty-six months after the date on which assumption occurred, the Tribe may elect to withdraw this Resolution, or its share of any PSFA (or portion thereof) and shall be entitled to its tribal share of funds supporting those PSFAs (and portions thereof), *provided* written notice of such action shall be given to the Cheyenne River Sioux Tribe and the Oglala Sioux Tribe, the Great Plains Tribal Chairmen's Health Board, and the Indian Health Service and that any such withdrawal shall be effective no earlier than eighteen months after the date on which such notices are received.

ROSEBUD SIOUX TRIBE
RESOLUTION NO. 2018-117
Reconsidered & Rescinded: 12-18-18

9. This Resolution does not supersede or replace any other action by the Tribe to authorize the Great Plains Tribal Chairmen's Health Board to provide support or services on behalf of the Tribe.

CERTIFICATION

This is to certify that the above Resolution No. 2018-117 was duly reconsidered and rescinded by the Rosebud Sioux Tribal Council in session on December 18, 2018, by a vote of thirteen (13) in favor, zero (0) opposed and five (5) not voting. The said resolution was adopted pursuant to authority vested in the Council. A quorum was present.

ATTEST:

Linda L. Marshall, Secretary
Rosebud Sioux Tribe

Rodney M. Bordeaux, President
Rosebud Sioux Tribe

Appendix I
(36 pages)

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

DONNA M. GILBERT, JULIE MOHNEY, CHARMAINE WHITE FACE, and others similarly situated, Plaintiffs, vs. RADM MICHAEL D. WEAHKEE, Principal Deputy Director of Indian Health Service (IHS); JAMES DRIVING HAWK, Great Plains IHS Area Director; and WILLIAM BARR, United States Attorney General, Defendants.	CIV. 19-5045-JLV ORDER

INTRODUCTION

Plaintiffs, Native Americans residing in Rapid City, South Dakota, bring this action challenging the decision of the Indian Health Service ("IHS") to enter into a self-determination contract with the Great Plains Tribal Chairmen's Health Board ("the Health Board"). (Docket 5). The contract permits the Health Board to operate portions of IHS's facilities in Rapid City, including the Sioux San hospital, now known as the Oyate Health Center. Plaintiffs assert the contract violates the Fort Laramie Treaty of 1868 between the United States and the Great Sioux Nation and the Indian Self-Determination and Education Assistance Act ("ISDEAA"). They ask the court to enjoin the contract and reinstate IHS control over the Rapid City facilities. Also pending before the

court are plaintiffs' motions for class certification and summary judgment. (Dockets 12 & 37).

Defendants moved to dismiss the complaint. (Docket 16). They argue plaintiffs lack standing, failed to join indispensable parties, failed to state a viable treaty claim, and do not merit injunctive relief. (Docket 17). Defendants also oppose class certification and assert summary judgment is inappropriate. (Dockets 34, 39 & 41).

As detailed below, the court finds plaintiffs do not have zone-of-interest standing to sue for relief under the ISDEAA, the Fort Laramie Treaty does not provide a private right of action under these circumstances, and the Health Board is an indispensable party that cannot be joined due to sovereign immunity. The court dismisses the complaint, denies injunctive relief and denies all other pending motions as moot.

I. Legal Standards

Pursuant to Federal Rule of Civil Procedure 12(b), defendants challenge the court's subject matter jurisdiction, the complaint's sufficiency and joinder. The court recites the standards governing each challenge in turn.

Under Rule 12(b)(1), defendants have the right to challenge the "lack of subject-matter jurisdiction . . . ." Fed. R. Civ. P. 12(b)(1). "In deciding a motion under Rule 12(b)(1), the district court must distinguish between a facial attack—where it looks only to the face of the pleadings—and a factual attack—where it may consider matters outside the pleading." Croyle v. United States,

908 F.3d 377, 380 (8th Cir. 2018). "In a factual attack, the non-moving party does not have the benefit of [Rule] 12(b)(6) safeguards." Id. (internal quotations omitted). "[T]he party invoking federal jurisdiction must prove jurisdictional facts by a preponderance of the evidence." Moss v. United States, 895 F.3d 1091, 1097 (8th Cir. 2018).

Rule 12(b)(6) allows the court to dismiss a complaint for "failure to state a claim upon which relief can be granted[.]" Fed. R. Civ. P. 12(b)(6). Two "working principles" underlie Rule 12(b)(6) analysis. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). First, courts are not required to accept as true legal conclusions "couched as . . . factual allegation[s]" in the complaint. Id. "[A] complaint must allege 'more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.' " Torti v. Hoag, 868 F.3d 666, 671 (8th Cir. 2017) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). The court does, however, "take the plaintiff's factual allegations as true." Braden v. Wal-Mart Stores, Inc., 588 F.3d 585, 594 (8th Cir. 2009). Second, the plausibility standard is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Iqbal, 556 U.S. at 679. The complaint is analyzed "as a whole, not parsed piece by piece to determine whether each allegation, in isolation, is plausible." Braden, 588 F.3d at 594.

Finally, Rule 12(b)(7) permits dismissal for "failure to join a party under Rule 19." Fed. R. Civ. P. 12(b)(7). "Rule 19(a) defines required party,

and Rule 19(b) provides factors to consider to determine whether dismissal is required when joinder of such a party cannot feasibly be accomplished." Two Shields v. Wilkinson, 790 F.3d 791, 794 (8th Cir. 2015) (quotation and alteration omitted). A party is required if:

> (A) in that person's absence, the court cannot accord complete relief among existing parties; or
>
> (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
>
> (i) as a practical matter impair or impede the person's ability to protect the interest; or
>
> (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Fed. R. Civ. P. 19(a)(1). The court must join a required party if personal jurisdiction over the required party exists and joinder will not "deprive the court of subject-matter jurisdiction." Id.

"Rule 19(b) authorizes a district court to exercise its equitable powers to dismiss an action if a party regarded as 'indispensable' cannot be joined." Spirit Lake Tribe v. North Dakota, 262 F.3d 732, 746 (8th Cir. 2001). Rule 19(b) provides the following factors for consideration in this inquiry:

> (1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;
>
> (2) the extent to which any prejudice could be lessened or avoided by:
>
> (A) protective provisions in the judgment;
>
> (B) shaping the relief; or

(C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

Fed. R. Civ. P. 19(b).

> In the specific context of an immune sovereign entity that is a required party not amenable to suit, the Supreme Court has explained that the action must be dismissed if the claims of sovereign immunity are not frivolous and "there is a potential for injury to the interests of the absent sovereign."

Two Shields, 790 F.3d at 798 (quoting Republic of the Philippines v. Pimentel, 553 U.S. 851, 867 (2008)).

II. Facts

Defendants challenge the complaint on multiple grounds, some of which involve factual questions underpinning the court's subject matter jurisdiction. Accordingly, the court finds defendants are factually attacking the complaint and considers matters outside the pleadings.[1] Croyle, 908 F.3d at 380.

On April 29, 1868, the United States entered into the Treaty of Fort Laramie with the bands of the Great Sioux Nation in an attempt to end warfare on the Northern Plains caused by an influx of American settlers onto tribal

[1]The court finds the materials cited in this order are also generally embraced by the complaint. See Zean v. Fairview Health Servs., 858 F.3d 520, 526 (8th Cir. 2017) (holding materials embraced by the complaint—"documents whose contents are alleged in a complaint and whose authenticity no party questions"—may be considered in a Rule 12 motion to dismiss) (internal quotation omitted).

lands. 15 Stat. 635 (1868); see also United States v. Sioux Nation of Indians, 448 U.S. 371, 374-84 (1980). In the treaty, the United States agreed to provide a physician to the Sioux people. 15 Stat. 635, arts. IV & XIII. The United States made similar promises to numerous tribal nations as part of its efforts to secure tribal lands for its westward expansion. See U.S. Comm'n on Civil Rights, Broken Promises: Continuing Federal Funding Shortfall for Native Americans, 61 (2018).[2] These treaty provisions have evolved into a general federal obligation to provide health care to Native Americans. Id. Today, the federal government "declares that it is the policy of this Nation, in fulfillment of its special trust responsibility and legal obligations to Indians to ensure the highest possible health status for Indians and . . . to provide all resources necessary to effect that policy[.]" 25 U.S.C. § 1602(1).

The modern Great Sioux Nation is composed of multiple descendant tribal nations. Three of those nations, the Oglala Sioux Tribe ("OST"), the Cheyenne River Sioux Tribe ("CRST"), and the Rosebud Sioux Tribe ("RST") reside on reservations in central and western South Dakota. Many of their citizens reside in Rapid City. To serve the Native American population of Rapid City, IHS established the Rapid City Service Unit. (Docket 18-10 at p. 2). According to IHS, 79.18 percent of the Rapid City Service Unit's patients are members of the OST, CRST or RST. (Docket 18-10 at p. 2). The Interior

[2]The report is available at https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf.

Board of Indian Appeals ("IBIA") held in 1997 that the OST, CRST, and RST could authorize a separate tribal organization to assume IHS functions in the Rapid City Service Unit.[3] Rapid City Indian Health Bd., Inc. v. Dir., Aberdeen Area Office, Indian Health Serv., IBIA 97-100-A, 4-8 (1997).[4]

Tribal nations located in the Dakotas, Iowa and Nebraska organized the Health Board "to make known the needs and desires of the Indian people for assistance of the [IHS] in formulating programs and establishing priorities in delivering services which it is incumbent upon the United States to provide pursuant to the solemn treaty and legal obligations to the Indian people." (Docket 18-12 at pp. 4-5, 8). The Health Board is incorporated as a nonprofit corporation under South Dakota law. Id. at pp. 1-2. The OST, CRST and RST are all members of the Health Board. Id. at pp. 4-5.

In 2018, the three tribes authorized the Health Board to enter into a self-determination contract with IHS for the purposes of assuming the functions of the Rapid City Service Unit. White Face v. Church et al., Civ. 18-5087 (Dockets 16-1 – 16-3) (D.S.D. Dec. 12, 2018). Each authorization provided it would only take effect if the other two tribes also enacted authorizations. Id. Using the authority granted by the three tribes, the Health Board transmitted its assumption proposal to IHS on September 26. White Face (Docket 16-5).

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[3]The IBIA has jurisdiction over partial or full denials of self-determination contracts under the ISDEAA. 25 C.F.R. §§ 900.31, 900.150, 900.152.

[4]A copy of the IBIA's decision is filed at docket entry 18-13.

In accordance with the ISDEAA's 90-day limit for considering a self-determination proposal, IHS responded it would accept or decline the proposal by December 26. White Face (Docket 16-6).

On December 4, Charmaine White Face, a named plaintiff in this case, filed suit against Jerrilyn Church, the Health Board's CEO, and James Driving Hawk, the IHS area director responsible for the Rapid City Service Unit. White Face (Docket 1). Ms. White Face requested a preliminary injunction to halt acceptance of the Health Board's proposal. White Face (Dockets 1 & 8). Ms. Church and Mr. Driving Hawk moved to dismiss the complaint. White Face (Dockets 13 & 14). The court held a hearing on Ms. White Face's motion on December 13 and dismissed the complaint for lack of subject matter jurisdiction. White Face (Dockets 27 & 31 at pp. 60-64). The court found the Health Board was entitled to tribal sovereign immunity, Ms. White Face lacked standing, and the OST, CRST and RST were indispensable parties who were not named in the complaint. White Face (Dockets 30 & 31 at pp. 60-64).

On December 18, the RST rescinded its authorization. (Docket 18-1 at pp. 5, 10). IHS canceled negotiations on December 20 and denied the Health Board's proposal on December 21. (Dockets 18-2 at pp. 1-2 & 18-3). The IHS concluded the RST's rescission invalidated the OST's and CRST's authorizations, leaving the Health Board unable to assume the Rapid City Service Unit's functions. (Docket 18-3 at pp. 5-7). To the court's knowledge, the Health Board did not administratively appeal the denial or challenge it in

federal court. See 25 U.S.C. § 5321(b)(3) (permitting tribes or tribal organizations to administratively appeal proposal denial or sue in federal district court).

In January 2019, the OST and CRST, acknowledging the RST's change of heart, amended their prior authorizations to remove the requirement that all three tribes consent to the Health Board's assumption of IHS functions. (Dockets 18-5 at pp. 1-3 & 18-6 at pp. 1-4). The Health Board returned to IHS on February 14 with a new proposal to assume functions at the Rapid City Service Unit on behalf of the OST and CRST only. (Docket 18-4). IHS and the Health Board negotiated aspects of the proposal in April and May of 2019. (Docket 18-8 at ¶ 3). IHS officials consulted with tribal members from each of the three tribes and employees of the Rapid City Service Unit during the negotiation process. Id. at ¶¶ 4-5. IHS officials communicated with plaintiffs Donna Gilbert and Ms. White Face during the consultation process. Id. at ¶¶ 5g, i, j & *l.*

On May 31, IHS and the Health Board entered into a contract permitting assumption of the Rapid City Service Unit on behalf of the OST and CRST. (Docket 18-9). On June 1, IHS granted in part and denied in part the Health Board's proposal.[5] (Docket 18-10). The declined portions of the proposal

[5]In a footnote in its partial denial letter, IHS stated it was informed by CRST authorities on May 29 that the tribe intended to hold a referendum on its authorization. (Docket 18-10 at p. 4 n.6). The record contains no further information as to whether a referendum occurred or is presently scheduled. To the best of the court's knowledge, the CRST's authorization is still in effect.

related to certain types of costs and the provision of oncology and alternative medicine services. Id. at pp. 9-21. As reflected in the final contract, the vast majority of the Health Board's proposal was accepted.

The contract went into effect on July 21. (Dockets 18-10 at § 2.2 & 18-8 at ¶ 7). The Rapid City Service Unit is currently operated jointly between the Health Board and IHS. (Docket 18-8 at ¶ 7). The Health Board ostensibly provides services to OST and CRST citizens, while IHS serves RST citizens and citizens of other tribes. Id. However, IHS represents that both it and the Health Board have an "open-door" policy whereby they will each serve Native Americans from any tribe. Id.

Two of the named plaintiffs, Ms. Gilbert and Julie Mohney, submitted affidavits detailing their experiences during the assumption process.[6] Ms. Gilbert stated she refused to sign an Intergovernmental Personnel Act ("IPA") agreement which would enable her to continue work at the Rapid City Service Unit under the Health Board's management.[7] (Docket 20 at p. 3). On December 17, 2018, Ms. Gilbert received a termination notice. (Docket 20-3).

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[6]Ms. White Face did not file an affidavit. The court found in the case she filed as sole plaintiff that she did not have standing to represent Rapid City Service Unit employees. White Face (Docket 31 at pp. 62-63). To the best of the court's knowledge, Ms. White Face is not employed at the Service Unit.

[7]According to an e-mail sent by Ms. Church to Rapid City Service Unit employees, the Health Board "intend[ed] to offer each eligible employee . . . the opportunity to continue in federal employment" through IPAs and other mechanisms. (Docket 20-5). Ineligible employees would be offered direct employment with the Health Board. Id.

Because the Health Board's first attempt to enter into a self-determination contract was denied, Ms. Gilbert's termination notice was rescinded. (Docket 20-13). In June of 2019, Ms. Gilbert was offered "one of the 35 federal jobs they were keeping[.]" (Docket 20 at p. 5). She does not state whether she accepted the job or whether she is still employed at the Rapid City Service Unit.

Ms. Mohney states she was "release[d] from employment with the [IHS]" on August 6, 2019. (Docket 21 at p. 1). She does not explain why she was terminated or whether it was connected to the assumption process. Ms. Mohney alleges "had the appropriate procedures and lawful practices been followed by the I.H.S. in this matter, [she] would still be employed with the I.H.S." but does not elaborate further. Id. at p. 2.

Plaintiffs filed affidavits from ten members of the Rapid City Native American community who all allege the assumption harmed them in some way.[8] (Dockets 22 – 29). Approximately 167 individuals, presumably members of the Rapid City Native American community and patients of the Rapid City Service Unit, consented to be part of a class action. (Dockets 12-1 & 30). These putative class members did not provide any individualized information about themselves or their connection to the Service Unit.

[8]Three of the affidavits are filed as attachments to a separate affidavit. (Docket 26-1 at pp. 43-50).

III. Analysis

Defendants assert the complaint should be dismissed for the following reasons:

1. Plaintiffs lack standing to challenge the Health Board's assumption of the Rapid City Service Unit's functions. (Docket 17 at pp. 10-14).

2. Plaintiffs' treaty claim fails to state a claim upon which relief can be granted. Id. at pp. 14-16.

3. Plaintiffs failed to join the Health Board, OST and CRST, which are indispensable parties protected by sovereign immunity. Id. at pp. 16-18.

4. The court "should not interfere" with the assumption contract. Id. at pp. 18-20.

Defendants also assert plaintiffs have not shown they are entitled to a preliminary or permanent injunction. Id. at pp. 22-26.

At the outset, the court notes defendants' fourth argument is more in the nature of a policy brief setting forth facts about the ISDEAA and the particular contract at issue in this case. Id. at pp. 18-20. It does not advance any reason that the complaint should be dismissed. The court will therefore not address it in its analysis. The other three arguments are addressed in turn.

A. ISDEAA zone-of-interests standing

Defendants assert plaintiffs do not have standing to assert a violation of the ISDEAA on their own individual behalf or on the behalf of others. (Docket 17 at pp. 10-14). In support of their argument, they cite the well-established

standards governing constitutional standing.[9] Id. at p. 10. However, defendants do not analyze whether each individual plaintiff has constitutional standing, instead choosing to assert that only tribes and tribal organizations may challenge ISDEAA violations. Id. at pp. 10-12.

Determining whether each plaintiff has constitutional standing would involve a more detailed factual inquiry than can be conducted on the present record. Nevertheless, even assuming plaintiffs have constitutional standing, the court finds their alleged harms do not fall within the "zone of interests" protected by the ISDEAA. Plaintiffs' ISDEAA claims therefore cannot proceed.

"A plaintiff seeking to bring suit under a federal statute must show not only that he has standing under Article III, but also that his complaint falls within the zone of interests protected by the law he invokes[.]" Bank of America Corp. v. City of Miami, Fla., 137 S. Ct. 1296, 1307 (2017) (Thomas, J. concurring in part and dissenting in part) (internal quotation omitted). Courts "presume that a statutory cause of action extends only to plaintiffs whose interests fall within the zone of interests protected by the law invoked." Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 129 (2014) (internal quotation omitted). "[T]he breadth of the zone of interests

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[9]The court uses the term "constitutional standing" to signify the "irreducible constitutional minimum of standing" mandated by Article III's case or controversy requirement. See Lujan v. Defs. of Wildlife, 504 U.S. 555, 560-61 (1992) (setting forth elements of "constitutional" standing). Constitutional standing is separate from the zone-of-interests analysis the court must undertake to determine whether plaintiffs' alleged injuries are encompassed within any right of action created by the ISDEAA.

varies according to the provisions of law at issue[.]" Bennett v. Spear, 520 U.S. 154, 163 (1997). "Whether a plaintiff comes within the zone of interests is an issue that requires [the court] to determine, using traditional tools of statutory interpretation, whether a legislatively conferred cause of action encompasses a particular plaintiff's claim." Lexmark, 572 U.S. at 127 (internal quotation omitted).

In the ISDEAA, Congress declared it is federal policy to establish "a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services." 25 U.S.C. § 5302(b). The ISDEAA accomplishes this goal by requiring federal officials to enter into a "self-determination contract" proposed by any tribe or "tribal organization" to assume the functions of certain federal agencies, including IHS. Id. at §§ 5321(a)(1), (2). The agency may only refuse a proposed self-determination contract for five specified reasons. Id. at § 5321(a)(2).

The ISDEAA is generally concerned with contracts between federal agencies and tribes or tribal organizations. It requires agencies to enter into contracts with eligible tribal entities. 25 U.S.C. § 5321(a) ("The Secretary is directed . . . to enter into a self-determination contract or contracts *with a tribal organization*[.]") (emphasis added). The law's definition of "self-

determination contract" is limited to contracts "between a tribal organization and the appropriate Secretary[.]" Id. at § 5304(j). Congress did not evince in the ISDEAA any intent to allow individuals to enter into enforceable contracts with agencies.

The references to individuals in the ISDEAA are secondary to its goal of promoting self-determination contracts. For example, the ISDEAA provides that federal employees affected by a self-determination contract are entitled to continuity of their federal benefits under certain circumstances. Id. at § 5332(e). Individuals are also able to bring tort claims against employees of tribes or tribal organizations operating under a self-determination contract as if they were federal employees. Id. at § 5321(d); see also Act of Nov. 5, 1990, Pub. L. No. 101-5112, § 314, 104 Stat. 1915, 1959-60 (allowing claims against tribal employees to proceed under Federal Tort Claims Act).

The ISDEAA's seemingly-broad right of action provision does not open the courthouse doors to individual litigants concerned with self-determination contracts. The provision gives federal district courts "original jurisdiction over any civil action or claim . . . arising under" the ISDEAA. 25 U.S.C. § 5331(a). However, Congress specified in the provision that a federal court may order "injunctive relief" to force agencies "to award and fund an approved self-determination contract[.]" Id. This specification indicates a focus in the right of action on the ISDEAA's overarching goal—to enable tribes and tribal organizations to assume federal functions through self-determination

contracts. The court finds Congress did not intend to "expressly negate[]" the traditional zone of interests analysis for courts evaluating the scope of the ISDEAA's right of action.[10] Bennett, 520 U.S. at 163.

ISDEAA case law, while not specifically resolving whether individuals have a right of action to challenge self-determination contracts, does confirm the law is concerned primarily with interactions between tribes and federal agencies. The United States Courts of Appeal for the Eighth, Ninth and Eleventh Circuits, as well as the Court of Federal Claims, have each held the ISDEAA does not permit private parties to sue for harms incurred pursuant to a self-determination contract.[11] The Eighth Circuit found "by definition, the ISDEAA does not contemplate that a private party . . . can enter into a self-determination contract." FGS, 64 F.3d at 1234 (referencing 25 U.S.C. § 5304(j)).

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[10]The court notes the ISDEAA's private right of action is not a "citizen-suit" provision similar to those the Supreme Court has construed to "expand[] the zone of interests" for the purposes of enabling suit by private parties. See Bennett, 520 U.S. at 163-66.

[11]See Colbert v. United States, 785 F.3d 1384, 1391 (11th Cir. 2015) (finding Federal Tort Claims Act coverage under ISDEAA only applicable when tortfeasor was employee of tribe or tribal organization, not a private party); Demontiney v. United States, 255 F.3d 801, 807 (9th Cir. 2001) (rejecting suit by private subcontractor for alleged breach of self-determination contract because ISDEAA does "not contemplate suits by private parties."); FGS Constructors, Inc. v. Carlow, 64 F.3d 1230, 1234-35 (8th Cir. 1995) (concluding private subcontractor was not an "Indian contractor" permitted to sue under ISDEAA for alleged breach of self-determination contract); Demontiney v. United States, 54 Fed. Cl. 780, 786 (2002).

Given the text and judicial interpretations of the ISDEAA, the court concludes its right of action does not encompass suits by individuals seeking to challenge a self-determination contract. The court finds plaintiffs, who seek to abrogate the contract between IHS and the Health Board, do not fall within the zone of interests protected by the ISDEAA. Nothing in the ISDEAA indicates Congress intended to permit individuals to interfere with self-determination contracts.

Plaintiffs' arguments against this conclusion are unpersuasive. They primarily assert the ISDEAA and its implementing regulations require defendants to secure "the consent of the Indian community to be served" by the proposed self-determination contract before acceptance. (Docket 19 at pp. 3-8). In plaintiffs' view, defendants' failure to gain the consent of the Rapid City Native American community "is grounds for enjoining the Defendants from enforcing" the contract. Id. at p. 7. Plaintiffs also take issue with the notion that consent of their tribal governments is sufficient to satisfy the ISDEAA, arguing that the tribes do not represent their interests in health care matters.[12] Id. at pp. 8-9.

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[12]Plaintiffs argue the OST and CRST are legally unable to authorize self-determinations contracts involving IHS assets in Rapid City because the assets are not located within reservation boundaries. (Docket 19 at pp. 8-9). The IBIA explicitly rejected this argument in 1997 and plaintiffs have not directly challenged that ruling. Rapid City Indian Health Bd., IBIA 97-100-A, 4-8 (1997). The court accepts the IBIA ruling for the purposes of this case. In any event, plaintiffs, as individuals, have no standing to challenge the legality of the contract.

At the outset, it is not clear what section of the ISDEAA plaintiffs rely on. Plaintiffs cited no specific statutory provisions in their response brief. The statutory citations in plaintiffs' amended complaint are not illuminating. See, e.g. Docket 5 at pp. 1, 3 (citing "25 CFR 450(c)," which does not exist, for proposition that community support is needed for a self-determination contract). Plaintiffs cite regulatory policy statements which reiterate federal intent to "assur[e] maximum Indian participation" in service provision and to "facilitate and encourage Indian tribes" to enter into self-determination contracts. 25 C.F.R. §§ 900.3(a)(1), (b)(3). These policy statements do not require IHS to secure consent of the Rapid City Native American community before allowing the Health Board to assume IHS functions.

Plaintiffs do cite to § 103(D) of the public law creating the ISDEAA. (Docket 5 at p. 1, 3). That particular section does not exist, but § 103(A), as enacted in 1975, did require a federal agency to consider whether a contracting tribe or tribal organization "would be deficient in performance under the contract with respect to . . . community support for the contract" before awarding the contract. Indian Self-Determination Act, Pub. L. 93-638, § 103(A), 88 Stat. 2203, 2207 (1975). However, Congress repealed that section in 1988. Indian Self-Determination Amendments of 1987, Pub. L. No. 100-472, § 201(b)(1), 102 Stat. 2285, 2289 (1988). Today, agencies are not required to consider community support before awarding a proposed contract.

In fact, lack of community support is not one of the five specific reasons for which a contract may legally be denied. 25 U.S.C. § 5321(a)(2).

Plaintiffs also rely on the ISDEAA's definition of tribal organization. See Dockets 19 at pp. 6-7 & 37 at pp. 2-3 (reciting definition). Under the ISDEAA, a tribal organization is

> the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities[.]

Id. at § 5304(*l*). This definition, parsed out, creates three separate categories of tribal organizations:

1. "[T]he recognized governing body of any Indian tribe[.]" Id.
2. "[A]ny legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body[,]" referring to "the recognized governing body of any Indian tribe[.]" Id.
3. "[A]ny legally established organization of Indians which is . . . democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities[.]" Id.

The statute defines each category in the disjunctive, signifying that an entity need only fit into one of the three categories to qualify as a tribal organization. Id.

Only the third category of tribal organization requires democratic participation by "the adult members of the Indian community to be served[.]" Id. If the Health Board fits into one of the other two categories of tribal

organization, democratic control is not required. In this case, it is clear the Health Board falls within the second category of tribal organization: an entity "controlled, sanctioned, or chartered" by tribal governments. Id. The Health Board is an entity organized under South Dakota law controlled by 17 separate federally recognized tribes. (Docket 18-12 at pp. 1-2, 4-5). As it relates to the present self-determination contract, the Health Board is authorized by the OST and CRST, both federally recognized tribes, to assume IHS functions at the Rapid City Service Unit. (Dockets 18-5 at pp. 1-3 & 18-6 at pp. 1-4). Accordingly, the ISDEAA does not require the Health Board to be democratically accountable to the Rapid City Native American community to qualify as a tribal organization able to enter into a self-determination contract.

Plaintiffs' argument that their interests are not represented by their tribal government fails for the same reason. The ISDEAA does not require that tribal governments democratically represent the will of the population to be served before their consent to a self-determination contract is valid. The ISDEAA only requires that a self-determination contract be authorized by "any Indian tribe by tribal resolution"—it does not specify how or whether the tribe should consult the population to be served. 25 U.S.C. § 5321(a)(1)

Plaintiffs did not establish that they fall within the zone of interests protected by the ISDEAA. The ISDEAA's right of action does not encompass their suit to enjoin the self-determination contract between the IHS and the

Health Board. Accordingly, the court dismisses plaintiffs' ISDEAA claim with prejudice.[13]

B. Treaty of Fort Laramie claim

Plaintiffs assert the self-determination contract contravenes the 1868 Treaty of Fort Laramie. (Docket 5 at p. 3). They argue the United States "agreed to provide health care for members of the Great Sioux Nation" and that "the responsibility of the United States to provide that health care is considerably diminished" by the self-determination contract. Id. Plaintiffs contend the United States violated the treaty by transferring its obligation to provide health care to the Health Board without their consent. Id.

The legal nature of plaintiffs' treaty claim is not clear. The court construes plaintiffs' complaint to contend the Treaty of Fort Laramie created a trust duty for defendants, as agents of the United States, to provide health care to the Great Sioux Nation. Plaintiffs' claim, under this view, would then assert defendants breached that trust duty by contracting with the Health Board to provide care. As with their ISDEAA claim, the court finds plaintiffs do not have standing as individuals to bring a treaty claim.

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[13]Although defendants suggest dismissal should be pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction, see Docket 17 at p. 10, the Supreme Court has made clear the zone-of-interests standing test is not a jurisdictional inquiry. Lexmark, 572 U.S. at 128 n.4. Plaintiffs failed to state a viable ISDEAA claim and so the court dismisses it pursuant to Rule 12(b)(6). The court dismisses the claim with prejudice because plaintiffs, as individuals, cannot allege any facts that would permit them to sue for an alleged ISDEAA violation.

"A treaty is essentially a contract between two sovereign nations." Herrera v. Wyoming, 139 S. Ct. 1686, 1699 (2019) (internal quotation omitted). "[T]he existence of a trust relationship between the United States and an Indian or Indian tribe includes as a fundamental incident the right of an injured beneficiary to sue the trustee for damages resulting from a breach of the trust." United States v. Mitchell, 463 U.S. 206, 226 (1983). "The existence of a trust duty between the United States and an Indian or Indian tribe can be inferred from the provisions of a statute, treaty or other agreement, 'reinforced by the undisputed existence of a general trust relationship between the United States and the Indian people.' " Blue Legs v. United States Bureau of Indian Affairs, 867 F.2d 1094, 1100 (8th Cir. 1989) (quoting Mitchell, 463 U.S. at 225). To state a breach of trust claim, plaintiffs must "identify a substantive source of law that establishes specific fiduciary or other duties, and allege that the Government has failed faithfully to perform those duties." United States v. Navajo Nation, 537 U.S. 488, 506 (2003).

Plaintiffs have not successfully stated a breach of trust claim as individuals. As defendants point out, the Treaty of Fort Laramie was negotiated between two sovereigns—the United States and the Great Sioux Nation—not between the United States and individual Indians. (Docket 17 at p. 15). The treaty provides, "[t]he United States hereby agrees to furnish annually to the Indians the physician . . . as herein contemplated, and that such appropriations shall be made from time to time, on the estimates of the

Secretary of the Interior, as will be sufficient to employ such persons." 15 Stat. 635, art. XIII. Reading this language with a liberal construction in favor of plaintiffs' interests as Indians, the court cannot infer an enforceable trust duty as to individual Indians such as plaintiffs.[14] See Herrera, 139 S. Ct. at 1699 (describing canon of construction requiring courts to interpret treaties in favor of the Indians). Stated differently, plaintiffs have not shown the treaty—or any other source of law—creates an individual trust duty the United States breached by entering into a self-determination contract with the Health Board.

Plaintiffs' arguments to the contrary miss the mark. They first point to examples of courts enforcing treaty rights in favor of individual Indians in fishing and hunting cases. (Docket 19 at pp. 9-10) (citing Herrera, 139 S. Ct. 1686; State v. Tinno, 497 P.2d 1386 (Idaho 1972)). But the affected persons in those cases were protected by individually enforceable treaty provisions guaranteeing the right to hunt or fish. Here, the Treaty of Fort Laramie does not guarantee an individual Indian the right to health care provided by the United States, as opposed to a tribal organization.

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[14]Whether the Treaty of Fort Laramie obligates the United States to provide health care to descendant tribes, as opposed to individuals, of the Great Sioux Nation is at issue in a case pending before the Central Division of this court. See Rosebud Sioux Tribe v. United States, Civ. 16-3038, 2017 WL 1214418 at *6-9 (D.S.D. Mar. 31, 2017) (holding the RST stated a claim that the United States violated trust duty to provide adequate health care created by the Treaty of Fort Laramie and other statutes sufficient to survive motion to dismiss). This case presents no occasion for the court to weigh in on that question.

Plaintiffs also assert Ms. White Face is the "Official Spokesperson for the 1894 Sioux Nation Treaty Council." (Docket 19 at p. 10). In that position, according to plaintiffs, Ms. White Face has the "duty and responsibility to protect and preserve all of the Articles and provisions of the Fort Laramie Treaty of 1868" and "undeniably has the authority necessary to speak on behalf of the Indian people and the Treaty." Id. at p. 11. Neither plaintiffs nor defendants provided the court with any information about the 1894 Sioux Nation Treaty Council.

Plaintiffs did not identify any basis for the court to consider the 1894 Sioux Nation Treaty Council as a descendant entity of the Great Sioux Nation. In comparison, the OST and CRST are federally recognized tribal nations. Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs, 84 Fed. Reg. 1200, 1201-02 (Feb. 1, 2019). The United States divided the Great Sioux Nation in 1889 as a method of acquiring more land for American settlement, segregating the OST and CRST onto separate reservations. Act of March 2, 1880, 25 Stat. 888, 888-89 (establishing Pine Ridge and Cheyenne River reservations). The OST and CRST organized as federally recognized tribal nations under the Indian Reorganization Act in 1935 and 1936, establishing their legal existence under American law.[15] The history of the OST and CRST make clear they are

[15]See Constitution and By-Laws of the Cheyenne River Sioux Tribe of South Dakota, Dec. 27, 1935, Certificate of Adoption; Constitution and By-Laws of the Oglala Sioux Tribe of the Pine Ridge Reservation of South Dakota,

descendant entities of the Great Sioux Nation, while plaintiffs do not show the 1894 Sioux Nation Treaty Council is entitled to enforce the Treaty of Fort Laramie. On the present record, the court cannot accept Ms. White Face's assertion that she is entitled, as Spokesperson of the Treaty Council, to sue on behalf of the Great Sioux Nation.

Plaintiffs cannot sue as individuals to enforce the Treaty of Fort Laramie's provisions relating to health care. The court dismisses their treaty claim with prejudice for failure to state a claim upon which relief can be granted.[16] Fed. R. Civ. P. 12(b)(6).

C. Joinder

Defendants' final argument in favor of dismissal is that plaintiffs failed to join the Health Board, OST and CRST. (Docket 17 at pp. 16-18). They assert the Health Board, as a party to the self-determination contract, would be directly impacted by this litigation. Id. at p. 17. Defendants also contend the litigation would "interfere with the rights" of the OST and CRST as sovereign tribal nations, presumably because the tribes authorized the contract. Id. Plaintiffs respond that the Health Board has no authority to enter into a self-determination contract because it "does not meet the qualifications to be

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Jan. 15, 1936, Certificate of Adoption.

[16]Plaintiffs' complaint also alleged the self-determination contract violated the Supremacy Clause and the Act of March 3rd, 1871. Docket 5 at p. 1; see also Act of March 3rd, 1871, 15 Stat. 544 (appropriating funding to fulfill treaty obligations). The court considers these claims as part of plaintiffs' treaty claim and dismisses them with prejudice.

designated as a Tribal Organization[,]" rendering it dispensable. (Docket 19 at p. 11; see also Docket 33 at pp. 2-4). The court finds the Health Board is an indispensable party that cannot be joined due to sovereign immunity, necessitating dismissal.[17]

An entity must be joined to an action if it "claims an interest relating to the subject of the action and is so situated that disposing of the action in the [entity's] absence may impair or impede the [entity's] ability to protect the interest[.]" Fed. R. Civ. P. 19(a)(1)(B)(i). Here, the Health Board has a vital interest in the self-determination contract that is the subject of this action. It is presently operating portions of the Rapid City Service Unit pursuant to the contract. Plaintiffs ask the court to cancel the contract, which would certainly "impair or impede" the Health Board's interest in the contract. The court finds the Health Board is indispensable to litigation concerning the present self-determination contract.

The court rejects plaintiffs' argument that the Health Board is not a tribal organization for ISDEAA purposes. As described above, see supra Section III.A, the Health Board is a consortium of 17 different tribes which is

[17]The court's finding that the Health Board is indispensable and cannot be joined obviates any need to conclusively determine whether the OST and CRST are also indispensable parties. In the White Face litigation, the court tentatively concluded the tribal nations were indispensable. White Face (Docket 31 at pp. 63-64). That conclusion was reached in the context of a temporary restraining order hearing on a rushed and limited factual record and is not binding authority. The court does not intend to foreclose argument as to the indispensability of the tribal nations in future ISDEAA litigation involving the Rapid City Service Unit.

specifically authorized by the OST and CRST to assume the functions of the Rapid City Service Unit. A "legally established organization of Indians which is controlled, sanctioned, or chartered by" tribal nations is a tribal organization under the ISDEAA. 25 U.S.C. § 5304(*l*). The Health Board fits squarely within that definition.[18] Accordingly, it had the power to enter into a self-determination contract. This litigation will impact the Health Board's valid interest in the contract, rendering the Health Board indispensable.

Having determined the Health Board is an indispensable party, the court must now consider whether it feasibly can be joined and, if it cannot be joined, whether this action should be dismissed. Fed. R. Civ. P. 19(b). The Health Board cannot feasibly be joined due to its sovereign immunity. The Southern Division of this court held in 2012 that the Health Board is entitled to share in the sovereign immunity of its component tribal nations. J.L. Ward Assocs., Inc. v. Great Plains Tribal Chairmen's Health Bd., 842 F. Supp. 2d 1163, 1171-77 (D.S.D. 2012). Plaintiffs do not advance any reason why the court should not adhere to the reasoning in J.L. Ward and the court perceives none.[19] Entities protected by tribal sovereign immunity may be sued "only if Congress has authorized the suit or the [entity] has waived its immunity," and nothing in

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[18]Contrary to plaintiffs' argument, it does not matter that the Health Board is incorporated under state law, as opposed to tribal law. (Docket 33 at pp. 2-4). The ISDEAA's definition of tribal organization does not preclude state-chartered organizations.

[19]The court orally affirmed its adherence to J.L. Ward in the White Face litigation as well. White Face (Docket 31 at p. 62).

the record indicates either condition is present in this case. Stanko v. Oglala Sioux Tribe, 916 F.3d 694, 696 (8th Cir. 2019). The Health Board's immunity from suit renders joinder infeasible in this case.

The Supreme Court and Eighth Circuit have both held that an action must be dismissed when an indispensable party cannot be joined due to sovereign immunity. Pimentel, 553 U.S. at 867; Two Shields, 790 F.3d at 798. These cases concerned the sovereign immunity of the Republic of the Phillippines and the United States, respectively, not an "arm of the tribe" entity entitled to tribal sovereign immunity such as the Health Board. Whatever import that distinction may have—and the court does not suggest there is any import at all—the factors of Rule 19(b) counsel in favor of dismissal regardless.

The first factor, the "extent to which a judgment . . . might prejudice" the absent party, weighs heavily in favor of dismissal. Fed. R. Civ. P. 19(b)(1). A judgment in favor of plaintiffs would invalidate the self-determination contract, in which the Health Board has a major interest. As to the second factor, each form of relief plaintiffs request would require the court to invalidate the self-determination contract, so there is no possibility of shaping the judgment to avoid prejudice to the Health Board. Fed. R. Civ. P. 19(b)(2); see also Docket 5 at p. 5 (prayer for relief).

The third factor, whether a judgment made in the absence of the indispensable party "would be adequate," does not weigh in favor of dismissal. Fed. R. Civ. P. 19(b)(3). It is true the court could render an adequate

judgment in the Health Board's absence, but the court cannot enter judgment in favor of plaintiffs for the substantive reasons given in this order. Finally, the court acknowledges plaintiffs may not have a judicial remedy if the court dismisses this action for lack of joinder. Fed. R. Civ. P. 19(b)(4). On December 4, 2018, the Oglala Sioux Tribal Court ruled it did not have jurisdiction over the Health Board. White Face v. Great Plains Tribal Chairmen's Health Bd., Civ. 18-409 (Oglala Sioux Tribal Ct. Dec. 4, 2018).[20] No party informed the court whether similar cases were brought in other tribal courts or in South Dakota state court. But the lack of a judicial remedy does not mean plaintiffs have no remedy at all. The RST already rescinded its authorization for the Health Board to assume the functions of the Rapid City Service Unit and it appears there is opposition to the OST's and CRST's assumption. Plaintiffs retain a political remedy through engagement with their tribal governments.

In any event, the Health Board's sovereign immunity and the impossibility of avoiding prejudice to the Health Board by proceeding with this litigation tip the scales in favor of dismissing this case for lack of joinder. The court dismisses plaintiff's complaint without prejudice under Rule 19(b).

D. Preliminary injunction

Plaintiffs' complaint asked for an "immediate injunction" to halt the self-determination contract. (Docket 5 at p. 5). Defendants oppose injunctive

[20]A copy of the Tribal Court's order is filed at docket entry 19-3.

relief. (Docket 17 at pp. 22-26). Because plaintiffs cannot succeed on the merits, the court denies an injunction.

> Whether a preliminary injunction should issue involves consideration of (1) the threat of irreparable harm to the movant; (2) the state of the balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest.
>
> Dataphase Sys, Inc. v. CL Sys., Inc., 640 F.2d 109, 113 (8th Cir. 1981).

"In deciding whether to grant a preliminary injunction, likelihood of success on the merits is the most significant." Laclede Gas Co. v. St. Charles Cty., Mo., 713 F.3d 413, 419 (8th Cir. 2013) (internal quotation omitted).

The court dismisses plaintiffs' complaint for failure to state a claim and lack of joinder. There is no likelihood plaintiffs will succeed on the merits. As for the other factors, the court notes enjoining the self-determination contract will upend a carefully-negotiated arrangement that presently governs a health care facility serving thousands of patients, many of them indigent Native Americans with no other care options. The balance of equities, in the court's view, favors defendants. Moreover, Congress has declared that self-determination contracts are in the public's interest. See 25 U.S.C. § 5302. These factors all weigh strongly against an injunction.

The court lastly considers the threat of irreparable harm to plaintiffs. "To succeed in demonstrating a threat of irreparable harm, a party must show that the harm is certain and great and of such imminence that there is a clear and present need for equitable relief." Roudachevski v. All-American Care Centers, Inc., 648 F.3d 701, 706 (8th Cir. 2011) (internal quotation omitted).

In various filings, plaintiffs assert the self-determination contract cost IHS employees their jobs and worsened the quality of care provided to community members. See, e.g., Dockets 21, 24 & 27 (alleging jobs terminated due to contract); Dockets 22, 27 & 28 (alleging drop in quality of care). Even taking these allegations as true, they do not show certain and imminent harm of such magnitude as to outweigh the other factors counseling against enjoining the contract.[21]

IV. Conclusion

This case raises delicate questions about the role of the Rapid City Native American community in the governance of the Rapid City Service Unit. The court wishes to emphasize that this order holds only that individuals, such as plaintiffs, cannot challenge a self-governance contract under the ISDEAA or the Fort Laramie Treaty and that the Health Board is an indispensable party to any litigation concerning the particular contract at issue in this case. The RST's rescission of its prior authorization and the possibility the CRST will hold a referendum regarding its authorization indicate the unsettled status of the assumption process. The court expresses no view about potential other challenges to the self-determination contract by any of the three affected tribal nations.

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[21]The Eighth Circuit has declined to require district courts to resolve "assertions of lack of jurisdiction" before considering a request for a preliminary injunction. Laclede Gas, 713 F.3d at 416-17. Having determined it must dismiss the complaint, the court considers itself bound to deny injunctive relief. The court nevertheless evaluates the Dataphase factors to avoid an incomplete ruling.

ORDER

For the reasons given above, it is

ORDERED that defendants' motion to dismiss (Docket 16) is granted as described in this order. Plaintiffs' claims under the ISDEAA and the 1868 Treaty of Fort Laramie are dismissed with prejudice.

IT IS FURTHER ORDERED that plaintiffs' motion for class certification (Docket 12) and motion for summary judgment (Docket 37) are denied as moot.

IT IS FURTHER ORDERED that defendants' motions to strike (Dockets 34 & 41) are denied as moot.

Dated February 18, 2020.

BY THE COURT:
/s/ *Jeffrey L. Viken*
JEFFREY L. VIKEN
UNITED STATES DISTRICT JUDGE