

Nos. 23-250 and 23-253

In the Supreme Court of the United States

XAVIER BECERRA, SECRETARY OF HEALTH AND HUMAN
SERVICES, ET AL., PETITIONERS

v.

SAN CARLOS APACHE TRIBE

XAVIER BECERRA, SECRETARY OF HEALTH AND HUMAN
SERVICES, ET AL., PETITIONERS

v.

NORTHERN ARAPAHO TRIBE

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURTS OF APPEALS
FOR THE NINTH AND TENTH CIRCUITS

JOINT APPENDIX

ELIZABETH B. PRELOGAR
Solicitor General
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217
Counsel of Record
for Petitioners

LLOYD BENTON MILLER
Sonosky, Chambers, Sachse,
Endreson & Perry LLP
1425 K Street, N.W.
Washington, D.C. 20005
lloyd@sonosky.net
(202) 682-0240
Counsel of Record
for San Carlos Apache Tribe

ADAM G. UNIKOWSKY
Jenner & Block LLP
1099 New York Ave., N.W.
Suite 900
Washington, D.C. 20001
aunikowsky@jenner.com
(202) 639-6000
Counsel of Record
for Northern Arapaho Tribe

PETITIONS FILED: SEPT. 13, 2023 AND SEPT. 20, 2023
CERTIORARI GRANTED: NOV. 20, 2023

TABLE OF CONTENTS

	Page
<i>San Carlos Apache (No. 23-250)</i>	
Complaint (D. Ct. Doc. 1) (Nov. 14, 2019)	1
San Carlos Apache Tribe Claim Letter (D. Ct. Doc. 1-3) (Nov. 14, 2019)	21
Indian Health Service Claim Denial Letter (D. Ct. Doc. 1-4) (Nov. 14, 2019)	31
Contract No. HHSI2472011100002C and FY2010-FY2013 Annual Funding Agreements (D. Ct. Doc. 13-2) (Jan. 21, 2010)	47
FY2013 Scope of Work for Emergency Medical Services Program (D. Ct. Doc. 13-3) (Jan. 21, 2020)	98
<i>Northern Arapaho (No. 23-253)</i>	
Complaint (D. Ct. Doc. 1) (Feb. 19, 2021).....	103
Contract No. HHSI244201600002C (D. Ct. Doc. 20-1) (June 4, 2021).....	121
CY 2016 Annual Funding Agreement (D. Ct. Doc. 20-2) (June 4, 2021).....	141
CY 2016 Annual Funding Agreement Scope of Work (D. Ct. Doc. 20-3) (June 4, 2021)	157

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Civil Action No.

SAN CARLOS APACHE TRIBE, PLAINTIFF

v.

ALEX AZAR, SECRETARY, U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES, MICHAEL WEAHKEE,
PRINCIPAL DEPUTY DIRECTOR, INDIAN HEALTH
SERVICE,

AND

UNITED STATES OF AMERICA, DEFENDANTS

Filed: Nov. 14, 2019

COMPLAINT

I. INTRODUCTION

1. This action seeks damages for the failure of the United States Indian Health Service (IHS) to pay the San Carlos Apache Tribe (the Tribe) certain “contract support costs” that were due under the Tribe’s contracts with IHS in Fiscal Years (FY) 2011, 2012, and 2013. The Tribe’s rights arise under its contracts and the statute under which the contracts were awarded, the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 5301-5423 (ISDEAA).

2. This action follows several Supreme Court decisions finding the federal government’s failure to pay full contract support costs to contractors like the San Car-

los Apache Tribe to be contrary to law and a breach of contract. See *Salazar v. Ramah Navajo Chapter*, 567 U.S. 182, 192-94 (2012); *Arctic Slope Native Ass'n v. Sebelius*, 133 S. Ct. 22 (2012), on remand 501 Fed. App'x 957, 959 (Fed. Cir. 2012) (*Arctic Slope II*); *Cherokee Nation v. Leavitt*, 543 U.S. 631, 636-38 (2005) (consolidated cases).

3. The San Carlos Apache Tribe seeks as damages the unpaid funds which the Secretary should have paid and the associated lost third-party collections which the Tribe would have collected had each year's unpaid contract support costs been paid in full. These are the sums necessary to put the Tribe back in the position it would have been in had IHS not breached its obligations under the ISDEAA and the Tribe's contracts.

II. JURISDICTION

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1362; 25 U.S.C. §§ 5331(a), 5531(d); and 41 U.S.C. § 7104 of the Contract Disputes Act.

III. PARTIES

5. San Carlos Apache Tribe is a federally recognized Indian Tribe with its tribal headquarters in San Carlos, Arizona. San Carlos Apache Tribe is an "Indian Tribe" as that term is defined by the ISDEAA at 25 U.S.C. § 5304(e), and it is referred to hereinafter as "the Tribe." At all relevant times, the Tribe carried out contracts with IHS pursuant to Title I of the ISDEAA, 25 U.S.C. §§ 5301-5332.

6. Alex Azar is the Secretary of the U.S. Department of Health and Human Services (HHS). Secretary Azar exercises limited responsibilities designated to

him by Congress pursuant to the ISDEAA and other applicable law. Michael Weahkee is the Principal Deputy Director of the Indian Health Service (IHS). Acting Director Weahkee exercises authority delegated to him by the Secretary to carry out the Secretary's responsibilities under the ISDEAA and other applicable law. As used throughout this Complaint (and unless context commands otherwise), the terms "Secretary," "HHS," "Acting Director," and "IHS" are used interchangeably.

IV. FACTS AND GENERAL ALLEGATIONS

A. The Contract Documents.

7. The San Carlos Apache Tribe operates various Federal health care programs, functions, services, and activities of the IHS (specifically the San Carlos Service Unit, an administrative component of the IHS Phoenix Area Office). The health services provided by the Tribe during the fiscal years at issue, 2011-2013, included community health representatives, emergency medical services, an alcohol and substance abuse program, behavioral health services, a teen wellness program, and general health and human services.

8. These programs are operated pursuant to contracts that IHS awarded to the Tribe under the ISDEAA. During the specific years at issue, the Tribe operated these federal IHS programs pursuant to Contract No. HHSI-2472011100002C and funding agreements awarded pursuant to the Contract. Together, these contract documents are termed the "contracts" throughout this Complaint.

9. The Contract is the basic contract document at issue in this case. The terms of the Contract are required by and inextricably intertwined with the IS-

DEAA. The Contract states that it “shall be liberally construed for the benefit of the contractor[.]” Contract, § 1(a)(2).

10. The foregoing Contract was awarded by IHS to the Tribe pursuant to Title I of the ISDEAA (25 U.S.C. §§ 5301-5332), and it expressly incorporates Title I into its terms. It is a “Self-Determination Contract” intended to “transfer the funding and the following related functions, services, activities, and programs (or portions thereof), that are otherwise contractible under section 102(a) of such Act, including all related administrative functions, from the Federal Government to the Contractor[.]” Contract, § 1(a)(2).

11. The contract documents also include the Tribe’s Funding Agreements. Funding Agreements for Title I funds are to be issued annually. 25 U.S.C. § 5329(c). Funding Agreements are often amended throughout a given year to take account of appropriations changes and new funds that IHS makes available to the Tribe. The Tribe’s FY 2011 through 2013 Funding Agreements were amended in this manner multiple times. At all times the Tribe’s Funding Agreements were governed by and incorporated into the Contract. Contract, § 1(f)(2)(B).

12. The contract documents that are controlling for the claims asserted here are the Title I Contract, the Funding Agreements, modifications to those documents, and the various statutory provisions incorporated by law into the contract documents, including the ISDEAA.

B. The Contract Agreement.

13. The Tribe's obligation under the contracts was to administer designated health care programs and provide certain health care services and functions for the benefit of the Tribe's citizens and others served by those programs. These services were previously provided by IHS. IHS's contractual obligation to the Tribe was to make certain specified payments to the Tribe, including payments required for the Tribe to carry out its administrative duties, as well as other costs of carrying out the contracts.

14. The Tribe's contracts were authorized by Title I of the ISDEAA, 25 U.S.C. §§ 5301-5332. At all relevant times, 25 U.S.C. § 5325 and related funding provisions of Title I of the ISDEAA controlled the Secretary's funding obligations under the contracts. These are the same provisions that the Supreme Court analyzed in *Cherokee Nation* and *Ramah*, and that the Federal Circuit construed in *Arctic Slope II*.

15. Section 5325(a)(1) provides for the direct program funding, also called the "Secretarial amount," representing "the amount the Secretary would have expended had the government itself [continued to] run the program." *Arctic Slope Native Ass'n, v. Sebelius*, 629 F.3d 1296, 1298-99 (Fed. Cir. 2010), *vacated on other grounds* 133 S. Ct. 22 (2012). The Secretarial amount was subject to being increased or decreased during the contract year to the extent the appropriation supporting the contracted program increased or decreased. This would be done by a mid-year contract modification. The Tribe's contracts had mid-year amendments and modifications of this kind.

16. In addition to paying the “Secretarial amount,” the ISDEAA and Funding Agreements also require that IHS pay contract support costs. Section 5325 provides that “[t]here shall be added to the amount required by paragraph (1) [*i.e.* to the Secretarial amount] contract support costs which shall consist of an amount for the reasonable costs for activities which must be carried on by a tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management. . . .” 25 U.S.C. § 5325(b).

C. Contract Support Costs.

17. Contract support costs are mostly “administrative expenses,” *Cherokee Nation*, 543 U.S. at 634, although as the Supreme Court has noted, they more precisely fall into one of two subcategories: (a) indirect administrative (or overhead) contract support costs, “such as special auditing or other financial management costs,” *id.* at 635 (citing § 5325(a)(3)(A)(ii)), and (b) direct contract support costs for certain annually recurring costs attributable directly to the personnel and facilities employed to carry out the contracted IHS programs, “such as workers’ compensation insurance,” *id.* (citing § 5325(a)(3)(A)(i)).

18. The ISDEAA defines these costs with particularity:

[t]he contract support costs that are eligible costs for the purposes of receiving funding under this chapter shall include the costs of reimbursing each tribal contractor for reasonable and allowable costs of—

(i) direct program expenses for the operation of the Federal program that is the subject of the contract, and

(ii) any additional administrative or other expense related to the overhead incurred by the tribal contractor in connection with the operation of the Federal program, function, service, or activity pursuant to the contract, except that such funding shall not duplicate any funding provided under subsection (a)(1) of this section. § 5325(a)(3)(A).

19. Thus, this provision of the ISDEAA obligates IHS to pay (a) all of the “reasonable and allowable costs” associated with additional “direct program expenses” incurred in operating the contract, plus (b) all of the “reasonable and allowable costs” for “any additional administrative or other expense related to the overhead incurred by the tribal contractor in connection with the operation of the [contracted] Federal program.” The only limitation on this payment obligation is that a CSC payment may not duplicate a program payment already made to the contractor as part of the Secretarial amount (*i.e.*, the amount “provided under subsection (a)(1) of [§ 5325]”).

20. The ISDEAA directs that “[u]pon the approval of a . . . contract, the Secretary shall add to the contract the full amount of funds to which the contractor is entitled under [§ 5325(a)], subject to adjustments for each subsequent year that such tribe . . . administers a Federal program, function, service, or activity under such contract.”

21. Title I of the ISDEAA delegates to the Secretary limited regulatory authority. 25. U.S.C. § 5328(a)(1). The Secretary “may not promulgate any regulation, nor impose any nonregulatory requirement, relating to self-determination contracts” except in relation to 16 subjects specified in the Act. *Id.* Those subjects do *not*

include contract support costs. *Ramah Navajo School Bd. v. Babbitt*, 87 F.3d 1338, 1344 (D.C. Cir. 1996) (“Congress has clearly expressed in the ISDEAA . . . its intent to circumscribe as tightly as possible the discretion of the Secretary;” “[t]he statute itself reveals that not only did Congress *not* intend to commit allocation decisions to agency discretion, it intended quite the opposite; Congress left the Secretary with as little discretion as feasible in the allocation of [contract support costs]” (emphasis in original) (citations omitted)).

22. Echoing these provisions, the model contract embedded in the ISDEAA provides that, “[e]xcept as specifically provided in the [ISDEAA] . . . the Contractor is not required to abide by program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Contractor and the Secretary, or otherwise required by law.” 25 U.S.C. § 5329(c) (model agreement § 1(b)(11)). This provision was expressly incorporated into the Tribe’s Contract. *See, e.g.*, 2011 Contract, § 1(b)(11).

23. During the fiscal years at issue here, IHS calculated and paid contract support costs pursuant to Chapter 6-3 of the Indian Health Manual (“IHS Manual” or “IHM”). *See* Indian Health Serv., *Indian Health Manual*, pt. 6, ch. 3 (2007), Ex. 1. This chapter of the IHS Manual explains how IHS determines CSC requirements, but it is not binding on tribal contractors. *Id.* § 6-3.1; *see also* 25 C.F.R. § 900.5.

24. The IHS Manual recognizes the statutory CSC provisions and provides additional “guidance to both Tribal and Agency personnel,” in the negotiation of contract support costs. IHM § 6-3.1(A). The version of the

IHS Manual in effect during the relevant time period acknowledged that:

Throughout the operation of the program by the awardee, *total contract costs, including CSC, are eligible to be paid* as either direct or indirect costs. Since Tribes often operate more than one program, many of the costs incurred by the awardee are paid through an indirect cost allocation process, usually negotiated by the “Federal Agency” as identified under the applicable [OMB] Circular. . . . [The IS-DEAA] authorizes awardees to [b]e paid CSC costs whether they are “indirect” in nature (benefitting multiple programs) or additional costs associated with operating a single program, except that such funding shall not duplicate any funding provided [under the Secretarial amount].

§ 6-3.2(B) (emphasis added).

i. Indirect Contract Support Costs

25. Administrative and overhead costs, also known as indirect contract support costs, are typically calculated by reference to an indirect cost rate. An indirect cost rate is a common accounting tool that recipients of federal funds employ to allocate administrative and overhead costs across multiple programs supported by pooled administrative activities. *Rumsfeld v. United Techs. Corp.*, 315 F.3d 1361, 1363 (Fed. Cir. 2003). Such pooled activities typically include financial management and accounting systems, information technology systems, insurance, facilities, procurement activities, and personnel management systems.

26. An indirect cost rate is calculated by pooling these administrative costs into an overarching “indirect

cost pool,” and then dividing that pool by the total amount of direct program costs that are supported, served, or benefited by the pool. This calculation results in a ratio known as an indirect cost rate, which is then applied to the direct cost base of each program supported by the pool.

27. In the case of IHS, the direct cost base is comprised of the funds spent under the IHS contract (“the IHS direct cost base”). This method permits a contractor to allocate its pooled indirect costs to each of the supported programs based on the one indirect cost rate.

28. When IHS runs a health care program, it bills Medicare, Medicaid, and private insurance programs; it collects revenues from those programs; and it then uses those revenues to operate additional and larger programs. *See* 42 U.S.C. §§ 1395-1395*lll*, 1396-1396*w-5*, 1397*aa-1397mm*. Revenue from these programs is generally called “third-party revenues,” and the generation and expenditure of these revenues is an integral part of IHS operations. Thus, IHS’s comprehensive health care programs include, and are funded by, both appropriated funds and third-party revenues.

29. IHS applied the Tribe’s indirect cost rate to determine the amount of indirect contract support costs due the San Carlos Apache Tribe each year. But IHS failed to apply the rate to the full IHS direct cost base associated with the Tribe’s contracted operations carried out under the Tribe’s contract with IHS. Instead, IHS applied the indirect cost rate only to the portion of the Tribe’s IHS direct cost base that was funded with IHS-appropriated dollars. IHS excluded from the IHS direct cost base the portion of that base that was funded

from third-party revenues the Tribe generated and spent under the contracts.

30. In the current version of the IHS Manual, IHS acknowledges that the portion of a Tribe's health care programs funded by third-party revenues may be considered when calculating the amount of contract support costs owed to a Tribe. IHM §§ 6-3.2(E)(1)(a)(i), (E)(1)(b) (calculating indirect CSC based in part upon "the total direct costs of the total health care program"); *see id.* § 6-3.1(G)(34) (defining "Total Health Care Program" to include "collections from Medicare, Medicaid, and private insurance" in addition to IHS funding), *available at* <https://www.ihs.gov/i hm/pc/part-6/p6c3/>.

ii. Direct Contract Support Costs

31. The ISDEAA also required IHS to fully reimburse the Tribe's direct contract support costs. 25 U.S.C. § 5325(a)(3)(A)(i). Direct contract support costs are for services that support one particular program and therefore are not properly allocated across other programs.

32. IHS failed to reimburse the Tribe for its full direct contract support costs incurred in FY 2011 through 2013.

D. Damages due to Lost Third-Party Revenue.

33. Expectancy damages for breach of the Secretary's contracts with the San Carlos Apache Tribe are measured by the amounts required to place the Tribe in the position it would have been in had there not been a breach. Thus, "an award of damages will often include an amount representing the profits that were lost as a result of the defendant's breach of contract, because

only by awarding lost profits will the plaintiff be made fully whole.” WILLISTON ON CONTRACTS § 64:2 (4th ed.) (emphasis added); see also RESTATEMENT § 347(b) (recoverable damages may include “incidental or consequential loss, caused by the breach”).

34. As noted, the Tribe generates third-party revenues while administering programs under its contract with IHS, and then spends those funds on additional health care services and purposes. IHS’s CSC underpayments from FY 2011 through 2013 compelled the Tribe to divert program funds to cover the fixed administrative and overhead expenses, and direct contract support costs, that IHS failed to pay. This directly reduced the funds the Tribe had available to provide health care services, inflicting on the Tribe a direct loss in third-party revenues that would have been generated from those services.

35. Diversion of program money and the resulting loss of third-party revenues were foreseeable consequences of the CSC underpayments. See U.S. Gov’t Accountability Office, GAO-99-150, *Indian Self-Determination Act: Shortfalls in Indian Contract Support Costs Need to be Addressed* 40-41 (1999) (describing use of medical program resources to cover unpaid CSC).

36. Since at least 1987, the federal government has been aware that when Tribes face contract support cost shortfalls, they are forced to use program money to cover the shortfall, which “results in decreased amounts of funds for services,” see S. REP. NO. 100-274, at 12 (1987), and that reduced program services meant there would be less billing to and collections from third-party payers. It was thus reasonably foreseeable that, if IHS

underpaid San Carlos Apache Tribe on the amounts due under its contracts for contract support costs, the Tribe would receive fewer collections from third-party payers.

37. IHS's breaches of the FY 2011 through 2013 contracts directly caused the Tribe to suffer foreseeable damages in the form of lost third-party revenues.

38. The Government is liable to the Tribe in damages for the amounts required to place the Tribe back in the position it would have been in had there been no breach of the Secretary's duty to pay the Tribe's contract support costs in full, including not only the unpaid contract support costs but also the associated lost third-party collections.

E. Interpretation of the Contracts.

39. In interpreting IHS's obligations, the Supreme Court has directed that "[c]ontracts made under [ISDEAA] specify that '[e]ach provision of the [ISDEAA] and each provision of this Contract shall be liberally construed for the benefit of the Contractor. . . .'" *Ramah*, 567 U.S. at 194 (quoting 25 U.S.C. § 5329(c) (model agreement § 1(a)(2)) (citation updated)). The Supreme Court has interpreted this language to mean that the government "must demonstrate that its reading [of the ISDEAA] is clearly required by the statutory language." *Id.*

F. Claims History.

40. On September 28, 2017, the San Carlos Apache Tribe timely filed claims for reimbursement of its unpaid contract support costs incurred in FY 2011 through 2013. Ex. 2.

41. The claims were denied by IHS on July 10, 2019. On that date IHS also asserted a counterclaim for an alleged overpayment in 2012. Ex. 3. The Tribe now appeals IHS's decision.

**COUNT I—BREACH OF CONTRACT
(UNDERPAYMENT OF DIRECT AND INDIRECT
CONTRACT SUPPORT COSTS)**

42. The San Carlos Apache Tribe incorporates all previous allegations of fact and law into this Cause of Action.

43. The San Carlos Apache Tribe's contract required the Secretary to pay in full the Tribe's contract support cost requirements. In doing so, the contracts incorporated the statutory provisions of the ISDEAA requiring full payment of contract support costs. In the *Cherokee*, *Ramah*, and *Arctic Slope* decisions, the Supreme Court and the Federal Circuit affirmed the federal government's duty to fully pay ISDEAA contracts in the years at issue here.

44. General contract principles control the calculation of damages in government contract litigation. This is so because "[w]hen the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private individuals." *United States v. Winstar Corp.*, 518 U.S. 839, 895 (1996) (quoting *Lynch v. United States*, 292 U.S. 571, 579 (1934)); see also *Mobil Oil Expl. & Producing Se., Inc. v. United States*, 530 U.S. 604, 607-08 (2000) (quoting *Winstar*, 518 U.S. at 895, and relying on the Restatement (Second) of Contracts (1981) ("Restatement")); *Franconia Assocs. v. United States*, 536 U.S. 129, 141 (2002) (quoting *Mobil Oil*, 530

U.S. at 607, and applying principles of general contract law).

45. General contract law on the issue of damages is clear that a contractor is entitled to damages which will protect “his ‘expectation interest,’ which is his interest in having the benefit of his bargain *by being put in as good a position as he would have been in had the contract been performed. . . .*” Restatement § 344(a) (emphasis added).

46. In order to fulfill the Tribe’s “expectation interest” arising from the Secretary’s breach of contract for failing to pay the contract amount owed, the Tribe is entitled to damages for the underpayment of its contract support costs, together with accrued interest and attorney’s fees and costs, as specifically prayed below.

47. IHS failed to pay the full amount due even under its own deficient calculations. IHS failed to reimburse the Tribe for its full administrative and overhead costs in FY 2011 through 2013 associated with the administration of health care programs carried out under the Tribe’s contracts and funded solely with IHS-appropriated dollars.

48. The Tribe incurred no less than \$463,990 in direct contract support costs in carrying out its FY 2011 through 2013 contracts with IHS based on IHS-appropriated dollars. After accounting for IHS’s payments and appropriate credits, IHS failed to pay the Tribe \$86,837 over this three-year period. *See* Ex. 2. In failing to pay the Tribe this amount, the government breached its contracts with the San Carlos Apache Tribe.

49. The Tribe incurred no less than \$1,738,381 in indirect contract support costs in carrying out its FY 2011 through 2013 contracts with IHS based on IHS-appropriated dollars. After accounting for IHS's payments and appropriate credits, IHS failed to pay the Tribe \$364,165 over this three-year period. *See* Ex. 2.

COUNT II—BREACH OF CONTRACT (FAILURE TO PAY INDIRECT CONTRACT SUPPORT COSTS ASSOCIATED WITH THIRD-PARTY REVENUES-FUNDED PORTION OF THE PROGRAM)

50. The San Carlos Apache Tribe incorporates all previous allegations of fact and law into this Cause of Action.

51. When the Tribe took over operation of IHS's comprehensive health care programs serving the Tribe's citizens and other eligible individuals, controlling law authorized the Tribe to continue to bill, collect, and spend third-party revenues. 25 U.S.C. §§ 1621f, 1641(d), § 5325(m)(2); 42 U.S.C. §§ 1395-1395*lll*, 1396-1396w-5, 1397aa-1397mm.

52. The Tribe was entitled to have contract support costs added to support the entirety of the IHS health programs it operated, regardless of the extent to which those programs were funded by appropriated dollars or third-party revenue dollars.

53. IHS failed to calculate and pay the administrative costs of operating the third-party revenue-funded portion of the IHS contracts, even though generating those revenues and spending them on health care was expressly contemplated by the contracts and was an integral and essential part of the contracts.

54. IHS's failure to pay the Tribe indirect contract support costs associated with the Tribe's third-party revenue supported health care operations—that is, the failure to include these third-party revenues in the IHS direct program base against which the Tribe's indirect cost rate was applied—resulted in significant underpayments to the Tribe of indirect contract support costs. It was also contrary to law.

55. The Tribe incurred no less than \$2,951,714 in indirect contract support costs associated with the expenditure of third-party revenue that was generated as a result of the IHS award. The IHS did not pay any indirect costs associated with these expenditures. In failing to pay the Tribe this amount, the government breached its contracts with the San Carlos Apache Tribe.

COUNT III—BREACH OF CONTRACT (LOST THIRD-PARTY REVENUES)

56. The San Carlos Apache Tribe incorporates all previous allegations of fact and law into this Cause of Action.

57. IHS's breaches of the FY 2011 through 2013 contracts also caused the Tribe damages in the form of lost third-party revenues. These damages were caused by IHS, were a foreseeable result of underpaying contract support costs, and are quantifiable. Specifically, the Tribe has lost an additional \$5,231,679 due to the government's breaches from FY 2011 to 2013.

COUNT IV—BREACH OF CONTRACT (LOST INDIRECT CSC FUNDING ON UNPAID DIRECT CSC FUNDING)

58. The San Carlos Apache Tribe incorporates all previous allegations of fact and law into this Cause of Action.

59. Had IHS fully funded the direct contract support costs from FY 2011 to 2013, the Tribe would have been entitled to an additional \$15,607 in indirect contract support cost funding. The Tribe lost this amount due to the government's breaches from FY 2011 to 2013.

60. The loss of this funding was foreseeable, directly caused by the government's breaches, and is quantifiable with reasonable certainty.

COUNT V—BREACH OF STATUTORY RIGHT

61. The San Carlos Apache Tribe incorporates all previous allegations of fact and law into this Cause of Action.

62. The ISDEAA creates a right of action for money damages to remedy the Secretary's breach of his obligations under the ISDEAA. 25 U.S.C. § 5331.

63. Under 25 U.S.C. §§ 5325(a)(2)-(3), the Secretary in FY 2011 through 2013 had a statutory duty to pay the San Carlos Apache Tribe full contract support costs.

64. The Secretary failed to pay the Tribe no less than \$3,402,716 in contract support costs due in FY 2011 through 2013.

65. The Tribe also lost an additional \$5,247,286 as a result of this statutory violation.

66. In order to remedy the Secretary's breach of his statutory obligations, the Tribe is entitled to damages of no less than \$8,650,002, plus applicable interest and attorneys' fees and costs, all as specifically prayed below.

V. PRAYER FOR RELIEF

WHEREFORE, the San Carlos Apache Tribe prays that this Court grant the following relief:

- (a) A declaratory judgment that in FY 2011 through 2013 the Secretary acted in violation of the ISDEAA by failing to pay the San Carlos Apache Tribe the full amount of contract support costs that the Tribe was due under its contract with the Secretary;
- (b) A declaratory judgment that in FY 2011 through 2013 the Secretary breached his contracts with the Tribe by failing to pay the Tribe's full contract support cost requirement;
- (c) A money judgment of \$8,650,002;
- (d) Interest for one year from the date each unpaid amount comprising the \$8,650,002 was due, as provided for under the Prompt Payment Act, 31 U.S.C. §§ 3901-3907;
- (e) Interest under the Contract Disputes Act, 41 U.S.C. §§ 7101-7109, from the date each claim was filed to the date of final payment made pursuant to a judgment of this Court;
- (f) Costs and attorneys' fees incurred in pursuing this claim, as provided for under the Equal Access to Justice Act, 5 U.S.C. § 504; 28 U.S.C.

§ 2412; the ISDEAA, 25 U.S.C. § 5331(c), and other applicable law; and

- (g) Such other monetary, declaratory, and equitable relief as this Court may find to be just.

Respectfully submitted this 14th day of November 2019.

SAN CARLOS APACHE TRIBE
Attorney General

By: /s/ ALEXANDER B. RITCHIE
ALEXANDER B. RITCHIE
Arizona Bar No. 019579
P.O. Box 40
San Carlos, AZ 85550
Telephone: (928) 475-3344
Alex.Ritchie@scat-nsn.gov

SONOSKY, CHAMBERS, SACHSE,
MILLER & MONKMAN, LLP

By: /s/ LLOYD B. MILLER
LLOYD B. MILLER
Alaska Bar No. 7906040
Rebecca Patterson
Alaska Bar No. 1305028
725 East Fireweed Lane, Suite 420
Anchorage, AK 99503
Telephone: (907) 258-6377
Lloyd@sonosky.net
Rebecca@sonosky.net

Attorneys for Plaintiff San Carlos Apache Tribe



San Carlos Apache Tribe
Office of the Attorney General
Post Office Box 0
San Carlos, Arizona 85550
Tel. (928) 475-3344 * Fax (928) 475-3344 *
E-Mail alex.ritchie@scat-nsn.gov

September 28, 2017

RADM Ty Reidhead, MD

Director

and

Verna Kuwanhoyioma

Contracting Officer

Phoenix Area Office

Indian Health Service

40 N. Central Avenue

Phoenix, Arizona 85004

***RE: Request for Contracting Officer's Decision on
Annual Funding Agreement for FYs 2011-2013***

Dear RADM Reidhead and Ms. Kuwanhoyioma:

On behalf of the San Carlos Apache Tribe (the "Tribe"), I request a contracting officer's decision under the Contract Disputes Act ("CDA"), 41 U.S.C.

§ 7101 et seq. This request is based on the claim, detailed below, that the Tribe is entitled, by statute and its Contract (No. HHSI-2472011100002C) and Funding Agreement (“FA”) for Fiscal Year (“FY”) 2011-2013, to immediate payment of \$8,650,002, plus applicable interest, and, without limitation, all other damages arising out of the failure by the Indian Health Service (“IHS”) to pay the Tribe full contract support costs (“CSC”), as required by the Indian Self Determination and Education Assistance Act (“ISDEAA”), 25 U.S.C. § 450 et seq.

The following documents were relied on in the calculation of the Tribe’s Claims and are incorporated herein by reference. Most of these documents were either generated by the IHS or are already in the possession of the Agency.

1. Contract HHSI-2472011100002C and modifications for FY’s 2011, 2012 and 2013.
2. IHS Contract Support Cost Shortfall Reports for 2012-2014.
3. San Carlos Apache Tribe annual Single Agency Audit Reports for 2011-2013.
4. Negotiated Indirect Cost Rate Agreements for FY’s 2011, 2012 and 2013.
5. San Carlos Apache Tribe-CSC Claim Analysis, as attached, which sets forth the Tribe’s analysis of the claims.

These claims arise from the case of *Salazar v. Ramah Navajo Chapter*, 132 S. Ct. 2181 (2012). In FY 2011, 2012 and 2013, the Tribe provided health care services pursuant to its ISDEAA Contract and FA with the Indian Health Service (“IHS”). Section 110 of the

ISDEAA states that the Contract Disputes Act applies to ISDEAA agreements. 25 U.S.C. § 450m-1(d). Section 106(a)(2) of the ISDEAA mandates as follows:

(2) There shall be added (to the 106(a)(1) amount] contract support costs which shall consist of an amount for the reasonable costs for activities which must be carried on by a tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management, but which—

(A) normally are not carried on by the respective Secretary in his direct operation of the program; or

(B) are provided by the Secretary in support of the contracted program from resources other than those under contract.

25 U.S.C. § 450j-1 (a)(2).

Section 106 of the ISDEAA, 25 U.S.C. § 450j-1, also requires the IHS to pay no less than the full amount of CSC associated with the Tribe's operation of IHS programs. *Cherokee Nation v. Leavitt*, 543 U.S. 631 (2005); *Salazar v. Ramah Navajo Chapter*, 132 S. Ct. 2181 (2012).

The AFA promises that the IHS will pay CSC in accordance with the ISDEAA. But IHS did not pay full CSC. as acknowledged in the agency's own CSC short-fall reports. Therefore IHS is liable for breach of contract; for damages, the Tribe demands that the IHS pay the remainder of the CSC owed for each fiscal year. as described and estimated below.

Fiscal Year 2011

According to the Tribe's calculations for fiscal year 2011, the total indirect CSC requirement associated

with the basic IHS contract was \$509,584.00; however, the IHS only provided \$348,338 in indirect cost funding. Additionally, the Tribe calculated its direct contract support cost (DCSC) requirement to be \$151,918 but the IHS only provided \$111,502 in DCSC funding. Based on that deficiency in DCSC, had the IHS fully funded the DCSC requirement, the Tribe calculates that it is entitled to an additional \$8,184 in indirect cost funding to pay the indirect cost requirement associated with the full DCSC requirement.

Next, the Tribe believes it is entitled to indirect cost funding associated with the Third Party Revenue that was generated as a result of the IHS award. See *Navajo Health-Foundation-Sage Memorial Hospital, Inc. v. Burwell. et al.*, 220 F. Supp. 3d 1190 (D.N.M. Nov. 23, 2016) (granting summary judgment to Sage Hospital and holding that the United States is liable for its unlawful declination of Sage's proposed FY 2016 Annual Funding Agreement). The Tribe calculates its indirect cost requirement associated with the Third Party Revenue generated under the IHS contract to be an additional \$673,850. The IHS did not pay any indirect costs associated with this Third Party Revenue; therefore the Tribe believes it is entitled to an additional \$673,850 for this indirect cost deficiency.

In summary, the Tribe believes its FY-2011 CSC requirements totaled \$ 1,343,536 but the IHS only provided \$459,835 in total CSC funding so the Tribe makes claims for an additional \$883,701 in order to provide full CSC funding for FY-2011. See Attached CSC Calculations.

Fiscal Year 2012

According to the Tribe's calculations for fiscal year 2012, the total indirect CSC requirement associated with the basic IHS contract was \$444,228.00: however, the IHS only provided \$421,937 in indirect cost funding. Additionally, the Tribe calculated its direct contract support cost ("DCSC") requirement to be \$155,260 but the IHS only provided \$135,608 in DCSC funding. Based on that deficiency in DCSC, had the IHS fully funded the DCSC requirement, the Tribe calculates that it is entitled to an additional \$2,832 in indirect cost funding to pay the indirect cost requirement associated with the full DCSC requirement.

The Tribe believes it is entitled to indirect cost funding associated with the Third Party Revenue that was generated as a result of the IHS award. *Navajo Health-Foundation-Sage Memorial Hospital, Inc. v. Burwell*. The Tribe calculates its indirect cost requirement associated with the Third Party Revenue generated under the IHS contract to be an additional \$876,578. The IHS did not pay any indirect costs associated with this Third Party Revenue: therefore the Tribe believes it is entitled to an additional \$876,578 for this indirect cost deficiency.

In summary, the Tribe believes its FY-2012 CSC requirements totaled \$1,478,898 but the IHS only provided \$557,545 in total CSC funding so the Tribe makes claims for an additional \$921,353 in order to provide full CSC funding for FY-2012. *See Attached CSC Calculations.*

Fiscal Year 2013

According to the Tribe's calculations for fiscal year 2013, the total indirect CSC requirement associated with the basic IHS contract was \$784,569.00; however, the IHS only provided \$603,946 in indirect cost funding and Tribal Share offsets. Additionally, the Tribe calculated its direct contract support cost (DCSC) requirement to be \$156,812 but the IHS only provided \$130,043 in DCSC funding. Based on that deficiency in DCSC, had the IHS fully funded the DCSC requirement, the Tribe calculates that it is entitled to an additional \$4,591 in indirect cost funding to pay the indirect cost requirement associated with the full DCSC requirement.

The Tribe believes it is entitled to indirect cost funding associated with the Third Party Revenue that was generated as a result of the IHS award. *Navajo Health-Foundation-Sage Memorial Hospital, Inc. v. Burwell*. The Tribe calculates its indirect cost requirement associated with the Third Party Revenue generated under the IHS contract to be an additional \$1,401,285. The IHS did not pay any indirect costs associated with this Third Party Revenue; therefore the Tribe believes it is entitled to an additional \$1,401,285 for this indirect cost deficiency.

In summary, the Tribe believes its FY-2013 CSC requirements totaled \$2,347,258 but the IHS only provided \$733,989 in total CSC funding so the Tribe makes claims for an additional \$1,613,269 in order to provide full CSC funding in FY-2013. *See Attached CSC Calculations*.

Lost Third Party Revenue

The damages caused by the IHS breach include lost third-party revenues. The CSC shortfalls described above required the Tribe to divert program funds to cover fixed administrative and overhead expenses. *This* resulted in less money being available for delivering health care services that could have generated third-party revenues from Medicare, Medicaid, or private insurance. The Tribe has calculated its total lost Third Party Revenue associated with the above CSC shortfalls for FY's 2011, 2012 and 2013 to be an additional \$5,231,679. *See* Attached CSC Calculations.

The Tribe has endeavored to calculate its claims based upon the best available evidence. This claim is supported by the originals of the contracts, funding agreements, amendments thereto, and indirect cost rate agreements, all of which are in the custody of the Government.

Please note that under the terms of the Contract Disputes Act, interest is accruing on the amount claimed. 41 U.S.C. § 7109. In addition, the Tribe reserves its right to amend its claim in whole or in part.

Thank you in advance for your prompt attention to this request for a final decision.

Sincerely yours,

/s/ ALEXANDER B. RITCHIE
ALEXANDER B. RITCHIE
Attorney General

Attachments

San Carlos Apache Tribe—CSC Claim Analysis
Certification

Cc: Terry Rambler, Chairman
Tao Etpison, Vice Chairman
San Carlos Council Members
Kevin Cronk, Treasurer
Joe Oletti, Comptroller
Janet Casoose, Grants & Contracts
File

CSC CLAIMS ANALYSIS

San Carlos Apache Tribe - FY 2010-2013 CSC Claim Calculations (Actual Cost-Actual PT)

Line#	San Carlos Apache Tribe Column 2	Column 3 FY 2011 Program Services	Column 4 FY 2012 Program Services	Column 5 FY 2013 Program Services	Column 6 Total Program Services
3					
4	Total IIS Expense from A-133 Audit (SEFA)	3,891,880	37,474,039	6,289,238	\$ 13,088,484
5	Percentage of IIS Award Expended	14.02%	140.20%	23.22%	17.8%
6	To: to AFR Award	2,452,837	3,281,838	4,627,200	10,177,541
7	CLAIM 1 - INDIRECT CSC SHORTFALL				
8	Total IIS Expense from A-133 Audit (SEFA)	\$ 3,891,880	\$ 3,747,435	\$ 6,289,238	\$ 13,088,484
9	IDC Rate	(246,333)	(431,297)	(802,099)	(1,279,129)
10	Final Through (Expenses) (SEFA) & (SEFA) (SEFA)	(1,177,309)	(283,732)	(91,447)	(1,451,388)
11	Direct Cost Basis - (Line 7 - Line 8 & 9)	2,516,663	3,082,776	4,574,744	10,173,983
12	Registered to Direct Cost Rate	31,294	14,494	17,194	17,094
13	Indirect Cost Requirement	509,594	44,428	784,569	1,238,591
14	IDC Funding Available	(346,333)	(431,297)	(802,099)	(1,279,129)
15	20% of Total Grant Available for IDC	0	0	(1,078)	(1,078)
16	Sub-Total: CLAIM 1 - INDIRECT CSC SHORTFALL	161,251	22,291	180,623	\$ 364,165
17	CLAIM 2 - DIRECT CSC SHORTFALL				
18	DCSC Program Available	151,918	155,280	156,812	463,990
19	DCSC Funding Available	(111,923)	(133,658)	(136,243)	(377,153)
20	Sub-Total: CLAIM 2 - DIRECT CSC SHORTFALL	40,466	19,622	20,569	\$ 80,657
21					
22	CLAIM 3 - IDC ON UNFUNDED DCSC				
23	DCSC Grants	40,416	19,632	20,769	80,817
24	Registered to Direct Cost Rate	31,294	14,494	17,194	17,094
25	Sub-Total: CLAIM 3 - IDC ON UNFUNDED DCSC	8,184	2,832	4,591	\$ 15,607
26					
27	Total: CSC SHORTFALL CLAIMS	209,651	44,715	213,984	\$ 466,608
28					
29	CLAIM 4 - IDC ON THIRD PARTY REVENUE EXPENDED CLAIM				
30	Total Third Party Revenue Associated with the IIS GDA Award	4,818,205	6,502,077	8,334,090	19,714,372
31	Less Final Through & Expenses (Reportable to IIS GDA)	(1,496,590)	(479,294)	(169,339)	(2,145,223)
32	Direct Cost Basis	3,327,655	6,083,123	8,170,760	17,581,539
33	Registered to Direct Cost Rate	21,294	14,494	17,194	17,094
34	Sub-Total: IDC ON THIRD PARTY REVENUE EXPENDED CLAIM	673,059	876,578	1,481,265	\$ 2,951,714
35					
36	CLAIM 5 - LOST THIRD PARTY REVENUE EXPECTANCY CLAIM				
37	Total Third Party Revenue Associated with the IIS GDA Award	4,818,205	6,502,077	8,334,090	19,714,372
38	Port of Third Party Revenue to IIS GDA Award	1,215	17,574	1,987	1,524
39	Sub-Total: LOST THIRD PARTY REVENUE EXPECTANCY CLAIM	1,066,599	1,613,307	2,589,713	\$ 5,231,679
40					
41	GRAND TOTAL CLAIM INCLUDING EXPECTANCY	\$ 1,885,309	\$ 2,314,728	\$ 4,164,992	\$ 8,609,009

CERTIFICATION

I hereby certify that:

1. The claim set out below is made in good faith:
2. The data supporting the claim are accurate to the best of my knowledge and
3. The requested amount reflects the contract adjustment amount for which the San Carlos Apache Tribe believes the government is liable:
4. I have been duly authorized to certify this claim on behalf of the San Carlos Apache Tribe.

Amount Due and Owing:

\$8,650,002.00, as described in the letter to which this certification is attached.

SAN CARLOS APACHE TRIBE

By: /s/ TERRY RAMBLER [9/27/17]
TERRY RAMBLER, Chairman (Date)

ATTEST

By: /s/ SANTANA DILLON [9/27/17]
SANTANA DILLON,
Tribal Council Secretary (Date)



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Phoenix Area Indian Health Service
Two Renaissance Square
40 North Central Avenue
Phoenix, Arizona 85004

July 10, 2019

By Certified Mail, Return Receipt Requested

Alexander B. Ritchie
Attorney General
San Carlos Apache Tribe
Post Office Box 0
San Carlos, Arizona 85550

Subject: Contract Disputes Act Claims for Contract Support Costs
Contract Nos. HHSI2470810009C and HHSI2472011100002C¹
Fiscal Years 2011-2013

Dear Mr. Ritchie:

On September 28, 2017, the Indian Health Service (IHS or Agency) received the request of the San Carlos Apache Tribe (Tribe) for a contracting officer's decision under the Contract Disputes Act (CDA). The Tribe claims that under Contract Nos. HHSI2470810009C

¹ Although the Tribe's claim letter identified the contract number for FYs 2011 through 2013 as HHSI2472011100002C, we have also identified contract number HHSI2470810009C, effective through December 31, 2010, to be relevant to the FY 2011 claims and have based our decision on a review of documents pertaining to both contracts.

and HHSI2472011100002C, IHS owes it an additional \$8,650,002, plus interest, in direct and indirect contract support costs (CSC) for fiscal years (FYs) 2011 through 2013. Based on the facts and law stated below, IHS denies the FYs 2011-2013 claims and asserts a counterclaim for overpayment of CSC under the FY 2012 contract.

I. Description of Claims and Counterclaim

Claims

The Tribe's letter, dated September 28, 2017, asserts that IHS failed to meet its obligation to pay the full amount of CSC in five ways. First, in what the Tribe has labeled Claim 1, the Tribe asserts that IHS underpaid the Tribe's indirect CSC by the total amount of \$364,165 in FYs 2011-2013. In Claim 2, the Tribe asserts that the IHS underpaid the Tribe for direct CSC by the total amount of \$86,837 in FYs 2011-2013. Next, in Claim 3, the Tribe asserts a claim for "IDC on unfunded DCSC" in the total amount of \$15,607 for FYs 2011-2013. In Claim 4, the Tribe contends that IHS should have paid the Tribe for its "indirect cost requirement associated with the Third Party Revenue generated under the IHS contract," and calculates the total amount owed in this category for FYs 2011-2013 as \$2,951,714. Finally, in Claim 5, the Tribe asserts that "damages caused by the IHS breach include lost third-party revenues" in the total amount of \$5,231,679 in FYs 2011-2013.

The Tribe did not provide any documentation to support its claims apart from a chart, attached to and referenced in its claims letter, setting forth its calculations. In particular, with regard to Claim 3, the Tribe did not provide documentation demonstrating: (a) the specific source of

the revenues used for the additional expenditures being claimed; and (b) that the revenues are related to the contract. In addition, the Tribe has not demonstrated that the claimed costs are CSC pursuant to 25 U.S.C. § 5325(a). Under the CDA, the Tribe bears the burden of proving these and all necessary elements of its claims that it has additional, unfunded CSC under the contract for FYs 2011-2013.

Counterclaim

As indicated in the annual funding agreement (AFA) for FY 2012, at the beginning of the FY, IHS and the Tribe estimated the Tribe's FY 2012 CSC need using the direct cost base and indirect cost rate as of December 7, 2010. The indirect cost rate agreement entered between the Tribe and the Department of the Interior National Business Center (IBC), dated December 7, 2010, identified a rate of 12.93% for FY 2008. As the most recent rate, IHS used the FY 2008 rate of 12.93% for the initial FY 2012 award amount. Based on the information available to IHS during the period of performance, IHS agreed to pay the Tribe, and did pay, \$421,937 in indirect CSC funding and \$135,608 in direct CSC funding for FY 2012.

However, IHS and the Tribe agreed in the AFA that the amounts for CSC were subject to adjustment when a final rate was approved and that any adjustments required would be made consistent with the IHS CSC Policy. *See, e.g.*, Indian Health Manual, Part 6, Chapter 3: Contract Support Costs, § 6-3.4E(3)² The FY 2012 indi-

² The IHS CSC Policy in effect at the time of the Tribe's FYs 2011-2013 ISDEAA agreements became effective on April 6, 2007,

rect cost rate agreement, dated September 19, 2014, shows that the Tribe's applicable rate for FY 2012 was 14.41%, which was higher than the rate used to negotiate the estimate for FY 2012. However, when the Tribe's final actual, eligible costs under the FY 2012 contract are considered, including by applying the applicable direct cost base and indirect cost rate, the Tribe's total indirect cost need for FY 2012 was no more than \$402,166. IHS paid the Tribe \$421,937 in indirect CSC funding for FY 2012. As a result, the Tribe was overpaid \$19,771 in indirect CSC funding in FY 2012.

Since this amount exceeds the amount authorized by the ISDEAA, IHS is counterclaiming in the amount of \$19,771 for FY 2012.

II. Contract Terms at Issue

We have reviewed your contracts for FYs 2011-2013. Contract No. HHSI2470810009C, effective October 1, 2007 and continuing through December 31, 2010, includes the following relevant provisions:

Section I(b)(1)—Term

Section I(b)(2)—Effective Date

Section I(b)(4)—Funding Amount

Section I(b)(5)—Limitation of Costs

Section I(b)(6)—Payment

The annual funding agreement (AFA) for FY 2010, effective October 1, 2009 and continuing through Decem-

and continued in effect until IHS issued a revised IHS CSC Policy on October 26, 2016 (which has since been amended).

ber 31, 2010 (by application of Modification No. 19), includes the following relevant provisions:

Section 1(d)—Funding and Budget Category

Section 1(e)—Payments

Section 1(f)(4)—Adjustment Due to the Congressional Actions

By Modification No. Twenty (20), dated November 18, 2010, IHS provided \$23,701 for direct CSC and \$74,280 for indirect CSC in the FY 2010 AFA for the period October 1, 2010 through December 3, 2010.

Contract No. HHSI2472011100002C, effective January 1, 2011 and continuing through FY 2013, includes the following relevant provisions:

Section I(b)(1)—Term

Section I(b)(2)—Effective Date

Section I(b)(4)—Funding Amount

Section I(b)(5)—Limitation of Costs

Section I(b)(6)—Payment

The AFA for FY 2011, effective January 1, 2011 and continuing through September 30, 2011, includes the following relevant provisions:

Section 1(d)—Funding and Budget Category

Section 1(e)—Payments

Section 1(f)(4)—Adjustment Due to the Congressional Actions

The AFA for FY 2012, effective October 1, 2011 and continuing through September 30, 2012, contains the following relevant provisions:

Section 1(b)—Effective Date and TermSection 1(e)—Funding and Budget CategorySection 1(f)(5)—Adjustment Due to the Congressional Actions

The AFA for FY 2013, effective October 1, 2012 and continuing through September 30, 2013, contains the following relevant provisions:

Section 1(b)—Effective Date and TermSection 1(e)—Funding and Budget CategorySection 1(f)(6)—Adjustment Due to the Congressional Actions

During FY 2013, by application of Modification No. Twenty-Six (26), dated September 27, 2013, the Tribe's direct CSC need was amended to \$130,043 and its indirect CSC need was amended to \$602,868.

III. Findings of Fact

Most of the allegations set forth in the Tribe's letter are characterizations of the rights and duties of the Tribe and IHS under the Indian Self-Determination and Education Assistance Act (ISDEAA). These legal arguments are discussed in the Decision section of this letter. This section addresses the underlying factual allegations of the Tribe's claims.

Although the Tribe did not provide IHS with documentation of costs actually incurred in FYs 2011-2013 or that the claimed costs meet the statutory definition of CSC, IHS considers the following facts pertinent to its decision on your claims:

FY 2011

- Contract documents show that IHS promised and paid \$135,825 in direct CSC and \$422,613 in indirect CSC, as shown in the contract records.
- Nothing in the parties' contract or AFA for FY 2011 includes an agreement to pay CSC funding on any expenditures other than the amount identified in the contract and AFA for the Secretarial amount awarded by IHS.

FY 2012

- Contract documents show that IHS promised and paid \$135,608 in direct CSC and \$421,937 in indirect CSC in FY 2012.
- Based on a review of the Tribe's financial records available to IHS, including its indirect cost rate proposal, indirect cost rate agreement, and financial statements for FY 2012, the records show that the indirect costs incurred under the contract totaled no more than \$402,166.
- Thus, IHS provided \$19,771 in CSC funding that exceeded the Tribe's indirect cost expenditures in support of the contract.
- Nothing in the parties' contract or AFA for FY 2012 includes an agreement to pay CSC funding on any expenditures other than the amount identified in the contract and AFA for the Secretarial amount awarded by IHS.

FY 2013

- Contract documents show that IHS promised and paid \$130,043 in direct CSC and \$602,868 for indirect CSC in FY 2013.
- In addition, as part of the Secretarial amount IHS funded at least \$1,955 for activities that were also included in the Tribe's indirect cost pool. These activities are not eligible for CSC and amounts related to such activities must be removed from the Tribe's total indirect costs to determine the amount of indirect CSC. This amount represents the amount of "tribal shares" that are estimated to be in the Tribe's indirect cost pool, and the IHS would need further information from the Tribe to identify additional activities in the indirect cost pool that are already funded in the Secretarial amount.
- Nothing in the parties' contract or AFA for FY 2013 includes an agreement to pay CSC funding on any expenditures other than the amount identified in the contract and AFA for the Secretarial amount awarded by IHS.

In addition, with regard to Claims 4 and 5, you have failed to provide IHS with documentation supporting your claims. Since you have failed to provide this information, IHS is unable to determine whether it agrees or disagrees with any factual assertions related to these claims.

IV. Decision

All of your claims for FYs 2011-2013 are denied for the following reasons: (1) IHS fully obligated the Congressional cap on CSC in FYs 2011-2013 and is barred from

paying additional CSC for FYs 2011-2013; and (2) Claims 3, 4, and 5 are unsupported by fact or law. In addition, IHS asserts a counterclaim for FY 2012.

1. *Claims 1 and 2: IHS is Barred from Paying Additional CSC*

Even if the Tribe could show that it incurred additional CSC, IHS is barred from paying additional CSC for FYs 2011-2013. Beginning in FY 1998, Congress enacted a statutory limit on the amount IHS could pay from its appropriation for CSC.³ The appropriations cap “prevents the Secretary from reprogramming other funds to pay contract support costs.” *Salazar v. Ramah Navajo Chapter*, 132 S. Ct. 2181, 2192 (2012) (*Ramah II*). Within the cap, however, “the ability to direct those funds [is] ‘committed to agency discretion by law.’” *Id.* at 2190 (quoting *Lincoln v. Vigil*, 508 U.S. 182, 193 (1993)). IHS exercised that discretion in FYs 2011-2013 and obligated the entirety of the FYs 2011-2013 CSC appropriations amongst all self-determination con-

³ See Public Law (P.L.) 105-83, 111 Stat. 1543, 1583 (FY 1998 Appropriations Act); P.L. 105-277, 112 Stat. 2681, 2681-279 (FY 1999 Appropriations Act); P.L. 106-113, 113 Stat. 1501, 1501A-182 (FY 2000 Appropriations Act); P.L. 106-291, 114 Stat. 922, 978-79 (FY 2001 Appropriations Act); P.L. 107-63, 115 Stat. 414, 456 (FY 2002 Appropriations Act); P.L. 108-7, 117 Stat. 11, 261 (FY 2003 Appropriations Act); P.L. 108-108, 117 Stat. 1241, 1293 (FY 2004 Appropriations Act); P.L. 108-447, 118 Stat. 2809, 3084 (FY 2005 Appropriations Act); P.L. 109-54, 119 Stat. 499, 540 (FY 2006 Appropriations Act); P.L. 110-28, 121 Stat. 112, 177 (FY 2007 Appropriations Act); P.L. 110-161, 121 Stat. 1844, 2135 (FY 2008 Appropriations Act); P.L. 111-8, 123 Stat. 524, 736 (FY 2009 Appropriations Act); P.L. 111-88, 123 Stat. 2904, 2946 (FY 2010 Appropriations Act); P.L. 111-242, 124 Stat. 2607 (FY 2011 Continuing Appropriations Act); P.L. 112-74, 125 Stat. 786, 1028 (FY 2012 Appropriations Act); P.L. 113-6, 127 Stat. 198,421 (FY 2013 Continuing Appropriations Act).

tracts and self-governance compacts. Because IHS may not reprogram other funds from its appropriation to pay CSC, and because IHS has obligated the entirety of the FYs 2011-2013 CSC appropriation, IHS is barred from paying the Tribe's claims. For these reasons, the Tribe's claims are rejected.

2. *Claims 3, 4, and 5 Are Unsupported by Fact or Law*

As with its other claims, the Tribe has failed to document Claims 3, 4, and 5, and to explain how such claims are supported under the ISDEAA.

a. *Claim 3*

In Claim 3, the Tribe alleges that it has additional indirect CSC in relation to the alleged underpayment of direct CSC. However, the Tribe has failed to show that it had additional, unfunded expenditures for FYs 2011-2013. Accordingly, Claim 3 is unsupported by fact or law.

b. *Claim 4*

The ISDEAA is clear that CSC only includes expenditures for activities that must be carried on by a tribe to ensure compliance with the terms of the contract and prudent management and that IHS does not normally carry on or performs with resources not transferred to the tribe. 25 U.S.C. § 5325(a)(2). Claim 4 is unsupported under the requirements of the ISDEAA because, among other things: (a) CSC only includes costs for activities necessary to support the scope of the Federal programs, functions, services, and activities (PFSAs) transferred under the ISDEAA agreement; (b) the Tribe does not suggest that IHS failed to transfer the required Secretarial amount, but the Tribe now implicitly asserts that it can unilaterally impose a post-hoc in-

crease to the agreed-upon amount; and (c) as the Tribe acknowledges, CSC funding is “added” to the Secretarial amount required by § 5325(a)(1), thus making it clear that CSC only includes costs necessary to support the Secretarial amount, and the Tribe does not challenge that amount. § 5325(a)(2); *see also* Indian Health Manual, Part 6, Chapter 3: Contract Support Costs, Ex. 6-3-H at 19 (explaining that, in the context of direct CSC, only costs “supported from directly appropriated dollars in the [Secretarial amount]” are eligible and that costs “supported with Medicaid and Medicare or other third-party resources” are not).

This conclusion is compelled by the contract and AFAs, which set out the terms of the parties’ agreement, including the Secretarial amount required by the ISDEAA and awarded by IHS for the transferred PFSAs, as well as the CSC to be calculated on that amount. By asserting that its third-party collections are part of the Secretarial amount, the Tribe implicitly asserts that IHS is required to pay that amount—not the Secretarial amount agreed upon in the contract—to the Tribe. However, there is no such requirement in the Tribe’s ISDEAA contract or AFAs, nor does the Tribe assert a claim challenging the Secretarial amount agreed upon by the parties in the contract and AFAs. While the Tribe may collect from third party payers through 25 U.S.C. § 1621e or through participation in Medicare, Medicaid, or the Children’s Health Insurance Program (CHIP), the collections do not become part of the Secretarial amount awarded or owed by IHS. Similarly, expenditures from such collections are not CSC; rather CSC is calculated based on the Secretarial amount owed by IHS to cover the Tribe’s unique costs of carrying out the PFSAs that IHS would have other-

wise carried out with that Secretarial amount. *See, e.g.*, 140 Cong. Rec. H11140-01, H11144 (daily ed. Oct. 6, 1994) (explaining that the objective of CSC funding is “to assure that there is no diminution in program resources *when [PFSAs] are transferred to tribal operation.*” (emphasis added)).

While the Tribe may expend an additional amount from other revenue sources, the ISDEAA does not require that IHS fund such increased expenditures; instead, “a tribe is entitled to just the amount of funds that IHS would have otherwise provided for the PFSA.” *In the Case of Yerington Paiute Tribe v. Indian Health Service*, HHS Departmental Appeals Bd. (DAB), DAB No. 2102, 2007 WL 3146252, at *2 (2007). (“When a tribe agrees to take responsibility for dental services or any other [PFSA] . . . the tribe is not guaranteed that the funds it receives from IHS will be adequate to provide its desired level of service.”). A tribe that opts to collect from third-party payers may be able to provide additional health care services using such collections. This does not change the Secretarial amount, and the costs of providing such additional services are not CSC; the ISDEAA bars the award of CSC funding for anything other than the PFSAs provided with the Secretarial amount. 25 U.S.C. §§ 5325(a), 5326. Indeed, depending on the nature of the “third-party revenues,” it is questionable whether a tribe would have any unfunded costs for services provided from such revenues.

In addition to failing to show how its claimed costs meet the ISDEAA requirements for CSC, the Tribe fails to meet its burden to document the amount it is claiming.⁴

⁴ Like all CDA claimants, the Tribe bears the burden of proving all elements of its claims. *See J.C. Equip. Corp.*, 360 F.3d at 1318;

The Tribe merely submitted a table setting forth its asserted claim amounts without further explanation or documentation. Finally, the Tribe has not documented the connection between the third-party revenues and its contract or AFAs and instead seems to suggest that such a connection should simply be assumed. Most critically, even if the Tribe submitted documentation explaining its calculations of the alleged loss, which it has failed to do, the claim is unsupported by the law, as discussed above.

Because IHS already fully funded the Tribe's Secretarial amount and its CSC need to operate the Federal PFSAs, and because the Tribe has not asserted any additional expenditures in support of those PFSAs that are CSC under the ISDEAA definition, Claim 4 is denied.

c. Claim 5

Similarly, the Tribe has failed to demonstrate the validity of Claim 5, the "Lost Third Party Revenue Expectancy Claim." The Tribe did not include any data supporting a finding of lost income or explaining how lost income from third party billing resulted from the alleged underfunding of CSC.

Even if the Tribe could submit documentation showing the alleged losses, the expectancy claim is invalid be-

Sociotechnical Research Applications, 29 F. App'x at 582 n.2. For claims of unpaid CSC, this includes the burden of proving that the claimed costs meet the ISDEAA definition of CSC. See *Ketchikan Indian Cmty. v. Dep't of Health & Human Servs.*, CBCA 1053-ISDA, CBCA 1054-ISDA, CBCA 1055-ISDA, 13 BCA ¶ 35,436 (Sept. 4, 2013) (dismissing claims not presented to the contracting officer and finding that the facts relevant to CSC claims include "establishing that a particular cost is a CSC").

cause third party billing activities are not funded with CSC, and any alleged lost income is too remote and speculative. Third-party billing is an activity normally carried out by IHS in its operation of a program. Accordingly, funds for this activity are provided to the Tribe through the “Secretarial” amount. *See* 25 U.S.C. § 5325(a)(2) (defining CSC as costs for activities not incurred by the Secretary in her operation of the program). By statute, funds distributed to a Tribe through the Secretarial amount shall not be duplicated in CSC funding. 25 U.S.C. § 5325(a)(3). An award of CSC to carry out third party billing activities already funded by the Secretarial amount would violate this prohibition. Because the Tribe already received funding to carry out third party billing activities, any claimed loss of third party billing revenues cannot be attributed to the alleged underpayment of CSC.

The Tribe’s claim for lost income also is invalid because the alleged damages are speculative and only remotely related to the Tribe’s ISDEAA contract. The purpose of the ISDEAA contract is to provide the Tribe with Federal funding to carry out health programs. Income collected by billing third parties while carrying out those health programs is only remotely related to the contract between IHS and the Tribe, and therefore, loss of such income is not an actionable claim under the contract. Further, any alleged losses of income are speculative because any amount the Tribe might gain through third party billing is highly variable and dependent on a number of factors outside the control of both IHS and the Tribe. Without any measure of whether such losses would even occur, let alone a way to determine the amount of such alleged losses, the damages claim is completely speculative. Furthermore, in entering into

an ISDEAA contract with the Tribe, IHS in no way agreed to ensure Tribal access to secondary business opportunities such as third party billing revenues.

3. IHS's Counterclaim

During FY 2012, IHS estimated the Tribe's indirect CSC need using the indirect cost rate as of December 7, 2010, which identified a rate for FY 2008. As set forth in the contract, IHS agreed to use the FY 2008 rate on a temporary basis, subject to adjustment when a rate was established for the FY 2012 funding period. *See also* Indian Health Manual, Part 6, Chapter 3: Contract Support Costs, §§ 6-3.4E(3). On September 19, 2014, IBC issued the FY 2012 indirect cost rate agreement; with a FY 2012 rate of 14.41%, which was higher than the FY 2008 rate used to estimate the indirect CSC amount for FY 2012. However, when the Tribe's final actual, eligible costs under the FY 2012 contract are considered, including by applying the applicable direct cost base and indirect cost rate, the Tribe's total indirect cost need for FY 2012 was no more than \$402,166. As a result, the Tribe was overpaid \$19,771 in indirect CSC funding in FY 2012. Please refund \$19,771 by check or money order made payable to the Department of Health and Human Services. Payment, along with a copy of this letter, should be sent to the following address:

Debt Collection Center, Accounting Services
Program Support Center
Department of Health and Human Services
7700 Wisconsin Avenue, Suite 8-811 OD
Bethesda, Maryland 20857

This claim arises out of the same contract and AFA as the Tribe's claims and also relates to the issue of pay-

ment of CSC under the ISDEAA; accordingly, it is invoked as a compulsory counterclaim to the Tribe's claims for adjustment to its indirect CSC funding for FY 2012. *See* 28 U.S.C. § 2415(f) (statute of limitations does not bar recovery by the Government where the counterclaim arises out of the transaction that is the subject matter of the underlying claims). Alternatively, IHS asserts its common law right to offset these amounts against any amounts due to the Tribe.

V. Appeal Rights

For the reasons stated above, the Tribe's claims are denied. This is a final decision. You may appeal this decision to the Civilian Board of Contract Appeals (CBCA), 1800 M Street, NW, 6th Floor, Washington, D.C. 20036. The mailing address for the CBCA is 1800 F Street, NW, Washington, D.C. 20405. If you decide to appeal, you shall, within ninety (90) days from the date you receive this decision, mail or otherwise furnish written notice to the CBCA and provide a copy to the individual from whose decision the appeal is taken. The notice shall indicate that an appeal is intended, and refer to the decision and contract number. Instead of appealing to the CBCA, you may bring an action in the U.S. Court of Federal Claims or in the United States District Court within twelve (12) months of the date you receive this notice.

Sincerely,

/s/ VERNA KUWANHOYIOMA
VERNA KUWANHOYIOMA
Contracting Officer

Exhibit A



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Phoenix Area Indian Health Service
Two Renaissance Square
40 North Central Avenue
Phoenix, Arizona 85004

December 29, 2010

Terry Rambler, Tribal Chairman
San Carlos Apache Tribe
P. O. Box O
San Carlos, AZ 85550

Ref: Contract No. HHSI2472011100002C
Combined Health Care Programs

Dear Tribal Chairman Rambler:

Enclosed is your official copy of Indian Self-Determination Contract and Funding Agreement. The first period is for nine months, January 1, 2011 through September 30, 2011. The second and third year will be on a Government fiscal year period, October 1 through September 30 of 2012 and 2013.

The award incorporates funds authorized by Continuing Resolution #2 for the period December 4, 2010 through December 18, 2010. Additional funds will be provided when made available to the Contracting Officer.

If you have any questions, please feel free to contact Verna Kuwanhoyioma, Supervisory Contract Specialist 602 364 5021 or Marilyn Lomakema, Contract Administrator at 602 300 9521.

Sincerely,

/s/ TENNYSON WELBOURNE
TENNYSON WELBOURNE
Contracting Officer

Enclosure

cc:

Anna Yazzie, Phoenix Area Finance, w/cy encl.

Jim Battese, TA/OSD, w/cy encl.

Nella Ben, CEO, San Carlos SU, w/cy encl.

Acting Director Tribal Health, San Carlos, w/ cy encl.

Carol Aday, Tribal Contract Specialist II, San Carlos,
w/cy encl.

James Toller, Tribal Treasurer, San Carlos, w/cy encl.

Contract File HHS12472011100002C

INDIAN SELF-DETERMINATION AGREEMENT

**BY AND BETWEEN
THE SAN CARLOS APACHE TRIBE
SAN CARLOS, ARIZONA**

AND THE

**DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
INDIAN HEALTH SERVICE**

**IHS CONTRACT NUMBER: HHSI2472011100002C
COMBINED HEALTH CARE PROGRAMS
EFFECTIVE AS OF: JANUARY 1, 2011**

SECTION I. AGREEMENT BETWEEN THE
SECRETARY AND THE SAN CARLOS
APACHE TRIBE TRIBAL
GOVERNMENT

(a) AUTHORITY AND PURPOSE

- (1) 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 (25 U.S.C. 450 et seq.) and by the authority of the San Carlos Apache Tribe tribal government or tribal organization (referred to in this agreement as the “Contractor”. The provisions of title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) are incorporated in this agreement.
- (2) PURPOSE. Each provision of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et. seq.) and each provision of this Contract shall be liberally construed for the benefit of the contractor to transfer the funding and the following related functions, services, activities, and programs (or portion thereof), that are otherwise contractible under section 102(a) of such Act, including all related administrative functions from the Federal Government to the Contractor:

1. Community Health Representative (CHR) Program
2. Emergency Medical Services (EMS) Program
3. Alcohol and Substance Abuse Program*
4. Behavioral Health Services Program*
5. Teen Wellness Program*
6. Health and Human Services

(*These three programs are collectively operated as the Wellness Center)

(3) **IHCIA Authorities.**

1. To the extent the PSFA descriptions in the Compact or Funding Agreement conflict with the new descriptions or definitions provided in the IHCIA, as amended, the IHCIA shall prevail unless they conflict with the ISDEAA.

2. The Tribe is committed to and shall provide quality health services that will at all times meet applicable standards.

(b) **TERMS, PROVISIONS, and CONDITIONS**

- (1) **TERM.** Pursuant to section 105 (c)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j (c)(1), term of this contract shall be nine months and two (2) years. Pursuant to section 105 (d)(1) of such act (25 U.S.C.J (d), upon the election by the Contractor, the period of this contract shall be determined on the basis of a fiscal year, unless the Secretary and the Contractor agree on a different period in

the annual funding agreement incorporated by reference in subsection (f)(2).

(2) EFFECTIVE DATE. This Contract shall become effective on January 1, 2011 and upon the approval and execution by the Contractor and the Secretary, unless the Contractor and the Secretary agree on an effective date other than the date specified in this paragraph.

(3) PROGRAM STANDARDS.

The Contractor agrees to administer the program, services, functions and activities (or portions thereof) listed in subsection (a)(2) of the Contract in conformity with the following standards:

Indian Health Services Manual, Professional Services, Chapter 16, Community Health Representatives Program

Indian Health Services Manual, Professional Services, Chapter 18, Alcohol/Substance Abuse Prevention Programs

Indian Health Services Manual, Professional Services, Chapter 14, Mental Health Programs

Indian Health Services Manual, Professional Services, Chapter 17, Emergency Medical Services

Arizona Department of Health Services: Emergency Medical Services

(4) FUNDING AMOUNT. Subject to the availability of appropriations, the Secretary

shall make available to the Contractor the total amount specified in the annual funding agreement incorporated by reference in subsection (f)(2). Such amount shall not be less than the applicable amount determined pursuant to section 106(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 j-1).

- (5) LIMITATION OF COSTS. The Contractor 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 Contractor 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 Contractor shall provide reasonable (60 days) notice to the appropriate Secretary. If the appropriate Secretary does not take such action as may be necessary to increase the amount of funds awarded under this contract, the contractor may suspend performance of the Contract until such time additional funds are awarded.
- (6) PAYMENT.
- (A) In General. Payments to the Contractor under this contract shall—
- (i) be made as expeditiously as practicable; and

- (ii) 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.
- (B) QUARTERLY, SEMIANNUAL, LUMP-SUM, AND OTHER METHODS OF PAYMENTS
- (i) In General. Pursuant to section 108(b) of the Indian Self-Determination and Education Assistance Act, and notwithstanding any other provision of law, for each fiscal year covered by this contract, the Secretary shall make available to the contractor the funds specified for the fiscal year under the annual funding agreement incorporated by reference pursuant to subsection (f)(2) by paying to the contractor, on a quarterly basis, one-quarter of the total amount provided for in the annual funding agreement for that fiscal year, in a lump-sum payment or as semi-annual payments, or any other method of payment authorized by law, in accordance with such methods as may be requested by the Contractor and specified in the annual funding agreement.

- (ii) Method of Quarterly Payment. If quarterly payments are specified in the annual funding agreement incorporated by reference pursuant to subsection (f)(2), each quarterly payment made pursuant to clause (i) shall be made on the first day of each quarter of the fiscal year, except that in any case in which the contract year coincided with the Federal fiscal year, payment for the first quarter shall be made not later than the date that is 45 calendar days after the date on which the Office of Management and Budget apportions the appropriations for the fiscal year for the programs, services, functions, and activities subject to this contract.
- (ii) Applicability. Chapter 39 of title 31, United States Code, shall apply to the payment of funds due under this Contract and the annual funding agreement referred to in clause (i)

(7) RECORDS AND MONITORING

- (A) 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 Interior or the Depart-

ment of Health and Human Services (or both), records of the Contractor shall not be considered Federal records for purposes of chapter 5 of title 5, United States Code.

- (B) Recordkeeping System. The Contractor shall maintain a recordkeeping system and, upon reasonable advance request, provide reasonable access to such records to the secretary.
- (C) Responsibilities of Contractor. The Contractor shall be responsible for managing the day-to-day operations conducted under this Contract for monitoring activities conducted under this contract to ensure compliance with the contract and applicable Federal requirements. With respect to the monitoring activities of the Secretary, the routine monitoring visits shall be limited to not more than one performance monitoring visit per year or as negotiated, by the head of each operating division, departmental bureau, or departmental agency, or duly authorized representative of such head unless—
 - (i) the Contractor agrees to one or more additional visits; or
 - (ii) the appropriate official determines that there is a reasonable cause to believe that grounds for reassumption of the contract, suspension of contract payments, or other seri-

ous contract performance deficiency may exist.

No additional visit referred to in clause (ii) 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 Contractor.

All visits shall be scheduled upon reasonable advance request.

(8) PROPERTY.

(A) In General. As provided in section 105(f) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j (f)), at the request of the contractor, the Secretary may make available, or transfer to the Contractor, all reasonable divisible real property, facilities, equipment, and personal property that the Secretary has used to provide or administer the programs, services, functions, and activities 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 Contractor.

(B) Records. The Contractor shall maintain a record of all property referred to in subparagraph (A) or other property acquired by the Contractor under sec-

tion 105(f)(2)(a) of such Act for purposes of replacement.

- (C) Joint Use Agreements. Upon the request of the Contractor, the Secretary and the Contractor shall enter into a separate joint use agreement to address the shared use by the parties of real or personal property that is not reasonably divisible.
- (D) Acquisition of Property. The Contractor is granted the authority to acquire such excess property as the contractor may determine to be appropriate in the judgment of the contractor to support the programs, services, functions, and activities operated pursuant to this Contract.
- (E) Confiscated or Excess Property. The Secretary shall assist the Contractor in obtaining such confiscated or excess property as may become available to tribes, tribal organizations, or local governments.
- (F) Screening Identification Card. A screening identification card (General Services Administration Form No. 2946) shall be issued to the Contractor no later than the effective date of this contract. The designated official shall, upon request, assist the contractor in securing the use of the card.

- (G) Capital Equipment. The Contractor shall determine the capital equipment, leases, rentals, property, or services the Contractor requires to perform the obligations of the contractor under this subsection. And shall acquire and maintain records of such capital equipment, property rentals, leases, property, or services through applicable procurement procedures of the Contractor.
- (9) AVAILABILITY OF FUNDS. Notwithstanding any other provision of law, any funds provided under this contract—
- (A) shall remain available until expended; and
- (B) with respect to such funds, no further—
- (i) approval by the Secretary, or
- (ii) justifying documentation from the Contractor, shall be required prior to the expenditure of such funds.
- (10) TRANSPORTATION. Beginning on the effective date of this Contract, the Secretary shall authorize the Contractor to obtain interagency motor pool vehicles and related services for performance of any activities carried out under this contract.
- (11) FEDERAL PROGRAM GUIDELINES, MANUALS OR POLICY DIRECTIVES.
- Except as specifically provided in the Indian Self-Determination and Education

Assistance Act (25 U.S.C. 450 et seq.) the Contractor is not required to abide by program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Contractor and the Secretary, or otherwise required by law.

(12) DISPUTES.

(A) 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 Contractor nominate a third party who is not employed by or significantly involved with the Secretary of the Interior, the Secretary of Health and Human Services, or the Contractor, to serve as a third-party mediator to mediate disputes under this Contract.

(B) Alternative Procedures. In addition to, or as an alternative to, remedies and procedures prescribed by section 110 of the Indian Self-Determination and Education assistance Act (25 U.S.C. 450m-1), the parties to this Contract may jointly—

- (i) submit disputes under this Contract to third-party mediation;
- (ii) submit the dispute to the adjudicatory body of the Contractor, including the tribal court of the Contractor

- (iii) submit the dispute to mediate processes provided for under the laws, policies, or procedures of the Contractor; or
- (iv) use the administrative dispute resolution processes authorized in subchapter IV of chapter 5 of title 5, United States Code.

(C) Effect of Decisions.

The Secretary shall be bound by decisions made pursuant to the processes set forth in subparagraph (b), except that the Secretary shall not be bound by any decision that significantly conflicts with the interest of Indians or the United States.

- (13) ADMINISTRATIVE PROCEDURES OF CONTRACTOR. Pursuant to the Indian Civil Rights Act of 1968 (25 U.S.C. 1301 et seq.), the laws, policies, and procedures of the Contractor shall provide for administrative due process (or the equivalent of administrative due process) with respect to programs, services, functions, and activities that are provided by the Contractor pursuant to this Contract.

(14) SUCCESSOR ANNUAL FUNDING AGREEMENT.

- (A) In General. Negotiations for a successor annual funding agreement, provided for in subsection (f)(2), shall begin not later than 120 days prior to

the conclusion of the preceding annual funding agreement. Except as provided in section 105 (c)(2) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(c)(2) the funding for each such successor annual funding agreement shall only be reduced pursuant to section 106(b) of such Act (25 U.S.C 450j-1-(b).

(B) Information. The Secretary shall prepare and supply relevant information, and promptly comply with any request by the Contractor for information that the contractor reasonably need to determine the amount of funds that may be available for a successor annual funding agreement, as provided for in subsection (f)(2) of this Contract.

(15) CONTRACT REQUIREMENTS; APPROVAL BY SECRETARY.

(A) In General. Except as provided in subparagraph (B), 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. 476), shall not apply to any contract entered into in connection with this Contract.

(B) Requirements. Each contract entered into by the Contractor with a third party in connection with performing the obligation of the Contractor under this contract shall—

- (i) be in writing
- (ii) identify the interested parties, the authorities of such parties, and purposes of the Contract;
- (iii) state the work to be performed under the contract; and
- (iv) state the process for making any claim, the payments to be made, and the terms of the Contract, which shall be fixed.

(c) OBLIGATIONS OF THE CONTRACTOR

- (1) Contract Performance. Except as provided in subsection (d)(2), the Contractor shall perform the programs, services, functions, and activities as provided in the annual funding agreement under subsection (f)(2) of this contract.
- (2) Amount of Funds. The total amount of funds to be paid under this Contract pursuant to section 106 (a) shall be determined in an annual funding agreement entered into between the Secretary and the contractor, which shall be incorporated into this contract.
- (3) Contracted Programs. Subject to the availability of appropriated funds, the Contractor shall administer the programs, services, functions and activities identified in this contract and funded through the annual funding agreement under subsection (f)(2).

(4) Trust Services for Individual Indians.

(A) In General. To the extent that the annual funding agreement provided funding for the delivery of trust services to individual Indians that have been provided by the Secretary, the Contractor shall maintain at least the same level of service as the Secretary provided for such individual Indians, subject to the availability of appropriated funds for such services.

(B) Trust Services to Individual Indians. For the purposes of this paragraph only, the term “trust services for individual Indians” means only those services that pertain to land or financial management connected to individually held allotments.

(5) Fair and Uniform Services. The Contractor shall provide services under this Contract in 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 Contractor arising out of the performance of the Contract.

(d) OBLIGATION TO THE UNITED STATES(1) TRUST RESPONSIBILITY

(A) In General. The United States reaffirms the trust responsibility of the United States to the San Carlos

Apache Tribe to protect and conserve the trust resources of the Indian tribes and the trust resources of individual Indians.

- (B) 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 tribes or individual Indians. The Secretary shall act in good faith in upholding such trust responsibility.
 - (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 Contractor to achieve the goals set forth in the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).
 - (3) PROGRAMS RETAINED. As specified in the annual funding agreement, the United States hereby retains the programs, services, functions, and activities with respect to the tribe(s) that are not specifically assumed by the Contractor in the annual funding agreement under subsection (f)(2).
- (e) OTHER PROVISIONS
- (1) Designated Officials. Not later than the effective date of this Contract, the United States shall provide to the Contractor, and the Contractor shall provide to the United States, as written designation of a senior of-

ficial to serve as a representative for notices, proposed amendments to the Contract, and other purposes for this Contract.

(2) Contract Modifications or Amendments.

(A) In General. Except as provided in subparagraph (B), 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 Contractor and the Secretary provide written consent for the modification.

(B) Exception. The addition of supplemental funds for programs, functions, and activities (or portions thereof) already included in the annual funding agreement under subsection (f)(2), and the reduction of funds pursuant to section 106(b)(2), shall not be subject to subparagraph (A).

(3) OFFICIALS NOT TO BENEFIT. No Member of Congress, or resident commissioner, shall be admitted to any share or 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 general benefit of the corporations.

- (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 Contractor for the purpose of securing business.
- (f) ATTACHMENTS
- (1) Approval of Contract. Unless previously furnished to the Secretary, the resolution of the San Carlos Apache Tribe authorizing the contracting of the programs, services, functions, and activities identified in this Contract is attached to this Contract as Attachment 1.
 - (2) Annual Funding Agreement
 - (A) In General. The funding agreement under this contract shall only contain:
 - (i) terms that identify the programs, services, functions, and activities to be performed or administered, the general budget category assigned, the funds to be provided, and the time and method of payment; and
 - (ii) such other provisions, including a brief description of the programs, services, functions, and activities

to be performed (including those supported by financial resources other than those provided by the Secretary), to which the parties agree.

(B) The funding agreement is hereby incorporated in its entirety in this Contract and attached to this Contract as Attachment 2.

(3) Certification Regarding Environmental Tobacco Smoke, in regards to Public Law 103-227, is incorporated and attached to this contract as Attachment 3.

(g) OTHER PROVISIONS

(1) CHARACTER INVESTIGATIONS

In accordance with Section 408 (c) of Public Law 101-630, the Indian Child Protection and Family Violence Prevention Act, 25 U.S.C. Section 3207(c), Investigations By Indian Tribes and Tribal Organizations, the contractor shall—

(A) 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

(B) employ individuals in those positions only if the individuals meet standards of character, no less stringent than those established and prescribed by the Secretary of Health &

Human Services, which the Indian tribe or tribal organization shall establish.

The minimum standards of character shall ensure that none of the individuals appointed to positions described in this section have been found guilty of, or entered a plea of nolo contendere or guilty to, any offense under Federal, State, or tribal law involving: crimes of violence, sexual assault, molestation, exploitation, or contact; prostitution; or crimes against persons.

- (h) SIGNATURES. This Agreement and its attachments constitute the full and complete agreement between the contracting parties.

THE SAN CARLOS APACHE TRIBE
SAN CARLOS, ARIZONA

BY: /s/ TERRY RAMBLER [12/28/2010]
TERRY RAMBLER, Chairman Date
San Carlos Apache Tribe

United States of America
Department of Health and Human Services
Indian Health Service

BY: /s/ TENNYSON WELBOURNE [12/29/2010]
TENNYSON WELBOURNE Date
Contracting Officer
Phoenix Area Indian Health Service

**SAN CARLOS APACHE TRIBE
SAN CARLOS APACHE INDIAN RESERVATION
SAN CARLOS, ARIZONA**

RESOLUTION

No: SP-10-257

(Requesting Renewal of P.L.93-638 Contract)

WHEREAS, The San Carlos Apache Tribe (“Tribe”) is a federally recognized Indian Tribe organized pursuant to the provisions of Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984); and

WHEREAS, The San Carlos Tribe council is responsible for the welfare of the Tribe to Article V, Section 1(A) of the Amended Constitution and By-Laws of the San Carlos Apache Tribe; and,

WHEREAS, The Tribal Council established the Tribal Department of Health and Human Services (“DHHS”) by Resolution No. 73-34, as amended, to plan, develop and administer the various programs and projects related to health and safety for the well-being of the members of the Tribe; and,

WHEREAS, The Indian Self-Determination and Education Assistance Act (P.L. 93-638, 25 U.S.C. 450 et ser.) as amended, allows for Tribes to contract IHS programs or any Portion thereof upon formal request; and,

WHEREAS, The Tribe originally contracted a P.L. 93-638, the Tribal DHHS to provide combined health care programs, oversight ad-

ministration and coordination of the contract and grants; and,

WHEREAS, The continuation of the contracting period (#HHS12470810009C) for the combined health care programs ending September 30, 2010; and,

WHEREAS, The Tribal Council finds that a renewal of the P.L. 93-638 contract to be in the best interest of the members of the Tribe and seeks to continue the contract for an additional three years; and,

WHEREAS, The Terms of the contract were reviewed by members of the Council and the contract is not substantially different than the prior contract.

NOW, THEREFORE BE IT RESOLVED THAT: The San Carlos Apache Tribal Council authorizes the PL 93-638 Contract of the IHS programs: Community Health Representative Services, Emergency Medical Services, Alcohol and Substances Abuse Programs, Mental Health Services, and Health & Human Services—the effective date of October 1, 2010, and will continue for three years through September 30, 2013.

BE IT FURTHER RESOLVED by the Tribal Council of the San Carlos Apache Tribe that the Chairman, or in his absence, the Vice Chairman, or designee, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

CERTIFICATION

I, the undersigned Secretary of the San Carlos Apache Tribal Council hereby Certify that the Tribal Council is presently composed of eleven (11) members of whom seven (7), constituting a quorum were present at a Special Council Meeting hereto held on the 24th day of September 2010 and that the foregoing Resolution No. SP-10-257 was duly adopted by a vote of 6 for; 0 opposed, of the Tribal Council pursuant to section 1(a) of the amended Constitution and Bylaws of the San Carlos Apache Tribe effective February 24, 1954.

/s/ BEATRICE HENDRICKS
BEATRICE HENDRICKS, Acting Tribal Secretary
San Carlos Apache Tribal Council

ATTACHMENT 2

FY 2011 FUNDING AGREEMENT (FA)
ATTACHMENT TO CONTRACT NO.
HHSI2472011100002C

FOR

DEPARTMENT OF HEALTH, EMERGENCY
MEDICAL SERVICES, COMMUNITY HEALTH
REPRESENTATIVE, ALCOHOL AND
SUBSTANCE ABUSE AND MENTAL HEALTH
PROGRAMS

BY AND BETWEEN

SAN CARLOS APACHE TRIBE

AND THE

UNITED STATES OF AMERICA DEPARTMENT
OF HEALTH AND HUMAN SERVICES
INDIAN HEALTH SERVICE

FOR THE PERIOD

JANUARY 1, 2011 through SEPTEMBER 30, 2011

Pursuant to

PL 93-638 As Amended By PL 103-413
(25 U.S.C. 450 et seq.)

Section 1(a) IN GENERAL.—This Funding Agreement, referred to in this agreement as the “FA”, is incorporated into the Indian Self-Determination Agreement, referred to in this agreement as the “Contract”, first executed by the San Carlos Apache Tribe, referred to in this agreement as the “Tribe”, and the Secretary of Health and Human Services, referred to in this agreement as the “Secretary”, as Attachment #2 of the original agreement.

(b) PURPOSE.—Pursuant to Section 1(f)(2) of the contract, this FA shall contain:

- (1) terms that identify the programs, services, functions, and activities to be performed or administered.
- (2) the general budget category assigned,
- (3) the funds to be provided,
- (4) the time and method of payment,
- (5) a brief description of the programs, services, functions, and activities to be performed (including those supported by financial resources other than those provided by the Secretary), and
- (6) such other provisions to which the parties agree.

(c) PROGRAMS, SERVICES, FUNCTIONS, AND ACTIVITIES.

- (1) The programs, services, functions, and activities to be performed and administered pursuant to Sec. 1(a)(2) of the Contract are as follows:

Community Health Representative Program, Emergency Medical Services Program, Alcohol and Substance Abuse Program*, Mental Health Program*, Teen Wellness Program* and Health and Human Services.

(*These three programs are collectively operated as the Wellness Center)

- (2) A brief description of the programs, services, functions, and activities to be performed or administered pursuant to Section 1(a)(2) of the contract are as follows:

Services to be provided in accordance with the Statements of Work (SOW).

- (3) PROGRAMS RETAINED. With the exception of the program(s) listed in paragraph (a) (1) of the AFA, the Secretary hereby retains all other programs, services, functions, and activities with respect to the San Carlos Apache Tribe pursuant to Section 1 (d)(3) of the Contract.
- (4) FUTURE NEGOTIATIONS. The Tribe retains the right to negotiate with the Secretary under the provisions of the Indian Self-Determination and Education Assistance Act, as amended, to include such retained programs, services, functions, and activities in the current and/or future AFAs, including the inclusion of Area and Headquarters “shares” once they are identified.
- (5) SPECIAL EARMARKED PROGRAMS, SERVICES AND FUNCTIONS. The Tribe is not authorized under this Funding Agreement to redesign or to shift or transfer any of the funding for any programs, services or functions which

are subject to special restrictions imposed by appropriations acts.

(d) FUNDING AND BUDGET CATEGORY

- (1) The funding amounts and budget categories negotiated for the San Carlos Apache Tribe are as follows:

<u>Program/Activity</u>	<u>Amount</u>
Hospitals & Clinics	\$958,041
Mental Health	\$290,415
Alcohol	\$906,525
Community Health Representative	\$602,101
M & I	\$3,268
Equipment Replacement	\$1,260
Direct Contract Support Cost	\$135,203
CSC Indirect	<u>\$423,731</u>
	\$3,320,544

- (2) The total funds cited above are not available for obligation or disbursement at award of this FA. Pursuant to Section 1 (b)(4) of the Contract, funds will be made available by subsequent modification(s) to this FA, subject to the availability of appropriations and distribution of apportionment to the Phoenix Area Indian Health Service. The Tribe is provided operational funds in the same manner as is provided to Indian Health Service, under the Continuing Resolution Authority (CRA) as listed below.

Specific FY 2011 funds based on CRA 2 for the period December 4, 2010 through December 18, 2010 is incorporated into this award as follows:

1. H&C—\$39,375
2. Mental Health—\$11,936
3. Alcohol—\$37,258
4. CHR—\$24,746
5. M&I—\$3,268
6. Equipment—\$1,260
7. CSC Direct—\$5,557
8. CSC Indirect—\$17,415

Funded

H/C	7510390	1.7100400161	886	04.09	41811	1-J403309	0.00	0.00	\$39,375.00
MH	7510390	1.7100400163	861	04.09	41811	1-J403809	0.00	0.00	\$11,936.00
Alcohol	7510390	1.7100400164	839	04.09	41811	1-J403909	0.00	0.00	\$37,258.00
CHR	7510390	1.7102400274	874	04.09	41811	1-J407509	0.00	0.00	\$24,746.00
M&I	75X0391	1.7202400376	814	04.09	41811	1-J40MA72	0.00	0.00	\$3,268.00
Equipment	75X0391	1.7206401271	884	04.09	41811	1-J40EP72	0.00	0.00	\$1,260.00
CSC/DIR	7510390	1.7114400861	882	04.09	41810	1-J405040	0.00	0.00	\$5,557.00
CSC/IDC	7510390	1.7114400861	882	04.09	41814	1-J405040	0.00	0.00	\$17,415.00
						Total	0.00	0.00	\$140,815.00

(3) CONTRACT SUPPORT COSTS

The parties agree that the CSC funding under this Funding Agreement (FA) will be calculated and paid in accordance with Section 106(a) of the Act; IHS CSC Policy (Indian Health Manual—Part 6, Chapter 3) or its successor; and any statutory restrictions imposed by Congress. In accordance with these authorities and available appropriations for CSC, the parties agree that

under this FA the San Carlos Apache Tribe will receive direct CSC in the amount of \$135,203, and indirect CSC in the amount of \$423,731. These amounts were determined using the FY 2010 IHS CSC appropriation, and the San Carlos Apache direct cost base and indirect rate as of December 7, 2010, and may be adjusted as set forth in the IHS CSC Policy (IHM 6-3) as a result of changes in program bases, Tribal CSC need, and available CSC appropriations. Any adjustments to these amounts will be reflected in future modifications to this FA.

- (4) **BUDGET.** Detailed budgets reflecting the amounts identified under Sec. 1(d) above may, at the option of the Tribe, be attached to this FA as Attachment "B".

The Tribe retains the right to re-budget to meet Contract objectives pursuant to Sec. 106(o) of the Indian Self-Determination and Education Assistance Act.

- (e) **PAYMENTS.** A **lump sum** payment method has been negotiated for this AFA. Payment(s) shall be made in accordance with the following:
- (1) If the lump sum method of payment was negotiated, the amount to be paid shall be the total of amounts cited in paragraph (d)(1) above. The Phoenix Area Division of Financial Management shall make this payment within 30 calendar days after receipt of the AFA.
 - (2) Payments of additional funds identified pursuant to modifications to this AFA shall be made

available with 30 days after incorporation into the AFA.

- (3) Payments will be processed by electronic transfer to the Tribe by the:

Phoenix Area Indian Health Service
Division of Financial Management
Two Renaissance Square
40 North Central Avenue Phoenix, AZ 85004

- (4) For payment inquiries contact the Division of Financial Management at (602) 364-5093.

- (5) All payment(s) due to the Tribe under this AFA are subject to the Prompt Payment Act, which has been incorporated by reference under Section 1 (b)(6)(B)(iii) of the Contract.

(f) OTHER PROVISIONS

- (1) NO REDUCTION IN PROGRAMS, SERVICES TO OTHER TRIBES. Pursuant to Section 105(i)(2) of the Act, nothing in the FA diminishes any programs, services or functions to other tribes.

- (2) AMENDMENT OR MODIFICATION OF AGREEMENT. Except as otherwise provided by the FA, the Contract, or by law, any modifications of this agreement shall be in the form of written amendment and shall require written consent of the Tribe and the Secretary or his/her designee.

- (3) REPORTS. As specified by Section 5 [25 USC 450c], the Tribe is responsible for the timely submission of the following reports:

- (A) Quarterly Report of Expenditures. To report on SF 269A and attachment to SF 269A, which is due within 60 days after the end of each quarter.

<u>Quarterly Period Covered</u>	<u>Due By</u>
1/01/2011 - 3/30/2011	5/31/2011
4/01/2011 -6/30/2011	8/31/2011
7/01/2011-9/30/2011	11/30/2011

- (B) Nine month narrative report is due within 45 days after end of this funding year.

Period from January 1, 2011 to September 30, 2011, due by November 15, 2011.

- (C) Annual Audit Report in accordance with the Single Audit Act Amendments of 1996 (Public Law 104-156) dated July 5, 1996. For each fiscal year during which the San Carlos Apache Tribe receives or expends funds pursuant to this agreement, the tribal organization shall submit a single-agency audit report, as required by 31 U.S.C. 7505. **(Due 6/30/2012)**

The above reports are to be submitted to the Contracting Officer at: Phoenix Area Indian Health Service, Division of Acquisition Management Branch, Two Renaissance Square, 40 North Central Avenue, Phoenix, Arizona 85004-0931.

- (D) CHR PCC reports in accordance with the CHR Reporting Requirements.

- (E) Electronic Data Entry: Alcohol/Substance Abuse and Mental Health Programs: As part of the IHS program standards, IHS Manual, Part 3, Chapter 14 and Chapter 18, the Tribe agrees to use the Integrated Alcohol/Mental Health Behavioral Health RPMS System upon implementation. This system is a behavioral health reporting package designed for recording and tracking patient care related to behavioral health. This reporting package integrates data entries for Alcohol/Substance Abuse and reporting for the Mental Health/Social Service Program by combining the data entry into one package Behavioral Health Graphical User Interface: BH-GUI v 4.0.
- (4) ADJUSTMENT DUE TO THE CONGRESSIONAL ACTIONS. The parties to this Funding Agreement recognize that the total amount, of the funding in this Funding Agreement is subject to adjustment due to the Congressional actions in appropriations acts. Upon enactment of relevant appropriations acts or other law affecting availability of funds to the IHS and the Department of Health and Human Services, the amount will be adjusted as necessary and the Tribe will be notified of such actions immediately.
- (g) SIGNATURES. This FA and its attachments constitute the full and complete agreement between the contracting parties.

San Carlos Apache Tribe

BY: /s/ TERRY RAMBLER [12/28/2010]
TERRY RAMBLER, Chairman Date
San Carlos Apache Tribe

United States of America
Department of Health and Human Services
Indian Health Service

BY: /s/ TENNYSON WELBOURNE [12/29/2010]
TENNYSON WELBOURNE Date
Contracting Officer
Phoenix Area Indian Health Service

ATTACHMENT 3**CERTIFICATION REGARDING
ENVIRONMENTAL TOBACCO SMOKE**

Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any Indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, daycare, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable Federal Funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 for each violation and for the imposition of an administrative compliance order on the responsible entity,

By signing this certification the Tribal Contractor certifies that the submitting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The submitting organization areas that it will require that the language of this certification be included in any

subawards which contain provisions for children's services and that all subrecipients shall certify accordingly,

/s/ <u>TERRY RAMBLER</u>	<u>[12/28/2010]</u>
TERRY RAMBLER, Chairman	Date
San Carlos Apache Tribe	

ATTACHMENT 2

FY 2012 ANNUAL FUNDING AGREEMENT (AFA)

ATTACHMENT TO CONTRACT NO.
HHSI2011 100002C

COMMUNITY HEALTH REPRESENTATIVE
PROGRAM ALCOHOL/SUBSTANCE ABUSE
PROGRAM
MENTAL HEALTH PROGRAM EMERGENCY
MEDICAL SERVICES PROGRAM

BY AND BETWEEN

THE SAN CARLOS APACHE TRIBE

AND THE

UNITED STATES OF AMERICA DEPARTMENT
OF HEALTH AND HUMAN SERVICES INDIAN
HEALTH SERVICE FOR THE PERIOD

OCTOBER 01, 2011 THROUGH SEPTEMBER 30, 2012

Pursuant to
PL 93-638 As Amended By PL 103-413

Section 1(a) IN GENERAL.—This Annual Funding Agreement (“AFA”), is incorporated into Indian Self Determination and Education Assistance Act (“IS-DEAA” or the “Act”) Contract No. 2472011100002C (“Contract”), between the San Carlos Apache Tribe (the “Tribe”) and the Secretary of Health and Human Services, through the Indian Health Service (the “IHS”) as Attachment #2 thereto.

(b) EFFECTIVE DATE AND TERM. This AFA shall become effective on October 01, 2011 and shall extend through September 30, 2012.

(c) PURPOSE.—Pursuant to Section 1(f)(2) of the Contract, this AFA shall contain:

- (1) terms that identify the programs, services, functions, and activities to be performed or administered;
- (2) the general budget category assigned;
- (3) the funds to be provided;
- (4) the time and method of payment;
- (5) a brief description of the programs, services, functions, and activities to be performed (including those supported by financial resources other than those provided by the Secretary); and
- (6) such other provisions to which the parties agree.

(d) PROGRAMS, SERVICES, FUNCTIONS, AND ACTIVITIES.

- (1) The programs, services, functions, and activities (“PFSAs”) to be performed and administered

pursuant to Section 1(a)(2) of the Contract are as follows:

Community Health Representative Program
 Alcohol/Substance Abuse Program
 Mental Health Program
 Emergency Medical Services Program

- (2) A brief description of the PFSAs to be performed or administered pursuant to Section 1(a)(2) of the Contract are as follows:

Descriptions of the PSFAs set forth in subsection 1 are revised as set forth ATTACHMENT 4 Scopes of Work and are attached to the Contract.

(e) **FUNDING AND BUDGET CATEGORY**

- (1) The annual funding amounts and budget categories negotiated for the Tribe are as follows:

<u>Program/Activity</u>	<u>Amount</u>
Hospitals & Clinics	\$958,041.00
Mental Health	\$290,415.00
Alcohol	\$ 906,525.00
CHR	\$600,897.00
Contract Support Costs Direct	<u>\$ 135,203.00</u>
Total amount	\$2,891,081.00

- (2) These funds will be provided to the Tribe in a lump sum when funds are allocated to the Phoenix Area Office.
- (3) The parties agree that the Contract Support Cost (“CSC”) funding under this AFA will be

calculated and paid in accordance with Section 106 of the Act; IHS CSC Policy (Indian Health Manual—Part 6, Chapter 3); and any Congressional restrictions in appropriations or other statutes. In accordance with these authorities and subject to available appropriations for CSC, the parties agree that under this AFA the Tribe will receive direct CSC in the amount of \$135,203.00 and indirect CSC in the amount of \$0.00. These amounts may be adjusted as set forth in the IHS CSC Policy (IHM 6-3) as a result of changes in program bases and/or Tribal CSC need, and available CSC appropriations. Any adjustments to these amounts will be reflected in future modifications to this AFA.

(f) OTHER PROVISIONS

- (1) AUDIT REPORTS: Pursuant to the ISDEAA, 25 U.S.C. § 450c(f)(1), the Single Audit Act, as amended, 31 U.S.C. §§ 7501-7507, and OMB Circular A-133, the Tribe shall provide to Indian Health Service (IHS), through the National External Audit Review (“NEAR”), on the Secretary’s behalf, and the Federal Audit Clearinghouse, copies of its annual Single Audit Report and any Management Letters issued by its auditors as required by OMB Circular A-133. The Tribe shall provide such other reports as agreed upon by the parties from time to time.
- (2) ELECTRONIC DATA ENTRY: As part of the IHS program standards for Alcohol and Substance Abuse Prevention activities, the Tribe shall report data utilizing the IHS Behavioral Health Reporting System. If a non-IHS data

system is used, the data collected must meet or exceed the IHS Behavioral Health Reporting System.

- (3) **ELECTRONIC DATA ENTRY:** The Tribe shall provide CHR PCC data reports in accordance with the CHR Standards, Part 3, Chapter 16.
- (4) **CONFIDENTIALITY OF MEDICAL RECORDS.** The Tribe will implement procedures appropriate to the PFSAs proposed to be contracted, assuring the confidentiality of medical records and of information relating to the financial affairs of individual Indians obtained as part of the operation of the contracted programs.
- (5) **ADJUSTMENT DUE TO THE CONGRESSIONAL ACTIONS.** The parties to this AFA recognize that the total amount of the funding in this AFA is subject to adjustment due to the Congressional actions in appropriations acts. Upon enactment of relevant appropriations acts or other law affecting availability of funds to the IHS and the Department of Health and Human Services, the amount will be adjusted as necessary and the Tribe will be notified of such actions immediately.
- (g) **SIGNATURES.** This AFA constitute the full and complete agreement between the contracting parties.

**San Carlos Apache Tribe
San Carlos, AZ**

BY: /s/ TERRY RAMBLER
TERRY RAMBLER,
Tribal Chairman

[11/21/2011]
Date

**United States of America
Department of Health and Human Services
Indian Health Service**

BY: /s/ JAMES ROGERS
JAMES ROGERS
Contracting Officer
Phoenix Area Indian Health Service

[23 Nov. 2011]
Date

ATTACHMENT 2
FY 2013 ANNUAL FUNDING AGREEMENT (AFA)

ATTACHMENT TO CONTRACT NO.
HHSI2472011100002C

BY AND BETWEEN

SAN CARLOS APACHE TRIBE

AND THE

UNITED STATES OF AMERICA DEPARTMENT
OF HEALTH AND HUMAN SERVICES
INDIAN HEALTH SERVICE

FOR THE PERIOD

OCTOBER 01, 2012 through September 30, 2013

Pursuant to
PL 93-638 As Amended By PL 103-413
(25 U.S.C. 450 et seq.)

DIVISION OF
ACQUISITION MGMT
2012 NOV -6 PM 4:18
PHOENIX AREA IHS

Section 1(a) IN GENERAL.—This Annual Funding Agreement (“AFA”), is incorporated into Indian Self-Determination and Education Assistance Act (“ISDEAA” or the “Act”) Contract No. HHS12472011100002C (“Contract”), between the San Carlos Apache Tribe (the “Tribe”) and the Secretary of Health and Human Services, through the Indian Health Service (the “IHS”) as Attachment #2 thereto.

(b) EFFECTIVE DATE AND TERM. This AFA shall become effective on October 1, 2012 and shall extend through September 30, 2013.

(c) PURPOSE.—Pursuant to Section 1(f)(2) of the Contract, this AFA shall contain:

- (1) terms that identify the programs, services, functions, and activities to be performed or administered;
 - (2) the general budget category assigned;
 - (3) the funds to be provided;
 - (4) the time and method of payment;
 - (5) a brief description of the programs, services, functions, and activities to be performed (including those supported by financial resources other than those provided by the Secretary); and
 - (6) such other provisions to which the parties agree.
- (d) PROGRAMS, SERVICES, FUNCTIONS, AND ACTIVITIES.
- (1) The programs, services, functions, and activities (“PFSAs”) to be performed and administered

pursuant to Section 1(a)(2) of the Contract are as follows:

DHHS

Community Health Representative Program
Alcohol Substance Abuse Program

Mental Health Program

Emergency Medical Services Program

- (2) A brief description of the PFSAs to be performed or administered pursuant to Section 1(a)(2) of the Contract are as follows:

A description of the PSFA set forth in subsection 1 are in the attached Scope of Work.

(e) FUNDING AND BUDGET CATEGORY

- (1) The annual funding amounts and budget categories negotiated for the Tribe are as follows:

<u>Program/Activity</u>	<u>Amount</u>
Hospitals & Clinics	\$1,026,033.00
Mental Health	\$289,950.00
Alcohol	\$905,075.00
CHR	\$599,936.00
CSC Direct	\$135,608.00
Total Amount	\$2,956,602.00

- (2) These funds will be provided to the Tribe in a lump sum when funds are allocated to the Phoenix Area Office.
- (3) Contract Support Costs

The parties agree that the contract support cost (“CSC”) funding under this AFA will be calculated and paid in accordance with Section 106 of the Act; IHS CSC Policy (Indian Health Manual—Part 6, Chapter 3); and any Congressional restrictions in appropriations or other statutes. In accordance with these authorities and subject to available appropriations for CSC, the parties agree that under this AFA the San Carlos Apache Tribe will receive direct CSC in the amount of \$135,608.00 and indirect-type CSC in the amount of \$Zero. These amounts may be adjusted as set forth in the IHS CSC Policy (IHM 6-3) as a result of changes in program bases and/or Tribal CSC need, and available CSC appropriations. Any adjustments to these amounts will be reflected in future modifications to this AFA.

(f) OTHER PROVISIONS

- (1) AUDIT REPORTS. Pursuant to the ISDEAA, 25 U.S.C. § 450c(f)(1), the Single Audit Act, as amended, 31 U.S.C. §§ 7501-7507, and OMB Circular A-133, the Tribe shall provide to Indian Health Service (IHS) through the National External Audit Review (“NEAR”), on the Secretary’s behalf, and the Federal Audit Clearinghouse, copies of its annual Single Audit Report and any Management Letters issued by its auditors as required by OMB Circular A-133. The Tribe shall provide such other reports as agreed upon by the parties from time to time.
- (2) Annual Financial Report on SF 269A and attachment to SF 269A is due within 90 days after the end of this AFA period.

The above report is to be submitted to the Contracting Officer at: Phoenix Area Indian Health Service

Division of Acquisition Management
Branch
Two Renaissance Square
40 North Central Avenue, Suite 507
Phoenix, Arizona 85004

(3) ELECTRONIC DATA ENTRY: Electronic Data Entry for A/SA and MH

As part of the IHS program standards for behavioral health programs (mental health and/or substance abuse) the Tribe agrees to report data utilizing the current IHS Behavioral Health Reporting System (BHRS). The BHRS will be effective when: (1) the system has been installed and functional; (2) the staff is trained; and (3) required documents for implementation have been completed and approved. The BHRS will not apply if: (1) the IHS BHRS is not accessible to the program(s) or (2) the Tribal BH program develops or utilizes a Non-IHS data system that meets or exceeds the IHS BHRS. If the Non-IHS data system utilized is not compatible with the IHS RPMS, the workload data requirements will be submitted in quarterly and/or annual report (s).

(4) ELECTRONIC DATA ENTRY: The Tribe shall provide CHR PCC data reports in accordance with the CHR Standards, Part 3, Chapter 16.

(5) CONFIDENTIALITY OF MEDICAL RECORDS. The Tribe will implement procedures

appropriate to the PFSAs proposed to be contracted, assuring the confidentiality of medical records and of information relating to the financial affairs of individual Indians obtained as part of the operation of the contracted programs.

(6) ADJUSTMENT DUE TO THE CONGRESSIONAL ACTIONS. The parties to this AFA recognize that the total amount of the funding in this AFA is subject to adjustment due to the Congressional actions in appropriations acts. Upon enactment of relevant appropriations acts or other law affecting availability of funds to the IHS and the Department of Health and Human Services, the amount will be adjusted as necessary and the Tribe will be notified of such actions immediately.

(g) SIGNATURES. This AFA constitute the full and complete agreement between the contracting parties.

San Carlos Apache Tribe

BY: /s/ TERRY RAMBLER [10/30/2012]
TERRY RAMBLER, Date
Tribal Chairman

United States of America
Department of Health and Human Services
Indian Health Service

BY: /s/ VERNA KUWANHOYIOMA [11/14/2012]
VERNA KUWANHOYIOMA Date
Contracting Officer
Phoenix Area Indian Health Service

Exhibit B

San Carlos Apache Tribe
Department of Health and Human Services
Emergency Medical Services Program

Mission

To increase the health and wellbeing of the San Carlos Apache Nation by promoting healthy lifestyles, delivering the highest quality services, expanding services that adapt to the community's needs, embracing our history and strengthening pride in our cultural identity.

Vision

We envision the San Carlos Apache Nation to be self-sufficient and in control of its future practicing spiritual, physical, emotional and social well-being.

FY2013 SCOPE OF WORK

The San Carlos Health and Human Services is responsible for managing the delivery of Emergency and Non-emergency services, to over 14,000 tribal members of the San Carlos Apache Reservation, and nontribal members, as well as those who commute through it.

A. Statement of Work

Emergency Medical Services

The San Carlos Emergency Medical Services Program provides basic and advanced emergency medical care, as well as non-emergency transportation services, for patients with medical appointments.

1. Provision of Patient Assessment and Therapeutic Care Services:

Primary Function (goals):

- a. Patient assessment to determine the type of care needed.
- b. Public education and awareness.
- c. Attract and facilitate appropriate development and progressive growth.

B. EMS Values and Services:

- Quality emergency and non-emergency services 24-hours, 7-days per week;
- We are committed to providing quality medical care;
- Services are provided efficiently and effectively, within our fiscal capabilities;
- Expansion plans and program improvement will continue;
- EMS is committed to enhancing the services provided, for the San Carlos Apache Reservation and for those who commute through it;
- EMS will engage in the support of the community it serves;
- EMS is committed to developing its workforce, and providing needed training opportunities for advancement.

Objective 1: To provide responsive, efficient, and appropriate emergency medical services.

- A. Provide 24-hour, 7-days per week services to the communities of the San Carlos Apache Reservation, and to those commuting through it.
- B. Provides services with qualified Arizona Department of Health Services (ADHS) certified B-EMT, I-EMT, and CEP.
- C. Maintains an information management system.
- D. Maintain an efficient billing system, to maximize third party revenues. Third Party Payers includes: Medicare, AHCCCS, Private Insurance, and IHS Contract Health Services. IHS Contract Health services will be billed for all IHS medically referred inter- facility transports. Services billed through IHS Contract Health Services will be paid in accordance with Contract Health Rules and Regulations.
- E. Continue public education.
- F. Maintaining MOU/MOA with adjacent agencies
- G. Continue vehicle replacement with GSA Fleet Management
- H. Finalize program policies and procedures
- I. Operate four (4) ambulances, staffed with ALS and BLS personnel, in accordance with ADHS standards.
- J. Continue and maintain the availability of back up emergency vehicles
- K. Maintains a National Incident Management Systems (NIMS) certified personnel
- L. In compliance with Health Improvement Patient Portability Act (HIPPA)

- M. Continue with internal patient referrals to Department of Health and Human Service Programs.

Objective 2: To provide quality non-emergency medical transportation services.

- A. Provide ground transportation services to surrounding medical facilities, for patient with medical appointments.
- B. Maintain a daily log of patients served and destination.
- C. Operate and maintain at least eight (8) non-emergency transportation vehicles.
- D. Ensures all drivers have appropriate training in 1st Aid/CPR, defensive driving; and safety training.
- E. All transportation vehicles to be maintained and service as required.
- F. Generate maximum third party revenues for all eligible patient transports.
- G. Provide nutritious meals to all patients transported over 100 miles one way.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

Civil No. [21CU37-R]

NORTHERN ARAPAHO TRIBE, PLAINTIFF

v.

NORRIS COCHRAN, IN HIS OFFICIAL CAPACITY AS
ACTING SECRETARY, U.S. DEPARTMENT OF HEALTH
& HUMAN SERVICES

ELIZABETH FOWLER, IN HER OFFICIAL CAPACITY AS
ACTING DIRECTOR, INDIAN HEALTH SERVICE

UNITED STATES OF AMERICA, DEFENDANTS

Filed: Feb. 19, 2021

COMPLAINT

INTRODUCTION AND SUMMARY

Plaintiff Northern Arapaho Tribe, for its cause of action against the Defendants named above, alleges as follows:

1. This is a suit against the United States for breach of contract and statute by the Indian Health Service (“IHS”), an agency in the U.S. Department of Health and Human Services. Plaintiff, the Northern Arapaho Tribe (“Tribe” or “NAT”), seeks money damages under the Contract Disputes Act, 41 U.S.C. §§ 7101-7109, and declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and 25 U.S.C. § 5331(a), based on the Secretary’s violation of the Tribe’s contractual

and statutory right to the payment of full funding of contract support costs (“CSC”) for a Contract and Annual Funding Agreement entered into under the ISDEAA, Pub. L. No. 93-638, as amended, 25 U.S.C. §§ 5301-5399.

2. The Supreme Court has held that the United States’ failure to pay the full CSC associated with its ISDEAA agreements constitutes a violation of law and breach of contract. *Salazar v. Ramah Navajo Chapter*, 567 U.S. 182, 185 (2012) (“[W]e hold that the Government must pay each tribe’s contract support costs in full.”); *Cherokee Nation v. Leavitt*, 543 U.S. 631, 634 (2005) (“The [ISDEAA] specifies that the Government must pay a tribe’s costs, including administrative expenses.”).

3. Defendants breached the Tribe’s agreements and violated the ISDEAA by failing to pay the full CSC owed to the Tribe under the statute and the Tribe’s Contract and Annual Funding Agreement for fiscal year (“FY”) 2016 and FY 2017.⁵

4. Defendants paid only a portion of the CSC owed under the Tribe’s contracts, due to their misinterpretation of the ISDEAA. Specifically, IHS failed to pay CSC associated with the portion of the Tribe’s health care program funded with third-party revenues-payments from Medicare, Medicaid, private insurers, and others. In doing so, IHS breached its contractual agreements with the Tribe.

⁵ The Funding Agreement for FY 2016 was originally entered into on a calendar-year basis beginning on January 15, 2016, but was modified to a fiscal year ending September 30, 2016. The FY 2017 agreement ran from October 1, 2016 through September 30, 2017.

5. This action challenges IHS's denial of the Tribe's Contract Disputes Act claims for FYs 2016 and 2017 and seeks damages and other relief.

JURISDICTION AND VENUE

6. This controversy arises under agreements between the United States and the Tribe for the operation of federal health programs for Indians carried out pursuant to the ISDEAA. This Court has subject matter jurisdiction under the Contract Disputes Act, 41 U.S.C. § 7104(b), and the ISDEAA. *See* 25 U.S.C. § 5331(a) (providing original jurisdiction to United States district courts, concurrent with the Court of Federal Claims, over civil actions for money damages arising under ISDEAA contracts).

7. In two letters dated May 30, 2019, the Tribe requested IHS contracting officer's decisions on claims for underpaid CSC in FYs 2016 and 2017. According to IHS, the agency received these requests on June 25, 2019. Letter from Michelle Begay, Director, Office of Tribal Programs, IHS, to Mr. Lee Spoonhunter, Chairman, Northern Arapaho Business Council, at 1 (February 20, 2020) ("Decision Letter"). In the Decision Letter, IHS denied the Tribe's claims for both years. The Tribe has filed this action within 12 months of receipt of the IHS decisions, as required by the Contract Disputes Act. 41 U.S.C. § 7104(b)(3).

8. This Court has jurisdiction to review the IHS's decisions on the FY 2016 and FY 2017 claims under the Contract Disputes Act and Section 110 of the ISDEAA. 41 U.S.C. § 7104(b); 25 U.S.C. § 5331(a); 25 U.S.C. § 5331(d).

9. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to this action occurred in this judicial district and because all defendants are subject to this Court's exercise of personal jurisdiction.

PARTIES

10. Plaintiff Northern Arapaho Tribe is a federally recognized tribe occupying the Wind River Reservation in Wyoming, and is an "Indian tribe" eligible to contract and compact with IHS under the ISDEAA. *See* 25 U.S.C. § 5304(e). Since 2016, the Tribe has contracted with IHS to carry out a range of health care programs, functions, services, and activities ("PFSAs") through the Wind River Family and Community Health Care System.

11. Defendant Norris Cochran, the Acting Secretary of Health and Human Services ("Secretary"), has overall responsibility for carrying out all the functions, responsibilities, authorities, and duties of the U.S. Department of Health and Human Services, including oversight of the IHS, an agency within the Department. He is sued in his official capacity.

12. Defendant Elizabeth Fowler is the Acting Director of the IHS, the agency charged by law with the responsibility for implementing, on behalf of the United States, the ISDEAA and other health laws benefiting American Indians and Alaska Natives. 25 U.S.C. § 1661(c)(3). She is sued in her official capacity.

13. The United States is a party to the Tribe's ISDEAA agreements. *See* *Between the Secretary of the Department of Health and Human Services and the Northern Arapaho Business Council*, No.

HHSI244201600002C (effective Jan. 15, 2016) (“Contract”), Art. I, § 1 (“This Agreement, denoted a Self-Determination Contract, . . . is entered into by the Secretary of Health and Human Services . . . for and on behalf of the United States pursuant to title I of the [ISDEAA]. . . ”).

STATUTORY BACKGROUND: THE ISDEAA

14. During FY 2016 and FY 2017, the Tribe provided health care services to eligible American Indians and other eligible beneficiaries pursuant to its Contract and Annual Funding Agreement (“AFA”) authorized by Title I of the ISDEAA, 25 U.S.C. §§ 5301-5332.

15. The ISDEAA authorizes the Tribe, other tribes, and tribal organizations to assume responsibility to provide PFSAs that the Secretary would otherwise be obligated to provide. In return, the Secretary must provide the Tribe two types of funding under Section 106(a) of the ISDEAA: (1) “program” funds, the amount the Secretary would have provided for the PFSAs had the IHS retained responsibility for them, *see* 25 U.S.C. § 5325(a)(1), sometimes called the “Secretarial amount” or the “106(a)(1) amount”; and (2) “contract support costs,” the reasonable administrative and overhead costs associated with carrying out the PFSAs, *see* 25 U.S.C. §§ 5325(a)(2) & (3); 25 U.S.C. § 5396(a) (mandatory application of section 5325(a) through (k) to Title V agreements).

16. There are three types of CSC: (1) pre-award and start-up costs, which are one-time costs to plan, prepare for, and assume operation of new or expanded PFSAs, *see* 25 U.S.C. § 5325(a)(5) & (6); (2) indirect CSC, which are costs incurred for a common or joint purpose benefiting more than one PFSA, such as administrative and

overhead costs, *see* 25 U.S.C. § 5325(a)(2); and (3) direct CSC, which are expenses directly attributable to a certain PFSA but not captured in either the indirect cost pool or the 106(a)(1) amount, such as workers' compensation insurance or other expenses the Secretary would not have incurred because, for example, the Government is self-insured, *see* 25 U.S.C. § 5325(a)(3)(A). This action involves indirect and direct CSC.

17. The ISDEAA requires that, upon approval of the contract, "the Secretary shall add to the contract the full amount of funds to which the contractor is entitled [under section 106(a) of the ISDEAA]," including CSC. 25 U.S.C. § 5325(g) (emphasis added); *see also Cherokee Nation*, 543 U.S. at 634 ("The [ISDEAA] specifies that the Government must pay a tribe's costs, including administrative expenses.").

18. The statute defines contract support costs as follows:

The contract support costs that are eligible costs for the purposes of receiving funding under this Act shall include the costs of reimbursing each tribal contractor for reasonable and allowable costs of-

- (i) direct program expenses for the operation of the Federal program that is the subject of the contract; and
- (ii) any additional administrative or other expense incurred by the governing body of the Indian Tribe or Tribal organization and any overhead expense incurred by the tribal contractor in connection with the operation of the Federal program, function, service, or activity pursuant to the contract,

except that such funding shall not duplicate any funding provided under section 106(a)(1).

25 U.S.C. § 5325(a)(3)(A). Thus the entire “Federal program” that is the subject of the contract-including program income from that Federal program-generates CSC requirements.

GENERAL ALLEGATIONS

Program Income

19. When IHS provides direct services to eligible beneficiaries, the PFSAs are funded not only by funds appropriated by Congress, but also by third-party revenues billed to and collected from Medicare, Medicaid, the Children’s Health Insurance Program, private insurers, and others. *See generally* 42 U.S.C. §§ 1395 *et seq.*, 1396 *et seq.*, 1397aa *et seq.* Each year in its budget request to Congress, IHS estimates how much third-party revenue will be collected and available to spend on services, based on past collections. *See, e.g.*, Dep’t of Health & Human Servs., *Indian Health Service FY 2021 Justification of Estimates for Appropriations Committees*, at CJ-188 (reporting that in FY 2020, IHS collected an estimated \$1.194 billion from third-party insurers). “Public and private collections represent a significant portion of the IHS and Tribal health care delivery budgets”—often 60% or more. *Id.*

20. By the same token, the Tribe, when carrying out PFSAs under its Contract and AFA, is required by law and contract to collect third-party revenues. Like IHS, the Tribe is required to bill responsible third parties because IHS and tribal programs are both “payer[s] of last resort.” 25 U.S.C. § 1623(b).

21. The Tribe is required by contract to collect third-party revenues as well. The Scope of Work, which is incorporated into the AFA, *see* AFA § 6, which itself is incorporated into the Contract, Art VII, § 2, requires the Tribe to bill and collect from third parties such as Medicare and Medicaid.

The Tribe's Business Office . . . will maintain accreditation standards in order to qualify for funds through third party-payers [sic]. Medicare and Medicaid numbers for billing purposes will be secured in order to meet the requirements of the Centers for Medicaid and Medicare Services (CMS) and Medicaid contracts with Managed Care Organizations (MCOs). Other requirements will be met for periodic renewal of accreditation or certification in order to continue to maintain eligibility for these funds.

AFA Scope of Work, § 4.C.

22. All third-party revenue or "program income" must be, and is, expended on PFSAs included in the Tribe's AFA with IHS. Title I of the ISDEAA mandates as follows:

The program income earned by a tribal organization in the course of carrying out a self-determination contract—

- (1) shall be used by the tribal organization to further the general purposes of the contract; and
- (2) shall not be a basis for reducing the amount of funds otherwise obligated to the contract.

25 U.S.C. § 5325(m). *See also* 25 U.S.C. §§ 1621f(a)(1), 1641(c)(1)(B), and 1641(d)(2)(A) (requiring tribes to spend third-party revenues on health care programs).

23. Thus, by law, these third-party revenue funds are part of the Federal program carried out by the Tribe under its ISDEAA agreements. *See Navajo Health Foundation—Sage Memorial Hospital, Inc. v. Burwell*, 263 F. Supp. 3d 1083, 1166-67 (D.N.M. 2016); *Pyramid Lake Paiute Tribe v. Burwell*, 70 F. Supp. 3d 534, 544 (D.D.C. 2014). *But see Swinomish Indian Tribal Community v. Azar*, 406 F. Supp. 3d 18 (D.D.C. 2019).

24. The IHS’s Indian Health Manual (“IHM”) acknowledges that a tribe’s “Total Health Care Program” includes the portion funded by “collections from Medicare, Medicaid, and private insurance,” not just IHS appropriations. IHM § 6-3.1(G)(34). Therefore that portion must be included when calculating the amount of CSC owed to the tribe. *Id.* §§ 6-3.2(E)(1)(a)(i), (E)(1)(b), *available at* <https://www.ihs.gov/i hm/pc/part-6/p6c3/>.

25. The agency derives this rule from the statute itself: the entire “Federal program”—including program income—carried out by the Tribe under the ISDEAA generates CSC requirements. *See* 25 U.S.C. § 5325(a)(3)(A).

Calculation of Contract Support Costs on Services Funded with Third-Party Revenues

26. As noted above, the ISDEAA requires IHS to pay full CSC. *Ramah*, 567 U.S. at 185; *Cherokee Nation*, 543 U.S. at 634. For the Tribe, as for most tribes, the full amount of indirect CSC is determined by multiplying a negotiated indirect cost rate by the amount of the direct cost base. *See* 25 U.S.C. § 5325(c)(3), (4) & (5)

(requiring Secretary to report annually on tribes' indirect cost rates and direct cost bases); *Cherokee Nation*, 543 U.S. at 635 (“Most contract support costs are indirect costs ‘generally calculated by applying an “indirect cost rate” to the amount of funds otherwise payable to the Tribe.’”)

27. The Tribe’s FY 2016 indirect cost rate agreement with the Department of the Interior’s Interior Business Center, which applies government-wide, calls for an indirect cost rate of 24.49% on a direct cost base comprised of “[t]otal direct costs, less capital expenditures and passthrough funds.” Indirect Cost Negotiation Agreement with U.S. Department of the Interior, Interior Business Center. (Nov. 15, 2016).

28. The Tribe’s FY 2017 indirect cost rate was 11.77% on a direct cost base comprised of “[t]otal direct costs, less capital expenditures and passthrough funds.” Indirect Cost Negotiation Agreement with U.S. Department of the Interior, Interior Business Center (April 4, 2019).

29. IHS accepts the Tribe’s rates, as it must. The controversy is over the amount of the direct cost base. Specifically, the issue is whether third-party revenues expended to provide services within the scope of the Tribe’s ISDEAA agreements are part of the direct cost base and therefore generate CSC requirements. IHS argues, in its decision denying the Tribe’s claims, that only federal program funds “transferred” by IHS to the Tribe are eligible for contract support. Decision Letter at 4. But the ISDEAA does not use the term “transferred”; rather, CSC is defined as the reasonable and non-duplicative costs, direct and indirect, of carrying

out the “Federal program” under the contract. 25 U.S.C. § 5325(a)(3)(A).

30. Similarly, IHS argued that only the Secretarial amount generates CSC, and the Secretarial amount is limited to funding for PFSAs transferred under the ISDEAA agreement. Decision Letter at 4. But the ISDEAA says that the Secretarial amount includes all resources the Secretary “would have otherwise provided” to carry out the PFSAs himself. 25 U.S.C. § 5325(a)(1). As noted above, the Secretary uses third-party revenues to carry out PFSAs when he directly provides services to beneficiaries, so these resources are part of the Secretarial amount. *Pyramid Lake Paiute Tribe*, 70 F. Supp. 3d at 544 (“[T]he applicable funding level for a contract proposal under [the ISDEAA] is determined based on what the Secretary otherwise would have spent, not on the source of the funds the Secretary uses.”); *Navajo Health Foundation-Sage Memorial Hospital, Inc. v. Burwell*, 263 F. Supp. 3d at 1166-67.

31. Yet in FY 2016 and FY 2017, IHS paid no CSC in support of health care services funded by third-party revenues, giving rise to the damages described next.

FY 2016

32. As documented in the Tribe’s audited financial records, in FY 2016 the Tribe expended \$2,168,546 in third-party revenues associated with IHS programs. IHS paid no CSC in support of those funds, giving rise to the following damages. Applying the Tribe’s negotiated indirect cost rate of 24.49% to third-party expenditures of \$2,168,546 yields a claim for unpaid indirect CSC in the amount of \$531,077.

33. The Tribe expended \$103,321 in third-party-funded salaries. Fringe benefits on these salaries are eligible to be paid as direct CSC, to the extent not duplicated in the Secretarial amount—that is, to the extent the fringe costs exceeded what IHS would have paid for the same salaries. Deducting the IHS fringe rate of 25.89% from the Tribe’s 2016 fringe rate of 32% leaves a fringe differential of 6.11%, which, applied to \$103,321 in third-party-funded salaries, yields a claim for unpaid direct CSC of \$6,313.

34. Finally, direct CSC is part of the direct cost base and generates indirect cost requirements. Applying the Tribe’s negotiated indirect cost rate of 24.49% to the direct CSC shortfall of \$6,313 produces a claim of \$1,546. The total of these three claims is **\$538,936**.

FY 2017

35. As documented in the Tribe’s audited financial records, in FY 2017 the Tribe expended \$6,179,246 in third-party revenues associated with IHS programs. IHS paid no CSC in support of those funds, giving rise to the following damages. Applying the Tribe’s negotiated indirect cost rate of 11.77% to third-party expenditures of \$6,179,246 yields a claim for unpaid indirect CSC in the amount of \$727,297.

36. The Tribe expended \$3,351,858 in third-party-funded salaries in FY 2017. Fringe benefits on these salaries are eligible to be paid as direct CSC, to the extent not duplicated in the Secretarial amount—that is, to the extent the fringe costs exceeded what IHS would have paid for the same salaries. Deducting the IHS fringe rate of 25.89% from the Tribe’s 2017 fringe rate of 32% leaves a fringe differential of 6.11%, which, ap-

plied to \$3,351,858 in third-party-funded salaries, yields a claim for unpaid direct CSC of \$204,799.

37. Finally, direct CSC is part of the direct cost base and generates indirect cost requirements. Applying the Tribe's 2017 negotiated indirect cost rate of 11.77 % to the direct CSC shortfall of \$204,799 produces a claim of \$24,105. The total of these three claims is \$1,001,201.

Procedural History of the Claims

38. In letters dated May 30, 2019, the Tribe requested a contracting officer's decision on the claims for unpaid CSC on third-party revenues described above. Specifically, the Tribe asserted that "IHS failed to pay CSC associated with the portion of the Tribe's federal health care program funded by third-party revenues, such as payments from Medicare, Medicaid, and private insurance." FY 2016 Claim Letter at 2; FY 2017 Claim Letter at 2.

39. IHS denied the Tribe's claims in a letter dated February 20, 2020. In the denial letter, IHS argues that the program amount generating CSC needs is limited to appropriated funds transferred in the AFA and may not include third-party collections.

40. The Tribe filed this action within twelve months of receipt of the IHS decision, as authorized by the Contract Disputes Act. 41 U.S.C. § 7104(b)(3).

Rule of Construction

41. The Contract provides as follows: "Each provision of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450⁶) and each provision of

⁶ The ISDEAA has been recodified at 25 U.S.C. § 5301 *et seq.*

this Contract shall be liberally construed for the benefit of the Contractor. . . . ” Contract, Art. I, § 2. Applying this interpretive rule, which is part of the statutory Model Agreement from Title I, 25 U.S.C. § 5329(c), § 1(a)(2), the Supreme Court has said that the government “must demonstrate that its reading [of the ISDEAA] is clearly required by the statutory language.” *Salazar v. Ramah Navajo Chapter*, 567 U.S. at 194. *See also* 25 C.F.R. § 900.3(b)(11) (liberal construction rule applies to interpretation of ISDEAA regulations as well).

**COUNT I—Violation of the ISDEAA:
Third-Party Revenues**

42. All prior allegations are adopted by reference as if fully set forth here.

43. The ISDEAA requires IHS to pay the Tribe’s contract support costs in full. 25 U.S.C. § 5325(a) & (g); *Salazar v. Ramah Navajo Chapter*, 567 U.S. at 185.

44. IHS failed to pay indirect CSC on that portion of the Federal program composed of third-party revenues expended to provide services under the AFA.

45. In doing so, IHS violated the ISDEAA.

46. As a result of IHS’s violation of the ISDEAA, the Tribe sustained damages totaling \$538,936 in FY 2016 and \$1,001,201 in FY 2017.

47. Defendants are liable to the Tribe, under 25 U.S.C. § 5331(a), for its FY 2016 and FY 2017 total damages of \$1,540,137.

COUNT II—Breach of Contract: Third-Party Revenues

48. All prior allegations are adopted by reference as if fully set forth here.

49. The Tribe’s Contract and AFA incorporate the statutory duty to fully fund CSC. *E.g.*, AFA, § 5 (“Contract support costs (CSC) will be paid in accordance with 25 U.S.C. § 5325]. . . .”). The ISDEAA, in turn, requires fully funding CSC, a duty affirmed by the Supreme Court in *Ramah* and *Cherokee*, *supra*.

50. By failing to pay indirect CSC on the third-party-revenue-funded portion of the Federal program, the IHS breached its contractual agreements with the Tribe.

51. As a result of IHS’s breaches of contract, the Tribe sustained damages totaling \$538,936 in FY 2016 and \$1,001,201 in FY 2017.

52. Defendants are liable to the Tribe, under 25 U.S.C. § 5331(a) and the Contract Disputes Act, for its FY 2016 and FY 2017 total damages of \$1,540,137.46.

COUNT III—Declaratory Relief

53. All prior allegations are adopted by reference as if fully set forth here.

54. The Declaratory Judgment Act, 28 U.S.C. § 2201, authorizes this Court to grant declaratory relief. *See also* 25 U.S.C. § 5331(a).

55. IHS refuses to pay CSC in support of health care services within the scope of the ISDEAA funding agreement but funded by program income, in violation of the ISDEAA mandate that CSC supports the entire Federal program.

56. In the Denial Letter IHS limits the “Secretarial amount” to which CSC “shall be added,” *see* 25 U.S.C. § 5325(a)(2), to include only those funds appropriated by Congress and transferred by IHS to the Tribe. But Section 106(a)(2) of the ISDEAA commands that CSC “shall be added” to the Secretarial amount that would otherwise be used by IHS to fund health care services. 25 U.S.C. § 5325(a)(2). When providing health care services directly to Indians and other beneficiaries, the Secretary uses not only funds appropriated by Congress, but also third-party revenues. In carrying out its Contract and AFA, the Tribe is required by law and contract to do the same.

57. Therefore, the Tribe is entitled to an Order declaring that program income expended within the scope of the ISDEAA agreement is part of the Federal program entitled to contract support and part of the Secretarial amount to which CSC “shall be added.” 25 U.S.C. § 5325(a)(2), (3).

PRAYER FOR RELIEF

58. The Tribe respectfully requests the Court grant relief as follows:

- A. Award the Tribe \$1,540,137 in damages, as summarized in the following table:

Claim	FY 2016	FY 2017
Indirect CSC	\$531,077	\$772,297
Direct CSC	\$6,313	\$204,799
Indirect costs on direct CSC	\$1,546	\$24,105
	\$538,936	\$1,001,201

- B. Award such other damages as may be proven in this action;
- C. Declare that IHS must pay CSC on the entire Federal program and Secretarial amount, including third-party revenues expended on health care services within the scope of the Tribe's Contract and AFA;
- D. Order the payment of interest on these claims pursuant to the Contract Disputes Act, 41 U.S.C. § 7109;
- E. Award the Tribe its attorney fees and expenses pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 and 25 U.S.C. § 5331(c), and other applicable law; and
- F. Grant the Tribe such other and further relief as the Court deems appropriate.

DATED this 19th day of February, 2021.

NORTHERN ARAPAHO TRIBE, Plaintiff

/s/ LUCAS BUCKLEY
LUCAS BUCKLEY, WSB#6-3997
HATHAWAY & KUNZ, LLP
2515 Warren Avenue, Suite 500
P.O. Box 1208
Cheyenne, WY 82003-1 208
Phone: 307-634-7723
Fax: 307-634-0985
lbuckley@hkwyolaw.com

Geoffrey D. Strommer
(Pro Hac Vice Pending)
Stephen D. Osborne

(Pro Hac Vice Pending)

HOBBS STRAUS DEAN & WALKER, LLP

215 SW Washington Street, Suite 200

Portland, OR 97204

503.242.1745

Fax: 503.242.1072

GStrommer@hobbsstrauss.com

SOsborne@hobbsstrauss.com

ATTORNEYS FOR PLAINTIFF

EXHIBIT A

CONTRACT

122

CONTRACT

BETWEEN

**THE SECRETARY OF
THE DEPARTMENT OF HEALTH AND HUMAN
SERVICES**

And

NORTHERN ARAPAHO BUSINESS COUNCIL

HHSI244201600002C

Effective January 15, 2016

**AGREEMENT BETWEEN THE SECRETARY OF
THE DEPARTMENT OF HEALTH AND HUMAN
SERVICES AND THE NORTHERN ARAPAHO
BUSINESS COUNCIL**

PREAMBLE

WHEREAS, the Northern Arapaho Tribe is a federally recognized American Indian Tribe which is recognized by the United States and the Northern Arapaho Business Council is the duly recognized governing body of the Northern Arapaho Tribe; and

WHEREAS, it is the policy of the Indian Health Service to support tribal self-determination to achieve self-sufficiency and it is the desire and intent of the Northern Arapaho Tribe to administer the resources and programs provided by the Indian Health Service as authorized by P.L. 93-638, as amended, and other federal laws and regulations; and

NOW, THEREFORE, the Indian Health Service (“IHS”) acting for the Secretary of the Department of Health and Human Services (the “Secretary”) and the Northern Arapaho Tribe hereby mutually agrees to enter into a government-to-government Agreement for the conduct and delivery of health services.

ARTICLE I

AUTHORITY AND PURPOSE

1. **AUTHORITY:** This Agreement, denoted a Self-Determination Contract (referred to in this agreement as the “Contract”), is entered into by the Secretary of the Department 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 (25 U.S.C. § 450 et seq.) and by the Northern Arapahoe Business Council for and on behalf of the Northern Arapaho Tribe (referred to in this Agreement as the “Tribe” or “Contractor”). The provisions of title I of the Indian Self-Determination and Education Assistance Act (the “Act”) (25 U.S.C. § 450 et seq.) are incorporated in this agreement.

2. **PURPOSE:** Each provision of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) and each provision of this Contract shall be liberally construed for the benefit of the Contractor to transfer the funding and the following related functions, services, activities, and programs (or portions thereof), that are otherwise contractable under section 102(a) of such Act, including all related administrative functions, from the Federal Government to the Contractor for operation of its health division, the Wind River Family and Community Health Care System (WRFCHCS).
 - I. **DIRECT HEALTH CARE SERVICES AND PROGRAMS**
 - A. Outpatient Ambulatory Medical Care/Primary Care
 - B. Nursing
 - C. Mental Health behavioral Health
 - D. Targeted Care Management, Medical Social Work Services & Family Services
 - E. Clinical Medical Laboratory
 - F. Radiology—Medical Imaging

- G. Physical Therapy
- H. Pharmacy
- I. Optometry
- J. Dental
- K. Public Health Nursing/Community Health

II. OFFICE OF ENVIRONMENTAL HEALTH AND ENGINEERING

III. HEALTH INFORMATION MANAGEMENT (HIM)

IV. SUPPORT SERVICES

- A. Administrative Services
- B. Financial Office
- C. Business Office (Billing and collections, benefits coordination will be tribal hires)
- D. Generalized Services
- E. Security Services

ARTICLE II

TERMS, PROVISIONS, AND CONDITIONS

1. **TERM:** Pursuant to section 105(c)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450j(c)(1), the term of this Contract shall be for three (3) years (January 1, 2016 through December 31, 2018), subject to the annual appropriation of funds by the Congress. Pursuant to section 105(d)(1) of such Act (25 U.S.C. § 450j(d)), upon the election by the Contractor, the funding period of this Contract shall be determined on the basis of a calendar year, unless the Secretary and the Contractor agree on a different period in the Annual

Funding Agreement (the “AFA”) incorporated by reference in Article VII, Section 2 of this Contract.

2. **EFFECTIVE DATE:** This Contract shall become effective upon the date of the approval and execution by the Contractor and the Secretary, unless the Contractor and the Secretary agree on an effective date other than the date specified in this paragraph. The parties agree that this Contract shall become effective on January 15, 2016.
3. **PROGRAM STANDARDS:** The Contractor agrees to administer the programs, services, functions, and activities (or portions thereof) listed in Article I, Section 2 of the Contract in conformity with the following standards: Applicable standards are set forth in the scope of work attached to the Annual Funding Agreement incorporated by reference in Subsection 6 - Applicable Standards, as applicable to the activities carried out under this Contract.
4. **FUNDING AMOUNT:** Subject to the availability of appropriations, the Secretary shall make available to the Contractor the total amount specified in the Annual Funding Agreement incorporated by reference in Article VII, Section 2. Such amount shall not be less than the applicable amount determined pursuant to section 106(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450j-1).
5. **LIMITATION OF COSTS:** The Contractor 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 Contractor 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 Contractor 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 Contractor may suspend performance of the Contract until such time as additional funds are awarded.

6. PAYMENT:

(A) IN GENERAL—Payments to the Contractor for the WRFCHCS under this Contract shall:

- (ii) Be made as expeditiously as practicable; and,
- (iii) 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.

(B) QUARTERLY, SEMIANNUAL, LUMP SUM, AND OTHER METHODS OF PAYMENT.

- (i) IN GENERAL. Pursuant to section 108(b) of the Indian Self-Determination and Education Assistance Act, and notwithstanding any other provision of law, for each fiscal year covered by this Contract, the Secretary shall make available to the Contractor the funds specified for the calendar year under the Annual Funding Agreement incorporated by reference pursuant to Article VII, Section 2 by paying to the Contract-

tor for deposit in the WRFCHCS account, on a quarterly basis, one-quarter of the total amount provided for in the Annual Funding Agreement for that calendar year, in a lump-sum payment or as semiannual payments, or any other method of payment authorized by law, in accordance with such method as may be requested by the Contractor and specified in the Annual Funding Agreement. The Contractor shall not be held accountable for interest earned on such funds pending disbursement, as provided in section 105b of the Act. (25 U.S.C. 450j(b)). However, interest and income earned must be used in accordance with the ISDEAA and IHCIA.

- (ii) METHOD OF QUARTERLY PAYMENT. If quarterly payments are specified in the Annual Funding Agreement incorporated by reference pursuant to Article VII, Section 2, each quarterly payment made pursuant to clause (i) shall be made on the first day of each quarter of the calendar year, except that in any case in which the Contract year coincides with the Federal fiscal year, payment for the first quarter shall be made not later than the date that is 10 calendar days after the date on which the Office of Management and Budget apportions the appropriations for the fiscal year for the programs, services, functions, and activities subject to this Contract. Notwithstanding Public Law 103-413, quarterly payment of funds to tribes and tribal or-

ganizations under annual funding agreements pursuant to section 108 of Public Law 93-638, as amended, beginning in fiscal year 1998 and thereafter, may be made on the first business day following the first day of a fiscal quarter.

- (iii) APPLICABILITY. Chapter 39 of title 31, United States Code, shall apply to the payment of funds due under this Contract and the Annual Funding Agreement referred to in clause (i).

7. RECORDS AND MONITORING:

- (A) IN GENERAL. Except for previously provided copies of tribal records that the Secretary demonstrates are clearly required to be maintained as part of the record keeping system of the Department of Health and Human Services, records of the Contractor shall not be considered Federal records for purposes of chapter 5 of title 5, United States Code.
- (B) RECORDKEEPING SYSTEM. The Contractor shall maintain a record keeping system in accordance with 25 U.S.C. 450c and shall, upon reasonable advance request, provide reasonable access to such records to the Secretary.
- (C) RESPONSIBILITIES OF CONTRACTOR. The Contractor through its WRFCHCS 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. With re-

spect 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:

- (i) the Contractor agrees to one or more additional visits; or
- (ii) the Contractor requests additional visits for technical assistance; or
- (iii) the appropriate official determines that there is a reasonable cause to believe that ground for reassumption of the Contract, suspension of Contract payments, or other serious Contract performance deficiency may exist.

No additional visit referred to in clause (ii) shall be made until such time as reasonable advance notice that include a description of the nature of the problem that requires the additional visit has been given to the Contractor.

8. PROPERTY:

- (A) IN GENERAL. As provided in section 105(f) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450j(f)), at the request of the Contractor the Secretary may make available, or transfer to the Contractor, all reasonably divisible real property, facilities, equipment, and personal property that the Secretary has used to provide or administer the WRFCHCS programs, services, functions, and

activities 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 Contractor, and periodically revised by the Secretary, with the concurrence of the Contractor. See Attachment G.

- (B) RECORDS. The Contractor shall maintain a record of all property referred to in subparagraph(A) or other property acquired by the Contractor under section 105(f)(2)(A) of such Act for purposes of replacement.
- (C) JOINT USE AGREEMENTS. Upon the request of the Contractor, the Secretary and the Contractor's designated official of the WRF-CHCS shall enter into a separate joint use agreement to address the shared use by the parties of real or personal property that is not reasonably divisible.
- (D) ACQUISITION OF PROPERTY. The Contractor is granted the authority to acquire such excess property as the Contractor may determine to be appropriate in the judgment of the Contractor to support the programs, services, functions, and activities operated pursuant to this Contract.
- (E) CONFISCATED OR EXCESS PROPERTY. The Secretary shall assist the Contractor in obtaining such confiscated or excess property as may become available to tribes, tribal organizations, or local governments.

- (F) **CAPITAL EQUIPMENT.** The designated official of the WRFCHCS shall determine the capital equipment, leases, rentals, property, or services the Contractor requires to perform the obligations of the Contractor under this subsection, and shall acquire and maintain records of such capital equipment, property rentals, leases, property, or services through applicable procurement procedures of the Contractor.
9. **AVAILABILITY OF FUNDS:** Notwithstanding any other provision of law, any funds provided under this Contract:
- (A) shall remain available until expended; and
 - (B) with respect to such funds no further:
 - (i) approval by the Secretary, or
 - (ii) justifying documentation from the Contractor's WRFCHCS shall be required prior to the expenditure of funds.
10. **TRANSPORTATION:** Beginning on the effective date of the Contract, the Secretary shall authorize the Contractor's WRFCHCS to obtain interagency motor pool vehicles and related services for performance of any activities carried out under this Contract.
11. **FEDERAL PROGRAM GUIDELINES, MANUALS OR POLICY DIRECTIVES:** Except as specifically provide in the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450 et seq) the Contractor is not required to abide by program guidelines, manuals, or policy directives of the Sec-

retary, unless otherwise agreed to by the Contractor and the Secretary, or otherwise required by law.

12. DISPUTES:

(A) 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 Contractor nominate a third party who is not employed by or significantly involved with the Secretary of the Interior, the Secretary of Health and Human Services, or the Contractor, to serve as a third-party mediator to mediate disputes under this Contract.

(B) ALTERNATE PROCEDURES. In addition to, or as an alternative to, remedies and procedures prescribed by section 110 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450m-1), the parties to the Contract may jointly:

- (i) submit disputes under this Contract to third-party mediation;
- (ii) submit the dispute to the adjudicatory body of the Contractor;
- (iii) submit the dispute to mediation processes provided for under the laws, policies, or procedures of the Contractor; or
- (iv) use the administrative dispute resolution processes authorized in subchapter IV of chapter 5 of title 5, United States Code.

(C) EFFECT OF DECISIONS. The Secretary shall be bound by decisions made pursuant to

the processes set forth in subparagraph (B), except that the Secretary shall not be bound by any decision that significantly conflict with the interests of Indians or the United States.

13. ADMINISTRATIVE PROCEDURES OF CONTRACTOR: Pursuant to the Indian Civil Rights Act of 1968 (2 U.S.C. § 1301 et seq.), the laws, policies, and procedures of the Contractor shall provide for administrative due process (or the equivalent of administrative due process) with respect to programs, services, functions, and activities that are provided by the Contractor pursuant to this Contract.

14. SUCCESSOR ANNUAL FUNDING AGREEMENT:

- (A) IN GENERAL. Negotiations for a successor Annual Funding Agreement shall beginning not later than 20 days prior to the conclusion of the preceding Annual Funding Agreement. Except as provided in section 105(c)(2) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450j(c)(2)) the funding for each such successor Annual Funding Agreement shall only be reduced pursuant to section 106(b) of such Act (25 U.S.C. § 450j-1(b)).
- (B) INFORMATION. The Secretary shall prepare and supply relevant information, and promptly comply with any request by the Contractor for information that the Contractor reasonably needs to determine the amount of funds that may be available for a successor Annual Funding Agreement, as provided for in Article VII, Section 2 of this Contract.

15. CONTRACT REQUIREMENTS: APPROVAL BY SECRETARY

- (A) IN GENERAL. Except as provided in subparagraph (B), 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. § 476), shall not apply to any contract entered into in connection with this Contract.
- (B) REQUIREMENTS. Each contract entered into by the Contractor with a third party in connection with performing the obligations of the Contractor under this Contract shall:
- (i) be in writing;
 - (ii) identify the interested parties, the authorities of such parties, and purposes of the Contract;
 - (iii) state the work to be performed under the Contract; and
 - (iv) state the process for making any claim, the payments to be made, and the terms of the contract, which shall be fixed.

ARTICLE III

OBLIGATIONS OF THE CONTRACTOR

1. **CONTRACT PERFORMANCE:** Except as provided in Article IV, Section 2 of this Contract, the Contractor shall, through its WRFCHCS, perform the programs, services, functions, and activities as provided in the Annual Funding Agreement under Article VII, Section 2 of this Contract.

2. **AMOUNT OF FUNDS:** The total amount of funds to be paid under this Contract pursuant to section 106(a) shall be determined in an Annual Funding Agreement entered into between the Secretary and the Contractor, which shall be incorporated into this Contract.
3. **CONTRACTED PROGRAMS:** Subject to the availability of appropriated funds, the Contractor's WRF-CHCS shall administer the programs, services, functions, and activities identified in Article I, section 2 of this Contract and funded through the Annual Funding Agreement under Article VII, Section 2.
4. **TRUST SERVICES FOR INDIVIDUAL INDIANS:**
 - (A) IN GENERAL. To the extent that the Annual Funding Agreement provides funding for the delivery of trust services to individual Indians that have been provided by the Secretary, the Contractor shall maintain at least the same level of service as the Secretary provided for such individual Indians, subject to the availability of appropriated funds for such services.
 - (B) TRUST SERVICES TO INDIVIDUAL INDIANS. For the purposes of this paragraph only, the term "trust services for individual Indians" means only those services that pertain to land or financial management connected to individually held allotments.
5. **FAIR AND UNIFORM SERVICES:** The Contractor shall provide services under this Contract in a fair and uniform manner and shall provide access to an administrative or judicial body empowered to adju-

dicating or otherwise resolve complaints, claims, and grievances brought by program beneficiaries against the Contractor arising out of the performance of the Contract.

ARTICLE IV

OBLIGATIONS OF THE UNITED STATES

1. TRUST RESPONSIBILITY:

- (A) IN GENERAL. The United States reaffirms the trust responsibility of the United States to the Tribe to protect and conserve the trust resources of the Tribe and the trust resources of individual Indians.
- (B) 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 Tribe or individual Indians. The Secretary shall act in good faith in upholding such trust responsibility.

- 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 Contractor to achieve the goals set forth in the Indian Health Care Improvement Act (25 U.S.C. § 1601 et seq.).
- 3. PROGRAMS RETAINED:** As specified in the Annual Funding Agreement, the United States hereby retains the programs, services, functions, and activities with respect to the Tribe that are not specifically assumed by the Contractor in the annual funding agreement under Article VII, Section 2 of the Contract.

ARTICLE V**OTHER PROVISIONS**

1. **DESIGNATED OFFICIALS:** Not later than the effective date of this Contract, the United States shall provide to the Contractor, and the Contractor shall provide to the United States, a written designation of senior official to serve as a representative for notices, proposed amendments to the Contract, and other purposes for this Contract.
2. **CONTRACT MODIFICATIONS OR AMENDMENTS:**
 - (A) **GENERAL.** Except as provided in subparagraph (B), 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 Contractor and the Secretary provide written consent for the modification.
 - (B) **EXCEPTION.** The addition of supplemental funds for programs, functions, and activities (or portions thereof) already included in the Annual Funding Agreement under Article VII, Section 2, and the reduction of funds pursuant to section 106(b)(2), shall not be subject to subparagraph (A).
3. **OFFICIALS NOT TO BENEFIT:** No member of Congress, or resident commissioner, shall be admitted to any share or part of any contract executed pursuant to this Contract, or to any benefit that may arise from such contract. This paragraph may 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.

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 Contractor for the purpose of securing business.

ARTICLE VI

TERMINATION OF AGREEMENT

This Contract may only be terminated in accordance with sections 105(e) and 109 of the Act.

ARTICLE VII

ATTACHMENTS

1. **APPROVAL OF CONTRACT:** Unless previously furnished to the Secretary, the resolution of the Northern Arapaho Business Council (NABC-2015-549) authorizing the contracting of the programs, services, functions, and activities identified in this Contract is attached to this Contract as Attachment E.
2. **ANNUAL FUNDING AGREEMENT:**
 - (A) **IN GENERAL.** The Annual Funding Agreement under this Contract shall only contain:
 - (i) terms that identify the programs, services, functions, and activities to be performed and administered, the general budget cate-

gory assigned, the funds to be provided, and the time and method of payment; and

- (ii) such other provisions, including a brief description of the programs, services, functions, and activities to be performed (including those supported by financial resources other than those provided by the Secretary), to which the parties agree.

(B) INCORPORATION BY REFERENCE - The Annual Funding Agreement is hereby incorporated in its entirety in this Contract and attached to this Contract as Attachment F.

**NORTHERN ARAPAHO BUSINESS COUNCIL
WIND RIVER RESERVATION, WYOMING**

BY /s/ [ILLEGIBLE] [1-15-16]
Chairman, Arapaho Business Council Date

**UNITED STATES OF AMERICA
SECRETARY OF THE
DEPARTMENT OF HEALTH &
HUMAN SERVICES**

BY /s/ [ILLEGIBLE] [1/15/16]
Chief of the Contracting Office Date

EXHIBIT B

ANNUAL FUNDING AGREEMENT

ANNUAL FUNDING AGREEMENT

BY AND BETWEEN

THE NORTHERN ARAPAHO TRIBE

AND THE

UNITED STATES OF AMERICA

FOR

JANUARY 15, 2016 THROUGH DECEMBER 31, 2016

IHS CONTRACT NUMBER: HHSI244201600002C

CONTENTS

- Section 1—Authority and Purpose
- Section 2—Effective Date and Term
- Section 3—Obligations of the IHS and Tribe
- Section 4—Amount of Funds Available in Calendar Year 2016
- Section 5—Contract Support Costs
- Section 6—Tribal Programs, Functions, Services and Activities (PFSAs) and Applicable Standards
- Section 7—Method of Payment
- Section 8—Amendment of this AFA
- Section 9—Federal Tort Claims Act
- Section 10—Buyback of IHS Services, Resources, Supplies, Functions and programs
- Section 11—Utilizing Federal Employees, IPA/MOA

Section 12—Reports

Section 13—Notices

Section 14—Successor Annual Funding Agreements

Attachment A: Funds Certification

Attachment B: Scope of Work (PFSAs)

Attachment C: Section 813 Resolution

Attachment D: Joint Use Agreement

Attachment E: Use Agreement—RPMS

Attachment F: Buyback Agreement

Section 1—Authority and Purpose

This Annual Funding Agreement (AFA) is executed by and between the Northern Arapaho Tribe (hereinafter Tribe) and the Secretary of the U.S. Department of Health and Human Services (DHHS), acting through the Indian Health Service (IHS), pursuant to Title I of the Indian Self Determination and Education Assistance Act (P.L. 93-638, as amended; ISDEAA or 25 U.S.C. § 450 *et seq*), and is incorporated into IHS Contract No. HHSI244201600002C (Contract) as governed by ISDEAA.

The purpose of this AFA is to set forth specific provisions for funding for Calendar Year 2016 for all programs, functions, services and activities (PFSAs) to be performed by the Tribe through its health division, the “Wind River Family and Community Health Care System” (hereinafter “WRFCHCS”) pursuant to Section 6 of this AFA and Attachment B, “Scope of Work.”

Section 2—Effective Date and Term

This AFA shall become effective January 15, 2016 and shall extend through December 31, 2016, The IHS provided all services to the Tribe from January 1, 2016 through January 15, 2016.

Section 3—Obligations of the IHS and Tribe

This AFA obligates the IHS to provide funding for the PFSAs identified herein, as provided for by the Contract between the Tribe and the United States.

The parties hereby agree that all provisions of the Contract and this AFA shall apply to the PFSAs operated by the Tribe through its WRFCHCS throughout the effective period of this AFA.

Section 4—Amount of Fund Available in Calendar Year 2016

The amounts available to the Tribe pursuant to the Contract and the ISDEAA are provided within Attachment A of this AFA, “Certification of Funds.”

IHS shall obligate funds pursuant to Attachment A of this AFA as authorized by Congressional appropriation to the IHS.

This CY 2016 AFA includes a portion of funding that is estimated based on appropriations of funding in FY 2017. Upon enactment of the FY 2017 Appropriations Acts, amounts will be adjusted as necessary and the Tribe will be notified of such actions by amendment to this AFA. In the event Congress does not authorize the full appropriation and a continuing resolution (CR) is enacted, the amount of fund obligated and made available to the Tribe will be made as authorized in accordance with the terms of the CR. The Tribe shall also be eligible for mandatory increases, general increases, contract support costs, and other non-recurring resources on the same basis as all other Tribes. In the event there are miscalculations or other inadvertent oversights regarding estimates of available funding, both parties agree to notify the other party and initiate action to correct such errors as they are identified.

Section 5—Contract Support Costs

- A. Contract support costs (CSC) will be paid in accordance with 25 U.S.C. § 450j-1 and § 458aaa-7(c). The parties agree that, according to the best data available as of the date of execution of this agreement, the amount to be paid under the CY covered by this agreement, which repre-

sents the parties' estimate of the Tribe's full CSC requirement pursuant to 25 U.S.C. § 450 j-1, is **\$619,978.62** including **\$0 for direct CSC** and **\$619,978.62 for Indirect CSC**. The amount to be paid from FY 2016 appropriations (~70.765%) is **\$457,489** including **\$0 for direct CSA** and **\$457,489 for Indirect CSC**. This estimate 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. § 450 j-1, and, to the extent not inconsistent with the ISDEAA, as specified in IHS Manual Part 6, Chapter 3 (approved April 6, 2007). 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 Tribe's full CSC requirement under the ISDEAA, the parties may pursue any remedies available to them under the ISDEAA, the Compact, and the Contract Disputes Act, 41 U.S.C. § 1701 et seq.

B. Pre-Award and Start Up CSC. In addition to the direct and indirect contract support costs identified above, the IHS will also provide a non-recurring \$434,964 for pre-award CSC and an estimated \$500,825 for non-recurring start-up costs.

Section 6—Tribal Program, Functions, Services and Activities (PFSAs) and Applicable Standards

The Tribe agrees to perform the PFSAs as described in Attachment B—Scope of Work, subject to the availability of funding provided by the IHS. In carrying out such PFSAs, the Tribe is committed to and shall provide quality health services that will at all times meet applicable standards during the period specified in Section 2 of this AFA.

Applicable Standards:

Part 3—Professional Services

- a) Part 3 Chapter 1—Medical Credentials and Privileges Review Process
- b) Part 3 Chapter 2—Dental
- c) Part 3 Chapter 3—Health Information Management
- d) Part 3 Chapter 4—Nursing
- f) Part 3 Chapter 7—Pharmacy
- g) Part 3 Chapter 9—Eye Care Program (Optometry)
- e) Part 3 Chapter 6—Laboratory Services
- h) Part 3 Chapter 14—Mental Health Programs (Behavioral Health)
- i) Part 3 Chapter 15—Physical Rehabilitation Services (Physical Therapy)
- j) Part 3 Chapter 21—Medical Imaging
- k) Part 8—Information Resource Management

Section 7—Method of Payment

Payment shall be provided to the Tribe for deposit in the Tribe's account for its WRFCHCS via Electronic Funds Transfer (EIJT), in accordance with the terms and procedures prescribed for by EFT and in accordance with the Prompt Payment Act. For this CY 2016 AFA, the IHS will pay a prorated 95.902% to account for the Tribe's acquisition of the program on January 15, 2016. The IHS will pay 70.765 percent of funds identified on the "Certification of Funds," attached to and incorporated herein as Attachment A, and 100 percent of the start-up and pre-award costs set forth in Section 5(B) above, on January 16, 2016. For this CY 2016 AFA, the IHS will pay the remaining 25.137 percent of funds identified on the "Certification of Funds," attached to and incorporated herein as Attachment A, on or before 15 days following the start of the federal fiscal year 2017, or if full appropriations are not enacted, 15 days after the date on which the Office of Management and Budget (OMB) apportions the available appropriations to the DHHS and subsequently to the IHS.¹

In the event of a CR, the IHS and Tribe agree that the amount will be calculated and paid in accordance with the terms and provisions contained in the CR.

Subsequent payment throughout the calendar year shall be made within 15 days following the receipt of a fully executed amendment.

¹ This split of funding payments over two federal fiscal periods is unique for CY 2016.

Section 8—Amendment of this AFA

- A. Except as otherwise provided by this AFA, Contract No. **HHSI244201600002C**, or by applicable law, any modification of this AFA shall be issued in written form (*e.g.*, contract amendment) and shall require written consent of the Tribe and the Secretary, or his/her designee.
- B. Should reductions of Congressional appropriations or rescissions occur; written amendments will be sent to the Tribe as unilateral amendments.
- C. Written consent of the Tribe shall not be required when the IHS issues amendments which result from changes in actual appropriation levels (as outlined in Section 4 herein), or which represent an increase in funding of PFSAs identified in this AFA. Such increases include, but are not limited to:
 - (i) Program/Area/Headquarters Mandatory/Congressional Adjustments
 - (ii) Program/Area/Headquarters End-of-Year Distributions
- D. Administrative amendments to correct inadvertent errors, such as miscalculation, transposition of numbers, or incorrect reference to amendment number, shall be issued unilaterally.

Section 9—Federal Tort Claims Act

The Federal Tort Claims Act (FTCA) applies to all PFSAs referenced in this AFA to the extent provided in 25 U.S.C. § 450f(b) of the ISDEAA, § 314 of P.L. 101-

512, and as set forth in 25 C.F.R. §§900.180-210. For purposes of FTCA coverage, the Tribe's employees (including employees of its WRFCHCS, and individuals performing personal services contracts to provide health care services for the Tribe's WRFCHCS) are deemed to be employees of the federal government while performing work under IHS Contract # **HHSI244201600002C**. This status is not changed by the source of the funds used by the Tribe to pay the employee's salary and benefits unless the employee receives additional compensation for performing covered services from anyone other than the contractor.

No reference to collaboration coordination, or other interaction with a federal, state or local government or private agency is intended to extend, nor does it have the effect of extending, FTCA coverage to such other entity. Although the Tribe may engage in traditional health care practices, pursuant 25 U.S.C. § 1680u of the Indian Health Care Improvement Act, as amended, the United States is not liable for any provisions of traditional health practices that results in damage, injury, or death to a patient. The IHS does not determine the scope of coverage under the FTCA The extent of coverage is determined pursuant to 28 U.S.C. §§ 2671-2680 and is described more specifically in 25 C.F.R. §§ 900.180-900.210.

Section 10—Buyback of IHS Services, Resources, Supplies, Functions and Programs. The Tribe has decided to buy back specific PFSAs from the IHS. Buybacks will occur as follows:

- A. **Buybacks.** The Tribe has opted to buy back certain PFSAs from IHS. *See* amount set forth in the Buyback Table that is a part of Attachment

A. The amount of \$674,101, for the period January 16 through February 28, 2016 will be withheld from the contract payment by the Billings Area Financial Management Program as authorized by this agreement; thereby preventing a violation of the Anti-Deficiency Act. The remaining reimbursement of the prorated costs due to the Billings Area Indian Health Service from February 29, 2016 through September 30, 2016 will be billed one month in advance thereafter. Tribal check payments for the personnel and services provided by the Indian Health Service must be received no later than ten (10) days after receipt of collection notice. The estimated amounts and schedule of payments to the agency required for this Agreement are attached to the Buy Back Agreement, Attachment F. These amounts reflect the projected costs for the use of Federal civilian personnel under the Intergovernmental Personnel Act (IPA), for the use of Commissioned Corp Officers as authorized by 42 U.S.C. 2004b, and for costs associated with services that NAT will buy back from the IHS. This amount may be increased or decreased based on actual costs. The terms and conditions for Federal civilian personnel will be set forth in separate IPA Agreements and for Commissioned Corps Officers, in separate Memoranda of Agreement. The term and conditions for buy back services are set forth in the Buy Back Agreement, Attachment F.

Estimated amounts represent the estimated full cost recovery for the provision of the services purchased hereunder subject to reconciliation.

In the event the IHS is operating under a continuing resolution for any portion of FY 2016 or FY 2017, the Tribe shall only be obligated to pay to IHS that portion of its AFA funding that is made available to the Tribe through the appropriations it receives pursuant to any such continuing resolution(s) for buy-backs.

If the Tribe fails to make payment within (10) days after the due date identified in the bill of collection, the IHS shall notify the Tribe that non-payment within seven (7) days may result in action by the Billings Area IHS to remove or re-deploy federal employees assigned to NAT and/or termination of buyback services and contracts.

- B. Periodic Buybacks.** The Tribe may wish to carry out a portions of its responsibilities under this Agreement by buying back certain PFSAs from the IHS during the Agreement year. If the Tribe becomes aware of any such PFSAs it shall contact the Billings Area Office and shall request a breakdown of the cost of the PFSA. The Billings Area Office shall provide the breakdown of costs within thirty days (30) working days from receipt of the request, and shall notify the Tribe at that time whether the requested PFSAs are currently available. If such PFSAs are currently available and if the Tribe decides to utilize the PFSAs, it shall send the Billings Area Office a written request identifying the PFSA the Tribe wishes to utilize. The Billings Area Office, as well as the Tribe, shall thereafter make arrangements for the provision to the Tribe of such PFSA and the method by which

the IHS will be reimbursed by the Tribe for the cost of such PFSA. The cost of the PFSA shall, to the extent possible, be deducted from any funding to be subsequently modified into this Agreement.

Section 11—Utilizing Federal Employees, IPA/MOA

The Tribe has chosen to use federal personnel on assignment under the Intergovernmental Personnel Act (IPA), 5 U.S.C § 3371 et seq., or on Memorandum of Agreement (MOA) detail for PHS commissioned officers under 42 U.S.C. § 2004b. Both types of federal personnel will continue to be paid through the federal payroll system. The Tribe will set aside and provide the necessary funding (including ds necessary to meet all special pay costs paid to IPA/MOA employees under this Agreement) to meet the payroll obligation from this specified recurring budget for the Service Unit, or for the specific portion(s) of the Service Unit’s program(s) in accordance with the attached buy back agreement and the associated IPA and MOA agreements.

Section 12—Reports

Pursuant to 25 U.S.C. § 450c(a)(2), the following reports will be provided by the Tribe:

- A. Annual Financial Reports.** The Tribe shall submit signed annual financial expenditure reports of the current funding cycle on or before the 45th day upon the completion of the preceding calendar year. The Tribe shall complete and submit this data on Standard Form (SF) 269, short or long form. The Tribe may report the expenditure of funds received outside of the current funding cycle by attaching a supplemental spreadsheet to a completed SF269.

- B. Single Agency Audit.** Pursuant to the Single Agency Audit Act (31 U.S.C. §§ 7501-7507), the Tribe shall provide an electronic copy to the Federal Audit Clearinghouse on or before the required deadline for any and all financial transactions pursuant to this AFA.
- C. Annual Program Report.** The Tribe will submit a brief annual program performance report within 60 days allowing the close of this AFA. The report should include a narrative summary of program activities for PFSA's contracted hereunder, including any on-going issues relate to those program activities, including but not limited to, administrative accomplishments and challenges, key personnel changes, and anticipated use of any carry-forward program funds.

Section 13—Eligibility and Services To Non-Beneficiaries

The Tribe shall provide service under this contract and AFA in accordance with 42 C.F.R. Part 136. Services will be provided to non-beneficiaries (*i.e.*, persons who are not eligible for services under 42 C.F.R. Part 36 or those individuals deemed eligible pursuant to 25 U.S.C. 1680c) on a fee-for-service basis in accordance with and subject to the provisions of 25 U.S.C. 1680c(c) of the Indian Health Care Improvement Act, as amended, and the resolution of the Northern Arapaho Business Council authorizing the provision of such services. Resolution No. NABC-2015-550 is attached hereto and fully incorporated by reference herein as Attachment C.

Section 14—Notices

The following individuals or offices are designated by the respective parties to receive notices and other infor-

mation with respect to this AFA, and serve as the respective points of contact:

- A. Northern Arapaho Tribe
Northern Arapaho Business Council
Attn: Tribal Chairman
P.O. Box 396
Ft. Washakie, WY 82514

Wind River Family and Community Health Care System
Attn: Richard Brannan, Chief Executive Officer
14 Great Plains Road
Arapahoe, WY 82510
- B. Billings Area Indian Health Service (IHS):
Billings Area Indian Health Service
2900 Fourth Avenue N.
P.O. Box 36600
Billings, MT 59107
 - a. Contract Proposal Liaison Officer
 - i. Standard Form 269—Annually Financial Report
 - ii. Indirect Cost Rate Agreement
 - iii. Annually or Annual Program Report, if applicable
 - b. Contract Specialist, Division of Acquisitions
 - i. Signed Contract and AFA
 - ii. Signed Contract Amendment
 - c. Area Director
 - i. ISDEAA Contract Proposal
 - ii. Request for Intergovernmental Personnel Agreements and Commission Corps. Memoranda of Agreement

- iii. Request for technical assistance and site visit

Section 15—Successor Annual Funding Agreements

Negotiations for a successor AFA shall begin no later than 120 days prior to the expiration of the current AFA. Except as provided in 25 U.S.C. § 450j(c)(2), the amount of funds required by 25 U.S.C. § 450j-1(a) for each successor AFA shall only be reduced pursuant to 25 U.S.C. § 450j-1(b) and is subject to the appropriation of funds by Congress.

Northern Arapaho Tribe

BY: /s/ [ILLEGIBLE] [1-15-16]
Chairman or Authorized Official Date

**United States of America
Department of Health and Human Services
Indian Health Service**

BY: /s/ [ILLEGIBLE] [1/15/16]
Chief of the Contracting Office Date
Billings Area Indian Health Service

BY: /s/ [ILLEGIBLE] [1/15/16]
Director Date
Billings Area Indian Health Service

EXHIBIT C

**ANNUAL FUNDING AGREEMENT
SCOPE OF WORK**

ATTACHMENT B

SCOPE OF WORK

**“PROGRAMS, SERVICES, FUNCTIONS AND
ACTIVITIES”—(PFSAs)**

**WIND RIVER FAMILY AND COMMUNITY
HEALTH CARE SYSTEM**

SCOPE OF WORK

**PROGRAMS, FUNCTIONS, SERVICES
AND ACTIVITIES**

Subject to the availability of funds and the Northern Arapaho Tribe's priorities, the Tribe agrees to administer the programs, functions, services, and activities (PFSAs) listed below, through the Tribe's Wind River Family and Community Health Care System. The Northern Arapaho Tribe is committed to and will provide quality health services to meet standards appropriate and applicable to the delivery of the health services identified below.

Hours of operation will continue as currently operated from 8:00 a.m. - 5:30 p.m., Monday through Friday, though extended hours may also be offered when staffing levels permit. The Improving Patient Care Initiative (IPC) model approach will guide service delivery and be incorporated along with other targeted care management and integrated service systems for quality improvement. Staffing qualifications that are part of credentialing (*e.g.*, licensure, certifications, specialized experience and education) and accreditation will be obtained/maintained.

Eligibility and Services to Non-Beneficiaries

The Tribe shall provide services under this contract and AFA in accordance with 42 C.F.R. Part 136. Services will be provided to non-beneficiaries (*i.e.*, persons who are not eligible for services under 42 C.F.R. Part 136 or those individuals deemed eligible pursuant to 25 U.S.C. 1680c) on a fee-for-service basis in accordance with and

subject to the provisions of 25 U.S.C. 1680c(c) of the Indian Health Care Improvement Act, as amended, and the resolution of the Northern Arapaho Business Council authorizing the provision of such services. Resolution No. NABC-2015-550 is attached hereto and fully incorporated by reference herein as Attachment E to the AFA.

TABLE OF CONTENTS

- I. DIRECT HEALTH CARE SERVICES AND PROGRAMS**
 - A. Outpatient Ambulatory Medical Care/Primary Care
 - B. Nursing
 - C. Mental Health/Behavioral Health
 - D. Targeted Care Management, Medical Social Work Services & Family Services
 - E. Clinical Medical Laboratory
 - F. Radiology—Medical Imaging
 - G. Physical Therapy
 - H. Pharmacy
 - I. Optometry
 - J. Dental
 - K. Public Health Nursing/Community Health
- II. OFFICE OF ENVIRONMENTAL HEALTH AND ENGINEERING (OEHE)**
- III. HEALTH INFORMATION MANAGEMENT (HIM)**
- IV. SUPPORT SERVICES**
 - A. Administrative Services
 - B. Financial Office
 - C. Business Office (Billing and collections, benefits coordination will be tribal hires)
 - D. Generalized Services
 - E. Security Services

I. DIRECT HEALTH CARE SERVICES AND PROGRAMS

The Tribe shall provide quality health services and programs that will at all times meet applicable standards. Direct health care services and programs will be performed by licensed or certified healthcare professionals, who shall adhere to their scope of clinical practice according to their respective state licensing board, plus the accepted standards of care for each profession's discipline. For a list of direct health care service providers and their supervisors, see the attached Organization Chart at Appendix 1.

A. Outpatient Ambulatory Medical Care/Primary Care

Primary Care Services and specialty clinics will be delivered through a comprehensive system of care that includes the following services:

1. Medical diagnosis and treatment
2. Behavioral health, emotional health, and psychological health diagnosis and treatment
3. Chronic disease and disability management
4. Patient education, health education and general information for improved access to health and wellness services and programs
5. Age-appropriate health maintenance services
6. Triage and assessment of presenting problems

7. Diagnosis and treatment of common health problems
8. Identification and management of chronic diseases
9. Ordering, conducting and interpreting diagnostic tests including laboratory testing and medical imaging
10. Referrals to the appropriate providers for types or levels of care not available within the Wind River Family and Community Health Care System
11. Health screening and testing
12. Teen Clinic (*e.g.*, AHC nursing staff)—will be coordinated between the two clinics
13. Physical examinations for preventive and screening purposes (*e.g.*, sports physicals, employment physicals)
14. Immunizations
15. Targeted case management and medically related social services
16. Telemedicine
17. Coordination of referrals for Purchased/ Referred Care and other indicated treatment and services and for patients referred post-discharge from medical and behavioral health facilities. Patients will receive medical staff or psychologist referrals to licensed health care facilities offering hospital and inpatient services. Referral agreements

and/or admitting privileges will be arranged to enable these services

B. Nursing

Nursing services emphasize:

1. Coordination of outpatient clinical services
2. Care/case management
3. Management of care for patients with high risk health conditions through chart reviews and health/behavioral health assessments
4. Maternal Child Health and care management services
5. Home and community based health services
6. Immunizations
7. Infection Control monitoring and quality improvement monitoring programs to protect the clinics against occupational exposure to infectious diseases

C. Mental Health/Behavioral Health

Mental Health/Behavioral Health Care Services will be provided by individuals licensed consistent with Section 706 of the Indian Health Care Improvement Act, 25 U.S.C. § 1665e, and delivered through a comprehensive integrated system of care that provides the following services:

1. Psychological, professional counseling services, and social work services to persons of all ages and special populations (e.g., disabled, elderly, children)
2. Psychological evaluations
3. Emergency mental health evaluations (including involuntary commitment)
4. Forensic interviews for purposes of providing expert testimony related to the apprehension and prosecution of crimes against children
5. Stress reduction
6. Assessment of cognitive impairments and developmental assessments for purposes of health/mental health/substance abuse care planning and treatment
7. Specialized services for the elderly (*e.g.* social work and therapy)
8. Specialized services for the Children and Adolescent and their Families
9. Specialized services among the Veteran population
10. Outreach direct-care and consultation services in the elementary and middle schools
11. Medication evaluations, prescriptions and management for psychiatric disorders

D. Targeted Care Management, Medical Social Work Services & Family Services

These services include the following:

1. Provision of clinical social work services and family supports
2. Provide case management related to health/mental health behavioral health to patients and their family services pursuant to the patient care plan, including housing and basic necessities of life, securing alternative financial resources and providing necessary medical transportation to specialty providers
3. Assist patients with arranging for alternative resources necessary for the health and welfare of the patient and family

E. Clinical Medical Laboratory

Laboratory services are provided on site and/or through contracted services based on referrals by internal and outside medical providers, with the majority of laboratory tests ordered by medical staff and performed on site, with the remainder of the tests sent to contracted licensed laboratory facilities. Clinical laboratory services include:

1. Performs specimen collection and processing

2. Performs analytical laboratory testing in the areas of routine chemistry, hematology, urinalysis, coagulation and miscellaneous serology
3. Performs post-test reporting procedures
4. Medical technologists can perform radiology functions with limited licensure and this option will be utilized should the Medical Technologist possess/obtain the necessary limited licensure
5. Comply with yearly laboratory inspections

F. Radiology—Medical Imaging

Radiology services are provided as an outpatient clinical service. Current radiological capacity at the clinic is limited to plain films of the chest, abdomen, head and extremities. Radiographs are initially read and interpreted by the medical provider who ordered the procedure. Then they are verified and read by licensed radiologists who are contracted with to provide radiographic interpretation services. Services include the following:

1. Performing X-Ray examinations using digital image techniques and controlling image quality
2. Initiate the information into the health information management system
3. Cross-trained radiology staff may also perform standardized and moderate

complexity lab testing procedures under the supervision of a Medical Technologist.

4. The Tribe will arrange for an annual inspection of the X-Ray equipment by a certified medical physicist.

G. Physical Therapy

Physical Therapy services are provided at the outpatient level and are based on referrals from the medical providers. Physical therapy services include:

1. Evaluation
2. Treatment of musculoskeletal pain
3. Treatment of movement dysfunction through specific exercise

H. Pharmacy

The pharmaceutical formulary is based on the national Indian Health Service (IHS) core formulary with any additions approved through the local pharmacy and therapeutics (P&T) committee. Prescriptions are filled for patients who present valid prescriptions or have orders written from in-clinic and outside prescribers in the electronic health record (EHR) per identified, applicable state law(s). Orders for non-formulary pharmaceuticals are referred to other local pharmacies that may carry the product, or are submitted for a formal approval process. The following pharmacy services will be provided:

1. Medication review and reconciliation
2. Processing medication orders (fill, verify, dispense)
3. Patient education related to medication orders and disease states
4. Patient monitoring for safety and efficacy
5. Consultation with prescribers on appropriate medication treatment
6. Disease state management for anti-coagulation therapy, diabetes, and others to a limited extent
7. Immunizations when the pharmacist is trained and certified to perform immunizations

I. Optometry

Optometry services are provided through an on-going eye care program that includes the following:

1. Ocular health promotion and vision screenings
2. General and specialty examinations
3. Treatments and procedures
4. Prescriptions for required ophthalmic devices
5. Referrals for ophthalmologist services as necessary

6. Coordinate and supervise student interns

J. Dental

The current dental services have licensed dentists and credentialed hygienist/dental assistants and include the following services:

1. Exams, cleanings, and oral surgery/extractions
2. Restorative dentistry (*e.g.*, fillings)
3. Root canals performed on restorable first molars and forward
4. School and community-based sealant/fluoride program for pre-school and school-aged children
5. Coordinate with IHS to host and provide services through a free denture clinic, which allows a group of prosthodontics to perform denture services from start to finish for approximately 30 patients for one week annually

K. Public Health Nursing/Community Health (Population Health/Home and Community Based Services)

Licensed nurses and licensed/certified health care professionals will perform services pursuant in promotion of population health and wellness and as ordered on the patient's individual plan of care. Services may include:

1. Patient education and health education instruction and curriculums
2. Increase access to care
3. Assist with transportation arrangements
4. Provide transition planning for patients returning from institutional/acute care to home care
5. Arrange and/or provide for durable medical equipment
6. Provide direct health care services in the home/school/community per the patient's individual plan of care, including preventive care, screening services and health education
7. Instruct care givers in home nursing/care for health, wellness and treatment for various treatments/conditions
8. Assist with community-based immunization program and perform immunization reporting to tribal, state and federal authorities
9. Provide public health screening for contagious disease
10. Provide group trainings for diabetes educators, health care workers, allied health professionals/para-professionals for purposes of improved population health and service access

11. Respond to health crises and/or epidemics

II. OFFICE OF ENVIRONMENTAL HEALTH AND ENGINEERING (OEHE)

The Northern Arapaho Tribe has taken a portion of its tribal shares of OEHE. The following services are performed:

A. Medical Equipment

The Tribe has elected to take its tribal share of medical equipment funds (also sometimes referred to as the Biomed Program) and shall be responsible for medical equipment calibration, preventative maintenance, medical equipment repair, medical equipment installation, training, consultation regarding equipment purchase, plan review, and healthcare accreditation compliance reviews. Any future equipment purchased by the Tribe to replace equipment listed on the IHS list of retained equipment will be subject to Section 105(f)(2) of the ISDEAA, 25 U.S.C. § 450j(f)(2)(A), and the applicable regulations at 25 C.F.R. Part 900, Subpart I.

B. Quarters

1. Program Identification

In accordance with the provisions of P.L. 93-638, the Northern Arapaho Tribe (NAT) of Arapahoe, Wyoming, shall administer the Quarters Management and Operations Maintenance program for three designated Quarters units:

#78, # 79, and #81 located at Fort Washakie, Wyoming.

2. Purpose

- A. To cause the NAT the authority to implement and collect rental rates and related charges for utilities, furnishings and services for all occupants of Quarters units: #78, # 79, and #81.
- B. To ensure that Quarters units #78, # 79, and #81 are continuously operated and maintained in safe and sanitary conditions at all times.
- C. The NAT shall operate and maintain three government Quarters in accordance with the required Indian Health Service (IHS) program requirements.
 - 1. The NAT shall be responsible for application and enforcement of all principles, policies, laws, regulations, directives, procedures, and other official guidance proscribed by the IHS related to Quarters management and real property accountability. This includes the responsibility to develop and adhere to (1) an annual work plan for the routine operation and maintenance of the facilities: and (2) a facilities engineering deficiencies report.

2. Reference Materials

- a. OMB Circular A-45. <http://www.whitehouse.gov/omb/circulars/a045>
 - b. Technical Handbook for Environmental Health and Engineering. <http://www.ihs.gov/nonmedicalprograms/DFEE/hb/index.cfm>
 - c. PHS Facilities Manual, Volume II. <http://www.ihs.gov/hhsmanuals/PHSV12120604.pdf>
 - d. Indian Health Service, Chapter 13. http://www.ihs.gov/i hm/index.cfm?module=dsp_i hm_pc_p5c13
 - e. Department of Health and Human Services, Public Health Service Quarters Management Handbook.
 - f. <http://www.doi.gov/nbc/finance/quarter.cfm>
 - g. International Property Maintenance Code
 - h. OMB Circular A-25. <http://www.whitehouse.gov/omb/circulars/a025>
- D. The following provisions shall apply to employees of the Secretary of Health and Human Services or contractors occupying Government quarters provided in compliance with this contract:

1. Quarter's rental rates and related charges shall be determined in accordance with applicable laws, regulations and established rental rates.
 - i. A schedule of rental rates and utility charges will be provided to the contractor by the Secretary.
 - ii. Charges for rents and related utilities shall be collected through payroll deduction whenever feasible.
 - iii. Alternate collection systems may be used to collect Quarters fees from non-government and non-contract personnel or whenever assignments to Quarters are of short duration, as to preclude the use of payroll deduction.
2. Rental rates and related charges for Quarters used by the contractor to house other than Government or contractor employees working on such contract, shall be equal to the full fair-market value, as established by the Secretary under applicable laws and regulations (Office of Management and Budget (OMB) Circular A-25, as amended; 41 Code of Federal Regulations (CFR) 114-52; OMB Circular A-45, as amended), and provided to the contractor by the Secre-

tary. Administrative adjustments shall not be used to reduce the rates below fair market value.

3. Government employees, contractor's employees, transients, persons on travel or training assignments, and visitors assigned to Federal Quarters, shall be assessed charges for rent and utilities, etc. An exception is provided for members of an official Volunteer Service Program who may be provided temporary housing at no cost with the approval of the Secretary. (Refer to Chapter 36-3.6, Assignment of Volunteers to Quarters)

E. No funds are appropriated for government quarters; quarters are considered self-sufficient from collections generated.

III. Contractor Operated and Maintained Federally Owned Quarters

- A. Quarters units shall be continuously maintained in a state of repair in which to assure safe and otherwise acceptable living conditions for all occupants. Maintenance costs shall be kept as low as possible consistent with protection of the Government investment. Refer to Technical Handbook, Chapter 36-6.2, Maintenance Standards and 36-6.3, Responsibility for Maintenance and Repair for further guidance on this topic.
 - a. With technical assistance from the IHS, the NAT shall maintain files on all three of the Quarters units #78, # 79, and #81 under

their control. The file shall include forms PHS-6070A, Assignment and Acceptance Agreement (refer to Chapter 36-3.9); PHS-6070B, Quarters Termination Record (refer to Chapter 36-3.14); and PHS-6068, Quarters Deficiency Checklist (refer to Chapter 36-3.13).

- b. All non-government/non-contract tenants shall pay rental at the fair market rates established in accord with applicable law and regulations without isolation adjustment, site amenities, and/or other administrative adjustments.
- B. The NAT shall be fully responsible for all operation, management and maintenance of three Quarters units located at the Fort Washakie clinic compound owned by the Federal Government and managed by NAT in accordance with the NAT Housing Policy approved by NAT. The Wyoming Landlord-Tenant Law does not apply to Federal Government housing. The NAT may choose to carry out its maintenance and improvement responsibilities for these Quarters through buybacks with the IHS.
- a. The NAT shall be responsible for assigning all NAT and Federal Government employees eligible under the NAT Housing Policy to Quarters under the NAT jurisdiction.
 - b. The NAT shall be responsible for all maintenance and service to utility lines, streets, common areas, and rights-of-way located in the area of the three Quarters units #78, # 79, and #81. These responsibilities in-

clude, but are not limited to, snow removal, sidewalk repair, street repair, etc.

- c. The NAT shall be responsible for the day-to-day operation of the Quarters under its jurisdiction, including but not limited to routine maintenance and upkeep of heating systems, appliances, utilities, service to utility lines, streets and furnishings, grounds, and the building structure.
- d. NAT shall inspect Quarters for damages and cleanliness upon the tenant vacating the premises to assess any damages identified as belonging to the tenant. If the Quarters require cleaning and/or any tenant-assessed damage is found, the tenant shall have the opportunity to make arrangements for cleaning and repairs at the tenant's expense and to the satisfaction of NAT.

IV. Establishing And Implementing Rental Rates And Related Charges

- A. Rental rates for the three IHS Quarters units #78, # 79, and #81 are established by a regional survey process through an interagency agreement with the Bureau of Reclamation/Department of the Interior, called the internet Quarters Management Information System (iQMIS). Annual iQMIS costs are nominal and IHS prorates these costs to the Service Unit based upon the number of Quarters at each installation and paid from collections.
- B. The NAT shall implement rental rates and related charges for utilities, furnishings and ser-

vices for all occupants of three government Quarters units #78, # 79, and #81 located at the IHS Wind River Service Unit at Fort Washakie, Wyoming. Rates for Federal, contractor and grantee employees shall be established by the Secretary in accordance with the requirements of OMB A-45, as amended. Rates for non-Federal, non-contractor and non-grantee occupants shall be established by the Secretary in accordance with OMB Circular A-25, as amended. All occupants of three (3) Fort Washakie compound Quarters, with the exception of approved volunteers and students shall be assessed charges for rent, special services (e.g., housekeeping, snow removal and trash removal), and utilities in accordance with the rental rates established by NAT.

- C. Rates for Federal, contractor and grantee employees shall be established in accordance with OMB a-45, as amended. Rates for non-Federal, non-contractor and non-grantee occupants shall be established in accordance with OMB A-25, as amended.
- D. iQMIS training on implementing new rental rates for Quarters in each Survey region (surveys are conducted every five years) is provided by Bureau of Reclamation/Department of the Interior. Housing Officers, Administrative Officers, and any Public Law 93-638 contractor's employees that assign Quarters and are responsible for implementing the new rates, shall attend the training sessions. Quarters Return (QR) funds can be expended for the rental rate implementation training.

V. Quarters Rental Collections

The NAT has elected to exercise its option of not participating in the Quarters Return Fund (an aggregate of funds collected within each Area and reserved for the operation and maintenance of Government Quarters in that Area). All Quarters receipts collected by the contractor shall be deposited into a separate account and applied only to the operation and management of the Quarters.

- A. The Secretary shall collect all rental amounts due from Quarters occupied by Federal employees (including those assigned to NAT via IPA/MOA). All Quarters receipts, collected by the Secretary for Federal employees occupying Quarters, shall be submitted to the contractor within 60 days of receipt by the Billings IHS Area Office.
- B. The NAT shall collect Quarters' rent and utility charges (where utilities are not payable directly to the utility provider) directly from tenants who are not Federal employees (*e.g.*, NAT employees) who occupy the Quarters.
- C. All Quarters receipts and accrued interest shall remain available for Quarters function until expended. These funds may not be used to purchase trailers or for new Quarters construction activities.
- D. Patients boarding in Boarders Quarters shall be billed at the established rate. NAT shall not be required to charge beneficiaries who must occupy such Quarters for medical reasons authorized by the attending Physician. If a patient

boarder has a third party source reimbursement providing lodging coverage the third party source of reimbursement shall be billed for lodging. Patient boarding receipts shall be program income under this FA.

- E. All Quarters receipts collected by NAT and all Quarters collections from federal government employees shall be deposited into a NAT managed account and accounted for separately. Such funds shall be applied only to the operation, maintenance, and management of such Quarters. All such funds shall remain available for such functions until expended.
- F. Nothing in this Section shall be interpreted, construed, or applied to restrict the sole discretion and authority of NAT to issue certifications for rental deductions for income tax purposes to employees hired directly by the NAT and to federal employees employed at the NAT Service Unit.

VI. Utilities

The NAT shall maintain a separate physical metering and billing system for all utilities and street lighting within the Quarters area.

VII. Terms and Conditions

It is the NAT's sole discretion to establish additional local guidance related to service made available in connection with the occupancy of Quarters so long as such guidance is in conformity with IHS Quarters Management Policies.

VIII. Reporting Requirements

The following reporting requirements shall apply to Federal Quarters managed by the contract in accordance with this contract.

- A. The NAT shall submit Quarters management reports annually to the IHS Billings Area Office, Division of Facilities Management, Office of Environmental Health and Engineering. The reports shall be submitted on or before the anniversary date of the contract/ compact.
- B. The reports shall include assignment data; Quarters rental collection data; and repairs and alterations done on the three Quarters units #78, #79 and #81.

III. HEALTH INFORMATION MANAGEMENT (HIM):

The HIM professionals maintain the overall knowledge and skills required for: managing patient registration and medical records; medical classification (coding) systems; flow of clinical information; the relationship of financial information to clinical data; medical-legal issues that are based on statutory, regulatory or internal control requirements. HIM services include:

- A. Managing patient records and the healthcare information within the RPMS data systems. The Tribe will utilize the current RPMS and EHR, and patient information for a one year transition period. (The transition period is intended to give the NA Tribe time to set up its own functioning RPMS and EHR System.)

- B. Integration of patient health records into the RPMS Certified Electronic Health Record
- C. Provide and document release of information
- D. Maintain a flow of clinical information and maintain the relationships of financial information to clinical data in the RPMS data systems in collaboration with the Clinical Application Coordinator:
 - 1. Appointment scheduling
 - 2. Medical classification system (coding) and data entry in the RPMS
 - 3. Creation, maintenance, and disposition of health records that adheres to and are monitored in compliance with HIPAA, 42 C.F.R. Part 2, and the Office of information Technology (IHS Manual, Part 8, Chapter 15)
 - 4. Coordination of benefits
 - 5. Maintenance of data systems for improved patient care and health planning.

IV. SUPPORT SERVICES

A. Administrative Services

Administrative services include the following key executive positions: the Chief Executive Officer (CEO), the Business Administrator and the Clinical Director. See the attached Organization Chart at Appendix 1 for more information about these positions. Duties include but are not limited to:

- 1. Oversight and management of overall service operations

2. Oversight and management of clinical, medical, nursing and indirect service operations
3. Oversight of RPMS data systems so that clinical data and financial data systems coordinate based on statutory, regulatory, or internal control requirements
4. Provide direction for hardware/software RPMS needs at the clinic
5. Oversight of implementing quality assurance performance improvement and quality improvement strategies
6. Developing, coordinating and administering the organization's policies on personnel
7. Human Resources management specific to staffing, recruitment, retention, job classification, pay and benefits administration
8. Training and development
9. Employee relations
10. Finance, accounting
11. Contracting, data processing, internal controls, auditing, materials management
12. Administration of all PFSAs

B. Financial Office

The Financial Office will handle all aspects of finances for direct and administrative services related to this Scope of Work. The Office will employ experienced individuals (e.g., Business Office Manager, Comptroller, accounts payable, accounts receivable, payroll, third-party claims

specialists, and patient benefits specialists). An IT specialist (finance) will provide system supports. The Financial Office will interface with the HIM Department to insure timely and proper coding and billing of services. General office duties will include:

1. Accounts payable, accounts receivable duties
 2. Purchasing approvals
 3. Insurance and Third-Party receivables (billers/collections)
 4. Grants and contracts financial management including 638 and VA contracts
 5. Purchased/Referred Care accounts manager
 6. Premium sponsorship management
 7. Payroll and employee benefits accounting
 8. Financial forecasting
 9. Revenue analysis
 10. Annual budget with incorporation of departmental budgets
 11. Internal auditing
 12. Policy and procedures related to accounts/expenditures
- C. Business Office—Billing, Collections and Benefits Coordination.**

The Tribe's Business Office (e.g., billings, collections and benefits coordination—Tribal hires may request technical assistance and training) will have an established accounting system to

monitor the number of billings submitted, claims completed and total payments received. It will maintain accreditation standards in order to qualify for funds through third party-payers. Medicare and Medicaid numbers for billing purposes will be secured in order to meet the requirements of the Centers for Medicaid and Medicare Services (CMS) and Medicaid contracts with Managed Care Organizations (MCOs). Other requirements will be met for periodic renewal of accreditation or certification in order to continue to maintain eligibility for these funds. Program functions include:

1. Use the IHS's RPMS third-party billing system and accounts receivable for a one year transition period. (The transition period is intended to give the NA Tribe time to set up its own functioning RPMS third-party billing system and accounts receivable.)
2. Benefits coordination to perform alternate resource determination, insurance enrollment
3. Maintain and monitor insurance needs
4. Assure necessary certifications are maintained
5. Oversee and assure medical coding training
6. Claims management
7. Quality assurance and all third-party billing processes

D. Generalized Services

This function includes but is not limited to providing technical and logistical management for all support services and operations for capitalized and non-capitalized equipment, vehicles, drugs, medical supplies and forms. Material support services include management and distribution of supplies, equipment and mail, inventory control of equipment assets and one (I) property and supply technician.

E. Security Services

Security Services seeks to maintain a safe and secure environment for patients and employees; to protect equipment and material; and control employee, visitor, and patient access to the Arapahoe Health Center by patrolling and monitoring premises and personnel. Unarmed security personnel will be trained in de-escalation techniques and assist with risk management activities. This program is intended to prevent losses and damage by tracking irregularities and informing violators of policies and procedures.