



**RESOLUTION OF THE GOVERNING BODY
OF THE THREE AFFILIATED TRIBES
OF THE FORT BERTHOLD INDIAN RESERVATION**

A Resolution entitled, "Settlement of Lawsuit against the Indian Health Service"

WHEREAS, the Three Affiliated Tribes of the Fort Berthold Reservation (the "Tribe") have accepted the Indian Reorganization Act of June 18, 1934 (the "Act"), and the authority under Section 16 of the Act; and

WHEREAS, the Tribe's Constitution (the "Constitution") authorizes and empowers the Tribe's Tribal Business Council (the "Tribal Business Council") to engage in activity on behalf of and in the interest of the welfare and benefit of the Tribe and of the enrolled members thereof; and

WHEREAS, pursuant to Article III, Section 1 of the Constitution, the Tribal Business Council is the governing body of the Tribe; and

WHEREAS, on March 31, 2008, the Indian Health Service ("IHS") declined in part the Tribe's proposal under the Indian Self-Determination and Education Assistance Act to contract for all of the programs, functions, services and activities of the Fort Berthold Service Unit, including specifically (1) the Tribe's proposal for funding of contract support costs ("CSC"), and (2) the Tribe's proposal to serve non-IHS beneficiaries "as may be authorized by Section 813 of the [Indian Health Care Improvement Act]" (the "Partial Declination"); and

WHEREAS, the Tribe's attorneys, Hobbs, Straus, Dean & Walker, LLP ("Hobbs Straus"), filed a suit challenging the Partial Declination in United States District Court for the District of Columbia, which suit is captioned *Three Affiliated Tribes of the Fort Berthold Reservation v. United States*, No. 08-1601 (JDB); and

WHEREAS, in addition to the claims asserted in the litigation applies for fiscal year ("FY") 2008, the Tribe has outstanding claims for CSC funding for FY2009 and FY2010; and

WHEREAS, on November 20, 2009, counsel for the Defendants made a settlement offer; and

WHEREAS, on November 25, 2009, the Tribal Business Council adopted Resolution No. 09-182-VJB, which made a counteroffer of settlement; and



WHEREAS, on December 4, 2009, the Defendants made a counteroffer to the Tribe's counteroffer; and

WHEREAS, the parties subsequently engaged in settlement negotiations, in which negotiations the Tribe was represented by Hobbs Straus and tribal officials, and arrived at a settlement in principal; and

WHEREAS, counsel for the parties have negotiated a Settlement Agreement (attached hereto), which is consistent with the settlement in principal. The essential terms of the Settlement Agreement are as follows:

- (1) IHS will make a one-time payment of \$1,181,288 (the amount proposed by the Tribe in its November 25, 2009 counter-offer) to the Tribe within fifteen business days of the effective date of the Settlement Agreement; and
- (2) IHS will add \$503,553 (the amount proposed by the Tribe in its November 25, 2009 counter-offer) to the Tribe's base funding for CSC in FY2010. The Tribe's IHS contracts will be modified to reflect the increase within seven business days, and the Tribe will be paid the increase within eight business days of the contract modifications; and
- (3) The Tribe will be eligible for an increase in CSC in FY2010 in addition to the \$503,553 on the same basis as other tribes, based on level of CSC need negotiated by the parties, provided that if the Tribe receives a new indirect cost rate applicable to the IHS contracted programs before the end of fiscal year 2010, then the Tribe's CSC need will be adjusted accordingly; and
- (4) The contracts will be amended to allow service to non-IHS beneficiaries to be provided under the contracts at the Mandaree, Twin Buttes, and White Shield health stations, pursuant to a Tribal Business Council resolution; and
- (5) The Tribe waives any other claim by the Tribe relating to CSC funding or the provision of services to non-IHS beneficiaries for fiscal years 2008, 2009, and 2010; and
- (6) The Tribe agrees to dismiss the lawsuit with prejudice after the IHS makes the required payments of \$1,181,288 and \$503,553.

WHEREAS, the Settlement Agreement must be approved by a Department of Justice official with authority and by the Tribal Business Council; and

WHEREAS, it is in the Tribe's best interest to settle the litigation; and

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THREE AFFILIATED TRIBES)
OF THE FORT BERTHOLD INDIAN)
RESERVATION,)
)
Plaintiff,)
)
v.)
)
UNITED STATES OF AMERICA;)
KATHLEEN SEBELIUS, Secretary of the)
United States Department of Health and)
Human Services; YVETTE)
ROUBIDEAUX, Director of the Indian)
Heath Service, United States Department)
of Health and Human Services;)
CHARLENE M. RED THUNDER, Area)
Director, Indian Health Service)
(Aberdeen, SD);)
)
Defendants.)
_____)

Case Number 1:08-cv-01601-JDB

Hon. John D. Bates

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), and through undersigned counsel, all parties to this action hereby stipulate to the dismissal of this action, in its entirety, with prejudice, each party to bear its own costs and attorneys' fees.

Respectfully Submitted,

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Attorneys for the Plaintiff, Three Affiliated
Tribes of the Fort Berthold Reservation

Attorneys for Defendants

Settlement Agreement

WHEREAS the Three Affiliated Tribes of the Fort Berthold Reservation (“Plaintiff”) have brought an action against the United States of America, Kathleen Sebelius, Secretary of the United States Department of Health and Human Services, Yvette Roubideaux, Director of the Indian Health Service, and Charlene M. Red Thunder, Aberdeen Area Director, Indian Health Service (collectively “Defendants”), in *Three Affiliated Tribes of the Ft. Berthold Reservation v. United States*, No. 08-1601 (D.D.C.) (hereinafter “lawsuit”), challenging the Indian Health Service’s (“IHS”) partial declination of two portions of its contract proposal under the Indian Self-Determination and Education Assistance Act (“ISDEAA”), codified at 25 U.S.C. §§ 450 *et seq.*, namely the declination of the Plaintiff’s language on the provision of services to non-Indians and of its contract support cost (“CSC”) funding proposal;

WHEREAS, on August 10, 2009, the Defendants filed their Answer to the Complaint, denying all liability as to all allegations by Plaintiff in this litigation; and

WHEREAS, the Plaintiff and the Defendants (collectively “the Parties” or individually “a Party”) wish to resolve the disputes that are the subject of the lawsuit without the further expense and risk of litigation;

NOW THEREFORE, the Parties, intending to be bound legally, hereby enter into the following Settlement Agreement (“Agreement”):

1. This Agreement is the result of the Parties compromising and settling disputed claims. Neither this Agreement nor representations made by either Party in the course of negotiating this Agreement shall constitute or be construed as an admission of liability or wrongdoing by any Party, or their employees, representatives, or agents. This Agreement shall not be utilized or be admissible as precedent, evidence, or argument in any other proceeding, except as may be necessary to carry out or to ensure compliance with its terms and conditions.
2. IHS shall pay to Plaintiff a lump sum of One Million One Hundred Eighty-One Thousand Two Hundred Eighty-Eight Dollars (\$1,181,288.00) (“the Payment”).
3. IHS will make the Payment to Plaintiff within fifteen business days from the effective date of this Agreement, as described in paragraph 15.
4. The Parties will amend Plaintiff’s ISDEAA contracts with IHS (Contract Nos. HHS-I-241-2008-00009 and HHS-I-241-2008-00241) to allow for the provision of services to non-IHS beneficiaries at the Mandaree, Twin Buttes, and White Shield health stations according to the following provision, which shall be added by bilateral amendment to the Plaintiff’s fiscal year (“FY”) 2010 Annual Funding Agreements (“AFA” or “AFAs”):

The Three Affiliated Tribes will provide services described in this

Scope of Work to eligible IHS beneficiaries and, on a fee-for-service basis, to non-IHS beneficiaries at the Mandaree, Twin Buttes, and White Shield health stations, based on a Tribal determination and through Tribal resolution in accordance with Section 813(c)(2) of the Indian Health Care Improvement Act, as amended.

5. The Parties will amend Plaintiff's FY 2010 ISDEAA contracts with IHS, by bilateral amendment to the FY 2010 AFAs, as follows:
 - a. The amendment to Contract No. HHS-I-241-2008-00009 will amend Section 5 – Contract Support Costs of the FY 2010 AFA to read as follows:

The parties agree that the CSC funding under this Annual Funding Agreement (AFA) 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 AFA the Three Affiliated Tribes will receive direct CSC in the amount of \$48,678 and indirect-type CSC in the amount of \$614,607. These amounts were determined based upon negotiations for indirect-type costs with the Tribe and the FY 2010 IHS CSC appropriation and may be adjusted as set forth in the IHS CSC Policy (IHM 6-3) as a result of changes in Tribal CSC need and available CSC appropriations. Any adjustments to these amounts will be reflected in future modifications to this AFA.

The Three Affiliated Tribes have submitted a new indirect cost proposal to their cognizant agency and anticipate receiving an indirect cost rate that is applicable to the PSFAs under this award prior to the expiration of this AFA. The parties agree that a rate for FY 2007 or a subsequent fiscal year would be considered applicable to the PSFAs for purposes of this paragraph. Pending the establishment of that new rate, the parties agree that \$663,285 will be provided for total contract support costs under this agreement. Once the new rate is established, the tribe's indirect CSC need will be adjusted consistent with that new rate and the above amount will be adjusted consistent with IHM 6-3 or its successor. Any such adjustment will be reflected in future modifications to this AFA. If the Three Affiliated Tribes fail to receive a new indirect cost rate applicable to the PSFAs under this award prior to the expiration of this AFA, the above amount shall be the total CSC awardable under this AFA for FY 2010.

- b. The amendment to Contract No. HHS-I-241-2008-00241 will amend Section 1, Paragraph 2 – Contract Support Costs of the FY 2010 AFA to read as follows:

The parties agree that the CSC funding under this Annual Funding Agreement (AFA) 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 AFA the Three Affiliated Tribes will receive direct CSC in the amount of \$317,811 and indirect-type CSC in the amount of \$497,696. These amounts were determined based upon negotiations for indirect-type costs with the Tribe and the FY 2010 IHS CSC appropriation and may be adjusted as set forth in the IHS CSC Policy (IHM 6-3) as a result of changes in Tribal CSC need and available CSC appropriations. Any adjustments to these amounts will be reflected in future modifications to this AFA.

The Three Affiliated Tribes have submitted a new indirect cost proposal to their cognizant agency and anticipate receiving an indirect cost rate that is applicable to the PSFAs under this award prior to the expiration of this AFA. The parties agree that a rate for FY 2007 or a subsequent fiscal year would be considered applicable to the PSFAs for purposes of this paragraph. Pending the establishment of that new rate, the parties agree that \$815,507 will be provided for total contract support costs under this agreement. Once the new rate is established, the tribe's indirect CSC need will be adjusted consistent with that new rate and the above amount will be adjusted consistent with IHM 6-3 or its successor. Any such adjustment will be reflected in future modifications to this AFA. If the Three Affiliated Tribes fail to receive a new indirect cost rate applicable to the PSFAs under this award prior to the expiration of this AFA, the above amount shall be the total CSC awardable under this AFA for FY 2010.

- c. The amendment to Contract No. HHS-I-241-2008-00241 will make an additional \$503,553 in CSC funding available in FY 2010. The amount will be made available pursuant to the amendment in paragraph 5(b) and by amending the FY 2010 AFA – Attachment A to add \$503,553 in CSC funding (including \$382,891 for indirect-type CSC and \$120,662 for direct CSC) to the FY 2010 AFA, bringing the total FY 2010 CSC funding for Contract No. HHS-I-241-2008-00241 to \$815,507. The amount to be made available pursuant to subparagraph 5(b) and this subparagraph will be paid in accordance with paragraph 6. The increase will bring Plaintiff's total CSC funding for both of its ISDEAA contracts with IHS to

\$1,478,792, including \$1,112,303 for indirect-type CSC and \$366,489 for direct CSC.

6. The Parties will make the amendments required under paragraphs 4 and 5 of this Agreement within seven business days from the effective date of this Agreement, as described in paragraph 15. Within eight business days of execution by both Parties of the bilateral amendment required under paragraph 5(b), (c), IHS will pay to Plaintiff the \$503,553 in additional CSC funding that is to be made available to Plaintiff pursuant to paragraph 5(c) of this Agreement.
7. Notwithstanding any other provision of this Agreement or of the contract amendments required by paragraph 5 of this Agreement, the Parties agree that Plaintiff will continue to be eligible for an increase in its CSC funding, above the \$503,553 to be made available according to paragraph 5 and paid in accordance with paragraph 6, on the same basis as all other tribes. Congress appropriated an increase in CSC funding in FY 2010, which IHS will treat as Pool No. 3 — Contract Support Costs Increase/Shortfall Funds under the IHS CSC Policy (Indian Health Manual — Part 6, Chapter 3). Pursuant to Section 6-3.3(C) of the IHS CSC Policy, IHS will allocate the increase in the CSC appropriation as follows: 50 percent of the funds available under Pool No. 3 will be allocated to tribes with the greatest CSC shortfalls using a bottom-up allocation methodology; the remaining 50 percent of the funds available under Pool No. 3 will be allocated proportionately to all tribes with a CSC shortfall. To ensure that Plaintiff is treated equitably with all other tribes, the increased FY 2010 CSC funding of \$503,553 referenced in paragraph 5(b), (c) will be included in the calculation of Plaintiff's "level of need funded" ("LNF"). The calculation of Plaintiff's LNF will be based on the Plaintiff's negotiated FY 2010 CSC need for both of its ISDEAA contracts with IHS (Contract Nos. HHS-I-241-2008-00009 and HHS-I-241-2008-00241), which includes \$1,358,478 in indirect-type CSC and \$366,489 in direct CSC. If Plaintiff is eligible for any funding based on application of the IHS CSC Policy, as described above, the Parties will amend Plaintiff's FY 2010 AFA for Contract No. HHS-I-241-2008-00009 to incorporate that funding at the time IHS allocates the increase in the CSC appropriation, irrespective of whether the allocation occurs prior to the effective date of this Agreement, as described in paragraph 15. If the allocation occurs prior to the effective date of this Agreement, as described in paragraph 15, the amendment required by paragraph 5(a) will be updated to reflect Plaintiff's total CSC funding for Contract No. HHS-I-241-2008-00009 at the time of the amendment, including any funding Plaintiff is eligible to receive based on the IHS CSC Policy and allocation of the FY 2010 CSC appropriation increase.
8. Plaintiff agrees to release and discharge the Defendants and their past or present employees, representatives, or agents, in their official or individual capacities, or any agency or instrumentality of the United States, from any and all claims, legal and equitable, arising from and pertaining to any of the Plaintiff's allegations in the Complaint filed in the lawsuit, as well as any claims for fiscal years 2008,

2009, and 2010 regarding the provision of services to non-IHS beneficiaries, CSC funding, interest, attorneys' fees, and costs. In addition, Plaintiff agrees to waive and not to pursue any claim or cause of action, in any forum, in any way related to any allegation, whether or not asserted in the lawsuit, that Plaintiff was not awarded or reimbursed its full contract support cost funding for fiscal years 2008, 2009, and 2010, including but not limited to, any ISDEAA declination appeals and Contract Disputes Act claims pertaining to CSC in those years. If Plaintiff has any pending CSC proposals or Contract Disputes Act claims pertaining to FYs 2008, 2009, or 2010, the Plaintiff agrees to withdraw those claims. The Parties agree that this paragraph does not preclude Plaintiff from seeking to enforce the terms of this Agreement or to enforce the contract amendments to be entered by the Parties pursuant to paragraphs 4 and 5 of this Agreement, or that may be entered by the Parties pursuant to paragraph 7 of this Agreement.

9. Each Party to this Agreement shall bear all of its own costs and attorneys' fees for all aspects of this lawsuit and for any administrative proceedings involving the claims that preceded this lawsuit.
10. This Agreement shall not constitute a precedent or argument in this or any other matter, nor shall it be used as evidence or otherwise in any pending or future civil or administrative action against or involving the Defendants, or their employees, representatives, or agents, or any agency or instrumentality of the United States, except as may be necessary to establish or clarify the Parties' respective rights and obligations under this Agreement. The Parties acknowledge that negotiations underlying the Agreement are subject to Federal Rule of Evidence 408.
11. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective predecessors, successors, agents, and assigns.
12. The terms of this Agreement shall constitute the entire settlement agreement between the Parties regarding both the final disposition of the lawsuit and the Parties' respective rights and obligations under this Agreement, and any prior oral or written statement, representation, agreement, or understanding that is not expressly contained herein, shall have no force or effect whatsoever. This Agreement, including this Paragraph 12, may not be changed, revised, modified, or terminated orally, except as provided by written instrument that is signed by the Parties to this Agreement after the effective date of this Agreement. Any waiver of the provisions of this Agreement must be in writing and signed by a duly authorized representative of the Party against whom enforcement of such waiver is sought. One or more waivers of any provision of this Agreement shall not be construed as a waiver of a subsequent breach or of any other covenant, condition, or provision of the Agreement. This Agreement shall be deemed to have been drafted jointly by the Parties, and no alleged ambiguity shall be construed against any Party as the drafter.
13. The Parties may execute this Agreement in counterparts, each of which

constitutes an original and all of which constitute one and the same Agreement. A facsimile or other duplicate of a signature shall constitute an acceptable, binding signature for purposes of this Agreement.

14. Following the execution of this Agreement by the signatories for all Parties and receipt by Plaintiff of the payments required by paragraphs 2 and 6, Defendant's counsel shall sign and deliver to Plaintiff's counsel a Stipulation of Dismissal with Prejudice, in the form attached hereto as Exhibit 1. Plaintiff's counsel shall promptly sign the Stipulation of Dismissal with Prejudice and file it with the Court, and such filing shall constitute a dismissal of the lawsuit with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii).
15. This Agreement will become effective upon execution of the Agreement by the signatories for all Parties and delivery of the fully executed Agreement to all Parties.
16. The Parties understand and agree that this Agreement, including all the terms and conditions of the compromise settlement herein and all additional agreements and undertakings relating thereto, may be made public in its entirety, and Plaintiff expressly consents to such release and disclosure.
17. The Parties hereby declare that they have voluntarily entered into this Agreement in good faith, have read and fully understand the entire Agreement, and consider it to be a fair and reasonable settlement agreement.
18. Undersigned counsel for Plaintiff certifies that the Tribal Chairman and Tribal Business Council have reviewed this Agreement and that, by Tribal Business Council resolution (attached hereto as Exhibit 2), they have approved of and authorized the execution of the document by Plaintiff, by and through its undersigned counsel. Each signatory to this Agreement on behalf of the Defendants represents and warrants that he or she is fully authorized to enter into this Agreement on behalf of the Defendants.

**Three Affiliated Tribes of the Fort Berthold
Reservation, Plaintiff**

Date _____, 2010

By: _____
Michael L. Roy, Counsel for Plaintiff,
Three Affiliated Tribes of the Fort Berthold
Reservation

United States, et al., Defendants

Date _____, 2010

By: _____
Dr. Yvette Roubideaux, Director
Indian Health Service

Date _____, 2010

By: _____
Ronald C. Machen, Jr., D.C. Bar # 447889
United States Attorney

By: _____
Rudolph Contreras, D.C. Bar # 434122
Assistant United States Attorney

By: _____
Jeremy S. Simon, D.C. Bar #447956
Assistant United States Attorney
555 4th St., N.W.
Washington, D.C. 20530
(202) 307-0406



WHEREAS, the Tribal Business Council hereby determines that health services should be provided to non-IHS beneficiaries at the Mandaree, Twin Buttes, and White Shield health stations, on a fee for service basis, and finds that the provision of such services will not result in a denial or diminution of services to IHS beneficiaries;

NOW THEREFORE BE IT RESOLVED that the Tribal Business Council hereby approves the Settlement Agreement attached hereto; and

NOW THEREFORE BE IT FURTHER RESOLVED that Hobbs Straus is authorized and directed to execute the Settlement Agreement on behalf of the Tribe; and

NOW THEREFORE BE IT FURTHER RESOLVED that the Chairman of the Tribe is authorized to execute the IHS contract modifications pursuant to the Settlement Agreement when they are received from the IHS; and


NOW THEREFORE BE IT FURTHER RESOLVED that Hobbs Straus is authorized to file with the Court a Stipulation of Dismissal dismissing the lawsuit with prejudice after the Defendants make the required payments of \$1,181,288 and \$503,553.

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

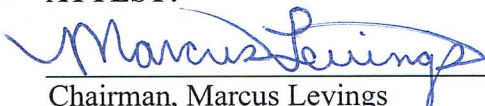
I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation, hereby certify that the Tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 6 were present at a Special Meeting thereof duly called, noticed, convened and held on the 13th day of April, 2010, that the forgoing Resolution was duly adopted at such meeting by the affirmative vote of 6 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman Voting. [] Not Voting

Dated this 13th day of April, 2010



Tribal Secretary, V. Judy Brugh
Tribal Business Council
Three Affiliated Tribes

ATTEST:


Chairman, Marcus Levings
Tribal Business Council
Three Affiliated Tribes