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August 26, 2013

The Honorable Patty Murray (D-WA)
Senate Committee on Appropriations
United States Senate
154 Russell Senate Office Building
Washington, DC 20510
ATTN: Shawn Bills, Deputy Chief of Staff and Anna Sperling, Legislative Assistant

Re: Contract Support Cost Senate Appropriations for FY 2014

Dear Senator Murray:

In early January 2013, I sent a letter to the Senate Committee on Indian Affairs (SCIA) Chairwoman Maria Cantwell to request a hearing on Contract Support Cost (CSC) to address two overarching issues: settlement of past claims for unpaid CSC and resolution of CSC issues moving forward. The recently released draft of the Senate's FY 2014 Interior, Environment and Related Agencies Appropriations Act has elevated my request to urge both you as a Member of the Senate Appropriations Committee and Senator Cantwell for your support of a simple, but critical, amendment to the Senate draft. The bill, as currently drafted, would adopt the Administration's proposal to impose a cap on the CSC available to every Tribe or Tribal organization that exercises its rights to Self-Determination and Self-Governance under the Indian Self-Determination and Education Assistance Act (ISDEAA).

For over twenty years, Tribes have been litigating CSC issues with the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS). Last June, in *Salazar v. Ramah Navajo Chapter*, the Supreme Court affirmed that Tribes carrying out federal programs under the ISDEAA are entitled to full CSC, the reasonable costs of administering those programs and services. Like any other federal contractors, every Tribe is entitled to be paid what the statute and its contract promise or the Tribes can recover CSC funding deficiencies through contract claims against the U.S. Government.

This Senate bill would incorporate funding tables prepared by the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) that identify a limited amount of CSC to be paid for each and every ISDEAA agreement—regardless of the full amount required by the ISDEAA based on the contractors' indirect cost rate agreements and negotiated direct

CSC needs. This approach would effectively nullify the U.S. Supreme Court's decision in the *Ramah Navajo* case and establish Self-Determination and Self-Governance Tribes as second-class government contractors, uniquely unable to recover damages for contract underpayments. This is hardly the way to promote the policy of Tribal Self-Determination that has proven to be the most successful in the history of Tribal-Federal relations.

During the recent Tribal Contract Support Cost Summit, an easy solution was discussed and approved. The enclosed proposed amendment to the draft Senate bill would simply strike the provisos for each agency's appropriation imposing caps on aggregate CSC spending and the funds available to each ISDEAA agreement. The bill would then be in accord with that of the House, which contains no CSC caps.

The explanatory statement accompanying the Senate bill would make it clear that the Committee adopted the Administration's approach with reluctance, and chides the Administration for putting forward its recommendation without consulting with Tribes. The Senate still has the opportunity to reject this approach and embrace one that accords not only with the House bill but with basic principles of Tribal Self-Determination.

On behalf of the Jamestown S'Klallam Tribe, I respectfully request that you support the enclosed amendment to the [draft] Senate FY 2014 Interior, Environment and Related Agencies Appropriations Act.

If you have any questions, please do not hesitate to call me at (360) 681-4621 or via email at rallen@jamestowntribe.org.

Sincerely,



W. Ron Allen, Chairman and CEO
Jamestown S'Klallam Tribe

Enclosures (3): Proposed Amendment to CSC Language
 Excerpt from FY 2014 Senate Interior Bill pp 28
 Excerpt from FY 2014 Senate Interior Bill pp 98-99

cc: National Congress of American Indians
 National Indian Health Board
 Affiliated Tribes of Northwest Indians
 DOI and HHS Self-Governance Tribes