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Burns-Paiute Tribe  
Chehalis Tribe  
Coeur d'Alene Tribe  
Confederated Tribes of Colville  
Confederated Tribes of Coos, Lower  
Umpqua, and Siuslaw Indians  
Confederated Tribes of Grand Ronde  
Confederated Tribes of Siletz  
Confederated Tribes of Umatilla  
Confederated Tribes of Warm Springs  
Coquille Tribe  
Cow Creek Tribe  
Cowlitz Tribe  
Hoh Tribe  
Jamestown S'Klallam Tribe  
Kalispel Tribe  
Klamath Tribe  
Kootenai Tribe  
Lower Elwha Klallam Tribe  
Lummi Tribe  
Makah Tribe  
Muckleshoot Tribe  
Nez Perce Tribe  
Nisqually Tribe  
Nooksack Tribe  
NW Band of Shoshone Tribe  
Port Gamble S'Klallam Tribe  
Puyallup Tribe  
Quileute Tribe  
Quinault Tribe  
Samish Indian Nation  
Sauk-Suiattle Tribe  
Shoalwater Bay Tribe  
Shoshone-Bannock Tribe  
Skokomish Tribe  
Snoqualmie Tribe  
Spokane Tribe  
Squaxin Island Tribe  
Stillaguamish Tribe  
Suquamish Tribe  
Swinomish Tribe  
Tulalip Tribe  
Upper Skagit Tribe  
Yakama Nation

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January 3, 2018

*Via Email*

RADM Michael D. Weahkee, Acting Director  
Indian Health Service  
5600 Fishers Lane  
Rockville, MD 20857

**RE: Tribal CSC Workgroup Objections to IHS's Unilateral  
Rescission of "97/3" Option for Determining Indirect Costs  
Associated with Service Unit Shares**

Dear RADM Weahkee:

As the Tribal Co-Chair of the Indian Health Service (IHS) Contract Support Cost (CSC) Workgroup, I write to express concern about your letter to tribal leaders, dated December 21, 2017, in which you announce IHS's decision to immediately rescind a key provision of the agency's CSC policy. The Workgroup objects to this unilateral decision, made without tribal consultation in violation of the policy's own requirements for adopting changes. Any amendments IHS wishes to propose should be implemented only after thorough discussion with the IHS CSC Workgroup and full tribal consultation. In preparation for this process, IHS should immediately distribute to the Workgroup the data that IHS believes support the proposed change.

The provision at issue arises from IHS's attempt to account for duplication between indirect CSC and indirect cost funding IHS believes is included in the Secretarial or program amount. When a tribe assumes a new or expanded program, function, service, or activity (PFSA), or adds staff associated with a joint venture, IHS requires a duplication review when determining the amount of CSC associated with the expansion. The rescinded provision gave tribes a choice between two methods: (1) a "case-by-case detailed analysis" of indirect costs transferred in the Secretarial amount; or (2) a 97/3 split, in which 97% of the expansion would be deemed part of the direct cost base (and thus generate indirect CSC), while 3% would be deemed indirect cost funding (and thus excluded from the direct cost base and offset against indirect CSC otherwise due).

The 97/3 option evolved from extensive and difficult negotiations between the tribal and federal representatives on the IHS CSC Workgroup in 2016. It was modeled on the longstanding 80/20 split for Area and Headquarters tribal shares. Like the 80/20 rule, the 97/3 split provides a reasonable approximation that saves much time and effort on both sides, replacing hours or days of potentially contentious negotiations with a simple computation. But now IHS proposes to unilaterally revoke, at least temporarily, this efficient option, which your letter says "may not conform in all cases with the statutory authority of the

Indian Self-Determination and Education Assistance Act (ISDEEA).”

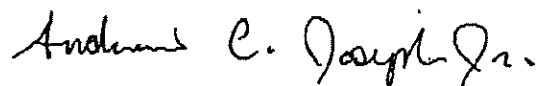
For well over a year, Tribes worked with IHS on a government-to-government basis to reach difficult compromises on contested issues such as accounting for duplication on service unit shares. The parties agreed that the policy will “be reassessed on a regular basis,”<sup>1</sup> but specified that “changes will only be implemented **after** Tribal consultation.”<sup>2</sup> Revoking the 97/3 option, even temporarily, fundamentally changes the agreement struck between the parties and should be implemented, if at all, only after informed discussion with the Workgroup and full tribal consultation—as IHS agreed in the policy itself.

As a first step, we respectfully request that IHS immediately distribute to the Workgroup the data which IHS relies for its conclusion that the 97/3 split may not “in all cases” conform to the ISDEEA. This should include the annual CSC Funding Report called for in the policy,<sup>3</sup> as well as data specific to the composition of service unit funding. To enable meaningful discussion, tribes need to conduct their own analysis of all information that, in IHS’s view, mandates re-opening this issue. IHS should then convene the CSC Workgroup, comprised of tribal leaders and technical experts, to develop a shared interpretation of the data. Finally, any changes agreed to by the Workgroup must be vetted through full tribal consultation.

Throughout this process, and until a final decision is made, IHS should continue to carry out its CSC policy as written, including the 97/3 option. If, in some individual case, IHS can show that the 97/3 split clearly and demonstrably conflicts with the ISDEEA, the policy already recognizes that the statute supersedes it in the event of a conflict.<sup>4</sup> A complete revocation of the 97/3 option is not necessary. More importantly, it disregards the bargain struck in government-to-government negotiations and ignores the deliberative process for amendments set forth in the policy itself.

Thank you for your prompt attention to this matter. We look forward to working with IHS as the conversation on this issue develops.

Sincerely,



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Andrew C. Joseph Jr.  
Tribal Co-Chair, IHS CSC Workgroup

cc: IHS CSC Workgroup members

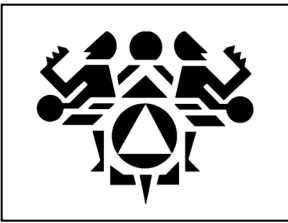
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<sup>1</sup> Indian Health Manual, § 6-3.1B(18).

<sup>2</sup> Indian Health Manual, § 6-3.1D (emphasis added).

<sup>3</sup> Indian Health Manual, § 6-3.5B.

<sup>4</sup> Indian Health Manual, § 6-3.1C.



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Tribe  
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Skokomish Tribe  
Snoqualmie Tribe  
Spokane Tribe  
Squaxin Island Tribe  
Stillaguamish Tribe  
Suquamish Tribe  
Swinomish Tribe  
Tulalip Tribe  
Umatilla Tribe  
Upper Skagit Tribe  
Warm Springs Tribe  
Yakama Nation

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**SUBMITTED VIA EMAIL**

January 12, 2018

RADM Michael D. Weahkee  
Acting Director  
Indian Health Service  
5600 Fishers Lane  
Rockville, MD 20857

***RE: Invitation to Attend Contract Support Cost Workgroup Meeting; Request for Information on CSC Issues***

Dear Acting Director Weahkee:

The Indian Health Service (IHS) Contract Support Cost (CSC) Workgroup, on which I serve as the Tribal Co-Chair, has scheduled an in-person meeting, at a location to be determined, on March 6-7, 2018. On behalf of the tribal leaders and technical experts on the Workgroup, I urge you to attend this important meeting. Among other topics, the meeting will address IHS's unilateral decision, announced in your letter to tribal leaders dated December 21, 2017, to immediately rescind a key provision of the agency's CSC Policy without notice to, let alone consultation with, tribes. This abrupt decision surprised and troubled tribal leaders, as it disregarded the agreement struck in lengthy and challenging negotiations. I hope you will take the opportunity provided by the Workgroup meeting to hear and respond personally to these concerns. Between now and then, I also hope the 97/3 option (Manual section 6-3.2E.3) will have been reinstated, as requested in my letter of January 3, 2018.

In my January 3<sup>rd</sup> letter, I requested that IHS provide the Workgroup all information on which the agency relied in concluding that the 97/3 option in § 6-3.2E(3) of the Policy may not "in all cases" conform to the Indian Self-Determination Act. Now that a Workgroup meeting has been scheduled and a preliminary agenda set, I would like to expand this information request accordingly. Please provide the Workgroup in advance with all relevant information and documentation on the following Workgroup agenda items:

- All data and other documentation underlying IHS's decision to rescind the 97/3 option;
- All data developed by IHS in 2016 at the time that IHS agreed to the 97/3 option;
- Delays in indirect cost rate negotiation in the Department of Health and Human Services;

RADM Michael D. Weahkee

January 12, 2018

Page 2

- IHS's response to a tribal request that IHS reconsider its refusal to pay CSC on Catastrophic Health Emergency Fund (CHEF) funding;
- IHS's response to a tribal request that IHS reconsider its refusal to pay CSC on Domestic Violence Prevention Initiative and Substance Abuse and Suicide Prevention funding;
- CSC distribution data for FYs 2014 through 2017 (update of spreadsheet provided at the Workgroup's last meeting in Tulsa in August 2017);
- Establishment of a tribal-federal sub-workgroup to develop CSC budget projections; and
- Ongoing review of the CSC Negotiation Template.

In order to allow time for careful tribal review of this information and maximize the productivity of the meeting, we request that IHS provide the information above no later than **February 9, 2018**.

We look forward to meeting with you on March 6-7, and we remain committed to working with IHS to resolve these issues in accordance with the Policy's guiding principles of transparency and collaboration in the government-to-government relationship.

Sincerely,

A handwritten signature in black ink that reads "Andy Joseph, Jr." in a cursive style.

Andy Joseph, Jr., NPAIHB Chairperson  
Colville Tribal Council Member

cc: IHS CSC Workgroup members