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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SUSANVILLE INDIAN RANCHERIA, Plaintiff vs. MIKE LEAVITT, et al., Defendants.	CASE NO. _____ DECLARATION OF JIM MACKAY

Jim Mackay hereby deposes and states:

1. My name is Jim Mackay. I am over 18 years of age. I am making this declaration on behalf of the Susanville Indian Rancheria's Motion for Temporary Restraining Order and Preliminary Injunction. I am fully competent to make this declaration. I have personal knowledge of the facts stated herein, and, if called to do so, could and would competently testify to the facts set forth herein. To my knowledge, all of the facts stated in this declaration are true and correct.

2. The Susanville Indian Rancheria ("Tribe") is a federally-recognized Indian tribe. Its business address is 745 Joaquin St., Susanville, CA, 96130.

3. I have been employed by the Tribe since March 24, 1997. I was initially hired as the Tribal Office Secretary/Bookkeeper and became the Tribal Office Manager on December 21, 1998. On May 30, 2005, I became Tribal Administrator. On April 26, 2006, I was appointed as Acting Executive Director for the Lassen Indian Health Center ("LIHC," the Tribe's health care services center).

4. LIHC has been providing health care services to Tribal members and other eligible beneficiaries pursuant to an Indian Self-Determination and Educational Assistance Act ("ISDEAA") Contract and Annual Funding Agreements ("AFA") with the IHS since 1986. The LIHC was developed to enable the Tribe to meet the health care needs of its members and other eligible beneficiaries in the Tribe's service area.

5. One vital part of the LIHC has been the provision of pharmacy services, allowing its eligible beneficiaries to obtain necessary prescription drugs at minimal cost (and, for those clients who are indigent, at no cost) in a program integrated with the other health services programs offered by the Tribe. In January 2007, LIHC filled 756 prescriptions, for an average of 37.8 per day. The pharmacy services program at the LIHC employs two people.

6. The Tribe has included the pharmacy program in our ISDEAA Contract and AFA with IHS since the time the pharmacy program opened in 1997. The IHS provides no funds to the Tribe to carry out a direct service pharmacy program. However, by including the program in the Tribe's AFA, the Tribe gains a number of benefits: it can access the 340B Federal Drug Discount Program to purchase pharmaceuticals for our patients (through the Health Resources and Services Administration, "HRSA"), it can reallocate a portion of other IHS funds transferred to

the Tribe in its ISDEAA agreement to the pharmacy program; and the Tribe's pharmacist is covered under the Federal Tort Claim Act ("FTCA"). Patients also gain a number of benefits: they are able to obtain their medication in the same facility as the physicians who prescribe those medicines; they have access to a program with full time direct pharmacy services that not only dispenses medication at lower cost but also involves recommending therapies to clinical providers, monitoring medication plans to assure appropriate, safe and cost-effective therapies, and providing patients with information and counseling, to ensure compliance and mediate potential side effects. The program provides a continuum of care that is integrated, coordinated and comprehensive designed to ensure effective, cost efficient, and safe therapies.

7. Because the IHS has never provided the tribe with any funds specifically to operate its pharmacy program, the Tribe has had to cobble together funds from various sources to operate the program. For example the Tribe has reallocated a portion of IHS funds away from other health services and has used a large amount of third party collections to fund the program. The Tribe attempted to get its pharmacy program running for several years, but its initial attempts resulted in significant out of pocket costs to the Tribe, which meant that substantial amounts of funds had to be diverted from other health purposes to support the pharmacy program. After several years of operating the program at a loss, the Tribe had to close the program between January 2004 and June 2005 because it was unable to provide these critically needed services in a financially sound manner.

8. During the timeframe the pharmacy was closed in 2004 and 2005, the Tribe received numerous complaints from the local beneficiaries because it created an inconvenience to them to see our providers and travel elsewhere to obtain their medications. In addition, beneficiaries complained about the lack of personal care they received (both by the pharmacist and by the

pharmacy staff) and the delay in obtaining prescriptions. We saw a drop in patient visits that were directly related to the Tribe not having an on-site pharmacy. In 2003, we had a patient count of 962 with a visit count of 4,936. In 2004; our patient count was 882 with a visit count of 4,405. As a result of these complaints and the loss of patients, the Tribe started up the pharmacy program once again in June 2005, but it was still not financially viable.

9. After much study and analysis, the Tribe determined that the only way it would be able to achieve financial viability for the pharmacy program would be to charge a small co-pay ($5.00) along with the acquisition cost of the medicine to those patients who could afford it (indigent members and elders are exempt from this charge). This policy was implemented in July 1, 2006. Per the Tribe's pharmacy financial records, since this policy was implemented the pharmacy received payments totaling $95,502.19 in 2006, and in January 2007, the pharmacy collected $10,304.41. These funds have made the pharmacy a financially viable operation, and we are only able to continue the service by carefully managing the fiscal resources.

10. In June 2006, the Tribe provided a copy of its pharmacy policy to the IHS. Around that time the Tribe was admitted into the ISDEAA Self-Governance applicant pool and the Tribe and IHS began to negotiate a self-governance Compact and Funding Agreement ("FA") pursuant to Title V of ISDEAA. One of the programs that the Tribe requested to be included in the funding agreement is its pharmacy services program, using substantially the same language that was included in the prior and present contracts.

11. While nearly all provisions of the Compact and FA were ultimately negotiated to the satisfaction of the Tribe and IHS, the IHS expressed concerns with the pharmacy co-pay feature. The Tribe presented its final offer on the Compact and FA on December 15, 2006. The final offer included the pharmacy program language. Under ISDEAA, the IHS had 45 days to

respond (by January 29, 2007). Since the Tribe's existing ISDEAA AFA was set to expire on December 31, 2006, the IHS and the Tribe agreed to extend the existing agreement for 45 days (to February 15, 2007) while the IHS considered its response to the Tribe's final offer. This extension covered all provisions in the existing FA, including the pharmacy program, which the IHS knew included the co-pay feature. The IHS did not make it a condition of granting the extension that the Tribe drop the co-pay feature. Thus, the Tribe has been able to continue to operate the pharmacy and charge the co-pay where appropriate under the policy.

12. On January 29, 2007, the IHS formally communicated to the Tribe that it would not approve the pharmacy program in the FA because the pharmacy program involves a co-pay feature. Thus, as of February 15, 2007, when the current FA extension expires, the IHS will formally exclude the pharmacy program from the programs to be authorized under the Tribe's ISDEAA Compact and FA.

13. If the Susanville Indian Rancheria is forced to exclude the Tribe's pharmacy from its AFA, it would result in the following: A) the program will possibly no longer be covered under FTCA and the Tribe will need to obtain liability insurance for the pharmacy program; B) the Tribe may be unable to obtain pharmaceuticals under the 340B Federal Drug Discount Program thus dramatically increasing the costs of pharmaceuticals; and C) the Tribe will be unable to reallocate other IHS funds to help defray operational costs of the pharmacy. These results would require the Tribe to close the pharmacy, because it would not be a financially viable operation.

14. Closure of the pharmacy would have significant and irreparable consequences on the Tribe and those it serves. The LIHC's patients would no longer have access to the low-cost pharmaceuticals that the Tribe can provide through the program. They would no longer be able to obtain those pharmaceuticals, as they can now, in the same facility as the physicians who

prescribe and oversee those medicines. The Tribe would not be able to offer a coordinated and comprehensive set of direct health care services, of which the pharmacy program is an essential part. The alternative to the co-pay system currently in place would be no pharmacy program at all. While the program's beneficiaries may be able to obtain their medicine elsewhere, doing so will cost more, will be inconvenient, and will not be done in accordance with LIHC's goal of providing continuity of care; i.e., providing a coordinated service environment meant to ensure effective, efficient, and safe therapies. If the beneficiaries wanted to obtain their medicine from an IHS-funded facility, the closest one is located in Reno, Nevada, 85 miles from Susanville. The closest one in California is in Oroville, 122 miles from Susanville.

15. In addition, closure of the pharmacy program would require the Tribe to lay off its pharmacy staff, which have specialized training and expertise. The result would be significant harm to those individuals and to the Tribe. It would be difficult for these staff to find comparable work in a rural area like Susanville. It is also highly possible that these expert staff would either find new positions in Susanville or leave the area to find comparable work, and that if the Tribe prevailed on the merits LIHC would be in the position of having to find, hire, and train new staff to fill these positions. It is very difficult to hire trained pharmacy staff in Susanville, and it would take a substantial period of time and incur significant costs if LIHC had to do so. For example, after LIHC reopened its pharmacy in June 2005, LIHC was without a full-time, on-site pharmacist for nearly a year and a half, having to rely during that time on an outside pharmacist contracting firm at significant additional cost. This situation creates problems with consistency and continuity of care.

16. The IHS would not suffer any injury as a result of a temporary restraining order or an injunction. Including the pharmacy program in the Tribe's FA will not require the IHS to

provide any additional funding to the Tribe. Moreover, the IHS already agreed to a 45 day extension preserving the status quo – including the pharmacy co-pay services – while it considered the Tribe's final offer on the Compact and Funding Agreement.

17. The IHS is also aware that many other tribes currently carry out pharmacy programs that require co-payments in some form by beneficiaries, and to my knowledge IHS has not sought to close those programs down. I conducted research of the other thirty-six (36) IHS funded sites in California, and I identified only twelve (12) facilities that have pharmacies. Out of these, more than half, seven (7) charge some sort of cost to their Native American patients, whether it is called a dispensing fee, handling fee, or prescription co-pay. As far as I know, IHS has not taken any action against them.

18. To allow the Tribe to continue to offer its critical pharmacy services beyond February 15, 2007, Defendants must be restrained and enjoined from excluding the pharmacy services program from the scope of programs authorized under the Tribe's ISDEAA Compact and FA. Otherwise, the harm to the Tribe, its health care patients, and its employees will be immediate and irreparable. Since IHS's exclusion of pharmacy services from the Tribe's programs will go into effect on February 15, 2007, the need for relief is immediate. Even if the LIHC pharmacy were prevented from charging a co-pay from February 15, 2007 until such time as the Court held a hearing to grant a preliminary injunction, it would result in substantial operational problems for LIHC, including but not limited to disrupting the expectations of LIHC patients regarding such charges, disrupting staff and administration by moving between a co-pay and non-co-pay system, uncertainties in income stream security for LIHC, and temporary reallocation of funds from other sources (resulting in diminishment in other services) to ensure that the pharmacy can meet its financial obligations.

19. I am the custodian for the official and business documents of the LIHC. I work with these documents on a daily basis, I rely on them to conduct the business of LIHC, and the accuracy and credibility of such documents is necessary for conducting such business. Those documents are organized pursuant to a document storage and retrieval system aimed at minimizing the risk of loss, destruction, or alteration. I certify that the attached Exhibits (described below) are accurate copies of documents maintained as official and business documents of LIHC, and were either created by LIHC or received by LIHC during the normal course of its business:

Exhibit A: Tribe-IHS Title I Contract and Annual Funding Agreement for CY 2006

Exhibit B: LIHC Pharmacy Policy, July 1, 2006

Exhibit C: Tribe's Final Offer on Compact and Funding Agreement, December 15, 2006

Exhibit D: IHS "Response to Final Offer" Letter, January 29, 2007

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 8th day of February, 2007.

Jim Mackay
Susanville Indian Rancheria
745 Joaquin St.
Susanville, CA, 96130

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

NOTICE OF SELF-DETERMINATION CONTRACT

1. Award Date Mo./Day/Year
May 1, 1995

2. a. Contract Recipient Name:

Susanville Indian Rancheria
795 Joaquin Street
Susanville, California 96130

3. Award Period
From: May 1, 1995
To: Indefinite

4. Contract No. 235-95-0013

5. Administrative Code N/A

6. Authorization (Legislation) 25 USC 450f

7. Program Title Comprehensive Health Services

9. FEDERAL FUNDS AWARDED, CURRENT AWARD PERIOD See Annual Funding Agreement(s)

Total See Annual Funding Agreement(s)

10. Unawarded Balance of Current Year's Funds See Annual Funding Agreement(s)

Carry Forward from Prior Year See Annual Funding Agreement(s)

Remarks (Other Documents Attached - __X__ Yes ____ No)

1. Tribal Resolution
2. Annual Funding Agreement(s)
3. Contractor Proposal (incorporated by Reference)

This contract is subject to the terms and conditions incorporated either directly or by reference in the following:

a. The Self-Determination Contract program legislation cited above.
b. The Annual Funding Agreement.
c. The award notice including terms and conditions, if any, under "Remarks."

11. CRS, -EIN 94-2165016

12. PAYMENT INFORMATION

23. Frequency of Payment
a. __X__ Annual Lump Sum Advance Payment b. ____ Quarterly Advance Payment
c. ____ Monthly Advance Payment

24. The Federal payment office for this Agreement is:
a. __X__ Division of Payment Management
DHHS/PHS/OASH/OM/DRM/DPM
P.O. Box 6021
Rockville, Maryland 20852
Telephone: (301) 443-1660

b. ____ Governmental Accounting Branch
Health Resources and Services Administration
Parklawn Building, Room 16-23
5600 Fishers Lane
Rockville, Maryland 20857
Telephone: (301) 443-1463

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AGREEMENT BETWEEN THE SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES AND THE SUSANVILLE INDIAN RANCHERIA

PREAMBLE

WHEREAS, the Susanville Indian Rancheria is a federally recognized American Indian Tribe and the Susanville Indian Rancheria Tribal Business Council/Health Board is the duly recognized governing body of the Susanville Indian Rancheria; and

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

NOW, THEREFORE, the IHS acting for the Secretary of the Department of Health and Human Services and the Susanville Indian Rancheria hereby mutually agree 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 Susanville Indian Rancheria Tribal Business Council/Health Board for and on behalf of the Susanville Indian Rancheria (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

The Tribe desires to exercise its right as a sovereign government to achieve full tribal self-determination and self-sufficiency. The Secretary will support and assist the

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Tribe in carrying out services and in developing its capacities in any manner appropriate to this Agreement. It is the intent of the parties to this Contract to convey to the Tribe all authorities and responsibilities authorized pursuant to the Indian Self-Determination Act and other allied statutes and regulations, and to enable the Tribe to exercise maximum discretion in the design, conduct and administration of program and budget in accordance with policies of the Tribe.

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 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:

(a) Pharmacy;

(b) Optometry;

(c) Radiology;

(d) Physical therapy;

(e) General Health Services;

i. Ambulatory Medical Services;
ii. Dental Services;
iii. Adolescent drug and treatment services (outpatient, after care and residential);
iv. Mental health services - outpatient;
v. Contract health services;
vi. Nutritional services;
vii. Reimbursement and third party collection;

(f) Preventive health services;

i. Omnibus drug and alcohol prevention;
ii. Public health nursing;
iii. Community health representatives, all remaining functions and activities;
iv. Immunizations and health screening;

(g) Facilities;

i. General building operation and maintenance;
ii. Maintenance and improvements;

(h) Such other programs, services, functions and activities funded by IHS and identified in the Annual Funding Agreement referred to in Article VII, section 2, that the Tribe may establish.

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 indefinite, 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.

3. PROGRAM STANDARDS

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

1. Susanville Indian Rancheria's personnel, property, fiscal, contract health services, medical and dental board approved standards;

2. The Tribe will strive to abide by accreditation from the JCAHO or a recognized accrediting health care organization.

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

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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 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 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 fiscal year under the Annual Funding Agreement incorporated by reference pursuant to Article VII, Section 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 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 105(b) of the Act. (25 U.S.C. § 450j(b)).

(ii) METHOD OF QUARTERLY PAYMENT. If quarterly payments are specified in the Annual Funding Agreement

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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 fiscal 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.

(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).

(C) WITHHOLDING OF PAYMENT

Payments under this Contract may only be suspended, delayed or withheld in compliance with section 106(l) of the Act.

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 the Interior or the Department 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 record keeping system in compliance with Article V, section 5(B) and section 5(D) of this Contract, and shall, 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 and 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 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

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

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.

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 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.

(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 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) SCREENER IDENTIFICATION CARD. A screener identification card (General Services Administration form numbered 2946) shall be issued to the Contractor not 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 AND OTHER FEDERAL SUPPLY SOURCES

Beginning on the effective date of this Contract, the Secretary shall authorize the Contractor to obtain interagency motor pool vehicles and related services and other federal supply sources (including lodging, airlines and other transportation services) for performance of any activities carried out under this Contract as provided in section 105(k) of the Act. When the Tribe's employees are carrying out the terms of this Contract they are eligible to have access to sources of supply on the same basis as employees of the federal government.

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

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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 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 conflicts with the interests 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 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 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.

16. LEASE

The Contractor and the Indian Health Service shall, within 60 days after the contract is effective, negotiate and enter into a lease, subject to the availability of funds, for the Lassen Indian Health Center as provided for by Section 105(l) of the Act. The amount due under the lease shall be set forth in the Annual Funding Agreement and should be paid by the Indian Health Service to the Tribe in accordance with the contract and the Annual Funding Agreement.

ARTICLE III

OBLIGATIONS OF THE CONTRACTOR

1. CONTRACT PERFORMANCE

Except as provided in Article IV, Section 2 of this Contract, the Contractor shall perform the programs, services,

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

6. PROGRAM INCOME, INCLUDING MEDICARE/MEDICAID

All Medicare, Medicaid or other program income received by the Tribe shall be treated as additional supplemental funding to that negotiated in the Annual Funding Agreement and the Tribe may retain all such income, pursuant to section 106(m) of the Act. Medicare/Medicaid collections of the Tribe under Title IV of Public Law 94-437, as amended, shall be used by the Tribe in accordance with any applicable statutory restrictions on the use

of such funds. The Tribe is obligated to seek third party reimbursement as provided by federal law.

7. ELIGIBILITY FOR SERVICES

In determining eligibility for services the Tribe shall comply with applicable eligibility provisions set forth in the Indian Health Care Improvement Act, as amended, other statutory law, applicable regulations.

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 Susanville Indian Rancheria 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.

(C) 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.).

2. PROGRAMS RETAINED

(A) 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 this Contract. The Tribe shall continue to be entitled to the full benefits of any such programs, activities, functions, and services subject to the availability of appropriations.

(B) No later than 180 days prior to the end of the Annual Funding Agreement, the IHS shall provide the Tribe with a written list of the retained programs, activities, functions, and services relevant to Indian health care in the Lassen Service Area for the upcoming fiscal year. To the fullest extent permitted by law, the Secretary shall provide the Tribe access

to, and copies of, all documents and other information relevant to any ongoing retained programs, activities, functions, or services, and shall cooperate with any evaluation which the Tribe and the IHS may wish to conduct. The Secretary will cooperate with the Tribe to facilitate the inclusion of programs, activities, functions, and services in future Contracts and Annual Funding Agreements of the Tribe.

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 a 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) 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 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 not be construed to apply to any contract with a third party entered into under this Contract if such contract is made with a corporation for the general benefit of the corporation.

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

EXHIBIT A
PAGE 15 OF 44

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.

5. ADMINISTRATIVE PROVISIONS

(A) BUDGET. The Contractor shall adopt a yearly budget under this Contract. Such budget shall identify costs in sufficient detail to permit the IHS to identify and provide indirect and such other contract support costs as are required under law. The Contractor shall have the authority to modify the budget under the Contract pursuant to section 106 (o) of the Act. Provided further that funds which are subject to specific directives or limitations in applicable appropriation acts are not transferred in violation of such directives or limitations, unless approval of the IHS is obtained in advance of such transfer.

(B) FINANCIAL MANAGEMENT. The Contractor shall provide effective financial management for all funds, maintain accurate and timely records and safeguard financial resources in accordance with the Contractor's established accounting procedures and in accordance with section 5(a)(2) of the Act. Records of revenues and expenditures shall be maintained for negotiated Contractor budgets.

(C) PERSONNEL MANAGEMENT. The Contractor shall provide a personnel management system in accordance with its adopted Personnel Policies.

(D) COST PRINCIPLES. Expenditures made under the Contract shall be in accordance with and subject to the provisions of section 106(k) of the Act.

(E) REPORTING. Reports to be submitted to the IHS shall include an audit report and financial statements required under the Single Audit Act, as required by section 5(f) of the Act. Data reporting requirements shall be negotiated and agreed upon by the IHS and the Tribe within 90 days of the effective date of this Contract.

(F) TRAINING, TECHNICAL ASSISTANCE AND CONTINUING EDUCATION. At the request of the Contractor, the IHS shall provide technical assistance, training, continuing education and other support services to the Contractor to the extent funds are available and consistent with section 103(d) of the Act.

(G) CONTRACT SUPPORT COSTS AND NEGOTIATED INDIRECT COST RATES:

EXHIBIT A
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(i) Subject to available appropriations, there shall be obligated to this Contract, the full amount of funds to which the Contractor is entitled under sections 106(a) and 106(g) of the Act.

(ii) The allowable indirect costs, to include identified contract support costs, under this contract shall be obtained by applying negotiated indirect cost rates to direct costs bases agreed upon by the parties. Under Section 106(a)(3) of the Act Contract Support Costs may also be recovered as direct costs.

(iii) The Contractor is entitled for reimbursement of indirect costs incurred in meeting contract requirements. Indirect costs are defined in section 4(f) of the Act. Contract support costs are defined in sections 106(a)(2) and 106(a)(3) of the Act.

(iv) The Contractor shall obtain an applicable indirect cost rate through negotiation with the appropriate federal agency.

(v) Pending establishment of negotiated indirect cost rates with the appropriate federal agency, the Contractor has the right to request the Contracting Officer to negotiate temporary rates for this contract. The Contracting Officer has the authority to negotiate indirect cost rates upon receiving such requests, and the Contractor shall be reimbursed at the indirect costs rates so negotiated with the Contracting Officer. The rates negotiated with the Contracting Officer are subject to appropriate adjustments when the final rates for that period are established. Any indirect cost rate negotiated with the Contracting Officer shall stipulate that a certain date shall be agreed to when such temporary rates must be finalized and Contract Support Funds adjusted accordingly; this final adjustment must occur prior to the end of the contract year.

(vi) Theoretical Over-Recoveries and Actual Under-Recoveries of Indirect costs shall be in a manner consistent with sections 106(d) and (e) of the Act.

(H) FEDERAL AND TRIBAL LAWS AND REGULATIONS. This contract is not subject to Federal Contract or Cooperative Agreement Laws and Regulations except to the extent that such laws expressly apply to Indian tribes as provided for in section 105(a). The Contractor will comply with applicable laws and regulations of the Tribe in performing this Contract.

(I) INSURANCE AND FEDERAL TORT CLAIMS COVERAGE.

(i) The Tribe is deemed by statute to be part of the Public Health Service, and the employees of the Tribe are deemed by statute to be part of or employed by the Public Health Service, for purposes of coverage under the Federal Tort Claims Act, while performing programs, activities, functions or services under this Contract and the Annual Funding Agreement, including coverage for claims of medical malpractice, as is more fully described in the Indian Self-Determination Memorandum No. 92-1 or its successor, which is fully incorporated by reference herein.

(ii) The above status of the Tribe, or an employee's status as an employee of the Tribe, is not affected by the source of the funds used by the Tribe to pay the employee's salary and benefits as long as the employee does not receive any additional compensation for the performance of covered services from anyone other than the Tribe.

(iii) The Tribe's employees may, while performing under this Contract and the Annual Funding Agreement, and as a condition of employment, be required by the Tribe to provide services to non-Indian Health Service beneficiaries in order to meet the obligations under this Contract either in facilities of the Tribe or in facilities other than those of the Tribe.

(iv) Personal services contracts entered into by the tribe shall be covered by the Federal Torts Claim Act in accordance with section 102(d) of the Act.

(J) INDIAN PREFERENCE. In accordance with sections 7(b) and 7(c) of the Act the Contractor shall give preference to members of the Tribe and to other Indians in employment and in the acquisition of goods and services in accordance with the laws and ordinances of the Tribe and its Personnel Policies.

(K) EXTRAORDINARY OR UNFORESEEN EVENTS. This Contract is intended to obligate the Tribe to carry out all usual and ordinary functions respecting the programs, activities, functions and services that it is undertaking to assume responsibility for under the Annual Funding Agreement. In the event major unforeseen or extraordinary events occur, as jointly identified by the Tribe and the Secretary, with consequences beyond the control of the Tribe, the Tribe shall have access to additional services and funding amounts for its Annual Funding Agreement as described in its Annual Funding Agreement and subject to available funds, insofar as the Tribe has not taken its tribal shares for specific emergency funds. The parties will seek to ensure that funds available to the Tribe to deal with the unforeseen circumstance will not be less than would have been available to the IHS if it had encountered a similar circumstance.

(L) SOVEREIGN IMMUNITY. Nothing in this Contract or in the Annual Funding Agreement shall be construed to waive the sovereign immunity of the Tribe.

(M) INADEQUACY OF PROGRAM FUNDING. The Indian Health Service recognizes that it has a unique and special obligation to raise the health status of American Indians and Alaska Natives to the highest level possible. The Indian Health Service recognizes that historically the Tribe has been funded at a level of Need Funded of less than one hundred percent (100%). Pursuant to the Indian Health Care Improvement Act, the Indian Health Service agrees to work with the Tribe to achieve the year 2000 objectives and to utilize the health data provided by the Tribe to advocate for increases in the Indian Health Service budget.

(N) USE OF FEDERAL EMPLOYEES. Section 104 of the Indian Self-Determination and Education Assistance Act, as amended, shall apply to this Contract and to any individuals assigned or detailed to the Tribe performing functions under this Contract or leaving federal employment to perform services under this Contract.

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

The resolution of the Susanville indian Rancheria Tribal Business Council/Health Board 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 Annual 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) INCORPORATION BY REFERENCE - The Annual Funding Agreement is hereby incorporated in its entirety in this Contract and attached to this Contract as Attachment 2.

SUSANVILLE INDIAN RANCHERIA

Date 4-8-95

By _____
Tribal Chairman
Nicolas J. Padilla

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

Date 5/1/95

By _____
Area Contracting Officer

EXHIBIT A
PAGE 20 OF 44

Susanville Indian Rancheria
Lassen Indian Health Center
SCOPE OF WORK
For 2006 Contract Year

I. Preamble:

The Susanville Indian Rancheria Tribal Business Council by resolution serves as the Health Board for the Lassen Indian Health Center (LIHC). The Health Board has authorized the LIHC to promote and assist the Tribe's eligible service population to attain and maintain an optimal level of care compatible with its goals of health and social well being for all individuals as well as the communities served.

The Susanville Indian Rancheria and LIHC will provide all of the health services described in this Scope of Work to eligible Indians and, on a fee for service basis to non-Indians as authorized by Section 813 of the Indian Health Care Improvement act.

Services Will Include:

1. Health promotion and disease prevention through the established clinic facilities, and outreach programs.

2. Evaluation and intervention/treatment of individuals and families with acute and/or chronic physical or mental health conditions, in order to restore the individual and/or family to the most complete state of physical, mental, social well being possible.

3. Promote community health goals, programs and activities that will assist in recognition, prevention and treatment of community health problems.

II. Administrative and Organizational Systems:

The Health Board provides goals, directives and sponsors the Tribe's Comprehensive Health Plan on behalf of the LIHC. The Health Board provides program and administrative oversight of the LIHC. The Health Board authorizes the Health Programs Director through delegations of authority to implement and ensure that the Board's mission policies and directives are carried out in a manner that will ensure the effective, efficient and financially sound provision of health services.

III. Program Services

A. Reporting

LIHC will provide the IHS with program service data through the RPMS system for those services described in the Scope Of Work.

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B. Primary Health Care

The goal of the clinical personnel is to provide the best level of care consistent with the budgetary limits of the contract and this AFA. The most cost-effective regimen consistent with established levels of quality shall be utilized.

1. Description of Services:

A broad range of preventive and primary health care services will be provided at and through the LIHC located on the Susanville Indian Rancheria.

The LIHC is the central point for and administration of the provision of prevention and primary care services described in this scope of work.

The clinic provides patient care for the treatment and prevention of acute and chronic illness and/or injuries. Primary care shall be provided by physicians and physician extenders who follow approved written protocols. They shall be supported in their efforts by registered nurses, licensed vocational nurses. Clinical records shall be maintained for all patients and all visits and treatments shall be properly recorded. Laboratory and radiology services shall be provided for diagnostic and treatment purposes. Pharmacy services are maintained on a full-time basis at the LIHC.

The Medical Clinics, Laboratory and Pharmacy shall provide outpatient services for diagnosis, treatment and prevention of disease i.e. health promotion (such as exercise through aerobics classes); chronic disease supervision of illnesses such as diabetes, hypertension and arthritis; general medical care, vision screening, family planning, and appropriate referral to contracted and non-contracted health care providers. The Tribe, under the auspices of the Lassen Indian Health Center, provides a full day childcare center. The center is structured to enable the staff to work with parents and families in learning parenting skills and in gaining self-sufficiency while at the same time learning about child development and health. A fee is charged based upon the ability to pay.

The Scope of Primary Preventative Services will include, but not be limited to, services such as:

a. First prenatal visit (all prenatals are referred to appropriate providers after the first visit),

b. Well child care,

c. Immunizations,

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d. General medical clinic and care,

e. Screening for chronic diseases,

2. Standards

Standards for the LIHC will consist of:

Ambulatory Health Care (Outpatient Services) contained in the AAAHC Accreditation Manual for Ambulatory Health Care Standards or the JCAHO Accreditation Manual for Ambulatory Health Care Standards, latest edition, and LIHC Policy and Procedures Manual, Medical Clinic Operations.

3. Evaluation

Evaluation of the Medical Department will be performed every two years using the standards listed above.

C. Dental Services

Goal: To examine and provide comprehensive dental services to all registered users in the LIHC service area.

1. Description of Services

Comprehensive dental services will include, but not be limited to, the following:

a. Emergency Services

b. Diagnostic Services

c. Preventive Services

d. Restorative Services

e. Endodontic Services

f. Periodontic Services

g. Prosthetic services

h. Oral Surgery Services (Limited)

i. Limited Orthodontics

Dental services as approved by the LIHC Dental Director will be provided in accordance with applicable state and federal laws.

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2. Standards

The quality of the dental care provided will be in accordance with the standards of generally accepted dental practice and in conjunction with the criteria as published in the IHS Oral Health Program Guide, Section 9, and the State of California Dental Practice Act.

3. Evaluation

LIHC Dental Services will be evaluated every two years using the standards listed above.

D. Pharmacy Services

1. Pharmacy services will include, but not be limited to, recommending therapies to clinical providers, dispensing medications and monitoring of medication treatment plans to assure appropriate, safe and cost effective therapies and to provide patients information and counseling regarding their treatment to assure compliance and to mediate potential side effects and to insure against potentially harmful interactions. Core pharmaceutical services include:
   a. Formulary management through the LIHC Pharmacy and Therapeutics Committee to ensure the provision of rational, cost effective therapy using the best and most appropriate medications.
   b. Procurement of pharmaceuticals utilizing sources to maximize budgetary potential.
   c. Install, maintain and monitor drug distribution at the LIHC.

2. Standards

Applicable program standards developed by the IHS, the LIHC and incorporated in the Policy and Procedures Manual.

3. Evaluation

Every two years the LIHC pharmacy services will be evaluated in accordance with the State of California, Department of Health Services, Indian Health Program's contract with SIR/LIHC.

E. Clinical Laboratory Services

Laboratory services are provided on site. The on site laboratory offers services recognized as C.L.I.A. waived testing. All other tests are sent to a reference laboratory that meets all Medicare/Medi-Cal requirements.

1. Standards

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Applicable program standards developed by the IHS, the LIHC and incorporated in the Policy and Procedures Manual.

3. Evaluation

Every two years an evaluation of Laboratory services will be conducted in accordance with LIHC's contract with the State of California, Department of Health Services, Indian Health Program. Quarterly on-site reviews by a contracted lab consultant are in place per C.L.I.A. requirements.

F. Alcohol/Chemical Dependency

1. Treatment services provided under this contract will focus primarily on the awareness, assessment and treatment of Alcohol and Chemical Abuse/Dependency. Services will be provided to adolescents on an inpatient (Contract Health Services)/outpatient basis when the screening process indicates this to be the most appropriate mode. Medical detoxification will be provided on a referral basis when medically indicated. Adolescent inpatient residential treatment may be provided on a referral basis when assessment dictates the need. Aftercare and follow-up services will be provided to each client discharged from a residential or outpatient treatment program. Prevention services, which include the identification of persons at risk of developing problems related to the use of abuse of alcohol, other drugs will be provided. This will include individual, family and community activities with a focus on prevention of FAS/FAE.

The LIHC Alcohol and Chemical Dependency Program Counselor(s) will be assigned specific tasks and community areas for work and will not work alone. As an integrated approach to Alcohol/Chemical dependency scope of work, the entire health system including physicians, physician extenders, nutritionist, social service personnel, mental health, and outreach personnel will participate in and contribute to the accomplishment of this Scope Of Work. Traditional healing and ceremonies may become involved in the treatment of LIHC clients as approved and appropriate.

2. Standards

Applicable program standards developed by the National Association of Alcoholism and Drug Abuse Counselors and the LIHC.

3. Evaluation

Every two years LIHC will conduct an evaluation of the Substance Abuse Program using the standards listed in #2 above.

G. Nutrition Program

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Goal: To assist in elevating the health status of the service population by providing comprehensive nutrition, fitness education and counseling for individual families and groups served by the LIHC.

1. Program Description

Nutrition services will provide for the on-going development and increased coordination of clinical and community based nutritional services for eligible persons, families and groups:

a. Nutrition Site
b. Clinic and Outreach; Provide nutritional screening and assessment, counseling, education, referrals and health promotion via established policy and procedures contained in Policy and Procedures Manual.

2. Standards

As established:

a. Within the Medical Policies and Procedures Manual,

b. Established guidelines and standards of the Federal Nutrition Program.

c. Developing standards for the senior nutrition site to be adopted in conjunction with the medical department

3. Evaluation

Evaluation will be in accordance with current policies and procedures. Evaluation will be on an every two-year basis.

H. Health Records

1. The department of Health Records is the central record keeping service for all LIHC clinical services. Operating from the central record units in the clinic, all provider notes and instructions are recorded and maintained in each patient record. New patients are screened on their first visit for medical history, eligibility and third party resources. Records are kept complete, current and are restricted to licensed and/or certified providers credentialed and other LIHC staff with a need to know.

2. Standards

Standards consist of the LIHC Policy and Procedures Manual, Chapter on Health Records, and applicable AAAHC standards, latest edition as pertains to patient records in ambulatory care clinics.

3. Evaluation

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Evaluation of the Clinical Health Records department and services will be conducted every two years using the standards listed above.

I. Public Health Nursing

1. Public Health Nursing is the integration of nursing practice and public health practice applied to the health promotion and preservation of the service population. The nature of this practice is continuous and comprehensive, including all areas and diagnostic groups.

Public Health Nursing is directed to individuals in families and groups and is intrinsically related and contributes to the health of the total community. The predominate responsibility of the Public Health Nurse (PHN) is to the service population as a whole. The primary focus of public health nursing is on the prevention of illness and the promotion and maintenance of health.

Public Health Nursing will include the following components.

a. Activities prioritized according to the LIHC comprehensive health plan.

b. Provision of nursing support activities for the prevention and control of tuberculosis, communicable diseases and chronic diseases.

c. Provision of nursing care and guidance to individuals and families particularly as it relates to maternity services including high-risk prenatals, child health services, which include high-risk prenatals, mental health, geriatrics, adolescents and general health supervision.

d. Identify and refer ill patients for medical care and provide follow-up if necessary.

e. Participation in programs of public information and public relations for community health nursing and community health.

2. Standards

Standards for Public Health Nursing are contained in the LIHC Policy and Procedures Manual and applicable Community Health Nursing standards published by the IHS and incorporated by reference into the Policy and Procedures Manual.

3. Evaluation

Evaluation of the PHN program will be conducted every two years using program standards adopted by the organization.

EXHIBIT A
PAGE 27 OF 44

J. Behavioral Health Services

1. Program Description

Goal 1: To ensure that behavioral health services are available to all Native American persons who need them, are appropriate to the nature and severity of their mental health needs, are of high quality and are sensitive and responsive to the cultural values of the individual, family and community.

Objective A: As an integral part of the health delivery system, the program will provide basic mental health services to Native Americans eligible, who participate in behavioral health initiatives, and engage in primary and secondary prevention activities directed toward mental illness.

Objective B: The basic services provided include but are not limited to assessment, crisis intervention, counseling and/or psychotherapy for children, adolescents, adults, family and marital therapy, case management, parenting, outreach, TOVA testing, client advocacy, consultation and referral. Direct care and/or referral to other qualified personnel for evaluation and treatment may be utilized.

Objective D: Primary and secondary prevention activities shall include but are not limited to education related topics to enhance coping and parenting skills, healthier communication skills, stress management, high risk behaviors such as suicide, drug and alcohol abuse, and behavioral aspects of diseases and health risks such as diabetes, smoking, eating disorders, etc.

Goal 2: To promote the mental health of individuals, families and the community.

2. Standards

Standards enumerated in the LIHC and Procedures Manual and applicable IHS program standards incorporated by reference into the Policy and Procedures Manual.

3. Evaluation

Behavioral Health Services will be evaluated every two years according to program standards adopted and in use by the LIHC.

K. Contract Health Services

1. The LIHC through its Comprehensive Health Care Delivery System shall provide Contract Health Services (CHS) to Native Americans permanently residing in Lassen County. Initial eligibility for CHS will be determined by

the staff of the LIHC according to current CHS policies in use by the Organization.

Approved inpatient and out patient services not available at the clinic shall be provided through a referral process to appropriate providers subject to the availability of funds.

Additionally, eligible patients shall be furnished such orthopedic, optical, dental, surgical and medical appliances, supplies and equipment as may be deemed necessary and approved by LIHC Medical staff according to CHS policies adopted and approved by the Health Board. Laboratory, x-ray and other diagnostic services not available at the clinic and necessary for fulfillment of treatment protocols shall be purchased in accordance with CHS policies and subject to the availability of funds. The use of IHS funds for payment of these services shall be authorized only after all other alternate resources have been exhausted.

Priority levels are established and approved annually, based upon the health care needs of the Native American communities served by the Lassen Indian Health Center and the financial resources available.

2. Standards

Standards are contained in the LIHC Policy and Procedures Manual and applicable IHS and CHS policies incorporated by reference into the Policy and Procedures Manual.

3. Evaluation

The CHS program will be evaluated every two years according to the standards in use and the Policy and Procedures Manual.

IV. Tribal Shares:

All tribal share amounts that are to be assumed by the Tribe or to be left as retained tribal shares are identified in Attachment B to the AFA.

DEPARTMENT OF HEALTH & HUMAN SERVICES PUBLIC HEALTH SERVICE

Indian Health Service
California Area Office
650 Capitol Mall, Suite 7-100
Sacramento, California 95814-4708

JE 1-1

2006
RW 1 H 5

December 27, 2005

Susanville Indian Rancheria
795 Joaquin Street
Susanville, CA 96130

Dear Contractor:

Enclosed is an executed copy of **Annual Funding Agreement No. 12 to Contract No. 235-95-0013.**

Please acknowledge receipt of this modification on the copy of this letter and return **only the copy of the letter** to this office.

Questions may be directed to Harry Weiss, your Contract Administrator, at (916) 930-3927, Extension 316.

Sincerely yours,

Harry J. Weiss
Contracting Officer

Enclosures
cc: PAO - Financial Mgt. Branch
Project Officer's Letter

RECEIPT ACKNOWLEDGMENT:

1/4/06

Signature **Date**

Stacy Dixon (Tribal Chairman)

Type Name & Title

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ANNUAL FUNDING AGREEMENT No. 12

BY AND BETWEEN

THE SUSANVILLE INDIAN RANCHERIA

AND

THE UNITED STATES OF AMERICA
SECRETARY OF THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES

CONTRACT NUMBER 235-95-0013

This Annual Funding Agreement, effective January 1, 2006, is entered into by the Susanville Indian Rancheria (the "Tribe") and the Indian Health Service ("IHS"), United States Department of Health and Human Services, in accordance with and pursuant to the Contract 235-95-0013, dated May 1, 1995, between the Tribe and the IHS ("Contract") under the provisions of Title I of the Indian Self-Determination and Education Assistance Act, as amended ("Act").

1. Tribal Programs. The Tribe shall administer the programs identified in the Scope of Work attached hereto and incorporated by reference herein as Exhibit A, during the term of this Annual Funding Agreement ("AFA") in accordance with the provisions of the Contract. Any revision to the Scope of Work shall require written consent of the Tribe and the Secretary.

2. Funding Amounts.

The amount of $1,235,343 (total of $1,112,906 base funds, $69,500 California Area Shares and $52,937 Headquarters Shares) is, for purposes of this AFA, identified as the P.L. 93-638, as amended, Section 106 (a)(1) amount for the period of January 1, 2006 to December 31, 2006 that is available for the Tribe to be paid under this AFA.

The IHS shall pay the Tribe the amount of $1,207,340 (total of $1,112,388 base funds, $62,100, California Area Office shares, and $32,842 Headquarters shares) which is identified as the P.L. 93-638, as amended, Section 106(a)(1) amount due for the period of January 1, 2006 to December 31, 2006. These funds shall be paid by the IHS to the Tribe in one lump sum payment within 25 days after the AFA is effective. The parties agree that this payment date includes any grace period that is provided to the IHS under the Prompt Payment Act. The Tribe will sign and return the AFA to the IHS within 5 days of receipt of a final agreement.

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(A) For the period January 1, 2006 to December 31, 2006, the Tribe shall be paid base funds in the amount of $1,112,388. This consists of the amount of $1,112,906, less $518 for telecommunications costs. If the final actual costs exceed, or are greater than, the estimated amount, such costs will be recovered and an adjustment will be made to this AFA or to the contractor's subsequent AFA. *See* Spreadsheets, attached as Exhibit B, showing breakdown of this amount.

These funds shall be paid by the IHS to the Tribe in one lump sum payment within 25 days after the AFA is effective. The parties agree that this payment date includes any grace period that is provided to the IHS under the Prompt Payment Act. The Tribe will sign and return the AFA to the IHS within 5 days of receipt of a final agreement.

Accounting and appropriations data for such payment is as follows:

Req. OPH 032-06

J410284 7560390 639141-01-01-61 884 41.8B 51-06	$687,025
J410261 7560390 639141-01-01-63 861 41.8B 51-06	44,274
J410239 7560390 639141-01-01-64 839 41.8B 51-06	36,441
J41TT74 75 6/7 0390 666041-02-01-66 874 41.8B 51-06	273,275
J410020 7560390 639141-01-01-64 879 41.8B 51-06	28,807
J410055 7560390 639141-01-01-64 889 41.8B 51-06	2,588
J410269 7560390 639241-02-04-74 869 41.8B 51-06	30,271
J410264 7560390 639241-02-02-72 864 41.8B 51-06	9,707

(B) For the period of January 1, 2006 to December 31, 2006, the Tribe shall be provided funds for indirect costs and direct contract support costs, subject to availability of appropriations. For purposes of this AFA, the IHS will calculate and pay contract support costs in an amount no less than that due under Section 106 of the ISDEAA, IHS CSC Circular No. 2004-3 or its successor, and any statutory restrictions imposed by Congress. The IHS will provide any shortfall report required by Section 106(c) of the ISDEAA. Nothing in this provision shall be construed to waive any statutory claim that the Tribe may assert it is entitled to under the ISDEAA. The amount of funds for contract support costs to be provided to the Tribe through this AFA for the period January 1, 2006 to December 31, 2006 is $421,244. This consists of $307,032 in indirect contract support and $114,212 in direct contract support.

These funds shall be paid by the IHS to the Tribe in one lump sum payment within 25 days after the AFA is effective. The parties agree that this payment date includes any grace period that is provided to the IHS under the Prompt Payment Act. The Tribe will sign and return the AFA to the IHS within 5 days of receipt of a final agreement.

EXHIBIT A
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Accounting and appropriations data for such payment is as follows:
Req. OPH 032-06

J410684 7560390-639841-08-01-61 884 41.8E 51-06	$307,032
J410684 7560390-639841-08-01-61 884 41.8A 51-06	114,212

(C) For the period January 1, 2006 to December 31, 2006, the Tribe shall be paid funds for California Area tribal shares in the amount of $62,100. *See* Spreadsheets, attached as Exhibit B, showing breakdown of this amount.

These funds shall be paid by the IHS to the Tribe in one lump sum payment within 25 days after the AFA is effective. The parties agree that this payment date includes any grace period that is provided to the IHS under the Prompt Payment Act. The Tribe will sign and return the AFA to the IHS within 5 days of receipt of a final agreement.

Accounting and appropriations data for such payment is as follows:

Req. OPH 042-06

J410211 7560390 639141-01-01-61 884 41.8B 26-06=	$40,700.
J410208 7560390 639141-01-01-61 834 41.8B 26-06=	1,700.
J410669 7560390 639141-01-01-62 868 41.8B 26-06=	2,000.
J410210 7560390 639141-01-01-61 8A6 41.8B 26-06=	1,900
J410562 7560390 639141-01-01-63 861 41.8B 26-06=	200.
J410242 7560390 639141-01-01-64 839 41.8B 26-06=	900.
J410271 7560390 639141-01-01-64 870 41.8B 26-06=	1,000.
J410340 7560390 639141-01-01-64 839 41.8B 26-06=	1,700.
J410243 7560390 639141-01-01-64 839 41.8B 26-06=	1,200.
J410740 7560390 639141-01-01-64 839 41.8B 26-06=	4,800.
J41TT72 75 6/7 0390 666041-02-01-66 874 41.8B 26-06=	2,700.
J410266 7560390 639241-02-03-73 865 41.8B 26-06=	2,300.
J410366 7560390 639241-02-04-74 869 41.8B 26-06=	800.
J410162 7560390 639241-02-03-73 865 41.8B 26-06=	200.

EXHIBIT A
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(D) For the period January 1, 2006 to December 31, 2006, the Tribe shall be paid funds for IHS Headquarters tribal shares in the amount of $32,842. This consists of $52,937 less $20,093 retained with IHS Headquarters for IRM Support Fund (Systems development services, systems management services and telecommunication management services for lines 126, 137, and 1301 of Exhibit C) and a $2 rounding adjustment. This amount is to be re-negotiated if the IHS implements a methodology for tribal shares of IHS Headquarters FY 2006 funds which provides additional funds for tribal shares. This figure will not be reduced if such methodology would result in a reduced amount.

These funds shall be paid by the IHS to the Tribe in one lump sum payment within 25 days after the AFA is effective. The parties agree that this payment date includes any grace period that is provided to the IHS under the Prompt Payment Act. The Tribe will sign and return the AFA to the IHS within 5 days of receipt of a final agreement.

Accounting and appropriations data for such payment area as follows:

Req. OPH 042-06

J410212 7560390 639141-01-01-61 884 41.8B 26-06	$14,454
J410670 7560390 639141-01-01-62 41.8B 868 26-06=	846
J410563 7560390 639141-01-01-63 41.8B 861 26-06=	1,471
J410741 7560390 639141-01-01-64 41.8B 839 26-06=	2,962
J410667 7560390 639241-02-02-72 41.8B 865 26-06=	604
J410267 7560390 639241-02-03-73 41.8B 865 26-06=	752
J410367 7560390 639241-02-04-74 41.8B 869 26-06=	1,604
J41TT73 75 6/7 0390 666041 -02-01-06 874 41.8B 26-06=	1,060
J410097 7560390 639641-06-01-80 41.8B 884 26-06=	9,089

(E) IHS shall make an additional payment based on the applicable methodology for tribal shares of program formula funds (e.g., dental equipment replacement, CHC - deferred services, CHC - unmet need, OEHE support, environmental health, facility maintenance and improvement, and equipment replacement) within 30 days of the initial lump sum payment or within 30 days of allocation of these funds.

(F) The Tribe shall receive an agreed upon share of all other IHS funds that are made available for contracting after execution of this AFA as such funds become available.

(G) The Tribe retains the right to identify other IHS PFSAs that it wishes to assume responsibility over and submit a proposal to the IHS to take over such PFSAs during the effective period of this AFA. If the Tribe's proposal is not declined by the IHS in accordance with Section 102 of P.L. 93-638, such PFSAs, including a negotiated funding amount, shall be added to this AFA.

(H) From the effective date of this AFA to December 31, 2006, the Tribe shall be reimbursed for indirect costs using the current fixed carry-forward rate as provided for in the negotiated Agreement with Department of the Interior, Office of Inspector General. The Tribe shall provide the CAO a copy of the contract budget to enable calculation of indirect cost requirements.

(I) The Tribe may wish to carry out certain of its responsibilities under the Contract to provide certain PFSAs (e.g. purchasing of supplies or certain training or educational activities) utilizing services, supplies or other resources ("Resources") of the Federal Government, as permitted by law. If the Tribe becomes aware of any such Resource it shall contact the CAO and request a breakdown of the cost of the Resource. The cost of the Resource to the Tribe shall not exceed the amount that would otherwise be paid the Tribe for such Resource in Tribal Shares. If the Tribe decides to utilize the Resource it shall send a confirming letter to the CAO and the cost of the resource shall be deducted from any funding to be subsequently modified into the AFA.

The Tribe shall purchase from the CAO Contract Health Services ("CHS") appeals services. The cost of such services shall be $200 for each appeal reviewed. The Tribe shall be responsible for insuring that each appeal file is complete in accordance with applicable tribal policies and CHS regulations before it is transferred to the CAO. If an appeal file is not complete, the CAO shall not be required to process the appeal. The CAO shall notify the Tribe that the file is incomplete within fifteen (15) days of receipt of such file. The notice shall specify what items are missing for the file to be completed. Upon receipt of such a notice, the Tribe has thirty (30) days to complete the file and resubmit it to the CAO for processing. Once the file is complete, the CHS regulations shall apply to the IHS's review of such file.

3. Consolidation of AFAs. The AFA negotiated in CY 2005 is amended or terminated to transfer applicable contracted funds into this AFA.

4. Payment Office. The payment office for this AFA shall be the financial management office, IHS Phoenix Area Office.

5. Amendment or Modification of this AFA. Except as otherwise provided by this AFA, the Contract, or by law, any modification of this AFA shall be in the form of a written amendment and shall require written consent of the Tribe and the Secretary and his/her designee.

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6. Effective Date. This AFA shall become effective on January 1, 2006 and it shall expire on December 31, 2006.

SUSANVILLE INDIAN RANCHERIA

Dated: 12/22/05, 2005. By: _____
Stacy Dixon, Chairman

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

Dated: 12/27/05, 2005. By: _____
Contracting Officer

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12/16/2005
bad
FINAL

CALIFORNIA AREA OFFICE BUDGET SUMMARY
FY 2006 Area PFSA Based on FY 2005 Appropriation

FY 94 Active Users = 806
FY 94 Total Active Users 60,480

		TOTAL BUDGET A	Earmarked B	Program Formula C	Residual D	Available for Tribal Shares E	Lassen Shares 0.013327 F	Retained Shares G	Total Contracted H
	SERVICES APPROPRIATION								
	OFFICE OF AREA DIRECTOR:								
1	Executive Direction	$ 683,856	$ -	$ -	$ 353,901	$ 329,955	$ 4,400		$ 4,400
2	SF Attorney	101,524	-	-	101,524	-	-		-
3	Emergency Accounts	228,284	-	-	-	228,284	3,000		3,000
4	OTA Staff	566,994	-	-	313,804	253,190	3,400		3,400
5	Tribal Advisory Committee	20,000	-	20,000	-	-	-		-
6	OAD OPERATIONS SUB-TOTAL	1,600,658	-	20,000	769,229	811,429	10,800	-	10,800
	OFFICE OF MANAGEMENT SUPPORT:								
7	Executive Directon	126,944	-	-	126,944	-	-		-
8	Contracting	678,280	-	-	302,081	376,199	5,000		5,000
9	Personnel	273,676	-	-	110,313	163,363	2,200		2,200
10	Property	84,115	-	-	-	84,115	1,100		1,100
11	Support Services	728,909	-	-	429,170	299,739	4,000		4,000
12	Contract Health Service	34,922	-	-	-	34,922	500		500
13	Finance	375,080	-	-	220,545	154,535	2,100		2,100
14	PMS Chares	433	-	-	-	433	-		-
15	Merit Pool	42,820	-	-	-	42,820	600		600
16	Employee Counseling	3,239	-	-	-	3,239	-		-
17	Upward Mobility	7,558	-	-	-	7,558	100		100
18	Long Term Training	37,795	-	-	-	37,795	500		500
19	Nat'l Agency Check/Inq.	3,239	-	-	-	3,239	-		-
20	RPMS Maintenance Contract	59,392	-	-	-	59,392	800	800	-
	Centrally Paid Expenses	1,410,352	-	1,410,352	-	-	-		-
22	OMS OPERATIONS SUB-TOTAL	3,866,754	-	1,410,352	1,189,053	1,267,349	16,900	800	16,100
	OFFICE OF PUBLIC HEALTH:								
23	Executive Direction	135,116	-	-	-	135,116	1,800		1,800
24	Planning & Statistics Staff	437,533	-	-	87,228	350,305	4,700		4,700
25	Office Automation Staff	179,453	-	-	74,524	104,929	1,400	1,400	-
26	RPMS Staff	413,614	-	-	91,084	322,530	4,300	4,300	-
27	Medical Records	67,333	-	-	-	67,333	900	900	-
28	PLANNING & IRM OPERATIONS SUB-TOTAL	1,233,049	-	-	252,836	980,213	13,100	6,600	6,500
29	Executive Direction	223,961	-	-	-	223,961	3,000		3,000
30	Medical	120,049	-	-	-	120,049	1,600		1,600
31	Dental	294,170	-	-	143,917	150,253	2,000		2,000
32	Nursing	229,178	-	-	100,484	128,694	1,700		1,700
33	Health Education	203,075	-	-	-	203,075	2,700		2,700
34	Pharmacy	92,482	-	-	-	92,482	1,200		1,200
35	Diabetes	130,607	-	-	-	130,607	1,700		1,700
36	Mental Health	211,164	-	-	79,881	131,283	1,700		1,700
37	Substance Abuse	383,299	-	-	82,789	300,510	4,000		4,000
38	AIDS Coordinator	144,274	-	-	-	144,274	1,900		1,900

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CALIFORNIA AREA OFFICE BUDGET SUMMARY
FY 2006 Area PFSA Based on FY 2005 Appropriation

	TOTAL BUDGET A	Earmarked B	Program Formula C	Residual D	Available for Tribal Shares E	Lassen Shares 0.013327 F	Retained Shares G	Total Contracted H
OFFICE OF PUBL HLTH continued								
39 MOA/IPA	895,620	895,620	-	-	-	-		-
40 Tribal Contracts	77,014,871	77,014,871	-	-	-	-		-
41 Tribal Compacts	32,464,726	32,464,726	-	-	-	-		-
42 Unmet Needs	80,905	-	-	-	80,905	1,100		1,100
43 Fetal Alcohol Syndrome	74,230	-	-	-	74,230	1,000		1,000
44 Alcohol Initiative	88,955	-	-	-	88,955	1,200		1,200
45 Alcohol Counselor Certification	125,130	-	-	-	125,130	1,700		1,700
46 Regional Treatment Center	1,285,745	1,285,745	-	-	-	-		-
47 Stevens Alcohol	845,281	845,281	-	-	-	-		
48 Maternal & Child Health	113,920	-	-	-	113,920	1,500		1,500
49 Model Diabetes Program	226,264	226,264	-	-	-	-		-
50 Social Services Training	9,574	-	-	-	9,574	100		100
51 Women & Children Initiative	21,522	-	-	-	21,522	300		300
52 None for the Road	10,604	-	-	-	10,604	100		100
53 Health Education Initiative	17,160	-	-	-	17,160	200		200
54 Mandatory for Professional Staff	683,269	-	683,269	-	-	-		-
55 Continuing Education	45,894	-	45,894	-	-	-		-
56 Special Pay	324,069	-	324,069	-	-	-		-
57 Perm Change of Station	16,517	-	16,517	-	-	-		-
58 Cont Ed & Equip Replace (Dental)	153,678	-	153,678	-	-	-		-
59 AIDS Prevention	86,389	-	86,389	-	-	-		-
60 Deferred Services Fund - CHS	52,170	-	52,170	-	-	-		-
61 Dental Flouridation	44,500	-	44,500	-	-	-		-
62 HIPPA	42,138	-	42,138	-	-	-		-
62 OPH OPERATIONS SUB-TOTAL	116,753,390	112,732,507	1,448,624	407,071	2,165,188	28,700	-	28,700
63 **TOTAL SERVICES APPROPRIATION**	123,453,851	112,732,507	2,878,976	2,618,189	5,224,179	69,500	7,400	62,100
FACILITIES APPROPRIATION								
OFFICE OF ENVIR HLTH AND ENGINEERING:								
64 Environmental Health Services	481,658	-	5,000	116,102	360,556	-		-
65 Injury Prevention	166,000	-	-	-	166,000	-		-
66 Sanitation Facilities Construction	1,444,977	-	27,000	337,150	1,080,827	-		-
67 Facilities Management	261,581	-	-	-	261,581	-		-
68 Tribal Contracts	47,393	47,393	-	-	-			-
69 **TOTAL FACILITIES APPROPRIATION**	2,401,609	47,393	32,000	453,252	1,868,964	-	-	-
70 **TOTAL AREA**	$ 125,855,460	$ 112,779,900	$ 2,910,976	$ 3,071,441	$ 7,093,143	69,500	7,400	62,100

File: 06LassenA

EXHIBIT A
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Table #4:

HQ PFSAs for FY 2006 TSA and Program Formula Lines
$ in Pool, Eligible Shares, and Prior Payment

Based on FY 2005 IHS Appropriation

LASSEN IHP

Shares Allocable to AFA **$52,937**

Eligible for 2006 **$52,937**

LASSEN IHP		TSA	PF	BB	*$ Pool TSA+PF*	*Eligible Shares*	*Paid in 2005*	*Elig. in 2006*	*Leave 2006*	*Due 2006*
Hospitals & Clinics					**$55,119,661**	**$32,770**	**$15,572**	**$32,770**		
101	Emergency Fund	☐	☑	☐	$4,000,000					–
104	Inter-Agency Agreements	☐	☐	☐	$0	$837	$837	$837		837
105	Management Initiatives	☐	☑	☐	$2,065,000					–
106	A.C.O.G. Contract	☑	☐	☐	$99,238	$67	$67	$67		67
107	H.P./D.P. Initiatives	☑	☐	☐	$3,753,346	$1,206	$1,206	$1,206		1206
110	N.E.C.I.	☑	☐	☐	$1,106,250	$742	$742	$742		742
111	Nurse Initiatives	☑	☐	☐	$1,290,700	$845	$845	$845		845
112	Nursing Costeps	☑	☐	☐	$619,025	$416	$416	$416		416
113	Chief Clinical Consultant	☑	☐	☐	$278,402	$187	$187	$187		187
115	Emergency Medical Svcs	☑	☐	☐	$555,195	$297	$297	$297		297
117	Traditional Advocacy Program	☑	☐	☐	$101,251	$68	$68	$68		68
118	Research Projects	☑	☐	☐	$1,267,019	$846	$846	$846		846
119	A.A.I.P. Contract	☑	☐	☐	$26,906	$18	$18	$18		18
120	Clinical Support Center-Phoenix	☑	☐	☐	$1,611,791	$1,144	$1,144	$1,144		1144
121	Costeps-Non Physicians	☑	☐	☐	$78,100	$53	$53	$53		53
123	Physician Residency	☑	☐	☐	$277,593	$186	$186	$186		186
124	Recruitment/Retention	☑	☐	☐	$2,073,338	$1,390	$1,390	$1,390		1390
125	U.S.U.H.S., etc.	☑	☐	☐	$3,047,355	$2,044	$2,044	$2,044		2044
126	D.I.R. Support Fund	☑	☐	☐	$19,268,795	$12,931	$284	$12,931	12931	–
127	Evaluation	☑	☐	☐	$1,066,600	$715	$715	$715		715
128	National Indian Health Board	☑	☐	☐	$462,125	$308	$308	$308		308
129	Albuq/HQ Administration	☑	☐	☐	$889,800	$675	$675	$675		675
130	Nutrition Training Center	☑	☐	☐	$347,185	$252	$252	$252		252
131	Diabetes Program-Albuq/HQ	☑	☐	☐	$1,239,771	$867	$868	$867		867
132	Cancer Prevention-Albuq/HQ	☑	☐	☐	$700,790	$493	$493	$493		493
133	Health Records	☑	☐	☐	$137,170	$73	$73	$73		73
134	AIDS Program	☑	☐	☐	$425,743	$484	$484	$484		484
135	Handicapped Children	☑	☐	☐	$348,100	$245	$245	$245		245
137	National DIR Support-Albuq/HQ	☑	☐	☐	$7,983,073	$5,380	$828	$5,380	5380	–
Dental Health					**$5,022,803**	**$846**	**$846**	**$846**		
201	IHS Dental Program	☑	☐	☐	$994,603	$846	$846	$846		846
202	IHS Dental Program - PgmFormula	☐	☑	☐	$4,028,200					
Mental Health					**$2,175,707**	**$1,472**	**$1,472**	**$1,472**		
301	Technical Assistance	☑	☐	☐	$1,445,007	$981	$982	$981		981
302	C.M.I. Grants	☑	☐	☐	$624,000	$418	$418	$418		418
303	National Conference	☑	☐	☐	$106,700	$72	$72	$72		72
Alcohol/Sub. Abuse					**$3,487,208**	**$2,961**	**$2,962**	**$2,961**		
401	Clinical Advocacy	☑	☐	☐	$2,728,813	$2,708	$2,708	$2,708		2708
402	Collaborative Initiatives	☑	☐	☐	$758,395	$254	$254	$254		254

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LASSEN IHP	TSA	PF	BB	$ Pool TSA+PF	Eligible Shares	Paid in 2005	Elig. in 2006	Leave 2006	Due 2006
Contract Health Care				$8,475,691	$1,060	$1,060	$1,060		
501 Fiscal Intermediary	☐	☑	☐	$6,008,325	$0		$0		
504 C.H.S. Reserve & Undistributed	☑	☐	☐	$2,467,366	$1,060	$1,060	$1,060		1060
Public Health Nursing				$3,311,000	$604	$604	$604		
601 Preventive Health Initiatives	☑	☐	☐	$911,000	$604	$604	$604		604
602 Preventive Health Initiatives - PgmFo	☐	☑	☐	$2,400,000					
Health Education				$1,110,000	$752	$752	$752		
701 IHS Health Education Program	☑	☐	☐	$1,110,000	$752	$752	$752		752
CHR				$2,385,000	$1,604	$1,604	$1,604		
801 IHS CHR Program	☑	☐	☐	$2,385,000	$1,604	$1,604	$1,604		1604
Direct Operations				$16,205,907	$10,867	$9,281	$10,867		
1301 Direct Operations - Rockville	☑	☐	☐	$16,205,907	$10,867	$9,281	$10,867	1782	9085
Facilities & Envr. Hlth. S				$6,353,897					
2401 San. Facilities Constr. Support	☐	☑	☐	$1,896,848		See Table 4F			
2402 Environ. Health Services Support	☐	☑	☐	$1,160,420		See Table 4F			
2403 Facilities & Realty Support	☐	☑	☐	$1,823,233		See Table 4F			
2404 Facilities Engineering Support	☐	☑	☐	$1,086,121		See Table 4F			
2405 Engineering Services Support	☐	☑	☐	$387,275		See Table 4F			
Other:				Note: For shares in line 2401-2405, please refer to Table 4F to be provided by Area.					
TSA				$76,746,265					
Program Formula				$26,900,609					
Total				$103,646,874	$52,937	$34,152	$52,937		

Revised Total 20,093 | 52842

The IHS negotiator is responsible for pro-rating Program, Functions, Services Activities (PFSA) amount IF: 1) the Tribe elects not to take 100% of the respective PFSA, and/or 2) the period is not a full year.

Tribal Size Adjustment (TSA) LINES: The amount shown in the Shares column was determined based on the TSA formula during April 1997 (FY 1997 budget). Since then, annual adjustments were made to shares that are proportional to increases/decreases in the IHS appropriations for the relevant budget sub-activity. Annual adjustments will be applied to shares when the new IHS appropriations bill is enacted.

PROGRAM FORMULA (PF) LINES: The amounts shown in the Shares column is determined annually by separate program formula. In many program formula lines, results differ from year to year. If zero shares appear in any program formula line at the time of negotiations, keep in mind that the AFA may (or may not) qualify later in the fiscal year (depending results when the formula is applied). The Facilities and Environmental Health Support, lines 2401 - 2401, are recomputed annually with program formula - Table 4F.

BASE BUDGET (BB) COLUMN: Stable funding level over a multi-year period to operate IHS PFSA's under Title III Compact

Round by $20

EXHIBIT A
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DEPARTMENT OF HEALTH & HUMAN SERVICES PUBLIC HEALTH SERVICE

Indian Health Service
California Area Office
650 Capitol Mall, Suite 7-100
Sacramento, California 95814-4708

January 8, 2007

Susanville Indian Rancheria
795 Joaquin Street
Susanville, CA 96130

Dear Contractor:

Enclosed is an executed copy of **Modification No. 09** to **Annual Funding Agreement No. 12 Contract No. 235-95-0013.**

Please acknowledge receipt of this modification on the copy of this letter and return **only the copy of the letter** to this office.

Questions may be directed to Harry Weiss, your Contract Administrator, at (916) 930-3927, Extension 316.

Sincerely yours,

Harry J. Weiss
Contracting Officer

Enclosures
cc: PAO - Financial Mgt. Branch
Project Officer - S. Lopez

EXHIBIT A
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DEPARTMENT OF HEALTH & HUMAN SERVICES PUBLIC HEALTH SERVICE

Indian Health Service
California Area Office
650 Capitol Mall, Suite 7-100
Sacramento, California 95814-4708

January 8, 2007

Susanville Indian Rancheria
795 Joaquin Street
Susanville, CA 96130

Dear Contractor:

Enclosed is an executed copy of **Modification No. 09** to **Annual Funding Agreement No. 12 Contract No. 235-95-0013.**

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Sincerely yours,

Harry J. Weiss
Contracting Officer

Enclosures
cc: PAO, Financial Mgt. Branch
Project Officer - S. Lopez

RECEIPT ACKNOWLEDGMENT:

_____

Signature **Date**

_____

Type Name & Title

EXHIBIT A
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MODIFICATION TO ANNUAL FUNDING AGREEMENT NO. 12
effective January 1, 2006
BY AND BETWEEN
THE SUSANVILLE INDIAN RANCHERIA
AND
THE UNITED STATES OF AMERICA
SECRETARY OF THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES
INDIAN HEALTH SERVICE
CALIFORNIA AREA OFFICE

MODIFICATION NO. 09 AFA #12
CONTRACT 235-95-0013
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AUTHORITY: 25 USC 450f

DESCRIPTION OF MODIFICATION:

This action extends the AFA to February 15, 2007.

Section 2 (A) of the AFA is Modified as follows:

The amount of this section is increased by $143,190 from $1,146,592 to $1,289,782 by reason of this modification.

Accounting and Appropriation Data:
Req. OPH- 045-07

J410284 7570390 739141-01-01-61 884 41.8B 51-06	$88,056
J410264 7570390 739241-02-02-72 864 41.8B 51-06	1,269
J410261 7570390 739141-01-01-63 861 41.8B 51-06	5,670
J410239 7570390 739141-01-01-64 839 41.8B 51-06	4,986
J41TE74 75 7/8 0390 767041-02-01-66 874 41.8B 51-06	35,387
J410020 7570390 739141-01-01-64 879 41.8B 51-06	3,601
J410055 7570390 739141-01-01-64 889 41.8B 51-06	324
J410269 7570390 739241-02-04-74 869 41.8B 51-06	3,897

Paragraph 2 (B) of the Annual Funding Agreement.

The amount of this section is increased by $59,744 from $493,359 to $553,103 by reason of this modification.

Accounting and Appropriation Data: Req. OPH 045-07

J410684 7570390-739841-08-01-61 884 41.8E 51-06	$45,371
J410684 7570390-739841-08-01-61 884 41.8A 51-06	14,373

Section 2 (C) of the AFA is Modified as follows:

The amount of this section is increased by $7,762 from $62,100 to $69,862 by reason of this modification.

Accounting and Appropriation Data:
Req. OPH- 045-07
J410211 7570390 739141-01-01-61 884 41.8B 26-06= $7,762.

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Section 2 (D) of the AFA is Modified as follows:

The amount of this section is increased by $4,127 from $33,015 to $37,142 by reason of this modification.

Accounting and Appropriation Data:

Req. OPH- 045-07

J410212 7570390 739141-01-01-61 884 41.8B 26-06 $4,127

All other terms and conditions remain unchanged.

This modification shall become effective upon signature of both Parties

SUSANVILLE INDIAN RANCHERIA DATE: 1/4/07

UNITED STATES OF AMERICA DATE: 1/8/07

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Susanville Indian Rancheria
Lassen Indian Health Center

Section 7.08

Reimbursement for Pharmacy Services

Purpose:

To provide a system for reimbursement for prescriptions dispensed from the Lassen Indian Health Center (LIHC) Pharmacy.

Policy:

1. **Formulary Prescriptions.** The Lassen Indian Health Center will maintain an on-site formulary consisting of frequently used, cost-effective medications. This on-site formulary will closely mirror, but not be exclusively limited to, a subset of the Medi-Cal formulary. In addition, each individual prescription insurance carrier / Prescription Drug Plan may have its own formulary that may or may not mirror the LIHC on-site formulary. At any time, the LIHC on-site formulary may be modified based on decisions of the Pharmacy and Therapeutics Committee. In addition, each prescription insurance carrier / Prescription Drug Plan has the right to modify their formulary with or without the permission of the LIHC. For the purposes of this policy, a prescription will be considered formulary or non-formulary based on the criteria established by the particular Pharmacy and Therapeutics Committee, prescription insurance carrier, and / or Prescription Drug Plan.

2. **Indigent Eligible Participants.** An indigent fund program has been established to pay for LIHC on-site formulary prescriptions of Native Americans and Alaska Natives permanently residing in the service area of the Lassen Indian Health Center and whose income is equal to or less than 125% of the Federal Poverty Guideline as published by the United States Department of Health and Human Services. If due to medical necessity and the required medication is not on the LIHC on-site formulary list, the provider will be authorized to fill out the "Non-Formulary Request" form for up to a 30-day supply of the prescription. Application for the use of the indigent funds shall be made through the Benefits Coordinator of the LIHC who shall then notify the Pharmacy Department that the prescription(s) will be paid for through the Indigent Fund Program. Individuals who are eligible for the Indigent Fund Program will be required to apply for supplemental prescription insurance through a Medi-Cal or a Medicare Part D prescription drug plan. Those who are deemed ineligible for supplemental prescription insurance will continue to have their prescriptions funded through the Indigent Fund Program. Individuals who refuse to apply for supplemental prescription coverage within 30 days will be required to pay a $5.00 dispensing fee plus the acquisition costs associated with each prescription. The LIHC has no obligation to pay for the prescription(s) if there are no funds remaining in the Indigent Fund Program.

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3. **Prescription Insurance / Prescription Drug Plan (PDP) Participants.** The appropriate prescription insurance carrier / PDP will be billed, according to their requirements, for the cost of the prescription(s). All LIHC pharmacy recipients that have prescription insurance / PDP shall pay the co-pay requirements of their respective prescription insurance carrier / PDP. In the case of a discrepancy between the third-party insurance / PDP carrier's formulary and the LIHC on-site formulary, the pharmacy will have the option to order a small quantity of the non-LIHC on-site formulary medications specifically for the individual patient. Usually, medications ordered in this fashion will be available for next-day pick-up. Note: The LIHC is not required to contract with all prescription insurance carriers / Prescription Drug Plans. As a result, the individual will be considered to be a non-prescription insurance / non-PDP participant if the LIHC does not have a contract with the respective prescription insurance carrier / PDP provider.

4. **Non-Prescription Insurance / Non-PDP Participants.** All LIHC pharmacy recipients that do not have prescription insurance or a PDP and are not covered by the Indigent Fund Program shall pay a $5.00 dispensing fee plus the acquisition costs associated with each prescription. It is strongly encouraged that each pharmacy recipient that does not have prescription insurance or a PDP contacts the LIHC Benefits Coordinator to assist them in acquiring prescription insurance or a PDP.

5. **Non-Formulary Prescriptions.** All LIHC eligible participants are entitled to obtain non-formulary prescriptions at a facility of their choice. If the participant elects to obtain the non-formulary prescription at the LIHC Pharmacy and they do not have prescription insurance or a PDP, the participant will be required to pay a $5.00 dispensing fee plus the acquisition costs associated with the prescription. If the participant has prescription insurance or a PDP, the participant will be required to pay the co-pay requirements of their respective prescription insurance carrier / PDP. The appropriate prescription insurance carrier / PDP will be billed, according to their requirements, for the costs associated with the non-formulary prescription(s).

Procedures:

1. Reimbursement for prescriptions will be sought from a variety of third-party payers including but not limited to Medicare, Medicare Part D, Medi-Cal, private prescription insurance, and Prescription Drug Plan.

2. Prescription fees will be collected at the time of dispensing the prescription(s). All transactions will be recorded in the pharmacy cash register and through the appropriate accounting program (RPMS or standalone).

3. The Susanville Indian Rancheria Fiscal Department will do a daily reconciliation of the cash register to track overages / shortages.

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4. Upon receipt of third-party reimbursement check(s), the fiscal department will provide a copy of the check(s) and Explanation of Benefits (EOBs) to the Pharmacy. The Pharmacy Department will reconcile payments to billing statements and provide timely follow-up by contacting prescription insurance / PDP companies when claims are not paid. The Pharmacy Department will track charges and payments, make adjustments, and bring uncollected accounts and any open claims to the attention of the Fiscal Controller or Operations Manager. A monthly aged report will be provided by the Pharmacy Department to the Fiscal Controller.

CERTIFICATION

We hereby certify that this change to the Reimbursement for Pharmacy Services was adopted by the Lassen Indian Health Board at a duly called meeting held May 15, 2006 with a vote of 6 for, 0 against, 0 abstain.

Attest;

Davon Joseph
Secretary/Treasurer

Stacy Dixon
Tribal Chairman

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SUSANVILLE INDIAN RANCHERIA

December 15, 2006

Via Federal Express

Dennis Heffington, Area Lead Negotiator
IHS – California Area Office
650 Capitol Mall, Suite 7-100
Sacramento, CA 95814

Re: Susanville Indian Rancheria Compact and Funding Agreement

Dear Mr. Heffington:

Enclosed are two original signed Compacts and Funding Agreements (FAs) that reflect all of the agreements that we reached over the past several months. We are submitting these documents to you for final processing per our agreement on December 6.[1] The Tribe very much looks forward to participating in the Self-Governance Program beginning on January 1, 2007.

As you know, during the negotiation process, we reached an impasse on several issues. The Tribe has decided to submit a final offer pursuant to Section 507(b)-(c) of Title V as well as subpart H of 42 C.F.R. Part 36 §§ 137.130-138 on one issue for which we reached no agreement, which is the Tribe's proposal to include the following sentence in Article II, Section 2 of the Compact: "In the event of inconsistency between the Compact and any FA, the provisions of the Compact shall prevail." During negotiations, the IHS declined to agree to this language, arguing that both the FA and Compact provisions be given the same weight. We disagree. The Compact is the core agreement reflecting the government-to-government relationship between the United States and the Tribe and it takes precedence over the Funding Agreements. Our view is that the Compact's terms should supersede any inconsistent provisions in the FA. Furthermore, it makes sense for the parties to agree to a provision that establishes a priority between the two agreements in the event there is an inconsistency between them. We very much hope that you will review the Agency's position on this matter and change your mind so that the language can be included in the Compact.

Other areas of disagreement also came up during negotiations. In particular, you and your team expressed disagreement over the Tribe's existing pharmacy policy in which it bills beneficiaries for prescription fees. On October 31, 2006, our legal counsel wrote the Office of General Counsel a lengthy and detailed explanation of the legal basis

[1] The Tribe believes that the parties' reached final agreement on all of the terms in these two documents. If, however, the IHS believes otherwise, and disagrees with any of the terms in these agreements please consider those terms to have been submitted on this date by the Tribe as a final offer pursuant to Section 507(b)-(c) of Title V as well as subpart H of 42 C.F.R. Part 36 §§ 137.130-138.

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745 JOAQUIN STREET • SUSANVILLE, CA 96130 • (530) 257- 6264 • FAX 257-7986

for the Tribe's belief that it has a right to collect these fees from beneficiaries. No response letter has ever been provided. Nevertheless, during the negotiations the Agency took a very strong position that the Tribe is not legally able to collect these dispensing fees. The Tribe continues to believe that it is legally entitled to collect these fees. The Tribe receives no pharmacy funds from the IHS and has no choice but to generate revenues to pay for these important services. Charging these fees is a necessity – without them it is likely that the Tribe would have to stop providing these critically needed services.

In addition, the Tribe is aware that many other tribal programs in California and other parts of the country bill beneficiaries for specific services. The Tribe respectfully requests that it not be singled out by the Agency for special treatment during these negotiations on this issue. If the IHS believes that tribes should not be charging beneficiaries under any circumstance, then it should initiate a broader discussion about this issue nationwide and consult with tribes before unilaterally imposing its views on one small California tribe. Perhaps a good starting point for such a discussion is for the Office of General Counsel to respond to the specific arguments raised in our legal counsel's October 31, 2006 letter to determine with some certitude that the Agency has a firm legal basis to disagree with the Tribe's position on this matter.

Finally, the Tribe will take under consideration its options relating to other areas of disagreement that occurred during the negotiations. If you have any questions about these documents please do not hesitate to contact me or the Acting Executive Director, Jim Mackay, of the Lassen Indian Health Center at 530-257-2542.

Sincerely

Stacy Dixon
Tribal Chairman

Enclosures

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COMPACT

BETWEEN

THE SUSANVILLE INDIAN RANCHERIA

AND THE

UNITED STATES OF AMERICA

JANUARY 1, 2007

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SUSANVILLE INDIAN RANCHERIA COMPACT

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COMPACT OF SELF-GOVERNANCE

BETWEEN

THE SUSANVILLE INDIAN RANCHERIA

AND

THE UNITED STATES OF AMERICA

PREAMBLE

WHEREAS, The Susanville Indian Rancheria ("Susanville" or the "Tribe") is a federally recognized American Indian Tribe and the Susanville Tribal Business Council is the duly recognized governing body of the Tribe, and

WHEREAS, it is the policy of the United States to support tribal Self-Governance and it is the desire and intent of the Tribe to administer the resources and programs provided by the Indian Health Service ("IHS") as authorized under P.L. 106-260, Title V of the Indian Self-Determination and Education Assistance Act, as amended, ("Act" or "Title V"), and other applicable federal laws and regulations, and

NOW THEREFORE, The IHS, acting for the Secretary of the Department of Health and Human Services, and the Tribe hereby mutually agree to enter into a government-to-government Agreement for the conduct and delivery of Health Services.

ARTICLE I

AUTHORITY AND PURPOSE

Section 1 – Authority. This Compact, which is authorized by the Act, is hereby entered into by the Secretary of the Department of Health and Human Services of the United States of America ("Secretary"), represented by the Director of the IHS, and the Tribe hereinafter. The Director of the IHS by signing this Compact commits the Secretary to the extent and within the scope of the Secretary's delegation of authority to enter into Compacts and Funding Agreements ("FA") pursuant to Title V or as otherwise authorized.

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Section 2 – Purpose. This Compact shall be liberally construed to achieve its purposes:

(a) This Compact is to carry out the Self-Governance Program authorized by Title V, and is intended to transfer to tribal governments, at tribal request, the power to decide how federal programs, services, functions and activities ("PSFAs") (or portions thereof) shall be funded and carried out. Title V is meant to strengthen the government-to-government relationship and to uphold the United States' trust responsibility. This Compact encourages innovation in order to determine how to improve this government-to-government relationship and promote the autonomy of the Tribe in the realm of health care.

(b) This Compact is to enable the Tribe to re-design health PSFAs of the IHS; to reallocate funds for such PSFAs according to the priorities of the Tribe; to provide such reallocated funds for such PSFAs according to the Tribe's priorities; to provide such PSFAs as determined by the Tribe's priorities; to enhance the effectiveness and long-term financial stability of the Tribe; and to streamline the federal IHS bureaucracy.

(c) This Compact is to enable the United States to maintain and improve its unique and continuing relationship with and responsibility to the Tribe through tribal Self-Governance and to permit an orderly transition from federal domination of programs and services. This Compact and all FAs negotiated thereunder shall transfer to the Tribe the responsibility for providing the PSFAs of the IHS specified in the FA. This Compact allows the Tribe to exercise meaningful authority to plan, conduct, and administer PSFAs to meet the health care needs of eligible individuals in the Tribe's service area. In fulfilling its responsibilities under the Compact and consistent with the President's November 6, 2000 Executive Order No. 13175 on Consultation and Coordination with Indian Tribal Governments, and Section 3(2) of P.L. 106-260, the Secretary hereby pledges that the IHS will conduct all relations with the Tribe on a government-to-government basis.

Section 3 – Tribal Law and Forums. To the extent that applicable Federal law, construed in accordance with the applicable canons of construction and Title V of the ISDEAA, as amended, is not inconsistent, the duly enacted laws of the Tribe shall be applied in the performance of this Compact and any FA negotiated thereunder and the powers and decisions of the Tribal Council shall be respected.

This provision shall not be construed as a waiver of sovereign immunity of the United States or the Tribe and shall not apply to, nor shall it in any way be interpreted to provide application of Tribal law or Tribal Council jurisdiction over (1) disputes between the Secretary and the Tribe regarding interpretation or implementation of this Compact and any FAs; (2) declination or other appeals or litigation brought against the Secretary under the ISDEAA, as amended; (3) claims for equitable relief or damages (including claims under the Contract Disputes Act) brought against the Secretary under Section 110 of the ISDEAA, as amended; or (4) tort claims brought against the United States under the Federal Tort Claims Act.

This provision shall govern disputes between Tribal members, or other persons, and the Tribe regarding services delivery, personnel management or compliance with applicable Tribal and Federal rules regarding Compact operations. Such disputes shall be heard and decided in the Tribe's Tribal Business Council after exhaustion of Tribal administrative remedies, provided that all tort claims against the Tribe or any tribal employee paid under or working under this Compact arising from actions taken during the course and scope of his/her employment shall be handled pursuant to the Federal Tort Claims Act, as more fully addressed at Article V, Section 3 of this Compact.

Section 4 – Access to Training and Technical Assistance. To the extent DHHS retains, as part of its PSFAs, the provision of training and technical assistance to P.L. 93-638 Contractors, to other Compact Indian tribes or to IHS service providers, the Tribe shall have access to and the right to benefit from those services on the same basis as those other Indian tribes or IHS service providers with regard to PSFAs retained by DHHS. With regard to PSFAs retained by DHHS, nothing in this Compact or the FA shall be construed to prevent the Tribe or its staff from attending IHS-sponsored seminars, workshops or continuing medical education (CME) programs on the same terms as other non-Compact Indian tribes or IHS service providers, provided, if the categories of IHS funds used to pay for non-Compact Indian tribes' travel and lodging costs for such attendance is included in the funds received by the Tribe under the FA, the Tribe will pay those costs and other costs sustained by IHS as a result of the Tribe's attendance at such IHS-sponsored seminars, workshops or CME programs with Compact or other non-IHS funds.

ARTICLE II

TERMS, PROVISIONS AND CONDITIONS

Section 1 – Term The term of this Compact shall begin when it is signed by the Tribe and the Secretary and shall extend thereafter throughout the period authorized by Title V of the Act, and any subsequent amendment thereto, and shall remain in effect for so long as is permitted by Federal law or until terminated by mutual written agreement, retrocession, or reassumption pursuant to Section 504(d) of Title V.

Section 2 – Effective Date.

Once this Compact and the FA, attached hereto as Exhibit B, are approved and signed by the Tribe and the Secretary, they shall be effective when signed by both parties.

Section 3 – Funding Amount. Subject only to the appropriation of funds by the Congress of the United States and in accordance with § 508 of Title V, the Secretary shall provide the total amounts specified in the Tribe's FAs.

Section 4 – Payment.

(a) Payment Schedule. Payments shall be made expeditiously and shall include financial arrangements to cover funding during periods under continuing resolutions to the extent permitted by such resolutions. For each calendar year covered by the Compact, the Secretary shall make available the funds specified for that calendar year under the FA by paying the respective total amount as provided for in the FA in advance lump sum, as permitted by law. The first payment shall be made on or before ten (10) days after the beginning of the calendar year, or if full appropriations are not enacted prior to the beginning of the calendar year, on or before ten (10) days after the date on which the Office of Management and Budget apportions the appropriations to DHHS for that fiscal year for the PSFAs subject to the Compact. The Prompt Payment Act, Chapter 39 of Title 31, United States Code, shall apply to the payment of funds due under this Compact and to any FA negotiated thereunder.

(b) Interest on Advances. The Tribe shall be permitted to retain interest earned on funds advanced in accordance with Section 4 (a) above pending disbursement as authorized by law. Interest earned on advances shall not diminish the amount of funds the Tribe is authorized to receive under its FA in the year earned or in any subsequent fiscal year. All funds transferred under FAs pursuant to this Compact shall be managed using the prudent investment standard pursuant to Section 508(h) of Title V, and its implementing regulations.

Section 5 – Reports to Congress. In accordance with Section 514 of Title V, the Secretary shall submit to the Senate Committee on Indian Affairs and the House Resources Committee a written report on the administration of Title V. Each report shall include a detailed analysis of the level of need being presently funded or unfunded for the Tribe. The contents of each report shall comply with Section 514(b). In compiling the report, the Secretary may not impose any reporting requirements on the Tribe not otherwise provided in Title V. The Secretary shall provide the Tribe with a draft of each report required to be submitted to Congress under this provision for a thirty (30) day comment period prior to the submission of the report to Congress so that the Tribe may comment on the report.

Section 6 – Audits.

(a) In accordance with 42 CFR §137.165 the Tribe shall send the annual single organization-wide audit as prescribed by the Single Audit Act of 1984, 31 U.S.C. § 7501, *et seq.*, to the Single Audit Clearinghouse in Jefferson, IN, and shall adhere to generally accepted accounting principles and the applicable Circulars of the Office of Management and Budget ("OMB"). A copy of this audit will be sent simultaneously to the DHHS National External Audit Review Center in Kansas City, MO.

(b) The Tribe shall apply cost principles under the applicable OMB Circular, except as modified by Section 106(k) of the Act, which section is hereby incorporated into this Compact, or by any exemptions subsequently granted by OMB. To the extent that OMB Circular A-87 or its successor, or other applicable circulars, permit agency pre-approval of allowable

costs, the Secretary hereby grants that pre-approval. The Secretary will assist the Tribe in obtaining such additional waivers from OMB as are requested by the Tribe. The Secretary shall require no other audit or accounting standards. Any claim by the Federal Government against the Tribe receiving funds under an FA based on any audit under this Section shall be subject to the provisions of Section 106(f) of the Act. Section 106(d) and (e) will also apply to any such claim.

Section 7 – Records.

(a) The Tribe's records are not to be considered federal agency records for purposes of the Freedom of Information Act, 5 U.S.C. §552, but the Tribe will comply with the procedures related to confidentiality of medical and financial records set forth in the Privacy Act of 1974, 5 U.S.C. §552a.

(b) At the Tribe's option in accordance with Section 105(o) of Title I medical records generated by the Tribe shall be deemed federal records for the limited purpose of making them eligible for storage in Federal Records Centers.

Section 8 – Property.

(a) In General. Section 512(c) and Section 1(b)(8) of the model Agreement set forth in Section 108(c) of the Indian Self-Determination and Education Assistance Act, as amended, are hereby incorporated into this Compact.

(b) Records. The Tribe shall maintain a record of all property referred to in subparagraph (a) or other property acquired by the Tribe under this section for purposes of replacement.

(c) Joint Use Agreements. Upon the request of the Tribe, the Secretary and the Tribe 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. In accordance with Section 512(c)(3) of Title V, the Tribe is granted the authority to acquire such surplus or excess property as the Tribe may determine to be appropriate to support the PSFAs operated pursuant to this Compact, if the Secretary also determines the property is appropriate for use by the Tribe.

(e) Confiscated or Excess Property. The Secretary shall assist the Tribe to obtain such confiscated or excess property as may become available to tribes, tribal organizations, or local governments.

(f) Screener Identification Card. Within 30 days after the Tribe identifies a designated representative for purposes of this section, the Tribe shall be issued a sponsorship letter by the IHS or other necessary document to screen excess property for the GSA or other federal agencies.

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(g) Capital Equipment. The Tribe shall determine the capital equipment, leases, rentals, property, or services it requires to perform the obligations under this Compact, and shall acquire and maintain records of such capital equipment, property rentals, leases, property, or services through applicable procurement procedures of the Tribe.

(h) Leases. Upon the request of the Tribe, the Secretary shall enter into a lease with the Tribe for facilities for which the Tribe holds title to, a leasehold interest in or a trust interest in accordance with Section 105(l) of the Act.

Section 9 – Regulatory Authority. The Secretary and the Tribe agree to utilize the following procedures governing the establishment and application of program rules and regulations under this Compact:

(a) Program Rules. In accordance with section 517(e) of Title V, the Tribe shall not be subject to any agency circular, policy, manual, guidance, or rule adopted by the IHS, unless expressly agreed to by the Tribe in the Compact or Funding Agreement, except for the eligibility provisions of section 105(g) of the ISDEAA and regulations promulgated under section 517.

(b) Federal Regulations.

(1) Applicable Federal Regulations. The Tribe, in carrying out the provisions of this Compact and applicable FAs, will be required to comply only with applicable federal regulations, which include regulations promulgated under Section 517 of Title V unless specifically waived as provided in Section 512 of Title V.

(2) Waiver of Federal Regulations.

(A) Upon request by the Tribe, the Secretary and the Tribe will seek to identify federal regulations promulgated under Section 517 or under the authorities specified in Section 512(b) of Title V that may require waiver in order to effectively carry out this Compact or any FAs.

(B) Waivers of regulations shall be submitted and addressed in accordance with the procedures set forth in Section 512(b) of Title V.

Section 10 – Disputes.

(a) In the event the IHS and the Tribe are unable to agree, in whole or in part, on the terms of the compact or funding agreement (including funding levels), the Tribe shall notify the IHS in writing of its final offer. The final offer shall be processed in accordance with Sections 507(b)-(d) of Title V.

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(b) All disputes between the IHS and the Tribe under this Compact shall be subject to Title V and the provisions of Section 110 of the ISDEAA, and all remedies provided for therein shall be available to the Tribe of this Compact. Actions and proceedings to enforce the Tribe's rights and the Secretary's obligations under this Compact shall be subject to the Equal Access to Justice Act, Public Law 96-481, as amended, to the same extent as are actions and proceedings involving P.L. 93-638 contracts.

(c) In the alternative, the IHS and the Tribe may use the processes authorized and encouraged in the Administrative Dispute Resolution Act, 5 U.S.C. § 581, for more informal resolution of disputes arising under this Compact and applicable FAs.

Section 11 – Retrocession. The retrocession provisions of Section 506(f) of Title V shall apply if the Tribe decides to retrocede a portion or all of the PSFAs contained in an FA.

Section 12 – Subsequent Funding Agreements.

(a) Negotiations for subsequent respective FAs, as provided for in Article VI, Section 2, shall begin in advance of the conclusion of the preceding Funding Agreement. The Tribe is hereby assured that future funding of its subsequent FAs shall only be reduced pursuant to the provisions of Section 508(d) of Title V. The Secretary agrees to prepare and supply relevant information, and promptly to comply with requests from the Tribe for information reasonably needed to determine the funds that may be available for a subsequent FA as provided for in Article VI, Section 2 of this Compact.

(b) If the parties are unable to conclude negotiation of a subsequent FA, and absent notification from the Tribe that it is retroceding the operation of one or more PSFAs (or portions thereof) the terms of this Compact and the existing FA shall remain in effect until a subsequent FA is agreed to. Subsequent FAs will be effective on the date signed by the Tribe and the Secretary, or on another date mutually agreed upon. As provided in Section 505(e) of Title V, subsequent FAs will become retroactive to the end of the term of the preceding FA. Any increases in funding to which the Tribe is entitled by statute, or increases which the Tribe subsequently negotiate, shall be included in the subsequent FA.

Section 13 – Health Status Reports. In accordance with Section 507(a)(1), the Tribe shall provide the Secretary a health status and service delivery report to the extent that relevant data is not otherwise available to the Secretary and specific funds for this purpose are provided to the Tribe in its FA. Such reporting may impose only minimal burdens on the Tribe and shall be consistent with regulations promulgated under Section 517 of Title V.

Section 14 – Secretarial Approval. For the term of the Compact, the provisions of 25 U.S.C. §§ 81 and 476 shall not apply to attorney and other professional contracts of the Tribe pursuant to Section 511(b).

Section 15 – Transportation and Other Supply Sources.

In accordance with Sections 508(e) and 516(a), the Tribe and its employees carrying out this Compact, shall have access to Federal Supplies (including supplies from federal warehouse facilities), Federal supply sources (including lodging, airline transportation, and other means of transportation, including the use of interagency motor pool vehicles) or other Federal resources (including supplies, services, and resources available to the Secretary under any procurement contracts in which the Department is eligible to participate). The Tribe shall have access to such supplies and services on the same basis as the Department and the Secretary agrees to acquire and transfer such supplies or resources to the Tribe upon request.

Section 16 – Limitation of Costs. The Tribe shall not be obligated to continue performance that requires an expenditure of funds in excess of funds transferred under the FA. In accordance with Section 508(k), if, at any time, the Tribe has reason to believe that the total amount required for performance of responsibilities set out in an FA, or a specific activity conducted under the FA, would be greater than the amount of funds awarded under the FA, the Tribe shall provide reasonable notice to the IHS. If the IHS does not take such action as may be necessary to increase the amount of funds transferred under the FA, the Tribe may suspend performance of the FA until such time as additional funds are transferred.

Section 17 – Consolidation with Other Programs. The Tribe may consolidate PSFAs and associated funds identified in an FA with other PSFAs provided with its own funds or funds from other sources, provided that the PSFAs are allowable for inclusion in an FA under Section 505 of Title V. In such cases, the Tribe shall not be required to separate dollars or PSFAs so long as the Tribe can provide sufficient data to permit an acceptable program and financial audit to be conducted. When PSFAs are consolidated in an FA by the Tribe in accordance with the terms of the FA and Sections 505 and 506(e) of Title V, the Tribe and its employees carrying out those PSFAs may receive FTCA coverage in accordance with the statutory provisions and regulations cited in Article V, Section 3 of this Compact. Whether the FTCA applies in any particular case is decided on an individual case-by-case basis by the United States Department of Justice and subsequently by the Federal courts.

ARTICLE III

OBLIGATIONS OF THE TRIBE

Section 1 – Consolidation. The Tribe will be responsible for performing the PSFAs as specified in Section 3 of this Article III and in applicable FAs, as provided for in Article VI, Section 2 of this Compact. To the extent a PSFA and funds included within a contract or grant entered into pursuant to Sections 102 or 103 of the Act is included within an FA, that contract or grant shall be modified or terminated as appropriate. This Compact shall govern the parties' obligations and all funds previously obligated under contracts or grants (including carry-over funds) will be re-obligated to the Tribe under an FA negotiated under this Compact.

Section 2 – Amount of Funds. The total amount of funds covered by the consolidation and redesign provided for in Section 1 of this Article that the Secretary shall make available to the Tribe shall be determined in accordance with Section 508(c) of Title V and shall be set forth in the FA negotiated under this Compact.

Section 3 – Compact Programs. The PSFAs that will be the responsibility of the Tribe under this Compact shall be identified in the Tribe's Funding Agreement.

Section 4 – Eligibility for Services. In determining eligibility for services the Tribe shall comply with applicable eligibility provisions set forth in the Indian Health Care Improvement Act, as amended, applicable regulations, and other statutory law and the availability of funds transferred by the IHS to the Tribe.

Section 5 – Reallocation, Redesign and Consolidation. In accordance with Section 506(e) of Title V, the Tribe may redesign or consolidate programs, services, functions, and activities (or portions thereof) included in a Funding Agreement and reallocate or redirect funds for such programs, services, functions, and activities (or portions thereof) in any manner which the Tribe deems to be in the best interest of the health and welfare of the Indian community being served, only if the redesign or consolidation does not have the effect of denying eligibility for services to population groups otherwise eligible to be served under applicable federal law.

Section 6 – Program Income, Including Medicare/ Medicaid. All Medicare, Medicaid or other program income earned by the Tribe shall be treated as additional supplemental funding to that negotiated in the FA and the Tribe may retain all such income, including Medicare/Medicaid, and expend such funds in the current year or in future years. Earnings of such funds described in the previous sentence shall not result in any off-set or reduction in the negotiated amount of the FA. Medicare/Medicaid collections of the Tribe under Title IV of Public Law 94-437, as amended, shall be used by the Tribe in accordance with any applicable statutory restrictions on the use of such funds. The Tribe is obligated to seek third party reimbursements as provided by federal law.

Section 7 – Carry-over. Congressionally appropriated funds allocated in accordance with an FA under this Compact are no year funds and may be expended by the Tribe in accordance with its budget for the year for which the funds are appropriated or carried over and expended in any subsequent fiscal year, and such carry-over shall not diminish the amount of funds the Tribe is authorized to receive under its FA for any such subsequent fiscal year.

Section 8 – Administrative Procedures. To the extent required by law the Tribe shall provide administrative due process rights to individuals that receive services provided under this Compact.

Section 9 – Matching Funds. Funds may be used to meet matching and other cost participation requirements under any other federal or non-federal programs pursuant to Section 512(d) of Title V.

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ARTICLE IV

OBLIGATIONS OF THE UNITED STATES

Section 1 – Trust Responsibility. In accordance with Sections 507(g) and 515(b) of Title V, nothing in this Compact waives, modifies, or diminishes in any way the trust responsibility of the United States with respect to the Tribe or individual American Indians which exists under treaties, executive orders, and Acts of Congress.

Section 2 – Programs Retained.

(a) The Secretary hereby retains the responsibility for the PSFAs with respect to the Tribe that are not specifically assumed by the Tribe through an FA and the Tribe shall continue to be entitled to the full benefit of those PSFAs retained by the IHS. In accordance with Section 506(h), the Tribe shall be eligible for new PSFAs of the Secretary and the IHS on the same basis as other Tribes and Tribal Organizations. The IHS, in consultation with the Tribe, may reorganize to sustain its ability to provide, in the most effective and efficient manner, all PSFAs that have not been included in the FA.

(b) Prior to the end of each fiscal year, the IHS shall provide the Tribe with a written list of the retained PSFAs relevant to health care in the Tribe's service area for the upcoming fiscal year. To the fullest extent permitted by law, the Secretary shall provide the Tribe access to, and copies of, all documents and other information relevant to any ongoing retained PSFAs and shall cooperate with any reasonable evaluation, which the Tribe may wish to conduct. The Secretary will cooperate with the Tribe to facilitate the inclusion of PSFAs in future FAs of the Tribe.

Section 3 – Financial and Other Information. The Tribe shall be eligible for new PSFAs and other new funds on the same basis as other tribes and the Secretary or an authorized representative shall advise the Tribe of the funding available for such programs. To assist the Tribe in monitoring compliance with Section 508(c) of Title V the Secretary shall annually provide the Tribe:

(a) Table #1: Congressional Changes to IHS Appropriations;

(b) Table #2: Breakdown of Appropriations, Allowances to Area and through HQ;

(c) Table #3: Breakdown of HQ Allowances, Detailed HQ Accounts and Categories for Tribal Shares; and

(d) HQ PSFAs available to the Susanville Indian Rancheria.

Other information requested by the Tribe shall be provided as expeditiously as possible. If the Secretary cannot provide the information within thirty (30) days of receipt of the request, he/she shall, within thirty (30) days, acknowledge the request in writing and agree with the Tribe on a timeframe for production of the information.

Section 4 – Savings. If the PSFAs carried out by the Tribe under Title V FAs and this Compact result in a reduction to the administrative or other responsibilities of the Secretary, with respect to the operation of Indian programs, and thereby result in savings that have not otherwise been included in the amount of tribal shares and other funds determined under Section 508(c) of Title V, the Secretary shall make such savings available to the Tribe for the provision of additional services in accordance with Section 507(f) of Title V or in accordance with other federal law.

ARTICLE V

OTHER PROVISIONS

Section 1 – Designated Officials. On or before the effective date of this Compact, both the Secretary and the Tribe shall provide a written designation of an individual as their representative/liaison. The Secretary shall direct all communications about the Compact and relevant FA to the Tribe's designee.

Section 2 – Indian Preference in Employment, Contracting and Sub-Contracting and Wage and Labor Standards. The Tribe's tribal law shall govern the provisions of Indian preference in employment, contracting and subcontracting subject to 25 U.S.C. § 450e. Further, the provisions of sections 7(b) and 7(c) of the Act shall apply to the Tribe to the full extent permitted by applicable federal law. Finally, Section 7(a) of the ISDEAA, as amended, shall apply to any construction activities transferred to the Tribe under this Compact.

Section 3 – Federal Tort Claims Act Coverage; Insurance.

(a) The Tribe is deemed by statute to be part of the Public Health Service (PHS), and the employees of the Tribe are deemed by statute to be part of or employed by the PHS, for purposes of coverage under the Federal Tort Claims Act, while performing PSFAs under this Compact and any FA, including coverage for claims of medical malpractice, as required by Section 516(a) of Title V and as more fully described in section 102(d) of the Indian Self-Determination Act, as amended, and 25 C.F.R. § 900.180-210. Whether the FTCA applies in any particular case is decided on an individual case-by-case basis by the United States Department of Justice and subsequently by the Federal courts.

(b) The above status of the Tribe, or an employee's status as an employee of the Tribe, is not affected by the source of the funds used by the Tribe to pay the employee's salary and benefits as long as the employee does not receive any additional compensation for the performance of covered services from anyone other than the Tribe.

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(c) The Tribe's employees may, while performing under this Compact and any FA and as a condition of employment, be required by the Tribe to provide services to non-IHS beneficiaries in order to meet the obligations under this Compact, either in facilities of the Tribe or in facilities other than those of the Tribe.

(d) Funds provided under an FA may be used to purchase such additional liability and other insurance as is prudent in the judgment of the Tribe performing under this Compact and FA for its protection and the protection of its employees.

(e) Personal services contracts shall be covered under this provision to the extent provided under Section 102(d) of the Act.

Section 4 – Compact Modifications or Amendments. To be effective, any modifications of this Compact shall be in the form of a written amendment, and shall require written consent of the Tribe and the Secretary.

Section 5 – Construction Activities. The Tribe may assume construction projects or programs in accordance with Title I, Title V or P.L. 86-121.

Section 6 – Officials Not To Benefit. No member of or delegate to Congress or resident Commissioner shall be admitted to any share or part of any Contract executed pursuant to this Compact, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to any contract under this Compact if made with a corporation for its general benefit.

Section 7 – 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 Compact 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.

Section 8 – Penalties. The parties agree that the criminal penalties set forth in 25 U.S.C. §450d apply to all activities conducted pursuant to this Compact.

Section 9 – Use of Federal Employees. Section 104 of the Act shall apply to this Compact and to any individuals assigned or detailed to the Tribe performing functions under this Compact or leaving federal employment to perform services under this Compact, including assignments either on detail or on leave without pay and with or without reimbursement by the Tribe for the travel and transportation expenses to or from the place of assignment and for the pay, or supplemental pay, or a part thereof, of the employee during assignment.

Section 10 – Extraordinary or Unforeseen Events. This Compact is intended to obligate the Tribe to carry out all usual and ordinary functions respecting the PSFAs that it is undertaking to assume responsibility for under its FA. In the event major unforeseen or

extraordinary events occur, as jointly identified by the Tribe and the Secretary, with consequences beyond the control of the Tribe, the Secretary and the Tribe agree that the Tribe shall have access to additional services and funding amounts for its FA, to the extent such resources are available. The parties will seek to ensure that funds available to the Tribe to deal with the unforeseen circumstance will not be less than would have been available to non-Compact Tribes or the IHS had they encountered a similar circumstance.

Section 11 – Mature Contract Status upon Compact Termination. In accordance with Section 506(g)(3) of Title V, should the Tribe elect to convert all or some of the programs operated under the Compact back to contract status under Title I of the Act, as amended, such conversion shall not affect the Tribe's status as having operated a mature contract within the meaning of Section 4(h) of the Act. Such conversion would occur only at the end of the Compact term, or on another date mutually acceptable to the Tribe and the Secretary, or as otherwise provided in this Compact, and will be implemented in a manner which avoids any interruption of services to individual tribal members. If the Compact is terminated or the Tribe determines that it will retrocede any PSFA operated under the Compact, the Tribe's contract(s) shall not lose mature contract status under Section 4(h) as a result of the conversion.

Section 12 – Contracting Rights. Nothing in this Compact or any FA shall be construed to preclude the Tribe from contracting with the Secretary to perform a PSFA under Title I of the Act, as amended, subject, however, to constraints against duplication pursuant to Section 506(h) of Title V.

Section 13 – Sovereign Immunity. Nothing in this Compact or in any FA shall be construed to affect or waive the sovereign immunity of the Tribe.

Section 14 – Interpretation of Federal Law. In the implementation of this Compact, the Secretary, to the extent feasible, and except as otherwise provided by law, shall interpret all federal laws, executive orders, regulations and this Compact in a manner that effectuates and facilitates the purposes of this Compact and achievement of the Tribe's health goals and objectives in accordance with Section 512(a) of Title V. In accordance with Section 512(f) of Title V, each provision of this compact or FA shall be liberally construed for the benefit of the Tribe and any ambiguity shall be resolved in favor of the Tribe.

Section 15 – Program Funding. The Secretary commits to advocate for increases in the IHS budget to further the ability of the Tribe to provide the full range of services that are the responsibility and obligation of the United States to make available to American Indian and Alaska Native people and to meet the goals of the Indian Health Care Improvement Act.

Section 16 – Effect on Non-Participating Tribes. Nothing in this Compact or associated FAs shall be construed to limit or reduce in any way the service, contracts or funds that any Indian Tribe or tribal organization is eligible to receive.

Section 17 – Severability.

(a) Except as provided in this section, this Compact shall not be considered invalid, void or voidable if any section or provision of this Compact is found to be invalid, unlawful or unenforceable by a court of competent jurisdiction.

(b) If any section or provision of this compact is found to be invalid, unlawful or unenforceable by a court of competent jurisdiction the parties will make every effort to reach agreement to amend, revise or delete any such invalid, unlawful or unenforceable section or provision.

Section 18 – Applicability of Title I Provisions. At the request of the Tribe, any provision of Title I, except those referred to in Section 516 of Title V, to the extent such provision does not conflict with a provision in Title V, shall be made a part of a Funding Agreement or this Compact. The Secretary is obligated to include such provision at the option of the Tribe. The Tribe may identify in writing, by citation or verbatim statement, any provision of Title I that it elects to incorporate into this Compact and submit such provision to the OTSG, with a copy to the Sacramento Area Office Director. Within 15 days of receipt of a written request the Secretary shall acknowledge receipt therefor. If no acknowledgement is sent within 15 days the request shall be deemed approved and incorporated into the Compact or Funding Agreement, and shall have the same force and effect as if it were set out in full in Title V. In the event the Tribe requests such incorporation at the negotiation stage of this Compact or a Funding Agreement, such incorporation shall be deemed effective immediately and shall control the negotiation and resulting Compact and Funding Agreement.

Section 19 – Purchases from the Indian Health Service. With respect to functions transferred by the IHS to the Tribe under this Compact or an applicable FA, the IHS shall provide goods and services to the Tribe, on a reimbursable basis, including payment in advance with subsequent adjustment. The reimbursements received from those goods and services, along with the funds received from the Tribe pursuant to this section, may be credited to the same or subsequent appropriation account which provided the funding, such amounts to remain available until expended.

Section 20 – Inclusion of Grants. The parties agree that Section 505(b)(2) of Title V provides, among other things, that statutorily mandated grants administered by the DHHS through the IHS may be added to the Tribe's FAs after award of such grants.

ARTICLE VI

ATTACHMENTS

Section 1 – Approval of Compact. The resolution of the Tribe approving this Compact and successor FAs is attached hereto as Exhibit A.

Section 2 – Funding Agreement. The Tribe's Funding Agreement shall be attached hereto as Exhibit B.

ARTICLE VII

COUNTERPART SIGNATURES

This Compact may be signed in counterparts.

IN WITNESS WHEREOF, the parties have executed, delivered and formed this Compact.

SUSANVILLE INDIAN RANCHERIA

By: _____ 12/18/06
Stacy Dixon, Chairman Date

UNITED STATES OF AMERICA

By: _____ _____
Charles W. Grim, D.D.S., M.H.S.A., Director, IHS Date

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FUNDING AGREEMENT

BETWEEN THE

SUSANVILLE INDIAN RANCHERIA

AND THE

SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

January 1, 2007 through December 31, 2007

This Funding Agreement ("FA" or "Agreement") is entered into by and between the Susanville Indian Rancheria ("Tribe") and the Secretary of the Department of Health and Human Services of the United States of America ("Secretary"), represented by the Director of the Indian Health Service ("IHS"). This FA shall be liberally construed to implement the Title V Compact of Self-Governance between the parties.

Section 1 – Obligations of the IHS. This FA obligates the IHS to provide funding and services identified herein and as provided in the Susanville Indian Rancheria Compact ("Compact") between the Tribe and the Secretary in Calendar Year 2007 (January 1, 2007 through December 31, 2007). This FA is negotiated in accordance with Section 508(b) of Title V.

Section 2 – Obligations of the Tribe. This FA obligates the Tribe, subject to the availability of funding provided by the IHS, to be responsible for and to provide health programs, services, functions and activities ("PSFAs") set forth below and identified in the attached Tribal Self-Governance FA tables for Calendar Year 2007 utilizing the resources transferred under this FA:

(A) Administrative and Organizational Systems: The purpose of this program is to provide the administrative oversight for all health PSFAs; to ensure the Health Program's mission, policies and other responsibilities are carried out; and to assure compliance with the Tribe's IHS Compact.

(B) Program Services

(i) Reporting. The purpose of this program is to provide the IHS with program service data through the RPMS system for those services described in this FA.

(ii) Primary Health Care. The purpose of this program is to provide the best level of care consistent with the budgetary limits of the Compact and this FA to eligible

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individuals in the service area. This program will include, but not be limited to, services such as: first prenatal visit (all prenatals are referred to appropriate providers after the first visit); well child care; immunizations; general medical care; and screening for chronic diseases. Lassen Indian Health Center (LIHC) provider may be involved in a community rotation of on-call physicians to provide after-hours access to emergency medical care and inpatient hospitalization. LIHC provider may be required to provide care for both Indian and non-Indian patients as part of this reciprocal arrangement in order to maintain seamless after-hours coverage for LIHC clients.

(iii) Dental Services. The purpose of this program is to examine and provide comprehensive dental services to all registered users in the LIHC service area. Comprehensive dental services will include, but not be limited to, the following: emergency services; diagnostic services; preventive services; restorative services; endodontic services; periodontic services; prosthetic services; oral surgery services (limited); and limited orthodontics.

(iv) Pharmacy Services. The purpose of this program is to provide pharmacy services to eligible individuals in the service area that include, but are not be limited to, recommending therapies to clinical providers, dispensing medications and monitoring of medication treatment plans to assure appropriate, safe and cost effective therapies and to provide patients information and counseling regarding their treatment to assure compliance and to mediate potential side effects and to insure against potentially harmful interactions.

(v) Clinical Laboratory Services. The purpose of this program is to provide on-site laboratory services to eligible individuals in the service area. The on-site laboratory offers services recognized as C.L.I.A. waived testing. All other tests are sent to a reference laboratory that meets all Medicare/Medi-Cal requirements.

(vi) Alcohol/Chemical Dependency. The purpose of this program is to provide treatment services to eligible individuals in the service area as funding allows, that will focus primarily on the awareness, assessment and treatment of Alcohol and Chemical Abuse/Dependency.

(vii) Health Records. The Department of Health Records is the central record keeping service for all LIHC clinical services. Operating from the central record units in the clinic, all provider notes and instructions are recorded and maintained in each patient record. Records are kept complete, current and are restricted to licensed and/or certified providers credentialed and other LIHC staff with a need to know.

(viii) Behavioral Health Services. The purpose of this program is to provide eligible individuals in the service area with behavioral health services that include, but are not limited to, assessment, crisis intervention, counseling and/or psychotherapy for children, adolescents, adults, family and marital therapy, case management, parenting, outreach, client advocacy, consultation and referral. Direct care and/or referral to other qualified personnel for evaluation and treatment may be utilized. Primary and secondary prevention activities shall include, but are not limited to, education related topics to enhance coping and parenting skills,

healthier communication skills, stress management, high risk behaviors such as suicide, drug and alcohol abuse, and behavioral aspects of diseases and health risks such as diabetes, smoking, eating disorders, etc.

(ix) Community Health Services. Community Health Services are provided by Community Health Representatives (CHR). CHR services are an integral part of the health promotion/disease prevention effort. Those services include, but are not limited to, assisting the medical, dental and behavioral health components by making home visits to assess, assist and perform those activities necessary for maintaining optimum health between clinic visits. CHR services also include community health assessments and those actions which facilitate medical, dental and behavioral health wellness efforts.

(x) Contract Health Services. The purpose of this program is to provide eligible individuals in the service area with approved inpatient and out patient services not available at the LIHC through a referral process to appropriate providers subject to the availability of funds. Eligible patients shall be furnished such orthopedic, optical, dental, surgical and medical appliances, supplies and equipment as may be deemed necessary and approved by LIHC medical staff according to CHS policies adopted and approved by the Health Board. Laboratory, x-ray and other diagnostic services not available at the LIHC and necessary for fulfillment of treatment protocols shall be purchased in accordance with CHS policies and subject to the availability of funds. The use of IHS funds for payment of these services shall be authorized only after all other alternate resources have been exhausted.

(C) This FA includes programs, functions, services and activities resulting from tribal redesign, or consolidation, reallocation or redirection of funds, including its own funds or funds from other sources, provided that such consolidation, redesign or reallocation or redirection of funds results in carrying out programs, functions, services and activities that may be included in the FA pursuant to section 505 or Title V (25 U.S.C. § 458aaa-4). This includes any other new health care programs, including, but not limited to, those identified in the Indian Health Care Improvement Act funded during the fiscal year.

(D) The Tribe will complement and supplement the PSFAs described in Section 3 with funding from sources other than the IHS through this FA, subject to the availability of such other funding. Consistent with the Compact, non-IHS funds will be added to or merged with funds provided by the IHS through this FA.

Section 3 – Inclusion of Statutorily Mandated Grants.

In accordance with Section 505(b)(2) of Title V and its implementing regulations, the parties agree that the Secretary will add statutorily mandated grants administered by DHHS through IHS to this FA after such grant has been awarded. Grant funds will be paid to the Tribe as a lump sum advance payment through the payment management system as soon as practicable after the award of the grant. The Tribe will use interest earned on such funds to enhance the grant program, including allowable administrative costs. The Tribe will comply with all terms and conditions of the grant award, including reporting requirements, and will not reallocate grant

funds nor redesign the grant program. Self-Governance tribes and their employees carrying out statutorily mandated grants added to a funding agreement are covered by the Federal Tort Claims Act (FTCA). Regulations governing coverage under the FTCA are published at 25 CFR Part 900 Subpart M. Whether the FTCA applies in any particular case is decided on an individual case-by-case basis by the United States Department of Justice and subsequently by the Federal courts.

Section 4 – Amounts available in Calendar Year 2007.

(A) The amounts available to the Tribe pursuant to this FA are shown on the CY 2007 Self-Governance FA Table, Attachment #1, and CY 2007 Retained Services Plan, Attachment #2, are hereby incorporated into this FA.

(B) The Tribe retains the right to negotiate further during the term of this FA to assume responsibility for additional PSFAs.

(C) Any funding not identified as tribal shares will be made available to the Tribe when the IHS subsequently identifies those funds as Tribal Shares.

(D) All new and previously undistributed non-recurring and recurring funds available for distribution shall be added to this FA within 10 days after distribution methodologies and other decisions regarding payment of those funds have been made by the IHS.

(E) If the expenses to the Tribe for a medical problem exceed the threshold amount established by the IHS, the Tribe may apply for Indian Catastrophic Health Emergency Funds (CHEF) and funds will be made available to the Tribe in accordance with CHEF policy and procedures.

(F) The Tribe is eligible for distribution of Tribal Share Management Initiatives and Emergency funds. Tribal shares of the Management Initiatives and Emergency funds shall be based on the TSA formula for any remaining balance in a fund at the end of the fiscal year, should there be any.

Section 5 – Contract Support Costs. For the period of this FA, the Tribe will be provided funds in advance for contract support costs. The amount to be paid in CY 2007 shall be set forth in the attached Self-Governance FA Table which is hereby incorporated into this FA. See Attachment "1." IHS will pay 100% of the funds identified and agreed upon in the Self-Governance tables to the Tribe on or before ten (10) days after January 1 of each calendar year, or if full appropriations are not enacted by January 1, ten (10) days after the date on which the Office of Management and Budget apportions the appropriations for each fiscal year to the DHHS. In the event of continuing resolutions, the IHS and Tribe agree that the amounts to be paid will be calculated and paid within ten (10) days of such funds being apportioned by OMB pursuant with the terms of the language contained in the continuing resolution and in accordance with the Compact, Article II, Section 4(a).

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IHS will comply with Section 508(c), 519(b) and 106 of the ISDEAA, as amended, and any statutory restrictions imposed by Congress. IHS will annually calculate and pay the Tribe contract support costs in accordance with IHS Circular 2004-03 or its successor. If the amount appropriated by Congress for CSC for the year covered by this FA is equal to the amount appropriated for the prior year, IHS will pay the Tribe CSC in the amount paid in the prior year, provided that such amount may not exceed 100% of the amount due under Section 106. The IHS will annually prepare a report identifying any deficiency of funds needed to provide required contract support costs to all contractors for the current fiscal year, in accordance with Section 106(c) of the ISDEAA.

Section 6 – Payment Amount and Schedule for Tribal Shares. Payment shall be by electronic funds transfer pursuant to Article II, Section 4, of the Compact. IHS will pay 100% of agreed funds identified on the attached Self-Governance FA table on or before ten (10) days after the beginning of each calendar year, or if full appropriations are not enacted by the beginning of the calendar year, ten (10) days after the date on which the Office of Management and Budget apportions the appropriations to the DHHS. The amount of funds identified for OEHE is estimated and will be recalculated on an annual basis each fiscal year based on existing resource requirements methodology and final appropriation. Additionally, the Secretary must transfer any funds subsequently due under the FA that were not paid in the initial lump sum payment within ten (10) days after distribution methodologies and other decisions regarding payment of those funds have been made by the IHS. The Prompt Payment Act shall apply until all amounts due are paid in full.

In the event of continuing resolutions, the IHS and Tribe agree that the amounts to be paid will be calculated and paid within ten (10) days of such funds being apportioned by OMB pursuant with the terms of the language contained in the continuing resolution and in accordance with the Compact, Article II, Section 4(a).

Section 7 – Buyback or Retained Services, Resources, Supplies, Functions and Programs. The Tribe may wish to carry out its responsibility to provide certain PSFAs included in this FA utilizing services, personnel, supplies or other resources ("Resources") of the federal government. Such Resources shall be provided in accordance with Article V, Section 19 of the Compact. If the Tribe becomes aware of any such Resources it shall contact the Agency Lead Negotiator ("ALN") and shall request a breakdown of the cost of the Resources. The ALN shall provide the breakdown of costs as soon as possible from receipt of the request, and shall notify the Tribe at that time whether the requested Resources are currently available. If such Resources are currently available and if the Tribe decides to utilize the Resources, it shall send the ALN a written request identifying the Resources the Tribe wishes to utilize. The ALN as well as the Tribe shall thereafter make arrangements for the provision to the Tribe of such Resources and the method by which the IHS will be reimbursed by the Tribe for the cost of such Resources. The cost of such resources shall either be deducted from any funding to be subsequently modified into this Agreement or paid by the Tribe directly to the IHS by check, inclusive of the full cost recovery fee.

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Section 8 – Adjustment of Funds Due to Congressional Actions. The total amount of funding identified in this FA is subject to adjustment due to Congressional action in Appropriations Acts or other law affecting availability of funds to the IHS and the U.S. Department of Health and Human Services. Upon enactment of any such Act or law, the amount of funding provided to the Tribe in this FA shall be adjusted as necessary on a sub-sub activity basis excluding earmarks, after the Tribe has been notified of such pending action and subject to any rights which the Tribe may have under this FA, the Compact, or the law.

Section 9 – IHS Responsibilities. Unless funds are specifically provided from IHS to the tribe through this FA, IHS retains all PSFAs and the Tribe will not be denied access to, or services from IHS. Except as otherwise provided in the Attachments or written buyback arrangement, any PSFA not listed in the Attachment B funding table or Section 2 of this FA shall be presumed to be a responsibility of the Secretary, unless additional funds are provided to the Tribe by amendment to this agreement for such PFSA.

Section 10 – Access to Training and Technical Assistance. To the extent funds for the following purposes are retained by the IHS, the Tribe shall have access to training, continuing education, and technical assistance in the same manner and to the same extent the Tribe would have received such services if it were not a Self-Governance Tribe.

Section 11 – Memorializing Disputes. The parties to this FA may have failed to reach agreement on certain matters which remain unresolved and in dispute. Such matters may be addressed through the process set forth in Sections 507(b)-(d) of Title V, or at the Tribe's option, may be set forth in an addendum to this FA, which shall be identified as "Memorialization of Disputes." This Addendum shall not be considered a part of this FA, but is attached for the purpose of recording matters in dispute for future reference, discussion and resolution as appropriate. The Tribe does not waive any remedy the Tribe may have under the law with regard to these issues and any others not listed herein.

Section 12 – Amendment or Modification of this FA.

(A) Except as otherwise provided by this FA, the Compact, or by law, any modifications of this Agreement shall be in the form of a written amendment and shall require written consent of the Tribe and the Secretary. Written consent of the Tribe shall not be required for issuing amendments that result from changes in actual appropriation levels or which represent an increase in funding for PSFAs identified in this FA. Such increases include, but are not limited to: Program/Area Office/Headquarters Mandatories; Program/Area Office/Headquarters End-of-year Distributions; and CHEF. Within two weeks after a specific request, the Tribe shall be provided with written documentation by either the ALN or OTSG of the sub-sub activity source and distribution formula for the funding. Such amendments shall be without prejudice to the rights of the Tribe to seek IHS administrative, Interior Board of Contract Appeals, or judicial review to resolve any disagreements or disputes respecting any such amendments, pursuant to otherwise applicable Federal law.

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(B) Should the Tribe determine that it wishes the IHS to provide PSFAs included in this FA for which funding has been identified, the parties shall negotiate an amendment to the FA to reflect the transfer of responsibilities from the Tribe back to the IHS and the pro-rata share of funding for that PSFA shall be retained by the IHS.

(C) Should the Tribe determine that it wishes to provide a PSFA of the IHS not included in this FA, the Tribe shall submit a proposal in writing to the Director of OTSG, with a copy sent to the Director, Sacramento Area Office. The parties shall negotiate the terms of such a proposal. If approved by the IHS, the Area Office shall prepare within 30 days an amendment to this Agreement and the amendment shall be executed through the Area Office and added to the Agreement. In the event the parties do not reach agreement over the proposal, the Tribe shall notify the IHS in writing of its final offer. The final offer shall be processed in accordance with Sections 507(b)-(d) of Title V.

Section 13 – Severability.

(A) Except as provided in this section, this FA shall not be considered invalid, void or voidable if any section or provision of this Agreement is found to be invalid, unlawful or unenforceable by a court or competent jurisdiction.

(B) If any section or provision of this FA is found to be invalid, unlawful or unenforceable by a court of competent jurisdiction the parties will make every effort to reach agreement to amend, revise or delete any such invalid, unlawful or unenforceable section or provision.

Section 14 – Administrative Notifications.

(A) Name/Address of tribe:
Susanville Indian Rancheria
ATTN: Tribal Chairman &
Executive Director
795 Joaquin Street
Susanville, CA 96130

(B) Federal Payment Office: Phoenix Area Office

(C) Catalog of Federal Domestic Assistance No.: 93-210

(D) HHS Administrative Code: ISG93

Section 15 – Effective Date and Duration. This FA will be effective January 1, 2007, and will remain in effect through December 31, 2007, or until a subsequent FA is negotiated and becomes effective pursuant to Article II, Section 12 of the Compact.

SUSANVILLE INDIAN RANCHERIA

By: _____ 12/18/06
Stacy Dixon, Chairman Date

UNITED STATES OF AMERICA

By: _____
Charles W. Grim, D.D.S., M.H.S.A., Director, IHS Date

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ADDENDUM
MEMORIALIZATION OF DISPUTES

During the Tribe's negotiations of its CY 2007 Funding Agreement, the IHS rejected language proposed by the Tribe in section 5 on two issues:

First, the tribe proposed language that confirmed that the Agency would, as required by Section 106(c) of the ISDEAA, report to Congress any deficiency of funds necessary to pay required contract support costs to all contractors in CY 2007. Instead, the IHS insisted that it could only "prepare" such reports and could not commit to ensuring that they be submitted to Congress. The Tribe believes that the IHS' position is inconsistent with and violates the requirements of Section 106(c).

Second, the tribe proposed a sentence for this same section that provides as follows: "Nothing in this provision shall be interpreted to waive the Tribe's right to be paid contract support costs to which it is entitled in accordance with Sections 508(c), 519(b) and 106 of the ISDEAA." The IHS' position was that the Agency will pay CSC in accordance with IHS Circular 2004-03. The Tribe believes the language it proposed is consistent with a decision made by the Interior Board of Contract Appeals in *Appeals of the Seldovia Village Tribe*, IBCA 3862 & 3863/97. In that case the IBCA made clear that the Tribe was entitled to be paid 100% of its statutorily mandated CSC and that the IHS' obligation to pay was not eliminated by language in a Funding Agreement in which the Tribe agreed to be paid in accordance with IHS' CSC policy.

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Indian Health Service
Rockville MD 20852

JAN 29 2007

Mr. Stacy Dixon
Tribal Chairman
Susanville Indian Rancheria
745 Joaquin Street
Susanville, CA 96130

Dear Chairman Dixon:

This letter is in response to your December 15, 2006, letter to Mr. Dennis Heffington, Agency Lead Negotiator, Indian Health Service (IHS) California Area, submitting a "final offer" under §507(b) of the Indian Self-Determination and Education Assistance, (ISDEAA), 25 U.S.C. §458aaa-6(b), on behalf of the Susanville Indian Rancheria (Susanville). I am responding under the authority delegated to me by the Secretary, United States Department of Health and Human Services, to manage the affairs of the IHS as the Director.

I. Response to Final Offer

Implementing regulations for Title V of the ISDEAA are set forth at Title 42 Code of Federal Regulations (CFR), Part 137. Under the regulations, a final offer "should be separate from the compact, funding agreement, or amendment" and should contain "a description of the disagreement between the Secretary and the Indian Tribe and the Indian Tribe's final proposal to resolve the disagreement." 42 CFR §§137.132 - 137.133.

Susanville's final offer sets forth two unresolved issues. The first is Susanville's proposal to charge eligible patients for pharmacy services provided under its ISDEAA funding agreement (FA). The second is the proposal to include Susanville specific language that states in the event of inconsistency between the Compact and any FA, the Compact will prevail.

A. Pharmacy Services (FA Section 2(B)(iv))

Susanville's FA contains a provision that states that pharmacy services will be provided under the FA. Susanville has proposed the following provision:

> 2(B)(iv) Pharmacy Services. The purpose of this program is to provide pharmacy services to eligible individuals in the service area that include, but are not (sic) be limited to, recommending therapies to clinical providers, dispensing medications and monitoring of medication treatment plans to assure appropriate, safe and cost effective therapies and to provide patients information and counseling regarding their treatment to assure compliance and to mediate potential side effects and to insure against potentially harmful interactions.

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During the negotiations, Susanville provided a copy of a document entitled "Susanville Indian Rancheria Lassen Indian Health Center Section 7.08 Reimbursement for Pharmacy Services" (hereafter "Pharmacy Policy") to the IHS negotiation team. Under this Pharmacy Policy, American Indians and Alaska Natives (AI/AN) who are otherwise eligible for services, but who do not qualify for an "indigent fund program" established by Susanville, or do not have prescription drug insurance coverage, will be required to pay a $5.00 dispensing fee plus the acquisition costs associated with each prescription in order to receive services under the IHS contracted program. Susanville informed the IHS negotiation team that the policy is in effect and that otherwise eligible individuals are being charged for prescriptions filled at its pharmacy, in accordance with its Pharmacy Policy.

Further, the IHS negotiation team informed Susanville that the IHS does not have authority to contract with any Tribe if that Tribe charges otherwise eligible beneficiaries for services under the contract. Moreover, a Tribe may contract only for those programs provided under Federal law to AI/ANs. See 25 U.S.C. §458aaa - 4(b)(2). A pharmacy program provided only upon receipt of a co-payment is not a program carried out under Federal law. Therefore, the IHS lacks authority to contract with Susanville for the existing pharmacy program. The IHS could agree to contract with Susanville if there were an overt statement in the FA that Susanville would not be charging eligible patients; otherwise, the pharmacy provision would have to be deleted from the FA. Susanville disagreed, and submitted its final offer, which included the FA with the pharmacy provision without the IHS recommended language stating it would not charge eligible patients, as requested by the IHS.

Susanville has a right under the ISDEAA to contract for those programs which the IHS is authorized to administer under delineated authorities. 25 U.S.C. §458aaa - 4(b)(2). The IHS does not have the authority to agree to the inclusion of programs, services, functions and activities (PSFAs) that are not authorized by the ISDEAA. Furthermore, a contracting Tribe's activities under an ISDEAA agreement are limited to activities the IHS is authorized to perform itself. Subsection 505(b) of the ISDEAA establishes what may be included in a Title V FA. 25 U.S.C. §458aaa - 4(b). Section 505(b)(1) requires that each FA shall authorize the Tribe to administer PSFAs "that are carried out for the benefit of Indians because of their status as Indians without regard to the agency or office of the Indian Health Service within which the program, service, function or activity (or portion thereof) is performed." 25 U.S.C. §458aaa - (b)(1) (emphasis added). Further, section 505(b)(2) of Title V restates this authority by providing that only PSFAs "with respect to which Indian tribes or Indians are primary or significant beneficiaries, administered by the Department of Health and Human Services through the Indian Health Service and all local, field, service unit, area, regional, and central headquarters or national office functions so administered under the authority of" the enumerated statutes[1] may be included in an FA. 25 U.S.C. §458aaa - 4(b)(2) (emphasis added). Thus, Susanville may only contract for programs that the IHS is authorized to administer.

[1]

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This limitation also extends to the manner in which PFSAs are carried out. See, e.g., Nizhoni Smiles, Inc. v. IHS, Departmental Appeals Board (DAB) Dec. No. CR450 (1996), p. 6 (in holding that the ISDEAA prohibits the IHS from contracting with Tribes to provide services that the IHS may not provide directly, the DAB explained that "[t]he limitation applies not only to the type of service that may be contracted for (i.e., health care), but to the manner in which the service is provided") (emphasis in original).

Title V of the ISDEAA prohibits the IHS from billing eligible AI/ANs for health services provided under its authority. See 25 U.S.C. § 458aaa-14(c). Section 458aaa-14(c) states:

> (c) Obligations of the United States
>
> The Indian Health Service under this Act shall neither bill nor charge those Indians who may have the economic means to pay for services, nor require any Indian tribe to do so.

This provision leaves no doubt about the boundaries of the IHS's authority. It may not charge eligible beneficiaries. The IHS may not contract lawfully for services to eligible AI/ANs which it may not provide directly to AI/ANs. See, e.g., Nizhoni Smiles, Inc. v. IHS, DAB Dec. No. CR450 (1996); see also Mashantucket Pequot Tribal Nation v. IHS, DAB Decision No. 2028 (May 3, 2006), p. 18.

Susanville agrees that the IHS is prohibited from billing eligible beneficiaries. However, Susanville argues that contracting Tribes have the discretion to determine whether to bill AI/AN

> The following statutes are set forth in 25 U.S.C. § 458aaa - 4(b)(2):
>
> (A) the Act of November 2, 1921 (42 Stat. 208; chapter 115; 25 U.S.C. §13);
> (B) the Act of April 16, 1934 (48 Stat. 596; chapter 147; 25 U.S.C. §452 et seq.);
> (C) the Act of August 5, 1954 (68 Stat. 674; chapter 658);
> (D) the Indian Health Care Improvement Act (25 U.S.C. §1601 et seq.);
> (E) the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. §2401et seq.);
> (F) any other Act of Congress authorizing any agency of the Department of Health and Human Services to administer, carry out, or provide financial assistance to such a program, service, function or activity (or portions thereof) described in this section that is carried out for the benefit of Indians because of their status as Indians; or
> (G) any other Act of Congress authorizing such a program, service, function, or activity (or portions thereof) carried out for the benefit of Indians under which appropriations are made available to any agency other than an agency within the Department of Health and Human Services, in any case in which the Secretary administers that program, service, function, or activity (or portion thereof).

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beneficiaries for services provided pursuant to an ISDEAA contract. Susanville's interpretation conflicts with the other sections of the ISDEAA that expressly limit the Secretary's ability to enter into contracts and compacts to only those programs the Secretary is authorized to administer. See 25 U.S.C. §450f(a)(1) and §458aaa-4(b)(2). The IHS's interpretation (i.e., that §458aaa-14(c) prohibits the IHS from billing eligible Indians and entering into ISDEAA contracts and compacts under which tribes will bill) is consistent with the other ISDEAA provisions which limit contractible PFSAs to those which the IHS itself is authorized to perform. See Morton v. Mancari, 417 U.S. 535, 551 (1974) ("when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective").

In Nizhhoni Smiles, the DAB held that the IHS was prohibited by appropriations act restrictions (codified at 25 U.S.C. § 1681) from contracting under the ISDEAA with Tribes or Tribal organizations that intended to bill eligible AI/ANs for contracted services. Although the appropriations act restrictions (codified at 25 U.S.C. §1681) examined by the administrative law judge in Nizhhoni Smiles may no longer be in effect, the provision in Title V of the ISDEAA is similar to the previous prohibition and continues to prohibit the IHS from billing eligible AI/ANs for health services provided under the ISDEAA. See 25 U.S.C. §458aaa-14(c).

25 U.S.C. §1681 provides:

> [T]he Indian Health Service shall neither bill nor charge those Indians who may have the economic means to pay unless and until such time as Congress has agreed upon a specific policy to do so and has directed the Indian Health Service to implement such a policy.

25 U.S.C. § 1681. As noted above, 25 U.S.C. § 458aaa-14(c) provides:

> (c) Obligations of the United States
>
> The Indian Health Service under this Act shall neither bill nor charge those Indians who may have the economic means to pay for services, nor require any Indian tribe to do so.

(Emphasis added.) Susanville suggests that the slightly different language between 25 U.S.C .§1681 and 25 U.S.C. §458aaa-14(c) supports its position that Congress intended that Tribes be allowed to decide for themselves whether to bill Indian beneficiaries for care. However, there is nothing in §458aaa-14(c) that states that contracting Tribes are allowed to bill eligible patients or that the IHS may contract with Tribes to do so. Moreover, if Congress intended or meant to give contracting Tribes greater discretion than the Secretary with regard to billing patients, then Congress could have provided so expressly.

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Furthermore, despite the lack of an express statement prohibiting the IHS from entering into ISDEAA contracts or compacts under which Tribes (and not the IHS) would bill eligible AI/ANs, it can be presumed that Congress intended for §458aaa-14(c) to have such an effect. A canon of statutory construction recognizes that Congress is aware of an administrative or judicial interpretation of a statute and that it intends to adopt that interpretation when it adopts a new law that incorporates sections of a prior law. See Lorillard v. Pons, 434 U.S. 575, 581 (1978). Congress adopted 25 U.S.C. §458aaa-14(c) in August 2000, approximately 4 years after the Nizhoni Smiles decision was issued. See DAB Dec. No. CR450. Thus, when it adopted §458aaa-14(c), Congress could be presumed to have been aware that the IHS was interpreting the prohibition on billing eligible AI/ANs by the IHS as also prohibiting the IHS from contracting or compacting under the ISDEAA with Tribes that intended to engage in such billing.

In the final offer, Susanville asserts that it "receives no pharmacy funds from the IHS and has no choice but to generate revenues to pay for these important services." However, at a minimum, IHS funds are still being used to support the pharmacy program through the health care facilities and health care personnel that are provided with IHS funds. Moreover, the source of funds for the pharmacy services is not determinative. Under the ISDEAA, a contracting Tribe may contribute non-IHS funds to support PFSAs that are properly included in an ISDEAA compact. However, a Tribe may not include non-IHS PFSAs in an ISDEAA compact, even if it uses non-IHS funds to operate the PFSA. As stated above, a compacting Tribe may only contract for those programs that the IHS is authorized to administer, in accordance with §505(b)(1) and §505(b)(2) of the ISDEAA. See 25 U.S.C. § 458aaa - 4(b)(1) and (b)(2).

If in fact Susanville does not expend any funds under its ISDEAA contract (whether Federal or Tribal) for its pharmacy program, Susanville's access to Federal benefits such as the Federal Supply Schedule and coverage under the Federal Tort Claims Act may be questioned. Access to these benefits is conditioned on the PFSA being provided under an ISDEAA contract.

In addition, the IHS believes strongly that allowing Tribes and Tribal organizations to bill IHS beneficiaries for compacted and contracted services will negatively impact numerous eligible AI/ANs and other beneficiaries by creating barriers to access IHS-funded health services.

In sum, the IHS cannot agree to the pharmacy provision submitted by Susanville because the IHS cannot contract or compact with Tribes to carry out activities that the agency has no authority to carry out itself. See 25 U.S.C. § 450f(a)(1), 458aaa-4(b)(2). Susanville's proposed pharmacy program is not a program provided to eligible beneficiaries under Federal law, 25 U.S.C. §458aaa - 4(b)(1), nor is it a program that the IHS is authorized to administer. 25 U.S.C. §458aaa - 4(b)(2). In addition, the IHS is prohibited from entering into a contract for an activity that cannot lawfully be carried out. Mashantucket Pequot Tribal Nation v. IHS, DAB Decision No. 2028 (May 3, 2006), p. 18. Here, there is no legal authority for the IHS to enter into an ISDEAA contract with Susanville to bill eligible AI/ANs for services provided under the

contract. Therefore, the IHS is prohibited from entering into the contract, and must reject the proposed language.

Furthermore, enforcement of Susanville's Pharmacy Policy could jeopardize health care services to the eligible AI/ANs who are otherwise eligible for health care services. Therefore, the proposed language is rejected on the grounds that Susanville cannot "carry out the program, function, service or activity (or portion thereof) in a manner that would not result in significant danger or risk to the public health." ISDEAA §507(c)(1)(A)(iii), 25 U.S.C. §458aaa-6(c)(1)(A)(iii).

B. Proposal That Compact Will Prevail Over FA In Event of Inconsistency (Article II, Section 2 of the Compact)

Susanville proposed the following language in Article II, section 2 of the Compact: "In the event of inconsistency between the Compact and any FA, the provisions of the Compact shall prevail." The IHS cannot agree to the language because the IHS reads the Compact and FA as complimentary documents, with the FA informing the Compact. Susanville's proposed language will create conflict between the two documents rather than the harmony which currently exists. Moreover, the FA may be negotiated and revised on an annual basis. We see no advantage or reason that the Compact should prevail over the FA in all instances, and therefore the IHS would not agree to the language proposed by the Tribe. On the contrary, it is arbitrary and irrational to set forth a rule that gives priority to one contract over another without any basis.

In addition, Susanville's proposed language potentially creates a discrepancy regarding the amount of funding. The Compact contains general language regarding funding amounts, while the FA has specific terms and provisions regarding the amount and timing of funding that will be provided to Susanville, the manner in which funding will be provided to Susanville, and how certain amounts, such as contract support costs (CSC), will be calculated. To the extent Susanville argues that, based on its proposed language, the Compact prevails over the FA, and therefore Susanville is entitled to funding amounts, including CSC, above and beyond what is set forth in the FA, Susanville's proposal is rejected pursuant to ISDEAA section 507(c)(1)(A)(i) on the grounds that "the amount of funds proposed in the final offer exceeds the applicable funding level to which the Indian tribe is entitled under this title." 25 U.S.C. § 458aaa-6(c)(1)(A)(i).

Furthermore, in our view, Susanville's proposed language is not properly an issue for a final offer and the final offer process. Title V of the ISDEAA clearly anticipates that issues relating to funding levels, the actual programs, functions, services and activities that will be provided under an ISDEAA compact and FA, and a Tribe's eligibility to participate in self-governance, can be subject to the final offer process. ISDEAA, 25 U.S.C. §458aaa-6(c)(1)(A). In this case, Susanville's proposed language has nothing to do with the funding levels under the FA, the PFSAs that Susanville will provide, or Susanville's eligibility to participate in self-governance.

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Rather, the parties simply could not agree on a rule of interpretation that is neither required nor addressed by the ISDEAA or any other law.

The ISDEAA does not mandate that the IHS agree to any and all provisions or terms proposed by a contracting Tribe. On the contrary, with the exception of specific provisions or terms required by statute, the Compact and FA contain only those terms to which the parties mutually agree. Section 458aaa- 3(a) provides:

> The Secretary shall negotiate and enter into a written compact with each Indian tribe participating in self-governance in a manner consistent with the Federal Government's trust responsibility, treaty obligations, and the government-to-government relationship between Indian tribes and the United States.

25 U.S.C. § 458aaa- 3(a) (emphasis added).

In addition, section 458aaa- 3(b) provides:

> Each compact required under subsection (a) shall set forth the general terms of the government-to-government relationship between the Indian tribe and the Secretary, including such terms as the parties intend shall control year after year. Such compacts may only be amended by mutual agreement of the parties."

25 U.S.C. §458aaa- 3(b).

Accordingly, the IHS does not agree to the language proposed by Susanville in Article II, section 2 of the Compact, and this provision will not be part of the final negotiated agreement. However, the IHS disputes that Susanville now has appeal rights with regard to this particular issue. The IHS has set forth its position regarding this issue in this response only because Susanville raised the issue in its final offer.

II. Appeal Rights

Within 30 days of the receipt of this decision, you may request an informal conference under Title 42 CFR §137.421, or appeal this decision under Title 42 CFR §137.425 to the Interior Board of Indian Appeals (IBIA). Should you decide to appeal this decision, you may request a hearing on the record. An appeal to the IBIA under Title 42 C.F.R. §137.425 shall be filed with the IBIA by certified mail or by hand delivery at the following address: Board of Indian Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203. You shall serve copies of your Notice of Appeal on the Secretary and on the official whose decision is being appealed. You shall certify to the IBIA that you have served these copies.

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In addition, the IHS is willing to provide technical assistance to the extent possible to overcome the objections stated in this response.

Sincerely yours,

Charles W. Grim, DDS

Charles W. Grim, D.D.S., M.H.S.A.
Assistant Surgeon General
Director

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