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**Testimony for the Subcommittee on Interior, Environment and Related Agencies
on the Fiscal Year 2014 Budget.**

Members of the Committee, Thank you for the honor of presenting testimony today.

My name is Julie Roberts and I am the Vice President of the Tanana Chiefs Conference and the President of Tanana Tribal Council. TCC is a non-profit intertribal consortium of 39 federally recognized Tribes located in the Interior of Alaska. TCC serves approximately 13,000 Native American people in Fairbanks and our rural villages. Our traditional territory and current services area occupy a mostly roadless area almost the size of Texas, stretching from Fairbanks clear up to the Brooks Range, and over to the Canadian border.

TCC is a Co-Signer of the Alaska Tribal Health Compact, awarded under Title V of the Indian Self Determination Act. I will be testifying on two matters. First, I will provide an overview of the Joint Venture Construction Program and specially address TCC's Joint Venture staffing needs. Second, I will explain the impact suffered by TCC and others from the contract support cost shortfall, and how that shortfall will have the most impact for those entities starting to operate replacement or joint venture facilities in fiscal year 2013.

1. TCC requires its full staffing package in FY 2014, which is already one year past what was contractually agreed to in our Joint Venture Agreement.

The Joint Venture Construction Program is authorized in Section 818(e) of the Indian Health Care Improvement Act, Public Law 94-437. The authorization directed the Secretary of HHS to make arrangements with Indian tribes to establish joint venture projects. The program is executed through a JVCP agreement—a contract—in which a tribal entity borrows non-IHS funds for the construction of a tribally owned health care facility, and, in exchange, the IHS promises to lease the facility, to equip the facility and to staff the facility.

In the Conference Report which accompanied the Department of the Interior, Environment, and Related Agencies Appropriation Act, 2010, the conferees explained the importance of the Joint Venture program. That program is a unique way of addressing the persistent backlog in IHS health facilities construction projects serving American Indians and Alaska Natives. The conferees reported, “The conferees believe that the joint venture program provides a cost-effective means to address this backlog and to increase access to health care services for American Indians and Alaska Natives. The conferees are aware that IHS is currently reviewing competitive applications from Tribes and Tribal organizations to participate in the 2010 joint venture program and encourage the Service to move forward with the process in an expeditious manner.”

IHS followed the direction of Congress and the Conference Report. In 2010, IHS signed a legally binding Joint Venture Construction Agreement with TCC. In the agreement, IHS agreed to “request funding from Congress for Fiscal year on the same basis as IHS requests funding for

any other Facilities.” Given that IHS has requested funding for the various JV projects across the country at different percentages and not in correlation to clinic opening dates, it appears that IHS has not requested funding on the same basis across all facilities.

TCC is deeply appreciative of the Committee’s efforts to secure some FY 2013 funding for joint venture projects, notwithstanding the general sequestration. We thank every Member of this Committee for the remarkable accomplishment. At the same time, it is a fact that funding for our Joint Venture project in FY 2013 will only be 1/3rd of the total staffing package IHS owes TCC (or around \$10 million). TCC had to invest in new program staffing to be ready to open our doors—including staffing for labs, radiology, facility maintenance and support—which does not include the additional clinical staffing that was added to meet the current demand. The additional staffing cost TCC approximately \$9 million. When added to the \$5.4 million bond payments and the \$600,000 in utility payments, TCC’s total deficit is \$15 million this year. Even accounting for the \$10 million for TCC in this year’s budget, we will still have \$5 million in operational deficit.

According to the agreement with IHS, TCC’s staffing package funding should be \$29.4 million—requiring an increase of \$19.4 million above our FY 2013 funding level. If the President’s proposed \$77 million staffing increases for FY 2014 are supported and applied to the *FY 2013* increases, this will make right the wrong TCC experienced. But if, as IHS indicates, they are above the *FY 2012* levels, they are woefully insufficient.

Last year IHS justified paying less because it believed we would not be able to staff up fast enough to spend the funds. But we have long been fully operational and the only barrier to hiring staff is IHS’s failure to honor its commitment. This is clear from the fact that, in order to open our doors, TCC invested \$9 million in new staffing and several providers are currently interested in working for us.

IHS has written that our Joint Venture partnership is a model for what can be achieved between Tribal Health Organizations and IHS to improve access to care for American Indian and Alaska Native people. TCC is holding up our end of the Joint Venture agreement. We need IHS, and Congress, to hold up the government’s end. This will require \$19.4 million in FY 2014. This will be one year late, but at least the commitment will finally be honored.

2. The Administration’s contract support cost request will worsen the national CSC shortfall and require further program cuts for Self-Determined Tribes; the burden will fall especially hard on Tribes operating recent new facilities.

Related to the Joint Venture Construction Program is our concern with IHS’s requested funding for contract support costs. These costs are owed to Tribes and tribal organizations like TCC that perform contracts on behalf of the United States pursuant to the Indian Self-Determination Act. “Contract support costs” are the fixed and fully audited costs which we incur and must spend to operate IHS’s programs and clinics. The law and our contracts say that these costs must be reimbursed. The Supreme Court, twice, has so ruled.

The Indian Self Determination Act depends upon a contracting mechanism to carry out its goal of transferring essential governmental functions from federal agency administration to tribal government administration. To carry out that goal and meet contract requirements, the Act requires that IHS fully reimburse every tribal contractor for the “contract support costs” that are necessary to carry out the contracted federal activities. (Cost-reimbursable government contracts similarly require reimbursement of “general and administrative” costs.)

Full payment of fixed contract support costs is essential: without it, offsetting program reductions must be made, vacancies cannot be filled, and services are reduced, all to make up for the shortfall. In short, a contract support cost shortfall is equivalent to a program cut.

Funding contract support costs in full permits the restoration of Indian country jobs that are cut when shortfalls occur. The FY 2010 reduction in the contract support cost shortfall produced a stunning increase in Indian country jobs. Third-party revenues generated from these new positions will eventually more than double the number of restored positions, and thereby double the amount of health care tribal organizations like ours will provide in our communities.

The problem is that for 2014, IHS has requested only a \$5.8 million increase over FY 2012 levels, up to \$477 million. Yet, the current shortfall is \$140 million, with a total projected \$617 million due all tribal contractors. At that, the IHS projected shortfall does not include contract support costs associated with facilities staffed up in FY 2013 and FY 2014. Against these numbers, a \$5.8 million increase is not just inadequate; it is shameful.

When contract support costs are not paid, we have no choice but to take the shortfall in funding out of the programs themselves. Letting the CSC shortfall increase, on top of underfunding TCC’s JV staffing requirements, will end up punishing tens of thousands of Native beneficiaries in Alaska. The government has a legal duty and trust responsibility to provide for the full staffing packages and the full contract support costs which the government, by contract, has committed to pay. We are not expecting a favor; we are expecting the government to hold up its end of the bargain.

It is not only illegal but immoral for IHS (and BIA, too) to structure their budgets in such a way that they cut only tribally-administered IHS and BIA programs—not IHS-administered or BIA-administered programs, but only tribally-administered programs—in order to meet the agencies’ overall budget targets. The thousands of Alaska Native patients and clients who we serve should not be punished because those services are administered under self-governance compacts instead of directly by IHS or the BIA.

As I mentioned last year, I am particularly concerned about this issue as we plan for FY 2014. In FY 2014 TCC projects an increased contract support cost requirement of \$6 million associated with the new clinic. As it is, remember that IHS has only committed to staff TCC’s clinic at 85% of capacity. If none of TCC’s contract support cost requirements to operate the new clinic are covered, the resulting \$6 million cut in staffing will drop the clinic to 65% of staffing capacity—even if the full JV staffing package is funded, and much less if it is not. This will severely compromise TCC’s ability both to administer the new facility and to meet our debt obligations. Worse yet, services to our people will be gravely compromised.

We understand that the dollars required to finally close the gap in contract support cost requirements are large, but this is only because the problem has been allowed to snowball over so many years. Once a budget correction is made to finally close the contract support cost gap inside both agencies, maintaining full funding of contract support costs on a going-forward basis will be much more manageable.

This is why TCC respectfully requests that the IHS appropriation for CSC be increased by \$140 million above the President's recommended level, to \$617 million, and that the BIA appropriation for CSC for FY 2013 be similarly increased to \$242 million.

Whatever the Committee chooses to do, the answer is, unequivocally, *not* to legislatively amend the Indian Self-Determination Act to cut off our rights to compensation for IHS's contract underpayments. Yet that is precisely what the President's Budget proposes -- cutting off the rights which currently exist under section 110 of the Act to sue the government when we are not paid.

This is rank discrimination -- *racial* discrimination -- and it must stop. No other contractor in the United States performs work for the government only to be told that it has no right to be paid. The very suggestion is ludicrous. Last year the Supreme Court in the Ramah and Arctic cases said so, and they said that our contracts are just as binding as any other contract. That is the law. The answer to those rulings is not to change the law. The answer is to honor the contracts.

We are shocked to see the Administration unilaterally propose changing the law so radically, and to see the Administration actually suggest that we be paid only what the Administration tells the Committee it will pay us, in a secret table it will provide to the Committee sometime next year. The very suggestion is enough to make us consider turning these contracts back over to IHS. Let's see if IHS can do as good a job for our tribal people as we do.

The fact is, IHS cannot do this work. All we ask is to be treated fairly, just like other contractors. The government sets our indirect cost rates -- not us -- and just like other contractors the government should pay those rates in full. If it cannot, or will not, prioritize those payments, then just like other contractors we must continue to be able to vindicate our rights under the Contract Disputes Act. Anything else is un-American, forcing us to do work without paying us what is due.

The Supreme Court has not once, but twice, told the government what to do: honor our contracts. The time is here to do just that.

Members of the Committee, thank you for the honor of presenting testimony today.