



# SQUAXIN ISLAND TRIBE

RESOLUTION NO. 15- 25

of the

## SQUAXIN ISLAND TRIBAL COUNCIL

**WHEREAS**, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965;

**WHEREAS**, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of the tribal members, and with negotiating with the Federal government on behalf of the Tribe;

**WHEREAS**, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government;

**WHEREAS**, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe;

**WHEREAS**, the Tribe has asserted certain claims arising out of the failure of the Indian Health Service (IHS) to reimburse the Tribe's contract support costs incurred in fiscal years 2006 through 2013;

**WHEREAS**, the Tribe and IHS have negotiated a compromise resolution of these claims under which litigation will be terminated in return for a compromise payment by the federal government to the Tribe of \$1,137,000 plus applicable interest to run from September 27, 2012 to the date of payment by the Judgment Fund, with the payment to come from the U.S. Treasury and not from IHS, and with such funds to be paid to the Tribe through the trust account maintained for such purposes by the Sonosky Chambers Law Firm;

**NOW THEREFORE BE IT RESOLVED**, that the Tribal Council approves this settlement and authorizes the Tribe's attorney Lloyd Miller to take all actions necessary to conclude and implement the settlement and carry out this Resolution, including execution of a Settlement Agreement reflecting these terms.

**CERTIFICATION**

The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 14 day of May, 2015, at which time a quorum was present and was passed by a vote of 4 for and 0 against, with 0 abstentions.

  
\_\_\_\_\_  
David Lopeman, Chairman

Attested by:   
\_\_\_\_\_  
Charlene Krise, Secretary

  
\_\_\_\_\_  
Arnold Cooper, Vice Chairman

## SETTLEMENT AGREEMENT

WHEREAS the Squaxin Island Tribe (“Contractor”) has submitted contract claims to the Indian Health Service (“IHS”), United States Department of Health and Human Services (“HHS”), alleging that IHS breached the Contractor’s contracts in fiscal years 2006 through 2013 by failing to pay “contract support costs” as required by the contracts and the Indian Self-Determination and Education Assistance Act, codified at 25 U.S.C. §§ 450 *et seq.* (“claims”);

WHEREAS, HHS denies all liability as to all allegations by the Contractor in these claims;

WHEREAS, the Contractor has filed appeals regarding its claims for fiscal years 2006 through 2013 to the Civilian Board of Contract Appeals (“CBCA”), Nos. \_\_\_\_-ISDA through \_\_\_\_-ISDA; and

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

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

1. This Agreement is the result of the Parties compromising and settling disputed claims. Neither this Agreement nor representations made by either Party in the course of negotiating this Agreement shall constitute or be construed as an admission of liability or wrongdoing by any Party, or their employees, representatives, or agents.
2. IHS (by way of the United States Judgment Fund (“Judgment Fund”), (*see* paragraph 3)) shall pay to the Contractor, through Contractor’s counsel, Sonosky, Chambers, Sachse, Endreson & Perry, LLP (“Firm”), a one-time, lump sum payment of One Million One Hundred Thirty-Seven Thousand Dollars (\$1,137,000.00) (the “Payment”). In addition, interest on the Payment shall be paid, as authorized by the Contract Disputes Act, 41 U.S.C. § 7109, for the period starting September 27, 2012, through the date of payment by the Judgment Fund.
3. The Contractor agrees to provide an accurate and complete Electronic Funds Transfer (“EFT”) form to Jay Furtick, Office of the General Counsel, within five business days of receipt of this Agreement as executed by the signatories for all Parties. IHS agrees to certify the Payment of \$1,137,000.00 to the Judgment Fund, within thirty (30) calendar days of either: (a) the order dismissing the appeals to the CBCA, or (b) the receipt of the Firm’s submission of an accurate and complete EFT form to Assistant Regional Counsel Jay Furtick (Jay.Furtick@hhs.gov), whichever occurs later.

4. Each Party releases and discharges the other Party and its past or present employees, representatives, or agents, in their official or individual capacities, or any agency or instrumentality of the United States, from any and all claims, legal and equitable, arising from or related to any payment, overpayment, nonpayment, or underpayment of contract support costs by HHS or IHS in fiscal years 2006 through 2013, including all claims for contract support costs, damages, attorney's fees, interest, expenses, and costs. The Parties agree that this paragraph does not preclude either Party from seeking to enforce the terms of this Agreement.

5. Notwithstanding any other provision of this Agreement, the Parties agree that the Payment is not to be counted as contract support costs recovery for any year, for any purpose, including indirect cost rate and/or shortfall calculations. The Contractor will continue to be eligible for increases in its contract support costs funding on the same basis as all other tribes.

6. Each Party to this Agreement shall bear all of its own costs, expenses, and attorney's fees for all aspects of the claims and related appeals thereof.

7. This Agreement shall not constitute a precedent or argument in this or any other matter, including subsequent contract negotiations, nor shall it be used as evidence or otherwise in any pending or future civil or administrative action against or involving the HHS, or its employees, representatives, or agents, or any agency or instrumentality of the United States, except as may be necessary to establish or clarify the Parties' respective rights and obligations under this Agreement, or to show estoppel against any future litigation in violation of this Agreement. The Parties acknowledge that negotiations underlying the Agreement are confidential and are subject to Federal Rule of Evidence 408. None of the representations made by either Party in the course of negotiating this Agreement shall be disclosed to any individual other than the Parties to this case, their attorneys, or their experts.

8. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective predecessors, successors, agents, and assigns.

9. The terms of this Agreement shall constitute the entire settlement agreement between the Parties regarding both the final disposition of the claims and the Parties' respective rights and obligations under this Agreement, and any prior oral or written statement, representation, agreement, or understanding that is not expressly contained herein, shall have no force or effect whatsoever. This Agreement shall be deemed to have been drafted jointly by the Parties, and no alleged ambiguity shall be construed against any Party as the drafter.

10. The Parties may execute this Agreement in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement. A facsimile or other duplicate of a signature shall constitute an acceptable, binding signature for purposes of this Agreement.

11. Within five business days of receipt of this Agreement as executed by the signatories for all Parties, counsel for the Contractor shall confer with counsel for IHS regarding the Joint Stipulation of Dismissal with Prejudice, in the form attached hereto as Exhibit 1, and shall file it with the CBCA regarding the claims for fiscal years 2006 through 2013, Nos. \_\_\_\_-ISDA through \_\_\_\_-ISDA.

12. This Agreement will become effective upon execution of the Agreement by the signatories for all Parties and delivery of the fully executed Agreement to all Parties.

13. The Parties hereby declare that they have voluntarily entered into this Agreement in good faith, have read and fully understand the entire Agreement, and consider it to be a fair and reasonable settlement agreement.

14. Undersigned counsel for the Contractor certifies that the Tribal Council has reviewed this Agreement and that, by Council resolution (attached hereto as Exhibit 2), they have approved of and authorized the execution of the document for the Contractor, by and through their undersigned counsel, and have approved of and authorized the Judgment Fund to issue the Payment to the Contractor's counsel, in accordance with paragraph 2. The signatory to this Agreement on behalf of HHS represents and warrants that she is fully authorized to enter into this Agreement on behalf of HHS.

**Squaxin Island Tribe,  
Contractor**

**Robert McSwain, Acting Director,  
Indian Health Service, U.S. Department of  
Health and Human Services**

By: \_\_\_\_\_  
Lloyd Miller, Counsel for Contractor

\_\_\_\_\_  
Robert McSwain, Acting Director  
Indian Health Service

Dated: \_\_\_\_\_, 2015

Dated: \_\_\_\_\_, 2015