



# USET

SOVEREIGNTY PROTECTION FUND

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## USET SPF Resolution No. 2019 SPF:008

### **CALLING UPON IHS TO IMPROVE PROJECTION AND REQUEST FULL FUNDING FOR 105(I) LEASING**

- WHEREAS,** United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is an intertribal organization comprised of twenty-seven (27) federally recognized Tribal Nations; and
- WHEREAS,** the actions taken by the USET SPF Board of Directors officially represent the intentions of each member Tribal Nation, as the Board of Directors comprises delegates from the member Tribal Nations' leadership; and
- WHEREAS,** Section 105(I) of the Indian Self Determination and Education Assistance Act (ISDEAA) requires the Indian Health Service (IHS), at the request of a Tribal Nation or Tribal organization, to enter into a lease for a facility that is owned or leased by the Tribal Nation or Tribal organization that is used for administration or delivery of services under the Act; and
- WHEREAS,** Tribal Nations have increasingly turned to section 105(I) leasing agreements in response to the chronic underfunding of facility maintenance, repair, and replacement costs; and
- WHEREAS,** as established in the Maniilaq Association v. Burwell litigation in 2016 (Maniilaq II), the Supreme Court ruled that section 105(I) leases must be fully paid by the IHS; and
- WHEREAS,** under these leases, the IHS must compensate a Tribal Nation or Tribal organization for reasonable facility expenses that include rent, principal and interest paid or accrued, operation and maintenance expenses; and
- WHEREAS,** in a Dear Tribal Leader Letter dated July 10th, IHS announced that the agency would be initiating Tribal consultation to determine how the agency might reprogram funding from other IHS programs to cover a \$13 million shortfall in funding for 105(I) leases; and
- WHEREAS,** IHS stated the agency has received fifty-five lease proposals totaling \$18 million in FY 2018, but had only identified \$5 million in available funding; and
- WHEREAS,** IHS proposed reprogramming a portion of the new unallocated FY 2018 inflation increases as the "best option" in the short-term to protect existing base funding allocations and minimize the impact to current activities within IHS for the remainder of FY 2018; and
- WHEREAS,** these increases were appropriated for the express purpose of attempting to ensure funding levels for IHS keep pace with inflation, as this negatively impacts purchasing power in a compounding manner year after year. It is inappropriate for IHS to reprogram dollars because of its own error in estimating Tribal interest in 105(I) leasing; and
- WHEREAS,** on July 27<sup>th</sup>, USET SPF submitted comments to IHS expressing concern regarding the agency's ability to accurately project 105(I) leasing costs and urging the agency to request a supplemental appropriation from Congress for 105(I) leasing in FY 2018, as well as support a separate,

indefinite appropriation from Congress with a goal of eventually moving to mandatory funding; and

**WHEREAS,** while USET SPF and Tribal Nations and organizations across the country strongly opposed reprogramming inflationary increases, on September 14<sup>th</sup>, IHS Acting Director, Michael Weahkee, announced that IHS will reprogram \$25 million from the FY 2018 \$70.4 million inflation increase to address the 105(l) lease shortfall; and

**WHEREAS,** this is considerably more than the \$13 million originally identified as the shortfall level and further underscores IHS' failure to estimate its obligation under this program; and

**WHEREAS,** USET SPF is deeply concerned that funding shortfalls for 105(l) leases are likely to lead to ongoing friction between Tribal Nations and IHS, unless a permanent full funding solution is found; and

**WHEREAS,** for a number of years, the current appropriations language that makes "such sums as may be necessary" available has ensured that Contract Support Costs are paid in full without reducing other IHS program funds. Extending this language to costs associated with section 105(l) leases would provide the same certainty; and

**WHEREAS,** USET SPF notes, however, that making these types of line items mandatory is a logical next step in pursuing funding for the agency that is more reflective of the federal government's trust responsibility and obligations; and

**WHEREAS,** in December 2010, the United States recognized the rights of its First Peoples through its support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), whose provisions and principles support and promote the purposes of this resolution; therefore, be it

**RESOLVED** USET SPF urges Indian Health Service to work to improve its 105(l) leasing projections and support appropriations language that would provide a separate indefinite appropriation or mandatory funding for these obligations; and, be it further

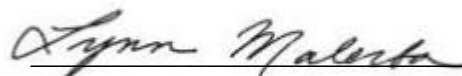
**RESOLVED** USET SPF calls upon Congress to help address funding shortfalls at Indian Health Service by enacting language to ensure funding responsibilities and trust obligations are fully met by the federal government.

**CERTIFICATION**

This resolution was duly passed at the USET SPF Annual Meeting held on the Sovereign Territory of the Seneca Nation of Indians, at which a quorum was present on October 11, 2018.



Chief Kirk E. Francis, Sr., President  
United South and Eastern Tribes  
Sovereignty Protection Fund



Chief Lynn Malerba, Secretary  
United South and Eastern Tribes  
Sovereignty Protection Fund

*Because there is Strength in Unity*