



350 Ryman Street
P.O. Box 7909
Missoula, Montana 59807-7909
(406) 523-2500
Fax (406) 523-2595
www.garlington.com

Stephen R. Brown
Gary B. Chumrau
Randall J. Colbert
Justin K. Cole
Jason M. Collins
Jared S. Dahle
Kathleen L. DeSoto
Scott W. Farago
Leah T. Handelman
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Alan F. McCormick
Charles E. McNeil
Emma L. Mediak
Kristen Z. Meredith
Mark S. Munro
Robert L. Nowels
J. Andrew Person
Robert J. Phillips
Anita Harper Poe
Brian J. Smith
Jeffrey B. Smith
Peter J. Stokstad
William T. Wagner
Lee Michael Wilson

October 4, 2018

Gary Fahlstedt
Assistant Regional Counsel
Department of Health & Human Services
Office of the General Counsel, Region VIII
Bryon Rodgers Federal Building
1961 Stout Street, room 08-148
Denver, CO 80294

RE: Contract Dispute

Dear Gary:

Thank you for your letter dated September 26, 2018. We understand from your letter that your position is that "IHS SFC has no record of any agreement between it and ADAMAS," and therefore, "there is no privity of contract between the HIS SFC and Adamas." It appears that you are not aware of the relevant facts of the dispute. We provide those facts in this letter and hope we can resolve this matter without litigation. However, we intend to bring a lawsuit to enforce the Contract if necessary. Please reply to this letter on or before October 9, 2018.

Here are the relevant facts of the dispute - facts of which we believe the IHS office in Billings is aware. For purposes of brevity, I will refer to the Lame Deer Cell 2 Sludge Removal – IHS Project BI 16-N39, the Lame Deer Sewer Main Cleaning and Examination – IHS project BI 15-N23, and IHS Project BI 17-A31 as the "Projects" and the contractual agreement between IHS, the NCUC, and Adamas to perform the work as the "Contract" or "Contracts."

- For months ADAMAS briefed IHS, EPA, and the Northern Cheyenne Tribal Council on the approach and technical specifications required for the Projects.
- The proposal developed by ADAMAS was used to award the Contracts, the proposals clearly reference ADAMAS as being considered or involved.
- IHS accepted and used ADAMAS's site safety plans, ADAMAS's AAP, ADAMAS's confined space plan and several other documents to fulfill the submittal portion required, for the award of the Contracts. Each document included ADAMAS's company letterhead and emergency

contact information. Without these document IHS would not have been able to award Contract or notice to proceed.

- When IHS and the NC Tribal Council signed the fixed price agreement with the NCUC, IHS and the Tribal Council were aware that NCUC did not have the technical expertise or equipment contacts to do this project without the participation of ADAMAS in the Projects.
- The Contracts were awarded and signed by all parties with ADAMAS in attendance at all Contract signings.
- The enclosed photo was taken after IHS and the NCUC signed the Contracts and the Tribal Council approved the Contracts. This photo was taken after Nathan Pierce, Owner and General Manager of ADAMAS, briefed those in attendance on the project and the proposal sent to the IHS office. The photo includes then NCUC Board, Sheldon King, - NC Councilman, Bobby Weaslebear - NCUC Board, Conrad Fisher, - NC Council VP, James Courtney - IHS, Jim White - IHS, Jace Killsback - NC President (brother to Dion), Doris Limberhand - NCUC financial consultant, Deborah Cherett - NC Councilwoman, Sheri Bement - NCUC GM, William Roland NC Councilman, and Nathan Pierce - Adamas Construction.
- On or around June 19, 2018, the IHS notified Mr. Pierce of site safety issues committed by a family member of a board member of the NCUC. Mr. Pierce contacted Sheri Bement with NCUC to notify her about site safety issues committed by her husband and the need to address them. IHS brought them directly to Adamas. Sheri responded by purporting to “cancel” ADAMAS’s Contract and remove ADAMAS as project manager.
- I have enclosed an email from IHS inspector George Cummings detailing the site safety issue sent to ADAMAS. ADAMAS responded to the email notifying Mr. Cummings that Sheri had purported to “cancel” the Contracts with ADAMAS.
- On June 21, 2018, after communications began to breakdown between NCUC and ADAMAS, Mr. Pierce received a call from Quinton Allan with IHS to request that ADAMAS stay involved with the Projects and he facilitated a conference call with IHS, NCUC, and ADAMAS that resulted in an agreement that ADAMAS would be taking over the two major projects, NCUC doing the scattered site work. I have enclosed an email sent to all parties after the meeting detailing agreement. There are numerous emails from the IHS directing ADAMAS to perform tasks and referring to ADAMAS as “Contractor.”
- I am also enclosing an email from Dion Killsback, the NCUC attorney which details the agreement by IHS to compensate ADAMAS.

The Montana Supreme Court has adopted the Restatement (Second) of Contracts § 304 to govern the rights of third-party beneficiaries to enforce Contracts. *Harman v. MIA Serv. Contracts*, 260 Mont. 67, 72, 858 P.2d 19, 22 (1993).

1) Unless otherwise agreed between promisor and promisee, a beneficiary of a promise is an intended beneficiary if recognition of a right to performance in the beneficiary is appropriate to effectuate the intention of the parties and

Gary Fahlstedt
RE: Contract Dispute
October 4, 2018
Page 3

either (a) the performance of the promise will satisfy an obligation of the promisee to pay money to the beneficiary; or
(b) the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.

Id. *See also Ludwig v. Spoklie*, 280 Mont. 315, 319, 930 P.2d 56, 59 (1996).

At a minimum, ADAMAS was an intended beneficiary of the written Contracts. If you have reason to believe this is not the case, please provide notice to us of the factual basis for that opinion at your earliest convenience.

Thank you.

Very truly yours,

GARLINGTON, LOHN & ROBINSON, PLLP



J. Andrew Person
Direct Line: (406) 523-2509
Email: japerson@garlington.com

JAP:pjc
Enclosures
c: Dion Killsback, NCUC (w/enc.)
Luke Vanderwagen, OGC, PHD (w/enc.)
Burke Helmer, P.E., Billings Area IHS/SFC (w/enc.)



Like



Comment



Share



Northern Cheyenne Utilities Commission



May 11 at 4:33pm •

THE NCUC/IHS/NC TRIBE MEETING TO DISCUSS THE UPCOMING LD LAGOON RENOVATION PROJECT, RATE INCREASE AND THE LAME DEER LAGOON NPDES PERMIT



10

1 Comment 4 Shares





Lame Deer Projects

4 messages

ADAMAS CONSTRUCTION And DEVELOPMENT SERVICES PLLC

Thu, Jun 21, 2018 at
9:38 PM

<adamas.mt.406@gmail.com>

To: Sheri Bement <bement.sheri@gmail.com>, "Courtney, James (IHS/BIL)" <James.Courtney@ihs.gov>, "White, Jim (IHS/BIL)" <Jim.White@ihs.gov>, Dion Killsback <dkillsback77@gmail.com>, Doris Limberhand <d_lhand@yahoo.com>, "Allen, Quentin B (IHS/BIL)" <Quentin.Allen@ihs.gov>, doris.ncuc@gmail.com

Good Evening,

I appreciate everyone's willingness to work towards the compromise that we all agreed to, in order to keep these projects on track, for benefit of the Lame Deer Community and the Northern Cheyenne Nation.

As per this afternoons phone conversation, between NCUC, IHS/SFC & ADAMAS, this email is written confirmation of Adamas Construction agreeing to the following:

1. NCUC - Sheri Bement will be taking over the project management and responsibilities of the scattered site projects. ADAMAS Construction will be reimbursed for payroll paid to NCUC employees for Julie Rodgers project and Supervision time spent by Nathan Pierce on this project. NCUC will call ADAMAS if needed for scattered site projects.
2. ADAMAS - Nathan Pierce will be the project manager for the Sludge removal project with the understanding that NO NCUC equipment and or staff will be used for this project, at the request of NCUC. ADAMAS will use their employees only and reserves the right to hire other labor if needed, from the Northern Cheyenne TERO office.
3. ADAMAS - Nathan Pierce will be Project Manager and responsible for the Lame Deer Sewer and Camera Cleaning project. ADAMAS agrees to use NCUC employees Jace Frank Backbone, and Loy (last name unknown) at the request of NCUC. NCUC agrees that while NCUC employees are working for ADAMAS they will follow the directives of Nathan Pierce and ADAMAS. If NCUC employees fail to do their Job responsibilities or follow the directives of Nathan Pierce or ADAMAS, they will be sent back to NCUC for disciplinary actions. ADAMAS will not be allowed to use any NCUC equipment for this work, per NCUC's request.

One request that we have, is that we do a change order for the removal or cutting of the Cattails, this is a duty that falls under the regular maintenance requirements for the lagoons, however they have not been cut this year and obstruct the working area of the pond?? We have the equipment on site to perform this task.

Please send email confirmation if you agree.

Best Regards,

--

Nathan Pierce - Owner/General Manager

ADAMAS Construction & Development Services PLLC

PH: 1-406-697-3022

EMAIL: ADAMAS.MT.406@GMAIL.COM

CONTRACTOR REGISTRATION# 228703

~ Building the Future with the Enviroment in Mind ~

ADAMAS CONSTRUCTION And DEVELOPMENT SERVICES PLLC
<adamas.mt.406@gmail.com>
To: voaxaa@hotmail.com

Thu, Jun 28, 2018 at
8:06 AM

Email # 2 Lame Deer projects.

[Quoted text hidden]

ADAMAS CONSTRUCTION And DEVELOPMENT SERVICES PLLC
<adamas.mt.406@gmail.com>
To: "J. Andrew Person" <japerson@garlington.com>

Fri, Aug 31, 2018 at
3:31 PM

----- Forwarded message -----

From: **ADAMAS CONSTRUCTION And DEVELOPMENT SERVICES PLLC**

<adamas.mt.406@gmail.com>

Date: Thu, Jun 21, 2018 at 9:38 PM

Subject: Lame Deer Projects

To: Sheri Bement <bement.sheri@gmail.com>, Courtney, James (IHS/BIL) <James.Courtney@ihs.gov>, White, Jim (IHS/BIL) <Jim.White@ihs.gov>, Dion Killsback <dkillsback77@gmail.com>, Doris Limberhand <d_lhand@yahoo.com>, Allen, Quentin B (IHS/BIL) <Quentin.Allen@ihs.gov>, <doris.ncuc@gmail.com>

[Quoted text hidden]

[Quoted text hidden]

ADAMAS CONSTRUCTION And DEVELOPMENT SERVICES PLLC
<adamas.mt.406@gmail.com>
To: lavonne.king@cheyennation.com

Fri, Aug 31, 2018 at
3:33 PM

Lavonne,

Please find the attaches email where our company say we reserve the right to use TERO.

----- Forwarded message -----

From: **ADAMAS CONSTRUCTION And DEVELOPMENT SERVICES PLLC**

<adamas.mt.406@gmail.com>

Date: Thu, Jun 21, 2018 at 9:38 PM

Subject: Lame Deer Projects

To: Sheri Bement <bement.sheri@gmail.com>, Courtney, James (IHS/BIL) <James.Courtney@ihs.gov>, White, Jim (IHS/BIL) <Jim.White@ihs.gov>, Dion Killsback <dkillsback77@gmail.com>, Doris Limberhand <d_lhand@yahoo.com>, Allen, Quentin B (IHS/BIL) <Quentin.Allen@ihs.gov>, <doris.ncuc@gmail.com>

[Quoted text hidden]

[Quoted text hidden]



CONSTRUCTION

2 messages

Cummins, George (IHS/BIL) <George.Cummins@ihs.gov>
To: "adamas.mt406@gmail.com" <adamas.mt406@gmail.com>

Wed, Jun 20, 2018 at 7:43 AM

Good Morning, we need a trench box to connect to sewer main at Rodgers it's pretty unsafe without it.
Thanks

ADAMAS CONSTRUCTION And DEVELOPMENT SERVICES PLLC
<adamas.mt.406@gmail.com>
To: "Cummins, George (IHS/BIL)" <George.Cummins@ihs.gov>
Cc: Sheri Bement <bement.sheri@gmail.com>

Wed, Jun 20, 2018 at
7:48 AM

George,

I agree and the NCUC crew has been given that directive several times over that last three days.

I recommend contacting Sheri Bement and informing her or her project manager for the scattered site work.

Best regards,

Nathan Pierce ADAMAS Construction and Development Services PLLC

[Quoted text hidden]



Payments

Dion Killsback <dkillsback77@gmail.com> Fri, Aug 24, 2018 at 4:52 PM
To: ADAMAS CONSTRUCTION And DEVELOPMENT SERVICES PLLC <adamas.mt.406@gmail.com>
Cc: Doris Limberhand <d_lhand@yahoo.com>, "White, Jim (IHS/BIL)" <Jim.White@ihs.gov>, Jace <voaxaa@hotmail.com>

Mr. Pierce,

Thank you for your email. I am the attorney for the Northern Cheyenne Utilities Commission. I do not have an attorney-client relationship with ADAMAS Construction, nor have I held myself out to represent ADAMAS Construction either directly or indirectly. I have informed you that the NCUC is responsible for the performance of the sludge removal and ADAMAS Construction, as a sub-contractor, I represented the NCUC's interest in trying to complete the project and subsequently engaged in attempting to resolve the calculation of overall sludge removal on NCUC and ADAMAS Construction's behalf. It is in this context and only in this context I represented both NCUC and ADAMAS Construction met with Indian Health Service on August 21, 2018 in an attempt to salvage the sludge removal project for Lame Deer Lagoon.

However, the Indian Health Service has recommended to cancel the contract for the sludge removal. The NCUC has cancelled the contract. Upon the cancellation it was understood that ADAMAS Construction would complete the application of the remaining stored sludge; and that ADAMAS Construction would provide documentation of the volume of application to NCUC in order to process payment.

Indian Health Service and NCUC and ADAMAS Construction have agreed to a settlement of the sludge removal at 600,000 gallons or approximately 2/3 of the overall contract, where ADAMAS Construction will be compensated accordingly. *Was Agreed to*

In order to process your payment there are several things that must occur: 1) application of sludge should be completed; 2) the documentation to support your work should also be completed; 3) NCUC and IHS will review the work completed and supporting documentation; 4) once both NCUC and IHS have been satisfied with the submissions from ADAMAS Construction a waiver and release of claims will be need to be executed by you; 5) payment will be processed, minus any costs associated.

Not Agreed to

Error on His Part
The Northern Cheyenne Tribe, the President, Administrator and Tribal Council do not have any authority to process payment or expedite the process outlined above. Allegations and statements that go beyond the sludge removal work are not relevant for processing this payment, and if anything only complicate matters for NCUC and may actually cause delay in the processing of payment.

I am not authorized to provide you legal advice as I am not your attorney. However, based on your statement upon leaving the meeting on August 21, 2018 you indicated that you would be seeking legal counsel. I have therefore, instructed the NCUC staff to refrain from contacting you and ask that you also refrain from NCUC and direct all communication to my office.

ADAMAS Construction is no longer a consultant and is no longer a contractor of NCUC. ADAMAS Construction is not authorized to speak, work or represent in any manner on behalf of the NCUC. Other than the completion of the application of remaining sludge in your storage facilities, this is the only work authorized by NCUC for ADAMAS Construction to complete.

Thank you for your attention to this matter in advance.

Dion Killsback, Esq.

Killsback Law PLLC

Attorney at Law
P.O. Box 294
Busby, MT 59016
Mobile: (406) 672-4779
dkillsback77@gmail.com

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[Quoted text hidden]



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P.O. Box 7909
Missoula, Montana 59807-7909
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Fax (406) 523-2595
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Anita Harper Poe
Brian J. Smith
Jeffrey B. Smith
Peter J. Stokstad
William T. Wagner
Lee Michael Wilson

September 14, 2018

Dion Killsback
Dkillsback77@gmail.com

CDR Burke Helmer, P.E.
OEHE Director, Acting
Billings Area Indian Health Service
Burke.helmer@ihs.gov
Jim.White@ihs.gov
Luke.Vanderwagen@ihs.gov
Andrea.Quinn-Matute@ihs.gov

**RE: DEMAND FOR ARBITRATION
Fixed Price Construction Agreement**

Dear Dion and Burke:

Our firm represents ADAMAS Construction, PLLP (“ADAMAS”). The Indian Health Service (IHS), the Northern Cheyenne Utilities Commission (“NCUC”), and ADAMAS entered into an agreement titled “Fixed Price Construction Agreement” (the “Agreement”). The Agreement provides in pertinent part:

42.1 All claims, disputes and other matters in question arising out of, or relating to, the fixed price documents or the breach thereof, except for claims which have been waived by the making and acceptance of final payment as provided by Section 40, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgement may be entered upon it in any court having jurisdiction thereof.

42.2 Notice of the demand for arbitration shall be filed in writing with the other party to the fixed price Documents and with the American Arbitration Association, and a copy shall be filed with the Engineer. Demand for arbitration shall in no event be made on any claim, dispute or other matter in question which would be barred by the applicable statute of limitations.

42.3 The NCUC will carry out the work and maintain the progress schedule during any arbitration proceedings, unless otherwise mutually agreed in writing.

Dion Killsback
CDR Burke Helmer, P.E.
RE: DEMAND FOR ARBITRATION
September 14, 2018
Page 2

ADAMAS has raised and discussed with IHS, primarily through communication with Dion Killsback and Burke Helmer objections to NCUC's interpretation of the Agreement and its reimbursement to ADAMAS under the Agreement. Despite these efforts, the parties have been unable to resolve the dispute.

THE PURPOSE OF THIS LETTER IS TO DEMAND AND NOTIFY YOU OF ADAMAS' INTENTION TO SUBMIT THIS DISPUTE TO BINDING ARBITRATION AS PERMITTED AND REQUIRED BY PARAGRAPH 42 OF THE AGREEMENT.

This letter constitutes ADAMAS' "demand" for arbitration of this dispute pursuant to Rule R-4 of the AAA Commercial Arbitration Rules.

We request that you promptly provide your written confirmation of your intent to honor this contractual provision and arbitrate this dispute.

In accordance with Rule R-4, ADAMAS provides you with the following information:

A. Nature of the Dispute/Damages.

Under the agreement between IHS, NCUC and ADAMAS, ADAMAS was to serve as project manager and technical consultant for the following projects:

BI-17-N61 Sewer Camera and Cleaning
BI-16N39 Lagoon Sludge removal
IHS Scattered site projects

In exchange, ADAMAS agreed to accept, as reimbursement:

BN-17-N61 - Sewer Camera and Cleaning - \$130,250.00
BN-16N39 - Lagoon Sludge removal - \$239,000.00
IHS Scattered site projects - \$200,000.00

This is the status of the dispute over each project as of the date of this letter:

BN-17-N61 - Sewer Camera and Cleaning

ADAMAS performed all or substantially some of the work for the project. ADAMAS also purchased a vac-truck per the contract specifications to assist the procurement of the contract. After a dispute arose NCUC "cancelled" the contract and will not compensate ADAMAS.

BN-16N39 - Lagoon Sludge Removal

On August 24, 2018, the NCUC “cancelled” the contract with ADAMAS for the Lame Deer Sewer Lagoon Sludge Removal Project and authorized ADAMAS to complete the application of the remaining sludge in the storage facilities of ADAMAS. On August 29, 2018, NCUC directed ADAMAS to “cease and desist all further work” of a sewage project on the Northern Cheyenne Reservation. This cease and desist order prevented ADAMAS from completing the project and caused ADAMAS to incur damages for the delay caused in returning leased equipment. As the prime contractor, NCUC is responsible for all equipment and rental costs, which continue to accrue due to this dispute.

IHS Scattered Site Projects

ADAMAS started to perform all or substantially all of the work for the project involving 10 homes on the Northern Cheyenne Reservation. After a dispute arose due to safety issues with the NCUC crew, NCUC “cancelled” the contract and will not compensate ADAMAS.

After the aforementioned disputes arose over payment, NCUC and ADAMAS agreed to a settlement of the sludge removal project at 600,000 gallons for payment of two-thirds of the \$239,000 contract.

To date, the IHS and the NCUC have refused to pay ADAMAS for its work. The conduct of the IHS and NCUC constitutes a breach of the contract, as well as the covenant and good faith and fair dealing as set forth by Montana law.

B. Names and Addresses of Parties.

ADAMAS: ADAMAS Construction & Development Services PLLP
Attn: Nathan Pierce – Owner/General Manager
16550 Cottontail Trail
Shepherd, MT 59079

Counsel for ADAMAS: J. Andrew Person
Garlington, Lohn & Robinson, PLLP
350 Ryman Street • P.O. Box 7909
Missoula, MT 59807-7909
Telephone: (406) 523-2500
Telefax: (406) 523-2595
E-mail: japerson@garlington.com

Counsel for NCUC: Dion Killsback

IHS: Burke Helmer, P.E.
OEHE Director, Acting

Billings Area Indian Health Service

There are no other parties to this dispute.

C. The Amount Involved.

ADAMAS demands the following damages from IHS and NCUC:

1. ADAMAS has made significant investments and expenditures in reliance on this contract. Therefore, ADAMAS is seeking \$118,300 pursuant to its agreement with IHS and NCUC for its work on the Lame Deer Sewer Lagoon Sludge Removal Project. Additionally, ADAMAS seeks to recover lost opportunity costs in an amount that is yet to be determined.
2. Damages for breach of the covenant of good faith and fair dealing.
3. Reasonable attorneys' fees paid by ADAMAS in connection with this matter.
4. Reimbursement of ADAMAS' arbitration fees, costs, and expenses.
5. Interest on such sums from the date due until paid at the applicable judgment rate of interest.

D. Remedy Sought.

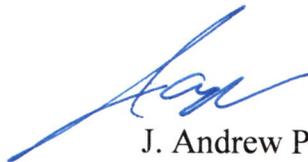
An award from the arbitrator for the payment to ADAMAS for its contract damages, breach of the covenant of good faith and fair dealing, costs, expenses, and fees set forth in subsection C above and proven during this binding arbitration process, together with applicable interest.

E. Locale Requested.

Billings, Montana.

Very truly yours,

GARLINGTON, LOHN & ROBINSON, PLLP



J. Andrew Person
Direct Line: (406) 523-2509
Email: japerson@garlington.com



Via Facsimile Transmission and Regular Mail

September 26, 2018

J. Andrew Person
Garlington Lohn Robinson, PLLP
350 Ryman Street
P.O. Box 7909
Missoula, Montana 59807-7909

Re: Arbitration Demand on Behalf of ADAMAS Construction, PLLP

Dear Mr. Person:

Your letter of September 14, 2018 to CDR Burke Helmer, P.E. concerning a “Demand for Arbitration” on behalf of your client, ADAMAS Construction, PLLP, has been referred to our office for response.

Your understanding that, “[t]he Indian Health Service (IHS), the Northern Cheyenne Utilities Commission (NCUC), and ADAMAS entered into an agreement titled ‘Fixed Price Construction Agreement,’” is incorrect. The IHS indicates that it has no record of any such three-way agreement. The IHS Sanitation Facilities Construction Branch (SFC), Billings Area IHS, entered into three separate fixed-price construction agreements with the NCUC—one for each of the three projects mentioned in your letter. However, as noted below, ADAMAS is not a party to any of these agreements.

The first of these agreements, effective May 11, 2018, was titled, “Fixed Price Construction Agreement Between Northern Cheyenne Utilities Commission (NCUC) and Billings Area Indian Health Service Sanitation Facilities Construction (SFC) for Lame Deer Cell 2 Sludge Removal—IHS Project BI 16-N39.” Emphasis added. As the title indicates, this was an agreement solely between the IHS SFC and the NCUC. ADAMAS was not a party to this agreement. ADAMAS was not a signatory to this agreement. ADAMAS Construction Company is not, in fact, mentioned anywhere in this agreement.

The second agreement, effective June 6, 2018, was titled, “Fixed Price Construction Agreement Between Northern Cheyenne Utilities Commission (NCUC) and Billings Area Indian Health Service Sanitation Facilities Construction (SFC) for Lame Deer Sewer Main Cleaning and Examination—IHS Project BI 15-N23 (initially mistakenly numbered BI 17-N61).” Emphasis added. Again, this was an agreement solely between the IHS SFC and the NCUC. ADAMAS was not a party to this agreement. ADAMAS was not a signatory to this agreement. Again, ADAMAS Construction Company is not mentioned in this agreement.

The third agreement, effective June 15, 2018, was titled, “Fixed Price Construction Agreement Between Northern Cheyenne Utilities Commission (NCUC) and Billings Area Indian Health Service Sanitation Facilities Construction (SFC) for 10 Unit Tribal Housing—IHS Project BI 17-A31. Emphasis added. Again, this was an agreement solely between the IHS SFC and the NCUC. ADAMAS was not a party to this agreement. ADAMAS was not a signatory to this agreement. ADAMAS Construction Company is not mentioned anywhere in this agreement.

The IHS SFC has no record of any agreement between it and ADAMAS. We conclude, therefore, that there is no privity of contract between the IHS SFC and ADAMAS.

We understand that ADAMAS may have entered into one or more subcontracts with NCUC. If so, it appears that the matters in dispute are matters to be resolved solely between ADAMAS and NCUC. The IHS SFC therefore declines to agree to participate in arbitration of those matters.

Sincerely,



Gary Fahlstedt
Assistant Regional Counsel
Department of Health and Human Services
Office of the General Counsel, Region VIII

cc: Dion Killback, UCNC
Luke Vanderwagen, OGC/PHD
Burke Helmer, P.E., Billings Area IHS/SFC