

## Tribal/State Title IV-E Financial Agreement

This financial agreement is made and entered into this by and between the \_\_\_\_\_ (hereinafter “the Tribe”), a sovereign nation, at \_\_\_\_\_, Wisconsin, and the Wisconsin Department of Children and Families (hereinafter “the Department”), the state Title IV-E agency, 201 E. Washington Ave., Madison, WI 53708.

### **Purpose of Agreement**

WHEREAS, 42 U.S.C. § 672(a)(2), also referred to as Part IV-E of the Social Security Act, requires that an agreement exist between the State Title IV-E agency and a sovereign nation as a mechanism for the sovereign nation to obtain Federal IV-E funds in accordance with Title IV, Part E, section 472(a)(2).

WHEREAS, the Department is the state agency responsible for the compliance with Federal requirements of the Title IV-E foster care program in Wisconsin and administration of the State Title Plan for Title IV-E of the Social Security Act.

WHEREAS, this agreement is necessary to establish a mechanism to enable the Tribe to obtain Federal Title IV-E reimbursement for the foster care administrative and maintenance costs for Indian children when such placements are ordered by the State or Tribal circuit courts.

WHEREAS, the Department recognizes its responsibility in giving full faith and credit to public acts, records, and judicial proceedings of a tribal court applicable to Indian child custody proceedings to the same extent given to any other entity as required by 25 U.S.C. § 1911(d).

WHEREAS, the Department recognizes that the Tribe, as a sovereign nation, has authority to make decisions related to the care and protection of its children through the exercise of jurisdiction over placement and care responsibilities for all appropriate child(ren), and will designate the services to be provided by order of the State or Tribal court.

WHEREAS, 25 U.S.C. § 1919, also referred to as the Indian Child Welfare Act (ICWA), authorizes states and Indian Tribes to “enter into agreements with each other respecting the care and custody of Indian children”. Both parties agree that this document is consistent with the law, intent and spirit of the Indian Child Welfare Act and the Wisconsin Indian Child Welfare Act.

WHEREAS, the parties to this agreement understand and agree that the State and its counties and other agents, in its supervisory role shall comply with the mandates of the Federal Indian Child Welfare Act.

WHEREAS, nothing in this agreement shall be construed, expressed or implied as a waiver of the State’s or the Tribe’s sovereign immunity.

Based on these principles, this agreement allows for the Department to provide IV-E foster care administrative and/or maintenance reimbursement to the Tribe for the costs of Tribal social services activities for children who are in Title IV-E eligible placements, kinship care placements where the Tribe is performing active licensing efforts, or are candidates for foster care.

THEREFORE, it is further agreed:

**A. General Provisions:**

- I. The Tribe may choose to claim Federal Title IV-E foster care maintenance, administrative or all types of reimbursement under this agreement. The Tribe may choose to claim specific types of costs for administrative reimbursement. The agreement may be modified to change the types of costs included for Title IV-E reimbursement.
- II. The Department and Tribe shall cooperate in carrying out the intent and purpose of this agreement.
- III. The Department Tribal Consultation Policy shall be used to resolve any conflicts that may arise between the Department and the Tribe regarding implementation of this agreement, except that any conflict pertaining to this agreement shall be resolved between the Tribes and the Department and shall not be referred to the Department of Administration. In the event that a conflict cannot be resolved through the dispute resolution method referred to in Section E. II by the Tribe and the Department, the parties may terminate the agreement.
- IV. The Tribe must make maintenance payments and pay for Tribal child welfare administrative costs from Tribal, State general purpose revenue (GPR), or Bureau of Indian Affairs (BIA) funds. Other federal funds approved by a federal agency may be used as reimbursement for Title IV-E reimbursement. The Tribe must ensure that funds used as the basis for Title IV-E reimbursement are not used as match for other Federal funding sources.
- V. Title IV-E revenue will be distributed to the Tribe as part of the state/tribal contract using a financial reporting system determined by the Department.
- VI. Title IV-E revenue received by the Tribe must be used for Tribal child welfare services, including maintenance payments, funding of Tribal child welfare staff, and services to children and families. IV-E revenue may also be used to fund and support Tribal attorneys working with child welfare cases.
- VII. The Tribe must adhere to all Federal Title IV-E regulations and requirements, as described in the Code of Federal Regulations (CFR), Title 45, Part 1355.30 and Part 1356. This includes all current and future Title IV-E reporting and claiming requirements.
- VIII. The Tribe must comply with the portions of the Wisconsin Title IV-E State Plan applicable to administrative and, when applicable, maintenance cost claiming. This Tribal IV-E agreement does not limit the authority of the Department to administer the Title IV-E State Plan. Future modifications to the Title IV-E State Plan will apply to this agreement. The Department shall provide written notice to the Tribe of pending modifications of the Title IV-E State Plan affecting this agreement and provide the Tribe with an opportunity for consultation and negotiation.
- IX. The Tribe must comply with the Wisconsin Title IV-E Eligibility and Reimbursability Policy Manual. This Tribal IV-E Agreement does not limit the authority of the Department to administer the Title IV-E Eligibility and Reimbursability Policy Manual. Future modifications to the Title IV-E Eligibility and Reimbursability Policy Manual will apply to this agreement.

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The Department shall provide written notice to the Tribe of future modifications of the Title IV-E Eligibility and Reimbursability Policy Manual affecting this agreement and provide the Tribe with an opportunity for consultation and negotiation.

- X. The Department shall provide the Tribe with training, technical assistance and support in order to ensure appropriate claiming and to adjust Title IV-E claims related to ineligible claims or underpayments. Training and technical assistance will be provided on-site at the Tribal office to the extent feasible.
- XI. To the extent that confidential personal information must be shared for purposes of claiming Title IV-E reimbursement, both parties to this agreement agree to protect confidential information and adhere to federal, state and Tribal privacy protections to the extent applicable.
- XII. The Tribe shall make records that support maintenance and administrative claims available to the Department for quality assurance reviews. Records will be made available at the Tribe's office at reasonable times upon request of the Department. Tribal staff may be present during the records review.
- XIII. The Tribe shall provide, from an independent certified public accountant, an audit of Federal funds in accordance with OMB 2 CFR Part 200 and provide a copy of such audit to the Department within 60 days of the receipt of the audit by the Tribe. Upon request, the Department will assist the Tribe in providing Tribal auditors with instructions for reviewing Title IV-E documentation.
- XIV. The Tribe acknowledges that the United States Department of Health and Human Services (DHHS), Administration of Children and Families (ACF), the Wisconsin Department of Children and Families (DCF) and the Wisconsin Legislative Audit Bureau (LAB) conduct periodic reviews of the Title IV-E eligibility and claiming processes. Upon advanced written notice the Tribe will make the following information available for an onsite review:
  - Case files of children in foster care.
  - Case files of children determined to be Title IV-E Candidates for foster care, as defined in Section D, Item XII.
  - Appropriate fiscal and staff time records used in the calculation of administrative claiming.
  - Licensing files for Tribal foster care providers.

The Tribe shall make all reasonable efforts to provide the reviewing agency with original records or copies of relevant portions of records as requested by the agency. The records and case files shall at all times remain the property of the Tribe. All reviews shall take place at either the Tribe's ICW Department or Law Office. No case files shall be removed offsite. Tribal staff may be present during the records review.

- XV. This agreement may be modified and expanded to include maintenance & training claiming and other administrative costs associated with the adoption assistance and/or subsidized guardianship programs if the Tribe implements these programs.

**B. Maintenance Claims:**

*Not under current consideration – may be added via contract amendment.*

**C. Training Administrative Claims:**

*The allowable costs associated with the development and delivery of Title IV-E allowable training to tribal child welfare staff at the administrative or enhanced training rate, whichever is applicable, are not under current consideration – may be added via contract amendment.*

**D. Staffing and other Administrative Claims:**

- I. The Tribe may choose any or all of the following costs for IV-E administrative reimbursement:
  - Foster Care Activities:
    - Out-of-Home Care (OHC) Case Management
    - OHC Legal and Service Support
    - Foster Home Management and Recruitment
    - IV-E Eligibility Assistance
    - Attending Child Welfare Trainings
    - Placement Prevention for At-Risk Children
    - General Administration
  - Adoption Activities
- II. The Tribe shall provide information to the Department regarding allowable costs and activities of Tribal child welfare, legal and other staff to determine the amount of allowable costs that can be claimed for Title IV-E administrative reimbursement.
- III. The allowable administrative activities for Title IV-E reimbursement do not infringe on the sovereignty of the Tribe to establish Tribal policies and procedures, including Tribal children’s code, Foster Care policy and Foster Home licensing procedures, including the tribal licensing of off-reservation Foster Homes. However, payment shall be provided for according to all applicable laws, regulations and policy guidance. Full faith and credit will be given by the Department to Tribal policies and procedures as provided under Wisconsin Statutes, WICWA and general tribal full faith and credit actions, Wis. Stat. Sections 48.028(3)(f) and 806.245.
- IV. Staff of the Tribal child welfare agency, that has placement and care responsibility for children placed in out-of-home care, shall participate in a Social Services Administrative Tribal Time Study (SSATTS), identified in Appendix A, to document activities related to case management, foster home licensing, prevention of placement, and foster parent training to determine the portion of staff time that is allowable for Title IV-E reimbursement. Tribal staff participating in the SSATTS shall be part of a time study that is conducted for a period of two week on a quarterly basis. All completed time study results will be submitted to the Department on a timely basis.
- V. The Tribe shall act as the administrator and fiscal reporting agent for purposes of operating the SSATTS. The Tribe is responsible for:

- A. Appointing and maintaining a SSATTS coordinator who will:
- Be responsible for the overall operation of the time study;
  - Ensure appropriate staff understand SSATTS requirements and complete training on activity codes used in the time study;
  - Monitor staff participation in the time study and completeness of time study results;
  - Be the singular contact for the Department for responding to questions and resolving problems or issues regarding time study results.
  - Not be a participant in the SSATTS.
- B. Appointing and maintaining a SSATTS fiscal representative who will:
- Be responsible for the accurate completion of the quarterly cost report to the Department within the required timeframe.
  - Be the singular contact for the Department for responding to questions and resolving problems or issues regarding the quarterly cost report.
  - Report direct and indirect expenditures to the Department using the System for Payments and Reports of Contracts (SPARC) system.

Note: the SSATTS Coordinator and the SSATTS Fiscal Representative can be the same person.

- VI. The Tribe shall ensure that staff participating in the time study, the SSATTS coordinator and fiscal representative have completed all necessary training regarding Title IV-E requirements. Training and technical assistance will be provided by the Department on-site at the Tribal office to the extent feasible.
- VII. The Tribe shall submit the following claiming reports for reimbursement of eligible expenditures:
- **Monthly Cost Reporting** – The Tribe shall enter reimbursable expenses into the SPARC system no later than the 23<sup>rd</sup> day of the following month. The portal is available for 90 days for any necessary corrections. Costs reported late shall be added to the next quarterly claim.
  - **Title IV-E Tribal Time Study** - The Tribe shall ensure that all required staff complete the quarterly time study by close of business the Wednesday following the two week time study period.

The Tribal claiming reports received by the Department, in a timely manner, will be processed for the federal IV-E claim in that quarter. Any reports received by the Department more than 23 days after the end date of the quarter shall be delayed for processing and included in the next Title IV-E claim. Claiming reports received by the Department more than 24 months from the end of the quarter will not be eligible for reimbursement.

- VIII. The Tribe shall maintain an accounting and financial management system and/or procedures adequate to support the amount of administrative costs reported to the Department for the Title IV-E administrative claim. These costs include personnel costs for Tribal child welfare staff, other administrative costs for the Tribal child welfare program, and indirect or overhead costs charged by the Tribe to the child welfare program.

- IX. Direct costs for staff that are allocated across several units (which may include Tribal attorneys) shall be calculated using a consistent time reporting methodology proposed by the tribe and approved by the Department. This methodology must be consistent with cost allocation methods used for other funding sources, including federal grants. If applicable, the methodology must also reduce total allocable expenses to account for the portion of allocable staff expenses that are in the indirect cost pool, if any. Tribes are responsible for ensuring that the legal staff time allocation method used meets existing annual single audit and other applicable audit requirements.
- X. The Tribe shall ensure that costs submitted for Title IV-E reimbursement shall be the actual costs, to be determined in accordance with costs principles outlined in OMB 2 CFR Part 200 and any subsequent applicable amendments to federal cost principles, and are accorded consistent treatment through the application of generally accepted accounting principles appropriate to the circumstances. The Tribe shall make its cost allocation plan for federal funds available to the Department upon request.
- XI. The Department shall use a statewide Tribal claiming penetration rate for applicable costs in all administrative claims. The Department will provide the estimated statewide Tribal claiming penetration percentage rate to the Tribe on an annual basis. The actual statewide penetration rate will be used for the quarterly claim.
- XII. When claiming Title IV-E administrative reimbursement for prevention of placement case management activities provided to children who are at risk of out-of-home placement (candidates for foster care), the Tribe must comply with the following requirements:
- Make a determination that the children are at imminent risk of out-of-home placement in a written service plan, safety plan, or through evidence of court proceeding describing the child's imminent risk of placement, with a re-determination made every six months.
  - Have a State or Tribal court order or service plan in place during each six-month period services are being provided to prevent placement.
  - Risk of placement is limited to placement in a licensed, foster care-related setting. Children at risk of a correctional or detention placement cannot be identified and claimed as a candidate for foster care.
  - Other requirements for candidates for foster care as specified in the Title IV-E Eligibility and Reimbursability Policy Manual.
- XIII. The Tribe shall provide the Department with an explanation of the procedures used to identify children as candidates for foster care and make determinations that the children are at imminent risk of placement. This includes copies of formats used for all case plans, safety plans or court orders that will be used to make candidate determinations.
- XIV. The Department shall provide Tribes with a quarterly statement showing the amount of Tribal costs included in the Federal Title IV-E claim, the penetration rate, net amount of Title IV-E reimbursement to the Tribe for that quarter, and any adjustments to prior quarter claims.

- XV. The Tribe acknowledges that repayment of ineligible Federal Title IV-E administrative costs may occur for costs determined to be in error during an audit review. Errors associated with the Tribe providing inaccurate information to the Department will be corrected via an adjustment to the next quarterly claim. Errors associated with the Department incorrectly calculating the Title IV-E claim after all appropriate cost information was provided by the Tribe will be corrected by the Department via an adjustment to the next quarterly claim.

**E. Additional Terms:**

- I. The term of this Agreement is \_\_\_\_\_ to \_\_\_\_\_. By mutual agreement between parties, the Agreement may be renewed.
- II. In the event a dispute arises that cannot be resolved by the Tribe and the Department, both parties shall use the Department's Policy Regarding Consultation with Wisconsin's Indian Tribes, or another mutually agreed upon dispute resolution method:  
<http://dcf.wisconsin.gov/tribalaffairs/consultation>  
  
Either party, without cause, may terminate this agreement by giving 60 day written notice, delivered by mail or in person, to the other party to the agreement.
- III. Tribes may terminate this agreement and submit Title IV-E claims directly to the federal government. The Department will submit Title IV-E claims on behalf of the Tribe until a direct federal claim agreement takes effect for up to one year as long as the Tribe continues to submit the necessary quarterly cost reports, participate in the SSATTS and abide by any other provisions included within this agreement.
- IV. In the event of a breach of this agreement, either party may terminate the agreement by written notice to the other party. Such notice shall specify the breach, and the party to whom notice is given shall have 30 days from the date of receipt of the notice to cure the breach. If the breach is not cured, termination shall become effective on the 31<sup>st</sup> day following receipt of notice, or such later date as specified in the notice.
- V. Termination of this agreement does not absolve the Tribe of responsibility for repayment of ineligible costs or the Department of responsibility for reimbursements calculated incorrectly as described in item D. XV. Should the agreement be terminated, the Department may recover any unpaid costs from other State or Federal funds provided by the Department to the Tribe, however, the Department shall provide the Tribe with 30 days' notice of intent to recover unpaid cost before garnishing any funds, and unpaid costs may not be withheld on applicable State- or Federally-restricted funds.
- VI. Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation of requirements applicable to the performance of this agreement.

**Signatures:**

**Tribe Signatory Representatives:**

\_\_\_\_\_  
\_\_\_\_\_, Social Services Director Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, Tribal Administrator Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, Chairman Date: \_\_\_\_\_

**Department of Children and Families Signatory Representatives:**

\_\_\_\_\_  
Freda-Elle Bove, Director, Division of Safety and Permanence  
State of Wisconsin Date: \_\_\_\_\_

\_\_\_\_\_  
Bob Nikolay, Director, Division of Management Services  
State of Wisconsin Date: \_\_\_\_\_

\_\_\_\_\_  
Eloise Anderson, Secretary, Department of Children and Families  
State of Wisconsin Date: \_\_\_\_\_

## Appendix A:

### **TRIBAL TITLE IV-E TIME STUDY INTRODUCTION AND INSTRUCTIONS**

#### A. Introduction

In order to claim Title IV-E funds for the cost of administering a child welfare foster care program it is necessary to complete a time study to determine how much staff time is specifically spent on working with children in Title IV-E reimbursable activities. Staff will participate in a two week Social Services Administrative Time Study (SSATTS) survey to identify federally claimable activities.

#### B. Target Population

The population of children for whom Title IV-E administrative claiming may occur is:

1. Children who are in Tribal or county licensed foster care or kinship care setting and are under the placement and care responsibility of the Tribe; or
2. Children who are placed in county licensed foster homes or approved kinship care placements via county court orders or voluntary placement agreements; or
3. Children receiving in-home services and are considered to be candidates for out-of-home care (see below) if those in-home services were not provided. Candidates for out-of-home care require the following documentation:

A defined case plan which clearly indicates that, absent effective preventive services, foster care is the planned arrangement for the child. The decision to remove a child from home is a significant legal and practice issue that is not entered into lightly. Therefore, a case plan that sets foster care as the goal for the child absent effective preventive services is an indication that the child is at serious risk of removal from his/her home because the State agency believes that a plan of action is needed to prevent that removal.

The target population includes children who meet any of the above criteria and are:

1. Wisconsin residents; or
2. Wisconsin children placed in other states under ICWA or Tribal provisions; or
3. Out of state children placed in Wisconsin under ICWA or Tribal provisions and case supervision is requested by the placing state.

#### C. Frequency

The Title IV-E SSATTS will be completed by Tribal staff for a period of two weeks, determined randomly by the Department each quarter, and submitted to the Department by close of business the following Wednesday.

#### D. Participants

Staff that are required to be included in the Tribal time study include:

1. Those who provide case management and service coordination directly to children in out-of-home placement,
2. Those who provide case management and service coordination directly to children receiving in-home services who are considered candidates for foster care,
3. Those whose duties include recruiting, licensing, supporting, and training foster care providers,
4. Those whose duties are split between case management and administrative or other activities.

Prior to the start of each quarter, the time study coordinator must submit a roster of agency employees who are required to be part of the time study.

Staff that shouldn't be included in the time study are as follows:

1. Those whose activities fall under support staff activities,
2. Staff who primarily provide direct service to families (i.e. counseling, in-home therapy, homemaking, etc.),
3. Supervisors,
4. Temporary and/or LTE employees,
5. Staff already included in an Income Maintenance time study roster,
6. Staff whose salary is paid by another federal funding source, with the exception of funds from Bureau of Indian Affairs (BIA).

#### E. Quarterly Time Study

Each staff listed on the time study roster must complete an online survey for all days and hours worked during the time study period. Each survey is broken down into 15 minute intervals for the worker to fill in using the one activity code that best describes the activity they were performing at that time:

- 01 – Out-of-Home Care (OHC) Case Management**
- 02 – OHC Legal and Service Support**
- 03 – Foster Home Management and Recruitment**
- 04 – IV-E Eligibility Assistance**
- 05 – Attending Child Welfare Training**
- 06 – Placement Prevention for At-Risk Children**
- 07 – In-Home/Informal Kinship Case Management**
- 08 – Therapy and Counseling Services**
- 09 – Adoption Assistance Activities**
- 10 – Other Program and Social Service Activities**
- 11 – General Administration**