

**TRIBAL/STATE AGREEMENT FOR FUNDING TRIBAL FOSTER CARE
PLACEMENTS AND OTHER CHILD WELFARE SERVICES MATTERS**

PREAMBLE

This Agreement made and entered into this 19 day of July, 2006 by and between the Sac and Fox Tribe of the Mississippi in Iowa (the Tribe), a federally-recognized Indian Tribe acting through its Chairman, the Honorable Homer Bear, Jr., and the State of Iowa, (the State) acting through the Iowa Department of Human Services and its Director, Kevin W. Concannon.

STATEMENT OF PURPOSES

OVERVIEW OF PURPOSES

The Sac and Fox Tribe of the Mississippi in Iowa and the Iowa Department of Human Services have worked together to develop this Tribal/State Agreement on child welfare service matters. This Agreement is designed to: allow the Tribe to access federal IV-E Program funding to help cover the foster care expenses of children placed under Tribal Court jurisdiction, indicate the agreement of the Tribe and the State to allow state funding of the non-federal costs of foster care placements for children placed under Tribal Court jurisdiction, and to indicate the mutual agreement of the parties on other child welfare service issues; including the ability of the Tribe to request that the State purchase child welfare services, beyond those available under foster care placement programs, for children and families under Tribal Court orders and jurisdiction. Specific purposes of this Agreement are outlined below.

- (1) WHEREAS, the Sac and Fox Tribe of the Mississippi in Iowa is a federally recognized Indian Tribe and is the beneficial owner of, and government for, the lands owned by the Sac and Fox Tribe of the Mississippi in Iowa located in the State of Iowa; and
- (2) WHEREAS, the State of Iowa and the Sac and Fox Tribe of the Mississippi in Iowa are separate sovereigns and each respects the laws of the other sovereign; and
- (3) WHEREAS, the public policy of the State of Iowa is reflected in the Constitution, statutes and administrative rules of the State of Iowa; and
- (4) WHEREAS, the public policy of the Tribe is reflected in its Constitution, statutes, ordinances, and administrative rules; and
- (5) WHEREAS, the Tribe has recently adopted Tribal child welfare statutes and created a Tribal Court, which is exercising jurisdiction on child welfare matters and over foster care and adoptive placements of children who are under the jurisdiction of the Tribe; and

(6) WHEREAS, the United States partially funds the costs of foster care and adoptive care for children living in the United States who meet eligibility requirements stated in Part E of Title IV of the Social Security Act, 42 U.S.C. 670 et seq. and the United States additionally partially funds administrative and training costs for some foster care and adoptive care programs; and

(7) WHEREAS, funding provided by Part E of Title IV of the Social Security Act, 42 C.F.R. § 670 et seq. can be used to pay costs of tribally ordered foster care and adoptive care only after the Tribe has entered into a pass-through agreement with the State in which the Tribe is located; and

(8) WHEREAS, the Sac and Fox Tribe of the Mississippi in Iowa and the State of Iowa have a mutual interest in entering into an agreement which will: permit the Tribe to obtain federal and state foster care funds for the foster care placements of children who are residents of Iowa and are within the jurisdiction of the Tribal Court, allow the Tribe to request and access State-funded child welfare services for children under court orders and jurisdiction of the Tribal Court, and indicate the mutual agreement of the parties concerning other child welfare matters, such as access to state child welfare training, monitoring of child welfare expenditures for Tribal children, and other issues.

Now, therefore, in consideration of these purposes and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Sac and Fox Tribe of the Mississippi in Iowa and the State of Iowa through the Iowa Department of Human Services promise, covenant and agree as follows:

1. DEFINITIONS

- A. "The Act" means the Social Security Act.
- B. "Adoption Assistance" means assistance to adoptive families to assist them with the costs associated with meeting their adoptive child's needs. Assistance can be in the form of cash payments and/or medical coverage.
- C. "Case management" shall mean services which help to create and support those tasks and activities that are required to meet the child welfare service needs of the child and/or the child's family.
- D. "Eligible Children" means those children served under this agreement who (a) have been placed in paid, licensed foster care or in unpaid, unlicensed relative care, or who are candidates for placement in foster care as defined under the federal Title IV-E foster care program and (b) if placed, are in the custody of the Tribe.
- E. "Iowa" and "State" mean the State of Iowa, including individuals, entities,

political subdivisions (including counties), agencies and all others using, claiming or in any manner asserting any right or power under the authority of the State of Iowa.

- F. "Iowa Department of Human Services" and "IDHS" mean the department within the Iowa government currently known as the Department of Human Services and any successor department within the State government that is granted authority and responsibility for meeting child welfare needs and providing child welfare programming within the state.
- G. "Legal Jurisdiction" means that the child's child welfare case is open under the authority and supervision of the Tribal Court, or in a voluntary placement under the Tribal child welfare administration of the Tribe through Meskwaki Family Services.
- H. "Meskwaki Family Services" and "MFS" means the department of the Tribe currently known as Meskwaki Family Services, and any successor department within the Tribal government that is given authority and responsibility for child welfare matters and programs by the Tribe.
- I. "Penetration rate" means the proportion of Title IV-E eligible children within the total Tribal foster care population; this ratio is also referred to as the "Title IV-E penetration rate" and is used to calculate the amount of the Tribe's administrative and training claims.
- J. "Sac and Fox Tribe of the Mississippi in Iowa" and "Tribe" means the Sac and Fox Tribe of the Mississippi in Iowa and all governmental persons or entities acting under the authority of the Sac and Fox Tribe of the Mississippi in Iowa.
- K. "SACWIS" means the Statewide Automated Child Welfare Information System (SACWIS) which contains the Adoption and Foster Care Analysis and Reporting System (AFCARS) data collection required less than 45 C.F.R. § 1355.40 for all Title IV-B/Title IV-E agencies.
- L. "Satisfactory background clearance" means clearance under standards established by State law or administrative rules; provided that where standards established by the Tribe are higher and where services are performed by Tribal officers or under authority of the Tribe, "satisfactory background clearance" means clearance under the higher standards established by tribal law or tribal administrative rules.
- M. "Time Study" means the Tribal Title IV-E Time Study as submitted by IDHS to the federal Department of Health and Human Services (DHHS) and approved as a Cost Allocation Plan by the DHHS.

2. APPLICABLE LAW AND AUTHORITY

- A. The parties will comply with all applicable federal laws, whether currently adopted or adopted while this agreement is in effect, related to the delivery of services under this contract, and such federal laws are incorporated into this Contract as if stated in full herein.
- B. The services provided by the Tribe under this agreement are provided under the authority of the Tribe, and in order to provide these services the Tribe shall hire qualified staff in accordance with Tribal personnel policies and procedures.
- C. The services provided by the State under this agreement are provided under the authority of State, and in order to provide these services the State shall hire qualified staff in accordance with State personnel policies and procedures.
- D. Title 7 of the Code of the Sac & Fox Tribe of the Mississippi in Iowa (Child Welfare) and Title 6, Article 1, Chapter IX (Adoption), attached hereto, provide procedural and substantive laws related to child welfare and child adoption cases, which meet the minimum requirements provided for in the Act. Should the Tribe make any substantive changes to the referenced and attached laws, it will provide IDHS with notice of the changes within ten days of their adoption by the Tribal Council.
- E. Nothing in this agreement is intended to alter the criminal or civil jurisdiction of either the State or the Tribe. The parties further acknowledge that nothing in this contract is intended to alter the Tribal Court's authority to be the final and definitive arbiter of the meaning of tribal statutory or other laws and that nothing in this contract is intended to alter the State Court's authority to be the final and definitive arbiter of the meaning of state statutory or other laws.

3. SERVICES TO CHILDREN AND FAMILIES

Both the State and the Tribe agree to work cooperatively to promote safety, permanency, and well being for children and families. Both parties mutually agree that:

- A. The Tribe will provide case management services and activities, as described in Section 11 of this Agreement, that are considered allowable services and costs for Title IV-E eligible children under the jurisdiction of the Tribal Court.

- B. The State, through the IDHS, and the Tribe agree to implement the foster care eligibility determination and payment provisions outlined in this Agreement in order to facilitate the delivery of out-of-home placement services and allow the Tribe to access federal and state funding for children placed in foster care settings under Tribal Court orders and jurisdiction.
- C. For children under Tribal Court orders for placements either in shelter care or foster group, payments by the State under this agreement shall be required only in those cases where the placement is consistent with or subject to any IDHS group care waiting list, and is in accordance with current state IDHS standards for shelter care placements, and in accordance with any State legislatively mandated conditions and limitations regarding funding for group care placements.
- D. The State, through the IDHS, agrees that it may provide child welfare services, in addition to those eligible for and provided under foster care funding, to children who are involved in Tribal Court proceedings to the same extent as it does to other children and families in Iowa; provided that funding for the services requested by the Tribe is available and the children and families meet existing state eligibility criteria established by IDHS for the specific services. The Department agrees to make provisions for Meskwaki Family Services to directly contact the entity that reviews and authorizes requests for services under the Department's Rehabilitative Treatment Services [RTS] program when RTS services are necessary for a child under the jurisdiction of the Tribal Court. The Department will arrange for MFS staff to receive an overview and training relevant to services under the RTS program and procedures for the authorization process. In addition, the Department will arrange for MFS to receive an overview and training concerning non-RTS child welfare services available through Department funding.
- E. Both the IDHS and the Tribe agree that their representatives will collaboratively work together to develop effective case plans for Tribal children and families, regardless of whether the proceedings are held in State or Tribal Court. If Tribal Court has jurisdiction of the child's case, Meskwaki Family Services will have case management responsibility and be responsible for developing the case plan. If a state court has jurisdiction, IDHS staff will have case management responsibility and be responsible for developing the case plan. Case plans will specify the responsibilities of each of the parties and which services will be provided and funded by each party.
- F. Both parties agree that the Tribe in the future may develop and adopt written Tribal foster home licensing standards and begin licensing foster family homes. The IDHS and Meskwaki Family Services will communicate and work together on this matter and make modifications in this Agreement if necessary to incorporate creation of these Tribal foster home licensing capabilities.

- G. Both parties agree that any Tribal licensing standards developed will include the requirement for completion of both child abuse and criminal record background checks on all prospective foster care providers before they are licensed and accept placements. The parties also agree that the safety of the foster care environment shall be the primary consideration in making foster care licensing decisions.

4. CHILD ABUSE REPORTING

- A. Where the IDHS is aware of a known or suspected instance of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment, as defined in Iowa Code Chapter 232, of a child under circumstances which indicate that the child's health or welfare is threatened thereby, and the child is either:
- in the custody of the Tribe,
 - is domiciled on the Settlement, or
 - is determined to be a Meskwaki child,

The IDHS shall report the known or suspected instance of maltreatment to the Tribe, by making contact with Meskwaki Family Services, and will initiate a response to the report within either 1, 24, or 96 hours, depending on the assessed level of risk to the child and in accordance with applicable state laws set forth in Iowa Code Chapter 232.

- B. The IDHS will provide the notification described above to the Tribe for the following purposes:
- To demonstrate State respect for the Tribe's sovereignty over tribal land and the Tribe's right to self government;
 - To demonstrate State recognition of the Tribal Court system and the role and authority granted by the Tribal Council to Meskwaki Family Services in providing intervention and oversight on child welfare matters for Tribal children;
 - To make the Tribe aware of circumstances that may jeopardize the safety of a child of the Tribe so that the Tribal Court may initiate necessary action to protect the child; and
 - To allow the IDHS to receive valuable information about the child and family that Meskwaki Family Services may be aware of that may be helpful in conducting the child abuse assessment and coordinating efforts by the parties to assess the maltreatment report and protect the child.
- C. Where the MFS is aware of a known or suspected instance of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment, as defined in Iowa Code Chapter 232, of a child under circumstances which indicate that the child's health or welfare is threatened thereby and the child is either in the custody of the State or is not a Meskwaki child*, MFS shall report the known or suspected instance to the IDHS within 24 hours of receipt by the MFS.

***Note- The Sac and Fox Tribe believe that as a matter of tribal sovereignty, the Tribe has primary responsibility for child protection matters involving Meskwaki children on the Meskwaki Settlement. Their attorney cites 18 U.S.C. 1169 and 25 U.S.C. 3203 as federal law in support of this position that the Tribe, and not state authorities, are where abuse allegations on Tribal children residing on the Settlement should be directed. This is the rationale for the language that appears in B. above.**

- D. In all instances where reporting is not required by this Section, and where reporting is not prohibited by any applicable laws, nothing in this Agreement is intended to prevent child abuse reporting by the State or the Tribe.
- E. In instances where a report of child maltreatment is made between the State and the Tribe under this section, the parties agree to begin discussions to develop a standard rule or protocol that defines responsibility for investigating, producing, and sharing reports related to the allegation. Absent such documented determination, both parties shall retain their existing respective authority and responsibility under federal and state statutes to initiate assessments and investigations and produce reports.
- F. Both the IDHS and the Tribe, through Meskwaki Family Services, agree to share reports of child abuse assessments as is legally permissible and necessary to work together in protecting the safety and welfare of children. The IDHS will share completed child abuse assessment reports with Meskwaki Family Services for Meskwaki children in which child abuse allegations have been reported, as described in 4A. in the following circumstances:
 - 1. Meskwaki Family Services, or another Tribal institution, has made the child maltreatment report to the IDHS;
 - 2. The alleged victim of abuse is a child under the custody or jurisdiction of Tribal Court; or
 - 3. Meskwaki Family Services is responsible for providing care, treatment, and supervision for a child named in the child abuse assessment report.

5. BACKGROUND CHECKS

- A. For any child for whom federal funds are provided under Title IV-B or IV-E or for any other services provided, and for any services performed by MFS or IDHS, no employee or agent of either party to this agreement may have unsupervised access to a child until the person has obtained a satisfactory background clearance.
- B. Where a background clearance of a tribal employee or agent is required, as part of

the background investigation, the Tribe shall request a child abuse records check from IDHS and a criminal history check from the Iowa Department of Criminal Investigation. IDHS will provide the Tribe with the names of designated staff within the Ames Service Area that the Tribe can contact to complete these child abuse records checks. The IDHS shall perform the child abuse records check at no cost to the Tribe. The Tribe shall be responsible for the cost of the records check from the Iowa Department of Criminal Investigation.

- C. In addition to those background clearances required by subsection A, the Tribe may request child abuse records checks and/or criminal history checks for others who will or may have access to children. Requests for such checks and financial responsibility for those checks shall be the same as stated in subsection B.
- D. In requesting child abuse records checks in these situations the IDHS will follow the following procedures:
1. If MFS is requesting information about the relative of a specific child who is under a Tribal Court order, in order to make a determination as to whether the specific child under Tribal Court jurisdiction can be placed with relatives, and MFS provides IDHS with a copy of the Tribal Court order on the child, IDHS will complete child abuse record checks and provide MFS with a summary of the results.
 2. When the Tribe adopts foster home licensing standards, if a family is applying to MFS to become tribally licensed foster parents and MFS sends the IDHS a copy of the signed foster home application, the IDHS will complete the child abuse record checks and provide information on results to MFS.
 3. If a family indicates to MFS that they are interested in providing a safe place for children to stay should tribal children need a family environment, but there is no specific Tribal Court order for completion of a home study, then MFS should have the family sign IDHS Form 470-3301 Authorization for Release of Child Abuse Information. Once signed, this form shall be sent by MFS to the IDHS Central Child Abuse Registry at the Hoover Building in Des Moines. The IDHS Central Registry shall complete such requests and forward the results to MFS.

6. ELIGIBILITY DETERMINATIONS FOR FOSTER CARE PLACEMENT PROGRAMS

- A. IDHS shall designate staff within the IDHS Ames Service Area to be the Eligibility Worker(s) for applications submitted by MFS to determine whether child welfare foster care placements for children under Tribal Court jurisdiction are eligible for federal funding under the Title IV-E program. IDHS will provide MFS with the names and contact information for these designated staff and will provide training for MFS on the types of information that needs to be collected and submitted to IDHS in order to assess eligibility for the IV-E program.
- B. A new application and new eligibility determination shall be required when a child becomes adoption eligible. The State shall request, and the Tribe shall provide, new applications and updated eligibility information as otherwise required by state or federal rules related to Title IV-B and Title IV-E.
- C. The IDHS Eligibility Worker(s) shall provide MFS with forms which, when completed by MFS, will provide the State with information sufficient to make a Title IV-E eligibility determination. IDHS will provide MFS staff with training and technical assistance on preparation of these forms as well as information on eligibility and procedural requirements for the Title IV-E program.
- D. The State shall provide an eligibility determination concerning funding for a child under the Title IV-E program to the Tribe within a reasonable time after a completed application form is submitted to the State. Administrative or judicial review of the decision of the Eligibility Worker shall be permitted solely to the extent allowed by State law, and the substantive and procedural laws of the State shall apply to any such review.
- E. The IDHS designated staff within the Ames Service Area will also be responsible for working with MFS to collect and maintain information concerning the foster care placements of non- IV-E eligible children placed under Tribal Court jurisdiction so that the State may correctly process payments for these placements.
- F. Throughout the period of this agreement, representatives from IDHS and MFS may communicate to consider and approve special rate or personal care services requested by the MFS program staff for children placed in out-of-home care under Tribal Court jurisdiction. These representatives may approve an additional monthly reimbursement for foster parents, based on the special needs of children following the application of IDHS special rate policies and procedures.

7. ELIGIBILITY DETERMINATIONS FOR STATE-FUNDED CHILD WELFARE SERVICES PROVIDED FOR CHILDREN/FAMILIES UNDER TRIBAL COURT JURISDICTION

- A. The IDHS will provide MFS with information, and training as necessary, on the array of federal and state-funded child welfare services that may be provided for children and families under Tribal Court jurisdiction. This information and training will include information on state-established eligibility criteria for these services as well as procedures through which these services are requested and authorized.
- B. The Tribe and IDHS agree to work together to jointly design and maintain a process under which MFS can request that IDHS provide purchased child welfare services for children and families under Tribal Court orders and jurisdiction. This process should include descriptions of: the referral process, the flow of information between the parties, procedures for arranging for and monitoring services agreed to and funded by the State, each party's respective responsibilities to children and families under this arrangement, and other relevant issues.
- C. Once a child and family under Tribal Court jurisdiction have been approved for the delivery of IDHS-funded child welfare services, MFS staff and designated IDHS staff within the Ames Service Area will regularly communicate to best coordinate the delivery, monitoring, payment and budgeting of services.

8. CREATION AND MAINTENANCE OF STATE CHILD WELFARE FUNDING ALLOCATION FOR CHILDREN UNDER TRIBAL COURT JURISDICTION

The IDHS and MFS will work cooperatively to identify a list of Tribal children and families that have received child welfare services through IDHS. This information will be used to identify an estimated total amount of federal and State-funded child welfare services, including both placement and non-placement interventions, historically provided for Tribal children and families. Once information on historical spending for child welfare services to Tribal children and families has been gathered and analyzed, IDHS and MFS agree that:

- A. An estimated annual child welfare service amount per child, based on historical spending patterns, will be established. The per child amount shall be adjusted annually to reflect increases or decreases in the costs of providing the described services, based upon statewide statistics.
- B. The IDHS agrees to make a maximum of this per child amount available to MFS for expenditure on state-funded child welfare services for each Tribal child under Tribal Court order and jurisdiction who requires child welfare placement or

services funded under this agreement.

- C. MFS may spend this per child allocation of child welfare service funding for services funded through the Department.
- D. The IDHS will regularly report to the Tribe on expenditures for child welfare services funded by the state for Tribal children.

9. RESPONSIBILITY FOR REQUIRED REPORTS

- A. If the Tribe decides to seek reimbursement for indirect costs associated with the administration of the IV-E program, then the Tribe shall provide to the IDHS information, which the IDHS identifies as reasonably needed for the completion of the Time Study. The information provided by the Tribe will identify, by position, the amount of time spent on Title IV-E activities that are eligible for federal reimbursement. The Time Study shall also contain a written list of the Title IV-E children receiving services from the Tribe. The Tribe further agrees to provide to IDHS the results of such position time studies with the Tribe's quarterly claim for reimbursement. These time studies shall be the basis for the allocation of the Tribe's expenditures attributable to Title IV-E reimbursable activities.
- B. The Tribe shall provide IDHS with necessary information to allow IDHS to complete the foster care payment rate assessment or determine the group care rate, and to allow IDHS to assess the need for other allowable child welfare services for the child that may be needed during the period of the child's placement or change of placements.
- C. The Tribe shall provide annually a copy of the Tribe's letter from the federal government regarding the Tribe's currently approved federally established indirect rate (FEIR).
- D. The Tribe shall provide a copy of the section of the Tribe's federal Child and Family Services Plan dealing with the Tribe's training plan. If the Tribe does not have a Child and Family Services Plan that includes the Tribe's training plan, then the Tribe must develop a training plan for their staff and foster care or facility providers for IDHS review. This training plan will be included in the State's Title IV-B Child and Family Services Plan that is, in accordance with federal regulations, submitted annually to the federal Department of Health and Human Services, Administration for Children and Families. The IDHS agrees to provide MFS with information concerning child welfare trainings provided through the Department and allow MFS staff to participate in Department trainings at no enrollment cost.

- E. Where the State conducts any random sampling or similar random testing, quality assurance activities, or auditing related to Title IV-B or IV-E, the Tribe shall provide information as requested and shall otherwise cooperate with the State sampling, testing, quality assurance, or auditing.
- F. The Tribe shall provide federally requested information for the State Automated Child Welfare Information System (SACWIS), which includes the AFCARS data elements as outlined by IDHS.
- G. Where the United States government specifically requests further information regarding any aspect of the Tribe's programs or services related to Title IV-B or IV-E funding, or other child welfare funding programs, the records, whether in the possession of the Tribe or the State, shall be provided to the United States government.
- H. All records referenced in Section 6 of this Agreement shall be maintained for four years and then until the completion of any pending audits related to any transactions for which the records may be of use.

10. CONFIDENTIALITY

- A. The parties agree to maintain information concerning children, families, and foster parents in the strictest confidence per the Social Security Act under Title IV-E, Section 471 (8) [42 U.S.C. § 671(8)] Title IV-E. The parties shall maintain information concerning individuals in strictest confidence and safeguard all information, and shall not use or disclose any information concerning any client for any purpose not directly connected with the administration of their responsibilities under this agreement, except as permitted by law or by prior written consent of the client or, in the case of a minor, the client's legal guardian.
- B. Each party agrees to train and assist foster parents to safeguard all information in either electronic, and/or in hard copy.
- C. It is understood and agreed by the parties that the obligations of subsection (A) shall survive the expiration or termination of this Agreement.

11. FOSTER CARE AND CHILD WELFARE SERVICE PAYMENTS AND REPORTS

- A. For Eligible Children, the IDHS agrees to pay the child's foster care providers and providers of state-funded child welfare services (as those services are described in section 8 of this agreement) directly through the FACS system, in accordance with IDHS's established payment rates and procedures. IDHS will

designate staff in the Ames Service Area that will be responsible for communicating with the Tribe to gather and maintain information necessary to make payments for Eligible Children under the jurisdiction of Tribal Court who are in foster care placements and/or receiving child_welfare services funded by IDHS. IDHS staff in the Ames Service Area will be responsible for these cases regardless of which service area previously had responsibility for the child's case.

- B. The IDHS will maintain a list of the Eligible Children for whom foster care and/or child_welfare service payments are made. On a quarterly basis throughout each fiscal year, the IDHS will prepare and send to MFS a report that details the total amount of federal and state-funded, payments made by the State for the costs of foster care placements and child welfare services for Eligible Children during the previous quarter. These reports billings will indicate:
1. the name of each child receiving services;
 2. the dates each child was in foster care during the quarter;
 3. whether they were IV-E eligible or not;
 4. the total amount of foster care payments made for each child during the quarter;
 5. the federal and state-funded, non-federally reimbursable, payment amount for each child;
 6. The names, dates of service and types of services for children under Tribal Court jurisdiction receiving non-placement child welfare services funded by the IDHS during the previous quarter;
 7. The costs of these non-placement child welfare services.

12. ADOPTION ASSISTANCE PAYMENTS

- A. The State agrees to pay for Adoption Assistance Payments to Eligible Children. A child who is under the jurisdiction of the Tribal Court and becomes fully free for adoption may be eligible for Adoption Assistance, including monthly assistance payments, medical coverage, and special payments. The IDHS agrees to provide training for MFS staff on eligibility requirements for Adoption Assistance programs as well as the benefits available under these programs.
- B. When a child under Tribal Court jurisdiction becomes free for adoption, Tribal staff shall communicate with staff designated by the IDHS who will determine with Tribal assistance whether the child is eligible for Adoption Assistance. Both parties will ensure that every effort is made to access Title IV-E Adoption Assistance for children eligible under that program.
- C. For purposes of this Agreement, the IDHS considers children placed in the guardianship of Meskwaki Family Services by Tribal Court for purposes of adoptive placement to be potentially eligible for Adoption Assistance. The IDHS

considers and recognizes Meskwaki Family Services to be the entity approved and licensed by the Tribe as a child-placing agency with the authority to place and supervise children in foster and adoptive settings.

13. ADMINISTRATIVE ACTIVITY COSTS

A. The State shall pass through to the Tribe the full amount of federal funds received for expenses incurred by the Tribe in providing allowable administrative activities for Eligible Children. Allowable administrative activities, as specified in 45 C.F.R. § 1356.60(c), include:

- Referral to services;
- Assistance in Title IV-E eligibility determination;
- Preparation for and participation in judicial determinations;
- Placement of the child;
- Development of case plans;
- Case reviews;
- Case management and supervision;
- Recruitment and licensing studies of foster homes;
- Recruitment and home studies of potential adoptive homes;
- A proportionate share of related agency overhead;
- Costs related to data collection and reporting.

B. The Tribe agrees to provide the full amount of matching funds required as a condition of receiving the federal funds referenced in subsection (A).

C. The Time Study shall be the basis for the allocation of the Tribe's expenditures attributable to Title IV-E allowable activities. All Tribal staff spending part or all of their time on Title IV-E allowable activities shall participate in a Time Study described in the federally approved IDHS Cost Allocation Plan.

Note: Fiscal staff or any contracted consultants who prepare the Tribe's Title IV-E administrative and training claim will be accounted for in the Tribe's federally established indirect rate (FEIR) used in calculating the Tribe's administrative and training claim.

14. TRAINING COSTS

A. The State shall pass through to the Tribe the full amount of federal funds received for expenses incurred by the Tribe in providing allowable training activities for Meskwaki Family Services staff or for current or prospective foster or adoptive parents of Eligible Children.

- B. Allowable training costs are those training activities and costs included in the Tribe's training plan that is included in the IDHS Child and Family Services Plan submitted to the federal DHHS regional office. Allowable training costs, specified in 45 C.F.R. § 1356.60(b) include long or short term training of personnel employed by or preparing for employment with the Tribe in accordance with 45 C.F.R. § 1356.60(b). The Tribe's training plan can be amended to include appropriate training throughout the contract period with prior IDHS approval, which approval shall not be unreasonably withheld.
- C. The IDHS agrees to provide MFS on a regular and ongoing basis with information concerning available IDHS child welfare training courses and schedules and agrees to allow MFS staff to enroll in these training courses without paying tuition costs.
- D. The Tribe agrees to provide the full amount of required matching funds as a condition of receiving the federal funds referenced in subsection (A).

15. MISCELLANEOUS FINANCIAL MATTERS

- A. Non-allowed costs. Costs that are not allowed and therefore not reimbursable under Title IV-E, 45 C.F.R. § 1356.60(c) (3), include:
 - Direct social services such as, but not limited to, counseling services, housing services, and homemaker services that provide treatment to the child, the child's family or foster family to remedy personal problems, behavior or home conditions;
 - The cost of Child Protective Services (CPS) investigations in response to child abuse or neglect referrals; and
 - The cost of physical and/or mental examinations.
- B. Travel Costs. The parties agree that all travel or per diem reimbursable costs must be directly related to providing Title IV-E services and must be at or below the current State of Iowa travel reimbursement rates as established by the Iowa Department of Administrative Services.

16. BILLING AND PAYMENT FOR TRIBAL ADMINISTRATION AND TRAINING EXPENSES

- A. Within 60 calendar days after the end of each quarter of every fiscal year, the Tribe shall certify to the IDHS, on a form provided by the IDHS, the Tribe's total

actual administration and training expenditures for providing foster care and adoption related Title IV-E reimbursable activities during the quarter.

The Tribe shall send the certification of expenditures to:

Mr. Barry Bennett
Division of Behavioral, Developmental, and Protective Services
5th Floor- Hoover Building
Des Moines, Iowa 50319

- B. Within 90 days of the receipt of the Tribe's accurately and properly executed certification of quarterly expenditures, IDHS shall pay to the Tribe the federal reimbursement for Title IV-E allowable administrative and training services incurred by the Tribe.

17. CALCULATION OF PAYMENT FOR ADMINISTRATION AND TRAINING EXPENSES

- A. Quarterly reimbursement for administration and training expenses shall be based on: the amount of actual expenditures for IV-E allowable costs expended, as certified by the Tribe, in providing services during the quarter; this amount shall be multiplied by the percentage (%) of children in foster care served by the Tribe who are Title IV-E eligible*.

*The percentage of children in foster care served by the Tribe who are Title IV-E eligible equals: the number of children in foster care served by the Tribe who are Title IV-E eligible divided by the total number of children in foster care served by the Tribe.

The amount of actual expenditures for IV-E allowable costs, when multiplied by the percentage (%) of children in foster care who are Title IV-E eligible, shall then be multiplied by:

The Federal Financial Participation Rate for administration (50%) or training (75% and only 50% for the Tribe's FEIR), whichever is applicable, depending on whether the expenditures for IV-E allowable costs were for administration or for training.

The resulting figure is the amount of the quarterly reimbursement payment to the Tribe.

- B. During the first operational year of the agreement, the state's current penetration rate will be used for calculating the Tribe's IV-E administrative and training

claim. Then the Tribe will transition to a rolling 4 quarters penetration rate (current quarter penetration rate plus past 3 quarters penetration rate divided 4) to aid in stabilizing the up and downs of the penetration rate over a year.

18. MEDICAL COVERAGE

All eligible children retain their categorical eligibility under applicable federal and State laws for the Title XIX Medicaid program.

19. FEDERAL AND STATE AUDITS AND MONITORING

- A. The Tribe agrees that under this agreement, it will be subject to all federal or state reviews, to the same extent as IDHS that are required by the Title IV-B and IV-E program. The Tribe agrees to make available to IDHS the Tribe's child welfare laws, rules, and/or policies (including Tribal foster care licensing standards when developed) when requested for any federal or state reviews. The Tribe will also provide to federal and IDHS reviewers reasonable access to all program-related records, material, staff and/or subcontractors. The Tribe agrees that IDHS staff may make visits to assist and/or evaluate the Tribe's progress and performance as it relates to compliance with the Title IV-E program.
- B. Areas of review and/or monitoring by state or federal officials may include, but are not limited to the following:
- General case management documentation;
 - Documentation of significant encounters with the child and family;
 - Documentation of services delivered by private providers;
 - Documentation regarding foster homes, adoptive homes, and child care institutions;
 - Child abuse and criminal background clearance checks;
 - Documentation of case plans and their content;
 - Documentation concerning judicial determinations and court orders;
 - Documentation regarding AFCARS reporting;
 - Title IV-E eligible and reimbursable child welfare foster care maintenance payments;
 - Documentation required to complete the IV-E eligibility and reimbursability determination;
 - Child welfare maintenance payments for non-IV-E eligible children;
 - Title IV-E administrative and training supporting documentation, including Time Study completion and reporting;
 - Documentation related to the elements and requirements of the federal Child and Family Service Review [CFSR] and Iowa's CFSR Program Improvement Plan [PIP];
 - Other relevant matters identified by the parties.

- C. The parties agree that cases for whom MFS has case management responsibility will be subject to inclusion in the federal Child and Family Services Review [CFSR] process. Therefore, MFS agrees that they will periodically review these cases using the CFSR Case Reading Tool developed by the IDHS, or a tool with similar content that is developed by the Tribe. The IDHS will provide an orientation for MFS staff on the purpose and use of the CFSR case reading tool.

20. AUDIT EXCEPTIONS

- A. The Tribe shall be financially responsible for any audit disallowances resulting from an action, omission or failure to act on the part of the Tribe, including but not limited to billing for services which were not delivered or billing for services which were not delivered in accordance with applicable standards. Where the Tribe's financial liability is determined after the Tribe has been reimbursed for the services at issue, IDHS shall recover the fees for those services and the Tribe shall fully cooperate during the recovery.
- B. The State shall be financially responsible for any audit disallowances resulting from an action, omission or failure to act on the part of the State. Where the State's financial liability is discovered before it has reimbursed the Tribe for the services at issue, it shall pay the Tribe the amount which would have been due if the state had not committed the action, omission or failure to act.
- C. Except as otherwise provided in subsection (B), where the State has erroneously made an overpayment to the Tribe, the Tribe shall, upon receipt of notice of the overpayment, repay the overpayment.
- D. If the Tribe does not repay the overpayment, the State may withhold the amount of the overpayment from future payments.

21. FUNDING STIPULATIONS

- A. **Information for Federal Funding.** The Tribe shall cooperate in supplying information to IDHS to determine clients' eligibility for federal funding for any applicable child welfare services provided to children and families.
- B. **Duplicate Billing.** The Tribe must not bill other funding sources for services rendered under this Agreement, which would result in duplicate billing to and payment from different funding sources for the same service. Furthermore, the Tribe shall ensure that no subcontractor bills any other funding sources for services rendered under this agreement, which would result in duplicate billing to different funding sources for the same service.

- C. Prohibition on Use of Federal Funds.** The Tribe certifies that no federal funds payable under this agreement will be paid by or on the behalf of the Tribe, to pay any person for influencing or attempting to influence an officer or employee of any agency, member of Congress, an officer or employee of Congress, or an employee of member of Congress in connection with the awarding of a federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with a federal contract, grant, loan, or cooperative agreement, the Indian Nation shall complete and submit the "Disclosure Form to Report Lobbying" in accordance with its instructions.

- D. Prohibition of Use of Funds for Lobbying Activities.** The Tribe shall not use funds payable under this agreement for lobbying activities.
- E. Use of State Facilities to Support or Oppose Election Campaign or Ballot Proposition Prohibited.** The Tribe shall not use state agency facilities including, but not limited to, office space, telephones, electronic mail, and data processing equipment, word processing and copying facilities, and any other state agency property to support or oppose any person's election campaign or any ballot proposal or propositions
- F. Use of State Facilities to Publish or Distribute Campaign Materials Prohibited.** The Tribe shall not use state agency supplies, equipment, or facilities to print, mail, or otherwise produce or distribute materials supporting or opposing any person's election campaign or any ballot proposition.
- G. Restriction: Tribe's Use of Title IV-E reimbursement.** The Title IV-E reimbursement that the Tribe receives through IDHS is restricted, in that the Tribe agrees to spend the Title IV-E reimbursement only on Tribally administered child welfare services, including associated indirect costs, under this agreement

22. MISCELLANEOUS PROVISIONS

- A. Debarment Certification.** The Tribe certifies that they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this agreement by any Federal department or agency. If requested by IDHS, the Tribe shall complete a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion. Any

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion pertaining to this agreement shall be incorporated into this agreement by reference.

- B. Subcontracting.** A party shall not subcontract any part of this agreement without approval of the other party, which approval shall not be unreasonably withheld.
- C. Tribal and State sovereignty.** This Agreement shall not be construed to waive or diminish the sovereignty or any sovereign immunity of the Tribe or Iowa.
- D. No separate entity or cooperative relationship.** This Agreement is not intended to create any separate administrative or legal entity. Nothing in this Agreement shall be construed as creating any third-party beneficiaries, a partnership, joint venture, or other joint or cooperative relationship between Iowa and the Tribe for any purpose.
- E. Appropriation of funds.** It is mutually understood and agreed that tribal and state financial commitments stated in this contract are contingent upon the availability and appropriation of governmental funds.
- F. Captions.** Captions and paragraph headings used in this Agreement are for convenience only, and are not a part of this Agreement, and shall not be deemed to limit or alter any provisions of this Agreement, and shall not be deemed relevant in construing the Agreement.
- G. Notices.** Any notices required to be made in connection with this Agreement shall be in writing and delivered personally or by certified mail to the parties at the below addresses, or to such other address(es) as the party to receive such notice shall designate in writing:

If to the Tribe:
 Chairman
 Mr. Homer Bear, Jr.
 Sac & Fox Tribe of the Mississippi in Iowa
 349 Meskwaki Road
 Tama, IA, Meskwaki Settlement, 52339

If to the State:
 Director
 Mr. Kevin W. Concannon
 Iowa Department of Human
 Services
 Hoover State Office Building
 Des Moines, IA 50319

Copy to:

Meskwaki Family Services Director
 Sac & Fox Tribe of the Mississippi in Iowa
 P.O. Box 245
 Tama, Iowa, Meskwaki Settlement 52339


H. **Indemnification.** Each party shall assume all liability for all claims arising out of and related to that party's services performed under this Agreement. Each party hereby agrees to defend, indemnify and hold harmless the other from all claims, losses, suits, damages, liabilities and expenses of whatever kind or nature, including reasonable attorney's fees, arising out of or resulting in any way from any negligent, reckless or intentional act, error, omission or mistake and/or strict liability of the indemnifying party, including employees of the indemnifying party or others for whom the indemnifying party is legally liable.


I. **Effective date.** This Agreement shall be effective upon signature by both parties.

J. **Termination.** This Agreement shall continue indefinitely unless terminated by either party upon ninety (90) days written notice to the other party without cause, provided that, before termination of the agreement, the terminating party makes good faith efforts to discuss, renegotiate, and modify this agreement or to resolve disputes. Either party may terminate this agreement immediately for material breach of the Agreement.

K. **Integration.** This Agreement constitutes the entire agreement between the parties. Neither party is relying on any prior or other written or oral representation in entering into this Agreement.

23. EXECUTION

Date: 
Homer Bear, Jr., Chairman
Sac & Fox Tribe of the Mississippi in Iowa

Date: 
Kevin W. Concannon, Director
State of Iowa

