

Title IV-E – Foster Care, and Adoption and Guardianship Assistance Programs
Tribal Agreement

1.0 INTRODUCTION

This Tribal State Agreement, hereinafter referred to as “Agreement,” made and entered into on the date in which all signatures have been obtained, by and between THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION (“Tribe”), a federally recognized Indian Tribe, whose address is 46411 Timine Way, Pendleton, Oregon 97801; and the Department of Human Services (“DHS”), a government agency of the State of Oregon, whose address is 500 Summer Street NE, Salem, Oregon 97301-1067.

The purpose of this Agreement is to provide the Tribe federal funding under the Title IV Part E Federal Payments for the Foster Care, Subsidized Guardianship Assistance, and Adoption Assistance program for: providers who are caring for Eligible Indian Children; payment for administrative expenses related to Indian Children who are candidates for or placed in foster care; for eligible training; to facilitate intergovernmental cooperation; to provide for the best interest of Indian Children; and to meet the policy goals of the Indian Child Welfare Act of 1978.

Authority for this Agreement includes the Constitution and by-laws for the Tribe; Section 422 [42 USC 622] and Section 475 [42 USC 675] of, Part E of Title IV of the Social Security Act; and ORS §190.110.

2.0 DEFINITIONS

2.01 “(The) ACT” means the Social Security Act.

2.02 “ADOPTION ASSISTANCE” means financial assistance and medical coverage granted to an adoptive or pre-adoptive family on behalf of an eligible adoptive child to offset the costs associated with adopting and meeting the on-going needs of the child. Adoption assistance may include cash payments, Medicaid coverage, an Agreement Only (no assistance of medical provide), and reimbursement of nonrecurring expenses.

2.03 “CANS SCREENING” means Child and Adolescent Needs and Strengths Screening, a process of integrating information on the child’s needs and strengths for the purposes of case planning, service planning, and determining the supervision needs for the child.

- 2.04 “CASE PLAN” means a written document, developed jointly with the parent(s) or guardians(s) of the child who is a candidate for or is placed in foster care that meets the detailed requirements describe in section 7.1 of this Agreement.
- 2.05 “CASE REVIEW” means the case review required for participation in the foster care maintenance payment program.
- 2.06 “DHHS” means the U.S. Department of Health and Human Services.
- 2.07 “DHS” means the Oregon Department of Human Services.
- 2.08 “ELIGIBLE INDIAN CHILD” means an Indian child who:
- a. Meets the eligibility requirements either: as a foster care candidate of the Social Security Act [Section 475(5)]; for foster care maintenance payments [42 USC section 672]; for adoption assistance payments [42 USC section 673]; for guardianship assistance payments [Section 471(a)(28)]; or for Title IV-E administrative payments or training funds depending on the type of payments sought; and
 - b. Is under the jurisdiction of the Tribal Court or meets the requirements for voluntary placement under this Agreement.
- 2.09 “ENHANCED SUPERVISION” means the additional support, direction, observation, and guidance provided by a certified provider to a child to promote and ensure the safety and well-being of the child, beyond the level of supervision that typically is required for a child of the same age.
- 2.10 “FACE TO FACE CONTACT” means in-person interaction between the caseworker and the child every 30 days
- 2.11 “FOSTER CARE ADMINISTRATIVE COSTS” means a reimbursement rate set quarterly, based on the federal fiscal year, for the administrative costs of the Tribes foster care program
- 2.12 “FEDERAL FINANCIAL PARTICIPATION” or “FFP” means those monies paid out under Title IV-E of the Social Security Act by the federal government for the foster care maintenance program.
- 2.13 “FINGERPRINT-BASED CRIMINAL OFFENDER INFORMATION” means criminal offender information compiled and maintained by the Oregon State Police (OSP) Bureau of Criminal Identification regarding individuals who have been arrested for crimes where law enforcement agencies have submitted fingerprints and other identifying data as required by ORS 181.515 or federal statutes, or as deemed appropriate by the submitting law enforcement agency for the purpose of identification.

- 2.14 "FOSTER CARE" means the substitute care provided for a child who is removed by court order or a voluntary placement agreement from his or her home.
- 2.15 "FOSTER CARE CANDIDATE" means a child who is at imminent risk of removal from the home as evidenced by the Tribe either pursuing his/her removal from the home or making reasonable efforts to prevent such removal. A child may be determined to be a foster care candidate after returning home from placement in foster care.
- 2.16 "FOSTER CARE MAINTENANCE PAYMENT" means the payments made to eligible foster care providers to meet the needs of the child receiving foster care from that provider.
- 2.17 "FOSTER CARE TRAINING COSTS" means reimbursement to the Tribes for eligible training costs for the Title IV-E foster care program.
- 2.18 "GUARDIAN" means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection; education; care and control of the person; custody of the person; and decision making. The term "legal guardian" means the caretaker in such relationship.
- 2.19 "GUARDIANSHIP ASSISTANCE" means financial assistance or medical benefits to a child's guardian on behalf of an eligible child under guardianship. Benefits may be in the form of a monthly guardianship assistance payment, Medicaid coverage, and nonrecurring legal costs incurred in establishing the guardianship.
- 2.20 "INDIAN CHILD" means a child who is an unmarried person who is under age eighteen and is either (a) member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is a lineal descendant of a member of that tribe.
- 2.21 "JUDICIAL DETERMINATION" means a determination made by a court of competent jurisdiction.
- 2.22 "LEVEL OF CARE" means the payment for enhanced supervision needs of a child to a certified family.
- 2.23 "LEVEL OF PERSONAL CARE" means the payment to a qualified provider for performing the personal care services for an eligible child.
- 2.24 "MATCH PAYMENTS" means the portion of the payment that is not paid by the federal government.
- 2.25 "PARTIES" mean the parties to this Agreement, which are the Department of Human Services and the Tribe.

- 2.26 "PENETRATION RATE" means the calculation of the average daily population of Title IV-E eligible children divided by the Tribal foster care population.
- 2.27 "PERMANENCY HEARING" means the permanency hearing required for participation in the foster care maintenance program. The permanency hearing must take place within 12 months of the date the child is considered to have entered foster care (as defined in Subsection 9.06), and not less frequently than every 12 months thereafter during the continuance of foster care, including voluntary foster care placements.
- 2.28 "PERSONAL CARE SERVICES" means the provision of or assistance with those functional activities described in OAR 413-090-0120 consisting of mobility, transfers, repositioning, basic personal hygiene, toileting, bowel and bladder care, nutrition, medication management, and delegated nursing tasks that a child requires for his or her continued well-being.
- See http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-e512.pdf.
- 2.29 "PERSONAL CARE SERVICES ASSESSMENT" means an evaluation by a registered nurse of the child's ability to perform the functional activities required to meet the child's daily needs.
- 2.30 "SOCIAL SERVICES DEPARTMENT (SSD)" means the lead Tribal program designated for implementing this Agreement.
- 2.31 "TITLE IV-E" means Part E of Title IV of the Social Security Act, 42 USC § 670 *et seq.*
- 2.32 "TITLE IV-E STATE PLAN" means the state plan developed by the State of Oregon to comply with the requirements of Part E of Title IV of the Social Security Act.
- 2.33 "TRIBAL COURT" means the Tribal Court of the TRIBE.
- 2.34 "TRIBAL TIME STUDY" means a study of staff time in conducting IV-E related activities. DHS randomly selects two weeks in each fiscal quarter of the fiscal year for the time study.
- 2.35 "TRIBE" means Confederated Tribes of the Umatilla Indian Reservation.
- 2.36 "VOLUNTARY PLACEMENT AGREEMENT" means a written agreement entered into by a parent of a child that voluntarily places care and custody of that child with the Tribe for purpose of foster care placement.

3.0 STATEMENT OF BASIC AGREEMENT

The Tribe and DHS hereby agree that DHS may make Title IV-E foster care maintenance payments, enhanced supervision payments, IV-E adoption assistance payments, IV-E subsidized guardianship payments, and reimburse for eligible IV-E administration and training costs, for Indian Children under the jurisdiction of the Tribal Court or who are voluntarily placed out of the home by or with the participation of the Tribe, in those cases where providers of care for such children would be paid Title IV-E program payments through the State of Oregon. The terms and conditions of such payments are set out in the remainder of this Agreement.

- 3.01 Designation of Authority of State and TRIBE: DHS is the designated agency to administer the Title IV-E program. The Tribe has designated its Social Services Department program as the lead tribal agency for this Agreement.
- 3.02 Title IV-E Foster Care Maintenance Funds to be Used When a Child is Eligible: When an Eligible Indian Child in foster care is eligible for Title IV-E federal financial participation, DHS may make foster care maintenance payments to eligible foster care providers for such children. Foster care maintenance payments may be established as defined in Subsection 14.03.
- 3.03 Enhanced Supervision Level of Care: A supplemental payment may be made for enhanced supervision needs of child to a certified family. An enhanced supervision level of care may be established as set forth in Subsections 14.04.
- 3.04 Level of Personal Care: A supplemental payment may be made for a child to a qualified provider for performing the personal care services for an eligible child. A level of personal care may be established as set forth in Subsections 14.05.
- 3.05 Medical Coverage Under Title XIX: All qualified children who are eligible for Title IV-E retain their categorical eligibility under federal law for Title XIX Medicaid. Federal law requires that all Title IV-E eligible children are to receive medical coverage under Title XIX. Per ORS 414.737 A person who is an American Indian and Alaska Native are excluded from mandatory enrollment in prepaid managed care health services organizations.
- 3.06 Match Payments: In each situation where DHS is making Title IV-E payments under this Agreement, DHS shall pay the non-federal share of the Title IV-E payment, i.e. the Match Payment.
- 3.07 Title IV-E Adoption Assistance: DHS shall make a determination for adoption assistance payments for any eligible Indian Child that is free for adoption or is adopted and is eligible for Title IV-E foster care maintenance payments. In determining whether a child has special needs under §473(c)(1) of the Act, the decision must be based on evidence by an order from a court of competent jurisdiction terminating parental rights, the existence of a petition for a termination of parental rights, a signed relinquishment by the parents, or in the

case of children who can be adopted in accordance with tribal law without a termination of parental rights or relinquishment, documentation of a valid reason why the child cannot or should not be returned to the home of his or her parents.

- 3.08 Foster Care Candidate: The TRIBE will make the determination that a child is a foster care candidate. DHS will make an administrative claim based on this determination, as defined in Subsection 9.01.
- 3.09 Title IV-E Administration for Foster Care Program: Administrative costs may be paid to the Tribe based upon the Adjusted Rate for Foster Care Administrative Costs. The process to submit documentation and calculate the rate of reimbursement for administrative expenditures is defined in Subsection 14.06.
- 3.10 Title IV-E Training: Federal Financial Participation “FFP” is available for the training of child welfare personnel employed or preparing for employment in the Tribe’s child welfare agency. Foster parents and staff of licensed or approved child care institutions providing foster care shall be eligible for short-term training at the initiation of or during their provision of care. FFP directly related to such training shall be limited to travel and per diem. The process for reimbursement of training expenditures is defined in Subsection 14.08.
- 3.11 Guardianship Assistance Program: FFP is available for relative caretaker guardianship arrangements for IV-E eligible children who meet the criteria for the Guardianship Assistance Program.
- 3.12 Title IV-E Waiver Guardianship Assistance Program: FFP is available for non-relative caretaker guardianship arrangements for IV-E eligible children who meet the criteria for the Guardianship Assistance Waiver Program. In the event the IV-E waiver program ends, the non-relative caretaker guardianship arrangements will remain the responsibility of DHS.
- 3.13 Title IV-E Flexible Funding: The Waiver is available to provide greater flexibility to use Title IV-E funds for innovative services that prevent foster care placement of children or reunify children with their families. Waiver Plans must be approved by DHS to meet all criteria of the IV-E Waiver Program. Such funds shall be available notwithstanding any IV-E waiver county control groups and is subject to the availability of continued funding for the IV-E Waiver Programs.
- 3.14 Limitation: This Agreement is limited to Eligible Indian Children and shall not affect DHS’ rights and responsibilities concerning Indian children who are in DHS’ care.

4.0 TERMS AND CONDITIONS REGARDING USE OF TITLE IV-E FUNDS TO MAKE FOSTER CARE MAINTENANCE PAYMENTS

The Tribe shall be responsible for submitting applications for eligibility for FFP to DHS. DHS shall be responsible for: the determination and re-determination of eligibility; fair hearings and appeals; rate setting; and making foster care maintenance payments for Eligible Indian Children based upon the following terms and conditions. FFP is available for each Eligible Indian Child.

4.01 who would meet the requirements of §406(a) or 407 of the Act (as in effect on July 16, 1996) but for his or her removal from the home of a relative specified in §406(a) (as so in effect), if the removal from his or her home:

- (a) was the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child and that reasonable efforts have been made, prior to the placement of the child in foster care, to prevent or eliminate the need for removal of the child from their home and to make it possible for the child to return to his or her home (as defined in Section 9.0 Preventive and Reunification Services); or
- (b) occurred pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian.

4.02 whose placement and care in a foster family home or child care institution (as defined in §472(c) of the Act) is the responsibility of the Tribe while this Agreement is in effect.

4.03 who:

- (a) received aid under the State plan approved under §402 of the Act (as in effect on July 16, 1996) in or for the month in which either a voluntary agreement was entered into or court proceedings leading to removal of the child from the home were initiated; or
- (b) would have received aid in or for such month if application for such aid had been made; or
- (c) had been living with a relative specified in §406(a) (as in effect on July 16, 1996) of the Act within six months prior to the month in which a voluntary agreement was entered into or court proceedings were initiated, and would have received aid in or for such month if in such month he or she had been living with such relative and an application had been made for aid under Title IV-A of the Act.

4.04 After the child is determined Title IV-E eligible, DHS is required to re-determine eligibility annually. DHS shall give the Tribe at least three (3) weeks written notice prior to the re-determination.

5.0 ELIGIBLE MAINTENANCE REIMBURSEMENT

5.01 Types of Maintenance Payments: Foster Care maintenance payments for a child in foster care may cover:

- (a) the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to the child, and reasonable travel (for the child) to the child's home for visitation; and
- (b) Reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement; and
- (c) in the case of institutional care, the reasonable costs of administration and operation of such institutions as are necessarily required to provide the items noted above in 5.01(a).

5.02 Equality of Payments: Foster care maintenance payments made under this Agreement shall be equal in amount to the payments DHS would make for these children if the children were in the care of DHS under state court jurisdiction.

5.03 When Made: Foster care maintenance payments using Title IV-E federal funds are made only on behalf of a child who is:

- (a) in the foster care of an individual, whether the payments are made to such individual or to a public or nonprofit private child placement or child care agency; or
- (b) in a child care institution, whether the payments are made to such institution or to a public or nonprofit private child placement or childcare agency. Such payments are limited to use to cover the cost of (and the cost of providing) those items that are included in the term "foster care maintenance payments" (defined in 475(4) of the Act).

5.04 Limitations and Licensing: Foster care maintenance payments may be made for the care of Eligible Indian Children in foster family homes, private child care institutions, or public child care institutions accommodating no more than 25 children, which are licensed by the Tribe or have been approved by the agency in such Tribe having responsibility for licensing or approving foster family homes or child care institutions. The requirements for licensing or approving foster family homes are set forth in Subsections 11.01 to 11.03. Federal reimbursement is not available for such children who are in detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of delinquent children.

6.0 VOLUNTARY PLACEMENTS

6.01 Requirements for Voluntary Placement: Foster care maintenance payments from Title IV-E federal funds shall be made in cases of voluntary placement of an Indian Child out of the home by or with the participation of the Tribe only if:

- (a) the assistance of the Tribe has been requested by the child's parents or legal guardian; and
- (b) there is a written voluntary placement agreement, binding on all parties to the agreement, which specifies at a minimum the legal status of the child and the rights and obligations of the parents or guardian(s), the child, and the Tribe while the child is in placement.

6.02 Judicial Determination Required for Extension: Federal reimbursement may be claimed only for voluntary foster care maintenance expenditures made within the first 180 days after the date of the original foster care placement unless there is a judicial determination by the Tribal Court within the first 180 days of the date of placement to the effect that the continued voluntary placement is in the best interest of the child.

6.03 Revocation of Voluntary Placement: The Tribe shall provide a uniform procedure or system for revocation by the parents or guardians of a voluntary placement agreement and return of the child.

7.0 CASE REVIEW REQUIREMENTS:

7.01 Case Plan: To meet the case plan requirements of §§471(a)(16), 475(1), and 475(5)(A) and (D) of the Act, the Tribe has promulgated policies, programmatic rules and instructions for use by the Tribe's SSD program to determine the appropriateness of and necessity for the foster care placement of an Eligible Indian Child. The case plan for each Eligible Indian Child must:

- (a) be a written document that is a discrete part of the case record, in a format determined by the Tribe, which is sent to the parents or guardian(s) of the foster child;
- (b) be developed within a reasonable period, but no later than sixty (60) days from the time the Tribe assumes responsibility for providing services, including placing the child;
- (c) include a description of the services offered and the services provided to prevent removal of the child from the home and to reunify the family, including a description of the cultural appropriateness of such services;
- (d) include a description of the type of home or institution in which the child is to be placed;

- (e) include a discussion of the safety and the appropriateness (cultural and otherwise) of the placement and include a plan for assuring that the child receives safe and proper care;
- (f) include a discussion of the services provided to the parent(s) in order to improve the conditions in the parent(s) home to facilitate the child's return to his or her own home, or for providing another permanent placement for the child;
- (g) include a plan for assuring that services are provided to the child and foster parents in order to address the needs of the child while in foster care;
- (h) where appropriate, for a child sixteen (16) years of age or older, include a written description of the programs and services that will help such child prepare for the transition from foster care to independent living;
- (i) include a plan to monitor the safety and well-being of the child in foster care to make the following contacts:
 - (1) Face-to-face contact with the child every 30 days;
 - (2) Contact with the certified provider every 30 days;
- (j) in the case of a child with respect to whom the permanency plan is adoption or placement in another permanent home, document the steps the SSD program is taking to find an adoptive family or other permanent living arrangement for the child. At a minimum, such documentation shall include child specific recruitment efforts used by the SSD Program;
- (k) discuss if the placement is designed to achieve placement in a safe setting that is the least restrictive (most family-like) setting available, that is in close proximity to the home of the parents, and which is consistent with the best interest and special needs of the child;
- (l) if the child has been placed in a foster family home or child-care institution a substantial distance from the home of the parent(s), or in a different state, set forth the reasons why such placement is in the best interest of the child;
- (m) if the child has been placed in foster care in another state, assure that an authorized caseworker of either state or a tribe in that state, makes face to face contact with the child once every 30 days, and submits a report on the visit to the SSD Program no less frequently than every six (6) months;

- (n) assure that at the permanency hearing a determination is made as to whether an out-of-state placement continues to be appropriate and in the best interest of the child;
- (o) assure the health and education records of the child, including:
 - (1) the names and addresses of the child's health and educational providers;
 - (2) the child's grade level performance;
 - (3) the child's school record;
 - (4) assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;
 - (5) a record of the child's immunizations;
 - (6) the child's known medical problems;
 - (7) the child's medications; and
 - (8) any other relevant health and education information concerning the child determined to be appropriate by the SSD Program.
- (p) Provide that a child's health and education record (as described above) is reviewed and updated, and supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster care.

7.02 Case Review Criteria: The Tribe shall implement a case review system which meets the requirements of §475(5) of the Act and assures that a case review of the status of each Eligible Indian Child who has been placed in foster care or another out-of-home arrangement will be made no less frequently than once every six (6) months (from the date the child is considered to have entered foster care, as defined in Subsection 9.06) by the Tribal Court in order to:

- (a) review the placement and plan for assuring that the child receives safe and proper care;
- (b) determine the continuing need for and appropriateness of the placement;
- (c) determine the extent of compliance with the case plan;
- (d) determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement;
- (e) project a likely date by which the child may be returned and safely maintained at home or placed for adoption or placed in another permanent living arrangement;

- (f) if the child is placed out of state, determine whether the out-of-state placement continues to be appropriate and in the best interest of the child; and
- (g) in the case of a child who has attained age sixteen (16), determine the services needed to assist the child to make the transition from foster care to independent living.

7.03 Case Review Solely Under Tribal Authority: The Tribe and DHS recognize that the Tribe will assume sole responsibility for conducting the case reviews required by this Section, and that these cases will not be scheduled to be heard in the State's Citizen Review Board system.

8.0 PERMANENCY HEARING AND PROCEDURAL SAFEGUARDS

8.01 When Required: A permanency hearing, must be held for each Eligible Indian Child in foster care under the responsibility of the Tribe if the Tribe claims federal reimbursement for the costs of foster care maintenance payments. To meet this requirement, the hearing must take place within (twelve) 12 months of the date of the child is considered to have entered foster care (as defined in Subsection 9.06) and not less frequently than every twelve (12) months thereafter during the continuance of foster care.

8.02 Determinations: For the purposes of this requirement, a permanency hearing shall determine the permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent. In cases where the Tribe has documented to the satisfaction of the Tribal Court a compelling reason for determining that it would not be in the best interest of the child to return home, the Tribe will place the child for adoption, place the child with a fit and willing relative or a legal guardian, or place in another permanent living arrangement. If the child is placed out of state, the Tribal Court shall determine whether the out-of-state placement continues to be appropriate and in the best interests of the child. In the case of a child who has attained age sixteen (16), the Tribal Court shall determine the services needed to assist the child to make the transition from foster care to independent living.

8.03 Exceptions: The provisions of this Section apply to all Eligible Indian Children who receive federal reimbursement for the costs of foster care maintenance payments under the agreement. It does not apply to those children for whom the Tribe intends not to claim federal reimbursement for the costs of foster care maintenance payments.

8.04 Procedural Safeguards:

- (a) As procedural safeguards, the Tribal Court or the SSD program shall notify the parents that their child has been removed from their home and when a hearing before the Tribal Court is scheduled.

- (b) The parents shall be notified by the Tribal Court or the SSD program when their child is moved from one placement to another.
- (c) The parents shall be notified by the Tribal Court or the SSD program of any determination affecting their visitation rights.
- (d) The foster parents (if any) of a child and any pre-adoptive parent or relative providing care for the child shall be provided with notice of, and an opportunity to be heard in, any review or hearing to be held with respect to the child, except that such notice shall not be construed to require that any foster parent, pre-adoptive parent, or relative providing care for the child be made a party to such a review or hearing solely on the basis of such notice and opportunity to be heard.

9.0 PREVENTIVE AND REUNIFICATION SERVICES

- 9.01 Foster Care Candidate: When a child is at imminent risk of removal from home as evidence the Tribe either pursuing his/her removal from the home or making reasonable efforts to prevent such removal, a child may be determined to be a foster care candidate. A child may also be determined to be a foster care candidate after returning home from a placement in foster care, if it is determined that without effective after care services, the child would be returned to foster care.
- 9.02 Reasonable Efforts: When making reasonable efforts, the child's health and safety shall be the paramount concern. Reasonable efforts shall be made to preserve and reunify families, to prevent or eliminate the need for removing the child from the child's home, and to make it possible for the child to safely return to the child's home.
- 9.03 Consistency with Permanency Plan: If continuation of reasonable efforts to reunify is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.
- 9.04 When Reasonable Efforts Not Required: Reasonable efforts to make it possible for a child to be returned to his or her home, as described in §471(a)(15)(B) of the Act, shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that the parent:
- (a) has subjected the child to aggravated circumstances (as defined by the laws of the Tribe or the State, which definition may include but need not be limited to abandonment, torture, chronic abuse, or sexual abuse);
 - (b) has aided or abetted, attempted, conspired, or solicited to commit a murder or a voluntary manslaughter;

- (c) has committed a felony assault that results in serious bodily injury to the child or another child of the parent; or
- (d) has had his or her parental rights to a sibling terminated involuntarily.

9.05 Hearing Required: If reasonable efforts of the type described in §471(a)(15)(B) of the Act, are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with Subsection 9.04 of the Agreement, a permanency hearing as described in §475(5)(C) of the Act shall:

- (a) be held for the child within thirty (30) days after the determination; and
- (b) reasonable efforts shall be made to finalize and to place permanently the child in a timely manner in accordance with the permanency plan.

9.06 Calculating When a Child Enters Foster Care: A child shall be considered to have entered foster care on the earlier of:

- (a) the date of the first judicial finding that the child has been subject to child abuse or neglect; or
- (b) the date that is sixty (60) days after the date on which the child is removed from the home.
- (c) the date a child is placed in the Tribe's custody by a written voluntary agreement entered into by a parent of a child.

10.0 TERMINATION OF PARENTAL RIGHTS

When Required; Exceptions: In the case of a child who has been in foster care under the responsibility of the Tribe for fifteen (15) of the most recent twenty-two (22) months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant, or has made a determination that the parent has committed murder of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent, the Tribe shall file a petition to terminate the parental rights of the child's parents, and concurrently, shall identify, recruit, process, and approve a qualified family for adoption unless:

- (a) the child is being cared for by a relative; or
- (b) the Tribe has documented in the case plan compelling reasons for determining that filing such a petition would not be in the best interests of the child; or
- (c) the Tribe has not provided the family of the child, consistent with the time period in the Tribe's case plan, such services as the Tribe deems necessary for the safe

return of the child to the child's home if reasonable efforts to make it possible for the child to safely return home are required to be made with respect to the child.

11.0 STANDARDS FOR FOSTER FAMILY HOME, ADOPTIVE HOMES, AND CHILD CARE INSTITUTIONS:

- 11.01 Tribal Standards: The Tribe shall establish and maintain standards for foster family homes, adoptive homes, and childcare institutions for children under the jurisdiction of the Tribal Court. The standards so established shall be applied by the Tribe to any foster family home, adoptive home, or childcare institution receiving funds under Title IV-E pursuant to this Agreement.
- 11.02 Consistency and Recognition of Tribal Standards: The standards shall be reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights.
- 11.03 Provision for Criminal Records Checks: The TRIBE shall establish procedures for fingerprint-based FBI criminal background checks for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child on whose behalf payments pursuant to this Agreement are to be made. Prior to re-certification, a minimum of every two years, the TRIBE shall establish procedures to obtain updated criminal records checks. In any case in which a record check reveals a felony conviction for any of the offenses listed in this section and the TRIBE finds that a court of competent jurisdiction has determined that a felony was committed, final approval shall not be granted.
- (a) child abuse or neglect;
 - (b) spousal abuse;
 - (c) a child as the victim (including child pornography);
 - (d) violence, including rape, sexual assault, or homicide, but not including other physical assault or battery;
 - (e) intentional starvation or torture;
 - (f) aiding, abetting, attempting, soliciting or conspiring to cause the death of a child; or
 - (g) sodomy or sexual abuse.
- 11.04 In any case in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if the Tribe finds that a court of competent jurisdiction has determined that the felony was committed within the past five (5) years, such final approval shall not be granted.
- 11.05 No exception may be granted to the prohibitions except if a family foster home was certified or an adoptive homes was approved before November 19, 1997, the TRIBE may place additional children in the home, renew the family's foster home

certificate or approve the home as an adoptive placement so long as the TRIBE has determined the following:

- (a) denial of the renewal or adoption application would result in the disruption of a child's placement or prevent future foster care or adoptive placements of the child's siblings;
- (b) the certification, adoption or licensing file for the foster family, adoptive family or relative placement contains documentation that safety considerations with respect to the foster family, adoptive family, relative or caretakers(s) have been addressed.

11.06 **Child Abuse and Neglect Registry Checks:** The TRIBE shall establish procedures to check any child abuse and neglect registry maintained by a State/Indian Tribe in which the adults living in the home of a prospective foster home have resided in the preceding five years as described in §471(a)(20)(B)(i) of the Act.

12.0 MAINTENANCE, RETENTION AND CONFIDENTIALITY OF RECORDS

12.01 **Confidentiality:** The Tribe has safeguards restricting use of or disclosure of confidential information concerning individuals assisted under the Agreement. The safeguards must meet the standards set forth in 42 USC sec. 671 (8).

12.02 **Tribal Policies:** The Tribe has promulgated laws and/or policy materials and instructions regarding the safeguarding of information.

12.03 **Record Maintenance:** The Tribe will maintain all records pertaining to Title IV-E eligibility for the entire time period for which an Eligible Indian Child is in out-of-home care, and a minimum of four (4) years after the child has left care. Unless this Agreement requires a longer retention period for certain information, Tribe and all providers shall maintain all accounting records, financial records, supporting documents, statistical records and all other records related to payments under this Agreement or payment for the delivery of any Service for a minimum of thirty-nine months after the payment. If there are unresolved audit questions or litigation at the end of the thirty-nine month period, the records shall be retained until the questions are resolved.

13.0 REPORTING REQUIREMENTS

13.01 **Child Abuse Reporting:** The Tribe will require reporting of child abuse in a manner that meets the requirements of 42 USC sec. 671(9).

13.02 **Single Audit Requirement:** The Tribe will provide for an independent certified public accountant audit of federal funds in accordance with OMB Circular A-133 and provide a copy of such audit to DHS.

- 13.03 DHHS Review: The Tribe and DHS acknowledge that the DHHS or DHS conducts periodic reviews of state agencies that receive and distribute Title IV-E funds, and that DHHS or DHS requires as a part of such reviews that case files on children receiving Title IV-E support be made available for inspection at a designated location. Upon reasonable advance written notice, the Tribe will make available for review by DHHS or DHS personnel the case file and provider files on those Eligible Indian Children assisted under the Agreement. The files shall at all times remain the property of the Tribe and shall be returned to the Tribe immediately upon completion of the review process.
- 13.04 Technical Assistance: The parties further agree that the Tribe may request DHS' technical assistance in assuring that the case files contain the proper documentation.
- 13.05 Reports: The Tribe will make reports in such form and containing such information on the Tribe's Title IV-E program as are required by either the DHS or DHHS. The Tribe will comply with such provisions as the DHS or DHHS may from time to time find necessary to assure the correctness and verification of such reports.
- 13.06 Time Study and Non-IV-E Eligible Children Reports:
- Time Study reports, summaries and lists of non-IV-E eligible tribal children (by case number only) will be submitted quarterly to DHS, for use in determining penetration rate and calculating the future tribal administrative claim.
- 13.07 Face to Face Contacts: Caseworker visits will need to be entered on the DHS State Automated Child Welfare Information System monthly by either DHS or the Tribe.

14.0 PROCEDURES FOR PAYMENTS

- 14.01 DHS Eligibility Worker: DHS shall designate staff within DHS to be the eligibility worker for Title IV-E foster care payment applications made by the Tribe pursuant to this Agreement.
- 14.02 Paperwork: The Tribe shall complete the required eligibility paperwork for Title IV-E for each Eligible Indian Child for whose foster care the Tribe would like FFP. This paperwork shall be submitted to the person within DHS who has been designated as the DHS eligibility worker who processes such claims from the Tribes.
- 14.03 Foster Care Maintenance Payments on Behalf of an Eligible Indian Child: The DHS eligibility worker shall complete the required paperwork for determination of eligibility for each case submitted by the Tribe. If the DHS eligibility worker determines that the child is eligible, DHS shall begin making foster care maintenance payments directly to the eligible foster care provider in which the

child or children are placed. Any funds collected based upon retroactive eligibility that the Tribe has reimbursed directly to the provider for the time period prior to the determination of eligibility, will be reimbursed to the Tribe directly.

- 14.04 Level of Care Payments: All requests for a level of care payment for the enhanced supervision of a child require a screening by a qualified CANS Screener to determine the level of care and enhanced supervision necessary to maintain the safety and support the well-being of the child
- 14.05 Level of Personal Care Services Assessment and Plan: All requests for a level of personal care reimbursement will require an evaluation by a registered nurse of the child's ability to perform the functional activities required to meet the child's daily needs and a personal care services plan which indicates the care, treatment, and procedures that are to be provided by the qualified provider to meet the child's daily needs.
- 14.06 Administrative Payments: The TRIBE will receive quarterly administrative payments based on the number of Title IV-E eligible children on the monthly Average Daily Population (ADP) report and the average cost per child per month (or the agreed upon monthly rate).
- (a) DHS will submit requests for reimbursement of administrative costs.
 - (b) DHS will track completion of reimbursement requests.
 - (c) DHS will notify the Tribe of reimbursement request completion and send a copy of the signed Contract Invoice/Voucher.
 - (d) DHS will notify the Tribe of confirmation of the payment.
- 14.07 Administrative Adjustments: The Tribe, in collaboration with DHS Federal Compliance Unit, will calculate the Tribe's average cost per child based on the Tribe's Administrative Expenditures.
- (a) The Tribe is responsible for completing two weeks of time studies for each quarter of the Federal Fiscal Year. These weeks are randomly selected by DHS.
 - (b) The Tribe provides a list of all children in the care and custody of the Tribe which includes the dates of the foster care episode, regardless of the child's IV-E eligibility status. This information is used to calculate the Tribe's Penetration Rate.
 - (c) The Tribe provides DHS with the Annually negotiated Indirect Cost Rate completed by the Bureau of Indian Affairs (BIA).

- (d) The Tribe provides DHS with total expenses eligible for the quarterly administrative reimbursement of the Tribal foster care program. Includes all costs for staff, purchase of service contracts and other operating costs for properly administering the foster care or adoption program. Allowable Title IV-E administration costs are reimbursed at 50% Federal Financial Participation (FFP). Examples of reimbursable Title IV-E administrative activities include:
- (1) Referral to service;
 - (2) Determination of Title IV-E eligibility;
 - (3) Preparation for and participation in judicial determinations;
 - (4) Placement of the child;
 - (5) Development of the case plan;
 - (6) Case reviews;
 - (7) Case management and supervision;
 - (8) Recruitment and licensing of foster homes and institutions;
 - (9) Costs related to data collection and reporting, and A proportionate share of related agency overhead (indirect costs).
- (e) DHS will use the information described above to calculate the tribe's cost per child per month. DHS will use the Tribes cost per child per month to adjust the tribe's administrative reimbursement based on the use of the Tribes actual Average Daily Population (ADP).
- (f) If the adjusted admin reimbursement indicates the tribe was underpaid/overpaid, the necessary adjustments will be made at the next quarterly administrative reimbursement.

14.08 Training Payments: The Tribe may receive a quarterly payment for reimbursement of eligible training as outlined in Subsection 3.10.

14.09 Guardianship Assistance Program: The Tribal caseworker will contact the DHS eligibility worker to determine if the child meets the eligibility criteria for the guardianship assistance, for both relative and non-relatives. If the child is eligible, the Tribal caseworker will complete the required applications and submit to DHS Central Office Adoption/Guardianship Unit prior to the completion of the order for guardianship

14.10 Adoption Assistance: The Tribal caseworker will contact the DHS eligibility worker to determine if the child meets the eligibility criteria for adoption assistance. If the child is eligible, the Tribal caseworker will complete the required applications and submit to DHS Central Office Adoption/Guardianship Unit prior to the signing of the General Judgment of Adoption.

15.0 FINANCIAL RESPONSIBILITY

Enforcement of Parental Responsibility: The parties acknowledge that the Act requires that parents participate financially in their child's care while the child is in foster care. Where appropriate, the Tribe shall take all steps, including cooperative efforts with DHS, to secure an assignment of any rights to support on behalf of each Eligible Indian Child receiving Title IV-E foster care maintenance payments. The Tribe shall pay to DHS the federal share of the support amount collected, for distribution to the federal government.

16.0 MISCELLANEOUS TERMS AND CONDITIONS

- 16.01 Effective Date, Term of the Agreement, Termination, and Review: This Agreement shall become effective immediately upon its execution by the parties and shall expire, unless otherwise extended on June 30, 2020 . Following its execution, the Agreement shall be promptly filed with the Oregon Secretary of the State's office and the Chairman of the Tribe. Either party may terminate this Agreement upon ninety (90) days written notice to the other party.
- 16.02 Severability: In the event that any provision in this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provision of this Agreement.
- 16.03 Consents; Reasonableness; Good Faith: No party shall unreasonably deny, withhold, or delay any consent or approval required or contemplated for any action or transactions proposed to be taken or made hereunder. The parties agree to cooperate fully with each other and to act reasonably and in good faith and in a timely manner in all matters hereunder so that each of them may obtain the benefits to which they are entitled hereunder and for which they have negotiated. The parties agree to negotiate in good faith and without delay as to all matters requiring negotiation. DHS has a protocol in place to reduce barriers which may cause delays in the steps required to process contracts and payments. The protocol is a guide for DHS to follow, attached as Appendices B
- 16.04 Notice: Any notice required or permitted to be given to a party by this Agreement must be in writing, addressed to the other party at the address indicated below and either: mailed by regular or certified mail by the Postal Service of the United States of America, postage pre-paid; or hand-delivered by courier or by a nationally recognized and reputable overnight delivery service.
- (a) Notice shall be deemed to have been given by regular mail when deposited in the United States mail, postage pre-paid, as evidenced by the date and time stamp. A notice sent by certified mail, return receipt requested, shall be deemed given upon receipt. If notice is given by a nationally recognized and reputable overnight delivery service, notice shall be deemed given when it is actually received by the party.

(b) Notices shall be provided at the following:

(1) If to the Tribe:

Debra Crosswell, Executive Director
46411 Timine Way,
Pendleton, Oregon 97801

With a copy to:

Theresa Ellisoff, ICW Supervisor
Indian Child Welfare Unit
46411 Timine Way,
Pendleton, Oregon 97801

(2) If to DHS:

DHS Assistant Director for Children Adults and Families Division
Department of Human Services
500 Summer Street
Salem, Oregon 97301-1067

With a copy to:

ICWA Manager
Children, Adult and Family Services
Department of Human Services
500 Summer Street NE, E62
Salem, Oregon 97301-1067

With a copy to:

Federal Compliance Manager
Children, Adult and Family Services
Department of Human Services
500 Summer Street NE, E62
Salem, Oregon 97301-1067

16.05 Headings: The headings to the various Sections and Subsections of this Agreement are inserted only for convenience of reference and are not intended, nor shall they be construed, to modify, define, limit, or expand the intent of the parties.

- 16.06 Delay or Omissions: No delay or omission to exercise any right, power, or remedy accruing under this Agreement shall impair such right, power, or remedy, nor shall it be construed to be a waiver of or acquiescence in a breach of or default under this Agreement.
- 16.07 Entire Agreement; Modifications: This Agreement constitutes the final and entire Agreement between parties, and there is no Agreement or promise on the part of either party to do or omit to do any act or thing not herein mentioned. This Agreement is intended as a complete and exclusive statement of the terms and conditions of the parties' Agreement and may not be effectively amended, changed, modified, or altered without the written consent of both parties. This Agreement is between and binding upon the parties and shall not be construed to confer any rights, benefits, or causes of action on any third parties. This Agreement is solely for the purpose of providing Title IV-E funds to providers of care to Eligible Indian Children and shall not be construed to grant or confer upon DHS any rights, responsibilities, obligations, or authority over Eligible Indian Children whose care is the subject of this Agreement. Nothing in this Agreement shall be construed as a diminishment or abrogation of the Tribe's rights under the Indian Child Welfare Act, any other federal law, or its treaty.
- 16.08 Counterparts: This Agreement may be executed and signed in counterpart.
- 16.09 Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.
- 16.10 Availability of Funds: The Oregon Legislature grants DHS authority to obligate funds only for a biennial period. The biennial period begins on July 1 of each odd numbered year and ends on June 30 of the next odd numbered year. If this Agreement extends beyond the end of the current State of Oregon budgeting biennium, this Agreement shall be contingent in each succeeding biennial budgeting period upon the receipt of an adequate appropriation for that biennial budgeting period for the services to be provided pursuant to this Agreement. If such funding is not received, this Agreement may be amended or terminated as provided herein.
- 16.11 Agreement to Comply with Statutory and Regulatory Requirements: Tribe asserts that it is generally exempt from the application of state laws under Public Law 83-280. DHS, in accepting federal funds that are a part of the financial assistance paid to Tribe under this Agreement, must comply and exercise best efforts to cause its sub-grantees to comply with federal requirements and applicable requirements and assurances in the State Title IV-E Plan applicable to the delivery of services. Tribe agrees, as DHS' sub-grantee, to comply and exercise best efforts to cause all providers to comply with all federal laws applicable to the delivery of services and to comply with those state laws and rules that are a basis of the State Title IV-E Plan and necessary for the delivery of Services under this Agreement.

- 16.12 Compliance with Federal Law: Without limiting the generality of Subsection 16.12 above, TRIBE shall, in providing services under this Agreement, comply and, as indicated, cause all providers to comply with the following federal requirements to the extent that they are applicable. For purposes of this Agreement, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.
- (a) Unless exempted under the rules, regulations, and relevant orders of the Secretary of Labor set forth in 41 CFR Part 60 or other federal law specifically exempting Indian tribes from any of the following, Tribe shall comply with all provisions of:
 - (1) Executive Order No. 11246 as amended by Executive Order No. 11375 of the President of the United States;
 - (2) Executive Order No. 12086 of the President of the United States, as supplemented by Department of Labor regulations set forth in 41 CFR Part 60;
 - (3) Title VI of the Civil Rights Act of 1964 (codified at 42 USC 2000d et. seq.), and Section 504 of the Rehabilitation Act of 1973 (codified at 29 USC 794) as implemented by 45 CFR Section 84.4; and
 - (4) all applicable rules, regulations and orders of the Secretary of Labor concerning equal opportunity in employment.
 - (b) Tribe shall comply and cause all providers to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6962). Section 6002 of that Act requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are contained in 40 CFR Parts 247-253.
 - (c) Tribe shall comply with:
 - (1) all applicable standards, orders or requirements issued under the Clean Air Act (codified at 42 USC 7401 et. seq.) and the Federal Water Pollution Control Act, as amended (codified at 33 USC 1251 et. seq.);
 - (2) Executive Order No. 11738 of the President of the United States; and
 - (3) Environmental Protection Agency regulations set forth in 40 CFR Part 15.

Tribe shall promptly report all violations of the federal laws identified in this paragraph to DHS. Tribe shall include and cause all providers to include in all Contracts with providers receiving more than \$100,000 in federal funds, language requiring the provider to comply with the federal laws identified in this paragraph and to report all violations thereof to Tribe.

- (d) Tribe shall comply and, if applicable, cause a provider to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations" and by the Comptroller General of the U.S. entitled "Government Auditing Standards."
- (e) Tribe shall not permit any person or entity to be a provider if the person or entity is listed on the non-procurement portion of the General Service Administration's list of parties excluded from federal procurement or non-procurement programs in accordance with Executive Order No. 12549 and Executive Order No. 12689 of the President of the United States.
- (f) Tribe certifies to DHS that, to the best of its knowledge and belief:
 - (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the Tribe, 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 any employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - (2) If any funds other than federal 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, or a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Tribe shall complete and submit Standard Form-LLL, entitled "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - (3) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 USC section 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. TRIBE shall include and cause all providers to include in all contracts with, the language of this certification.

- (g) Although Tribe may be exempt from certain provisions of the Americans with Disabilities ACT of 1990, Tribe recognizes that as a sub-grantee of DHS, in order to provide services under this Agreement in accordance with federal law, DHS must ensure that its contactors provide services to clients consistent with the Americans with Disabilities Act. Therefore, Tribe agrees to comply with, and cause all providers to comply with Title II of the Americans with Disabilities Act of 1990 (codified at 42 USC 12131 et. Seq.) and all regulations established pursuant to that law, in the construction, remodeling, maintenance, and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the delivery of services.
- (h) Tribe shall comply and cause all providers to comply with the Pro-Children Act of 1995 (codified at 20 USC section 6081 et. seq.).

16.13 Audits and Inspections. Tribe shall permit and cause all providers to permit authorized representatives of DHS, the Oregon Secretary of State's Audits Division and the applicable audit agencies of the United States Government to review the records of Tribe and providers in order to satisfy audit or program evaluation purposes. Audit and program evaluation purposes include, but are not limited to the following:

- (a) To document the relationship between the financial assistance paid by DHS under this Agreement and the amounts expended by Tribe or provider on the delivery of services;
- (b) To document that the amounts expended by Tribe or provider on the delivery of a service are reasonable and necessary to ensure quality of service; and
- (c) To ensure that Tribe or provider's expenses are in accordance with federal OMB Circular A-133 as applicable on allowable costs.

Tribe shall permit, and cause all providers to permit, authorized representatives of DHS to perform site reviews of all services delivered by Tribe or a provider. Tribe explicitly grants to the agencies or entities stated in this subsection, access to reservation lands where inspection is necessary and consistent with the purposes stated in this subsection.

16.14 Reconciliation of payments based on differential cost between state rate and tribal rate. DHS will compensate tribe or seek compensation to reconcile payments based on actual expenditures of the Tribe following the end of each fiscal year. Reconciliation will be made as part of future payments to the tribe.

17.0 RECOVERY OF FINANCIAL ASSISTANCE

17.1 Recovery of Funds: Under the following circumstances, DHS may recover from Tribe the financial assistance paid to Tribe under this Agreement:

- (a) If Tribe fails or, if applicable, a provider fails to have an independent certified public accountant audit federal funds in a manner that complies with Subsection 13.02 of this Agreement, DHS may recover from Tribe all federal funds paid to Tribe under this Agreement.
- (b) If federal authorities demand repayment of all or a portion of the federal funds or disallow payment of all or a portion of the federal funds to Tribe under this Agreement, DHS may recover from Tribe that portion of the federal funds necessary to satisfy the federal repayment demand or disallowance. If the federal repayment demand or disallowance results from a provider's actions or omissions, Tribe shall, upon DHS' request, recover the amount of the repayment demand or disallowance from the provider. To the extent permitted by state and federal law, DHS shall not require Tribe to recover funds from a provider under this subsection if DHS determines that further action by Tribe is unreasonable given the cost of the action in comparison to the amount sought to be recovered and/or the likelihood of successful recovery resulting from Tribe actions under authority vested in Tribe.
- (c) If a Tribe expenditure of financial assistance paid to Tribe under this Agreement does not result in the delivery of a service in accordance with the terms and conditions of this Agreement, DHS may recover the amount of the expenditure from Tribe as provided by this subsection. If a Tribe expenditure of financial assistance paid to Tribe under this Agreement does not result in the delivery of a service in accordance with the terms and conditions of this Agreement because of a provider's actions or omissions, Tribe shall, upon DHS' request, recover from the provider the amount of the expenditure received by the provider. To the extent permitted by state and federal law, DHS shall not require Tribe to recover funds from a provider under this subsection if DHS determines that further action by Tribe is unreasonable given the cost of the action in comparison to the amount sought to be recovered and/or the likelihood of successful recovery resulting from TRIBE actions under authority vested in Tribe.
- (d) The sole method of recovering financial assistance from Tribe under this Agreement shall be by deducting the amount of financial assistance to be recovered from any future payments to Tribe. DHS shall provide notice to Tribe of the amount of financial assistance to be recovered. Tribe shall have 60 days to provide payment to the DHS. If after 60 days DHS has not received payment from Tribe, DHS may deduct the amount of financial assistance from a future payment to Tribe. For purposes of this subsection, "future payments" to Tribe include, but are not limited to, any payment to

Tribe from DHS under this Agreement; any payment to Tribe from DHS under any other contract or agreement between Tribe and DHS, present or future; and any payment to Tribe from the State of Oregon under any other contract or agreement, present or future, unless prohibited by state or federal law.

- (e) DHS shall notify Tribe of its intent to recover financial assistance and identify the program from which the deduction will be made. Tribe shall have the right to, not later than 14 days from the date of DHS' notice, request the deduction be made from a future payment(s) identified by Tribe. To the extent that DHS' recovery of financial assistance from the future payment suggested by Tribe is feasible, DHS shall comply with Tribe request.
- (f) In exercising DHS' right to recovery under this subsection, DHS shall first seek recovery from the State General Fund portion of financial assistance remaining to be paid under this Agreement to satisfy the repayment. If that amount is insufficient, then DHS shall seek recovery from the State General Fund portion of a future payment from any obligation of the State of Oregon Department of Human Services owing to Tribe. If that amount is insufficient, then DHS shall seek recovery from any other future payment as defined above.
- (g) In no case, without the prior consent of Tribe, shall the amount of recovery deducted from any one obligation owing to Tribe exceed twenty-five percent (25%) of the amount from which the deduction was taken. The DHS may seek recovery from as many future payments as necessary in order to fully recover the amount of financial assistance. DHS' right to recover financial assistance from TRIBE under this subsection is not subject to or conditioned on Tribe's recovery of financial assistance from a provider.

17.2 Limitation of Liabilities: Except as provided for under this subsection (including but not limited to, monetary penalties assessed against DHS by the federal government or an agency thereof), neither party shall be liable for any indirect, incidental, consequential or special damages under this agreement. Neither party shall be liable for any damages of any sort arising solely from the termination of this agreement or any part hereof in accordance with its terms.

18.0 Signatures:

Approved by Tribe:

Debra Maxwell Interim Executive 5.3.10
Authorized Signature Title Director Date

Approved by DHS:

Angela Pong Administrator 5/18/10
Authorized Signature Title Date

Approved by the Department of Administrative Services:

Exempt per OAR 125-246-0170(2)

Authorized Signature Title Date

Approved for Legal Sufficiency:

Not Required per OAR 137-045-0030(1)(a)

Assistant Attorney General Date

DHS/Office of Contracts and Procurement:

[Signature] 5/21/10
Contract Specialist Date