

**STATE OF SOUTH DAKOTA
DEPARTMENT OF SOCIAL SERVICES
DIVISION OF CHILD PROTECTION**

**Purchase of Services Agreement
Between**

Sisseton Wahpeton Oyate
Child Protection Program
P.O. Box 509
Agency Village, SD 57262

State of South Dakota
Department of Social Services
DIVISION OF CHILD PROTECTION
700 Governors Drive
Pierre, SD 57501-2291

Referred to as Provider

Referred to as State

The State hereby enters into a vendor-type contractual agreement for procurement of goods or services. While performing services hereunder, Provider is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

1. PROVIDER'S South Dakota Vendor Number is **1203241302**.
2. PERIOD OF PERFORMANCE:
 - A. This agreement shall be effective as of June 1, 2013 and shall end on May 31, 2014, unless sooner terminated pursuant to the terms hereof.
 - B. Agreement is exempt from the request for proposal process.
3. PROVISIONS (add an attachment if needed) :
 - A. The Purpose of this agreement is to:
 1. Provide Title IV-E foster care maintenance payments on behalf of children who are Title IV-E eligible under the custody of the Sisseton Wahpeton Oyate Tribal Court.
 2. Provide Title IV-E Adoption Assistance payments on behalf of children who are Title IV-E eligible under the custody of the Sisseton Wahpeton Oyate Tribal Court.
 3. Provide Title IV-E Guardianship Assistance Program payment on behalf of children who are Title IV-E eligible under the custody of the Sisseton Wahpeton Oyate Tribal Court
 4. Reimburse Sisseton Wahpeton Oyate Tribe the federal share for tribally incurred Title IV-E allowable administrative and training costs.

- B. The Provider agrees to perform the following services:
Adoption and Foster Care Analysis and Reporting System (AFCARS)

AFCARS collects case level information on all children in foster care for whom State and Tribal title IV-E agencies have responsibility for placement, care or supervision and on children who are adopted under the auspices of the State and Tribal Title IV-E agency. A tribal child welfare agency who has a Title IV-E Agreement with the State, is required to enter and update specific case data in FACIS for all children who are determined to be Title IV-E eligible and under the placement, care and responsibility of the Tribal child welfare agency. The following data elements must be entered in FACIS on a regular basis:

- Caseworker Visits
- Case Plan- Goal
- Placements and Discharges within 30 Days
- Payments
- Client Basic – Demographics, Address and Medicaid

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- AFCARS Disabilities
- IV-A Eligibility Determination
- Legal
- Biological Parent Information
- Resource Compliance –Resources must have data showing a current license and complete demographics on each resource member.

Caseworker visits are a federal requirement which is included in the State's AFCARS data submission. Visits not entered into FACIS can be entered as late as September 30th for the current Federal Fiscal Year but missed visits can never be made up. The best practice is to have the visits each and every month and then have these visits entered in a timely fashion. If child(ren) enter care after the first of the month or leave care before the end of the month then the child does not need to be visited in that month. Only full months of placement need a visit and entry into FACIS.

The State will review FACIS on a monthly basis to assure case worker visits are occurring monthly, over half of the monthly visits are occurring in the residence of the child and all visits are documented on the Case Worker screens in FACIS in a timely manner. Written notice will be given to the tribe if the visits fall below 90% for that month. This written notice will continue for three consecutive months, but if after three months of non-compliance with the completion of these visit and their entry into FACIS, the child(ren) that have not been visited or entered will lose Title IV-E eligibility until the child is visited, the visit is entered into FACIS and an action plan is submitted outlining how compliance with this requirement will be monitored. When Title IV-E eligibility is closed for a child, the provider will not receive Title IV-E funding for the child's placement costs until visits are made and the plan is submitted.

Title IV-E Eligibility

All Title IV-E determinations are made by a Central Reviewer in Child Protection Services State Office in Pierre, SD. The following documents/actions are needed for the reviewer to make a Title IV-E eligibility determination:

- The Temporary Emergency Custody court order must contain the following language to demonstrate the court has found the following:
 "It is contrary to the welfare of the child to remain in the home." "Reasonable efforts have been made to prevent removal from the home."
If the first court order removing the child does not contain this language "It is contrary to the welfare of the child to remain in the home.", the child is ineligible for Title IV-E for the duration for the foster care episode. The "Reasonable efforts have been made to prevent removal from the home." court finding must be made no later than 60 days from the date of removal or the child is ineligible for Title IV-E for the duration for the foster care episode. It is recommended that the "Reasonable Efforts" language be in the first order removing the child to assure eligibility requirements are met.
- The child must be physically removed from the home and placed in a licensed foster home or group care center for minors and remain in care under the responsibility of a tribal child placement agency.
- In order to utilize Title IV-E as payment for placement costs, the family foster home, child placement agency or group care center for minors, must be fully licensed with documentation to demonstrate compliance with safety considerations such as criminal background checks, central registry screenings and sex offender registry checks. Specifically:
 1. Central Registry screening for anyone in the household 10 years of age or older.
 2. Criminal background check for anyone living in the home that is 18

years of age or older. This includes completing criminal background checks on those members of the household who have turned 18 since the initial and/or renewal licenses were issued.

- a. Fingerprint based criminal record check completed by the Division of Criminal Investigation (DCI) which results in documentation (either a letter from the DCI, or a copy of the rap sheet) indicating there is no criminal history that would prevent the individual from being licensed.
 - b. Fingerprint based criminal record check completed by the FBI which results in a letter from CPS State Office signed by Division Director indicating the applicant meets criteria for licensing under the state statute.
 - c. Sex Offender Registry conducted on anyone 15 years of age or older in the household. While not required for federal reviews, it is a state law and should be in the licensing files.
(SDCL:26-6-14.11.)
- IV-E Hypothetical Application – The application needs to be completed. If there are areas that cannot be answered completely then make a notation that every effort was exhausted to find the information and it could not be found.
 - "PERMANENCY HEARING" shall mean the permanency hearing required by Title IV-E of the Social Security Act for participation in the foster care maintenance program which must take place within 12 months of the date the child is considered to have entered foster care, and not less frequently than every 12 months thereafter during the continuance of foster care, including voluntary foster care placements.

During a permanency hearing the court must find that "reasonable efforts have been made to achieve the child's permanent plan (reunification, placement with relatives, guardianship, adoption, transition to adulthood)". The court order should also contain information about the type of efforts that have been made to achieve the permanent plan. If the Permanency Hearing is not held within 12 months and the court order does not contain the language stated above, the child becomes ineligible for Title IV-E funding until a Permanency Hearing is held and a proper court order submitted. Funding for placement cost during this period of ineligibility is the responsibility of the tribe.

Title IV-E Administrative and Training Costs

To access the administrative and training expenditures allowable under Title IV-E reimbursement, the provider agrees to:

- Complete time studies on a quarterly basis in order to capture the daily Title IV-E activities completed by staff during the assigned time study month if the provider chooses to submit claims for reimbursement of Title IV-E administrative activities.
- Document all training activities eligible for Title IV-E training reimbursement to include date of training, location of training, title of training session, staff attending the training, hours of training of the training session and expenses incurred for instructor and staff in terms of mileage, meals and lodging.
- Prepare and submit claims for allowable Title IV-E administrative costs on a quarterly basis after the completion of each quarter, preferably in the quarter preceding the completion of the most recent quarter. Quarterly claims must be submitted no later than two years from the quarter in which the administrative expenses were incurred. If a Title IV-E administrative claim is not received by the State within the two year period from the date the expenses were incurred, the State will not reimburse the incurred expense. This is in accordance with Section 1132 of the Social Security Act and Federal regulations at 45 CFR Part 95 Subpart A. Title IV-E administrative claims must be submitted to the State for submission to the Administration of Children and Families within 2 years of the last day of the fiscal quarter in which expenditures were made.

The State agrees to:

Title IV-E Eligibility and Monitoring

- Provide a process for the determination of all Title IV-E eligibility for children who are under the jurisdiction of the Sisseton Wahpeton Oyate Tribal Court.
- Conduct random sampling for case reviews of eligible Title IV-E children and licensing files receiving Title IV-E foster care maintenance payments on a twice a year basis for monitoring of compliance with requirements.

Title IV-E Guardianship Assistance Payments

- "GUARDIANSHIP ASSISTANCE PROGRAM" (GAP) refers to a federally supported program for children in kinship foster care. The program provides financial assistance through Title IV-E to related licensed caregivers who assume legal guardianship of children formerly under their care as foster children. As the legal guardian, the relative is responsible for the day-to-day care and supervision of the children and makes all the necessary decisions related to the children's health, education, discipline, and upbringing. The Tribal agency/court would no longer have legal custody of the child and a check on the child and family once per year to verify that the child is still residing with the guardian is required. GAP provides relative guardians a monthly Title IV-E maintenance payment that is comparable to the children's foster care rate or no less than what the guardians would receive if they adopted the child.

Title IV-E Reimbursements

- Provide funding for foster care maintenance payments under the Title IV-E program on a monthly basis.
- Will establish a protocol for accessing Federal Title IV-E reimbursement for allowable provider incurred administrative and training expenditures and for meeting requirements associated with those funds under Title IV-E for eligible children of the Sisseton Wahpeton Oyate Reservation; Refer to Program Addendum for Title IV-E Eligibility Requirements.

Refer to the attached Program Addendum for specific requirements associated with this agreement.

- C. The **TOTAL AMOUNT** of the Title IV-E administrative and training reimbursement claims associated with this agreement will not exceed \$225,696.00, which includes \$185,696.00 for personal services and operating expenses and \$40,000.00 for reimbursement of Title IV-E allowable administrative claims.

The payment for personal services and operations expenses will be billed monthly in the amount of \$15,474.67.

Payment will be in accordance with SDCL 5-26.

- D. **BASIS OF AGREEMENT AMOUNTS:**

The rate and amount for services purchased have been determined on the following basis:

- Reimbursement to Provider for children determined to be Title IV-E eligible and meets funding requirements for Title IV-E funding. Monthly IV-E payments for eligible children are based on the daily rate for basic, specialized, treatment and emergency foster care and for group care that are established by the State.

Federal Title IV-E dollars will be matched by the State for IV-E eligible children in a licensed foster home or facility, except for a psychiatric residential treatment facility. **(See Attached Fiscal Year 2014 Rate)**

- Provider requests for additional funding must be submitted to the State prior to June 30 of each contract year for consideration. A detailed justification for the funding request must be included. Funding requests are subject to the budgetary and approval process for the Department of Social Services.
- Federal matching funds based on federal cost allocation principles will be made available for reimbursement of allowable administrative and training expenditures necessary for the proper and efficient administration of the Title IV-E foster care and adoption assistance program based on time studies completed by the Provider and documentation of administrative costs submitted to the State on a quarterly basis. The Provider will provide non-federal matching funds for any Federal Title IV-E dollars requested for Title IV-E Administrative Claim at a 50% match rate and for training claims at a 75% match rate.

4. **BILLING:**

Provider agrees to prepare and submit a CP-522 Request for Payment for services within 30 days following the end of the month in which services were provided. If the provider cannot submit a bill within the 30-day timeframe, a written request for an extension of time must be provided to the State. If a bill has not been received by the State, the State reserves the right to refuse payment.

An exception to this is when a provider is waiting for program/funding eligibility determination and billing cannot be made within 30 days. Valid adjustments and/or voiding of claims can continue to occur past the 30-day timeframe.

Prepare and submit claims for allowable Title IV-E bill administrative costs on a quarterly basis after the completion of each quarter, preferably in the quarter preceding the completion of the most recent quarter. Quarterly claims must be submitted no later than two years from the quarter in which the administrative expenses were incurred. If a Title IV-E administrative claim is not received by the State within the two year period from the date the expenses were incurred, the State will not reimburse the incurred expense. This is in accordance with Section 1132 of the Social Security Act and Federal regulations at 45 CFR Part 95 Subpart A. Title IV-E administrative claims must be submitted to the State for submission to the Administration of Children and Families within 2 years of the last day of the fiscal quarter in which expenditures were made.

5. **TECHNICAL ASSISTANCE:**

The State agrees to provide technical assistance regarding Department of Social Services' rules, regulations and policies to the Provider and to assist in the correction of problem areas identified by the State's monitoring activities.

6. **LICENSING AND STANDARD COMPLIANCE:**

The Provider agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this agreement. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Provider's failure to ensure the safety of all individuals served is assumed entirely by the Provider.

7. **ASSURANCE REQUIREMENTS:**

The Provider agrees to abide by all applicable provisions of the following assurances: Lobbying Activity, Debarment and Suspension, Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996, Charitable Choice Provisions and Regulations, and American Recovery and Reinvestment Act of 2009 as applicable.

8. RETENTION AND INSPECTION OF RECORDS:

The Provider agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, statistical, fiscal, other records, and information necessary for reporting and accountability required by the State. The Provider shall retain such records for six years following termination of the agreement. If such records are under pending audit, the Provider agrees to hold such records for a longer period upon notification from the State. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement. State Proprietary Information retained in Provider's secondary and backup systems will remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Provider's established record retention policies.

All payments to the Provider by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment of this agreement shall be returned to the State within thirty days after written notification to the Provider.

9. WORK PRODUCT:

Provider hereby acknowledges and agrees that all reports, plans, specifications, technical data, drawings, software system programs and documentation, procedures, files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, State Proprietary Information, State Data, End User Data, Personal Health Information, and all information contained therein provided to the State by the Provider in connection with its performance of service under this Agreement shall belong to and is the property of the State and will not be used in any way by the Provider without the written consent of the State.

Paper, reports, forms software programs, source code(s) and other materials which are a part of the work under this Agreement will not be copyrighted without written approval of the State. In the unlikely event that any copyright does not fully belong to the State, the State none the less reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and otherwise use, and to authorize others to use, any such work for government purposes.

Provider agrees to return all information received from the State to State's custody upon the end of the term of this contract, unless otherwise agreed in a writing signed by both parties.

10. COST REPORTING REQUIREMENTS:

The provider agrees to submit a cost report in the format required by the State, and is due four months following the end of the provider's fiscal year.

or

No reporting is required.

11. TERMINATION:

This Agreement may be terminated by either party hereto upon thirty (30) days written notice, and may be terminated by the State for cause at any time, with or without notice. On termination of this agreement all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.

12. FUNDING:

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reduction, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

13. AMENDMENTS:

This agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

14. CONTROLLING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

15. SUPERCESSION:

All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire Agreement with respect to the subject matter hereof.

16. SEVERABILITY:

In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

17. IT STANDARDS:

Provider warrants that the software and hardware developed or purchased for the state will be in compliance with the BIT Standards including but not limited to the standards for security, file naming conventions, executable module names, Job Control Language, systems software, and systems software release levels, temporary work areas, executable program size, forms management, network access, tape management, hosting requirements, administrative controls, and job stream procedures prior to the installation and acceptance of the final project. BIT standards can be found at <http://bit.sd.gov/standards/>.

18. NOTICE:

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Division being contracted with on behalf of the State, and by the Provider, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

19. SUBCONTRACTORS:

Provider may not use subcontractors to perform the services described herein without the express prior written consent of the State. The State reserves the right to reject any person from the contract presenting insufficient skills or inappropriate behavior.

Provider will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. Provider will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. The State, at its option, may require the vetting of any subcontractors. The Provider is required to assist in this process as needed.

20. HOLD HARMLESS:

The Provider agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require the Provider to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

21. INSURANCE:

Before beginning work under this Agreement, Provider shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. The Provider, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits listed below. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Provider agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Provider shall furnish copies of insurance policies if requested by the State.

A. Commercial General Liability Insurance:

Provider shall maintain occurrence-based commercial general liability insurance or an equivalent form with a limit of not less than \$1,000,000 for each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit.

B. Business Automobile Liability Insurance:

Provider shall maintain business automobile liability insurance or an equivalent form with a limit of not less than \$500,000 for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles.

C. Workers' Compensation Insurance:

Provider shall procure and maintain Workers' Compensation and employers' liability insurance as required by South Dakota law.

D. Professional Liability Insurance:

Provider agrees to procure and maintain professional liability insurance with a limit not less than \$1,000,000.

22. CONFLICT OF INTEREST

Provider agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

23. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

Provider certifies, by signing this agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

24. CONFIDENTIALITY OF INFORMATION:

For the purpose of the sub-paragraph, "State Proprietary Information" shall include all information disclosed to the Provider by the State. Provider acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Provider shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this contract; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this contract; (iii) make State Proprietary Information available to any of its employees, officers, agents or consultants except those who have agreed to obligations of confidentiality at least as strict as those set out in this contract and who have a need to know such information. Provider is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Provider shall protect confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to Provider; (ii) was known to Provider without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Provider without the benefit or influence of the State's

information; (v) becomes known to Provider without restriction from a source not connected to the State of South Dakota. State's Proprietary Information shall include names, social security numbers, employer numbers, addresses and all other data about applicants, employers or other clients to whom the State provides services of any kind. Provider understands that this information is confidential and protected under applicable State law at SDCL 1-27-1.5, modified by SDCL 1-27-1.6, SDCL 28-1-29, SDCL 28-1-32, and SDCL 28-1-68 as applicable federal regulation and agrees to immediately notify the State if the information is disclosure, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the agreement except as required by applicable law or as necessary to carry out the terms of the agreement or to enforce that party's rights under this agreement. Provider acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this contract for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meetings laws. If work assignments performed in the course of this agreement require additional security requirements or clearance, the Provider will be required to undergo investigation.

25. AUTHORIZED SIGNATURES:

In witness hereto, the parties signify their agreement by affixing their signatures hereto.

<u><i>Robert Splad</i></u>	<u>6-7-13</u>
Provider Signature	Date
<u><i>Virgena Wieseler</i></u>	<u>5-2-13</u>
State- DSS Division Director Virgena Wieseler	Date
<u><i>Greg Benidt</i></u>	<u>5/7/13</u>
State - DSS Chief Financial Officer <i>Brenda Tidball-Zeltinger</i>	Date
<u><i>Kim Malsam-Rysdon</i></u>	<u>5/9/13</u>
State - DSS Secretary Kim Malsam-Rysdon	Date

State Agency Coding:

CFDA#				
Company	<u>1000</u>	<u>2004</u>	<u>2004</u>	<u></u>
Account	<u>5206070</u>	<u>5206070</u>	<u>1261160</u>	<u></u>
Center Req	<u>0842240</u>	<u>0842240</u>	<u>08422100</u>	<u></u>
Center User	<u>002Q1</u>	<u>002Q1</u>	<u>F0701</u>	<u></u>
Dollar Total	<u>44%</u>	<u>56%</u>	<u></u>	<u></u>
	<u>\$81,706.00</u>	<u>\$103,990.00</u>	<u>\$40,000.00</u>	<u></u>

DSS Program Contact Person Joseph Ashley
Phone 605-773-3227

DSS Fiscal Contact Person Patty Hanson
Phone 605 773-3586

Provider Program Contact Person Ken Harty
Phone 605-698-3992

Provider Program Email Address Ken.Harty@state.sd.us

Provider Fiscal Contact Person Greg Benidt
Phone 605-698-3911 ext. 114

Provider Fiscal Email Address

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State Office

PROGRAM ADDENDUM

DEFINITIONS

The words and phrases listed below, as used in this Agreement, shall each have the following definitions:

- a) "(The) ACT" shall mean the Social Security Act.
- b) "AFCARS" shall mean the Adoption and Foster Care Analysis Reporting System, which includes 103 data elements required to be submitted to the federal government bi-annually from the state's automated child welfare information system.
- c) "ADOPTION ASSISTANCE" shall mean financial and/or medical assistance to adoptive families including Tribal custom [customary] adoptions to assist them with the costs associated with their adoptive child's needs.
- d) "ADOPTION ASSISTANCE BENEFITS" means all or any portion of the adoption assistance package of benefits, which include monthly payments, nonrecurring payment, special payments and medical assistance.
- e) "CRIMINAL BACKGROUND CHECKS" shall mean the criminal history inquiries required of all prospective foster and adoptive parents. *See page 18 for the description under the Social Security Act.*
- f) "CASE MANAGEMENT" shall mean services which help to create and support those tasks and activities that are required to meet the service needs of the child and/or the child's family.
- g) "CASE PLAN" shall mean the case plan required by Title IV-E of the Social Security Act for participation in the foster care program.
- h) "CASE REVIEW" shall mean the case review required by Title IV-E of the Social Security Act for participation in foster care program.
- i) "CHILD WELFARE SERVICES PROGRAM" shall mean SWOCP that meets the safety, permanency, and child/family well-being needs of the children under Tribal jurisdiction.
- j) "CUSTODY" shall mean the physical custody of the children under the Tribe's legal jurisdiction. Under this Program Agreement, the Tribe will have sole custody of the children as established by the Tribal court or in voluntary placement cases, under the Tribal Child welfare administration of the Tribe.
- k) "DHHS" shall mean the U.S. Department of Health and Human Services.
- l) "DSS/CPS" shall mean the South Dakota Department of Social Service/Division of Child Protection Services.
- m) "ELIGIBLE CHILD" means a child who:
 - 1) Meets the eligibility requirements either for foster care maintenance payments set forth in the Social Security Act, Title IV-E, Section 472 [42 U.S.C. section 672] or for adoption assistance payments set forth in Social Security Act, Title IV-E, 673 [42 U.S.C. section 673], depending on the type of payments sought; and
 - 2) Is under the jurisdiction of the Tribe.

- n) "FFP- FEDERAL FINANCIAL PARTICIPATION" shall mean those monies paid out under Title IV-E of the Social Security Act by the federal government for foster care and adoption assistance maintenance, administration, and training.
- o) "FOSTER CARE" shall mean the substitute care provided for a child who is removed by court order or a voluntary placement agreement from his or her home.
- p) "FOSTER CARE AND ADOPTION ADMINISTRATION EXPENDITURES" shall mean the costs incurred by SWOCP for eligible Title IV-E expenditures for the administration of the foster care and adoption programs.
- q) "FOSTER CARE AND ADOPTION TRAINING EXPENDITURES" shall mean the costs incurred by the Tribe for eligible Title IV-E training expenditures for the foster care and adoption programs.
- r) "FOSTER CARE MAINTENANCE PAYMENT" shall mean payments made by the DSS/CPS to eligible foster care providers to meet the needs of the child or children receiving foster care from that provider.
- s) "GUARDIANSHIP" 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. No legal monitoring of the guardianship by the Tribe Court is required, although SWOCP may provide social services to the guardian or child. No state or IV-E funds are available once this guardianship is established.
- t) "GUARDIANSHIP ASSISTANCE PROGRAM" (GAP) refers to a federally supported program for children in kinship foster care. The program provides financial assistance through Title IV-E to related licensed caregivers who assume legal guardianship of children formerly under their care as foster children. As the legal guardian, the relative is responsible for the day-to-day care and supervision of the children and makes all the necessary decisions related to the children's health, education, discipline, and upbringing. The Tribal agency/court would no longer have legal custody of the child and a check on the child and family once per year to verify that the child is still residing with the guardian is required. GAP provides relative guardians a monthly Title IV-E maintenance payment that is comparable to the children's foster care rate or no less than what the guardians would receive if they adopted the child.
- u) "HEARINGS" shall mean any Tribal court review of the child's case plan.
- v) "JUDICIAL DETERMINATION" shall mean a determination made by a court of competent jurisdiction.
- w) "LEGAL JURISDICTION" shall mean that the child is under the authority of the Tribal court or in voluntary placement under the Tribe's child welfare agency.
- x) "PARTIES" shall mean the parties to this Program Agreement which are the State of South Dakota, Department of Social Services, Division of Child Protection Services and SWOCP.
- y) "PENETRATION RATE" shall mean 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 SWOCP's administrative and training claims.
- z) "PERMANENCY HEARING" shall mean the permanency hearing required by Title IV-E of the Social Security Act for participation in the foster care maintenance program which must take place within 12 months of the date the child is considered to have entered foster care (as defined in

Section 9.05), and not less frequently than every 12 months thereafter during the continuance of foster care, including voluntary foster care placements.

- aa) "REIMBURSEMENT FOR ADMINISTRATIVE COSTS" shall mean reimbursement for administrative costs incurred by SWOCPD based on the cost multiplied by the percent of children in foster care or adoption that are Title IV-E eligible multiplied by 50 percent FFP.
- bb) "REIMBURSEMENT FOR TRAINING COSTS" shall mean reimbursement for administrative training costs incurred by the Tribe based on the cost multiplied by the percent of children in foster care or adoption that are Title IV-E eligible multiplied by 75 percent FFP. However, SWOCPD's federally established indirect rate costs for training are based on the cost multiplied by the percent of children in foster care or adoption that are Title IV-E eligible multiplied by 50 percent FFP for the reimbursement claim.
- cc) "SWOCPD INDIRECT RATE" shall mean the federally established indirect rate (FEIR) negotiated between the federal government and SWOCPD. This FEIR rate is used in the calculation of SWOCPD's Title IV-E administrative and training reimbursement claim.
- dd) "TITLE IV-E" shall mean Title IV-Part E of the Social Security Act.
- ee) "TITLE IV-E STATE PLAN" shall mean the state plan developed by the State of South Dakota to comply with the requirements of Title IV-Part E of the Social Security Act.
- ff) "TRIBAL COURT" shall mean the Tribal Court of the Sisseton Wahpeton Oyate.
- gg) "TRIBE" shall mean the Sisseton Wahpeton Oyate.
- hh) "VOLUNTARY PLACEMENT AGREEMENT" shall mean a written agreement entered into by a parent of a child that voluntarily places care and custody of that child with the Tribe for foster care placement by SWOCPD.

STATEMENT OF BASIC AGREEMENT

For children under the legal jurisdiction of the Tribe and SWOCPD, DSS/CPS shall make Title IV-E foster care maintenance payments directly to eligible foster care providers based on the state's rate schedules for Title IV-E foster care maintenance. DSS/CPS shall also make any Title IV-E adoption assistance payments directly to the adoptive parent. DSS/CPS shall also make any Title IV-E Guardianship Assistance Program (GAP) payments to eligible related licensed caregivers who have assumed legal guardianship of children formerly under their care as foster children.

DSS/CPS is to reimburse SWOCPD the federal share for tribally incurred Title IV-E allowable administrative and training costs.

The terms and conditions of such payments are set out in the remainder of this Program Agreement.

Designation of Authority of State and Tribe:

- 1) The State of South Dakota, Department of Social Services, Division of Child Protection Services, is the designated agency to administer the Title IV-E program.
- 2) The Tribe hereinafter referred to as SWOCPD, will implement this Program Agreement.

Title IV-E Foster Care Maintenance Funds to be Used When a Child is Eligible:

SWOCPD is eligible for Title IV-E federal financial participation when a child in foster care is under the legal jurisdiction of the Tribe. DSS/CPS shall make foster care maintenance payments to eligible foster care providers for such children. Foster care maintenance payments

include the foster care basic rate, and may include the special rate and/or allowable maintenance payments per the Code of Federal Regulations, 42 CFR 1355, 1356, and 1357.

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 as stated in the state's Medicaid plan.

Payments for Foster Care: DSS/CPS shall reimburse placements providers (foster parents and group care centers for minors) for children who are IV-E eligible the cost of foster care maintenance payments according to the DSS/CPS rate schedule. Child Protection Services requires that a placement be established in FACIS within 5 working days. Foster care payments cannot be authorized until the placement is established in FACIS and the foster care home or facility is fully licensed. Reimbursement payment is determined by the original foster care placement date, not the date of data entry.

Title IV-E Adoption Assistance: DSS/CPS shall make adoption assistance payments to the adoptive parent for children eligible for Title IV-E Adoption Assistance.

Title IV-E Guardianship Assistance Program (GAP): DSS/CPS shall make GAP payment to the relatives taking legal guardianship of children who have been in licensed foster care with the relative.

Title IV-E Administrative Funds for Foster Care Program: Federal matching funds based on federal cost allocation principles will be made available for reimbursement of allowable administrative expenditures necessary for the proper and efficient administration of the Title IV-E foster care and adoption program. SWOCP shall submit for reimbursement the eligible administration expenditures on a quarterly basis.

The following are examples of allowable administrative costs:

- 1) Referral to services;
- 2) Preparation for and participation in judicial determinations;
- 3) Placement of the child;
- 4) *Development of the case plan;*
- 5) Case reviews;
- 6) Case management and supervision, including
 - Health and Safety visits;
 - Notification to parents of change in the foster placement for the child(ren);
 - Notification to the foster parents of court hearings;
 - Notification regarding any changes in visits with the child(ren).
- 7) Recruitment and licensing of foster homes and institutions, including the cost of home studies and criminal records checks;
- 8) A proportionate share of related agency overhead;
- 9) Foster care rate setting;
- 10) Management information system, and;
- 11) SWOCP's federally established indirect rate used in calculating the administrative and training reimbursement claim.

Allowable administrative costs do not include the costs of social services provided to the child, the child's family or foster family to ameliorate or remedy personal problems, behaviors or home conditions, since these are considered direct services.

Title IV-E Training: Federal matching funds are available for the short and long term training of child welfare personnel employed by or preparing for employment with SWOCP in accordance with federal regulations. All training activities and costs funded under Title IV-E shall be included in the Tribe's federal Child and Family Services Plan, or if the Tribe does not submit an annual Child and Family Services Plan to DHHS, then in SWOCP's training plan that is sent to DSS/CPS for inclusion in the state's annual Child and Family Services Plan. For training plans included in the state's Child and Family Services Plan, the state shall review the training plan to assure compliance with federal regulations. The training plan may be amended by SWOCP or the Tribe and sent to DSS/CPS anytime during the year. The Tribe or SWOCP shall submit for reimbursement of eligible training expenditures on a quarterly basis. 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.

Title IV-E Eligibility Determination: DSS/CPS shall be responsible for determining eligibility for Title IV-E. SWOCP shall provide eligibility related information to DSS/CPS to assist DSS/CPS in determining Title IV-E eligibility as soon as possible after the child is placed in out of home care.

SWOCP will send a copy of the foster care license and documentation of criminal background checks and central registry screenings to the DSS/CPS contract monitor to assure that the foster home is licensed and has the required background checks for licensure.

Limitation: This Program Agreement is limited to children under the legal jurisdiction of the Tribe and shall not affect DSS/CPS's rights and responsibilities concerning children who are in DSS/CPS's care under the jurisdiction of the state court system.

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

SWOCP shall be responsible for submitting a Title IV-E application/information packet for each child in out of home care to DSS/CPS. DSS/CPS shall be responsible for the determination and ongoing re-determination of Title IV-E eligibility, fair hearings and appeals, rate setting and foster care maintenance payments for Title IV-E eligible children based upon the following terms and conditions:

Availability of Federal Financial Participation (FFP): FFP is available for each child:

- 1) who meet the requirements of section 406(a) or 407 of the Social Security Act (as in effect on July 16, 1996) but for his or her removal from the home of a relative specified in section 406(a):
 - a) was the result of 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- Prevention and Reunification Services); or
 - b) occurred pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian; and
- 2) whose placement and care in a foster family home or child care institution (as defined in section 472(c) of the Social Security Act) is the responsibility of SWOCP while this Agreement is in effect and who would have received the federally

funded Aid to Families with Dependent Children (AFDC) under the State plan approved under section 402 of the Social Security 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.

- 3) DSS/CPS shall re-determine the eligibility of each child every twelve months after the case is determined Title IV-E eligible. SWOCPD shall complete and submit the on-going re-determination paperwork to DSS/CPS for a re-determination of eligibility. DSS/CPS shall give SWOCPD at least 30 days written notice prior to the date that on-going redetermination paperwork is due.
- 4) For continued Title IV-E payment for each child, a judicial determination is required that reasonable efforts have been made to finalize permanency within 12 months from the date the child is considered to have entered placement in foster care (original placement date) under the supervision of SWOCPD. This judicial determination is required every 12 months thereafter until the permanency plan is finalized.

ELIGIBLE MAINTENANCE REIMBURSEMENTS

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

- 1) 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, reasonable travel expenses for child visitation with parents, sibling, family, and other significant caretakers, employment related child care for the foster parent; and
- 2) 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 in paragraph 1) above; and
- 3) foster care costs of the child of a minor parent, when that child is placed with his/her minor parent who is a dependent under Tribal Court jurisdiction or in a voluntary placement with SWOCPD, and the payment to the minor parent's foster parent includes the Title IV-E funds for the child of the minor parent.

The adoption support payments are made directly to the adoptive family.

The kinship guardianship assistance payments for relatives taking legal guardianship of children who have been in foster care with the relative are made directly to the relative family.

When Made: Foster care maintenance payments using Title IV-E federal funds are made only on behalf of eligible children who are:

- 1) placed with a licensed foster care provider, regardless if payments are made to such individual or to a Tribe, public or nonprofit private child placement or child care agency; or
- 2) in a child care institution which is licensed and eligible for foster care payments as a family home or group care, regardless if the payments are made to such institution, Tribe, or to a public or nonprofit private child placement or childcare agency. Such payments are limited to include only those items which are included in the term "foster care maintenance payments" (defined in section 475(4) of the Social Security Act).

Limitations and Licensing: Foster care payments shall be made for the care of children in foster family homes, private child care institutions, or public child care institutions accommodating no more than 25 children, which are fully licensed by the state, certified by a Child Placing Agency

licensed by the state or licensed by a Tribe who has established their own (Tribe's) licensing standards for licensing foster homes on the Tribe's Reservation. For Tribes that establish licensing standards for licensing foster homes on the Tribe's reservation, the Tribe shall adopt, maintain and utilize foster care licensing standards that are accepted by the federal Administration for Children and Families as part of the State of South Dakota's Title IV-E plan.

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.

VOLUNTARY PLACEMENTS

Requirements for Voluntary Placement: Foster care maintenance payments from Title IV-E federal funds shall be made in cases of voluntary placement of a minor child placed out of the home by or with the participation of SWOCCP only if:

- 1) placement of the child has been requested by the child's parent or legal guardian; and
- 2) 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 parent(s) or guardian(s), the child, and the SWOCCP while the child is in placement.

Note: A voluntary placement that proceeds to adoption will not qualify for the federal adoption support program unless there has been at least one Title IV-E foster care maintenance payment on the child's behalf during the current out of home placement episode.

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.

Revocation of Voluntary Placement: Revocation shall be in accordance with Tribal law and guidelines.

CASE REVIEW REQUIREMENTS

SWOCCP will provide the case management activities required to meet the service needs of the child and/or the child's family in support of the development of the each child's case plan.

The Tribal court must conduct periodic reviews of the child's case plan. At a minimum, there must be six month periodic reviews and twelve month permanency planning reviews once the child is placed in out of home care.

Case Plan Criteria: To meet the case plan requirements of section 471(a)(16), 475(1), and 475(5)(A) and (D) of the Social Security Act, SWOCCP agrees that the case plan will:

- 1) be a written document that is a discrete part of the case record, that meets the requirements of DSS/CPS, in a format determined by SWOCCP, which is sent to the parents or guardian(s) of the foster child;
- 2) be developed within a reasonable period, but no later than sixty (60) days from the time SWOCCP assumes responsibility for providing services, including placing the child;

- 3) 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;
- 4) include a description of the type of home or institution in which the child is to be placed, and a description of the placement caregiver's responsibilities;
- 5) include a discussion of the safety and the appropriateness (cultural and otherwise) of the placement and of the judicial determination made or to be requested with respect to the child in accordance with section 472(a)(1) of the Social Security Act;
- 6) include a plan for assuring that the child receives safe and proper care, for providing services 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 safe home, or for providing a permanent placement of the child;
- 7) 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;
- 8) include a discussion of the appropriateness of the services that have been provided to the child under the plan;
- 9) 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;
- 10) in the case of a child with respect to whom the permanency plan is adoption or placement in another permanent home, document the steps SWOCP is taking to find an adoptive family or other permanent living arrangement for the child such as placement with an adoptive family, a fit and willing relative, a legal guardian, or another planned permanent living arrangement, and/or to finalize the adoption or legal guardianship. At a minimum, such documentation shall include child specific recruitment efforts used by SWOCP;
- 11) be 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;
- 12) 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;
- 13) if the child has been placed in foster care in a state outside the state in which the child's parent(s) are located, assure that an authorized caseworker from either that state or another Tribe visits the foster home or institution no less frequently than every six (6) months and submits a report as requested to the Tribe;
- 14) assure that the permanency hearings determine whether an out-of-state placement continues to be appropriate and in the best interest of the child;
- 15) to the extent available and accessible, incorporate the health and education records of the child, and provide the information to the child's care provider including:
 - a) the names and addresses of the child's health and educational providers;
 - b) the child's grade level performance;
 - c) the child's school record;

- d) 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;
- e) a record of the child's immunizations;
- f) the child's known medical problems;
- g) the child's medications; and
- h) any other relevant health and education information concerning the child determined to be appropriate by SWOCP.

16) Provide that a child's health and education record (as described in #15 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.

Permanency Planning Review Criteria: SWOCP shall implement a case review system which meets the requirements of section 475(5) of the Social Security Act and assures that a Tribal Court review of the status of each 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 Section 9.05, in order to:

- 1) review the placement and plan for assuring that the child receives safe and proper care;
- 2) determine the continuing need for and appropriateness of the placement;
- 3) determine the extent of compliance with the case plan;
- 4) determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement;
- 5) project a likely date by which the child may be returned and safely maintained at home or placed for adoption or legal guardianship;
- 6) 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
- 7) 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.

The Permanency Planning Review shall include an update of the child's Health and Education Record.

SWOCP shall give a copy of the case plan to the child's care provider. The section of the case plan regarding services offered to the parent(s) can be limited for confidentiality reasons.

PERMANENCY HEARING, PROCEDURAL SAFEGUARDS

When Required: A Permanency Hearing must be held for each child in foster care under the responsibility of SWOCP if the child placed by SWOCP receives Federal Title IV-E foster care maintenance payments. To meet this requirement, the hearing must take place within (twelve) 12 months of the date the child is considered to have entered foster care (as defined in Section 9.05) and not less frequently than every twelve (12) months thereafter during the continuance of foster care. **If a twelve (12) month permanency hearing is not held, the State will notify SWOCP that the child is no longer eligible for Title IV-E funding and Title IV-E funding will not be reinstated until a permanency hearing is held.**

Determination: For the purposes of this requirement, a Permanency Hearing shall determine the permanency plan for the child that includes whether, and if applicable when:

- 1) the child will be returned to the parent;
- 2) the child will be placed for adoption and SWOCP will file a petition for termination of parental rights; or
- 3) the child will be placed in a custom [customary] adoption that gives the child a *permanent parent-child relationship with someone other than child's birth parents even though the child's birth parents' parental rights are not terminated*; or
- 4) the child will be referred for legal guardianship or, in cases where SWOCP has documented to the satisfaction of the Tribal Court a compelling reason for determining that it would not be in the best interests of the child to return home and that *termination of parental rights and/or guardianship are not appropriate, the child may be placed in another planned permanent living arrangement by determination of the Tribal court.*

The following are examples of compelling reasons:

- (i) The case of an older teen who specifically requests that emancipation be established as his/her permanency plan;
- (ii) The case of a parent and child who have a significant bond but the parent is unable to care for the child because of an emotional or physical disability and the child's foster parents have committed to raising him/her to the age of majority and to facilitate visitation with the disabled parent; or
- (iii) SWOCP has identified another planned permanent living arrangement for the child.

In cases where the child is placed out of state, the Tribal court shall also determine whether the placement continues to be in the best interest of the child.

In the case of a child who has attained age (16) sixteen, the Tribal court shall determine the services needed to assist the child to make the transition from foster care to independent living.

Procedural Safeguards:

As procedural safeguards, SWOCP shall notify the parents:

- 1) when a hearing before the Tribal Court is scheduled;
- 2) when their child is moved from one placement to another; or
- 3) *of any determination affecting their visitation rights.*

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 the date, time, and location of any review or hearing to be held with respect to the child, and an opportunity to be heard, except that 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.

PREVENTIVE AND REUNIFICATION SERVICES

Reasonable Efforts: 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. When making reasonable efforts, the child's health and safety shall be the paramount concern. In any case in which the agency

supervising the placement of the child is required pursuant to the Indian Child Welfare Act (ICWA), 25 USC 1912(d), to make active efforts to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family, the reasonable efforts requirements of this Program Agreement shall be construed in a manner consistent with the active efforts requirement of ICWA.

Consistency with Permanency Plan: If continuation of reasonable and active efforts to reunify is determined to be inconsistent with the permanency plan for the child, reasonable and active 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.

When Reasonable and Active Efforts Are Not Required: Reasonable and active efforts to make it possible for a child to be returned to his or her home, as described in section 471(a)(15)(B) of the Social Security Act and (ICWA), 25 USC 1912(d), 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:

- 1) has subjected the child to aggravated circumstances (as defined by the applicable law, which definition may include but need not be limited to abandonment, torture, chronic abuse, or sexual abuse);
- 2) committed murder (which would have been an offense under section 1111 (a) of Title 18, United States Code, if the jurisdiction of the United States) of another child of the parent;
- 3) committed voluntary manslaughter (which would have been an offense under section 1112(a) of Title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;
- 4) has aided or abetted, attempted, conspired, or solicited to commit a murder or a voluntary manslaughter;
- 5) has committed a felony assault that results in serious bodily injury to the child or another child of the parent; or
- 6) has had his or her parental rights to a sibling terminated involuntarily.

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

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

Calculating When a Child Enters Foster Care: A child shall be considered to have entered foster care on the original placement date which is defined as the beginning date for the most current, unbroken out-of-home placement on which the child was legally removed from the custody of the parents or legal guardians via court order or written voluntary placement agreement. This is the date that SWOCP has been given physical custody of the child.

TERMINATION OF PARENTAL RIGHTS

When Required; Exceptions: SWOCP – 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 – 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:

- 1) the child is being cared for by a relative; or
- 2) SWOCP 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
- 3) SWOCP has not provided the family of the child, consistent with the time period in the SWOCP's case plan, such services as SWOCP 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.

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

Tribal Standards: Parties recognize and agree that the SWOCP may establish and maintain standards for foster family homes, adoptive homes, and childcare institutions for children under the jurisdiction of the Tribe. The standards shall be reasonably in accord with standards recommended by national organizations concerned with standards for such institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights and shall be applied by the SWOCP to all foster family homes, adoptive homes, or childcare institutions receiving funds under Title IV-E pursuant to this Program Agreement. The SWOCP shall adopt, maintain and utilize foster care licensing standards that are accepted by the federal Administration for Children and Families as part of the State of South Dakota Title IV-E plan. Criminal background checks are required as a condition for licensure in accordance with federal regulation (42 USC 671(A)(20)). *See page 18 for complete description.*

1. Central Registry screening for anyone in the household 10 years of age or older.
2. Criminal background check for anyone living in the home that is 18 years of age or older. This includes completing criminal background checks on those members of the household who have turned 18 since the initial or renewal licenses were issued.
 - a. Fingerprint based criminal record check completed by the Division of Criminal Investigation (DCI) which results in documentation (either a letter from the DCI, or a copy of the rap sheet) indicating there is no criminal history that would prevent the individual from being licensed.
 - b. Fingerprint based criminal record check completed by the FBI which results in a letter from CPS State Office signed by Division Director indicating the applicant meets criteria for licensing under the state statute.
 - c. Sex Offender Registry conducted on anyone 15 years of age or older in the household. While not required for federal reviews, it is a state law (SDCL 26-6-14.11.) and should be in the licensing files.

SWOCP has the authority to license foster homes located within the boundaries of the Sisseton Wahpeton Indian Reservation. For purposes of this agreement, the SWOCP may license individuals who are members of the Sisseton Wahpeton Oyate or are eligible for

membership in the Sisseton Wahpeton Oyate, and members of other federally recognized Tribes or are eligible for membership.

SAFEGUARDING/MAINTAINING INFORMATION AND RECORDS RETENTION

Confidentiality: SWOCP must have safeguards restricting use of or disclosure of confidential information concerning individuals assisted under the Title IV-E plan that meet the standards set forth in 42 U.S.C. sec. 671 (8).

All subpoena's from Tribal Court to your office need to be funneled through DSS-CPS before any information is released, prior to the signing of the contract, so a determination can be made whether the information is a work product of the Department of Social Services, Division of Child Protection Services and requires legal review.

FACIS information belongs to the State of South Dakota and any release of information outside the confines of the Division of Child Protection Services, tribal child welfare programs or any other agencies that have access to FACIS must abide by strict confidentiality standards.

Foster Care Licensing Records: SWOCP must maintain the licensing records for each foster family homes, adoptive homes, or childcare institutions receiving state or Title IV-E funds. SWOCP shall maintain closed foster care licensing files for 6 (six) years from the date the license expired or was withdrawn. For revoked or denied foster care licensing files, SWOCP must maintain the records indefinitely due to future liability issues if the foster home or facility obtained a license at a later date.

Record Maintenance: SWOCP will maintain all IV-E tribal records pertaining to Title IV-E eligibility and maintenance payments for the entire time period for which a child is in out-of-home care, and a minimum of four (4) years after the child has left care.

REPORTING REQUIREMENTS

Child Abuse Reporting: SWOCP has exclusive jurisdiction to investigate allegations of child abuse or neglect occurring in a foster home licensed by the Tribe.

SWOCP shall notify the Department contact for licensing of SWOCP approval or termination of any foster care license.

SWOCP will also notify the Department of any founded allegation of child abuse or neglect occurring in a foster home licensed by SWOCP. SWOCP agrees to provide this information in order to participate with other child welfare providers in an attempt to keep central records within the State of South Dakota on individuals who care for or who seek to care for children. The information maintained by the Department will be kept confidential according to South Dakota State law.

DHHS Review: SWOCP and DSS/CPS acknowledge that the federal Department of Health and Human Services (DHHS) and DSS/CPS conduct periodic reviews of state agencies that receive and distribute Title IV-E funds, and that DHHS and DSS/CPS require 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 through SWOCP will make available for review by DHHS or DSS/CPS personnel the case file and provider files on the children in foster care under the jurisdiction of the Tribe whose foster care providers receive Title IV-E funds. The files shall at all times remain the property of the SWOCP and shall be returned to the SWOCP immediately upon completion of the review process.

Technical Assistance: The parties further agree that SWOCP may request DSS/CPS's technical assistance in assuring that the case files contain the proper documentation.

Reports: SWOCCP will make reports in such form and containing such information on the Tribe's Title IV-E program as is required by either the DSS/CPS or DHHS.

Verification: SWOCCP will comply with such provisions as the DHHS and DSS/CPS may from time to time find necessary to assure the correctness and verification of such reports.

PROCEDURES FOR PAYMENTS

DSS Eligibility Worker: DSS shall designate staff within DSS to be the eligibility worker for Title IV-E foster care payment applications made by SWOCCP pursuant to this Agreement, and will notify SWOCCP in writing of that designated staff.

Required Documentation:

1. SWOCCP shall complete the required eligibility packet for each child's Title IV-E determination. This paperwork shall be submitted to the person within DSS who has been designated as the DSS eligibility worker dealing with claims from SWOCCP.
2. SWOCCP shall complete the required AFCARS reporting for each child that comes within the jurisdiction of the Tribe and enter into FACIS.
3. SWOCCP shall complete and submit administrative and training summary claim reports and worksheets as provided by the state on a quarterly basis.

Foster Care Maintenance Payments on Behalf of a Child: If the DSS eligibility worker determines that the child is eligible for such foster care, DSS/CPS shall make foster care maintenance payments directly to service providers.

Retroactive Eligibility: Any funds collected based upon retroactive eligibility that impacts the SWOCCP administration or training claim will be reimbursed to SWOCCP.

Adoption Assistance: When a child is legally free for adoption law, the caseworker shall notify the DSS/CPS worker, who will refer the case for review to determine if adoption assistance is appropriate.

The adoption assistance payments are made directly to the adoptive parent and not through SWOCCP.

Guardianship Assistance Program (GAP): When a child is eligible for GAP, the caseworker shall notify DSS/CPS State Office, who will make the determination if GAP payments are appropriate.

The GAP payments are made directly to the relative kin and not through SWOCCP.

FINANCIAL RESPONSIBILITY

The Office of Child Support shall be notified by DSS/CPS of children placed into out of home care in accordance with federal regulations.

TRUST ACCOUNTS

All income that is not exempt from Title IV-E resource/asset calculations (e.g., child support, SSI, SSA, Veterans) will be accounted for by DSS/CPS. SWOCCP shall inform DSS/CPS of any income received by the child or by a caretaker on behalf of a child so that a trust account for the child may be established. Trust accounts may reduce the federal claim and state match.

REFERRALS TO PSYCHIATRIC RESIDENTIAL TREATMENT

The South Dakota Medicaid Program was informed by the Centers for Medicaid and Medicare Services(CMS) that effective July 1, 2007 Medicaid will no longer be a funding source for treatment in group care facilities. Medicaid will only be allowed as a funding source for treatment provided in accredited Psychiatric Residential Treatment Facilities (PRTF).

This change does **not** affect Medicaid funded placements at Children's Care Hospital and School (CCHS) or Adjustment Training Centers.

The facilities listed below are already certified as PRTF's or in the process of becoming accredited and will be the only facilities where Medicaid will be a funding source after July 1, 2007:

- Abbott House – Mitchell
- Our Home Parkston – Parkston
- Our Home ASAP – Huron
- Canyon Hills – Spearfish
- Summit Oaks I – Sioux Falls
- Summit Oaks II – Sioux Falls
- Aurora Plains Academy – Plankinton
- Children's Home Society – Black Hills and Sioux Falls

For youth eligible for PRTF the approval process will involve a two prong review. The first review will be a level of care review and will be completed by the State Review Team (SRT). The second portion of the review will be a medical necessity review and will be completed the by the Peer Review Organization (PRO), SD Foundation of Medical Care. The referral process is outlined below for use when referring a child to a PRTF level of care:

- The referring party submits the referral form and supporting documentation to Judy Hoscheid for review by the State Review Team (SRT);
- If approved for PRTF level of care, the documentation is then sent to the PRO for medical necessity review (the documentation is submitted directly to PRO by the SRT);
- If approved for PRTF medical necessity, PRO will give approval to the PRTF with a copy to the referring party;
- The PRTF will be responsible to obtain a continued stay approval from PRO.
- Attachments included in this e-mail: Eligibility Criteria; SD PRTF referral form.

The payment structure will also be changing in the PRTF level of care. Currently the referring school district or agency is responsible for both the tuition and maintenance rate for a child placed in a residential or group home. After this change however, the maintenance rate will be included in the Medicaid treatment rate therefore the child's school district will only be responsible for the tuition.

The address to be utilized when submitting a referral for a PRTF facility is:
Judy Hoscheid, DSS SRT
700 Governors Drive
Pierre, South Dakota 57501

The contact person is for referrals to Psychiatric Residential Treatment facilities is Judy Hoscheid. She can be reached at 773-3448 regarding referrals and questions.

REFERRAL PROCESS FOR PYSCHIATRIC RESIDENTIAL TREATMENT

The Referring Agency/Person

- Makes contact with Psychiatric Residential Treatment Facility (PRTF) to review the record for acceptance determination;
- Submits referral form with recommended facility identified and supporting documentation to State Review Team (SRT);

State Review Team (SRT)

- SRT completes the Level of Care (LOC) determination via a weekly conference call meeting scheduled every Monday (Tuesday if Monday holiday); Emergency cases may be handled via an e-mail review by SRT;
- SRT notifies the Peer Review Organization (PRO) of referral and LOC determination via e-mail and file director.

Peer Review Organization (PRO)

- Determines medical necessity of case;
- PRO notifies facility and referring agency of approval via phone and follow-up fax;
- PRO assigns an authorization number

Psychiatric Residential Treatment Facility (PRTF)

- The treating PRTF sends monthly progress notes to referring agency.

Psychiatric Residential Continued Stay Reviews

To assure continued Medicaid funding, the treating PRTF is responsible to obtain the continued stay authorization within the time frame assigned by PRO;

For the continued stay review the PRTF must:

- **Submit documentation to:**
 - PRO via Fax or Mail;
 - Referring agency via
 - **Documentation:**
 - South Dakota Continued Stay Review Form Psychiatric Services Under 21;
 - Monthly progress reports since the last review (for PRO);
 - Other supporting documentation necessary to complete the continued stay review.
- PRO notifies facility and the referring agency of continued stay authorization .
- PRO assigns an authorization number .

Discharge Planning

PRTF and referring agency begin discharge planning on admission and make plans for transition to lower level of residential or community based and discharge as PRO determines the psychiatric treatment is no longer medically necessary.

ELIGIBILITY CRITERIA FOR PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY LEVEL OF CARE:

To be eligible to receive services in a Residential Treatment Center or Intensive Residential Treatment Center:

- The individual is under the age of 21;
- The individual is eligible for medical assistance under Article 67:46;
- Documentation supports a finding that the individual requires intensive professional assistance and therapy for behavioral or emotional problems in a highly structured, self contained environment;
- Based on medical documentation the individual is certified to require the PRTF level of care by a two level review process:

- The State Review Team has determined that the individual requires the level of care provided in a PRTF or IPRTF and that the services cannot be provided in an outpatient care setting, or lower level of residential treatment; and .
- The PRO has determined that the services the individual requires are medically necessary at the PRTF level of care, has approved the individual's admission and has certified that:
 - Ambulatory Care resources available in the community do not meet the treatment needs of the individual;
 - Proper treatment of the individual's mental illness condition requires services on an inpatient basis under the direction of a physician; and
 - The services can reasonably be expected to improve the individual's mental health or prevent further regression so that the services shall no longer be required.
- The recipient must be certified to have a diagnosis of a psychiatric disorder classified as a DSM– IV diagnosis from one of the following diagnostic categories;
 - 295 - Schizophrenia;
 - 296 - Episodic Mood disorder
 - 297 – Delusional
 - 298 – Other non-organic
 - 300 – Neurotic disorder
 - 301 - Personality Disorder
 - 307 – Special symptoms or syndromes (anorexia / tics)
 - 308 – Acute reaction to stress
 - 309 – adjustment Reaction
 - 311 – Depressive Disorder
 - 312 – Disturbance of conduct
 - 313 – Disturbance of emotions
 - 314 – Hyperkinetic syndrome of childhood (ADD, ADHD, conduct disorder); and

Be experiencing problems related to the DSM IV disorder in one of the following categories:

- a. Self care deficit placing recipient at risk for self harm:
 - Deficit severe and/or long standing enough to prevent community setting placement;
 - Deficit placing the individual in a life threatening physiological imbalance without skilled intervention.
- b. Impaired Safety: The individual is exhibiting behaviors that present a threat to the welfare of himself or others as evidenced by one of the following:
 - Threat to self to others (verbalization or gestures);
 - Continued suicidal/homicidal ideation with plan of intent and/or violent/aggressive behaviors requiring seclusion or restraints;
 - Presenting symptoms severe enough to warrant residential treatment under the direction of a physician; and
 - Verbal, physical and/or sexually aggressive behavior that poses a potential danger to self/others; or
 - Conduct and/or anti social behaviors of such severity that it places them or society at risk.
- c. Impaired thought process: Inability to perceive/validate reality to extent that child cannot negotiate basic environment or participate in family/school life:
 - Disruption of safety to self, family, peer or community group;
 - Impaired reality testing sufficient to prohibit participation in community educational alternative;
 - Individual is not responsive to outpatient trial of medication or supportive care;

- Individual requires inpatient diagnostic evaluation to determine treatment needs.

d. Severely dysfunctional patterns: Family, environment, or behavioral processes placing child at risk:

- Documentation of family environment escalating symptoms or placing child at risk;
 - Family situation non-responsible to outpatient or community resources and interventions;
 - Escalation of instability or disruption;
 - Severe behavior prohibits participation in lower level of care; or
- History of previous psychiatric diagnosis and posing an imminent danger to self and/or others; or
 - In the absence of an identified DSM-IV diagnosis, the individual must be exhibiting behaviors that presents an imminent danger to self and/or others as evidenced by one of the following:
 - Symptoms severe enough to warrant residential treatment under the direction of a physician; and
 - Aggressive behavior that poses a potential danger to self/others; or Recipient is exhibiting conduct and/or anti social behaviors of such severity that it places them or society at risk.

STATE PLAN FOR FOSTER CARE AND ADOPTION ASSISTANCE

Social Security Act Sec. 471. [42 U.S.C. 671] (a) In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which under section (20)(A) provides procedures for criminal records checks, including fingerprint-based checks of national crime information databases (as defined in section 534(e)(3)(A) of title 28, United States Code^[182]), for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the State plan under this part, including procedures requiring that—

(i) in any case involving a child on whose behalf such payments are to be made in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and

(ii) in any case involving a child on whose behalf such payments are to be made in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted; and

(B)^[183] provides that the State shall—

(i) check any child abuse and neglect registry maintained by the State for information on any prospective foster or adoptive parent and on any other adult living in the home of such a prospective parent, and request any other State in which any such prospective parent or other adult has resided in the preceding 5 years, to enable the State to check any child abuse and neglect registry maintained by such other State for such information, before the prospective foster or adoptive parent may be finally approved for placement of a child, regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the State plan under this part;

(ii) comply with any request described in clause (i) that is received from another State; and

(iii) have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the State, and to prevent any such information obtained pursuant to this

subparagraph from being used for a purpose other than the conducting of background checks in foster or adoptive placement cases; and

(C) ^[164] provides procedures for criminal records checks, including fingerprint-based checks of national crime information databases (as defined in section 534(e)(3)(A) of title 28, United States Code), on any relative guardian, and for checks described in subparagraph (C) of this paragraph on any relative guardian and any other adult living in the home of any relative guardian, before the relative guardian may receive kinship guardianship assistance payments on behalf of the child under the State plan under this part;