

TRIBAL-STATE JOINT POWERS AGREEMENT FOR
FOSTER CARE AND ADOPTION ASSISTANCE PAYMENTS
UNDER TITLE IV(E) OF THE
SOCIAL SECURITY ACT

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**TRIBAL-STATE JOINT POWERS AGREEMENT FOR
FOSTER CARE AND ADOPTION ASSISTANCE PAYMENTS UNDER TITLE IV(E)
OF THE SOCIAL SECURITY ACT**

THIS AGREEMENT is entered into this _____ day of _____,
20__, by and between the CHILDREN, YOUTH AND FAMILIES DEPARTMENT
("CYFD") of the State of New Mexico (the "Department") and the
Navajo Nation (the "Nation").

W I T N E S S E T H:

I. RECITALS

WHEREAS, the State of New Mexico (the "State") receives federal funds through Title IV(E) of the Social Security Act, 42 U.S.C. §§ 670-679 ("Title IV(E)") and provides state matching funds to make foster care maintenance and adoption assistance payments on behalf of eligible children within the State; and

WHEREAS, the Department is authorized to administer Title IV(E) funds and enter into agreements under the Title IV(E) State Plan (attached hereto as Exhibit A) filed with the United States Health and Human Services Department and NMSA 1978 §§ 9-2A-7 and 9-2A-8 to assist the Department in administering and enforcing the laws with which it is charged; and

WHEREAS, there are children residing within the Navajo Nation who are or may become eligible for such foster care and adoption assistance payments; and

WHEREAS, the Nation maintains jurisdiction, custody, and supervision over certain children within the Nation; and

WHEREAS, the Department and the Nation recognize that Navajo children are citizens of the State and further recognize the need to coordinate their efforts with respect to these children to ensure that the Title IV(E) payments and care these children receive is in accordance with the federal standards set forth in Title IV(E); and

WHEREAS, the Department is empowered to enter into cooperative agreements with Indian Nations pursuant to the Joint Powers Agreement Act, NMSA 1978, §§ 11-1-1 to 11-1-7; and

WHEREAS, the Nation, as a sovereign government, has the inherent authority to enter into this agreement with the Department; and

WHEREAS, consistent with the Government-to-Government Policy Agreement entered into by the State and the Indian Pueblos of New Mexico, dated July 8, 1996, the interactions between the State and the Nation are predicated on a government-to-government relationship and carried forward in a spirit of cooperation, coordination, communication, and good will;

NOW, THEREFORE, the parties agree as follows:

II. PURPOSE

The purpose of this agreement is to establish a protocol for accessing federal and state matching funds and for meeting federal requirements associated with those funds under Title IV(E) for eligible children in Nation custody.

III. ADMINISTERING AGENCY

The administering agency is Children, Youth and Families Department of the State of New Mexico.

IV. CONTACT PERSONS

Unless otherwise stated, the appropriate contact person for the State of New Mexico for any matter pertaining to this agreement shall be:

Jeff Thompson, Manager Title IV(E)
Children, Youth and Families Department
P.O. Drawer 5160
Santa Fe, NM 87504
(505) 827-8427
FAX: (505) 827-8480

For other matters regarding child welfare questions, the Nation may contact the local County office of the Protective Services Division.

The appropriate contact person for the Nation shall be:

Cecilia Belone, Director SSD
Navajo Nation
PO Box 1926
Window Rock, AZ 86515
(520) 871-6183
Fax: 520-871-_____

The Nation shall contact the above designated individual for the State, and the State Title IV(E) staff shall contact the above designated individual for the Nation when either party has any program questions related to this agreement. Unless otherwise specified, all notices required under this agreement shall be sent to the above contact persons.

V. DEFINITIONS

A. "COM" as used in Exhibit D § 1105.4 means County Office Manager of the CYFD Department.

B. "Disallowance" means a decision by the federal Department of Health and Human Services that funds expended under this agreement do not comply with federal law, regulations, or policy.

C. "Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services" means preventive health care services that are required for Medicaid eligible children and adolescents under 21 years of age. Through EPSDT, screening and diagnostic services are provided to identify physical or mental conditions which require further treatment. This program is also known as Tots to Teens.

D. "Good Cause" means, for termination of this agreement, a substantial reason that cannot be corrected by amendment to this agreement. For example, the following constitute good cause to terminate this agreement: termination of the Title IV(E) program by the federal government, blatant and repeated non-compliance with the terms of this agreement or with the Title IV(E) requirements,

or a substantive change in federal law or policy which the parties to this agreement cannot accommodate by amendment of this agreement.

E. "Health Maintenance Organization (HMO)" means a company that hires hospitals, doctors, and other medical personnel to take care of an individual who may be sick or in need of medical care that will help the individual stay well. When enrolled in a Managed Care program, the enrolled individual must go to the hospital, doctor, and other medical providers as directed by the HMO. Prior approval must be obtained from the HMO before scheduling a medical appointment.

F. "Informal Process for Recoupment" means that in the event of an overpayment by the Department to the foster parent(s), the Nation agrees to assist the Department in recovering the monies as follows: Initially, the Nation, after notice from the Department, will notify the foster parent(s) who received the overpayment, verbally and in writing, that the overpayment must be returned to the Department within thirty (30) days. If the foster parent(s) fails to return the overpayment, appropriate action shall be taken in accordance with § VI. A(8).

G. "Managed Care" means the method developed to manage medical care cost by reimbursement for medical services through capitation rather than fee for service to an at risk Managed Care entity (HMO). Medicaid eligible children must be enrolled in the

Managed Care program by selection of a HMO provider unless they have requested and are eligible to opt out of the program.

H. "Overpayment" means that amount of a Title IV(E) foster care payment that was provided to a foster care provider for which they were not entitled. For example, a foster care payment that was provided to a foster parent for a child that no longer lived in the foster home.

I. "Primary Care Network Restrictions" means those restrictions that are imposed by the Medicaid program, which limit the choice of health care providers to those that have been approved by the Medicaid program.

J. "Reasonable Technical Assistance" means that assistance that will be provided by CYFD Title IV(E) Specialist staff concerning compliance with Title IV(E) requirements. It will include training Nation staff on documentation, submission of required documentation for reimbursement, review of case records to ensure Title IV(E) documentation and follow-up on any Title IV(E) foster care payment problems.

K. "Service Date" means the date of initial placement in foster care.

L. "Surplus Funds" means those foster care overpayments that are returned to the Nation and which shall be forwarded to CYFD.

M. "Nation Custody" means the care, control and maintenance of a child which is granted by the Nation court to a parent, foster

parent, guardian, or extended family member according to the placement criteria and preference of the Nation.

N. "Underpayment" means that amount of a Title IV(E) foster care payment that was not provided to a foster care provider for which they were entitled. For example, a foster care payment that did not cover the full time period that a foster child was in the foster home.

O. "Utilization Review Procedures" means the required pre-review procedure that must be followed to determine a child's level of care needed to ensure appropriate placement of a child in a medical care facility such as a certified residential treatment facility or group home (when they are exempt from Managed Care). This utilization review is provided by CYFD Prevention and Intervention Division for all residential treatment and group home facilities. Utilization reviews for hospitalization is provided through the Medicaid provider.

VI. CONDITIONS CONCERNING PAYMENTS

A. Foster Care Payments

1. The Department agrees to make payments to the foster parent(s) as established by the Department's policies and procedures and rates (attached hereto as Exhibit "B" and

incorporated herein by reference). The Department will pay the entire foster care payment for the Title IV(E) eligible children only, which payments shall include the State's matching portion. If the child loses Title IV(E) eligibility, then the Title IV(E) foster care payments shall cease.

2. On the last working day of each month the Nation shall submit by FAX to the State Contact Person an alphabetical listing by child's name of those children who are then eligible for Title IV(E) payments to the Department for approval using the billing form attached hereto as Exhibit C. The billing form shall include information on where the child is currently placed.

3. The Nation agrees to certify on the billing form to the accuracy of all documentation in support of the Title IV(E) eligible children in Nation custody.

4. Payments shall be made to the foster parent(s) via the Department's computer system.

5. The Nation, on behalf of the child in Nation custody, agrees to apply for any monetary benefits to which the child may be entitled; for example: third party insurance payments, survivors benefits, child support, Veterans Administration benefits, and Supplemental Security Income, etc. If the child is determined eligible for any such benefits, the Nation shall immediately notify the Department and redetermine whether the child is eligible for continued Title IV(E) payments.

6. In the event of an underpayment by the Department to the foster parent(s), the correction shall be made on the next billing.

7. In the event of an overpayment by the Department to the foster parent(s), the Nation agrees to reimburse the Department for the overpayment and the Department agrees to assign its claim for recoupment of the overpayment to the Nation.

B. Adoption Assistance Payments. Any child who is eligible for Title IV(E) foster care payments and who has a permanency plan of adoption is eligible for Adoption Assistance Subsidy payments upon signing of the adoption assistance agreement (as defined in 42 U.S.C. § 675(3)). Procedures and the necessary forms for obtaining such payments are attached hereto as Exhibits D, and E. The required documents shall be sent to the Title IV(E) Central Adoption Unit (CAU) subsidy specialist (Ms. Emily Garcia, CAU Adoption Specialist, Children Youth & Families Department, P.O. Drawer 5160, Santa Fe, NM 87504, Phone: (505) 827-8413) for processing, certification, and approval.

C. Contingency; Availability of Funds. Payments pursuant to this agreement, whether in whole or in part, are subject to and contingent upon the continuing availability of federal funds. In the event that said funds become unavailable, the Department may terminate this agreement according to § XX or amend it according to § XXI of this agreement.

D. Conflict Resolution

1. The Nation will make repayment of any Title IV(E) funds expended by the Department on behalf of any child subject to the jurisdiction and authority of the Nation to which the federal agency (Health and Human Services) takes exception and requests reimbursement through a disallowance, provided that, and only to the extent that, such disallowance is based upon the acts or omissions of the Nation which violate applicable federal statutes and/or regulations.

2. If the Department becomes aware of circumstances that might jeopardize continued federal funding, the situation shall be reviewed and reconciled by the Nation and State Title IV(E) staff on a case-by-case basis. If the matter cannot be reconciled it shall be presented to a mutually agreed upon panel of Nation and Department officials on a case-by-case basis. If reconciliation is not possible, both parties shall present their views in writing to: Mr. Leon R. McCowan, Regional Administrator, Administration for Children & Families, U.S. Department of Health and Human Services, 1301 Young Street, Dallas, TX 75202, (Attention: Mr. Joe Woodard, Office of State and Tribal Programs), who shall determine whether continued payment shall be made on behalf of the case(s) affected.

3. Any disputed issues that remain unresolved at the end of the process described in ¶ 2 above shall be submitted to

arbitration as outlined in the November 26, 1991 Memorandum on Dispute Resolution from the Office of the Attorney General of New Mexico (see arbitration provisions below). Arbitration shall not be invoked until the administrative procedures described in ¶ 2 above have been exhausted. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Nation or the State of New Mexico, subject to the limitations and immunities of the New Mexico Tort Claims Act.

ARBITRATION PROVISIONS:

SECTION ONE - MATTERS TO BE SUBMITTED TO ARBITRATION:

All disputes and controversies of every kind and nature between the parties to this agreement as to the existence, construction, validity, interpretation or meaning, performance, non-performance, enforcement, operation breach, continuance, or termination of this agreement shall be submitted to arbitration pursuant to the procedure set forth herein.

SECTION TWO - PROCEDURE:

A. Either party may demand such arbitration in writing, which demand shall include the name of the arbitrator appointed by the party demanding arbitration, together with a statement of the matter of controversy.

B. Within 20 days after such demand, the other party shall name its arbitrator, or in default of such naming, such arbitrator shall be named by the American Arbitration Association, and the two arbitrators so selected shall name a third arbitrator within 20 days or, in lieu of such agreement on a third arbitrator by the two arbitrators so appointed, a third arbitrator shall be appointed by the Federal District Court for the District of New Mexico. In the event said Court fails to appoint a third arbitrator within 30 days of the request therefor, the appointment shall be made by the American Arbitration Association.

C. The arbitration costs and expenses of each party shall be borne by that party and all arbitrators' fees and other expenses shall be borne equally by both parties.

D. The arbitration hearing shall be held at such time and place as designated by the arbitrators on at least 20 days' written notice to the parties.

E. An award rendered by a majority of the arbitrators appointed pursuant to this agreement shall be final and binding on all parties to the proceeding, and the parties hereto agree to be bound by such award.

F. As to any procedures regarding the conduct of the arbitration that are not specified either in this agreement or in another written agreement signed in advance of the hearing,

the parties shall follow the Commercial Arbitration Rules of the American Arbitration Association.

SECTION THREE - ARBITRATION AS BAR TO SUIT:

A. The parties stipulate that the arbitration provisions of this agreement shall be a complete defense to any suit, action, or proceeding instituted in any federal, state, or tribal court or before an administrative tribunal with respect to any controversy or dispute arising during the period of this agreement and which is arbitratable as set forth in this agreement.

B. The arbitration provisions of this agreement shall, with respect to such controversy or dispute, survive the termination or expiration of this agreement.

SECTION FOUR - LACK OF ARBITRATORS' AUTHORITY TO MODIFY AGREEMENT:

Nothing contained in this agreement shall be deemed to give the arbitrators any authority, power, or right to alter, change, amend, modify, add to, or subtract from any of the provisions of this agreement.

SECTION FIVE - ENFORCEMENT:

Failure by either party to arbitrate any dispute pursuant to the procedure set forth herein when a demand to do so has been made by the other party or failure by either party to comply with the arbitration award shall amount to a material breach

of this agreement and shall entitle the party who demanded arbitration to cease performance of any obligation set forth in this agreement at the sole discretion of that party.

SECTION SIX--NON-APPLICABILITY OF UNIFORM ARBITRATION ACT:

This agreement is not subject to enforcement under the Uniform Arbitration Act (NMSA 1978, Sections 44-7-1 through 44-7-22).

VII. DAY TO DAY OPERATIONS

A. Referrals For Payments

1. When the Nation Court awards custody of a child to the Nation due to abuse or neglect and foster care placement is made in a Nation approved foster home (or, if no Nation foster home is available, a Department approved foster home), the Nation shall make a referral for payments to the Title IV(E) Specialist if the Nation believes that the child is eligible for Title IV(E) payments.

2. The referral shall include the completed forms attached as Exhibits G, H, I, J, and K, which forms are attached hereto (**note** that if the child has special needs, as set out in Exhibit L, the referral should include the completed Request For Special Needs Certification, which is attached as part of Exhibit M); a copy of the court order; the case plan as defined in 42 U.S.C. § 675(1) see Exhibit N; a copy of the child's birth certificate and Social Security card; and the name and address of the child's placement with a copy of the foster home license.

B. Status of Referrals

1. The Department shall determine Title IV(E) eligibility based upon the information received with the referral.

2. The Title IV(E) Specialist shall notify the Nation, within 15 days of receipt of the referral, of the status of the referral by sending a copy of the Title IV(E) determination form with one of the following notations:

The information is complete, the child is eligible and the Nation can expect Medicaid eligibility and foster care payments to commence pursuant to the Title IV(E) Joint Powers Agreement.

-OR-

The following additional information is required to determine the child's Title IV(E) eligibility: (Note: The Title IV-E Specialist shall list the additional information needed).

-OR-

The information is complete but the child is not eligible for Title IV(E) payments for the following reasons: (Note: the Title IV-E Specialist will list the reason why the child is ineligible).

C. Effective Date of Payments. If the child was receiving AFDC (TANF) payments at the time of removal from the home, the effective date of payment shall be on the first day of the month following the adjudication of abuse or neglect or the closure of the AFDC (TANF) grant, whichever is earlier. If the child was not receiving AFDC (TANF) payments at the time of removal from the

home, the effective date of payments shall be the date of placement in foster care.

D. Notice of Changes. The Nation shall provide verbal notification to the Department within 48 hours and written notification to the Department within 5 working days after becoming aware of any changes in the child's circumstances which might affect continued eligibility for Title IV(E) benefits.

E. Redeterminations. The Nation shall redetermine the child's eligibility for Title IV(E) benefits at six-month intervals. At the time of such redetermination, the Nation shall complete the Title IV(E) Eligibility and Redetermination Checklist (attached as Exhibit G), send a copy of the completed form to the Department, and file the original completed form in the child's case record.

F. Medicaid Coverage

1. New Mexico Medicaid cards for children in Nation custody who have been certified as eligible for Title IV(E) benefits shall be sent to the foster parent(s). If the child's placement is changed, the Nation Social Worker shall give the current Medicaid card to the child's new foster parent(s).

2. The Nation shall immediately notify the Department of changes in placement so that computer updates can be made. The Medicaid card will be sent by the Department to the new foster parent(s) the following month.

3. All Medicaid eligible clients are subject to Medicaid procedures: primary care network restrictions, HMO and Managed Care requirements, utilization review procedures, and EPSDT screen requirements.

G. Technical Assistance

1. The Department shall provide reasonable technical assistance to the Nation to comply with federal law, policy and regulations for fiscal accountability, program operations, reporting procedures and to comply with the terms and conditions of this agreement.

2. The Department's Title IV(E) staff shall monitor the Nation's cases in accordance with Title IV(B) and Title IV(E), as amended, of the Social Security Act (Exhibit Q).

3. The Department agrees to assist the Nation in the training of personnel for the preparation of referrals and the appropriate forms for payments provided under the terms of this agreement.

H. Administrative Costs

The Nation may submit necessary forms to receive partial federal reimbursement for administrative costs. The Nation shall receive the federal reimbursement only. A cost allocation plan and other federal reporting requirements are necessary under federal guidelines. The Department shall assist the Nation in the

preparation of the forms necessary for administrative reimbursement.

I. Guardianship

The Nation can refer Guardianship Subsidy cases to the Central Adoptions Unit as allowed under the Title IV-E Demonstration Waiver Project. The Title IV-E eligibility requirements for guardianship subsidy are similar to adoption subsidy, but the guardianship subsidies will be allowed under the Waiver for a period of five years (Terms and Conditions attached hereto and made a part hereof as Exhibit P).

J. Title IV-E Demonstration Waiver Project

The Nation shall cooperate with the Department and the Contractor monitoring the Title IV-E Waiver Demonstration Project in the collection of data as required by the project.

VIII. PROVISION OF SERVICES

1. The Nation shall be primarily responsible for case management of foster care services (**NOTE: excluding Title IV(E) foster care payment**), for children placed by the Nation in a foster care home licensed and approved by the Nation pursuant to the standards and procedures adopted by the Nation, when the Nation has custody of the child.

NOTE: In most situations in which the Nation has custody, the action will be in Nation Court or in the process of being transferred to Nation Court. In any case in which the Nation has

custody, but the action is being maintained in State court, or the child is placed in a foster home outside of the Nation, a staffing between the appropriate Nation representatives and Department representatives, including the Children's Court Attorney, will be necessary to coordinate responsibilities relative to the State court proceedings.

2. The Nation shall make reasonable efforts to eliminate the need for removing the child from his home and to make timely reunification possible.

3. After reasonable efforts have been made and reunification is determined not possible, the Nation Court shall conduct a Permanency Hearing and create a permanency plan within twelve (12) months of the child entering care in order to determine which of the following options best meets the needs and interests of the child:

The child should be returned to the parents.

-OR-

The child should be continued in foster care for a specified period.

-OR-

The child should be placed for adoption.

-OR-

The child should be continued in foster care on permanent or long-term basis.

-OR-

The child should be placed with a legal guardian.

3. The Nation Court shall conduct judicial case reviews of Title IV(E) eligible children at least once every six (6) months. The Court must address the assurances listed under the judicial determination safeguards (see Foster Care Compliance Requirements in Exhibit N, Item II C, Nos. 16-18).

IX. ASSURANCES

1. The Nation and the Department, through their joint efforts, as specified herein, agree to meet the provisions of Title IV(B) and Title IV(E) of the Social Security Act, the State Title IV(E) Plan filed with the Administration for Children and Families, Department of Health and Human Services. The Title IV-E of the Social Security Act has been amended and now includes ASFA law PL 105/89. The Nation is also required to adhere to requirements of PL 105/89 in order to access Title IV-E reimbursement. The ASFA law requires: new criteria for "reasonable efforts", new health and safety determinations, new timelines for hearings, new background check requirements for foster and adoptive parents, new case plan requirements, and new adoption incentives. For details of the new requirements for Title IV-E the recompiled law is attached hereto and made a part hereof as Exhibit Q".

2. The Nation agrees to meet all federal requirements for children receiving Title IV(E) payments as outlined in the Federal Foster Care Compliance Requirements (P.L. 96-272): "A Desk Guide for Service Workers" (Exhibit N, incorporated herein by reference); Requirements for Court Order Findings (Exhibit O, incorporated herein by reference); and the Title IV(E) Foster Care Eligibility Check List (Exhibit G, incorporated herein by reference).

3. The Nation shall provide the Department with sufficient information regarding a child in Nation custody in order for the Department to assess compliance with federal requirements necessary for federal financial participation and to determine the child's eligibility for other benefit programs administered by the Department (e.g., Social Security).

4. The Department retains the right to conduct program audits of the services provided pursuant to this agreement and the administration thereof. If the Department becomes aware of circumstances that might jeopardize continued federal funding, the situation shall be handled as provided in § VI D above.

X. RECORDS

1. The Nation agrees to develop and maintain client case records and foster parent records, including placement agreements, consistent with the requirements of Title IV(B) and IV(E) of the Social Security Act, for a period of five (5) years. The Department has designated the Uniform Case Record forms (attached

as Exhibit J), which contain all of the federal requirements and may be used by the Nation. If the Nation wishes to develop their own forms, then they must be approved by the Department Title IV(E) Specialist prior to receiving Title IV(E) payments. All of these records shall be submitted to the Title IV(E) Specialist prior to the initiation of the foster care payments.

2. The Nation agrees to make all records pertaining to Title IV(E) payments (including the eligible child's foster care/adoption case record, placement and foster home records, including studies and licensure information), available for on-site inspection at the Nation's Social Services Office with reasonable notice.

3. The Nation shall maintain fiscal and program records pertaining to this agreement for a minimum of five (5) years.

XI. ACCOUNTABILITY OF FUNDS

The Nation shall provide for strict accountability of all money paid to the Nation subject to this agreement and shall follow generally accepted accounting principles and account for all receipts and disbursements of funds made to the Nation pursuant to this agreement.

XII. RETURN OF FUNDS

If there are any surplus funds, those funds shall be returned to the Department.

XIII. LIABILITY

Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation of requirements applicable to the performance of this agreement. Each party shall be liable for its actions in accordance with this agreement.

XIV. ACQUISITION OF PROPERTY

No property will be purchased under the terms of this agreement by the Nation.

XV. ASSIGNMENT

The parties shall not assign any interest in this agreement or assign any claims for money due or to become due under this agreement, unless otherwise noted in this agreement.

XVI. LOBBYING

1. To the extent required by 31 U.S.C. § 1352 or other applicable federal law, the Nation agrees that if the Nation receives federal funds through the Department, for full or partial payment under this agreement, then no federally appropriated funds will be paid, by or on behalf of the Nation, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with

the Nation or (a) the awarding of any federal contract; (b) the making of any federal grant; (c) entering into any cooperative agreement; and (d) the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement. The parties hereby acknowledge the exemption for Indian Pueblos, tribal organizations and other Indian organizations provided in 31 U.S.C. § 1352.

2. To the extent required by 31 U.S.C. § 1352 or other applicable federal law, if any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress or Legislature, the Nation shall complete and submit Federal Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with the form's instructions. The parties hereby acknowledge the exemption for Indian Pueblos, tribal organizations and other Indian organizations provided in 31 U.S.C. § 1352.

XVII. NON-DISCRIMINATION

1. The Nation will comply fully with applicable law prohibiting discrimination in employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

2. To the extent required by applicable law, no qualified handicapped person shall, on the basis of handicap, be excluded from participation or be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the Nation that is conducted pursuant to this agreement.

3. Notwithstanding the above provisions, nothing in this agreement shall prohibit the Nation from adhering to a policy of Indian preference in employment to the fullest extent permitted by law.

4. The Nation agrees to insert similar provisions in all subcontracts for services allowed under this agreement.

XVIII. DRUG-FREE WORKPLACE

The Nation hereby assures the Department that it has implemented and will operate a drug-free workplace as required by and in accordance with applicable law.

XIX. PERIOD OF AGREEMENT

This agreement shall become effective on _____, 20____ or upon approval by the Department of Finance and Administration, whichever is later, and shall not terminate unless terminated pursuant to § XX, "Termination of Agreement."

XX. TERMINATION OF AGREEMENT

This agreement may be terminated by either of the parties for good cause by giving sixty (60) days prior written notice, which

includes an explanation of the reason for termination, to the other.

XXI. AMENDMENTS

This agreement shall not be altered, changed or amended except by an instrument in writing executed by the parties hereto. All amendments are subject to the approval of the Department of Finance and Administration. The Nation's President or his designee shall be the contact person for the Nation when negotiating any amendment to this agreement. The Director of the Protective Services Division (PSD) or his/her designee shall be the contact person for the State when negotiating any amendment to this agreement.

XXII. EXECUTION OF DOCUMENTS

The Parties agree to execute any documents necessary to implement the terms of this agreement.

XXIII. ENTIRE DOCUMENT

This agreement incorporates all the agreements and understandings between the parties hereto, and all such agreements have been merged into this written agreement. No prior agreement, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

WE, THE UNDERSIGNED, HEREBY AGREE TO THE TERMS AND CONDITIONS OF THIS INTERGOVERNMENTAL AGREEMENT BETWEEN THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT OF THE STATE OF NEW MEXICO AND THE NAVAJO NATION.

NAVAJO NATION (signed 9-14-01)

Kelsey Begay, President

Date: _____

STATE OF NEW MEXICO:

Deborah Hartz, Secretary
Children, Youth & Families Department

Date: _____

Department of Finance and Administration

Date: _____

Gary Johnson, Governor

Date: _____

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

CYFD Office of General Counsel

Date: _____

Date: _____

Patricia Madrid, Attorney General

Rosemary L. Maestas-Swazo, AAG
Special Counsel for Indian Affairs

Date: _____

