

**Mille Lacs Band of Ojibwe and the Minnesota Department of  
Human Services  
Title IV-E Foster Care Maintenance Agreement**

This AGREEMENT is made and entered into this 13th day of September 2011, by and between the Mille Lacs Band of Ojibwe (hereinafter “the band”), a sovereign nation, 43408 Oodena Drive, Onamia, Minnesota 56359, and the Minnesota Department of Human Services (hereinafter “the department”), a state agency, 444 Lafayette Road North, St. Paul, Minnesota 55155.

**WHEREAS:** 25 United States Code (U.S.C.) §1901 *et. seq.*, also referred to as the Indian Child Welfare Act (ICWA), authorizes states and Indian tribes “to enter into agreements with each other respecting care and custody of Indian children.” Both parties agree that this document is bound by the law, intent and spirit of the Indian Child Welfare Act. The parties acknowledge that, as sovereigns, they may disagree as to the extent of each others’ authority, power and jurisdiction in children in need of protection or services (CHIPS) and permanency proceedings. The parties agree, however, that the fundamental purpose of ICWA is to secure and to preserve an Indian child’s sense of belonging to her or his family and Band or Tribe.

**WHEREAS:** 42 U.S.C. § 672 (a)(2), also referred to as Title IV-E, section 472(a)(2) of the Social Security Act, allows the transfer of responsibility for the placement and care of children from the state agency administering the state Title IV-E plan to another public agency.

**WHEREAS:** Mille Lacs Band of Ojibwe is a sovereign Indian nation as recognized in the Treaty of 1855.

**WHEREAS:** The department is the state agency responsible for the administration of the state Title IV-E plan of the Social Security Act.

**WHEREAS:** The department will assert its authority to obtain foster care maintenance reimbursement and services under Minnesota Statutes, Chapter 260, sections 751 to 835, also referred to as the Minnesota Indian Family Preservation Act “MIFPA” to enforce the provisions of this agreement.

**WHEREAS:** The department recognizes and respects the authority of the band to place and care for children under the jurisdiction of the Mille Lacs Band of Ojibwe tribal court.

**WHEREAS:** A child’s Title IV-E eligibility or reimbursement status does not change the county’s financial responsibility according to Minn. Stat. § 256G.

**WHEREAS:** This agreement is necessary to establish a mechanism to enable Minnesota counties to obtain federal Title IV-E foster care maintenance reimbursement for the cost of out-of-home placements when such costs are paid by the county and when such placements are ordered by the Mille Lacs Band of Ojibwe tribal court. The counties will remain financially responsible for such placements.

**WHEREAS:** The department understands that the federal government is bound to the Trust Responsibility Doctrine, and that, by entering into this agreement, the department is carrying out this program of the federal government. Nothing in this agreement shall abrogate that trust responsibility. *See Cherokee Nation v. Georgia, 30 U.S. 1 (1831) (analogizing the government-to-government relationship between tribes and the federal government as a trust relationship with a concomitant federal duty to protect tribal sovereignty).*

**WHEREAS:** This agreement applies to children in foster care for whom the band has exercised court jurisdiction.

**NOW THEREFORE, it is further agreed:**

**I. PARAMETERS OF AGREEMENT**

This agreement replaces individual county substitute care supervision agreements, if any. This Title IV-E agreement provides a mechanism to enable all Minnesota counties to obtain federal Title IV-E foster care maintenance reimbursement for the cost of out-of-home placements for children when such costs are paid by the county and when such placements are ordered by the Mille Lacs Band of Ojibwe tribal court.

The department recognizes the responsibility of the state and county social service agencies to make available to Indian families all of the other services available to any other family in the circumstances covered by the Tribal State Agreement (February 22, 2007). The parties agree that orders of the District Court of Mille Lacs Band of Ojibwe concerning placement of an Indian child shall have the same force and effect as orders of a state district court in compliance with 25 U.S.C. 1911 (d), which requires each state to give full faith and credit to the public acts, records and judicial proceedings to the same extent that the state or county gives full faith and credit to public acts, records, and judicial proceedings of any other entity. The exercise of tribal court jurisdiction does not mean withdrawal, decrease, or denial of county social services. (Minn. Stat. § 260.771, subd. 4.)

Foster care maintenance payments under this agreement shall be equal in amount to the payments counties would make for the child (ren) if they were under the jurisdiction of the state court.

When a Child in Need of Protection (CHIPS) petition is filed in tribal court, the county in which the child (ren) resides will receive notice from the Mille Lacs Band of Ojibwe tribal court.

The Minnesota Unitary Residence and Financial Responsibility Act, codified at Minnesota Statutes, Chapter 256G, apply in determining the county of financial responsibility when tribal courts exercise jurisdiction. Financial responsibility to provide services to child(ren) and their families who are subject to tribal court is delineated in DHS Bulletin #11-68-02 (March 4, 2011).

## **II. EMERGENCY CHILD WELFARE REMOVALS**

Per Mille Lacs Band of Ojibwe tribal statute, a social services worker or law enforcement officer has authority to remove an Indian child from his or her home in emergency situations for children living on the reservation. (Mille Lacs Band of Ojibwe Statutes Title 8 § 3144, Band Ordinance 01-96, § 9) The county of financial responsibility shall be responsible for placement costs in the event the Mille Lacs Band of Ojibwe places a child in emergency shelter or with a relative according to DHS Bulletins #11-68-02 (March 4, 2011) and #08-68-01 (January 2, 2008). The Mille Lacs Band of Ojibwe Family Services will provide notice to the county on the same business day or the following Mille Lacs Band of Ojibwe business day unless there are extenuating reasons for delay.

In any case where the tribal court orders placement of a child through a county social services agency, the tribal court shall provide to the county social services agency notice and an opportunity to be heard in tribal court regarding the placement. (Minn. Stat. § 260.771, subd. 4)

## **III. TRIBAL JURISDICTION**

The Mille Lacs Band of Ojibwe retains all jurisdiction and authority over placement and care responsibilities for all appropriate child (ren), and will designate the services to be provided. The District Court of Mille Lacs Band of Ojibwe has jurisdiction to make decisions for an Indian child (ren) who:

- A. Are residents of, or domiciled on, the Mille Lacs Band of Ojibwe reservation, or
- B. Are members living outside the reservation, or
- C. Are living outside the reservation and are eligible for membership with the band, as defined under Mille Lacs Band of Ojibwe Joint Resolution 11-02-90-04 (2004), and
- D. Are in the legal custody of a person or agency pursuant to an order of the Mille Lacs Band of Ojibwe tribal court.

For purposes of this agreement, “reservation” has the same meaning given to it by the Indian Child Welfare Act: “Indian country as defined in section 1151 of Title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.” [25 U.S.C. § 1903 (10)]. Nothing in this agreement purports to affect any jurisdictional relationship or dispute involving the Band or current reservation boundaries. The probable jurisdiction noted in subdivision B and C is subject to parental objection, tribal court declination or assertion of good cause. [25 U.S.C. § 1911; 2007 Tribal State Agreement, Part 1.C.3.b.]

## **IV. DEFINITION OF FOSTER CARE**

Foster care is defined as the 24-hour substitute care for a child placed away from their parents or guardians and for whom the band or the county has placement and care responsibility. This includes, but is not limited to, placements in family foster homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child

care institutions, and preadoptive homes. A child is in foster care in accordance to this definition regardless of whether the foster care facility is licensed and regardless if payments are made by the county for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is federal matching of any payments that are made. Children must be removed from his or her home by court order or a voluntary placement agreement. [45 § CFR 1355.20 (a)].

#### **V. FOSTER CARE MAINTENANCE AND DIFFICULTY OF CARE (DOC) PAYMENTS**

Foster care maintenance payments for child(ren) in foster care are “made on behalf of child(ren) to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, child(ren) personal incidentals, liability insurance with respect to child(ren) and reasonable travel for visitation with family, or other caretakers.” 45 CFR §1355.20(a) foster care maintenance payments for a child (ren) in foster care shall be made in accordance with Minnesota Statute §256.82 subd. 2-5 (2005), Minnesota Rule §§9560.0521, 9560.0650, 9560.0653, 9560.0654, 9560.0665.

The county social service agency shall make payments in addition to the basic maintenance standards of Minnesota Rule § 9560.0650, subpart 1, for children with mental, physical, or emotional disabilities who require additional supervision or assistance in behavior management, activities of daily living, management of medical problems, or interaction with the birth parents and the community.

The rate will be established following the applicable department guidelines including the county and the band making a good faith effort to come to an agreement on any disputed DOC assessment of a child.

#### **VI. SERVICES**

The department recognizes that Minnesota counties have a statutory financial responsibility to provide services for children under the jurisdiction of the District Court of Mille Lacs Band of Ojibwe to the same extent that any child subject to the Minnesota Indian Family Preservation Act is otherwise eligible for such services, and agrees that the provision of these services will not be impacted by this agreement. These services will be identified in the case plan. A child’s Title IV-E eligibility or reimbursement status does not change the county’s financial responsibility.

The Band will provide the following services to all children in foster care under the District Court of Mille Lacs Band of Ojibwe’s jurisdiction in compliance with 45 CFR §1355, 1356, and 1357.

- A. Case plan. The case plan must be designed to achieve placement in the most family-like setting possible, and in accordance with Mille Lacs Band of Ojibwe placement preference, MLBSA § 3156(b); consistent with the child’s best interests and special needs; and shall comply with 45 CFR § 1356.21 (g)(1).
- B. The case plan shall be a written document that is a discrete part of the child’s case record and in a format jointly approved by the department to be in compliance with

federal Title IV-E requirements. For cases the Mille Lacs Band seeks to transfer to tribal court, the Mille Lacs Band of Ojibwe's Solicitor General will file a petition with the tribal court to request acceptance into tribal court at the same time a petition to transfer is filed with the district court. District court retains jurisdiction until the tribal court has issued an order accepting jurisdiction. The case plan must be developed no later than 60-days from the time the band assumes legal responsibility for placement and care of the child (ren). The 60 days begins when the case is accepted for transfer into tribal court. Until tribal court has accepted jurisdiction, the county social services agency remains responsible for ensuring the case plan requirements are met. The case plan shall be developed jointly with the parent(s) or guardian of a foster child and shall include the following: 45 CFR § 1356.21 (g) (1)-(3)

1. A description of the foster home or residential setting where the child (ren) is to be placed, an explanation of why the placement is appropriate, and how the band plans to implement judicial requirements. All judicial determinations are to be made in accordance with the Mille Lacs Band of Ojibwe Family Code and in accordance with 45 CFR §1356.21;
  2. An explanation of the efforts that were offered and made to prevent the need for removal of the child (ren) from their home;
  3. A description of the care and services the child(ren) will receive in the foster home, both to meet the needs of the child(ren) while in foster care, and to document what steps have been made toward achieving the permanency goal;
  4. A description of the services that the child (ren) and their parent(s) will receive, with the objective of allowing the child (ren) to return home;
  5. A discussion of why the care and services provided to the child (ren) under the plan are appropriate;
  6. A written description, when a child reaches the age of 16, of the programs and services which will help the child(ren) to prepare for the transition from foster care to independent living; and
  7. Include, to the extent available, the health and education records of the child (ren) which include,
    - a. The names and addresses of the child (ren) health and education providers;
    - b. Their grade level performance;
    - c. Their school record;
    - d. Assurances that the child (ren)'s placement in foster care takes into account the proximity to the school in which the child (ren) is enrolled at the time of placement;
    - e. A record of immunizations;
    - f. Any known medical problems;
    - g. Any medications;
    - h. Any other relevant health and education information determined to be appropriate by the band.
- C. Case review system. The band will maintain a case review system that complies with 45 Code of Federal Regulation (CFR) 1356.21 (f) that ensures:

1. The status of each child is reviewed no less frequently than once every six months, through either judicial or administrative review;
2. The placement is still necessary and appropriate, the case plan is followed and relevant to the child's (ren's) permanency plan, that progress is made toward eliminating the need for foster care, and that a likely date is established by which the child(ren) will either be returned home or placed for adoption, legal guardianship or an alternative planned permanent living arrangement;
3. If the administrative review method is used, it must be available to the child's (ren's) parent(s), and be conducted by a panel of appropriate persons; at least one of whom is not responsible for case management or services for the child (ren) or the parent(s);
4. A permanency hearing is held in tribal court at least every 12-months after the original placement; and every 12-months thereafter until the band no longer has placement and care responsibilities for the child (ren). At the permanency hearing the tribal court will determine whether the child should:
  - a. Be returned to the parent(s);
  - b. Be adopted through an open adoption or cultural adoption; or referred for legal guardianship;
  - c. Be placed permanently with a fit and willing relative;
  - d. Be placed into another planned permanent living arrangement when compelling reasons exist that none of the other options listed would be in the best interest of the child(ren);
  - e. Be placed for adoption with a petition filed to terminate parental rights.

D. Foster Care to Age 21. Effective October 1, 2010, for purposes of out of home placement, the band agrees to advise youth in foster care under the jurisdiction of the district court of the Mille Lacs Band of Ojibwe who are not able to return home or otherwise achieve permanency prior to age 18, of the availability of continued care benefits up to age 21, provided that the youth meet the following conditions:

- 1) Completing secondary education or a program leading to an equivalent credential
- 2) Enrolled in an institution that provides postsecondary or vocational education
- 3) Participating in a program or activity designed to promote or remove barriers to employment
- 4) Employed for at least 80 hours per month, or
- 5) Incapable of doing any of the activities describes above due to a medical condition.

The band agrees to offer notification of foster care benefits at least 90 days prior to a youth's 18<sup>th</sup> birthday. If a youth does not wish to remain in extended care, the band will work with the youth to develop and execute a personalized transition plan (as outlined in section 475(H) of the Social Security Act) during the 90 day period immediately prior to their discharge. The county remains financially responsible for these youth who continue in care.

## **VII. PROCEDURAL SAFEGUARDS**

The band shall apply procedural safeguards with respect to parental rights pertaining to the removal of the child(ren) from the home of their parent(s), to a change in the child(ren) placement, and to any determination affecting visitation privileges of parent(s) in accordance with 42 USC § 675 (5) (c).

#### **VIII. JUDICIAL SAFEGUARDS**

Children in foster care who are subject to tribal court jurisdiction will receive the following judicial safeguards in accordance with 45 CFR §1356.21.

- A. The band will make reasonable efforts to maintain the family unit and prevent the unnecessary removal of child (ren) from their home, as long as child (ren) safety is assured, to effect the safe reunification of the child (ren) and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child (ren)); and to make and finalize alternative permanency plans in a timely manner when reunification is not appropriate or possible;
- B. Judicial determination of reasonable efforts will be made to prevent the child (ren)'s removal from the home;
- C. When child(ren) are removed from their home, the judicial determination as to whether reasonable efforts were made, or were not required to prevent the removal, must be made no later than 60-days from the date the child(ren) is/are removed from their homes;
- D. Under section 472 (a) (1) of the Social Security Act, a child (ren) removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a Voluntary Placement Agreement) to the effect that continuation of residence in their home would be contrary to their welfare, or that placement would be in their best interest. The contrary to welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of the child (ren) from their home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child (ren) is not eligible for Title IV-E foster care maintenance payments for the duration of the stay in foster care.
- E. Judicial determination of reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within 12-months of the date the child (ren) is/are considered to have entered foster care, and at least once every 12-months thereafter while they remain in foster care.
- F. When aggravated circumstances are determined by Mille Lacs Band of Ojibwe tribal court, reasonable efforts to return the child (ren) home are not required. However, a permanency hearing shall be held within 30-days. Aggravated circumstances are determined when a court of competent jurisdiction has determined that the parent has been convicted of voluntary manslaughter of another parent; or aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary

manslaughter; or a felony assault that results in serious bodily injury to the child (ren) or other child (ren).

- G. When a child has been in foster care for 15 of the past 22 months, the band must elect to file or join a petition to terminate parental rights unless there is documentation of compelling reasons to not file a termination of parental rights petition in the case file.
- H. Compelling reasons for not filing a termination of parental rights petition include but are not limited to: adoption not being the appropriate permanency goal for the child (ren), or no grounds to file a petition to terminate parental rights exist; or the band has not provided services to the family consistent with the time period in the case plan, services that the band deems necessary but have not been provided for the safe return of the child (ren) to their home when reasonable efforts to reunify the family are required.
- I. If after considering reunification, adoption, legal guardianship, or permanent placement with a fit and willing relative, the most appropriate permanency plan for the child (ren) is placement in another planned permanent living arrangement, the band will document the compelling reason for the alternate plan. Examples of compelling reasons for establishing such a permanency plan may include: An older teen who specifically requests that emancipation be established as their permanency plan; a parent and child(ren) who have a significant bond but the parent is unable to care for the child(ren) because of an emotional or physical disability, and the child(ren) foster parent(s) have committed to raising them to the age of majority, and to facilitate visitation with the disabled parent; or the band identified another planned permanent living arrangement for the child(ren).
- J. The placement resource must either be licensed by the department, the band, or a licensed child placement agency. Foster and adoptive homes licensed by the band must meet the federal documentation and safety requirements set forth in the Indian Child Protection and Family Violence Act, 25 U.S.C.A. § 3201 *et. seq.* Foster care placements must not violate 45 CFR § 1356.30 (2005) and P.L. 109-248 commonly referred to as the Adam Walsh Child Protection and Safety Act of 2006. The department will provide the Band with technical assistance so the Band's licensing program is in compliance with federal requirements.

#### **IX. FOSTER CARE STANDARDS**

The band shall establish and maintain standards for foster family homes, adoptive homes, and child care institutions for children under the jurisdiction of the tribal court. The standards so established shall be applied by the band to any foster family home, pre-adoptive home, or child care institution, and will meet Title IV-E requirements so federal reimbursement can be claimed by the county on behalf of children placed in tribally licensed facilities.

- A. The band shall establish procedures for criminal records checks for any prospective foster or adoptive parent(s) before they can be approved for placement of a child.
  - 1. In any case in which a criminal 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, approval shall not be granted.
2. If a criminal record check reveals a felony conviction for physical assault, battery, or a drug-related offense, and the felony was committed within the past 5 years, such final approval shall not be granted.
- B. No exception may be granted to the above prohibitions except if a family foster home was certified or an adoptive home was approved prior to November 19, 1997, the band may place additional children in the home, renew the family's foster home certificate, or approve the home as an adoptive placement so long as the band has determined the following:
1. Denial of the renewal or adoption application would result in the disruption of a child (ren)'s placement or prevent future foster care or adoptive placements of the child (ren)'s siblings:
  2. The certification, adoption or licensing file for the foster family, adoptive family or relative placement, contains documentation that safety considerations with respect to the foster family, adoptive family, relative or caretakers(s) have been addressed.

#### **X. VOLUNTARY FOSTER CARE PLACEMENT**

For a child removed from his/her home under a voluntary placement agreement, the band must meet the requirements of Title IV, Part E, Section 422, 472 and 475 of the Social Security Act, 45 CFR § 1356.21 (f) – (i) and 45 CFR § 1356.22.

- A. Foster care maintenance payments from federal Title IV-E funds shall be made in cases of voluntary placements of Indian Child (ren) out of their home by or with the participation of the band only if:
1. The assistance of the band has been requested by the child (ren)'s parent(s) or legal guardian; and
  2. There is a written Voluntary Placement Agreement, binding all parties to the agreement, which specifies at a minimum the legal status of the child(ren) and the rights and obligations of the parent(s) or guardian(s), the child(ren), and the band while the child(ren) are in placement.
- B. The band shall provide a uniform procedure or system for revocation by the parent(s) or guardian(s) of a voluntary foster care placement agreement and return of the child (ren).
- C. A judicial determination of best interests must occur within the first 180 days of the child's original foster care placement. Within the 180 days the tribal court must order the out-of-home placement unless the court finds the continuation of the voluntary placement in the child's best interests.

#### **XI. ADOPTION**

The Mille Lacs Band of Ojibwe tribal court can order, according to tribal law, that the child (ren) can be adopted without a Termination of Parental Rights. When this occurs, all parties must agree that the requirements of Social Security Act § 473 (c)(1) will be satisfied so long as the band's law remains in effect, and the Mille Lacs Band of Ojibwe

tribal court order has documented valid reasons why the child(ren) cannot, or should not, be returned to their home. The Mille Lacs Band of Ojibwe will complete adoption assistance eligibility for child (ren) under tribal court jurisdiction. (Administration for Children and Families Policy Announcement ACYF-CB-PA-01-01);

- A. The department shall enter into a Title IV-E Adoption Assistance Agreement with adoptive parent(s) who adopt child (ren) under the jurisdiction of the band when the child (ren) meet(s) the eligibility requirements for Title IV-E Adoption Assistance.
- B. The placing agency will certify that the child (ren) is/are eligible for Adoption Assistance according to rules promulgated by the commissioner of the Minnesota Department of Human Services. The placing agency shall not certify any child (ren) who remain(s) under the jurisdiction of the sending agency pursuant to Minnesota Statutes, section 260.851, article 5, for state funded Adoption Assistance when Minnesota is the receiving state.

## **XII. INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN**

For the purposes of the county or state's financial contribution under this contract for placement of children in foster care, the band agrees to accept children from out-of-state only if they are placed according to the procedures outlined in the Interstate Compact on the Placement of Children (ICPC). The parties understand and agree that the band is not legally bound to enter into the ICPC when accepting out-of-state placement of Indian children into the state, but if the band accepts any child (ren) without an ICPC agreement, the county or state is not financially responsible. For the purposes of the county's financial contribution under this agreement for placement of youth in foster care, the band agrees to send or place child (ren) from the state of Minnesota to another state only if they are placed according to procedures outlined in the ICPC. The parties understand and agree that the band is not legally bound to enter into the ICPC when sending or placing child (ren) from the band into another state from the state of Minnesota, but if the band sends or places a child without an ICPC agreement, the county is not financially responsible. Only if a child (ren) continues under the jurisdiction of another government outside the tribe and the state of Minnesota does the ICPC apply.

The department is committed to ensuring that the sending state fulfills their responsibility per the ICPC.

## **XIII. RESOLUTION OF DISPUTES REGARDING INTERPRETATION OF THIS AGREEMENT**

In the event a disagreement regarding Title IV-E program requirements occurs between the band, the department and/or the county, the county retains financial responsibility until the issue is resolved and appropriate adjustments have been made. The parties agree that, upon request of any party, disputes arising between any signatory Tribe and the Department concerning the application and interpretation of this agreement shall be referred to a duly designated representative (or representatives) of the Department and the Tribe for a good faith effort to resolve the dispute. If a resolution is reached, the decision shall be binding upon the Department and upon the participating Tribe.

If a state or federal law is amended, neither the Tribe(s) nor the Department will be required to comply with any section of this agreement that would be out of compliance with, or not required by existing law.

**XIV. TITLE IV-E FOSTER CARE ELIGIBILITY DETERMINATION RESPONSIBILITY**

The band will assume responsibility for determining federal Title IV-E foster care eligibility for child (ren) under tribal court jurisdiction in the future. The band and the department are committed to working together to identify the steps necessary to carry out this responsibility.

**XV. SOCIAL SERVICE ADMINISTRATION TRIBAL TIME STUDY (SSATTS)**

Reimbursement for allowable Title IV-E administrative and training costs for Mille Lacs children under the jurisdiction of the District Court of Mille Lacs Band of Ojibwe or in placement pursuant to a voluntary placement agreement with Mille Lacs Band of Ojibwe Family Services or foster care candidates shall be accessed through the Social Services Administrative Tribal Time Study (SSATTS) and made available to the band after the following A – C steps have been completed.

- A. A time study and software application has been developed by the department;
- B. Mille Lacs Band of Ojibwe Family Services staff has received training; and
- C. A cost allocation plan developed by the department has been submitted for federal approval.

The band will assume responsibility for determining and re-determining federal Title IV-E foster care candidacy for the SSATTS.

Federal matching funds, based on federal cost allocation principles, will be made available for reimbursement to the band according to 45 CFR § 235.61-235.64.

- A. Reimbursement is based on allowable administrative expenditures necessary for the proper and efficient administration of the Title IV-E foster care and adoption programs. Examples of allowable administrative costs:
  - 1. Referral to services
  - 2. Preparation for, and participation in, judicial determinations
  - 3. Placement of child (ren)
  - 4. Development of case plans
  - 5. Case reviews
  - 6. Case management and supervision, including:
    - a. Health and safety visits
    - b. Notification to parent(s) of change in the foster placement for the child (ren)
    - c. Notification to the foster parent(s) of court hearings
    - d. 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 record checks
  8. A proportionate share of related agency overhead
  9. Foster care rate setting
  10. Management information system
  11. The band's federally established indirect rate used in calculating the administrative and training reimbursement claim.
- B. The department agrees to provide all time study training materials and training to band within 60 days of the anticipated start date of the time study sampling.
- C. The department's claiming and reimbursement procedures have been developed to ensure compliance with federal Title IV-E fiscal reporting requirements. Therefore, a quarterly reimbursement schedule has been established.
- D. The band shall earn the federal administrative funds for administrative activities necessary for proper and efficient administration of the Minnesota Title IV-E Plan, consistent with Title IV-B and Title IV-E of the Social Security Act and 45 CFR § 1356.60 by participating in the SSATTS.
- E. The department and the band will carry out their respective roles and responsibilities for the time study.
- F. The band shall act as the administrator, trainer, and fiscal reporting agent for purposes of operating the Social Services Administrative Tribal Time Study (SSATTS) project. The department will ensure the staff person identified by the band to be the SSATTS coordinator will receive the training to carry out the following duties. Department staff shall provide the initial training to time study participants. In the future, when new staff joins the time study the SSATTS coordinator will be asked to provide this training when department staff is not available. The following responsibilities are necessary for participation in the time study. The band will:
1. Appoint and maintain a SSATTS coordinator. The SSATTS coordinator will be responsible for overall operation of the time study. The person appointed to this position may not be a participant in the SSATTS. The SSATTS coordinator will be the singular contact for the department and as such, will be responsible for responding to, and resolving all time study questions, problems, or issues from the department for the duration of the time study;
  2. Appoint and maintain a SSATTS fiscal representative who will be responsible for the accurate completion of the quarterly cost report;
  3. Attend all department required SSATTS trainings;
  4. Identify time study participants, training of participants in activity code selection, and training of participants in log sheet completion;
  5. Submit all SSATTS application materials, contracts, log sheets, cost reports, and other required forms and paperwork to the department within the required timelines.

- G. The band shall submit reports as reasonably requested by the department. The reports will provide information as needed by the department to properly administer the SSATTS, and comply with all applicable federal and state laws, rules and regulations.
- H. The band shall ensure and provide verification that staff participating in the time study and SSATTS coordinators and fiscal representatives have completed all required training.
- I. The band shall comply with the requirements for claiming administrative reimbursement under Title IV-E of the Social Security Act in accordance with 45 Code of Federal Regulation (CFR) §1356.60 and the federal *Child Welfare Policy Manual*.
- J. The band shall ensure that costs claimed for reimbursement through the SSATTS shall be the actual costs, to be determined in accordance with cost principles outlined in OMB Circular A-87. Properly constructed time studies shall be the basis for separating allowable from unallowable costs, and for establishing appropriate costs.
- K. The band while participating in the SSATTS shall maintain an accounting and financial management system adequate to support all claims for federal reimbursement through the SSATTS.
- L. The band shall provide the non-federal share of all expenditures for which federal revenue is claimed through the SSATTS. In addition, the band shall ensure that expenditures submitted for federal reimbursement shall be paid from public sources other than federal funds, or funds used to match other federal funds, or from permissible federal funds.
- M. The department shall forward to the band, on a quarterly basis, federal funds earned through the SSATTS. For purposes of this contract, the term "quarter" shall mean a period of 3-months ending on the last day of March, June, September and December.
- N. For funds payable under this agreement, an amount not to exceed ten percent of earned federal dollars will be deducted and held by the department as a set-aside to repay the special revenue maximization account for state expenses exclusively in administering the SSATTS. Unused set-aside funds will be returned to the band on an annual basis.
- O. The department shall ensure that federal reimbursement earned pursuant to this agreement shall not be used in determining the allocation or distribution of funds to other tribes.
- P. Payments to the band shall be based-upon activities and costs eligible for reimbursement through Title IV-E of the Social Security Act. If at any time such federal funds become unavailable, the band shall be paid on a pro rata basis, for services satisfactorily performed, and for which federal reimbursement was received.

- Q. The amount forwarded to the band shall be based on eligible activities identified through the SSATTS and quarterly costs.
1. The band shall submit SSATTS cost reports within 20-days after the end of the quarter. Cost reports received by the band more than 20-days after the end of the quarter, and amended costs reports, shall be processed one year after the original cost report was due unless otherwise agreed to by the department. Cost reports submitted more than one year after the original due date will not be eligible for reimbursement.
  2. The band shall submit SSATTS log sheets to the department within 7-days from the time the log sheet was to be completed, unless otherwise agreed to by the department.
- R. The department shall pay the federal reimbursement earned under this agreement, less a set-aside as defined in section N. to the band based on their earnings pursuant to the terms of payment once federal approval for this project is granted, and federal funds become available.
- S. The department shall recover from the band any federal fiscal disallowances or fiscal disallowances or sanctions are based on either a statewide sample or a categorical disallowance imposed across the state, the department shall recover the proportional share of the disallowance or sanction from the band.
- T. All services and reporting provided by the band pursuant to this agreement shall be performed in accordance with all applicable federal, state and local laws, rules and regulations. The department agrees to work with the band to address and correct any performance or reporting issues. If efforts to rectify issues with the band are unsuccessful, the department may suspend, reduce or terminate the distribution of SSATTS funds to the band for services, SSATTS reporting, or reporting provided pursuant to this agreement found to be unsatisfactory or in violation of federal, state, or local laws and regulations.
- U. The books, records, documents, and accounting procedures, and practices of the band relevant to this agreement shall be subject to examination by the department, legislative auditors, and appropriate federal and independent auditors. Records shall be sufficient to reflect all costs incurred in performance of the contract, and shall be maintained for six years.

#### **XVI. 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 in the Mille Lacs Band of Ojibwe's child welfare agency, in accordance with federal regulations. Foster parent(s) 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.

- A. All training activities shall be included in a training plan submitted and approved by the department.

- B. Foster parent(s) and staff of licensed or approved child (ren) care institutions providing foster care shall be eligible for short-term training at initiation and/or during the provision of care.
- C. The band will submit a payment request for reimbursement of eligible training. Reimbursement requests may be submitted quarterly and must be submitted to the department within fifteen months of the training date.

#### **XVII. USE OF FEDERAL REVENUE**

The band agrees that all reimbursements from the Social Service Administrative Time Study administrative activities shall be used to support the goals of Mille Lacs Band of Ojibwe Family Services. These funds can be used as the local match for additional federal reimbursement.

#### **XVIII. OVERSIGHT AND QUALITY ASSURANCE**

The band and the department acknowledge that the United States Department of Health and Human Services (DHHS), or the department, conduct periodic reviews of state agencies that receive and distribute Title IV-E funds, and that DHHS or the department requires, as a part of such reviews, that case files on children receiving Title IV-E funds are made available for inspection at a designated location.

Reviews will consist of department sponsored case reviews for the purpose of preparation for an upcoming federal review, and routine case consultations by the department as requested by the band. The department and the band will develop a mutually agreed upon quality assurance program to ensure on-going compliance with federal requirements.

The band and the department will consult with the counties to develop a process for the timely sharing of information necessary to implement this agreement.

Upon reasonable advance written notice, the band will make available for review by DHHS, or department personnel, the case files and provider files on the child (ren) in foster care under the jurisdiction of the band whose foster parent(s) receive Title IV-E funds.

- A. The band agrees to make the records and/or files described herein available at all reasonable times at the band's designated office for review by DHHS or the department. The files shall at all times remain the property of the band and shall be returned to the band immediately upon completion of the review process.
- B. The department agrees to provide the appropriate forms, technical assistance, consultations, and monitoring to enhance compliance with the Title IV-E requirements.
- C. The department will use the same laws, policies and procedures that it currently uses with counties in their review. The department agrees to provide the same opportunity to the band as provided to counties to correct the deficiency without financial burden or other sanctions.

D. The band and the department will work in partnership to ensure case files contain the proper documentation.

**XIX. DATA PRIVACY PROTECTIONS**

For purposes of executing its responsibilities, and to the extent set forth in this agreement, the band will be processing health care bills or payments on behalf of the department, and/or conducting other health care operations on behalf of the department. In carrying out its duties, the band will be handling protected health information, and other private information concerning individual department clients. As such, the band agrees to be bound by federal laws 45 CFR parts 160 & 164 commonly referred to as "HIPPA" protecting the privacy or information.

**XX. FULL FAITH AND CREDIT**

"The United States, every state, every territory or possession of the United States, and every Indian tribe, shall give full faith and credit to the public acts, records, and judicial proceedings of an Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity." [25 U.S.C. § 1911 (d)] "The Department recognizes its responsibility to adhere to this mandate." (*Tribal State Agreement, February 22, 2007*)

**XXI. TERMINATION OF AGREEMENT**

Either party, without cause, may terminate this agreement by giving a 60-day written notice, delivered by mail or in person, to the other party to the agreement.

**XXII. BREACH OF AGREEMENT**

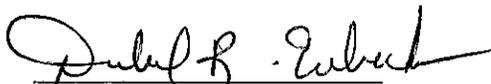
In the event of a breach of the agreement, either party may terminate the agreement by written notice to the other party. Such notice shall specify the breach, and the party to whom notice is given shall have 30-days from the date of receipt of the notice to cure the breach. If the breach is not cured, termination shall become effective on the 31<sup>st</sup> day following receipt of notice unless the date has been extended by the parties, or such later date as specified in the notice.

**XXIII. COOPERATION**

The department and the band agree to cooperate to the utmost in carrying out the intent and purpose of this agreement.

**XXIV. EFFECTIVE DATE OF AGREEMENT**

This agreement shall remain in effect from the date of signing, unless modified by agreement of the parties, or terminated by either party.



Don Eubanks, Commissioner  
Health and Human Services  
Mille Lacs Band of Ojibwe Indians

Date 9-13-11



Christeen Borsheim, Director  
Child Safety and Permanency Division  
Minnesota Department of Human Services

Date 9/13/2011