

**AGREEMENT FOR THE WHITE EARTH BAND OF OJIBWE'S
PARTICIPATION IN THE TITLE IV PART E PROGRAM FOR
FOSTER CARE MAINTENANCE, TRAINING AND
ADMINISTRATIVE COSTS
BETWEEN THE WHITE EARTH BAND OF OJIBWE
AND
THE MINNESOTA DEPARTMENT OF HUMAN SERVICES**

1.0 INTRODUCTION

This shall be considered a government to government agreement between the White Earth Band of Ojibwe and the Minnesota Department of Human Services. Hereafter referred to as the "Tribe" and the "Department."

This Agreement is made and entered into this 3rd day of December, 2007, by and between the White Earth Band of Ojibwe ("Tribe"), a federally recognized sovereign nation, established by treaty with the United States in 1867, whose business address is P.O. Box 418 White Earth, MN 56591 and the Minnesota Department of Human Services ("Department"), whose business address is P.O. Box 64943 St. Paul, MN 55164-0943, the state agency responsible for the administration of the state Title IV-E plan and authorized to implement the American Indian child welfare projects.

The Indian Child Welfare Act, 25 United States Code (U.S.C.) 1901 *et. seq.*, authorizes states and tribes to enter into agreements with each other respecting care and custody of Indian children. Both parties agree that this document is federally authorized and bound by the law, intent and spirit of the Indian Child Welfare Act.

Whereas: This agreement must be in effect before the White Earth Band of Ojibwe assumes financial responsibility for the cost of out of home placement for children eligible for the American Indian Child Welfare Initiative. The American Indian Child Welfare Initiative (also known as the American Indian Project) provides a grant award to the White Earth Band of Ojibwe for the purpose of assisting the Tribe to provide child welfare services to children of the White Earth Band residing on the Reservation.

Whereas: This agreement will allow the White Earth Band of Ojibwe access to federal funding pursuant to Title IV, Part E of the Social Security Act. This federal reimbursement program will allow the Tribe to carry out its duties and responsibilities to tribal members. By entering into this agreement both parties embrace the intent of Congress as expressed in the Indian Child Welfare Act to support federally recognized tribes to care for their children.

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. This Agreement shall enable the Tribe, a public agency within the meaning of the

law, to submit Title IV-E foster care maintenance claims on behalf of children eligible for the American Indian Child Welfare Initiative pursuant to Minn. Stat. § 256.01, subdivision 14b and Title IV-E eligible administrative/training claims to the Department.

Whereas: This agreement shall be utilized to facilitate intergovernmental cooperation; to allow the Tribe to provide for the best interests of White Earth children under the jurisdiction of the White Earth Tribal Court; to meet the policy goals established by the White Earth Band of Ojibwe for its children, to comply with the federal Title IV-E program regulations; and to meet the requirements for participating in the American Indian Child Welfare Initiative.

Whereas: The Department understands that the federal government is bound to the Trust Responsibility Doctrine, and that, by entering this Agreement, the Department is carrying out a program of the federal government. Nothing in this agreement shall abrogate the 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 recognizes that the White Earth Band of Ojibwe will exercise jurisdiction over child welfare matters involving White Earth Indian children domiciled within the boundaries of the Reservation. The White Earth Tribal Court has jurisdiction to issue court orders for eligible Indian children and the Department accords full faith and credit to Tribal court orders to the same extent mandated by the Indian Child Welfare Act as follows:

“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 any 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)

Pursuant to the White Earth Band of Ojibwe Children’s Code, the Tribal Court may make child protection, placement, and permanency determinations for White Earth Indian children who:

- a) are domiciled within the boundaries of the White Earth Reservation; or
- b) are eligible for membership under the Indian Child Welfare Act with the White Earth Band of Ojibwe not necessarily residing within the boundaries of the Reservation upon transfer of child welfare proceedings from state district court; or
- c) are wards of the Tribal Court.

Whereas: In the spirit of cooperation that the parties to this agreement have resolved to bind themselves, each party will timely inform the other of any shortcomings, lack of documentation or other responsibility that has not been satisfied; and will provide the other party with a meaningful opportunity to correct such documentation, lack of documentation or other responsibility.

1.1 DEFINITIONS

The following definitions are consistent with applicable federal and state rules and laws.

1. **“Act”** is defined as the Social Security Act
2. **“Adoption subsidy”** is defined as the financial assistance issued on behalf of qualifying adopted children per Minn. Stat. § 259.67 or Title IV-E, Section 473.
3. **“Amendment”** is defined as the changes made to this agreement in future negotiations between the White Earth Band of Ojibwe and the Minnesota Department of Human Services.
4. **“American Indian Project”** also known as the **“American Indian Child Welfare Initiative”** is defined as the project funded by the Minnesota Legislature for tribes to access state dollars to operate their own child welfare programs, including exercising jurisdiction, accessing Title IV-E dollars, operating full child welfare services, and paying foster care maintenance costs per Minn. Stat. § 256.01, subd. 14b.
5. **“Case plan”** is defined as the case plan required by Title IV-E of the Social Security Act for participation in the foster care maintenance payment program according to 45 Code of Federal Regulation (CFR) § 1356.21 (g).
6. **“Case review”** is defined as the case review required by Title IV-E of the Social Security Act for participation in foster care maintenance payment program according to 45 CFR § 1356.21 (f).
7. **“Department”** is defined as the Minnesota Department of Human Services.
8. **“DHHS”** is defined as the United States Department of Health and Human Services.
9. **“Difficulty of care rate”** is defined as a supplemental payment to foster parents for children in foster care who have mental, physical, or emotional handicaps who require additional supervision or assistance in behavior management, activities of daily living, management of medical problems, or interaction with birth parents and the community. The difficulty of care rate shall be determined according to Minnesota Rules Chapter 9560 and documented with the Department’s Difficulty of Care Assessment Schedule DHS-2834-ENG (5-06) and forms developed by the Tribe.
10. **“Federal financial participation”** is defined as the Federal government’s share of expenditures made by the Department, Tribe or county per Title IV-E of the Social Security Act for the costs associated with State’s administrative and operation of foster care and adoption programs. Provisions which govern Federal financial participation are set forth in the Social Security Act, 45 CFR §§ 233 & 235 and in other policy issues by the Secretary of DHHS.
11. **“Foster care”** is defined as the 24-hour substitute care for a child placed away from their parents or guardians and for whom the Tribe or 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 payments are made by the Tribe or 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).

12. **“Foster care maintenance payment”** is defined as the payments made by the Tribe or county on behalf of a child eligible for Title IV-E foster care to cover 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 a child, and reasonable travel for a child’s visitation with family, or other caretakers. Local travel associated with providing the items listed above is also an allowable expense. Daily supervision for which foster care maintenance payments may be made includes when work responsibilities preclude foster parents from being at home when the child for whom they have care and responsibility in foster care is not in school, licensed child care when the foster parent is required to participate, without the child, in activities associated with parenting a child in foster care that are beyond the scope of ordinary parental duties, such as attendance at administrative or judicial reviews, case conferences, or foster parent training. 45 CFR § 1355.20 (a), Minn. Stat. § 256.82. Subd.2-5, Minn. Rules § 9560.0521, 9560.0650, 9560.0653, 0560.0654, 9560.0665.
13. **“Foster care administration costs”** is defined as the costs incurred by the Tribe for the administration of the foster care program.
14. **“Foster care standards”** is defined as the written standards approved by resolution of the White Earth Tribal Council to govern policy and procedure in the licensing of Tribal foster homes which are and in compliance with 45 CFR § 1356.30 including the Adam Walsh Act of 2006
15. **“Foster care training costs”** is defined as the costs incurred by the Tribe for training activities related to the foster care program according to 45 CFR § 235.
16. **“Human Services Division”** is defined as the White Earth Band of Ojibwe’s Human Services Division.
17. **“Indian Child Welfare (ICW)”** is defined as the White Earth Band of Ojibwe’s Indian Child Welfare Department.
18. **“Judicial determination”** is defined as a determination made by a court of competent jurisdiction. Judicial determinations are to be explicit, made on a case-by-case basis, and so stated in the court order. Absent the appropriate judicial determination in a court order, a verbatim transcript of the court proceedings will be required to verify that required judicial determinations have been made according to 45 CFR § 1356.21 (d).
19. **“Legal guardianship”** is defined as 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 the following parental rights with respect to the child: protection, education, care and control of the person, and decision making. The term legal guardian means the caretaker in such relationship. 45 CFR § 1355.20
20. **“Match Payments”** is defined as the local share of the payments made on behalf of Title IV-E eligible children paid by the White Earth Band of Ojibwe.
21. **“Memorandum of Understanding”** is defined as the local agreements between White Earth and the counties participating in the American Indian Project.

22. **"Parties"** is defined as the parties to this Agreement, which are the Minnesota Department of Human Services and the White Earth Band of Ojibwe.
23. **"Permanency hearing"** is defined as the permanency hearing required by the Title IV-E of the Social Security Act, in accordance with the White Earth Band of Ojibwe's Children's Code, for participation in the foster care maintenance program. A permanency hearing shall 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. 45 § CFR 1355.20
24. **"Title IV-E"** is defined as Part E of Title IV of the Social Security Act.
25. **"Title IV-E Reimbursement"** is defined as the payments made by the state to the White Earth Band of Ojibwe to provide the federal financial share for eligible Title IV-E costs.
26. **"Title IV-E state plan"** is defined as the state plan developed by the Department to comply with the requirements of Part E of Title IV of the Social Security Act.
27. **"Tribal court"** is defined as the court of competent jurisdiction for the White Earth Band of Ojibwe.
28. **"Tribal court children's code"** is defined as the governing laws of the White Earth Band of Ojibwe utilized by the Tribal Court in child welfare cases.
29. **"Tribe"** is defined as the White Earth Band of Ojibwe.
30. **"Voluntary Placement Agreement"** is defined as a written agreement entered into by a parent of a child that voluntarily places care and custody of that child with the Tribe for purposes of foster care placement. 45 CFR §1356.21 (i).

2.0 STATEMENT OF BASIC AGREEMENT

The Tribe and Department hereby agree that the Tribe shall make foster care maintenance (including difficulty of care) payments on behalf of children participating in the American Indian Project. The federal Title IV-E reimbursement for eligible payments shall be distributed by the Department to the Tribe. Reimbursement for allowable Title IV-E administration and training costs for White Earth children under the jurisdiction of the White Earth Tribal Court or in placement pursuant to a voluntary placement agreement with ICW shall be accessed through the Social Services Administrative Tribal Time Study (SSATTS) and made available to the Tribe.

The Tribe agrees to provide services to all children in foster care under voluntary placement agreement with ICW or the White Earth Tribal Court's jurisdiction in compliance with 45 CFR §§ 1355, 1356 and 1357 and Title IV-E and Title IV-B of the Social Security Act.

When this agreement is signed, the Tribe will assume financial responsibility for foster care maintenance payments on behalf of children eligible for the American Indian Project while financial opportunities allow for such payments.

The terms and conditions of such payments are set out in the remainder of this Agreement and are subject to change by amendments agreed to by both parties in writing after the signing of this agreement.

2.1 Authority of the State and Tribe

The White Earth Band of Ojibwe has designated the Indian Child Welfare Department, hereafter "ICW" as the lead tribal agency for implementing this agreement. The State of Minnesota has designated the Department of Human Services, hereafter the "Department" as the state agency to administer the Title IV-E program.

2.2 Title IV-E Foster Care Maintenance

When a child is recognized by the White Earth Band of Ojibwe as a child eligible for membership with the tribe, domiciled within the White Earth Reservation, under the jurisdiction of the White Earth Tribal Court or in placement pursuant to voluntary placement agreement with ICW, placed in foster care and therefore determined eligible to participate in the American Indian Project, the Tribe shall make foster care maintenance payments on behalf of the child. If the child is Title IV-E eligible and associated foster care costs are reimbursable, this agreement allows the Tribe to submit Title IV-E claims to the Department. The Department shall provide the Tribe with a procedure manual for submitting federal claims to the Department along with training and on-going consultation and in return the Tribe agrees to follow the established Departmental procedures for submitting Title IV-E claims. The Department shall submit Title IV-E claims to DHHS on behalf of the Tribe.

2.3 Payments of Foster Care

The Department and the Tribe have entered into a contract relationship so the Tribe can access state grant dollars appropriated by the Minnesota Legislature for the American Indian Project (Minn. Stat. § 256.01, subdivision 14b.) These base funding dollars shall be used for child welfare service related activities, such as foster care maintenance payments, child and family services, administration and training. The White Earth Band of Ojibwe agrees to provide foster care maintenance payments to eligible families, child welfare services, administration activities, and training opportunities pursuant to contract activities related to the American Indian Project and to the extent that these activities are funded by the contract.

For the American Indian Project, foster care shall mean 24 hour substitute care for children placed away from their parent(s), legal guardian(s), or Indian custodians for child protection matters pursuant to the White Earth Band of Ojibwe Children's Code and applicable state and federal laws. For children living with an Indian custodian at the time of removal or within six months of the removal, the Indian custodian must meet the specified relative criteria for AFDC and have legal custody of the child to be eligible for Title IV-E. Placements may include foster homes (relative and non-relative), group homes, shelter homes, residential facilities and preadoptive homes.

For a child determined ineligible for the American Indian Project and for whom the ICW program has been given legal responsibility for the care and placement by White Earth

Tribal Court, financial responsibility for the cost of foster care remains with the county social service agency as required under Minn. Stat. § 260.771, subd. 4. Title IV-E eligibility shall be determined by the county of financial responsibility.

Foster Care Difficulty of Care and Adoption Subsidy

The White Earth ICW Department's multidisciplinary team shall assess and determine difficulty of care points for children in foster care and special needs pursuant to adoption assistance. The difficulty of care rates shall identify the child's physical, mental, behavioral, and/or emotional needs that exceed basic care. Both parties to this agreement recognize that Difficulty of Care rates as well as adoption subsidies assist in maintaining a special needs child by compensating trained caregivers and adoptive parents who provide a level of extraordinary care, supervision, and/or other services that may be time-limited by nature (foster care) or permanent by nature (adoption). The difficulty of care rates shall be determined according to Minnesota Rules Chapter 9560 and documented with the Department's Difficulty of Assessment Schedule form DHS-2834-ENG (05-06). The adoption subsidy rates shall be determined by Minnesota Rules Chapter 9560 and Minn. Stat. § 259.67. The Tribe may elect to use additional forms that are culturally appropriate in addition to the aforementioned documentation.

For children eligible for customary adoption in White Earth Tribal Court, adoption subsidy (adoption assistance) shall mean financial assistance provided for children with special needs as an incentive to help place children for adoption through the White Earth Tribal Court and White Earth Adoption Program. A subsidy agreement is negotiated prior to a finalization of adoption, and may include monthly maintenance payments, medical coverage, and other services such as therapy and respite care. Basic and specialized adoption assistance rates shall be based on the Department's schedules. Special needs qualifications shall be defined by the State in communication and cooperation with the Tribe.

2.4 Title IV-E Foster Care Reimbursement

Department shall submit claims to the DHHS, on behalf of payments made by the Tribe, for Title IV-E funding reimbursement with respect to eligible children.

2.5 Use of Federal Revenue

The Tribe agrees that all reimbursements resulting from Title IV-E maintenance payments and all revenue resulting from the Social Service Administrative Time Study administrative activities shall be used to support the goals of the American Indian Project and the White Earth ICW Program. These funds can be used as the local match for additional federal reimbursement.

3.0 PARAMETERS OF AGREEMENT

This agreement replaces individual county substitute care supervision agreements signed with the Tribe. This state tribal Title IV-E agreement provides a mechanism to enable all Minnesota counties to obtain eligible federal Title IV-E foster care maintenance reimbursement for the cost of out of home placements for children not eligible for the

American Indian Child Welfare Initiative when such costs are paid by the county and when such placements are ordered by the White Earth Band Tribal Court. Furthermore, the agreement supports meeting the needs of White Earth children who are under the jurisdiction of state district courts in Minnesota.

The Department recognizes the responsibility of the State and local 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 local social service agencies must honor tribal court orders for placement and provision of services 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 of an Indian tribe applicable to Indian child custody proceedings. The exercise of tribal court jurisdiction does not mean withdrawal, decrease, or denial of county social services.

Direct payments made by the Tribe for foster care, administration and training is limited to White Earth Children under the jurisdiction of the White Earth Tribal Court or voluntary placement and identified by the Tribe as eligible participants in the American Indian Project. This agreement shall not affect the State's rights and responsibilities concerning White Earth children who are in the State's care under jurisdiction of the state district court, or otherwise identified as ineligible for participation in the White Earth American Indian Project.

For children who are ineligible for the American Indian Project but recognized as eligible for membership under ICWA with White Earth, this Agreement serves to protect such children's eligibility under Title IV-E so that a county or the Department may claim Title IV-E reimbursement

4.0 TERMS AND CONDITIONS FOR USE OF TITLE IV-E MONIES TO MAKE MAINTENANCE PAYMENTS

The Tribe shall be responsible for submitting determinations for eligibility for Title IV-E Federal Financial Participation (FFP) to the Department for children identified as eligible for the American Indian Project. The Department shall be responsible for periodic examination of eligibility, fair hearings and appeals, as well as technical assistance to the Tribe. The foster care maintenance payments for Title IV-E eligible children eligible for the American Indian Project for White Earth children shall be made by the Tribe based on the following terms and conditions set forth in the Social Security Act, part E, Title IV.

- 4.1 Availability of Title IV-E Federal Financial Participation: FFP is available for each White Earth child under the American Indian Project
 - a. who would meet the requirements of 406(a) of the Act (as in effect on July 16, 1996) but for his or her removal from the home of a relative if the removal from his or her home:

- (1) was the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child and that reasonable efforts have been made, prior to the placement of the child in foster care, to prevent or eliminate the need for removal of the child from their home and to make it possible for the child to return to his or her home; or
- (2) occurred pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian.
- b. whose placement and care is the responsibility of the Tribe while this Title IV-E agreement is in effect; and
- c. the child has been placed in a foster family home or child-care institution.
- d. who:
 - (1) would have received AFDC under the State Plan approved under the Act (as in effect on July 16, 1996) in or for the month in which either a voluntary agreement was entered into or court proceedings leading to removal of the child from the home were initiated, or
 - (2) would have received AFDC in or for such month if application for such aid had been made; or
 - (3) had been living in the home of a relative specified in the Act within six months prior to the month in which a voluntary agreement was entered into or court proceedings were initiated, and would have received AFDC in or for such month if in such month he or she had been living with such relative and an application had been made for aid under title IV-A of the Act.

4.2 Availability of Title IV-E Federal Financial Participation: FFP is available for White Earth children not under the American Indian Project:

- a. who would meet the requirements of 406(a) of the Act (as in effect on July 16, 1996) but for his or her removal from the home of a relative if the removal from his or her home:
 - (1) was the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child and that reasonable efforts have been made, prior to the placement of the child in foster care, to prevent or eliminate the need for removal of the child from their home and to make it possible for the child to return to his or her home; or
 - (2) occurred pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian; and
 - (3) the child had been placed in a foster family home or child-care institution.
- b. whose placement and care is the responsibility of either:
 - (1) The Tribe or
 - (2) A Minnesota County
- c. who:
 - (1) would have received AFDC under the State Plan approved under the Act (as in effect on July 16, 1996) in or for the month in which either a

- voluntary agreement was entered into or court proceedings leading to removal of the child from the home were initiated, or
- (2) would have received AFDC in or for such month if application for such aid had been made; or
 - (3) had been living with a relative specified in the Act within six months prior to the month in which a voluntary agreement was entered into or court proceedings were initiated, and would have received AFDC in or for such month if in such month he or she had been living with such relative and an application had been made for aid under Title IV-A of the Act.

5.0 ELIGIBLE MAINTENANCE REIMBURSEMENTS FOR THE WHITE EARTH BAND OF OJIBWE FOR CHILDREN UNDER THE AMERICAN INDIAN PROJECT

5.1 Types of Payments: Maintenance payments for a White Earth child in care under the American Indian Project may cover:

- a. the cost of (and providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to the child, and reasonable travel for the child to the child's home for visitation; and
- b. in the case of institutional care (group homes or residential treatment) the reasonable costs of administration and operation of such institutions as are necessarily required to provide the items needed by the child.

5.2 Equality of Payments: Maintenance payments made under this Title IV-E agreement shall be equal in amount to the difficulty of care points and rate set for the individualized needs of the child.

5.3 Timeliness of Payments: Maintenance payments using Title IV-E federal funds are made by the Tribe on behalf of a White Earth child who is:

- a. in the care of a licensed foster home or preadoptive home, whether the payments are made to the licensed individual or to a public, governmental, or non profit private child placing agency.
- b. in a group home, family foster group home, or residential treatment center with the payments being made to the designated entity for that facility. Such payments are limited to include only those items which are included in the term "foster care maintenance payments."

5.4 Limitations and Licensing: Maintenance payments shall be made for the care of White Earth children in foster family homes, group homes, preadoptive homes, and residential treatment centers licensed by the Department or approved by the Tribe. In addition, these homes/facilities must be licensed in accordance with the Adoption and Safe Families Act and Adam Walsh Act standards.

6.0 VOLUNTARY PLACEMENTS MEETING MAINTENANCE REIMBURSEMENT

6.1 Requirements for Voluntary Placements: Foster care maintenance payments from Title IV-E federal funds shall be made in cases of voluntary placements of a minor White Earth child out of the home with the participation of the Tribe only if:

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

6.2 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 after the date of placement to the effect that the placement is in the best interests of the child.

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

6.4 Judicial Review of Voluntary Placement: All voluntary placements of a minor White Earth child out of the home will be presented to the Tribal Court for judicial review within 30 days of the child's placement into the care, custody and control of the Tribe's ICW Department; and such voluntary placements will be judicially reviewed every 90 days.

7.0 CASE REVIEW REQUIREMENTS FOR WHITE EARTH CHILDREN INVOLVED IN THE AMERICAN INDIAN PROJECT FOR WHICH THE TRIBE CLAIMS IV-E REIMBURSEMENT

7.1 Case Plan: The case plan requirements of the Social Security Act will be met by the Tribe utilizing the DHS case plan forms in SSIS. The Department agrees to provide the Tribe technical and equipment assistance to implement this statewide informational system. The case plan forms will be utilized for each White Earth child served in the American Indian Project, and must meet the following requirements:

- a. be a written document that contains all of the federal language requirements, which is developed with the family and copies provided to the parents or guardians of the child;
- b. be developed within 30 days of the child's placement out of the home or within 30 days of the Tribe assuming responsibility for providing services;
- c. include a description of the services offered to prevent the removal of the child from the home and to reunify the family;
- d. include a description of the type of home or institution in which the child is to be placed;

- e. include language that addresses the safety and appropriateness of the placement;
- f. include a plan for assuring that the child receives safe and proper care, for providing services to the parent(s) or guardian in order to improve the conditions in the parent(s) or guardian's home to facilitate reunification, or for providing an alternative permanent placement of the child;
- g. include a plan for assuring that services are provided to the child and foster parents in order to address the needs of the child while in foster care;
- h. for a child age sixteen or older, there shall be a written independent living skills plan, the programs and services to meet this plan, and description of preparing the child to transition from foster care to independent living;
- i. in the case of a child whose alternative living plan is customary adoption or adoption there must be documentation included of the steps ICW is taking to secure an alternative permanent living arrangement for the child; the steps taken to place the child with family; and the steps taken by ICW to finalize this plan.
- j. address placement in a safe setting that is the least restrictive available, in close proximity to the parent(s) or guardian, and is consistent with the best interest and special needs of the child;
- k. must address the reasons why a child is placed in a foster home or other approved setting that is a substantial distance from the home of the parent(s) or guardian;
- l. if the child is placed in foster care or preadoptive placement in another state the plan must assure that the Tribal caseworker visits the child at a minimum of every six months; and that an authorized caseworker of the other state visits the home no less frequently than every three months and submits a report through the Interstate Compact system;
- m. assure that the permanency hearings determine whether an out of state placement continues to be appropriate and in the best interests of the child;
- n. to the extent available and accessible to the Tribe, the plan needs to incorporate the health and educational record of the child, including:
 - 1. the names and addresses of the health care providers;
 - 2. the names and addresses of previous education providers;
 - 3. the school record;
 - 4. addresses the attempts to keep the child in the same school district attended at the time in placement;
 - 5. a record of immunizations;
 - 6. the child's known medical conditions;
 - 7. the child's medications;
 - 8. and any other relevant health and education information concerning the child.
- o. provide that a child's health and education record is reviewed and updated, and supplied to the foster provider with whom the child is placed.

7.2 Case Review Criteria: The Tribe shall implement a case review system through either judicial or administrative review, which meets the requirement of the Act

(45 C.F.R. 1356.21(f))and assures that a case review of the status of each White Earth child who has been placed in foster care or other out of home placement will be made at least every six months from the date the child entered into care, in order to:

- a. review the placement and plan for assuring the child receives safe and proper care;
- b. determine the continuing need for and appropriateness of the placement;
- c. determine the extent of compliance with the case plan;
- d. determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement;
- e. project a likely reunification date or alternative permanency plan date;
- f. address, in the case of a child placed out of state, whether this placement continues to be appropriate and in the best interests of the child; and
- g. address, in the case of a child age sixteen or older, the services needed to transition the child from foster care to independent living.

8.0 PERMANENCY HEARING AND PROCEDURAL SAFEGUARDS

8.1 Dispositional Review: shall be held for each White Earth child in foster care under the responsibility of the Tribe in the American Indian Project. Pursuant to Tribal code, review hearings shall be held at least every 90 days of the date of the placement of the child; and a permanency hearing will be held at least 12 months after the child entered out of home placement and every 12 months thereafter during the continuance of foster care.

8.2 Determinations: for the purpose of this requirement, a dispositional review or permanency hearing shall determine the permanency plan for the child that includes:

- a. whether reunification is sought,
- b. whether the child is to be customarily adopted,
- c. whether the child is to be adopted,
- d. whether the child is to be placed in the legal and physical custody of someone other than the parent(s),
- e. whether guardianship shall be granted of the child to another party,
- f. whether the child shall be placed into long term foster care,
- g. if the child is placed out of state, whether this placement continues to be necessary,
- h. whether a termination of parental rights or suspension of parental rights petition needs to be filed if the child is not in the care of a relative; and compelling reasons not to file a termination or suspension petition,
- i. and in the case of a child age sixteen or older, the independent living skills plan for the child.

8.3 Procedural Safeguards:

- a. The Tribe shall notify the parents pursuant to the Children's Code when their child has been removed from their home and when an emergency hearing before the Tribal Court is scheduled.

- b. The parents shall be notified by the Tribe when their child is moved from one placement to another.
- c. The parents shall be notified by the Tribe of any determinations affecting their visitation rights.
- d. The foster parents or caregivers shall be provided notice of and have the right to be heard in any review hearing held with respect to the child. Participation by the foster parent or caregiver shall not be construed to mean that they are made a party to the proceedings.

9.0 PREVENTIVE AND REUNIFICATION SERVICES

- 9.1 Active Efforts: When making active efforts to prevent the removal of the child from the parent(s) or guardian, the child's health and safety shall be the paramount concern. Active efforts shall be made to preserve and reunify families, to prevent the need for removing the child from the home, and to make it possible for the child to safely return home.
- 9.2 Consistency with Alternative Permanency Plan: If continuation of active efforts to reunify the child is determined to be inconsistent with the permanency plan for the child, active efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete the necessary steps to finalize the plan for the child.
- 9.3 Active Efforts not Required: Active efforts to reunify a child shall not be required if the Tribal Court has determined that the parent:
 - a. has subjected the child to aggravated circumstances as defined by the Tribe;
 - b. has aided or abetted, attempted, or conspired, or solicited to commit a murder or voluntary manslaughter;
 - c. has committed a felony assault that results in serious injury to the child or another child of the parent; or
 - d. has had their parental rights to a sibling terminated, suspended, or transferred involuntarily.
- 9.4 Hearing Requirements: If active efforts are not made for a child by determination of Tribal Court, a permanency hearing shall:
 - a. be held for the child within 30 days of the determination; and
 - b. the efforts of ICW to finalize and place the child in a timely manner in accordance with the permanency plan shall be reviewed by the court.
- 9.5 Calculating When a Child Enters Foster Care: a child shall be considered to have entered foster care on the earlier of:
 - a. the date of the first judicial finding that the child has been subject to child abuse or neglect;
 - b. the date that is 60 days after the date on which the child is removed from the home; or
 - c. the date a child is placed under the Tribe's responsibility by a written voluntary agreement entered into by a parent of a child.

10.0 PERMANENCY

10.1 Suspension of Parental Rights and Customary Adoption

The governing body of the White Earth Band of Ojibwe, the White Earth Tribal Council, has enacted a customary adoption code which provides a unique permanency option for children whose cases are before the White Earth Tribal Court. The customary adoption will be utilized as a permanency option for cases before the White Earth Tribal Court that are included in the American Indian Child Welfare Initiative. The customary adoption is an acceptable permanency option pursuant to the Adoption and Safe Families Act.

- 10.2 When Required and Exceptions: Under the Adoption and Safe Families Act, the responsible social services agency must file a termination of parental rights petition for children who have been in foster care for fifteen of the most recent 22 months or if the court has determined a child to be an abandoned infant, 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 or at the option of the Tribe, if there are aggravated circumstances. Pursuant to the ASFA rules the Tribe must document on a case by case basis why a termination of parental rights petition is not required or in the best interests of the child. Exceptions to filing a termination of parental right petition and identifying the recruitment for a qualified family for adoption include:
- a. the child is being cared for by a relative;
 - b. the Tribe has documented in the case plan (which must be available for court review) compelling reason for determining that filing such a petition would not be in the best interests of the child; or
 - c. the Tribe has not provided the family of the child such services the Tribe deems necessary for the safe return of the child to the child's home if active efforts could result in the return of the child to the home and such active efforts are required.

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

- 11.1 Tribal Standards: The Tribe has licensing standards for foster family homes, therapeutic foster homes, family foster group homes, group homes, adoptive homes, respite care homes, and shelter homes. These standards established shall be applied by the Tribe to any Tribally-licensed entity providing care to children in out of home placement. These standards address policy and procedure in licensing.
- 11.2 Criminal Background Checks: The Tribe has established procedures for completion of criminal background checks prior to granting a final approval on a license to providers. The criminal background checks are in compliance with the Adam Walsh Act. Children on whose behalf payments are made will not be

placed into homes that are not approved for licensure. In any case in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children, or for a crime involving violence, rape, sexual assault, or homicide then final approval shall not be granted. When a record check reveals a felony conviction for physical assault, battery, or a drug-related offense within the past five years, such final approval shall not be granted.

12.0 DATA PRIVACY

- 12.1 To address data practices, the Tribe agrees that its policies regarding record maintenance and disclosure of information are in accordance with data privacy requirements under Chapter 13 of Minnesota Statutes.
- 12.2 Confidentiality: The Tribe has safeguards restricting use of or disclosure of confidential information concerning individuals assisted under the Title IV-E plan. Staff must sign individual confidentiality agreements within ICW, in addition to Tribal confidentiality agreements. Staff is trained on confidentiality and data privacy issues. ICW has release of information forms that are compliant with state mandates and HIPAA regulations.
- 12.3 Tribal Policies within ICW: The Tribe has a data practices policy and instructions regarding the safeguarding of information.
- 12.4 Record Maintenance: The Tribe will maintain all records pertaining to Title IV-E eligibility and maintenance payments, for the period under which a child is in out of home care, and a minimum of six years thereafter.

13.0 REPORTING REQUIREMENTS

- 13.1 DHHS Review: The Tribe and DHS acknowledge that the DHHS or DHS conducts periodic reviews of state agencies that receive and distribute Title IV-E funds, and that DHHS or DHS requires as a part of such reviews that case files on children receiving IV-E support be made available for inspection at a designated time and location. Upon reasonable advance written notice, the Tribe will make available for review by DHHS or Department staff the case file and provider files on those identified White Earth children in foster care under the jurisdiction of the Tribal Court, and in the American Indian Project, whose foster care providers receive Title IV-E funds. The files, when requested, shall be delivered by the Tribe to the designated location for review. The files shall at all times remain the property of the Tribe and shall be returned to the Tribe immediately upon completion of the review process.
- 13.2 Technical Assistance: The Department will provide the Tribe with training, technical assistance and support to ensure proper claiming and to adjust Title IV-E claims related to ineligible claims or underpayments. The Tribe may request technical assistance from the Department in assuring that the case files contain the proper documentation; and that this technical assistance occurs in the manner requested by the Tribe including on-site visits to train ICW staff.

13.3 Reports: The Tribe will make reports in such form and containing such information on the Tribe's Title IV-E program as are required quarterly and bi-annually by the Department.

13.4 Verification: The Tribe will comply with such provisions as the Department or DHHS may from time to time find necessary to assure the correctness and verification of such reports.

14.0 PROCEDURES FOR PAYMENTS

14.1 Tribal IV-E Eligibility Worker: The Tribe shall designate staff to be the eligibility worker for Title IV-E foster care payment applications made by the Tribe pursuant to this agreement.

14.2 Paperwork: The Tribe shall complete the eligibility paperwork and determination for Title IV-E for each White Earth child that is identified within the American Indian Project, under the jurisdiction of the Tribal Court, and for whose foster care the Tribe would like Federal Financial Participation.

14.3 Foster Care Maintenance Payments: When a child is identified to be eligible for the American Indian Project, the Tribe shall use the base funding appropriated by the Minnesota State Legislature for the Project to pay foster care maintenance payments. Reports shall be submitted to the Department quarterly for Federal Financial Participation and reimbursement of costs to the Tribe.

14.4 Difficulty of Care Rates: The ICW Department shall determine any difficulty of care points and rates for each identified child within the Project, based on the individual needs identified and documented for the child per Minnesota Rules Chapter 9560.

14.5 Documentation of Difficulty of Care Rates: All difficulty of care points assigned to children must reflect their individual needs for services. These individual needs shall be identified, along with the care, treatment, and procedures that are to be provided by the caregiver to meet these needs and documented in the Difficulty of Care Assessment Schedule Form DHS-2834-ENG.

15.0 PROCEDURES FOR SSATTS

15.1 Federal matching funds, based on federal cost allocation principles, will be made available for reimbursement to the Tribe according to 45 CFR § 235.61-235.64. Reimbursement is based on allowable administrative expenditures necessary for the proper and efficient administration of the Title IV-E foster care and adoption programs.

15.2 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 Tribe's federally established indirect rate used in calculating the administrative and training reimbursement claim.
- 15.2 The Department agrees to provide all time study training materials and training to Tribe within 60 days of the anticipated start date of the time study sampling.
- 15.3 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.
- 15.4 The Tribe 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.
- 15.5 The Department and the Tribe will carry out their respective roles and responsibilities for the time study.
- 15.6 The Tribe 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 Tribe 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 Tribe 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, training of participants in log sheet completion; Submit of all SSATTS application materials, contracts, log sheets, cost reports, and other required forms and paperwork to the Department within the required timelines.

- 15.7 The Tribe 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 appropriate federal and state laws, rules and regulations.
- 15.8 The Tribe shall ensure and provide verification that staff participating in the time study and SSATTS coordinators and fiscal representatives have completed all required training.
- 15.9 The Tribe 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*.
- 15.10 The Tribe 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.
- 15.11 The Tribe participating in the SSATTS shall maintain an accounting and financial management system adequate to support all claims for federal reimbursement through the SSATTS.
- 15.12 The Tribe shall provide the non-federal share of all expenditures for which federal revenue is claimed through the SSATTS. In addition, the Tribe 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.
- 15.13 The Department shall forward to the Tribe, 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.
- 15.14 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 in administering the SSATTS. Unused set-aside funds will be returned to the Tribe on an annual basis.
- 15.15 The Department shall ensure that federal reimbursement earned pursuant to this agreement shall not be used in determining the allocation or distribution of other funds to Tribes.
- 15.16 Payments to the Tribe 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 Tribe shall be paid on a pro rata basis, for services satisfactorily performed, and for which federal reimbursement was received.
- 15.17 The amount forwarded to the Tribe shall be based on eligible activities identified through the SSATTS and quarterly costs.
 - 1) The Tribe shall submit SSATTS cost reports within 20-days after the end of the quarter. Cost reports received by the Tribe 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 Tribe 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.
- 15.18 The Department shall pay the federal reimbursement earned under this agreement, less a set-aside as defined in this agreement Part 15.14 to the Tribe based on their earnings pursuant to the terms of payment in this Article once federal approval for this project is granted, and federal funds become available.
- 15.19 The Department shall recover from the Tribe any federal fiscal disallowances or sanctions attributable to actions of the Tribe participating in the SSATTS. If federal 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 Tribe.
- 15.20 All services and reporting provided by the Tribe 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 Tribe to rectify issues. In the end, however, the Department reserves the right to suspend, reduce or terminate the distribution of SSATTS funds to the Tribe for services, SSATTS reporting, or reporting provided pursuant to this agreement found by the Department to be unsatisfactory or in violation of federal or state laws and regulations.
- 15.21 The books, records, documents, and accounting procedures, and practices of the Tribe 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.

16.0 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 band's child welfare agency, in accordance with 45 CFR § 235.61 – 235.66. Foster parent(s) and staff of licensed or approved child care institutions providing foster care shall be eligible for short-term training. The reimbursement for the training of tribal staff conducted by the other tribal staff shall be administered through the SSATTS time study. Other costs incurred for formal training where consultants are hired to provide training to tribal staff or to foster parents can be reimbursed through an annual training plan.

- 16.1 All training activities and costs shall be included in a training plan submitted and approved annually by the department and not included in the SSATTS.
- 16.2 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.

16.3 The band will submit a quarterly payment request for reimbursement of eligible training costs.

17.0 OVERSIGHT AND QUALITY ASSURANCE

17.1 The Tribe 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 support be made available for inspection at a designated location. Upon reasonable advance written notice, the Tribe shall 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 Tribe whose foster parent(s) receive Title IV-E funds.

17.2 The Tribe agrees to make the records and/or files described herein available at all reasonable times at the Tribe's designated office for review by DHHS or the Department. The files shall at all times remain the property of the Tribe and shall be returned to the Tribe immediately upon completion of the review process.

17.3 The Department agrees to provide the appropriate forms, technical assistance, consultations, and monitoring to enhance compliance with the Title IV-E requirements.

17.4 The Department will use the same laws, policies and procedures that it currently uses with counties in their Title IV-E review. The Department agrees to provide the same opportunity to the Tribe as provided to counties to correct the deficiency without financial burden or other sanctions.

17.5 The Tribe and the Department will work in partnership to ensure case files contain the proper documentation.

18.0 FINANCIAL RESPONSIBILITY

The parties acknowledge that the Act requires that parents participate financially in their child's care while the child is in foster care. The Tribe shall use the Tribal Court to assess feasibility of child support payments, and enforce those support payments ordered by the Tribal Court.

18.1 Trust Account

The dollars collected through child support for the child's care out of the home shall be placed into a trust account, and the distribution of those funds to ICW for their proportionate share of costs in providing care to the children.

18.2 Benefit Accounts

All income that is not exempt (e.g., support, SSA, Veterans, SAIF) will be deposited in the child's benefit account. Benefit accounts will reduce the federal claim and state match.

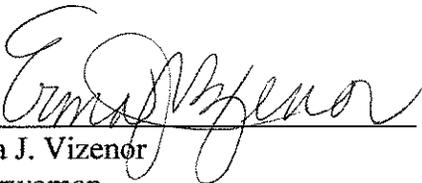
19.0 MONITORING

The Tribe and the Department agree to monitor and conduct evaluations of activities carried out in the Tribal Title IV-E program.

20.0 MISCELLANEOUS TERMS AND CONDITIONS

- 20.1 **Effective Terms of the Agreement and Reviews:** This agreement shall become effective upon its execution by the parties and shall remain in effect until rescinded or terminated. Either party may terminate this agreement upon 90 days written notice to the other party, provided that, before termination of this agreement, the parties shall make a good faith effort to discuss, renegotiate, and modify the agreement. A review of the agreement to discuss, renegotiate, and modify portions may be requested by either party at any given time.
- 20.2 **Severability:** at any time a provision in this agreement is held invalid or unenforceable by a court of competent jurisdiction; such holdings shall not invalidate or render unenforceable any other provision in this agreement.
- 20.3 **Entire Agreement:** This agreement constitutes the final and entire agreement between the parties, and there is no agreement or promise on the part of any party to do or omit to do any act or thing not herein mentioned. This agreement is intended as a complete and exclusive statement of the terms and conditions of the parties' agreement and may not be effectively amended, changed, modified, or altered without the written consent of all the parties.
- 20.4 **Breach:** In the event of a breach of this agreement, either party may terminate the agreement. Either party may terminated the agreement by written notice to the other party. Such notice shall specify the breach, and the party to whom notice of breach is given shall have thirty (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 31st day following receipt of notice, or such later date as specified in the notice.
- 20.5 **Cooperation:** The Tribe and the Department agree to cooperate to the utmost in carrying out the intent and purposes of this agreement.

WHITE EARTH BAND
OF OJIBWE


Erma J. Vizenor
Chairwoman

Dated: 12-03-07

MINNESOTA DEPARTMENT
OF HUMAN SERVICES


Erin Sullivan Sutton, Director
Child Safety & Permanency Division

Dated: 12-5-07