

TRIBAL - STATE FOSTER CARE AGREEMENT

WHEREAS, the North Dakota Department of Human Services (hereinafter referred to as the Department) and the Devils Lake Sioux Tribe (hereinafter referred to as the Council) and the Devils Lake Sioux Tribe Tribal Court (hereinafter referred to as the Court) continue to be concerned that proper supervision be exercised over children placed in foster care in which the Department, Council, and Court have an interest and that appropriate periodic services and services on an as needed basis be provided to such children; and

WHEREAS, in the past, the parties to this Agreement have agreed on the development of an appropriate service plan for children in foster care, the Department, through its county administrative units; the Council, through its social services component; and the Court, through its judicial orders; to assure that relevant revisions of 45 CFR 233.110(2) and (3) are met and to assure that such services were not duplicated when placement and care responsibilities for such children were given by the Court to the Council and its social services component; and

WHEREAS, the parties to the Agreement wish to continue the formalizing of such arrangements so as to assure that such legally mandated services and other necessary services were provided to such children pursuant to a child care plan in each instance, which assures that the best interests of such children remain of paramount importance.

WHEREFORE, the Department, Council, and Court agree as follows:

1. That the Court will continue to exercise its jurisdiction of its placement and care responsibilities for all appropriate children and will designate the services provider which, by order of the Court and in accordance with this Agreement, will undertake and continue to provide services.
2. The Council, through its designated agents, shall, when designated to be the service provider, fulfill all of the requirements of North Dakota Department of Human Services Foster Care - Permanency Planning Chapter 624. In addition, they shall undertake and continue to provide services in compliance with 45 CFR 233.110, AFDC Foster Care, as well as Section 427 of Public Law 96-272 for such children, including but not limited to, the following:
  - A. 427 (a) (2) (B) Care Review System  
Case Plan

For each child receiving foster care maintenance payments, there is a case plan which is a written document. The case plan includes at a minimum:

- (a) a description of the type of home or institution in which the child is to be placed;
- (b) a discussion of the appropriateness of the placement;
- (c) a discussion of how the responsible agency plans to carry out the judicial determination made with respect to the child in accordance with Section 472 (a) (1) "the removal from the home was a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of the child and effective October 1, 1983 that reasonable efforts of the type described in Section 471 (a) (15) have and will be made."
  - 1. Section 471 (a) (15) states "effective October 1, 1983, provides that, in each case, reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home."
- (d) a plan for assuring that the child receives proper care;
- (e) a plan for assuring that services are provided to the child and parents to improve conditions in the parents' home and facilitate return of the child to his own home.
- (f) a plan for assuring that services are provided to the child and foster parents to facilitate return of the child to his own home or the permanent placement of the child and address the needs of the child while in foster care;
- (g) a discussion of the appropriateness of the services that have been provided the child under the plan.

#### Case Review

The tribal agency will have a case review system which meets the requirements of Section 475 (5) of the Act and ensures that:

- A. The case plan for each child is designed to achieve:
  - 1. Placement in a least restrictive (most family like) setting available, and
  - 2. Placement in closest proximity to the parents' home consistent with the best interest and special needs of the child.
- B. The status of each child will be reviewed periodically but no less frequently than once every six months by either a court or administrative review;
- C. The periodic review will:
  - 1. Determine the continuing need for and appropriateness of the placement;
  - 2. Determine the extent of compliance with the case plan;

3. Determine the extent of progress made toward alleviating or mitigating the cause necessitating the placement in foster care; and
  4. Projects a likely date which the child may be returned home or placed for adoption or legal guardianship.
- D. An administrative review of the following requirements specified in Section 475 (6) are met:
1. The review is open to the participation of the parent(s) of the child, and
  2. The review is conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parent(s) for the subject of the review.
- E. The Tribal agency applies procedural safeguards with respect to each child in foster care under supervision of the state which assures that:
1. A dispositional hearing is held in a tribal court of competent jurisdiction or by an administrative body appointed or approved by the Court, no later than 18 months after the original placement (and periodically thereafter during the continuation of foster care);
  2. The dispositional hearing determines the future status of the child including whether the child should:
    - a) be returned to the parent(s), or
    - b) be continued in foster care for a specified period, or
    - c) be placed for adoption, or
    - d) because of the child's special needs or circumstances, be continued in foster care on a permanent or long term basis;
  3. Procedural safeguards are applied with respect to parental rights pertaining to:
    - a) removal of child from his or her parents' home
    - b) a change in the child's placement
    - c) any termination effecting visiting privileges of the parents.
  4. The Council and the Court will also comply with the provisions of the Indian Child Welfare Act of 1978 and associate federal regulations and the appropriate provisions of the Devils Lake Sioux Tribe insofar as these authorities do not conflict with the authorities cited in paragraph 3, above.
  5. The Council and the Court agree that the Department will continue to monitor the placement of such children, the service plan developed for such children, and the provision of services for such children to assure that the best interests of the child are served, thereby in accordance with federal and state regulations.

6. The Department, Council, and Court agree to continue to cooperate to the utmost in carrying out the intent and purpose of this Agreement.
7. It is mutually agreed that this Agreement may be terminated by either party at any time, with or without cause, by giving 30 days written notice delivered by mail or in person to all parties to this Agreement.

This Agreement shall remain in effect unless so terminated or modified. Dated this 30th day of September, 1983.

NORTH DAKOTA DEPARTMENT  
OF HUMAN SERVICES

By: Dale Moug  
Dale Moug, Executive Director

DEVILS LAKE SIOUX TRIBE

By: Elmer White Jr  
Tribal Chairman

**ADDENDUM #2 TO**  
**TRIBAL – STATE FOSTER CARE AGREEMENT**  
**BETWEEN THE**  
**SPIRIT LAKE SIOUX TRIBE TRIBAL COUNCIL,**  
**THE SPIRIT LAKE SIOUX TRIBE TRIBAL COURT**  
**AND THE**  
**NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES**

**WHEREAS**, the Devils Lake Sioux Tribe Tribal Council, the Devils Lake Sioux Tribe Tribal Court and the North Dakota Department of Human Services entered into a Title IV-E Foster Care Agreement on September 30, 1983 which is still in effect; and

**WHEREAS**, the Agreement recognized the sovereignty of the Devils Lake Sioux Tribe to make placement and care decisions concerning children in foster care under its jurisdiction; and

**WHEREAS**, the Devils Lake Sioux Tribe is now known as the Spirit Lake Sioux Tribe; and

**WHEREAS**, an agreement is necessary specifying that the Tribe will follow Federal Title IV-E law and regulations in order for the Tribe to access federal reimbursement for Title IV-E related expenditures; and

**WHEREAS**, federal law and regulations as specified in the current Agreement have changed since the Agreement was signed and there is a need to reflect these changes in the Agreement in order to maximize federal reimbursement to the Tribe and the Department

**THEREFORE**, the Council, Court and Department agree to the following addendum to the current Agreement:

**FEDERAL LAW, REGULATIONS AND POLICY**

The Tribe shall follow all Title IV-E laws, regulations and policies. The Department shall make Title IV-E federal reimbursement funds available to the Tribe for allowable administration and training expenditures incurred by the Tribe.

These dollars shall go directly to tribal Social Services for child welfare programming.

#### **MAINTENANCE PAYMENTS**

The Department shall be responsible for providing the non-federal share of the foster care and subsidized adoption maintenance payments for all Title IV-E eligible children.

#### **TITLE IV-E ELIGIBILITY DETERMINATION**

The Department, through a County Social Service Board shall be responsible for determining eligibility for Title IV-E. The Tribe shall provide eligibility related information to the County to assist the County in determining Title IV-E eligibility.

#### **TRIBAL COURT ORDERS**

The Tribal Court shall include all necessary language in Tribal Court orders that are required for Title IV-E eligibility purposes. In addition, the Tribal Court shall order parents whose child has been removed by order of the tribal court to cooperate with all Tribal, Department and County agencies in providing requested medical and financial information.

#### **REIMBURSEMENT FOR TRIBE INCURRED ADMINISTRATION COSTS**

The Department shall pass through Title IV-E reimbursement for Tribal incurred administration costs in accordance with federal regulations and Department policies and procedures.

The following are examples of allowable administration costs as specified in 45 CFR 1356.60 (c):

- (i) Referral to services;
- (ii) Preparation for and participation in judicial determinations;
- (iii) Placement of the child;
- (iv) Development of the case plan;
- (v) Case reviews;
- (vi) Case management and supervision;
- (vii) Recruitment and licensing studies of foster homes;
- (viii) Rate setting;
- (ix) A proportionate share of related agency overhead; and
- (x) Costs related to data collection and reporting

The Tribe's administration costs shall be cost allocated based on a Tribal Social Service Time Study in accordance with the federally approved Department Cost Allocation Plan.

The allowable administration costs will be further cost allocated based on:

- The percentage (%) Native American children in foster care or subsidized adoption in Tribal custody on the reservation that are Title IV-E eligible times (X) 50% (Federal Financial Participation for administration) or
- The percentage (%) of all children statewide who are in the Departments foster care or subsidized adoption universe that are Title IV-E eligible times (X) 50% (Federal Financial Participation for administration).

### **REIMBURSEMENT FOR TRIBE INCURRED TRAINING COSTS**

The Department shall pass through Title IV-E reimbursement for Tribal incurred training costs in accordance with 45 CFR 1356.60 (b). These dollars shall be used for the delivery of child welfare training.

Title IV-E reimbursement is available for the costs of long and short term training of child welfare personnel employed by or preparing for employment by Spirit Lake Sioux Tribal Social Services. In addition, current or prospective foster or adoptive parents shall be eligible for short-term training (including travel and per diem expenses).

All training activities and costs reimbursed under Title IV-E shall be included in the Department's and Tribe's Title IV-B, "Child Welfare Services Plan" and have prior approval of the Department's Children and Family Services Division that the training is reimbursable.

The allowable training costs incurred by the Tribe will be cost allocated based on:

- The percentage of Native American children in foster care or subsidized adoption in Tribal custody on the reservation that are Title IV-E eligible times (X) 75% (Federal Financial Participation for training) or
- The percentage of all children statewide in the Department's foster care or subsidized adoption universe that are Title IV-E eligible times (X) 75% (Federal Financial Participation for training).

### **PROCESS FOR CLAIMING REIMBURSEMENT**

Reimbursement for administration and training expenses shall be made on a quarterly basis and is limited to those expenses that are made with funds that are eligible to be matched with Title IV-E.

To receive the administration and training reimbursement on a timely basis, the Tribe shall certify its itemized expenses to the Department's Children and Family Services Division on a form provided by the division by the 15<sup>th</sup> day of the month following the quarter for which the claim is being made. The Department shall apply the appropriate federal reimbursement formula, claim the federal reimbursement and pass it through to the Tribe.

### MEDICAID COVERAGE FOR CHILDREN IN FOSTER CARE OR SUBSIDIZED ADOPTION

All children who are Title IV-E eligible for foster care and all children (including IV-E and 638) receiving subsidized adoption are categorically eligible for Medicaid (Title XIX). The Tribe is responsible for assuring that application is made with the appropriate County Social Service Office.

Children who are in foster care under a Tribal Court Order who are not eligible for Title IV-E may be eligible for Medicaid based on the child's legal status, income and resources. The Tribe is responsible for assuring that application is made with the appropriate County Social Service Office.

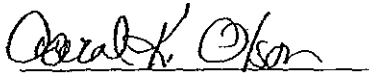
### LICENSING FOSTER CARE HOMES AND FACILITIES


Title IV-E reimbursed maintenance payments may only be made to licensed or approved foster homes or facilities. The Department does not have the jurisdiction to license such homes or facilities on the reservation.

The Department shall recognize the licensure by the Tribe of any foster home or facility on the reservation in accordance with the Adoption and Safe Families Act. The Tribe may establish its own licensing standards by Tribal Resolution for foster homes and/or facilities. If the Tribe does not have its own licensing standards, they must follow the standards adopted by the Department in order for Title IV-E maintenance payments to be made.


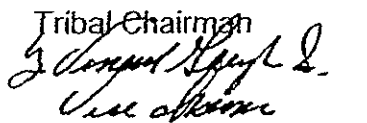
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North Dakota Department  
Of Human Services

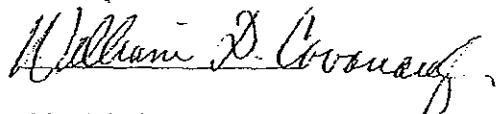
  
Carol K. Olson  
Executive Director

  
Brenda Weisz  
Chief Financial Officer

Spirit Lake Sioux Tribe

  
Tribal Chairman  


Spirit Lake Sioux  
Tribe Tribal Court

  
Tribal Judge



## Agreement

The State of North Dakota, acting through its North Dakota Department of Human Services (Department), and Spirit Lake Sioux Tribe (Tribe) has determined Spirit Lake is in violation of the Tribal-State Foster Care Agreement, based on the findings of the IV-E review. Because of the violation, the parties enter into this agreement to outline the 30 day process to begin to address deficiencies discovered during the review.

Department and Spirit Lake Sioux Tribe therefore enter into the following:

1). This Agreement runs from the date the Agreement is signed by both parties, but no later than February 15, 2012, through the following 30 days.

2). Title IV-E funds will not be available to provide foster care maintenance payments to providers during the 30 day period. Tribal funds will need to be identified to support the children currently in care for this 30 day period so that safety is assured and payments will continue to be made to the providers who care for these children.

Spirit Lake will not be eligible to recoup IV-E funds for this 30 day period. At the close of the 30 days, if all conditions required are met, Spirit Lake Tribal Social Services can resume access to IV-E funds as provided in the Tribal-State Foster Care Agreement. If all conditions required are not met, the Department shall terminate the Tribal-State Foster Care Agreement, ending all access to IV-E funds through the Department.

3). Spirit Lake Tribal Social Services will not be able to claim IV-E Administrative funds for the first quarter of 2012, based on the violation of Tribal-State Foster Care Agreement. If conditions required are met in this 30 day process, Spirit Lake Tribe can resume the opportunity to submit IV-E Administrative claims for the remaining three quarters of 2012.

4). Conditions required during the next 30 days:

A. All children in care must remain in care and be supported by tribal funds to remain in care, unless the plan for change in placement is already in place when the agreement is signed or the return home or change of placement is in the best interest of the child. If there is a change in placement, the case change must be staffed with and approved by the Regional Supervisor of Child Welfare Services.

B. Every child on the review list must be visited (face-to-face) to assess safety, appropriateness of placement, and assure needs of child are being met.

Documentation must be completed and placed in each child's file. In addition, a full case plan must be completed for each child on the list enclosed and placed in the child's file. If the child is out-of-state, a contract can be used for the face-to-face contact, as long as the person contracting for the visit is not staff of the agency or facility and a standard visitation form is used. During this visit, the tribal child welfare worker must be present by phone or another means of technology and participate in the visit.

- C. Spirit Lake must initiate and begin to work on a Program Improvement Plan (PIP) to address all the deficiencies noted in the reviewed files, and to address on-going documentation and case management activities to ensure casework requirements are met. While this activity must commence in the 30 days, Spirit Lake will be given 12 months to develop, implement and carry out the plan.
- D. Spirit Lake shall ensure that documents necessary for determination of IV-E eligibility and reimbursability are provided to Benson County, or any other county in a timely manner and will continue thereafter.
- E. Spirit Lake will determine a plan, with firm timelines, to address the backlog of adoption cases (5 cases of the 36 noted on the list) currently waiting for legal proceedings (these cases have been waiting from 16-19 months).


5). At the close of the 30 day period, a review of case files will be done to assess whether the conditions required have been met, and whether there is a plan in place for practice improvements and a timeline for completion of the legal process on the adoption cases. If these conditions have not been met in any case, the Department shall move to terminate the Tribal-State Foster Care Agreement.

North Dakota Department of Human Services

  
\_\_\_\_\_  
Carol K. Olson, Executive Director

1/31/12  
Date

Spirit Lake Sioux Tribe

  
\_\_\_\_\_  
Roger Yankton, Sr., Tribal Chair

2-15-12  
Date