

**Testimony**  
**Health and Human Services Committee**  
**Representative Robin Weisz, Chairman**  
**March 23, 2010**

Chairman Weisz and members of the Health and Human Services Committee, my name is Tara Lea Muhlhauser, and I am the Director of Children and Family Services (CFS) in the Department of Human Services (DHS). I am here today at your request to provide you with information in regard to child welfare-related memorandums of understanding with tribal entities.

Children and Family Services (CFS) currently has IV-E related memorandums of understanding [MOU] with every tribe in ND. IV-E dollars are federal dollars used to provide payment for maintaining children in a foster care placement. These MOU agreements allow tribes to claim these federal dollars for payment of foster care-related expenses for children that meet IV-E eligibility. Claims are made through the state and typically are made on a quarterly basis through DHS with a reimbursement payment flowing back to the tribe. [Handout provided of two examples of IV-E MOUs].

At present, there are no tribal memorandums of understanding in place regarding child protective services.

If you would like any additional information, I would be happy to provide you with such or answer questions you have. Thank you.

## TRIBAL - STATE FOSTER CARE AGREEMENT

WHEREAS, the North Dakota Department of Human Services (hereinafter referred to as the Department) and the Three Affiliated Tribes (hereinafter referred to as the Council) and the Three Affiliated Tribes 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) Case 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 case of 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 Three Affiliated Tribes 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.



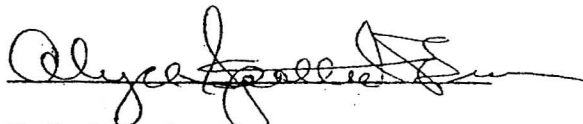
6. The Department, Council, and Court agree to continue to cooperate to the utmost in carrying out the intent and purpose of this Agreement.
7. It is mutually agreed that this Agreement may be terminated by either party at any time, with or without cause, by giving 30 days written notice delivered by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

This Agreement shall remain in effect unless so terminated or modified. Dated this 29 day of September, 1983.

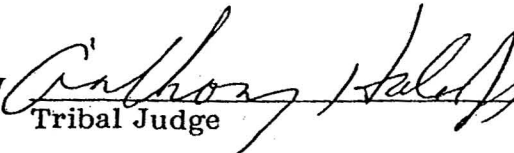
NORTH DAKOTA DEPARTMENT  
OF HUMAN SERVICES

By   
Dale Moug, Executive Director

THREE AFFILIATED TRIBES

By   
Tribal Chairman

THREE AFFILIATED TRIBES TRIBAL COURT

By   
Tribal Judge

**ADDENDUM TO**  
**TRIBAL – STATE FOSTER CARE AGREEMENT**  
**BETWEEN THE**  
**THREE AFFILIATED TRIBES TRIBAL COUNCIL,**  
**THE THREE AFFILIATED TRIBES TRIBAL COURT**  
**AND THE**  
**NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES**

**WHEREAS**, the Three Affiliated Tribes Tribal Council, the Three Affiliated Tribes Tribal Court and the North Dakota Department of Human Services entered into a Title IV-E Foster Care Agreement on October 25, 1983 which is still in effect; and

**WHEREAS**, the Agreement recognized the sovereignty of the Three Affiliated Tribes to make placement and care decisions concerning children in foster care under its jurisdiction; 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 when utilizing IV-E funding. 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.

## **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 the Department and State Children's Service Coordinating Committee Agreement.

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 Random Moment 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 Three Affiliated 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.

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 monthly basis and is limited to those expenses that are made with funds that are eligible to be matched with Title IV-E.

Administration reimbursement shall be made through the Three Affiliated Tribes Tribal Children's Service Coordinating Committee.

To receive the training reimbursement on a timely basis, the Tribe shall certify its itemized expenses to the Department's Children and Family Services 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. 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.

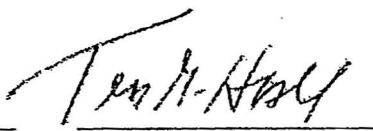
Dated: 12/15/00

North Dakota Department  
of Human Services



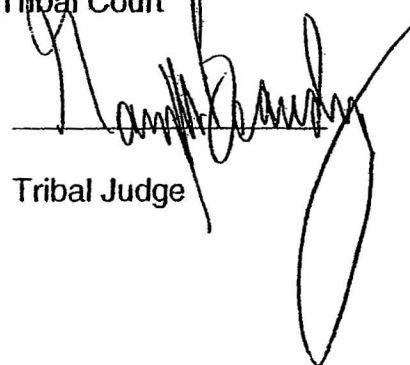
Carol K. Olson  
Executive Director

Three Affiliated Tribes

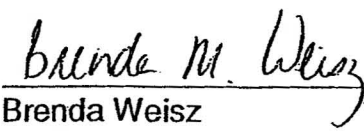


Tribal Chairman

Three Affiliated Tribes  
Tribal Court



Tribal Judge



Brenda Weisz  
Director of Fiscal Administration



**ADDENDUM # 2 TO**  
**TRIBAL – STATE FOSTER CARE AGREEMENT**  
**BETWEEN THE**  
**THREE AFFILIATED TRIBES TRIBAL COUNCIL**  
**AND THE**  
**NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES**

**WHEREAS**, the Three Affiliated Tribes Tribal Council, the Three Affiliated Tribes Tribal Court and the North Dakota Department of Human Services entered into a Title IV-E Foster Care Agreement on September 29, 1983 which is still in effect; and

**WHEREAS**, the Agreement recognized the sovereignty of the Three Affiliated Tribes to make placement and care decisions concerning children in foster care under its jurisdiction; 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 original 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; and

**WHEREAS**, the Three Affiliated Tribes Tribal Council, the Three Affiliated Tribes Tribal Court and the North Dakota Department of Human Services added addendum # 1 to the original Agreement on December 15, 2000 parts of which are in need of modification as per Tribal Resolution; and

**THEREFORE**, the Council, and Department agree to delete addendum # 1 and add the following addendum # 2 to the original Agreement:

**FEDERAL LAW, REGULATIONS AND POLICY**

The Tribe shall follow all Title IV-E laws, regulations and policies when utilizing IV-E funding. 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.

**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 Three Affiliated Tribes 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 assurance from the Department's Children and Family Services Division that the training is IV-E 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. 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.

This Addendum shall be effective July 1, 2003 and like the current and original Agreement shall remain in effect unless so terminated or modified.

North Dakota Department

Three Affiliated Tribes

Three Affiliated Tribes


Of Human Services

Tribal court



Carol K. Olson

Executive Director



Brenda Weisz

Chief Financial Officer

  
Tribal Chairman  
Tribal Judge



# **MEMORANDUM of UNDERSTANDING**

*Between*

***North Dakota Department of Human Services, Children & Family Services Division, the South Dakota Department of Social Services, Division of Child Protection and Standing Rock Sioux Tribe***

***Formula for Distribution of IV-E Related Administrative & Training Expenses of the Standing Rock Sioux Tribe, Child Protection Services, Between North Dakota and South Dakota***

## **Preface**

The Standing Rock Sioux Tribe provides Child Protection Services in both North Dakota and South Dakota. Most of the Tribe's activities deal with foster care. To carry out these activities the Tribe has an IV-E Agreement with the states of North Dakota and South Dakota. The IV-E Agreement between the State of South Dakota Department of Social Services and the Standing Rock Sioux Tribe – Agreement 09-08452-553 has a term from June 1, 2008 through May 31, 2009, with renewal of the contract on a yearly basis. The IV-E Agreement between the State of North Dakota Department of Human Services and the Standing Rock Sioux Tribe does not have an ending date and does not require a renewal.

The purpose of these agreements are to provide the Standing Rock Sioux Tribe federal funding under the Title IV-E foster care maintenance payment program for providers who are caring for children under the jurisdiction of the Standing Rock Tribal Court and/or in the care and custody of the Standing Rock Sioux Tribe; to establish a protocol for accessing maintenance funds as well as federal IV-E reimbursement for eligible Provider incurred administrative and training expenditures and for meeting requirements associated with those funds under Title IV-E for eligible children of the Standing Rock Indian Reservation; and to facilitate intergovernmental cooperation to provide for the best interests of the children on the Standing Rock Indian Reservation.

Standing Rock Sioux Tribe can access IV-E administrative dollars by submitting administrative expenditure reports to each State for the portion of costs associated with the Tribes activities in each State. The Standing Rock Sioux Tribe is having difficulty dividing some shared administrative costs between South Dakota and North Dakota. Most of the Tribe's direct service staff work only in one state, however some support staff work in both states. This results in a complicated cost distribution between the two states. Because Standing Rock Sioux Tribe can only access IV-E reimbursement through a IV-E Agreement with each state, it is essential that expenditures be distributed in a simplified and appropriate manner to maintain the fiscal integrity of the IV-E Agreements and to ensure IV-E reimbursements can be made on a timely basis.

The purpose of this "Memorandum of Understanding" is to assist the Standing Rock Sioux Tribe in making the necessary reports to both states so that IV-E administrative and training reimbursement can be secured.

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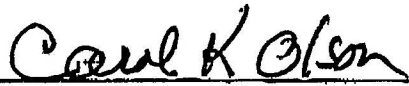
This Memorandum of Understanding will go into effect upon execution by the parties; will be made part of the respective IV-E Agreements between the States and the Standing Rock Sioux Tribe; and will continue in effect for the term of those agreements.

The Standing Rock Sioux Tribe (SRST), the State of North Dakota through its Department of Human Services and the State of South Dakota through its Department of Social Services hereby agree as follows:

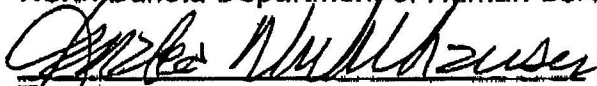
#### **Agreement**

1. All allowable expenses (including salary, fringe benefits and operating) of SRST staff are reported each quarter. This includes those staff who only worked for SRST Child Protection for a portion of the quarter.
2. Title IV-E allowable expenses are distributed to each State on the basis of the average number of children in foster care under the jurisdiction of Standing Rock Sioux Tribe in each state for each quarter.
3. In determining the amount of the quarterly federal claim, each state shall apply the:
  - Results of SRST time study
  - Percentage of children in foster care under the jurisdiction of SRST who are IV-E eligible
4. Finance staff at SRST are responsible for submitting IV-E administrative cost reports to both North Dakota and South Dakota each quarter. SRST will submit the same report to North and South Dakota in which the States will use the allocation of caseload to reimburse the Tribe for their IV-E allowable administrative costs. The respective States will use these reports to submit a claim to the federal government and reimburse the Tribe.

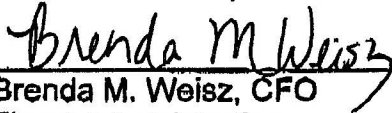
This Agreement applies to all quarterly claims that have not been submitted by Standing Rock Sioux Tribe within the federal time limitations.



Carol K. Olson  
Executive Director  
North Dakota Department of Human Services



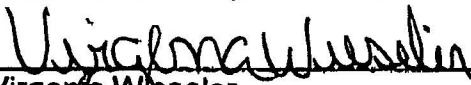
Tara Muhlhauser  
Director of Children and Family Services  
North Dakota Department of Human Services



Brenda M. Weisz, CFO  
Fiscal Administration  
North Dakota Department of Human Services



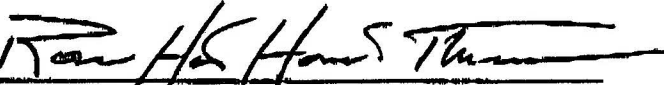
Deborah K. Bowman  
Secretary  
South Dakota Department of Social Services



Virginia Wieseler  
Division Director, Child Protection Services  
South Dakota Department of Social Services



Brenda Tidball-Zeltinger  
Chief Financial Officer  
South Dakota Department of Social Services



Ron His Horse Is Thunder  
Chairman  
Standing Rock Sioux Tribe