
TITLE IV-E INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CALIFORNIA DEPARTMENT OF SOCIAL SERVICES
AND
THE KARUK TRIBE OF CALIFORNIA



I. INTRODUCTION

This Title IV-E Intergovernmental Agreement (hereinafter “Agreement”) is made and entered into this 14th day of March 2007, by and between the California Department of Social Services (hereafter “CDSS” or “the Department”), an agency of the State of California, and the Karuk Tribe of California, a federally-recognized Indian Tribe located within the State of California (hereafter the “Tribe”). Together, CDSS and the Tribe may be referred to herein as “the Parties”.

II. PURPOSE, AUTHORITY, APPLICABLE LAW AND POLICY

A. Purpose:

The purposes of this Agreement are to:

1. Provide for the pass through to the Tribe of federal funding under Title IV, Part E of the Federal Social Security Act for the Foster Care and Adoption Assistance Programs, and California State General Funds, subject to the Annual Budget Act, for the Tribe's child welfare program;
2. Facilitate intergovernmental communication and collaboration, in a spirit of cooperation and good will;
3. Meet the policy goals of the Indian Child Welfare Act of 1978 to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families;¹ and
4. Delegate to the Tribe the responsibility that would otherwise be the responsibility of the counties for the provision of foster care and adoption assistance payments under the AFDC-FC program, child welfare services, and related functions as more specifically set forth in the Tribal Child Welfare Services Plan (hereinafter "Tribal CWS Plan").

B. Authority:

Authority for the Parties to enter into this Agreement is found in:

1. The Karuk Tribe's Constitution.
2. Section 1919 of the Indian Child Welfare Act, codified as 25 U.S.C. section 1919.
3. Section 472(a)(2) of Title IV-E of the Social Security Act, codified as 42 U.S.C. section 672(a)(2).
4. California Welfare and Institutions Code sections 10553.1 and 10553.2 which authorize the Director of the Department, in accordance with federal and state law, to enter into agreements with Indian tribes to provide for the pass through of funds for the provision of foster care and adoption assistance payments and child welfare services.

¹ 25 U.S.C. §§ 1901 and 1902

C. Applicable Law:

The Parties understand that law applicable to this Agreement is:

1. Title IV-E of the Federal Social Security Act. The State of California is required to maintain a Title IV-E State Plan that is approved by the United States Department of Health and Human Services, Administration for Children and Families (hereafter "DHHS") in order for the State to receive Title IV-E funding. The Tribal CWS Plan will meet the standards in the Title IV-E State Plan;
2. The federal regulations applicable to Title IV-E including those set forth at 45 Code of Federal Regulations sections 1355 et seq. and 1356 et seq.;
3. Relevant provisions of the ICWA;
4. Welfare and Institutions Code sections 10553.1 and 10553.2 and the requirements and standards referenced therein;
5. The Karuk Children's Code to the extent that it does not conflict with Title IV-E, California's Title IV-E State Plan, Welfare and Institutions Code section 10553.1 and the provisions of this Agreement;
6. Relevant California laws that provide authority and standards for activities necessary to carry out the programs specified in this Agreement and its addenda. The Parties acknowledge that as the implementation and operation of the Karuk Child Welfare Service program proceeds, questions will arise for which neither this Agreement nor its addenda provide explicit provision or direction. Under those circumstances, the Parties will meet and confer to identify the applicable law and agreed upon course of action.

D. Policy:

1. The ICWA was passed to remedy the problem of disproportionately large numbers of Indian children being placed in foster care. The law recognized "that there is no resource . . . more vital to the continued existence and integrity of Indian Tribes than their children" and that there has been a failure by the states "to recognize the essential tribal relations of Indian people and the culture and social standards prevailing in Indian communities and families." (25 U.S.C. § 1901)
2. The ICWA codifies a strong preference for Indian children to be placed in Indian homes and for their child welfare cases to be heard in their Tribe's court.² In passing the ICWA, Congress stated:

“It is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian Tribes in the operations of child and family service programs.”

3. California has adopted laws and policies that acknowledge, support and implement the ICWA and its underlying policies that support the continued existence of Indian tribes, and the value of the connection of children to their tribes.³
4. The ICWA, the Karuk Children's Code and Welfare and Institutions Code sections 10553.1 and 10553.2 apply specifically to the provision of foster care and child welfare services to Indian children by their tribes.
5. It is in the interest of Indian children that their family structures, Tribal membership and other ties to their Tribe, extended family and Tribal community, all be preserved, and that disputes regarding their welfare be resolved in a culturally-appropriate, non-adversarial manner, in their Tribe's court, whenever possible.
6. The Karuk Tribal Court is an integral component of the Tribe's sovereign authority, and is crucial to the effective meeting of the policy goals here articulated.
7. The Department's mission is to serve, aid, and protect needy and vulnerable children and adults in ways that strengthen and preserve families, encourage personal responsibility and foster independence. The health, safety and best interests of the children served under this Agreement are of paramount concern to the Department and the guiding principle for oversight and operation of this Agreement.

² 25 U.S.C. § 1915; *Mississippi Band of Choctaw Indians v Holyfield*, 490 U.S. 30, 32 (1988)

³ E.g. SB 678, Chapter 838, Statutes of 2006.

III. DEFINITIONS

[The] ACT "[The] ACT" means the Social Security Act commencing at section 470 and codified at 45 United State Code section 670 et seq.

ADOPTION ASSISTANCE "ADOPTION ASSISTANCE" means assistance approved pursuant to an agreement with prospective adoptive parents of a child with special needs and which meets the requirements of sections 471(a), 473, and 475(3) of the Act⁴ and 45 Code of Federal Regulations sections 1356.40 and 41.

ADOPTION ASSISTANCE BENEFITS "ADOPTION ASSISTANCE BENEFITS" means benefits provided to an adoptive child pursuant to section 473 of the Act.

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS) "CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)" is the single state agency responsible for the oversight of the State Plan for federally-funded Title IV-E foster care maintenance and adoption assistance programs and for the provision of child welfare services. CDSS is responsible for ensuring compliance with applicable state and federal statutes and regulations for these programs, including oversight of the Title IV-E Intergovernmental Agreement between CDSS and the Karuk Tribe of California.

CHILD ABUSE CENTRAL INDEX (CACI) "CHILD ABUSE CENTRAL INDEX (CACI)" means the statewide, multi-jurisdictional, centralized index of child abuse investigation reports maintained by the California Department of Justice. These reports pertain to alleged incidents of physical abuse, sexual abuse, mental/emotional abuse and/or severe neglect.

CACI CLEARANCE "CACI CLEARANCE" means that the California Department of Justice has conducted a name search of the index and the search did not result in a match, or the search resulted in a match but the agency (CDSS/county child welfare agency/Tribe) conducting the CACI review, determined after investigation as set forth in Health and Safety Code section 1522.1, that the allegation of abuse or neglect was not substantiated.

⁴ 42 U.S.C §§ 671, 673 and 675

CHILD WELFARE SERVICES (CWS)

"CHILD WELFARE SERVICES (CWS)" for the purposes of this Agreement shall mean those services designated as meeting the service delivery standards identified in Welfare and Institutions Code section 10553.1(b) that are contained in the Tribal CWS Plan, are subject to the Fiscal Addendum, and that may include, but are not necessarily limited to, the administrative activities and services associated with emergency response, family maintenance, foster care, family reunification, and permanent placement, as funded by Title IV-E, and the State General Fund. Funding for child welfare services from the State General Fund is subject to sufficient funding in the Annual State Budget Act and does not include California State Title IV-B Services funding.

CORI

"CORI" means state or Federal criminal offender record information under the authority of the California Department of Justice.

CRIMINAL RECORD CLEARANCE

"CRIMINAL RECORD CLEARANCE" means that the placing authority (county/Tribe) has conducted a criminal background check and found that an individual has no felony or misdemeanor conviction(s) reported by the California Department of Justice or the FBI (excepting minor traffic violations or juvenile adjudications), or has a conviction(s) but has been granted an exemption pursuant to standards applied to State licensed or county approved foster homes as set forth in Health and Safety Code section 1522.

CWS PROGRAM CONTACT

"CWS PROGRAM CONTACT" means the individual designated by each Party to act as the Tribal or state Child Welfare Services Program Contact for any matter pertaining to this Agreement.

DHHS

"DHHS" means the U.S. Department of Health and Human Services, Administration for Children and Families (ACF). For purposes of this Agreement, the point of contact for DHHS in California is the Region IX ACF Office in San Francisco.

DOJ

"DOJ" means the Department of Justice of the California Attorney General.

FISCAL ADDENDUM

"FISCAL ADDENDUM" means the document unilaterally developed by CDSS and, updated as necessary on an annual basis, that is subject to the Annual State Budget Act, and which provides for procedures, forms and standards that meet state and federal fiscal requirements, including those set forth in Welfare and Institutions Code section 10102, and provides for timely reimbursement and appropriate accountability on use and disbursement of funds under this Agreement.

FOSTER CARE

"FOSTER CARE" means 24-hour substitute care for children placed away from their parents or guardians and for whom the Karuk Tribe has placement and care responsibility. This includes, but is not limited to, placements in foster homes approved or licensed by the Tribe for a home on or near its reservation, or a home approved by another tribe on or near its respective reservation⁵, a State/county licensed foster family home or small family home, a family home certified by a State licensed foster family agency, a State/county approved relative or non-related extended family foster home, or a state licensed group home for children.

**FOSTER CARE
ADMINISTRATIVE COSTS**

"FOSTER CARE ADMINISTRATIVE COSTS" means payments made for administration of the Title IV-E foster care program.⁶

**FOSTER CARE
MAINTENANCE
PAYMENTS**

"FOSTER CARE MAINTENANCE PAYMENTS" means payments made on behalf of a child eligible for foster care for the care and supervision of the child including the cost of providing food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to the care of a child, and reasonable travel to the child's home for visitation.⁷

**FOSTER CARE
TRAINING COSTS**

"FOSTER CARE TRAINING COSTS" means payments made for eligible staff and caregiver training costs for the Title IV-E foster care program.⁸

⁵ 45 CFR § 1355.20

⁶ 45 CFR § 1356.60(c)

⁷ 45 CFR §§ 1355.20, WIC 11460(b), WIC 11461

⁸ 45 CFR § 1356.60(b) and 45 CFR §§ 235.63 through 235.66(a)

FOSTER HOME

"FOSTER HOME" means, for the purpose of Title IV-E eligibility, a home on or near the Tribe's reservation that is licensed or approved by the Karuk Tribe or by another Indian tribe, as meeting the standards established by the Tribal licensing or approval authority, consistent with 45 CFR section 1355.20 and consistent with the standards applied to all foster homes in California, or the home of an individual or family licensed, approved or certified as meeting the standards established by the state licensing or approval authority(ies) that provide 24-hour out-of-home care for children. The term may include a home certified by a state licensed foster family agency.

ICWA

"ICWA" means the Indian Child Welfare Act as codified at 25 United States Code section 1901 et seq.

MATCH PAYMENTS

"MATCH PAYMENTS" for purposes of this Agreement, means required payments by the Tribe made in accordance with sections 10553.1 (b)(2) and (3) of the Welfare and Institutions Code.

TITLE IV-E

"TITLE IV-E" means Part E of Title IV of the Social Security Act codified at 42 United States Code section 670 et seq.

**TITLE IV-E
ELIGIBLE CHILD**

"TITLE IV-E ELIGIBLE CHILD" for purposes of this Agreement means a child who is under the jurisdiction of the Karuk Tribal Court or meets the requirements for voluntary placement pursuant to 45 CFR section 1356.22, and who meets the eligibility requirements either for foster care maintenance payments set forth in section 472 of the Social Security Act, or for adoption assistance payments set forth in section 473 of the Social Security Act, depending on the type of payments sought.

TITLE IV-E STATE PLAN

"TITLE IV-E STATE PLAN" means the plan developed by the State of California to comply with the requirements of Part E of Title IV of the Act and approved by the DHHS.

**TRIBAL CHILD WELFARE
SERVICES PLAN**

"TRIBAL CHILD WELFARE SERVICES PLAN" is a plan developed by the Tribe which describes the operation of the Tribal Child Welfare Services program and which is submitted to CDSS for its review and ongoing approval to ensure the plan meets federal and state requirements applicable to this Agreement. The plan includes the Karuk Tribal Court Children's Code, and the Tribe's policies and procedures that demonstrate how the Tribe will meet the standards for the Tribe's child welfare programs and for foster care and adoption assistance funding, as required by Title IV-E and Welfare and Institutions Code section 10553.1. Applicable standards include those set forth in Division 31 of the California Manual of Policies and Procedures, and those set forth in state law that govern family maintenance, out of home care, family reunification, and permanency planning. The plan is incorporated into this Agreement by reference herein.

TRIBAL COURT

"TRIBAL COURT" means the Tribal Court of the Karuk Tribe of California.

IV. STATEMENT OF BASIC AGREEMENT

- A. The Tribe and CDSS hereby agree that Title IV-E and State General Fund allowable costs shall be passed through from CDSS to the Tribe for the administration and provision of foster care maintenance payments, adoption assistance payments and child welfare services to eligible children under the jurisdiction of the Tribal Court, or for those children who are voluntarily placed out of the home by, or with the participation of, the Tribe. The terms and conditions of such payments are set out in the remainder of this Agreement.
- B. The Tribe and CDSS recognize that state and federal funding for the Tribal programs enumerated in this Agreement are contingent upon:
1. Sufficient funding in the annual State Budget Act for the programs and activities provided for in this Agreement;
 2. Submission of a resolution from the Karuk Tribe of California Tribal Council authorizing this Agreement and designation of the Tribal Chairman as the authorized signatory on the Agreement;
 3. Submission by the Tribe to CDSS, and subsequent maintenance of, a Tribal CWS Plan, as defined in Section III of this Agreement;
 4. Approval by CDSS of the Tribal CWS Plan as being in accordance with the standards set forth in this Agreement;
 5. Compliance with procedures for the adjustment of claims against advancements and submission of claims as set forth in the Fiscal Addendum, and in compliance with applicable sections of Division 45 of the California Manual of Policies and Procedures and/or other state or federal requirements for claims that may be identified during the course of the operation of the Tribe's Child Welfare Services Program; and
 6. DHHS approval of a Title IV-E State Plan amendment that authorizes the pass-through of federal funds through this Intergovernmental Agreement.
- C. Designation of Authority of State and Tribe:
1. CDSS is the single state agency designated to administer the California Title IV-E program. CDSS has designated the CDSS Chief of the Child Protection and Family Support Branch to be the State's CWS Program Contact for this Agreement.
 2. The Tribe has designated the Executive Director of the Karuk Health and Human Services Department, to administer the Tribe's program established pursuant to this Agreement.

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- D. Match Payments: match payments shall be made by the Tribe in accordance with sections 10553.1 (b)(2) and (3) of the Welfare and Institutions Code. They may not be included as a cost or used to meet cost sharing/matching requirements for any other federal program except as specifically provided by Federal law or regulation.
- E. This Agreement in no way precludes the Tribe from seeking additional funding sources for which the Tribe is eligible that may assist in the establishment and operation of the Tribal CWS Plan, including payment of matching costs to the extent specifically permitted by Federal law or regulation.
- F. Additional fiscal provisions applicable to this Agreement are set forth in the Fiscal Addendum, which is intended in part to provide for the processing of claims under this Agreement. In addition, any and all costs are to be consistent with Office and Budget (OMB) Circular A 87, and consistent with the California Title IV-E State Plan and Federal Title IV-E requirements.
- G. The Parties understand that pursuant to Welfare and Institutions Code section 10553.2, cost allocation methodologies shall be developed in consultation with and agreed to by CDSS, the Karuk Tribe and the county governments affected by this Agreement: Humboldt and Siskiyou.
- H. In accordance with Section II of this Agreement, the Tribe shall be responsible for the administration of the Tribal Child Welfare Services Program, including the determination and re-determination of Title IV-E eligibility, along with the administrative activities associated with making foster care maintenance and adoption assistance payments.

V. STANDARDS FOR FOSTER AND ADOPTIVE HOMES

A. Tribal Standards:

The Tribe shall establish and maintain standards pursuant to and consistent with Section II of this Agreement, for approval or disapproval of foster or adoptive homes on or near Karuk Tribal lands for children under the jurisdiction of the Tribal Court. The standards so established shall be applied by the Tribe to foster or adoptive homes, receiving funds pursuant to this Agreement. In order to receive funding pursuant to Title IV-E, children placed by the Tribe in homes that are not on or near Karuk Tribal lands, shall only be placed in homes that are licensed or approved by the state or county in which the home is located or is a home approved by another federally recognized tribe on or near its respective lands.

B. Provision for Criminal Offender Record Information Requests and Child Abuse Central Index Searches:

Title IV-E at section 471(20)(A) requires criminal record clearances prior to approval of prospective foster and adoptive parents. The Tribe agrees to comply with the requirements for criminal record clearances as approved in the Title IV-E state plan and as applied to all state licensed or county approved foster and adoptive homes.

Title IV-E also requires the performance of child abuse registry checks before the licensure or approval of a foster home.⁹ Moreover, because California's child abuse registry, the Child Abuse Central Index (CACI), is an integral part of California's provision of foster care, the CACI clearance requirement will be included as a component of the Tribal CWS Plan. The CACI clearance standards are those applied to all state licensed or approved foster homes. The Tribe agrees to ensure that criminal record and CACI clearances are conducted in accordance with standards contained within the Title IV-E State Plan. In the event that the criminal record clearance and CACI clearance components for the Tribal CWS Plan are to be performed by CDSS on behalf of the Tribe, the Parties shall develop a process for conducting said clearances, and for the reimbursement of the costs borne by CDSS in its performance of these functions.

⁹ 42 U.S.C §§ 671(a)(20)(A)

C. Criminal Record Clearances and the California Department of Justice:

Notwithstanding any other provisions of this Agreement, the Parties recognize that this Agreement cannot grant authority to the Karuk Tribe to access state or federal criminal offender record information (CORI), to access the Child Abuse Central Index (CACI), or to access other California law enforcement databases. Access to that information is under the control of the California Department of Justice (DOJ) and is subject to statutory provisions and court rulings. It is further recognized by the Parties that the Attorney General of the State of California is an independent constitutional office and is in no way bound by this Agreement between the Parties. Therefore, before access to any such information may be granted, a separate agreement must be executed between the Karuk Tribe and DOJ, which may first necessitate statutory or regulatory revisions.

D. Transition Period:

If the Tribal CWS Plan and the instant Agreement are approved and executed by CDSS before a separate agreement is reached between the DOJ and the Karuk Tribe, the CORI request or CACI search component for the child welfare services noted in the Plan shall be performed by separate agreement for said purpose between the Tribe and a county or between the Tribe and CDSS as noted in Section V. paragraph B. As such, the respective county's child welfare services agency or CDSS would continue to request CORI or CACI searches from the DOJ to assist in the determination of appropriateness for placement of dependent children and inform the Karuk Tribe, without releasing the underlying CORI or CACI data, of the determination pursuant to the standards within the Title IV-E State Plan. Appeals from denials of criminal record or CACI clearances shall be conducted pursuant to existing processes used by the respective entity conducting the review.

VI. EMERGENCY REMOVAL OR PLACEMENT OF CHILD, TERMINATION; APPROPRIATE ACTION

- A. Pursuant to ICWA section 1922, and the effect of Public Law 280 on Tribal-State concurrent jurisdiction over child custody proceedings, nothing in this Agreement shall be construed to prevent the emergency removal of an Indian child who is a resident of, or is domiciled on Karuk Tribal land, under applicable state law, in order to prevent imminent physical damage or harm to the child. The Parties recognize that state law applicable to children who are not wards of the Tribal Court specifies the required timeframe for filing a petition in state court when children are removed from their parents or legal custodians (Welfare and Institutions Code 313), unless statutory changes are enacted which permit the administrative transfer of children to the Tribe in lieu of filing a petition to initiate dependency.
- B. The Parties agree to work collaboratively with the affected counties, to facilitate local agreements that provide for coordinated local emergency response, which protect Indian children from child abuse or neglect and allow for the efficient exercise of Tribal care and supervision of said children.
- C. The Parties further agree that a tribal social worker who takes a child into emergency custody shall file the child custody petition in the Tribal Court within the same timeframe specified in Welfare and Institutions Code section 313 and the Karuk Tribe's Children's Code.

VII. CONFIDENTIALITY, MAINTENANCE, RETENTION AND RELEASE OF INFORMATION AND RECORDS

A. Confidentiality:

CDSS and the Tribe will continue to maintain safeguards restricting the use or disclosure of confidential information concerning individuals assisted under the Agreement. The safeguards must meet the requirements of section 471(8) of the Act, and shall be consistent with the California Title IV-E State Plan.¹⁰ The Parties agree to comply with the confidentiality requirements contained in Welfare and Institutions Code section 10850 related to the provision of public social services under Title IV-E.

B. Record Retention:

The Tribe will maintain all records pertaining to children receiving foster care assistance, adoption assistance or child welfare services under this Agreement. Records pertaining to Title IV-E eligibility shall be maintained for the entire time period for which a Title IV-E eligible child is in out-of-home care, and a minimum of three (3) years after the child has left care and the last state expenditure report for that period has been submitted to DHHS. Unless this Agreement or applicable Tribal, state, or federal laws require a longer retention period for certain information, the Tribe and all providers shall maintain all accounting, financial and statistical records, and supporting documents, and all other records related to payments under this Agreement or payment for the delivery of any service. The Tribe agrees to maintain said records for a minimum of thirty nine (39) months following the submission to DHHS of the last state expenditure report for that period. If there are unresolved audit questions or litigation at the end of the thirty nine (39) month period, the records shall be retained until the questions are resolved. The Parties acknowledge that there may be records retention needs not specified herein and that such will be further designated as part of the Tribal CWS Plan.

¹⁰ See State plan section 6 General provisions, subsection B Safeguarding Information

C. Sharing of Information:

1. CDSS shall have reasonable access to records and information of children served pursuant to this Agreement for purposes of CDSS' oversight duties and administration of this Agreement.
2. To the extent feasible, CDSS shall make every effort to inform the Tribe in advance of the content and format of records, data and information it expects the Tribe to capture, maintain and provide.
3. The Tribe agrees to provide reports and other information in the form requested by CDSS and or DHHS, to ensure the accuracy of claims and to verify that program activities are consistent with the purposes of the Agreement.
4. The Tribe agrees to ensure that all requests for reports and/or information including, but not limited to, data reports on child welfare services program operation, data required by federal laws or regulations, data necessary for state administration of the program, and/or information related to individual children being served pursuant to this Agreement, will be timely provided to CDSS.

VIII. AUDITS AND RECOVERY OF FINANCIAL ASSISTANCE

A. Single Audit Requirement:

As further set forth in the Fiscal Addendum, the Tribe agrees to provide for an independent certified public accountant audit of applicable federal funds in accordance with OMB Circular A-133, and provide a copy of such audit to CDSS.

B. DHHS/CDSS Review:

The Tribe and CDSS acknowledge that the DHHS or CDSS conducts necessary fiscal and programmatic reviews and/or audits of entities that receive and distribute State or Title IV-E funds, and that DHHS or CDSS require, as a part of such reviews and or audits, that case files or other information on children receiving State funds and Title IV-E support, be made available for inspection.

C. Upon request, the Tribe will make available for review by DHHS or CDSS case files, provider files, and other information as needed pertaining to children assisted under this Agreement. These 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.

D. Any audit exception(s), deferral(s), disallowance(s), or overpayment(s) resulting from audit of the Tribal Foster Care and CWS program will be repaid by the Tribe in accordance with the procedures set forth in the Fiscal Addendum. The Tribe will be responsible for the federal share of costs of any audit exception(s), deferral(s), disallowance(s) or overpayment(s) for administrative and/or assistance costs claimed during the time period in question. The Tribe will also be responsible for the state share of costs of any audit exception(s), deferral(s), disallowance(s), or overpayment(s) for administrative and/or assistance costs claimed during the time period in question, if applicable.

E. The Tribe agrees that CDSS may offset from any funds payable, any reimbursement CDSS is owed including, but not limited to, those arising from an audit exception, deferral, disallowance, or overpayment. If CDSS is unable to recover funds payable through offset, CDSS may request the Tribe to repay funds as set forth in the Fiscal Addendum at sections G and H.

IX. CHILD ABUSE REPORTING REQUIREMENTS

It is understood by the Parties that Karuk Tribal social workers, pursuant to Welfare and Institutions Code section 215, are social workers within the coverage of Penal Code section 11165.7 and are thus persons designated as mandated reporters. The Tribe will thus require reporting of suspected child abuse or neglect in a manner that meets the requirements of section 471 (a) (9) of the Social Security Act, is consistent with California's Title IV-E State Plan and complies with the California Child Abuse Neglect and Reporting Act.¹¹ At the time of execution of this Agreement, this means that a Tribal social worker will report suspected child abuse or neglect to the entities identified in Penal Code section 11165.9.

X. PARENTAL RESPONSIBILITY

Enforcement of Parental Responsibility:

The Parties acknowledge that there are federal requirements related to parental financial responsibility of non-custodial parents of children placed in foster care.¹² During the course of development of the Tribe's CWS Plan the Parties will develop procedures to fulfill these requirements.

¹¹ Penal Code §§ 11164 et seq.

¹² 42 U.S.C. §§ 654

XI. ADDITIONAL RESPONSIBILITIES

A. CDSS' Responsibilities-Start up:

1. CDSS agrees to work cooperatively with the Tribe to provide to the Tribe guidance and information on the essential components of the Tribal CWS Plan, in order for the Plan to meet the standards in this Agreement.
2. Within thirty days (30) days after execution of this Agreement, CDSS shall provide technical assistance to the Tribe for the purpose of completing the Tribal CWS Plan. This technical assistance shall include informing the Tribe regarding the content and format of data and information to capture, maintain and provide to CDSS.
3. Within forty five (45) days after of execution of this Agreement and after CDSS has provided the technical assistance set forth above, a completed proposed Tribal CWS Plan will be submitted to CDSS. Within thirty (30) days after receipt of the Plan, CDSS will complete its review and submit it to DHHS to determine whether it satisfies applicable standards.
4. If CDSS and/or DHHS determine that changes are needed to the Plan, the Parties shall meet and confer to reach an accord as to appropriate changes. Every effort shall be made to finalize the Plan no later than seventy five (75) days after execution of this Agreement.
5. If CDSS and/or DHSS have not reached accord as to the Plan within seventy-five (75) days after execution of this Agreement, the Tribe may consider interim operation utilizing regulations of the State of California Manual of Policies and Procedures Division 31, in conjunction with the Children's Code of the Karuk Tribal Court as an interim Plan until such time CDSS and/or DHSS accord can be reached and the Plan modified. During this interim period the Tribe may seek exemptions from regulations that do not affect funding under Title IV-E or the standards under this agreement.

B. CDSS' Responsibilities - Ongoing:

1. CDSS agrees to reimburse the Tribe as set forth in the Fiscal Addendum for the provision of foster care and adoption assistance programs and child welfare services as defined in Section III of this Agreement. CDSS agrees to support the Tribe, as appropriate, in securing future funding to augment the programs implemented pursuant to this Agreement.
2. CDSS agrees to prepare and provide to the Tribe the Fiscal Addendum as defined in Section III, which will describe standards and procedures for the claiming and reimbursement of funding for the Tribe's provision of foster care, adoption assistance and/or child welfare services.
3. CDSS will review and approve any proposed changes to the Tribal CWS Plan according to the standards identified in Section II.
4. Upon request by the Tribe, CDSS will assist in securing the sharing and transfer of information from a county to the Tribe related to a child or children being transferred to Tribal Court jurisdiction.
5. CDSS will give notice to the Tribe in the same manner as it does to the counties, through All County Letters (ACLs), All County Information Notices (ACINs), County Fiscal Letters (CFLs), or other communications as appropriate, of program and fiscal regulations, guidelines, and procedures required to implement, maintain and claim costs for foster care and adoption assistance payments and child welfare services. Notices shall be sent to the Tribal CWS Program Contact, and may be provided electronically or in hard copy.
6. CDSS will inform the Tribe of relevant, CDSS-sponsored training opportunities, and will facilitate access to CDSS publications that pertain to services undertaken by the Tribe pursuant to this Agreement. Upon request by the Tribe, CDSS will offer the appropriate Tribal representative(s) training to facilitate compliance with federal regulations related to implementation of the Agreement.
7. The Parties further agree that the Tribe may request from CDSS technical assistance on issues related to implementation and/or operation of this Agreement. CDSS will work in good faith to provide the Tribe with technical assistance.

C. Tribal Responsibilities-Start up:

1. Prior to commencement of funding for provision of child welfare services pursuant to this Agreement, the Tribe shall submit to CDSS for approval, a Tribal CWS Plan.
2. The Tribe agrees to modify the Tribal CWS Plan should CDSS request necessary changes in order for the Plan to meet the applicable laws and standards set forth in this Agreement.
3. The Tribal CWS Plan shall describe how the Tribe will comply with State and Federal quality control requirements for funding of child welfare services, including those set forth for section 471(a)(22) of the Act pertaining to health and safety.

D. Mutual Responsibilities:

1. The Parties agree that they will exchange information as permitted under state, federal and Tribal law pertaining to case management as may be necessary for each Party to perform its respective duties, responsibilities and functions under this Agreement.
2. The Parties agree to have at all times an identified Tribal-State CWS contact person or designee for any matter pertaining to this Agreement. The respective CWS contact persons at this time shall be:

CWS CONTACT PERSONS

For CDSS:

Title: Susan Nisenbaum, Chief
Child Protection & Family Support Branch
744 P Street, MS 11-83
Sacramento, California 95814
Phone number: (916) 651-6xxx
Email: Susan.Nisenbaum@dss.ca.gov

For the Tribe:

Title: Martha Schrock
Executive Director of Health and Human Services
P.O. Box 1016,
Happy Camp, California 96039
Phone number: (530) 493-1600
Email: mschrock@karuk.us

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3. The Parties agree to notify each other in writing of changes in federal, state or Tribal statutes, regulations or policies that may affect the provision of services under this Agreement.
 4. Upon notification of such change(s), the Parties agree to confer to determine the applicability of the changes to the Tribe and whether the changes necessitate a modification of the Tribal CWS Plan. Each Party shall make a reasonable effort to timely notify the other of any impending legal or policy change(s) as described in this paragraph, if possible within thirty (30) days of the effective date of the change(s).
 5. Should it become apparent to the Parties during the operation of this Agreement that there are state and federal statutes or policies and practices relevant to the continuation of federal funds, or to the health and safety of the children served under this program, that are not adequately addressed by the Tribal CWS Plan, the Parties shall meet and confer to identify program needs, and to make modifications to the Plan.
 6. Should consensus not be reached, the Department as the Title IV-E oversight entity has final authority to determine the contents of the Plan and changes that may be necessary for the continued operation of the program. Nothing herein precludes the Tribe from consulting with DHHS concerning the applicability of a policy imposed by the Department in exercising its oversight capacity. However if further inquiry is requested by the Tribe, the modification requested will not be deemed stayed (or shall not be delayed) pending response from DHHS. Absent a determination to the contrary from DHHS, the Department has the final authority and the Tribe agrees to comply with the Department's position.

XII. DISPUTE RESOLUTION

This dispute resolution process seeks to effectively and efficiently streamline and standardize the communication process between the Parties with the goal of working together to seek mutually beneficial solutions to problems arising from implementation. The Parties agree to look for guidance on resolution of disputes to Title IV-E of the Act, the ICWA, the Federal regulations applicable to the programs the subject of this agreement, Karuk Tribal Codes, and the California Welfare and Institutions Code, section 10553.1 in particular. Both Parties will strive to ensure the dispute will not result in a disruption of the services to Indian children and families. Resolution of disputes regarding fiscal claims shall utilize the processes specified in the Fiscal Addendum.

A. **Informal Process-Meet and Confer:**

If a dispute arises with respect to this Agreement involving the interpretation, implementation or conflict of laws, policies and regulations, the Tribe and CDSS will meet and confer in good faith at the Tribal and Department staff level, commencing with communication between the designated Tribal/State CWS Program Contacts, and attempt to resolve the dispute in a manner consistent with Tribal, federal and state laws and consistent with Section II of this Agreement.

B. **Mediation:**

If the meet and confer process set forth above does not result in the resolution of the dispute, the Parties agree to attempt in good faith to settle the dispute by mediation administered by Judicial Arbitration and Mediation Services (JAMS) or other mediation service as mutually agreed to by the Parties. The role of the mediator is to aid the Parties in identifying the issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, and finding points of agreement. The decision as a result of the mediation process will be that of the Parties, not of the mediator. The Parties agree to equally split the mediator's costs.

1. **Matters not subject to Mediation:**

Any laws, processes or protocols identified by CDSS and/or the DHHS, as contrary to the laws and/or policies of Title IV-E and that are either substantially likely to subject the Tribe's program to ineligibility for Title IV-E funding or cause serious risk of harm to children served under this Agreement.

2. Commencing Mediation:

The mediation process will be commenced when the CWS Program Contact of one Party outlines an issue in writing to the designated CWS Program Contact of the other and indicates that resolution could not be reached through the meet and confer process. The written communication shall contain a statement describing the issue, a description of the desired solution, a proposed timeline establishing dates and performance indicators that demonstrate resolution is being achieved. Within ten (10) working days of receipt of the communication, the recipient will respond in writing outlining what activity is currently underway to resolve the dispute. If agreement is not reached within twenty (20) working days after the initial response, then the Parties agree to submit the matter expeditiously to mediation.

C. Unresolved disputes:

If the Parties are still unable to resolve the dispute after mediation, or in the case of the occurrence of a matter not subject to mediation, the Parties may consider termination of the Agreement as provided in section XVI, Termination of Agreement.

Prior to the termination of this Agreement, the Parties agree to convene a meeting between the Chairperson (or his or her designee) of the Karuk Tribe of California and the Director of CDSS (or his or her designee), to determine whether the issue causing the impending termination is in fact one that is so fundamental as to be non-resolvable and constitute cause for termination.

XIII. LIABILITY AND INSURANCE

- A. This Agreement may not be construed to impose liability upon or to require indemnification by a participating county of the State of California or the State of California for any act or omission performed by an officer, agent, or employee of the Tribe pursuant to Welfare and Institutions Code section 10553.1(f).
- B. The Tribe has compacted with the United States pursuant to the Indian Self-determination and Education Assistance Act, Public Law 93-638, for the Tribe to assume responsibility of social services and Indian Child Welfare programs and/or services formerly provided by the federal government that may be related to the subject of this Agreement. The Karuk Tribe is thus a self-governing Tribe with such a "638 compact" and its employees are thus considered employees of the federal government for purposes of Federal Tort Claims Act coverage, while performing work under the compact.
- C. The Tribe is of the position that due to its 638 compact, tribal employees (including individuals performing personal services contracts with the Tribe to provide health care services) are considered employees of the federal government for purposes of Federal Tort Claims Act coverage, while performing work under this Agreement. It is the intention of the Parties that liability not covered by the Federal Tort Claims Act, will be covered by the Tribe's insurance policy agreed to in Section XIII paragraph D. The Tribe agrees to provide CDSS with thirty (30) days written notice in the event the 638 compact is no longer in place.
- D. The Tribe shall maintain a commercial general liability insurance policy (hereafter "Policy") underwritten by an insurer admitted by the State of California with an A.M. Best rating of A or higher which provides coverage of no less than one million dollars (\$1,000,000.00) per occurrence for bodily injury, property damage, and personal injury arising out of, connected with, or relating to the operation of this agreement.
- E. At least thirty (30) days prior to the expiration of any such Policy, a signed and complete certificate of insurance, with all required endorsements showing that such insurance coverage has been renewed or extended or that the Tribe has procured a new Policy with the required endorsements, shall be submitted to the Department. Failure to maintain insurance coverage will be grounds for termination of the Agreement by the State under section XVI.

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- F. The Tribe's insurance Policy shall include endorsements providing the following:
- (1) the State of California, including its counties, and their officers, employees and agents, are additional insureds under the terms of the Policy for injury for claims arising out of, connected with, or relating to the operation of this Agreement,
 - (2) an endorsement that removes any exclusion that removes or limits coverage for sexual abuse and molestation related to claims arising out of, connected with, or relating to the operation of this Agreement, within the Policy limits, and
 - (3) waivers as set forth in paragraph G pertaining to sovereign immunity.
- G. The Tribe's insurance Policy shall acknowledge in writing that it will not assert the Tribe's defense of sovereign immunity for claims for bodily injury, personal injury, and property damage up to the limits of the Policy, provided, however, that nothing herein requires the Tribe to agree to liability for punitive damages or to waive its right to assert sovereign immunity in connection therewith, and shall include an endorsement providing that the insurer shall not invoke tribal sovereign immunity up to the limits of the Policy. However, such endorsement and acknowledgement shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity for the amount of any claim above the Policy limits, or for those claims not covered by the Policy.
- H. Employees or authorized agents of the Tribe may not invoke, and the Tribe shall not invoke on behalf of any employee or agent, the Tribe's sovereign immunity in connection with any claim for, or any judgment based on any claim for, injury to persons or property committed by the employee or authorized agent who has acted outside the authority either vested in them under Tribal law, or beyond the authority the Tribe is capable of bestowing upon them, without regard to the Tribe's Policy limits. Nothing in this paragraph prevents the Tribe from invoking sovereign immunity on its own behalf or authorizes a claim against the Tribe where an employee or agent has acted outside said authority.
- I. A signed and complete certificate of insurance, with all required endorsements, shall be submitted to the Department prior to provision of services or draw down of federal funding under this Agreement, but no later than seventy-five (75) days after the execution of this Agreement. At least thirty (30) days prior to the expiration of any such Policy, a signed and complete certificate of insurance, with all required endorsements, showing that such insurance coverage has been renewed or extended, or that the Tribe has procured a new Policy, shall be filed with the Department.
- J. The Tribe will submit any claims arising as a result of the operation of/or provision of services under this Agreement, under the Federal Tort Claims Act and under the Policy.

XIV. TERM OF THIS INTERGOVERNMENTAL AGREEMENT

The term of this Agreement shall commence on the effective date of this Agreement, and shall continue until terminated by the Parties as provided herein.

XV. MODIFICATIONS

This Agreement may be modified at any time with the mutual consent of both Parties. This Agreement shall be modified as necessary due to changes in state or federal laws which impact its provisions and that cannot be addressed by the modification of the Tribal CWS Plan. Any modifications to this Agreement must be in writing and signed by authorized representatives of the Parties.

XVI. TERMINATION

- A. Prior to notification of any termination, either Party considering termination shall seek to cooperatively explore with the other Party, ways in which to avoid termination.
- B. This Agreement may be terminated by either Party with one hundred eighty (180) days prior written notice.
- C. Notwithstanding any other provision, this Agreement may be terminated for cause, upon sixty (60) days written notice. "For cause" means termination based upon the Tribe or State substantially failing to comply with the terms and policies contained herein including, but not necessarily limited to, Tribal or State conduct that places children at serious risk of harm, jeopardizes the continuation of federal funding, and/or subjects the State and/or the Tribe's program to deferral, penalties or overpayments.
- D. The notice of termination for cause may be stayed for a period of up to four months provided that the Parties have entered into an agreed upon plan that describes how the non-compliance will be addressed. Failure to implement the plan will be cause to lift the stay and resume termination. Successful implementation of the plan will be cause to continue the stay or vacate the termination notice.
- E. Upon notice of any termination, both parties agree to collaborate with each other and with affected counties to develop a phase-down plan to minimize disruption of the services provided to Indian children and families.
- F. The Tribe has the right to retain jurisdiction over cases involving Indian children already under Tribal court jurisdiction. However, Title IV-E and State General Fund monies will no longer be available for costs associated with such children as of the effective date of the termination.
- G. For purposes of this section, a termination notice from the Tribe shall be transmitted from the Chairman of the Karuk Tribe in writing, delivered by registered mail to:

Director

California Department of Social Services
744 P Street M.S. 17-11
Sacramento, CA 95814

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- H. A termination notice from CDSS shall be a memorandum from the Director of the California Department of Social Services, delivered by registered mail to:

Chairman

Karuk Tribe of California

P.O. Box 1016

Happy Camp, California 96039

Receipt of such notice by either Party shall begin the one hundred eighty (180) day period required for termination, or the required sixty (60) day period, if the termination is for cause.

- I. Upon termination of this Agreement, any unused advances not accounted for by actual expenditures by the Tribe and/or any outstanding invoices for actual expenditures prior to termination shall be submitted to CDSS within forty five (45) days of the termination date.
- J. Upon termination of this Agreement, CDSS will reconcile and remit funds to the Tribe within forty five (45) days from receipt of the invoice(s).

XVII. MISCELLANEOUS PROVISIONS

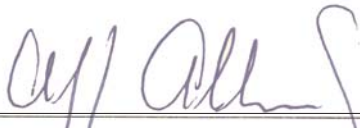
- A. Nothing in this Agreement shall prevent the Tribe or CDSS from entering into Agreements with the federal government regarding the services incorporated herein.
- B. Nothing in this Agreement shall be construed to prevent either the Tribe from contracting with a county as a service provider, or a county from separately contracting with the Tribe as a service provider for Indian families under Welfare and Institutions Code section 16501.
- C. Nothing in this Agreement affects the application or implementation of the ICWA to any Indian child as defined therein or relieves any public entity, person or party of their obligation to follow and implement the ICWA when applicable.
- D. This Agreement is the product of mutual negotiations between the Parties and should not be interpreted strictly for or against any of the Parties.
- E. Should any provision of this Agreement be declared or be determined, by any court of competent jurisdiction, to be illegal or invalid, the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be part of this Agreement.
- F. Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of the Tribe except as provided for in Section XIII, that the Tribe's insurance company may not raise the defense of sovereign immunity.
- G. This Agreement confers no rights or benefits on any third parties and shall in no way be binding on any other sovereign Indian Tribe located within the State of California.
- H. This Agreement and its addenda sets forth the entire understanding between the Parties hereto and fully supersedes any and all prior Agreements or understandings between the Parties hereto pertaining to the subject matter hereof.
- I. The undersigned, being duly authorized to enter into this Agreement on behalf of CDSS and the Tribe, respectively, and having consulted with their advisors and counsel, and having read the foregoing, understand its contents and hereby execute this Agreement. This Agreement shall become effective upon submission and approval of all necessary documents, which are listed after the Agreement and incorporated herein by reference.

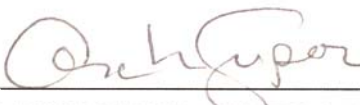
XVIII. EFFECTIVE DATE

The effective date of this Agreement is the date in which all Parties have fully executed this Agreement and in which all addenda have been fully completed and approved as required herein.

Executed this 14th day of March, 2007,
in Happy Camp, California.




CLIFF ALLENBY, DIRECTOR
California Department of Social Services


ARCH SUPER, CHAIRMAN
Karuk Tribe California

Addenda to the Agreement:

Addendum A

Resolution of the Tribal Council authorizing the Tribal Chair to sign Agreement on behalf of the Tribe

Addendum B

Fiscal Addendum

Addendum C

Tribal Child Welfare Services Plan

Karuk Tribe of California



Administrative Office
64236 Second Ave. • P.O. Box 1016
Happy Camp, CA 96039
(530) 493-1600 Fax (530) 493-5322

Happy Camp Health Services
38 Park Way • P.O. Box 1016
Happy Camp, CA 96039
(530) 493-5257 Fax (530) 493-5270

RESOLUTION OF THE KARUK TRIBE OF CALIFORNIA

Resolution No: 07-R-036
Date Approved: March 14, 2007

RESOLUTION AUTHORIZING EXECUTION OF THE TITLE IV-E INTERGOVERNMENTAL AGREEMENT BETWEEN THE CALIFORNIA DEPARTMENT OF SOCIAL SERVICES AND THE KARUK TRIBE OF CALIFORNIA

WHEREAS; the Karuk Tribe of California is a sovereign aboriginal People, that have lived on their own land since long before the European influx of white men came to this continent;

WHEREAS; the general membership approved Article V of our Constitution, stating that “The members of the Karuk Tribe hereby delegate to the Tribal Council the authority to exercise by resolution or the enactment of Tribal Laws all the inherent sovereign powers vested in the Tribe as a Sovereign Aboriginal People”;

WHEREAS; the Karuk Tribe is a federally recognized Tribe and its Tribal Council is eligible to and is designated as an organization authorized to Contract pursuant to P.L. 93-638 on behalf of the Karuk Tribe of California;

WHEREAS; Public Law 280, 28 U.S.C. 1360, does not divest the Tribe of its inherent sovereign authority to establish and operate its own judicial and child welfare systems;

WHEREAS; the Indian Child Welfare Act was enacted to protect the best interest of Indian children and to promote the stability and security of Indian tribes and families;

WHEREAS; the Indian Child Welfare Act codifies a strong preference for Indian children to be placed in Indian homes and for their applicable child welfare cases to be heard in their Tribe’s court;

WHEREAS; Title IV, Part E of the federal Social Security Act is a permanently authorized entitlement under which the federal government has an obligation to provide states with federal matching funds to assist with providing foster care and adoption assistance for economically disadvantaged children and children with special needs;

WHEREAS; Direct funding under Title IV-E is not available to Tribes under the current federal statutory scheme. Instead, in order to access Title IV-E funds, federal legislation requires Tribes to enter into cooperative pass-through agreements with their respective states;

WHEREAS; California law delegates the authority of the state to the Director of the Department of Social Services ("DSS") to negotiate IV-E agreements with Indian tribes;

WHEREAS; the Karuk Tribe of California has negotiated with the state DSS for nearly three years to reach a Title IV-E Intergovernmental Agreement;

WHEREAS; Until Indian Tribes in California have access to IV-E funding, their inherent sovereignty rights are effectively denied in that cases are often screened out of Tribal courts by Tribal social workers because of the lack of resources to support placements. Equally important, Indian children are being deprived of a forum and culturally appropriate services where they have the greatest opportunity to thrive;

WHEREAS; execution and implementation of a *Title IV-E Intergovernmental Agreement Between the California Department of Social Services and the Karuk Tribe of California* is necessary to secure the rights of and ensure fairness and financial support to the eligible children, parents, guardians, custodians or other parties who come before the Tribal Court;

THEREFORE BE IT RESOLVED; that the Karuk Tribe of California authorizes the execution of the *Title IV-E Intergovernmental Agreement Between the California Department of Social Services and the Karuk Tribe of California*, a true and correct copy of which is attached hereto as Exhibit A;

BE IT FURTHER RESOLVED; that the Karuk Tribe of California hereby authorizes Tribal Council Chairman Arch Super to execute the *Title IV-E Intergovernmental Agreement Between the California Department of Social Services and the Karuk Tribe of California* on behalf of the Tribe;

CERTIFICATION

I, the Chairman, hereby certify the foregoing resolution which was approved at a meeting on March 14, 2007, was duly adopted by a vote of 5 AYES, 0 NOES, 0 ABSTAIN, and said resolution has not been rescinded or amended in any way. The Tribal Council is comprised of 9 members of which 5 voted.



Arch Super, Chairman

03/14/07

Date