# Red Lake Nation and Minnesota Department of Human Services
# Title IV-E Foster Care Agreement

This agreement is made and entered into this 3rd day of January, 2008, by and between the Red Lake Band of Chippewa Indians (hereinafter "the Nation"), a sovereign nation, at P.O. Box 550, Red Lake, Minnesota, 56671, and the state of Minnesota as represented by Minnesota Department of Human Services (hereinafter, "the Department"), a state agency, P.O. Box 64943, St. Paul, Minnesota, 55164-0943.

**WHEREAS**, the Red Lake Nation is a sovereign Indian Nation as recognized in the agreement of 1889 and the Red Lake Family & Children Services is the Nation's division responsible for the well-being and welfare of the Nation's children.

**WHEREAS**, the state of Minnesota is responsible for the administration of Title IV-E of the Social Security Act, a program of the federal government, and the Department of Human Services is the state agency responsible for ensuring compliance with the federal requirements of the Title IV-E foster care program in Minnesota and administration of the state Title IV-E Foster Care Plan.

**WHEREAS**, 25 U.S.C. §1901 *et. seq.*, also referred to as the "Indian Child Welfare Act", authorizes states and Indian tribes "to enter into agreements with each other respecting care and custody of Indian children." Both parties agree that this document is bound by the law, intent and spirit of the Indian Child Welfare Act.

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

**WHEREAS**, state agencies are directed by Executive Order #03-05 from the Office of the Governor, to recognize the unique government-to-government relationship between the state and Indian tribes. State agencies have the delegated authority to carry out the directive.

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

**WHEREAS**, the Department affirms its responsibility to adhere to the Tribal State Agreement, dated February 22, 2007, including giving full faith and credit to the public acts, records, and judicial proceedings of a tribal court applicable to Indian child custody proceedings to the same extent given to any other entity as required by 25 U.S.C. §1911(d).

**WHEREAS**, it is the intent of the parties to enter into this agreement for the purposes of affirming the government-to-government relationship and creating an environment of inter-governmental cooperation and implementation of Title IV-E of the Social Security Act in the best interests of the families and children they serve.

**WHEREAS**, the parties to this agreement understand and agree that the state and the Department, in its supervisory role, and the counties in their administrative role, are required to comply with the mandates of the federal Indian Child Welfare Act, and the Minnesota Indian Family Preservation Act, each agrees that in proceedings involving Indian child(ren), the best interests of the children must be determined consistent with the ICWA, MIFPA, and the Nation's family and/or social standards.

**WHEREAS**, the Nation's Family & Children Services Division is considered part of the state welfare system, which includes the Department, local social services agencies, Tribes, and other entities under contract to any of the above agencies to the extent specified in the contract in accordance with Minn. Stat. §13.46, subd.1 (b) and (c) and subd.2a (5)-(7).

**WHEREAS**, the Minnesota Unitary Residence and Financial Responsibility Act, codified as Minnesota Statutes, Chapter 256G, applies in determining the county of financial responsibility when Tribal courts have jurisdiction. Financial responsibility is delineated in the department's Informational Bulletin #07-68-08 (June 28, 2007). The county continues to be financially responsible to provide services and for the foster care maintenance costs for Tribal children who are residents of the county when such placements are ordered by the Tribal court.

**WHEREAS**, federal matching funds, based on federal cost allocation principles, will be made available to the Red Lake Nation for reimbursement of allowable administrative expenditures necessary for the proper and efficient administration of the Title IV-E foster care and adoption programs.

**WHEREAS**, the parties recognize and affirm the unique situation that Native Americans enjoy dual citizenship, a citizen in their Indigenous Nation/tribe, and citizenship in the U.S. and that their U.S. citizenship provides the basis of their equal and unfettered access to the rights, privileges and benefits of such citizenship.

**WHEREAS**, it is the intent of the Red Lake Nation to ultimately assume full responsibility for all child welfare programming and the state recognizes this intent. This agreement is in place until such time as that occurs.

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

I. This Agreement replaces previous or current Substitute Care Supervision Agreements the Red Lake Nation has entered into with county governments. Individual county Title IV-E agreements are no longer necessary as this Agreement applies to all Minnesota Counties.

II. The Department's foster care/Title IV-E staff, in conjunction with the Title IV-E Eligibility Determination Trainers, will provide training and technical assistance to assist the Red Lake Nation in compliance with federal Title IV-E requirements and to ensure that the case files contain proper documentation. The Department agrees to provide the appropriate forms, consultations, and monitoring to enhance such compliance.

III. Staff of the Red Lake Nation social services agency, a public agency that has responsibility for the placement and care of children in foster care, will participate in the Social Services Administrative Tribal Time Study (SSATTS) in order to document social services administrative and training activities for Title IV-E eligible children. The SSATTS is the mechanism that enables the Nation to obtain federal financial participation for the costs of Tribal social services administrative and training activities for Title IV-E eligible children in foster or pre-adoptive placements and/or Title IV-E foster care candidates, children at imminent risk of placement. The SSATTS process is described in Addendum A, which is incorporated by reference into this agreement.

IV. The Nation shall submit to the Department claims for reimbursement of the eligible administration expenditures on a quarterly basis. Allowable administrative and training costs are delineated in the SSATTS. The Department shall forward to the Nation, on a quarterly basis, federal funds earned through the SSATTS. For purposes of this agreement, the term "quarter" shall mean a period of three months ending on the last day of March, June, September and December.

V. Federal matching funds are available for short and long term training of child welfare personnel employed by or preparing for employment in the Nation's child welfare agency, in accordance with federal regulations. Foster parent(s) and staff of licensed or approved child care institutions providing foster care shall be eligible for short-term training.

VI. The Department agrees that counties have the statutory responsibility to provide services for children under the jurisdiction of the Red Lake Nation court, including foster care, and that the county will undertake and continue to provide such services as identified in the case plan. These services will not be impacted by this agreement. This agreement does not authorize the county to stop providing, or reduce the level of other services that counties are otherwise obligated to provide.

VII. When a petition is filed in Red Lake Nation court regarding a child in need of protection and services, the Nation will provide the child's county of residence/financial responsibility with notice and an opportunity to appear.

VIII. The Red Lake Nation agrees to cooperate with the county of residence/financial responsibility with information and documents necessary to establish a child's eligibility for basic and ongoing Title IV-E foster care, foster care candidacy and provider licensure in

order for Minnesota counties to obtain and maximize federal financial participation for placements ordered by the Nation's court and to comply with all of the requirements and safeguards of the 45 Code of Federal Regulation (CFR) §1355.30 (p) (4)and §1356.60 (c) (7).

IX. The Nation agrees to comply with all of the requirements of Title IV-E, including the case plan, the case review system, the procedural and judicial safeguards described in, 45 CFR § 1356.20 & 1356.21, for all Red Lake Nation children under the jurisdiction of the Nation's court or placed voluntarily and for whom placement and care responsibility has been transferred to Red Lake Family & Children Services.

X. The Nation may provide dual case management where appropriate and agrees to cooperate with the county of the child's residence/financial responsibility in complying with the Title IV-E requirements, including the case plan, the case review system, the procedural and judicial safeguards described in 45 CFR § 1356.20 & 1356.21, for Red Lake Nation children whose case has not been transferred to Red Lake Nation Court.

XI. The Nation acknowledges that the United States Department of Health and Human Services (DHHS), or the Department, conducts periodic reviews of state agencies that receive and distribute Title IV-E funds, and that DHHS or the Department requires, as a part of such reviews, that case files on children for whom a Title IV-E claim has been submitted be made available for inspection at a designated location. Upon reasonable advance written notice, the tribe will make available for review by DHHS, or Department personnel, the case files and provider files on the child(ren) in foster care under the jurisdiction of the Nation whose foster parent(s) receive Title IV-E funds. The Department will use the same laws, policies and procedures that it currently uses with counties in their review. The files shall at all times remain the property of the Nation and shall be returned to the Nation immediately upon completion of the review process.

XII. The Nation agrees to make the records, case files and the provider files for children for whom a Title IV-E claim has been submitted available to the Department for quality assurance reviews on a reasonable basis.

XIII. The Department will provide the Nation with training, technical assistance and support in order to ensure appropriate claiming and to adjust Title IV-E claims related to ineligible claims and over or underpayments.

XIV. The Nation agrees that all reimbursements resulting from the Title IV-E Social Service Administrative Tribal Time Study for administrative activities shall be used to support the goals of Red Lake Family & Children Services Program. These funds can be used as the local match for additional federal reimbursement.

XV. For purposes of executing its responsibilities, and to the extent set forth in this agreement, the Nation may be handling protected health information, and other private information concerning individuals. As such, the Nation agrees to be bound by federal law, commonly referred to as "HIPPA" in 45 CFR §§ 160 & 164 that protects private or confidential information.

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

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

XVIII. The Department and the Nation agree to cooperate to the utmost in carrying out the intent and purpose of this agreement.

XIX. Both parties agree that the terms of this agreement do not impair or limit the authority or responsibility of the department in the administration of the State Title IV-E plan.

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

**SIGNATURES**

**Date** 1/3/08
Floyd "Buck" Jourdain, Tribal Chairman
Red Lake Nation

**Date** 1-9-08
Cal Ludeman, Commissioner
Minnesota Department of Human Services

**Addendum A**
Red Lake Tribal State Title IV-E Agreement

**Proeedures for the Soeial Service Administrative Tribal Time Study (SSATTS)**

A. Federal matching funds, based on federal cost allocation principles, will be made available for reimbursement to the Nation according to 45 Code of Federal Regulation (CFR) § 235.61-235.64. Reimbursement is based on allowable administrative expenditures necessary for the proper and efficient administration of the Title IV-E foster care and adoption programs. Examples of allowable administrative costs include:
1) Referral to services
2) Preparation for, and participation in, judicial determinations
3) Placement of child (ren)
4) Development of case plans
5) Case reviews
6) Case management and supervision, such as:
    a) Health and safety visits
    b) Notification to parent(s) of change in the foster placement for the child (ren)
    c) Notification to the foster parent(s) of court hearings and
    d) Notification regarding any changes in visits with the child (ren).
7) Recruitment and licensing of foster homes and institutions, including the cost of home studies and criminal record checks
8) A proportionate share of related agency overhead
9) Foster care rate setting
10) Management information system
11) The Nation's federally established indirect rate used in calculating the administrative and training reimbursement claim.

B. The Department agrees to provide all time study training materials and training to the Nation within 60 days of the anticipated start date of the time study sampling.

C. The Department's claiming and reimbursement procedures have been developed to ensure compliance with federal Title IV-E fiscal reporting requirements. Therefore, a quarterly reimbursement schedule has been established.

D. The Nation shall earn the federal administrative funds for administrative activities necessary for proper and efficient administration of the Minnesota State Title IV-E Plan, consistent with Title IV-B and Title IV-E of the Social Security Act and 45 CFR §1356.60 by participating in the SSATTS.

E. The Department and the Nation will carry out its respective roles and responsibilities for the time study.

F. The Nation shall act as the administrator, trainer, and fiscal reporting agent for purposes of operating the SSATTS. The Department will ensure the staff person identified by the

Nation to be the SSATTS coordinator will receive the training to carry out the following duties. Department staff shall provide the initial training to time study participants. In the future, when new staff joins the time study the SSATTS trainer will be asked to provide this training when Department staff is not available. The following responsibilities are necessary for participation in the time study. The Nation will:

1) Appoint and maintain a SSATTS coordinator. The SSATTS coordinator will be responsible for overall operation of the time study. The person appointed to this position may not be a participant in the SSATTS. The SSATTS coordinator will be the singular contact for the Department and as such, will be responsible for responding to, and resolving all time study questions, problems, or issues from the Department for the duration of the time study;

2) Appoint and maintain a SSATTS fiscal representative who will be responsible for the accurate completion of the quarterly cost report;

3) Attend all Department required SSATTS trainings;

4) Identify time study participates, train participants in activity code selection, train participants in log sheet completion;

5) Submit all SSATTS application materials, contracts, log sheets, cost reports, and other required forms and paperwork to the Department within the required timelines.

G. The Nation shall submit reports as reasonably requested by the Department. The reports will provide information as needed by the Department to properly administer the SSATTS, and comply with all appropriate federal and state laws, rules and regulations.

H. The Nation shall ensure and provide verification that staff participating in the time study and SSATTS coordinators and fiscal representatives have completed all required training.

I. The Nation shall comply with the requirements for claiming administrative reimbursement under Title IV-E of the Social Security Act in accordance with 45 CFR §1356.60 and the federal *Child Welfare Policy Manual.*

J. The Nation shall ensure that costs claimed for reimbursement through the SSATTS shall be the actual costs, to be determined in accordance with cost principles outlined in OMB Circular A-87. Properly constructed time studies shall be the basis for separating allowable from unallowable costs, and for establishing appropriate costs.

K. The Nation participating in the SSATTS shall maintain an accounting and financial management system adequate to support all claims for federal reimbursement through the SSATTS.

L. The Nation shall provide the non-federal share of all expenditures for which federal revenue is claimed through the SSATTS. In addition, the Nation shall ensure that expenditures submitted for federal reimbursement shall be paid from public sources other than federal funds, or funds used to match other federal funds, or from permissible federal funds.

M. The Department shall forward to the Nation, on a quarterly basis, federal funds earned through the SSATTS. For purposes of this agreement, the term "quarter" shall mean a period of 3 months ending on the last day of March, June, September and December.

N. For funds payable under this agreement, an amount not to exceed ten percent of earned federal dollars will be deducted and held by the Department as a set-aside to repay the special revenue maximization account for state expenses in administering the SSATTS. Unused set-aside funds will be returned to the Nation on an annual basis.

O. The Department shall ensure that federal reimbursement earned pursuant to this agreement shall not be used in determining the allocation or distribution of other funds to the Nation.

P. Payments to the Nation shall be based upon activities and costs eligible for reimbursement through Title IV-E of the Social Security Act. If at any time such federal funds become unavailable, the Tribe shall be paid on a pro rata basis, for services satisfactorily performed, and for which federal reimbursement was received.

Q. The amount forwarded to the Nation shall be based on eligible activities identified through the SSATTS and quarterly costs.
1) The Nation shall submit SSATTS cost reports within 20 days after the end of the quarter. Cost reports received by the Nation more than 20 days after the end of the quarter, and amended costs reports, shall be processed one year after the original cost report was due unless otherwise agreed to by the Department. Cost reports submitted more than one year after the original due date will not be eligible for reimbursement.
2) The Nation shall submit SSATTS log sheets to the Department within 7 days from the time the log sheet was to be completed, unless otherwise agreed to by the Department.

R. The Department shall pay the federal reimbursement earned under this agreement, less a set-aside as defined in N. of this agreement, to the Nation based on their earnings pursuant to the terms of payment as outlined in this Addendum, once federal approval for this project is granted, and federal funds become available.

S. The Department shall recover from the Nation any federal fiscal disallowances or sanctions attributable to actions of the Nation participating in the SSATTS. If federal fiscal disallowances or sanctions are based on either a statewide sample or a categorical disallowance imposed across the state, the Department shall recover the proportional share of the disallowance or sanction from the Nation.

T. All services and reporting provided by the Nation pursuant to this agreement shall be performed in accordance with all applicable federal, state and local laws, rules and regulations. The Department agrees to work with the Nation to rectify issues. In the end, however, the Department reserves the right to suspend, reduce or terminate the distribution of SSATTS funds to the Nation for services, SSATTS reporting, or reporting provided pursuant to this agreement found by the Department to be unsatisfactory or in violation of federal or state laws and regulations.

U. The books, records, documents, and accounting procedures, and practices of the Nation relevant to this agreement shall be subject to examination by the Department, legislative auditors, state auditors, and appropriate federal and independent auditors. Records shall

be sufficient to reflect all costs incurred in performance of this agreement, and shall be maintained for six years to meet federal and state audit requirements.

V. The Nation certifies it will comply with the Single Audit Act and OMB Circular A-133, as appclicable. All sub-recipients receiving $500,000 or more of federal assistance in a fiscal year will obtain a financial and compliance audit made in accordance with the Single Audit Act or OMB Circular A-133, as applicable. Failure to comply with these requirements could result in forfeiture of federal funds.

Federal Regulation 45 CFR § 92.35 prohibits the state from purchasing goods or services with federal money from vendors who have been suspended or debarred by the federal government. Similarly, Minn. Stat. §16C.03, subd. 2 provides the Commissioner of Administration with the authority to debar and suspend vendors who seek to contract with the state.

By signing this agreement, the Nation certifies that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transacting business by or with any federal, state or local governmental department or agency; and

2. Have not within a three year period preceding this agreement: a) been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract; b) violated any federal or state antitrust statutes; or c) committed embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and

3. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity for: a) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction; b) violating any federal or state antitrust statutes; or c) committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and

4. Are not aware of any information and possess no knowledge that any subcontractor(s) that will perform work pursuant to this agreement are in violation of any of the certifications set forth above.

5. Shall immediately give written notice to the state should the Nation come under investigation for allegations of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing: a public (federal, state or local government) transaction; violating any federal or state antitrust statutes; or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.