36959-04

INDIAN CHILD WELFARE, ADULT AND CHILD PROTECTION AND SAFETY SERVICES, AND JUVENILE SERVICE AGREEMENT

BETWEEN THE

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF CHILDREN AND FAMILY SERVICES
AND

THE OMAHA TRIBE

AMENDMENT TWO, JULY 2010

This Agreement is entered into by and between the Nebraska Department of Health and Human Services, **DIVISION OF CHILDREN AND FAMILY SERVICES** (hereinafter "DHHS"), and **THE OMAHA TRIBE** (hereinafter "Contractor").

The Agreement between the parties dated November 3, 2008 is hereby amended as follows:

The First Amendment executed on July 26, 2010 and all words contained therein are herby stricken.

Article TITLE ONE B. 1. TERM is amended to read:

1. TERM. This agreement shall be effective from October 1, 2008 and shall be in effect through September 30, 2010.

Article TITLE TWO – CONSIDERATION A. BUDGET amended to add:

5. The State agrees to pay an additional $262,318.13 (two hundred sixty two thousand three hundred eighteen dollars and thirteen cents) for the period of July 1, 2010 to September 30, 2010.

Salaries and Fringe	95,463.78
Operational Costs	14,729.69
Indirect Costs	25,113.09
Services	127,011.57
Total	262,318.13

Article TITLE TWO – CONSIDERATION D. PAYMENTS is amended to add:

3. Payment under this Amendment will be made on or after July 15, 2010 but no earlier than receipt of the expenditure statement for the quarter of April 1, 2010 through June 30, 2010. Payment will be decreased based upon any unexpended funds as reported from the April 1, 2010 through June 30, 2010 quarter.

Article TITLE FIVE – GENERAL PROVISIONS is amended to add:

Z. NEW EMPLOYEE WORK ELIGIBILITY STATUS. The Tribe shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

If the Tribe subcontracts to an individual or sole proprietorship, the following applies:

1. The Tribe or the subcontractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at www.das.state.ne.us.

2. If an individual indicates on such attestation form that he or she is a qualified alien, the Tribe and subcontractor agree to provide the U.S. Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

3. The Tribe and subcontractor understand and agree that lawful presence in the United States is required and the (AGENCY) and the subcontractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by NEB. REV. STAT. § 4-108.

All other terms and conditions remain in full force and effect.

IN WITNESS THEREOF, the parties have duly executed this contract hereto, and each party acknowledges the receipt of a duly executed copy of this contract with original signatures.

FOR DHHS:

Signature

Kerry T. Winterer
Chief Executive Officer
Department of Health and Human Services

DATE: 7/28/2010

FOR THE TRIBE:

Signature Vice Chairman

Name
Title
Contractor name

DATE: 7/29/2010

36959-04

FIRST AMENDMENT

This document (hereinafter, the Amendment), amends the Child Welfare Agreement (hereinafter, the Agreement) entered into on October 1, 2008, by and between the Department of Health & Human Services (hereinafter, the Department) and the Omaha Tribe (hereinafter, the Tribe).

WHEREAS, the original term of the Agreement is from October 1, 2008 through June 30, 2010.

WHEREAS, the continued performance of the Tribe requires an adjustment to extend the Agreement.

WHEREAS, the parties herein seek to make the effective term of the Agreement language change to be from October 1, 2006, through September 30, 2010.

NOW, THEREFORE, the parties agree as follows:

Section 1. General Provisions

1.1 This Amendment becomes effective only upon the signing of all parties hereto, and the beginning of the new term.

1.2 The Recitals set forth above are an integral part of this Amendment; therefore, they are hereby incorporated herein.

1.3 The written Agreement, all attachments, any prior amendments, and this Amendment represent the entire agreement between the parties, and any prior or contemporaneous representations, promises, or statements by the parties, that are not incorporated herein, shall not serve to vary or contradict the terms set forth in the written agreement between the parties.

Section 2. Amended Terms

2.1 The parties herein agree that the Agreement period for Section 2.2 of this amendment to be effective from October 1, 2008, through September 30, 2010.

2.2 Title Two – L. The budget within the agreement is amended by adding the following amounts for the period July 1, 2010, through September 30, 2010:

Salaries and Fringe	95,463.78
Operational Costs	14,729.69
Indirect Cost	25,113.09
Services	127,011.57
Total	262,318.13

2.3 Title Two – M. Payment under this Amendment will be made on or after July 15, 2010, but no earlier than receipt of the expenditure statement for the quarter of April 1, 2010, through June 30, 2010. Payment will be decreased based upon any unexpended funds as reported from the April 1, 2010, through June 30, 2010, quarter.

2.4 Title Three - General Provisions A. Term of Agreement of the Agreement is amended by deleting "This agreement shall be effective from October 1, 2008, and shall be in effect through June 30, 2010." and inserting the following provision:

"This agreement shall be effective from October 1, 2008, and shall be in effect through September 30, 2010."

2.5 All other terms and conditions of said Agreement, and the addendum referenced herein, not hereinafter modified or amended, shall remain in full force and effect.

IN WITNESS THEREOF, the parties have duly executed this Amendment hereto, and each party acknowledges the receipt of a duly executed copy of this Amendment with original signatures.

FOR THE DEPARTMENT

By: _____

Kerry T. Winterer

Chief Executive Officer

Department of Health and Human Services

Date: 7/23/2010

FOR THE TRIBE

By: _____

Title: Vice Chairperson

Name Printed: Rodney Morris

Date: 7/26/2010

AB# 540383

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36959-04

INDIAN CHILD WELFARE, ADULT AND CHILD PROTECTION AND SAFETY SERVICES AND JUVENILE SERVICES AGREEMENT

BETWEEN

THE NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES DIVISION OF CHILDREN AND FAMILY SERVICES

AND

THE OMAHA TRIBE

TITLE ONE - PARTIES, TERM AND TERMINATION, APPLICABILITY

A. PARTIES TO AGREEMENT. This agreement is entered into by and between the State of Nebraska on behalf of the Department of Health and Human Services (herein after referred to as the "State" or the "Department"), and the Omaha Tribe (herein after referred to as the "Tribe").

B. TERM AND TERMINATION

1. TERM. This agreement shall be effective from October 1, 2008, and shall be in effect through June 30, 2010.
2. TERMINATION. This Agreement may be terminated at any time upon mutual written consent or by either party for any reason upon submission of written notice to the other party at least 30 (thirty) days prior to the effective date of termination. The State may also terminate this Agreement in accord with the provisions designated "AVAILABILITY OF FUNDING" and "BREACH OF CONTRACT". In the event that either party terminates this Agreement, the Tribe shall provide to the State all unexpended funds immediately.

C. TITLES AND APPLICABILITY. The Agreement consists of five (5) Titles. The terms of each Title, unless otherwise noted, are hereby made applicable to all Titles of this Agreement.

TITLE TWO – CONSIDERATION

A. BUDGET. In consideration of this agreement the State agrees to pay a maximum of $1,044,052.26 annually for the salary and fringe benefits for Omaha Tribal Child Protective Services (CPS), operational costs and indirect costs as follows:

1. SALARIES AND FRINGE BENEFITS. Salaries and fringe benefits shall be paid based on actual hours worked. The annual budget for Salaries and Fringe Benefits is $379,955.32.
2. OPERATIONAL COSTS. Operational costs including training and travel, equipment, supplies and operating costs, and telephone/internet based on actual expenditures incurred. The annual budget for Operational Costs is $58,625.64.
3. INDIRECT COSTS. Indirect cost rate will be set at a rate no greater than the indirect cost rate established for the Tribe by the Bureau of Indian Affairs (BIA) and will not be adjusted during the term of this agreement. The annual budget for Indirect Costs is $99,952.60.
4. SERVICES. Services include services provided to children and families in cases of abuse or neglect. The annual budget for Services is $505,518.70.

B. BUDGET LIMITS BY CATEGORY; COMMINGLING PROHIBITED. Expenditures for the term of the agreement cannot exceed the authorized maximum amounts for each of the three budget category (salaries and fringe benefits, operations

and indirect costs). Funds cannot be commingled between the three budget categories.

C. **SEPARATE ACCOUNT; RECORDS**. Funds from this Agreement must be kept in a separate account by the Tribe. Records of expenditures shall be kept by the Tribe for review by the State monthly, upon request.

D. **PAYMENTS**. A payment of $261,013.07 for the budget period October 1, 2008, through December 31, 2008, will be made upon signing of this Agreement by both parties. The Tribe agrees to provide a statement of expenditures for the period of October 1, 2008, through December 31, 2008, no later than January 15, 2009. A payment of one-fourth of the agreed upon annual budget for the period of January 1, 2009, through March 31, 2009, will be made on or after January 16, 2009, but no earlier than receipt of the expenditure statement for the prior quarter. The payment will be decreased based on any unexpended funds from the October 1, 2008, through December 31, 2008, budget period. Payments equal to one quarter of the budget year will be made for subsequent quarters on or after April 16, 2009, July 16, 2009, October 16, 2009, January16, 2010, April 16, 2010, and July 16, 2010, but no earlier than receipt of expenditure statements for prior quarters, and will be decreased based on any unexpended funds as reported for the prior quarter. The Tribe agrees to provide a report of expenditures from the prior quarter no later than the 15th day following the end of the budget quarter (January 15, 2009; April 15, 2009; July 15, 2009; October 15, 2009; January 15, 2010; April 15, 2010; and July 15, 2010). The Tribe agrees to specify expenditures within each of the three budget categories (salaries and fringe benefits, operations, and indirect costs). The Tribe agrees that the

report of expenditures will be signed by the Tribal Financial Officer and the Director of the Tribal Child Welfare Program.

1. Review of the Expenditure Report for processing of payment will occur within 15 days after the receipt of the Expenditure Report.
2. Payments will be based upon the actual expenditures incurred by the Tribe, but will not exceed ¼ (one quarter) of the amount of the annual budget. Expenditures in excess of ¼ (one quarter) of the amount of the annual budget will be carried over for payment in future quarters, provided that no quarter's payment will exceed ¼ (one quarter) of the amount of the annual budget. Final payment under this Agreement will include amounts carried over from prior quarters up to the amount of the Agreement for each category.

TITLE THREE - INDIAN CHILD WELFARE AND CUSTODY

A. STATEMENT OF PURPOSE AND INTERGOVERNMENTAL COOPERATION

1. ICWA. The Congress of the United States has enacted the Indian Child Welfare Act of 1978 (PL 95-608), 25 U.S.C. 1901, *et seq.*, hereinafter referred as the "ICWA". which Act provides that "it is the policy of this Nation to protect the 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 will reflect the unique values of Indian culture, and by providing for assistance to Indian Tribes in the operation of child and family service programs" (25 U.S.C. 1902).

2. NICWA. The Nebraska Legislature has enacted the Nebraska Indian Child Welfare Act, Neb. Rev. Stat. 43-1501, *et seq.*, hereinafter referred to as the "NICWA", which Act provides that "It shall be the policy of the State to cooperate fully with Indian Tribes in Nebraska in order to ensure that the intent and provisions of the Federal Indian Child Welfare Act are enforced". (Neb. Rev. Stat. 43-1502);

3. AUTHORITY FOR AGREEMENT. This Agreement is entered into pursuant to Section 109 of the ICWA (25 U.S.C. 1919) and Section 1 of the NICWA (Neb. Rev. Stat. 43-1511), which authorize appropriate departments and agencies of this State to enter into agreements with Indian Tribes regarding care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for an orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between the State and Indian Tribes, and is predicated on a government-to-government relationship between the State of Nebraska and the Omaha Tribe based on a spirit of cooperation, coordination, communication, and good will;

4. TRIBE APPROVAL OF OUTSOURCED OR CONTRACTED SOCIAL WORK PERTAINING TO INDIAN CHILDREN. That in order to implement the spirit of ICWA and NICWA the State shall offer the Tribe approval of any outsourced or contracted social work that pertains to the Indian Child Welfare Act or provision of services to Native American children who are members of or eligible for membership in the Omaha Tribe. This shall include, but not be limited to, home studies, pre-adoptive home studies and ICWA compliance checks.

B. ACKNOWLEDGEMENTS. The State and the Omaha Tribe recognize:

1. That there is no resource more vital to the continued existence and integrity of the Omaha Tribe than its children;
2. That the State has a direct interest in protecting the health, safety, welfare and cultural diversity of all its citizens, which includes the provision of equal or comparable resources to all its citizens.
3. That the State also recognizes that the Omaha Tribe is a sovereign nation and that its sovereignty is to be respected in all aspects of the relationship between the State and the Tribe as may relate to specific provisions of this contract and the administration of those provisions.
4. That the goals of the State when involved with Native American children and their families are:
   a. To promote stability of Native American families and to avoid unnecessary removal of Native American children from their culture, Tribe and community.
   b. To take active efforts to provide culturally relevant remedial services and rehabilitative programs to prevent the breakup of the Native American family.
   c. To educate the Department in ICWA and NICWA and in locating and providing culturally relevant services.
   d. To seek assistance from the Tribe in educating the Department in locating and coordinating culturally relevant services.
   e. To actively seek to identify Native American children and provide notification and coordination with the Tribe when appropriate.

f. To secure permanent placement for children in the least restrictive environment in compliance with ICWA and NICWA and approximates a family. When possible this will be in reasonable proximity to the children's home.

g. To prevent or remedy neglect, abuse or exploitation.

h. To provide the Tribe with information concerning children identified under ICWA and NICWA to include prior or closed cases, to allow the Tribe visits with those children and families and access to all records of the Department regarding these children in order to coordinate services, and copies of such records as requested, with the exception of communications between attorneys for the Department and Department staff and any records not permitted by state or federal law.

5. That the State strives to provide the highest quality professional services in cases involving Native American children and wishes to assist the Tribe in meeting its own commitment to the welfare of tribal families and in its provision of child and family service programs.

6. That the State recognizes that the best interest of Native American children is to remain culturally linked to the Tribe and that active efforts shall require active coordination with the Tribe.

7. That the State, pursuant to 25 U.S.C. 1911(d) and Neb. Rev. Stat. 43-1504(4) shall give full faith and credit to the public acts, records and judicial proceedings of any Indian Nation applicable to child custody proceedings to the same extent that the State gives full faith and credit to the public acts, records, and judicial proceedings of any other entity. The State also recognizes the independent and

sovereign nature of the judicial arm of the Tribe and shall not challenge the validity of these Courts, or require disclosure of anticipated Tribal Court proceedings in order to recognize the rights of the Tribe under ICWA and NICWA.

8. The parties agree that the Emergency Removal provision of the ICWA (25 U.S.C. 1922) and the NICWA (Neb. Rev. Stat. 43-1514) shall apply in all cases where a Native American child, though a resident of or domiciled on a reservation, is in danger of imminent physical harm while temporarily located off the reservation. The State authority, official or agency shall ensure that the removal or placement was conducted pursuant to applicable State and Federal Law, including the placement preferences under ICWA and NICWA.

9. The State may, and is encouraged to, place children in foster/group homes licensed/approved by the Tribe.

10. The State shall follow the placement preferences in this agreement and ensure appropriate payment, even in the event that the State and Tribal definitions of extended family may differ.

11. Each Tribal child accepted for out-of-home care by the State shall be placed in the least restrictive setting appropriate to his/her special needs and which approximates his/her family and within a reasonable distance to his/her home. Unless the Tribe has established, by resolution, a different order of preference, or in the absence of good cause to the contrary, pursuant to 25 U.S.C. section 1915, Neb. Rev. Stat. section 43-1505, and subject to any change in or exception to that reference, preference shall be given to placement in the following order with:

a. A member of the Indian Child's extended family, as determined by the Tribe according to Tribal Code.

b. A foster home, licensed, approved or specified by the Indian Child's Tribe.

c. An Indian foster home licensed or approved by a non-Indian licensing authority.

d. A child caring agency, institution or group home for children approved by an Indian Tribe or operated by an Indian organization and which has a program available to meet the Indian child's needs.

12. Good cause to depart from placement preferences, in accordance with 25 U.S.C. section 1515, Neb. Rev. Stat. section 43-1505, and 390 Nebraska Administrative Code 7-004.07, and subject to any change in or exception to those references, must be based upon one or more of the following considerations:

a. The request of the biological parent(s) or of the minor child (if the child is age 12 or older) for a specific placement;

b. Extraordinary physical or emotional needs of the child, as established through the testimony of a person with the following qualifications:

i. A member of the Indian Child's Tribe who is recognized by the Tribal community as knowledgeable in tribal customs as they pertain to the family organizations and child-rearing practices; OR

ii. A lay person having substantial expertise in the delivery of children's and family services to Indians, and extensive knowledge of the prevailing social and cultural standards and child-rearing practices with the Indian Child's Tribe; OR

iii. A professional person having substantial education and expertise in the area of his/her specialty;

c. The unavailability of suitable families for placement after a diligent search is completed for families, including at a minimum:

i. Contacting the Indian Child's Tribal social service program.

ii. Searching of lists of all licensed foster care homes in the State.

iii. Contacting nationally known Indian programs known that have available placement resources.

13. The Department and the Tribe agree to work together to request a waiver of the Title IV-E definition of relative from the federal Administration for Children, Youth and Families, to recognize the Tribe's definition of relative.

14. That this Agreement does not in any way change or alter any other agreement or contract currently in effect between the State and the Tribe, except as specifically detailed in this agreement, and contains no provisions governing or limiting the jurisdiction of the Tribe over child custody proceedings under the authority of ICWA and/or the NICWA. The Tribe reserves the right to exercise the jurisdiction it has been granted by law, and the parties anticipate further agreements to govern the identification of Tribal children, the proper and timely notification of parties involved in such proceedings, the transfer of such cases, and the exercise of exclusive Tribal jurisdiction.

TITLE FOUR - CUSTODY AND PROTECTION SERVICES

A. GENERAL MATTERS

1. The parties will cooperate fully to achieve appropriate resolution of Native American family welfare proceedings involving children over whom the Tribal Court has exercised jurisdiction, under applicable Tribal and Federal law. The age of majority for children served by the Tribe under this agreement shall be defined by Tribal Code but no older than the State's age of majority as defined by state law. The State and the Tribe will assist each other to meet the goals of the ICWA, NICWA and this Agreement. For purposes of this Agreement, a case or proceeding shall mean those (a) in which an abuse or neglect, minor in need of supervision or voluntary relinquishment of parental rights has been filed with the Tribal Court pursuant to the Tribal Code, following which the Tribal Court has taken and is currently exercising jurisdiction, and (b) where legal custody or responsibility for the child(ren) has thereafter been awarded to Omaha Tribal Child Protective Services and the Omaha Tribal Court
2. The parties hereby acknowledge that one of the primary purposes for this agreement is to establish a procedure whereby the resources of the State can be made available to a Tribal child so as to ensure safe, adequate and appropriate services to Tribal children.
3. Members of the Department or of Omaha Tribal Child Protective Services (CPS) may attend trainings sponsored by the other agency. Tribal staff will be invited to participate in all Indian Child Welfare Act trainings provided by the Department for Department staff.

4. Members of the Department and of Omaha Tribal CPS shall cooperate in providing courtesy services, background information and historical data to the other agency, should clients relocate to the territorial jurisdiction of the other agency.
5. Each agency may apply to the other to provide initial assessment services should the agency experience a conflict of interest, as defined by individual agency protocols that cannot be resolved within the agency. The Tribe will seek outside case management or resolve conflicts as appropriate at their own expense.
6. Both the Tribe and the State agree to hold all shared information confidential and disseminate the shared information only on a need to know basis, unless specifically authorized by State or Federal Law.
7. Department staff may exercise all non-investigative functions for non-Tribal children and families located on the Reservation without approval of the Tribe. A courtesy call is encouraged.
8. The Tribe and the State will work together to review all child deaths alleged to have resulted from abuse or neglect. The review will not impede any criminal investigation or prosecution.

B. CHILD AND FAMILY SERVICES (CFS). The State recognizes its desire to assist the Tribe in meeting the mutual obligation of the parties to the welfare of tribal children, families and vulnerable adults through the provisions of Child and Family Services and programs. The Tribe agrees that, in return for valuable consideration provided by the State, it will perform Child and Family, Adult Protection and Safety and Family Support services on the Omaha Reservation, as defined by this Agreement.

Services are delivered to abused or neglected children, minors in need of supervision and their families/caregivers in order to achieve the stated service goal(s). These services are provided directly by CPS staff, through purchase of services, and/or through community provided services. The Tribe agrees to provide Tribal protocol to carry out these functions agreed to by the State including definitions, processes and protocols. In the absence of Tribal protocol, the Tribe agrees to follow the State definitions, policies and procedures. In addition, CPS staff performs clearly defined safety assessment and service delivery functions.

1. GOALS. The Tribe and the State agree that the federal measures of safety and timeliness and State permanency measures are also goals of the Tribe. The Tribe agrees to work toward the goals of safety, timeliness and permanency and that the targeted measures of work as defined by the federal outcomes and permanency measures will be will be jointly assessed on a quarterly basis. Goals, outcomes and permanency measures include:

   a. Safety and Timeliness

      1.) Reunification in less than 12 months with a federal goal of 56.8%.

      2.) Placement stability of two (2) or fewer placements with a federal goal of 86.7%.

      3.) Not re-entering foster care within 12 months of discharge from foster care with a federal goal of 91.4%.

      4.) No maltreatment in foster care with a federal goal of 99.68%.

      5.) Adoption within 24 months with a federal goal of 32%.

b. Permanency

1.) Case plans completed within 60 calendar days of the youth coming into custody.

2.) Case plans updated a minimum of every six months.

3.) Monthly visits to children.

4.) Monthly visits to families.

5.) Emergency shelter stays no longer than 30 days.

2. SAFETY ASSESSMENT. The Tribe agrees to accept reports of abuse or neglect from the State Child Abuse and Neglect Hotline and to assess all reports of abuse or neglect for both Tribal and non-Tribal children within the exterior boundaries of the Omaha Tribal Reservation. The Tribe agrees that the names of individuals for whom there is a substantiation of abuse or neglect will be maintained on the State's Child Abuse and Neglect Central Register. The Tribe agrees to record all child abuse and neglect information on the State's N-FOCUS information system. Protocol shall include:

a. Receiving all reports alleging abuse or neglect of children, with referral of non-appropriate reports to other resources, where possible;

b. Determining priority of reported cases.

c. Investigating reports of alleged abuse or neglect of children and coordinate with local law enforcement agencies in investigating such reports.

d. Coordinating with all mandatory reporting agencies to ensure that all relevant agencies are accurately reporting.

e. Working in conjunction with law enforcement and Prosecutor's office to initiate court proceedings, including emergency intervention, as necessary.

f. Presenting testimony at court cases or hearings involving abuse, neglect, delinquency.

g. Maintaining record keeping and keep all necessary documentation.

3. SERVICE DELIVERY FUNCTION

a. Work with abused or neglected children, minors in need of supervision and their families/caregivers to determine necessary services and formulate a service plan;

b. Evaluate information concerning client's social, economic, and personal background and utilize this information to develop and implement individual and family case plans and treatment plans which prioritize client and family needs with goals, action steps and timelines to meet requirements.

c. Monitor and evaluate client needs and progress on established case plan in order to modify the case plan as each individual case may require;

d. Present testimony at court cases or hearings involving abuse, neglect, delinquency, status offender dependency and foster care status and explain and interpret reports and case evaluation.

e. Review and evaluate temporary and long-term foster care placements, to include relative placements, institutional placements and pre-adoptive placements.

f. Conduct home visits and monitoring of families and children, both in home and in foster care placement, to maintain ongoing evaluation of services necessary and appropriateness of placement.

g. Provide skill building services to families and children targeted at establishing safe and healthy home environments and alleviating the situation which brought the family into the Court system.

h. Provide transportation services for client in order to facilitate services outlined in the case plan.

i. Monitor and provide transportation for supervised visitations as ordered by the Court.

j. Provide written reports as necessary for use in legal proceedings.

k. Other such similar duties as may be assigned by the Tribal Council or directed in an individual case by the Omaha Tribal Court.

C. CASE ADMINISTRATION

1. The Tribe will provide a hard copies of required documentation to the designated Department financial payment worker necessary to make initial or ongoing IV-E eligibility determination. Failure by the Tribe to provide such documentation within 30 days of request for documentation may result in determination of non-eligibility or discontinuation of payments until documentation is provided. Documents which must be provided in every case are:

   a. **IV-E Application (EA-117);**

   b. **Financial and third party liability information** on the parents, child and family (all household members);

c. **Petition leading to and first court order pertaining to initial removal.** The order must include findings that: (1) removal was proper; and (2) that the child(ren)'s continued placement in the home would be contrary to the child(ren)'s welfare, or that remaining in the home would be contrary to the best interest, welfare or safety of the child(ren); and (3) reasonable efforts were made prior to the removal of the minor child to make it possible for the child to remain in the home and such efforts were unsuccessful, or an order within 60 days of removal with the finding that reasonable efforts have been made to remove the circumstances leading to the removal and to reunify the child with his or her family;

d. **Court order resulting from permanency review hearings.** Judicial review hearings for reviewing the case shall be held at a minimum of every 180 days. Within twelve (12) months of the child(ren) entering out of home placement a permanency review hearing shall be held. At this hearing the Court shall make findings that continued out of home placement is necessary, what the permanency goal for the child(ren) is, whether reasonable efforts are being made towards the permanency goal that was in place prior to the hearing. Every twelve (12) months thereafter a permanency review hearing shall be held, at this hearing the court shall make a finding that continued out of home placement is necessary and whether reasonable efforts have been made towards the permanency goal that was in place prior to the hearing;

e. **The most recent order of removal.** If the juvenile after being placed outside the home is returned home for longer than six (6) months and subsequently removed;

f. **Foster Care Checklist;**

g. **Legal Status and Placement completed on N-FOCUS/CWIS;**

h. **FC Pay completed on N-FOCUS/CWIS;**

i. **Copy of the home study approval and foster care license;**

j. **Any other orders necessary to establish initial or continuing eligibility for Title IV-E;**

D. GUARDIANSHIPS AND ADOPTIONS

1. UNSUBSIDIZED AND FEDERALLY SUBSIDIZED. The State acknowledges that for unsubsidized guardianships and adoptions, and for purposes of federal subsidies for guardianships and adoptions, the Tribe has the right to act within tribal and federal laws and protocol. No State approval is necessary and State laws do not apply to such proceedings.

2. STATE SUBSIDIZED. For state subsidies for guardianships and adoptions, the Tribe will make the child a ward of the State before the Tribal Court enters an order for subsidized guardianship or adoption. No prior approval is needed for the Tribal Court to make a child a ward of the State for purposes of state subsidies for guardianships and adoptions. Documentation required to apply for subsidy will be completed and approved by the State before an entry of an order of guardianship or adoption. Failure to make the child a ward of the State will result in denial of the subsidy. Failure to obtain State approval for the subsidy before

the Tribal Court enters the order for subsidized guardianship or subsidized adoption will result in denial of the subsidy. The Tribe agrees that the State is not required to pay for any services before the approval of the subsidy.

E. N-FOCUS

1. Tribal representatives' access to N-FOCUS for case management is limited to those cases in which children are tribal wards and children made wards of the state by tribal courts for purposes of guardianship or adoption subsidies or placement at the YRTCs.
2. Tribal representatives' access to N-FOCUS for viewing of Indian Child Welfare Act cases in Nebraska state courts in which the children are members or eligible for membership in the Omaha Tribe is limited to reviewing the information available on N-FOCUS. Tribal representatives are not authorized to add or change information in these cases.
3. Tribal representatives do not have the authority to create service authorizations. Any authorizations created by tribal representatives that result in payment by the State will result in a deduction of the amount paid from the next funding payment to the Tribe.
4. The Tribe may access all protection and safety management reports available on N-FOCUS that pertain to tribal children and supervision of tribal case management.
5. The Tribe agrees to document all case management functions on N-FOCUS that are required by federal regulations, including:

   a. Permanency goals information,

b. Monthly face-to-face contact information,

c. Placement information, and

d. Any occurrence of maltreatment while in foster care.

F. FOSTER CARE LICENSING AND RECOGNITION

1. The parties shall agree to cooperate in locating and licensing suitable homes for foster, adoptive and other placements of Native American children, both on and off the Omaha Reservation.
2. The Tribe has exclusive jurisdiction to license/approve foster care facilities and to license group care facilities for tribal children within the boundaries of the Omaha Tribal Reservation.
3. The State acknowledges the Tribe's sovereignty in licensing homes that outside the boundaries of the reservation. The tribe agrees not to place children in tribally licensed homes that are located off the reservation but within Nebraska that would result in a violation of State law.
4. The State authorizes the Tribe, at its sole discretion, to complete the work necessary for the State to issue a Native American Foster Home License or approval, using the State standards developed for Native American families.
5. Foster and group homes within the exterior boundaries of the Omaha Tribal Reservation approved or licensed by the Tribe are recognized by the State as meeting the licensing requirements under State law. Homes outside the Omaha Reservation approved or licensed by the State are recognized by the Tribe as meeting the licensing or approval requirements of the Tribe. Both parties agree to provide the other with a copy of their current licensing standards and to provide

the other party a copy of any changes in these standards within thirty (30) days of the effective date of such changes.

6. The State may place children in foster/group homes licensed/approved by the Tribe, and the Tribe may place children in foster/group homes licensed/approved by the State. The tribe agrees to notify the appropriate service area of any placement in a state licensed home or group home.

G. UTILIZATION OF YRTCs

1. GENERAL INFORMATION. The Tribal Court may commit Tribal Wards to the Department of Health and Human Services (DHHS) - Office of Juvenile Services (OJS) Youth Rehabilitation and Treatment Centers (YRTCs). The YRTCs are located at Geneva, Nebraska, for female juvenile offenders and Kearney, Nebraska, for male juvenile offenders. Per this agreement, DHHS-OJS will provide two (2) beds at YRTC-Geneva and two (2) beds at YRTC-Kearney for use by each tribe which has entered into an Agreement with DHHS-OJS. For a Tribal Ward to be committed to a YRTC pursuant to this Agreement, a Tribe must comply with the following:

a. Adjudication:

1.) The Tribal Ward must be a juvenile less than eighteen (18) years of age at the time of the law violation, he or she must have been adjudicated as a law violator by the Tribal Court before he or she may be legally committed to the care and custody of DHHS-OJS and placed at a YRTC, and he or she must be less than nineteen (19) years of age when so placed at a YRTC. Discharge is mandatory when the juvenile reaches nineteen (19) years of age.

2.) The Tribal Ward is adjudicated in the tribe's Tribal Court pursuant to the tribe's Tribal Code as follows:

a.) The Tribal Ward is adjudicated to be a juvenile who committed an act other than a traffic offense which would constitute a misdemeanor or an infraction under the tribe's tribal code and said misdemeanor or infraction has essentially the same elements for such an offense as exists under the laws of the State of Nebraska.

b.) The Tribal Ward is adjudicated to be a juvenile who committed an act which would constitute a felony under the tribe's tribal code and said felony has essentially the same elements for such an offense as exists under the laws of the State of Nebraska.

c.) The Tribal Ward is adjudicated to be a juvenile who committed an act which would constitute a traffic offense as defined by the tribe's tribal code and said traffic offense has essentially the same elements for such an offense as exists under the laws of the State of Nebraska.

3.) A Tribal Ward under twelve (12) years of age will not be placed at a YRTC unless he or she has violated the terms of probation or has committed an additional offense and the Tribal Court finds that the interests of the Tribal Ward and the welfare of the tribe demand his or her commitment. This minimum age provision will not apply if the act in question is murder or manslaughter.

b. Pre-Dispositional Evaluation:

1.) A Pre-Dispositional Evaluation is required before a Tribal Ward can be committed to DHHS-OJS and placed at a YRTC.

2.) The evaluation will include a clinical assessment of the Tribal Ward's social, physical, psychological, educational development and needs, including recommendations for an appropriate treatment plan and level of care.

3.) Following adjudication and prior to disposition, the Tribal Court can place a Tribal Ward with DHHS-OJS for the completion of the Pre-Dispositional Evaluation. The Department will be responsible in making arrangements for the evaluation and submitting the completed evaluation and treatment level recommendations to the Tribal Court.

c. Placement at the YRTCs

1.) The Tribal Ward must be committed by the Tribal Court to the care and custody of DHHS-OJS for placement at the YRTCs. The order from the Tribal Court must contain the language that the conduct that was adjudicated under the Tribal Code has the same elements for such an offense as exists under the laws of the State of Nebraska.

2.) The Tribal Court must contact the YRTC Administrator prior to the placement of the Tribal Ward and provide documentation on the Pre-Dispositional Evaluation and other additional information as it relates to programming and services.

3.) The Tribal Court will be responsible for the transporting of the Tribal Ward for placement at the YRTCs.

d. Programming

1.) Upon placement, YRTC personnel will classify the Tribal Ward to the most appropriate level of support, programming, treatment, and custody.

2.) The length of placement is for an indeterminate period and is based, in part, on the Tribal Ward's progress in the YRTC program.

3.) The Tribal Court will assign a Tribal Worker who will serve as the primary contact for the Tribal Court.

4.) The Tribal Worker will participate with YRTC personnel in the development of the Tribal Ward's individual treatment plan, review of his or her progress with the plan, and program release recommendations.

5.) The Tribal Worker will assist the YRTC, as necessary, to provide for a Tribal Ward who requests to be active in a religion, a religious practice, spirituality, or tribal custom and tradition. Participation will be limited only by documentation showing it is a threat to the safety of the Tribal Ward involved or that participation itself disrupts or threatens the safety, security, and good order of the YRTC. Services and supports will be coordinated with the YRTC Administrator and will conform to YRTC policies and procedures related to the Tribal Ward's security and control.

e. Release

1.) The Tribal Ward will receive an institutional discharge upon completion of the program and will be released back to the Tribal Court.

2.) The YRTC will release the Tribal Ward prior to program completion if the Tribal Court should make a determination to terminate custody with OJS.

H. ADULT PROTECTIVE SERVICES (APS). Services are delivered to adults and their families/caregivers. These services are provided directly by APS staff, through

purchase of services, and/or through community provided services. In addition, APS staff perform investigative functions, which include:

1. Receiving all reports alleging abuse/neglect of vulnerable adults with referral of non-appropriate reports to other resources, where possible;

2. Determine risk and priority of reported cases;

3. Investigate reports of alleged abuse/neglect of vulnerable adults as defined by the Omaha Tribal Code;

4. Conduct needs assessment, make collateral contacts as necessary and provide necessary information for referral services;

5. Work in conjunction with law enforcement and Prosecutors office to initiate court proceedings, including emergency intervention, as necessary;

6. Maintain record keeping and keep all necessary documentation.

TITLE FIVE -GENERAL PROVISIONS

A. ACCESS TO RECORDS AND AUDIT RESPONSIBILITIES.

1. All Tribal books, records, and documents regardless of physical form, and including data maintained in computer files or on magnetic, optical or other media, relating to work performed or monies received under this Agreement shall be subject to audit at any reasonable time upon the provision of reasonable notice by the Department. These records shall be maintained as follows: all records shall be maintained for five (5) years from the date of final payment and records that full under the provisions of HIPAA shall be maintained for six (6) full years from the date of final payment. In addition to the foregoing retention periods, all records shall be maintained until all issues related to an audit, litigation or other

action are resolved to the satisfaction of the Department. All records shall be maintained in accordance with generally accepted accounting principles.

2. The Tribe agrees to provide the Department any and all written communications received by the Tribe from an auditor related to Tribe's internal control over financial reporting requirements and communication with those charged with governance including those in compliance with or related to Statement of Auditing Standards (SAS) 112 *Communicating Internal Control related Matters Identified in an Audit* and SAS 114 *The Auditor's Communication with Those Charged with Governance*. The Tribe agrees to provide the Department with a copy of all such written communications immediately upon receipt or instruct any auditor it employs to deliver copies of such written communication to the Department at the same time copies are delivered to the Tribe, in which case the Tribe agrees to verify that the Department has received a copy.
3. The Tribe agrees to immediately correct any material weakness or condition reported to the Department in the course of an audit and notify the Department that the corrections have been made.
4. In addition to, and in no way in limitation of any obligation in this Agreement, the Tribe agrees that it will be liable for audit exceptions, and shall return to the Department all payments made under this contract for which an exception, upon demand from the Department.

B. AMENDMENT. This Agreement may be modified only by written amendment, duly executed by both parties. No alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties

hereto. Every amendment shall specify the date on which its provisions shall be effective.

C. ASSIGNMENT.

The Tribe agrees not to assign or transfer any interest, rights, or duties under this Agreement to any person, firm or corporation without prior written consent of the Department except as permitted within this Agreement. In the absence of such written consent, any assignment or attempt to assign shall constitute a breach of this Agreement.

D. AVAILABILITY OF FUNDING. Due to possible future reductions in State and/or Federal appropriations, the Department cannot guarantee the continued availability of funding for this contract notwithstanding the consideration stated above. In the event funds to finance this contract become unavailable either in full or in part due to such reductions in appropriations, the Department may terminate the contract or reduce the consideration upon notice in writing to the Tribe. The Department shall be the final authority as to the availability of funds. The effective date of such contract termination or reduction in consideration shall be specified in the notice as the date of service of said notice or the actual effective date of the funding reduction, whichever is later. Provided, that reductions shall not apply to payments made for services satisfactorily completed prior to said effective date. In the event of a reduction in consideration, the Tribe may terminate this contract as of the effective date of the reduction upon the provision of advance written notice to the Department.

E. BACKGROUND CHECKS. The Tribe agrees to perform background checks on any person who is utilized as an independent contractor to provide services under this

agreement and any person who applies for employee, intern or volunteer status in relation to the provision of services outlined herein. Background checks shall include abuse/neglect checks through Child Protective Services, Adult Protective Services and the Sexual Offenders Registry. For those independent contractors, employees, interns and volunteers who have resided in Nebraska for less than two (2) years, the Tribe agrees to check with the State of previous residence regarding any history of abuse or neglect through the Department's Central Registry. The Tribe agrees to complete these background checks prior to utilization, employment, intern or volunteer work begins, and every two (2) years thereafter. The Tribe agrees to maintain this information.

F. BREACH OF CONTRACT.

1. Should the Tribe breach this contract, the Department may, at its discretion, terminate this contract immediately upon written notice to the Tribe. The Department shall pay the Tribe only for such performance as has been properly completed and is of use to the Department. The Department may, at its discretion, contract for the provision of the services required to complete this contract and hold the Tribe liable for all expenses incurred in such additional contract over and above the total cost of performance set forth herein. This provision shall not preclude the pursuit of other remedies for breach of contract as allowed by law.
2. The waiver by the Department of a breach of any provision of this contract by the Tribe shall not operate or be construed as a waiver of any subsequent breach by the Tribe. No waiver shall be valid unless in writing and signed by the party.

G. **CONFIDENTIALITY**. The Tribe agrees that any and all information gathered in the performance of this Agreement, either independently or through the Department, shall be held in the strictest of confidence and shall be released to no one other than the Department without the prior written authorization of the Department, provided, that contract sections set forth herein shall be deemed to be authorized exceptions to this general confidentiality provision. This provision shall survive termination of this Agreement.

H. **CONFLICTS OF INTEREST**. In the performance of this Agreement, the Tribe agrees to avoid all conflicts of interest and all appearances of conflicts of interests; the Tribe will notify the Department of any such instances encountered in the courts of the work so that other arrangements can be made to complete the work.

I. **DATA OWNERSHIP AND COPYRIGHT**. All data collected as a result of this project shall be the property of the Department. The Tribe may copyright any of the copyrightable material produced in conjunction with the performance required under Title Four of this Agreement. The State and the appropriate federal funding agency hereby reserve a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the copyrightable material for State or Federal Government purposes. This provision shall survive termination of this Agreement.

J. **DEBARMENT, SUSPENSION OR DECLARED INELIGIBLE**. The Tribe certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

K. DOCUMENTS INCORPORATED BY REFERENCE. All references in this Agreement to laws, rules, regulations, guidelines, directives, and attachments which set forth standards and procedures shall be followed by the Tribe in discharging its obligations under this Agreement shall be deemed incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text, herein.

L. DRUG-FREE WORKPLACE. The Tribe hereby assures the State that it will operate a drug-free workplace in accordance with Federal and State guidelines and has implemented a drug-free workplace policy, which is available to the Department on request.

M. FEDERAL FINANCIAL ASSISTANCE. The Tribe agrees that its performance under this Agreement will comply with all applicable provisions of 45 C.F.R. §§87.1-87.2. The Tribe further agrees that it shall not use direct federal financial assistance to engage in inherently religious activities, such as worship, religious instruction, and/or proselytization.

N. FORCE MAJEURE. Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under this Agreement due to a natural disaster, or other similar event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of this Agreement. The party so affected shall immediately give notice to the other party of the Force Majeure Event. Upon such notice, all obligations of the affected party under this Agreement which are reasonably related to the Force Majeure Event shall be suspended, and the affected party shall do everything

reasonably necessary to resume performance as soon as possible. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under this Agreement.

O. GOVERNING LAW

The Tribal Court and the Omaha Tribal Child Protective Services shall be governed by Tribal law and applicable Federal law, and shall cooperate with the State in following the policies of the Department where such policies coincide with Tribal or Federal law, but shall not be governed by State law, or regulations or policies of the Department that do not coincide with Tribal or Federal law. Tribal Court findings, including a finding that removal was accomplished properly under Tribal Law, shall not be subject to review by any agency of the State or Department.

P. HOLD HARMLESS.

1. The Tribe agrees to assume all risk of loss and hold the Department, its employees, agents, assignees, and legal representatives harmless from all liabilities, demands, claims, suits, losses, damages, causes of action, fines, or judgments and expenses incident thereto, for injuries to persons and for loss of, damages to, or destruction of property arising out of or in connection with either party's performance under this contract and proximately caused by the negligent or intentional acts or omission of the Tribe, its officers, employees, assignees, or agents.
2. The Department's liability is limited to the extent provided by the Nebraska Tort Claims Act, the Nebraska Contract Claims Act, and the Nebraska Miscellaneous

Claims Act; and any other applicable provisions of law. The Department does not assume liability for the action of the Tribe.

Q. INTEGRATION. This written Agreement represents the entire agreement between the parties, and any prior or contemporaneous representations, promises, or statements by the parties, that are not incorporated herein, shall not serve to vary or contradict the terms set forth in this Agreement.

R. LOBBYING.

1. If the Tribe receives federal funds through the State, under this Agreement, for full or partial payment under this Agreement, then no Federal appropriated funds will be paid, by or on behalf of the Tribe, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement or (a) the awarding of any Federal agreement; (b) the making of any federal grant; (c) the entering into of any cooperative agreement; and (d) the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, the Tribe shall complete and submit Federal Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

S. **NEBRASKA TECHNOLOGY ACCESS STANDARDS**. The Tribe shall review the Nebraska Access Technology Standards, found at: http://www.nitc.state.ne.us/standards/accessibility and ensure that products and/or services provided under the Agreement comply with the applicable standards. In the event such standards change during the Tribe's performance, the State may create an amendment to the Agreement to request that the Agreement comply with the changed standard at a cost mutually acceptable to the parties.

T. **NON-DISCRIMINATION**. To the extent that Federal law requires, the Tribe agrees to comply fully with Title VI of the Civil Rights Act of 1964, as amended; the Rehabilitation Act of 1973, Public Law 93-112, as amended; the Indian self-determination Act of 1975, Public Law 93-638, as amended; and the Americans with Disabilities Act of 1990, Public Law 101-336, in that there shall be no discrimination against any employee who is employed in the performance of Title Four of the Agreement, or against any applicant for such employment because of age, color, national origin, ancestry, race, religion, creed, disability, sex or marital status, except that any Indian preference as lawfully authorized is preserved. This provision shall include, but not be limited to the following: Employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and, selection for training including apprenticeship. The Tribe agrees that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the Tribe. The Tribe further agrees

to insert similar provisions in all sub-contracts for services allowed under this Agreement under any program or activity.

U. **PROMPT PAYMENT**. Payment will be made in conjunction with the State of Nebraska Prompt Payment Act. The Department may request that payment be made electronically instead of by warrant.

V. **RESEARCH**. The Tribe will not engage in research utilizing the information obtained through the performance of Title Four of this Agreement without the express written consent of the State. The term "research" shall mean the investigation, analysis, or review of information, other than aggregate statistical information, which is used for purposes unconnected with this Agreement.

W. **SEVERABILITY**. If any term or condition of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights an obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular provision held to be invalid.

X. **SOVEREIGN**. The Tribe is a sovereign nation and neither it nor any of its employees shall for any purpose be deemed employees of the Department. It is also agreed that nothing contained herein is intended to be construed in any manner as creating or establishing an agency or partnership between the State and the Tribe. The Tribe shall employ and direct such personnel as it requires to perform its obligations under this Agreement, exercise full authority over its personnel, and comply with all workers' compensation, employer's liability and other federal and

tribal laws, ordinances, rules and regulations required of an employer providing services as contemplated by this Agreement.

Y. SUBCONTRACTORS. The Tribe agrees that before subcontractors may be utilized in the performance of this Agreement, the Department must give prior written approval. If the Tribe subcontracts a portion of the work involved in this Agreement, it shall ensure that the subcontractor complies with all workers' compensation, employer's liability and other federal and tribal laws, rules and regulations required of an employer providing services as contemplated by this Agreement.

NOTICES. Notices shall be in writing and shall be effective upon receipt. Written notices, including all reports and other written communications required by this Agreement shall be sent to the following addresses:

FOR THE DEPARTMENT:

Sherri Eveleth
Indian Child Welfare Program Specialist
Nebraska Dept of Health and Human Services
209 N 5th Street
Norfolk, NE 68701

FOR THE TRIBE:

Omaha Tribal Council
P.O. Box 368
Macy, NE 68039

IN WITNESS THEREOF, the parties have duly executed this Agreement hereto, and each party acknowledges the receipt of a duly executed copy of this Agreement with original signatures.

FOR THE DEPARTMENT:

By: Todd A. Landry
Todd A. Landry, Director
Division of Children & Family Services
Department of Health and Human Services

Dated the 3 day of Nov., 2008

FOR THE TRIBE:

By: _____
Amen Sheridan, Sr.
Tribal Chair

Dated the ____ day of _____, 2008