

**PUEBLO OF LAGUNA
AND
STATE OF NEW MEXICO
CHILDREN, YOUTH AND FAMILIES DEPARTMENT**

**JOINT POWERS AGREEMENT
FOR PASS THROUGH OF TITLE IV-E FOSTER CARE
MAINTENANCE, ADOPTION ASSISTANCE, AND GUARDIANSHIP
ASSISTANCE PAYMENTS**

May 12, 2022

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AND
STATE OF NEW MEXICO CHILDREN YOUTH AND FAMILIES DEPARTMENT**

**JOINT POWERS AGREEMENT (JPA)
FOR PASS THROUGH TITLE IV-E FOSTER CARE MAINTENANCE, ADOPTION ASSISTANCE,
AND GUARDIANSHIP ASSISTANCE PAYMENTS**

THIS AGREEMENT is between the State of New Mexico, Children, Youth and Families Department, Protective Services Division (hereinafter "the AGENCY") and the Pueblo of Laguna (hereinafter the "PUEBLO"), a federally recognized Indian Tribe.

WHEREAS, the AGENCY receives federal funds through Title IV-E of the Social Security Act, 42 U.S.C. §§ 670-679 (hereinafter "Title IV-E") to make foster care maintenance, adoption assistance, or guardianship assistance payments on behalf of eligible children within the State; and

WHEREAS, the AGENCY is the State's designated Title IV-E agency that administers federal Title IV-E funds, and may enter into an Agreement with the PUEBLO to administer Title IV-E funds on behalf of eligible children; and

WHEREAS, the PUEBLO is a sovereign Indian Pueblo government and has the inherent authority to enter into this Agreement with the AGENCY; and

WHEREAS, the PUEBLO maintains jurisdiction, custody, and supervision over eligible children who are members of the Pueblo of Laguna; and

WHEREAS, the PUEBLO may request assistance from the AGENCY in placing Pueblo children in foster homes licensed by the AGENCY; and

WHEREAS, the AGENCY and the PUEBLO recognize that Indian children are citizens of the State of New Mexico and further recognize the need to coordinate efforts to ensure that the Title IV-E payments and case planning services these children receive is in accordance with the federal standards set forth in Title IV-E; and to provide for the care, protection and wholesome mental and physical development of children in accordance with applicable laws; and

WHEREAS, it is the policy of the Agency that the interests of children are best served when they are raised by their parents. When neither parent is able or willing to provide appropriate care, guidance, and supervision to a child[ren], it is the policy of the state that, whenever possible, a child[ren] should be raised by family members or kinship caregivers; and

WHEREAS, the AGENCY and the PUEBLO recognize that the cost of the services provided to an Indian child[ren] residing, on or off the reservation, as a citizen of this state, shall have the same right to services that are available to other children of the state, pursuant to Intergovernmental Agreements; and

WHEREAS, the AGENCY is empowered to enter into cooperative agreements with Indian CONTRACTORS, Tribes and Nations pursuant to the Joint Powers Agreement Act, NMSA 1978, 11-1-1 to 11-1-7 and the New Mexico Children’s Code, NMSA 1978, 32A-1-8(E); and

WHEREAS, the 2009 New Mexico State Legislature passed the State and Tribal Collaboration Act (NMSA 1978, 11-18-1 to 11-18-5), which enhances government-to-government communication and collaboration between the state and tribal governments and requires cabinet-level agencies to develop policies that promote communication and cooperation between the state and tribal governments.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

I. PURPOSE

The purpose of this Agreement between the PUEBLO and the AGENCY is to administer Federal Title IV-E pass through funding to the PUEBLO, on behalf of Title IV-E eligible children, for the purpose of foster care maintenance payments, adoption assistance payments, or guardianship assistance payments.

II. TITLE IV-E ELIGIBILITY DETERMINATION

A. The AGENCY will conduct a Title IV-E eligibility determination for all children referred by the PUEBLO in accordance with federal requirements. Initial eligibility requirements are summarized in Attachment 1, Summary of Title IV-E Requirements for Foster Care Maintenance, attached hereto and incorporated herein by reference.

B. The AGENCY Title IV-E Specialist will request the PUEBLO to provide documentation to support the Title IV-E eligibility determination. The IV-E Specialist will need, but not limited to, the following:

1. the first removal Order issued by the contemporary or traditional court process removing the child[ren] from the home with a determination that:
 - a. it is “contrary to welfare of the child[ren] to remain in the home” with specific findings as to why the removal is necessary; and
 - b. “reasonable efforts to prevent removal of the child[ren]” has been made with specific findings as to what efforts have been made to prevent the removal of the child[ren] from the home; and
2. any and all subsequent court Orders pertaining to the child[ren]’s removal from the home; and

3. all information regarding the decision for removal to include: why the child[ren] was removed; from whom, by name and relationship to the child[ren], the child[ren] was removed; investigation studies, case notes, meeting notes, or affidavits pertaining to the removal from the home; and

4 the child[ren]'s social security number and a copy of their birth certificate; and

5. information on the removal home, such as number of household members, employment or unemployment information, and any monetary benefits received such as Social Security, TANF, or SNAP benefits; and

6. a copy of the Pueblo's foster family home license or license for a child care institution, if the child[ren] is placed in a child care institution; and

7. documentation of completed criminal records checks and abuse and neglect checks to include:

a. federal fingerprint based criminal records checks (the PUEBLO may request assistance from the AGENCY if needed); and

b. state criminal records checks (nmcourts.gov or applicable site);

c. the PUEBLO may include a PUEBLO law enforcement database check, if available; and

d. the AGENCY's abuse and neglect database check, completed by the AGENCY;

e. Adam Walsh checks, if applicable, on foster parents and all adults living in the home.

i. The PUEBLO may request assistance from the AGENCY in completing Adam Walsh checks.

ii. If a family has lived outside the state of New Mexico within 5 years, prior to the licensing of the home, the PUEBLO must ensure an Adam Walsh check is conducted on the family. The Adam Walsh check is a check of all other relevant state's Abuse and Neglect Registry in which the family previously resided.

C. On-going Title IV-E eligibility and reimbursement must be met to continue the pass through of Title IV-E funds:

1. the foster home must be continually licensed or certified (with no breaks in licensure or certification) by the PUEBLO, and must have met criminal records check requirements as outlined in paragraph II. B.7 above; and

2. a permanency hearing must be held every twelve (12) months from the date the child[ren] or youth entered foster care and a judicial determination must be made that "reasonable efforts have been made to finalize the permanency plan" at the first permanency hearing and each permanency hearing thereafter, as long as the child[ren] remains in the PUEBLO's custody. (See Attachment 1, Summary of Title IV-E Requirements for Foster Car Maintenance, attached hereto and incorporated herein by reference)

D. The AGENCY will review on-going eligibility at six (6) and twelve (12) months, then every twelve (12) months after the first year the child[ren] is in custody, according to federal requirements to ensure requirements outlined in C.1 and C.2, above, are met.

E. Prior to the redetermination date, the AGENCY will notify the PUEBLO if any documentation is needed. Such documentation may include, but not limited to: new Tribal Court Orders; documentation of license renewals; licenses for any new foster parents; updated criminal records and abuse and neglect checks; and other documentation affecting on-going eligibility.

III. REFERRAL PROCESS

A. When a Tribal Court awards custody of a child[ren] to the PUEBLO due to abuse or neglect, and foster care placement is made in a PUEBLO licensed or approved foster home (or, if no PUEBLO foster home is available, an AGENCY-approved foster home), then the PUEBLO shall make a referral to the AGENCY for Title IV-E eligibility determination, as soon as possible.

B. The PUEBLO will provide the AGENCY the completed Title IV-E Eligibility Determination Cover Sheet (Attachment 3) and Information Sheet (Attachments 4), attached hereto and incorporated herein by reference, as well as the documentation outlined in paragraph II, subparagraph B, above, within ninety (90) days.

C. If the child[ren] is placed in a licensed foster home at the time of the referral, the PUEBLO must also provide the AGENCY with the Foster Care Provider Information Sheet (Attachment 5), attached hereto and incorporated herein by reference, as well as a copy of the foster home license, documentation of completed criminal records checks and abuse and neglect checks.

D. If the child[ren] is not currently placed in a licensed home, Title IV-E eligibility can still be determined, but maintenance payments cannot be made until the required criminal records checks and abuse and neglect checks have been completed and the home is fully licensed or approved by the PUEBLO.

E. If the PUEBLO believes the child[ren] requires a higher level of need and supervision, the PUEBLO will contact the AGENCY requesting review and approval for a Level II/Specialized Care maintenance rate. For the foster care provider to receive maintenance payments at a higher rate, the PUEBLO must document the higher needs of child[ren] and provide it to the AGENCY. The AGENCY will provide direction and any forms needed to complete the request for higher levels of care. All Level III Assessments are completed and approved by the AGENCY, using supporting documentation from the PUEBLO.

F. If the child[ren] transfer(s) to the PUEBLO's custody from the AGENCY's custody, the child[ren]'s Title IV-E eligibility also transfers. The AGENCY will continue to provide Title IV-E payments once the AGENCY Title IV-E Specialist has verified that all required on-going eligibility requirements are met.

G. The AGENCY will notify the PUEBLO, in writing, within thirty (30) days of receipt of the referral or receipt of additional information, if necessary, and one of the following determinations:

1. the child[ren] met federal Title IV-E eligibility requirements and the PUEBLO can expect Medicaid eligibility and foster care payments to commence; OR

2. the child[ren] did not meet federal Title IV-E eligibility requirements, and the AGENCY will not provide Title IV-E payments. The AGENCY will provide the PUEBLO with the reason(s) why the child[ren] did not meet Title IV-E eligibility requirements, in writing.

IV. PAYMENT

A. Foster Care Maintenance Payments

The AGENCY agrees to make foster care maintenance payments on behalf of a Title IV-E eligible child[ren] residing in licensed or approved foster homes based on the current approved rates established by the AGENCY. The current rate schedule, Foster Care Reimbursement Rates, is attached hereto (Attachment 2) and incorporated herein by reference.

1. Maintenance payments are designed to reimburse the cost of food, clothing, shelter, daily supervision, school supplies, personal incidentals, and reasonable travel required to address the child[ren]'s needs. While monthly maintenance payments cover most of these expenses, the AGENCY may be able to provide additional incidental payments to reimburse one-time expenses related to the on-going needs and support of the child[ren]. Maintenance payment rates are determined by age of the child[ren], placement type, and level of care the child[ren] may need.

2. For a child[ren] who has been determined to meet Federal Title IV-E eligibility criteria by the AGENCY, foster care maintenance and some incidental payments are reimbursed at the State's Federal Medical Assistance Percentage (FMAP) through the federal government under Title IV-E of the Social Security Act. The AGENCY will pick up the remaining expenses.

3. Since foster care maintenance payments are not salaries, foster parents must often work outside the home. Childcare that provides daily supervision during a foster parent's working hours, when the child[ren] is not in school is an allowable expenditure under foster care maintenance payments. Childcare services must be procured through a licensed childcare entity by the AGENCY or PUEBLO.

B. Title IV-E Kinship Guardianship Assistance Payments

The AGENCY agrees to make Title IV-E Kinship Guardianship Assistance payments to relative and fictive kin guardians, on behalf of a child[ren] who exits foster care, due to a legal guardianship. A Kinship Guardianship Assistance Agreement must be completed prior to the finalization of guardianship. The AGENCY is responsible for providing the PUEBLO with all forms and instruction when applying for kinship guardianship assistance payments on behalf of an eligible child[ren].

1. To be eligible for Title IV-E Kinship Guardianship assistance, a child[ren]:

- a. must have been removed from their home pursuant to a voluntary placement agreement, or as a result of an ex-parte removal order with a judicial determination that continuation in the home would be contrary to the welfare of the child[ren]; and
- b. must be determined eligible for Title IV-E foster care maintenance payments while in the home of the licensed relative or fictive kin guardian; and

c. must have lived with the licensed relative or fictive kin guardian for at least six consecutive months.

2. Siblings: If a child[ren] is determined eligible for Title IV-E Kinship Guardianship assistance, the AGENCY may also make payments for any siblings of a Title IV-E eligible child[ren]. Siblings do not have to be in the custody of the PUEBLO, but siblings must be placed with the same relative or fictive kin guardian as the eligible child[ren], under the same Kinship Guardianship Assistance Agreement. Siblings are not required to meet Title IV-E criteria, because they meet criteria based on their relationship to the Title IV-E eligible child.

3. Medicaid Eligibility: A child[ren] and siblings who receive a Title IV-E Kinship Guardianship Assistance are eligible for Medicaid assistance in their state of residence.

4. Successor Guardian: The establishment of a successor guardian is required as a condition for continuation of kinship guardianship assistance. If the relative guardian dies, is incapacitated or unable to continue to care for the child[ren], a successor legal guardian must be named in the Kinship Guardianship Assistance Agreement, including any amendments to the agreement thereafter.

5. Extended Kinship Guardianship Assistance to Age twenty-one (21): Kinship guardianship assistance may continue for youth at age eighteen (18) and up to age twenty-one (21), when:

- a. the youth is enrolled in the medically fragile waiver program through the New Mexico Department of Health; or
- b. the youth was placed into the kinship guardianship at age sixteen (16) years or older; and
- c. the youth is working, attending school, or is incapable of doing either.

6. Title IV-E Kinship Guardianship Assistance payment amounts are negotiated with the relative guardian and cannot exceed the amount the child[ren] received while in foster care. Kinship guardianship assistance does not include reimbursement for incidentals or childcare expenses. Payments begin once the guardianship has finalized.

C. Title IV-E Adoption Assistance Payments

The AGENCY agrees to make Title IV-E adoption assistance payments to an adopted child[ren] who meets both special-needs criteria and Title IV-E adoption assistance criteria. An Adoption Assistance Agreement must be completed prior to the finalization of an adoption. The AGENCY is responsible for providing the PUEBLO with all forms and instruction when applying for adoption assistance payments on behalf of an eligible child[ren].

1. Special Needs Criteria:

The AGENCY will verify the child[ren] meets the following requirements for Special Needs Criteria:

- a. the child[ren] cannot be returned to the home of the parents; and
- b. there is documentation of at least one of the following factors or conditions that make it reasonable to conclude that the child[ren] cannot be placed for adoption without providing adoption assistance:
 - i. the child[ren] is age five or older; or

- ii. the child[ren] has a diagnosed physical, developmental, psychological, or emotional condition requiring medical or mental health intervention; or
 - iii. the child[ren] is a member of a minority group; or
 - iv. the child[ren] is part of a sibling group that will be placed and adopted together; and
- c. a reasonable, but unsuccessful, effort has been made to place the child[ren] without adoption assistance, unless such effort would be against the best interests of the child[ren].

2. Title IV-E Eligibility for Adoption Assistance:

The AGENCY will verify the child[ren] meets the following requirements for Title IV-E adoption assistance:

- a. the child[ren] was determined IV-E eligible while in foster care and meets special needs criteria; or
- b. the child[ren] was not IV-E eligible while in foster care, but meets all the following criteria:
 - i. the child[ren] was removed from the home of the specified relative;
 - ii. the child[ren] was placed in Tribal custody and into foster care under a Voluntary Placement Agreement or through a judicial determination that continuation in the home would be contrary to the welfare of the child[ren];
 - iii. the child[ren] is age two (2) years old or older or turning age two (2), within the current federal fiscal year; and
 - iv. the child[ren] meets special needs criteria; or
- c. the child[ren] is eligible for and receiving Supplement Security Income (SSI).

3. Siblings:

If a child[ren] is determined eligible for Title IV-E adoption assistance payments, then the AGENCY may also make payments for any siblings in the same adoptive home of an eligible child[ren] and named in the same agreement as the eligible child. Siblings are not required to meet special needs criteria or Title IV-E criteria, they meet criteria based on their relationship to the Title IV-E eligible child[ren].

4. Medicaid Eligibility:

Children and siblings who receive a Title IV-E adoption assistance are eligible for Medicaid assistance in their state of residence.

5. Extended Adoption Assistance to Age twenty-one (21):

Adoption assistance may continue for youth at age eighteen (18) and up to age twenty-one (21) when:

- a. the youth is enrolled in the medically fragile waiver program through the New Mexico Department of Health; or
- b. the youth is adopted and placed into an adoptive home at age sixteen (16) years or older; and

c. the youth is working, attending school, or is incapable of doing either.

6. Title IV-E kinship adoption assistance payment amounts are negotiated with the relative guardian and cannot exceed the amount the youth received while in foster care. Adoption assistance does not include reimbursement for incidentals or childcare expenses. Payments begin when the adoption is finalized.

7. Tribal customary adoptions meet eligibility requirements for Title IV-E adoption assistance. A Tribal Customary Adoption Order does not require the termination of parental rights language, as long as it is in accordance with tribal or state law. The Order shall also state why the child should not be returned to the parents and that tribal customary adoption is the best permanency option for the child[ren]. An Adoption Assistance Agreement which is required for Title IV-E must be completed prior to the finalization of any adoption.

V. BILLING AND MONTHLY PAYMENTS

A. By the last working day of each month, the PUEBLO shall submit a completed Title IV-E Billing Form (Attachment 6), attached hereto and incorporated herein by reference, for each Title IV-E eligible child by email or FAX to the AGENCY Title IV-E Specialist for approval. This Billing Form shall minimally include the billing month; the date of submission; the child[ren]'s name, date of birth, and social security number, and the name and address of the child[ren]'s placement.

B. If the placement is the child[ren]'s initial placement or if the child[ren] has changed placements since the last billing, the Foster Care Provider Information Sheet (Attachment 5), attached hereto and incorporated herein by reference, must be submitted, to provide additional detail regarding the foster placement. It is very important that the PUEBLO notify the AGENCY Title IV-E Specialist of any placement changes, in accordance with provision IV above to avoid overpayments.

C. The PUEBLO agrees that by signing the Title IV-E Monthly Update Billing Form, (Attachment 6), attached hereto and incorporated herein by reference, the PUEBLO is certifying the accuracy of all documentation in support of the Title IV-E eligible child[ren] in PUEBLO custody.

D. Payments shall be made to the foster parent(s) via the AGENCY database system, currently known as FACTS.

E. The PUEBLO, on behalf of the child[ren] in PUEBLO's custody, agrees to apply for any monetary benefits to which the child[ren] may be entitled to include: third party insurance payments, survivor's benefits, child support, Veterans Administration benefits, Supplemental Security Income. If the child[ren] is determined eligible for any such benefits, the PUEBLO shall notify the AGENCY, within forty-eight (48) hours of determination of such eligibility, by phone or email. The AGENCY's Title IV-E Specialist will determine whether the child[ren] is eligible for continued Title IV-E payments, according to federal requirements.

F. In the event of an underpayment by the AGENCY to the foster parent(s), the correction shall be made on the next billing.

G. In the event of an overpayment by the AGENCY to the foster parent(s), the PUEBLO agrees to reimburse the AGENCY for the overpayment and the AGENCY agrees to assign its claim for recoupment of the overpayment to the PUEBLO.

H. The PUEBLO will submit any request for payment modifications as needed, along with the written justification to support the request for level I to Level III payment adjustments.

I. The effective date of payments shall be the date of placement in foster care. Retroactive payments cannot be made for a period exceeding sixty (60) days.

VI. ON-GOING DOCUMENTATION AND NOTICES OF CHANGES

A. The PUEBLO will provide the AGENCY copies of any new court orders within five (5) working days of the issuance of the order.

B. The PUEBLO will provide the AGENCY with copies of a foster care provider license renewal within five (5) working days of the renewal. Licenses must be renewed prior to the expiration of the current license.

C. The PUEBLO will provide verbal or email notification to the AGENCY within forty-eight (48) hours and written notification to the AGENCY within five (5) working days after becoming aware of any changes in the child[ren]'s placement (including, but not limited to, placement change, trial home visit, detention, runaway, and institutionalization) which might affect continued eligibility for Title IV-E funds.

VII. EXTENDED FOSTER CARE / FOSTERING CONNECTIONS PROGRAM

A. Extended Foster Care, also known as the Fostering Connections Program, allows eligible adults, including youth in tribal care, to remain in foster care until age twenty-one (21) to support their transition to adulthood, advance outcomes in permanency, housing, education, and financial stability by providing enhanced services and supports. An eligible adult for Fostering Connections is determined by the AGENCY using established State and Federal regulations. The Fostering Connections Program is being rolled out over a three (3) year period beginning with youth who are eighteen (18) and then adding eligible nineteen (19), twenty (20), and twenty-one (21) year olds over the next three fiscal years.

B. An eligible adult for the Fostering Connections Program is a young adult who has attained at least age eighteen (18) years of age and younger than:

1. nineteen (19) years of age, as of July 1, 2020;
2. twenty (20) years of age, as of July 1, 2021;
3. twenty-one (21) years of age, after July 1, 2022;
4. who meets one of the following criteria:

- a. attained at least 18 years of age and:
 - i. was adjudicated pursuant to the Children's Code or its equivalent under tribal law;
 - ii. was subject to a court order that placement and care be the responsibility of the department or the Indian tribe that entered into an agreement with the department; and

iii. was subject to an out-of-home placement order; or
b. attained at least fourteen (14) years of age when a Guardianship Assistance Agreement or Adoption Assistance Agreement was in effect, and whose Guardianship Assistance Agreement or Adoption Assistance Agreement was terminated, or the guardian or parents are no longer willing to provide emotional or financial support after the child attained eighteen (18) years of age;

c. is:
i. completing a secondary education or an educational program leading to an equivalent credential; or
ii. enrolled in an institution that provides post-secondary or vocational education; or
iii. is employed for at least eighty (80) hours per month; or
iv. participating in a program or activity designed to promote employment or remove barriers to employment; or
v. is incapable of doing any of the activities described above (i through iv) due to a medical or behavioral condition that is supported by regularly updated information in the transition plan; and

d. enters into a Voluntary Services and Support Agreement (VSSA) with the AGENCY. The AGENCY is responsible for providing the VSSA, as necessary.

C. The AGENCY will conduct a new IV-E eligibility determination for each eligible adult participating in the Fostering Connections Program.

D. Youth who age out of foster care are eligible for Medicaid to age twenty-six (26) under the Affordable Care Act.

VIII. MEDICAID

A. A child[ren] who is Title IV-E eligible is also eligible for Medicaid. The AGENCY Title IV-E Specialist will approve/enroll the child[ren] in Medicaid via the FACTS/ASPEN interface. Any questions regarding Medicaid eligibility, on-going eligibility, or enrollment shall be sent to the AGENCY Title IV-E Specialist.

B. All Medicaid eligible clients are subject to Medicaid requirements (for example, primary care network restrictions, utilization review procedures, and EPSDT screen requirements).

IX. PROVISION OF SERVICES

A. Case Management

The PUEBLO shall be responsible for case management of foster care services for a child[ren] placed by the PUEBLO in a foster care home licensed and approved by the PUEBLO, when the PUEBLO has custody of the child[ren]. If the PUEBLO places the child[ren] in an AGENCY approved foster home and/or requests the assistance of the AGENCY in placing a child[ren], the PUEBLO shall maintain the responsibility for case management of foster care services for the child[ren] when the PUEBLO has custody of the child[ren].

B. Reasonable Efforts

The PUEBLO shall make and document reasonable efforts to:

1. prevent the removal of the child[ren] from his or her home;
2. reunify the family or when reunification is not possible, to otherwise finalize permanency for the child[ren] through: adoption, including tribal customary adoption; guardianship; placement with a fit and willing relative; or other planned permanency living arrangement; and
3. place siblings together, unless there is a therapeutic recommendation to not place siblings together in the same home or placement.

C. Permanency Hearing

1. The Pueblo shall conduct a Permanency Hearing and identify a permanency goal within twelve (12) months of the child[ren] entering care to determine which of the following options best meets the needs and interests of the child[ren]:
 - a. Reunification: The child[ren] should be returned to the parent(s);
 - b. Adoption: The child[ren] should be placed for adoption, including tribal customary adoption. The child[ren] may be eligible for adoption assistance;
 - c. Guardianship: The child[ren] should be placed with a permanent, legal guardian; if the child[ren] is placed with a relative guardian then the child[ren] may be eligible for kinship guardianship assistance;
 - d. Fit and Willing Relative: The child[ren] should be placed in the home of a fit and willing relative while remaining in the legal custody of the PUEBLO. The relative must be fully licensed by the PUEBLO or AGENCY for Title IV-E reimbursement; or
 - e. Planned Permanent Living Arrangement (PPLA): A child[ren] over the age of sixteen (16) should continue in foster care and age out of foster care, if none of the above goals is appropriate for the child[ren]. The PUEBLO may contact the AGENCY to inquire about these services to youth who age out of foster care, including the Extended Foster Care/Fostering Connection Program (See Provision VII above).
2. The permanency plan shall be reviewed by the Tribal Court and the Tribal Court shall make a determination that reasonable efforts have been made by the PUEBLO to finalize the permanency plan. If the Tribal Court does not make such findings, the AGENCY will stop Title IV-E payments. Title IV-E payments may resume once the Tribal Court makes this determination, as of the date of the determination.

X. RECORDS

A. Case Records

The PUEBLO agrees to develop client case records, including service plans and placement agreements, and maintain such records for a period of five (5) years following case closure. The PUEBLO agrees to develop and maintain foster parent records, including background checks and foster home licenses, for a period of five (5) years following the expiration of the latest license.

B. Availability for Inspection

The PUEBLO agrees to make all records pertaining to Title IV-E payments (including the eligible child[ren]'s foster care/adoption case record, placement and foster home records, including home studies and licensure information) available for onsite and offsite inspection by the AGENCY, given reasonable notice.

C. **Audits**

1. The PUEBLO agrees to provide to the AGENCY any records or documentation required for the Federal Title IV-E Audit conducted every three years. Any Title IV-E payments made on behalf of a child[ren] in foster are subject to the US Department of Health and Human Services Administration for Children and Families Title IV-E Foster Care Eligibility Review.

2. The AGENCY may request the PUEBLO to participate in any audit preparation or internal reviews prior to the Federal Title IV-E Audit.

XI. ACCOUNTABILITY OF FUNDS

The PUEBLO shall provide for strict accountability of all money paid to the PUEBLO, subject to this Agreement, and shall follow generally accepted accounting principles and account for all receipts and disbursements of funds made to the PUEBLO pursuant to this Agreement.

XII. CONTINGENCY; AVAILABILITY OF FUNDS

Payments pursuant to this Agreement, whether in whole or in part, are subject to and contingent upon the continuing availability of funds. In the event said funds become unavailable, the AGENCY may terminate this Agreement according to Paragraph XXIII below or amend it according to Paragraph XXIV of this Agreement.

XIII. CONFLICT RESOLUTION

A. **Disallowance and Reimbursement of Funds**

1. The PUEBLO will make repayment of any Title IV-E funds expended by the AGENCY on behalf of any child[ren], subject to the jurisdiction and authority of the PUEBLO, to which the federal agency (U.S. Department of Health and Human Services) takes exception and requests reimbursement through a disallowance, due to noncompliance with federal law, regulations or policy, provided that and only to the extent that, such disallowance is based upon the acts or omissions of the PUEBLO which violate applicable federal statutes and/or regulations.

2. If the AGENCY becomes aware of circumstances that might jeopardize continued federal funding, the situation shall be reviewed and reconciled by the PUEBLO and the AGENCY, on a case-by-case basis. If the matter cannot be reconciled, it shall be presented to a mutually agreed upon panel of PUEBLO and AGENCY officials, on a case-by-case basis. If reconciliation is not possible, both parties shall present their views in writing to: Administration for Children & Families, U.S. Department of Health and Human Services, 1301 Young Street, Dallas, TX 75202, who shall determine whether continued payment shall be made on behalf of the case(s) affected.

B. Dispute Resolution

1. Any disputed issues that remain unresolved at the end of the process described in Paragraph A. 2 above shall be submitted to arbitration as outlined in Section XV below.

2. Arbitration shall not be invoked until the administrative procedures described in Paragraph A. 2 above have been exhausted.

3. Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the State of New Mexico, subject to the limitations and immunities of the New Mexico Tort Claims Act.

XIV. ASSURANCES

A. The PUEBLO and the AGENCY, through their joint efforts as specified herein, agree to meet the provisions of Title IV-B and Title IV-E of the federal Social Security Act, including all federal requirements for a child[ren] receiving Title IV-E payments.

B. The PUEBLO shall provide the AGENCY with sufficient information, including case records regarding a child[ren] in PUEBLO custody for the AGENCY to assess compliance with federal requirements necessary for federal financial participation and to determine the child[ren]'s eligibility for other benefit programs (*e.g.*, Social Security, Medicaid).

C. The AGENCY retains the right to conduct program audits of the services provided pursuant to this Agreement and the administration thereof. If the AGENCY becomes aware of circumstances that might jeopardize continued federal funding, the situation shall be handled as provided in Section XVI below.

XV. ARBITRATION

A. Matters to be Submitted to Arbitration

All disputes and controversies of every kind and nature between the PUEBLO and AGENCY (hereinafter party[ies]) to this Agreement as to the existence, construction, validity, interpretation or meaning, performance, non-performance, enforcement, operation, breach, continuance, or termination of this Agreement shall be submitted to arbitration pursuant to the procedure set forth herein.

B. Procedure

1. Either party may demand such arbitration in writing, which demand shall include the name of the arbitrator appointed by the party demanding arbitration, together with a statement of the matter of controversy.

2. Within twenty (20) days after such demand, the other party shall name its arbitrator, or in default of such naming, such arbitrator shall be named by the American Arbitration Association. The two arbitrators so selected shall name a third arbitrator within twenty (20) days or, in lieu of such agreement on a third arbitrator by the two arbitrators so appointed, a third arbitrator shall be appointed by the Federal District Court for the District of New Mexico. In the event said Court fails to appoint a third arbitrator within thirty (30) days of the request therefore, the appointment shall be made by the American Arbitration Association.

3. The arbitration costs and expenses of each party shall be borne by that

party and all arbitrators' fees and other expenses shall be borne equally by both parties.

4. The arbitration hearing shall be held at such time and place as designated by the arbitrators on at least twenty (20) days written notice to the parties.

5. An award rendered by a majority of the arbitrators appointed, pursuant to this Agreement, shall be final and binding on all parties to the proceeding, and the parties hereto agree to be bound by such award.

6. As to any procedures regarding the conduct of the arbitration that are not specified either in this Agreement, or in another written agreement signed in advance of the hearing, the parties shall follow the Commercial Arbitration Rules of the American Arbitration Association.

C. **Arbitration as Bar to Suit**

1. The parties stipulate that the arbitration provisions of this Agreement shall be a complete defense to any suit, action, or proceeding instituted in any federal, state, or tribal court or before an administrative tribunal with respect to any controversy or dispute arising during the period of this Agreement and which is arbitral as set forth in this Agreement.

2. The arbitration provisions of this Agreement shall, with respect to such controversy or dispute, survive the termination or expiration of this Agreement.

D. **Lack of Arbitrators' Authority to Modify Agreement**

Nothing contained in this Agreement shall be deemed to give the arbitrators any authority, power, or right to alter, change, amend, modify, add to, or subtract from any of the provisions of this Agreement.

E. **Enforcement**

Failure by either party to arbitrate any dispute pursuant to the procedure set forth herein when a demand to do so has been made by the other party or failure by either party to comply with the arbitration award shall amount to a material breach of this Agreement and shall entitle the party who demanded arbitration to cease performance of any obligation set forth in this Agreement at the sole discretion of that party.

F. **Non-Applicability of Uniform Arbitration Act**

This Agreement is not subject to enforcement under the Uniform Arbitration Act (sections 44-7-1 through 44-7-22, NMSA 1978).

XVI. LIABILITY

Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation of requirements applicable to the performance of this Agreement. Each party shall be liable for its actions in accordance with this Agreement.

XVII. ACQUISITION OF PROPERTY

No property will be purchased under the terms of this Agreement by the PUEBLO.

XVIII. ASSIGNMENT

The parties shall not assign any interest in this Agreement or assign any claims for money due or to become due under this Agreement, unless otherwise noted in this Agreement.

XIX. LOBBYING

A. To the extent required by 31 U.S.C. § 1352 or other applicable federal law, the PUEBLO agrees that if the PUEBLO receives any federal funds through the AGENCY, for full or partial payment under this Agreement, then no federally appropriated funds will be paid, by or on behalf of the PUEBLO 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 the PUEBLO or (a) the awarding of any federal contract; (b) the making of any federal grant; (c) entering into any cooperative agreement; and (d) the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement. The parties hereby acknowledge the exemption for Indian tribes, tribal organizations and other Indian organizations provided in 31 U.S.C. § 1352.

B. To the extent required by 31 U.S.C. § 1352 or other applicable federal law, if any funds other than federally 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 or Legislature, the PUEBLO shall complete and submit Federal Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with the form's instructions. The parties hereby acknowledge the exemption for Indian tribes, tribal organizations and other Indian organizations provided in 31 U.S.C. § 1352.

XX. EQUAL OPPORTUNITY COMPLIANCE

A. The PUEBLO will comply fully with applicable law prohibiting discrimination in 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.

B. To the extent required by applicable law, no qualified handicapped person shall, on the basis of handicap, be excluded from participation or be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the PUEBLO that is conducted pursuant to this Agreement.

C. The PUEBLO agrees to insert similar Equal Opportunity compliance provisions in all subcontracts for services allowed under this Agreement.

D. Notwithstanding the above provisions, nothing in this Agreement shall prohibit the PUEBLO from adhering to a policy of Indian preference in employment to the fullest extent permitted by law.

E. The Equal Opportunity Clause of this Agreement applies except in so far as it conflicts with Sections 701 (b) (1) and 703 of Title IV of the Civil Rights Act of 1964, 78 Stat. 253, 257, 42 U.S.C. 2000 (e) which pertains to Indian Tribes as employers and to preferential treatment in employment given to Indians residing on or near an Indian Reservation.

XXI. DRUG-FREE WORKPLACE

The PUEBLO hereby assures the AGENCY that it has implemented and will operate a drug-free workplace as required by and in accordance with applicable law.

XXII. PERIOD OF AGREEMENT

This Agreement shall become effective upon final signature by the AGENCY and PUEBLO and shall be reviewed and re-approved by the parties every four years thereafter.

XXIII. TERMINATION OF AGREEMENT

This Agreement may be terminated by either of the parties for good cause by giving sixty (60) days prior written notice to the other which includes an explanation of the reason for termination.

XXIV. AMENDMENTS

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the parties hereto. The Pueblo Governor or designee shall be the contact person for the PUEBLO when negotiating any amendment to this Agreement. The Director of the Office of Tribal Affairs or his/her designee shall be the contact person for the AGENCY when negotiating any amendment to this Agreement.

XXV. EXECUTION OF DOCUMENTS

The Parties agree to execute any documents necessary to implement the terms of this Agreement.

XXVI. ENTIRE DOCUMENT

This Agreement incorporates all the agreements and understandings between the parties hereto for the purpose stated herein at Section I, PURPOSE, and all such agreements have been merged into this written Agreement. This Agreement shall not prohibit the parties from entering into other agreements not related to Title IV-E foster payments. No prior agreement, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

XXVII. SOVEREIGN IMMUNITY

Nothing contained in this Agreement shall be construed or interpreted in any way as a waiver, express or implied, of the sovereign immunity of the PUEBLO or of the State of New Mexico.

WE, THE UNDERSIGNED, HEREBY AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT BETWEEN THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT OF THE STATE OF NEW MEXICO AND THE PUEBLO OF LAGUNA.

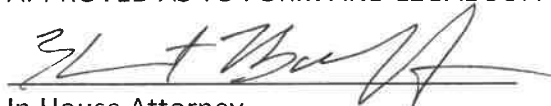
PUEBLO OF LAGUNA



Governor Martin Kowemy, Jr.

Date: 5/16/2022

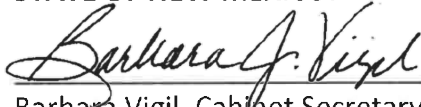
APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



In House Attorney
Government Affairs Office

Date: 5/12/2022

STATE OF NEW MEXICO:



Barbara Vigil, Cabinet Secretary
Children, Youth & Families Department

Date: 5/19/2022

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Cynthia Aragon Digitally signed by Cynthia Aragon
Date: 2022.05.18 13:45:09 -06'00'

Office of General Counsel
Children, Youth & Families Department

Date: _____