



**INDIAN NATION  
PROGRAM AGREEMENT**  
**For Tribal Participation in Title IV-E  
Program - Federal Payments for Foster  
Care and Adoption Assistance**

DSHS Agreement Number  
**0562-83676**

This Program Agreement is by and between the State of Washington Department of Social and Health Services (DSHS) and the Indian Nation identified below, and is issued in conjunction with an Indian Nation and DSHS Agreement Regarding General Terms and Conditions, which is incorporated by reference.

Administration or Division Agreement Number  

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Indian Nation Agreement Number

DSHS ADMINISTRATION  
**Childrens Administration**

DSHS DIVISION  
**Management Services Division**

DSHS INDEX NUMBER  
**1314**

CCS CONTRACT CODE  
**2077NC**

DSHS CONTACT NAME AND TITLE  
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INDIAN NATION NAME  
**Port Gamble S'Klallam Tribe**

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IS THE INDIAN NATION A SUBRECIPIENT FOR PURPOSES OF THIS PROGRAM AGREEMENT?  
**No**

CFDA NUMBERS

PROGRAM AGREEMENT START DATE  
**09/30/2005**

PROGRAM AGREEMENT END DATE  
**None**

MAXIMUM PROGRAM AGREEMENT AMOUNT  
**\$0.00**

EXHIBITS. When the box below is marked with an X, the following Exhibits are attached and are incorporated into this Indian Nation Program Agreement by reference:  
 Exhibits (specify):

By their signatures below, the parties agree to the terms and conditions of this Indian Nation Program Agreement and all documents incorporated by reference. No other understandings or representations, oral or otherwise, regarding the subject matter of this Program Agreement shall be deemed to exist or bind the parties. The parties signing below certify that they are authorized, as representatives of their respective governments, to sign this Program Agreement.

INDIAN NATION SIGNATURE

PRINTED NAME AND TITLE

DATE SIGNED

DSHS SIGNATURE

PRINTED NAME AND TITLE

DATE SIGNED

## TERMS AND CONDITIONS

This Intergovernmental Agreement, hereinafter referred to as the "Agreement" is entered into by and between the Port Gamble S'Klallam Tribe ("Tribe"), a federally recognized Indian Tribe, and the Department of Social and Health Services, Children's Administration, (DSHS/CA), a government agency of the State of Washington.

### 1.00 INTRODUCTION

The purpose of this Program Agreement is to provide the Port Gamble S'Klallam Tribe federal funding under Title IV - Part E of the Social Security Act, federal payment for foster care and adoption assistance program, for providers who are caring for children under the jurisdiction of the Tribe; to facilitate intergovernmental cooperation; to provide for the best interest of children; to meet the policy goals of the Indian Child Welfare Act of 1978; and to meet the Multi-Ethnic Placement Act and Amendments – P.L. 103-82 and P.L. 104-188. Authority for this Program Agreement includes the Constitution and by-laws for the Port Gamble S'Klallam Tribe, the Adoption Assistance and Child Welfare Act (Public Law 96-272), Part E of Title IV of the Social Security Act, the Adoption and Safe Family Act (Public Law 105-89) and the Washington State, Tribal-State Agreement Regarding Child Custody Services and Proceedings.

Tribal court orders will be given full faith and credit pursuant to the Indian Child Welfare Act, 25 U.S.C. 1911 (d), and the Washington State, Tribal-State Agreement. DSHS/CA will provide services to children who are subject to Tribal Court proceedings as required by the Tribal-State Agreement and the DSHS/CA Indian Child Welfare Manual. It is the intent of DSHS/CA to provide services to children who are subject to Tribal Court proceedings to the same extent as provided to other children and families in Washington State provided the services are available and the children meet existing eligibility requirements for the services.

### 2.00 DEFINITIONS

The words and phrases listed below, as used in this Agreement, shall each have the following definitions:

- a) "(The) ACT" shall mean the Social Security Act.
- b) "AFCARS" shall mean the Adoption and Foster Care Analysis Reporting System, which includes 103 data elements required to be submitted to the federal government bi-annually from the state's automated child welfare information system.
- c) "ADOPTION ASSISTANCE" shall mean financial and/or medical assistance to adoptive families including Tribal custom [customary] adoptions to assist them with the costs associated with their adoptive child's needs.
- d) "ADOPTION ASSISTANCE BENEFITS" means all or any portion of the adoption assistance package of benefits, which include monthly payments, nonrecurring payment, special payments and medical assistance.
- e) "BACKGROUND CLEARANCES" shall mean the criminal history inquiries required of all Tribal child welfare services staff and foster and adoptive parents, and any other parties defined in Tribal policy who have unsupervised access to foster children.
- f) "CASE MANAGEMENT" shall mean services which help to create and support those tasks and activities that are required to meet the service needs of the child and/or the child's family.
- g) "CASE PLAN" shall mean the case plan required by Title IV-E of the Social Security Act for participation in the foster care program.

- h) "CASE REVIEW" shall mean the case review required by Title IV-E of the Social Security Act for participation in foster care program.
- i) "CHILD WELFARE SERVICES PROGRAM" shall mean the Port Gamble S'Klallam Tribe program that meets the safety, permanency, and child/family well-being needs of the children under Tribal jurisdiction.
- j) "CUSTODY" shall mean the physical custody of the children under the Tribe's legal jurisdiction. Under this Program Agreement, the Tribe will have sole custody of the children as established by the Tribal court or in voluntary placement cases, under the Tribal Child welfare administration of the Tribe.
- k) "CUSTOM [CUSTOMARY] ADOPTION" shall mean a traditional tribal practice recognized in Tribal rule or law where the Tribal community formally acknowledges a permanent parent-child relationship between the child and someone other than the child's birth parent with no termination of parental rights.
- l) "DHHS" shall mean the U.S. Department of Health and Human Services.
- m) "DSHS/CA" shall mean the Washington State Department of Social and Health Services, Children's Administration.
- n) "ELIGIBLE CHILD" means a child who:
  - 1) Meets the eligibility requirements either for foster care maintenance payments set forth in the Social Security Act, Title IV-E, Section 472 [42 U.S.C. section 672] or for adoption assistance payments set forth in Social Security Act, Title IV-E, 673 [42 U.S.C. section 673], depending on the type of payments sought; and
  - 2) Is under the jurisdiction of the Tribe.
- o) "FFP- FEDERAL FINANCIAL PARTICIPATION" shall mean those monies paid out under Title IV-E of the Social Security Act by the federal government for foster care and adoption assistance maintenance, administration, and training.
- p) "FOSTER CARE" shall mean the substitute care provided for a child who is removed by court order or a voluntary placement agreement from his or her home.
- q) "FOSTER CARE AND ADOPTION ADMINISTRATION EXPENDITURES" shall mean the costs incurred by the Tribe for eligible Title IV-E expenditures for the administration of the foster care and adoption programs.
- r) "FOSTER CARE AND ADOPTION TRAINING EXPENDITURES" shall mean the costs incurred by the Tribe for eligible Title IV-E training expenditures for the foster care and adoption programs.
- s) "FOSTER CARE MAINTENANCE PAYMENT" shall mean payments made by the Tribe to eligible foster care providers to meet the needs of the child or children receiving foster care from that provider.
- t) "GUARDIANSHIP" means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person and decision making. No legal monitoring of the guardianship by the Tribe is required, although the Tribe may provide social services to the guardian or child. No state or federal IV-E funds are available once this guardianship is established.

- u) "HEARINGS" shall mean any Tribal court review of the child's case plan.
- v) "JUDICIAL DETERMINATION" shall mean a determination made by a court of competent jurisdiction.
- w) "LEGAL JURISDICTION" shall mean that the child is under the authority of the Tribal court or in voluntary placement under the Tribe's child welfare agency.
- x) "PARTIES" shall mean the parties to this Program Agreement which are the State of Washington, Department of Social Health and Services, Children's Administration, and the Port Gamble S'Klallam Tribe.
- y) "PENETRATION RATE" shall mean the proportion of Title IV-E eligible children within the total Tribal foster care population; this ratio is also referred to as the "Title IV-E penetration rate" and is used to calculate the Tribe's administrative and training claims.
- z) "PERMANENCY HEARING" shall mean the permanency hearing required by Title IV-E of the Social Security Act for participation in the foster care maintenance program which must take place within 12 months of the date the child is considered to have entered foster care (as defined in Section 9.05), and not less frequently than every 12 months thereafter during the continuance of foster care, including voluntary foster care placements.
- aa) "REIMBURSEMENT FOR ADMINISTRATIVE COSTS" shall mean reimbursement for administrative costs incurred by the Tribe based on the cost multiplied by the percent of children in foster care or adoption that are Title IV-E eligible multiplied by 50 percent FFP.
- bb) "REIMBURSEMENT FOR TRAINING COSTS" shall mean reimbursement for administrative training costs incurred by the Tribe based on the cost multiplied by the percent of children in foster care or adoption that are Title IV-E eligible multiplied by 75 percent FFP. However, the Tribal federally established indirect rate costs for training are based on the cost multiplied by the percent of children in foster care or adoption that are Title IV-E eligible multiplied by 50 percent FFP for the reimbursement claim.
- cc) "SPECIAL RATE" shall mean additional payments to caregivers according to the DSHS/CA Foster Care Rate Assessment to provide compensation for care, supervision, and other maintenance expenses identified to address the foster parent's time needed to meet the child's extraordinary physical, mental, behavioral and/or emotional needs.
- dd) "TITLE IV-E" shall mean Title IV-Part E of the Social Security Act.
- ee) "TITLE IV-E STATE PLAN" shall mean the state plan developed by the State of Washington to comply with the requirements of Title IV-Part E of the Social Security Act.
- ff) "TRIBAL COURT" shall mean the Tribal Court of the Port Gamble S'Klallam Tribe.
- gg) "TRIBAL INDIRECT RATE" shall mean the federally established indirect rate (FEIR) negotiated between the federal government and the Tribe. This FEIR rate is used in the calculation of the Tribe's Title IV-E administrative and training reimbursement claim.
- hh) "TRIBE" shall mean the Port Gamble S'Klallam Tribe.
- ii) "VOLUNTARY PLACEMENT AGREEMENT" shall mean a written agreement entered into by a parent of a child that voluntarily places care and custody of that child with the Tribe for foster care placement.

### 3.00 STATEMENT OF BASIC AGREEMENT

For children under the legal jurisdiction of the Tribe and the Tribal child welfare services program, DSHS/CA hereby agrees that DSHS/CA shall reimburse the Tribe based on the state's rate schedules for Title IV-E foster care maintenance. DSHS/CA shall make any Title IV-E adoption assistance payments directly to the adoptive parent.

DSHS/CA is to reimburse the Tribe the federal share for tribally incurred Title IV-E allowable administrative and training costs.

The terms and conditions of such payments are set out in the remainder of this Program Agreement.

#### 3.01 **Designation of Authority of State and Tribe:**

- 1) The State of Washington, Department of Social and Health Services, Children's Administration, is the designated agency to administer the Title IV-E program.
- 2) The Tribe has designated its tribal child welfare service program, hereinafter referred to as the lead tribal agency, for implementing this Program Agreement.

#### 3.02 **Title IV-E Foster Care Maintenance Funds to be Used When a Child is Eligible:**

The Tribe is eligible for Title IV-E federal financial participation when a child in foster care is under the legal jurisdiction of the Tribe. The Tribe shall make foster care maintenance payments to eligible foster care providers for such children. Foster care maintenance payments include the foster care basic rate, and may include the special rate and/or allowable maintenance payments per the Code of Federal Regulations, 42 CFR 1355, 1356, and 1357.

**3.03 Medical Coverage under Title XIX:** All qualified children who are eligible for Title IV-E retain their categorical eligibility under federal law for Title XIX Medicaid as stated in the state's Medicaid plan.

**3.04 Payments for Foster Care:** DSHS/CA shall reimburse the Tribe the cost of Tribal foster care maintenance payments according to the DSHS/CA rate schedule. Children's Administration rules require that a placement be established in CAMIS within 5 working days. Foster care payments cannot be authorized until the placement is established in CAMIS and the foster care home or facility is fully licensed. Reimbursement payment to the Tribe is determined by the original foster care placement date, not the date of data entry.

**3.05 Title IV-E Adoption Assistance:** DSHS/CA shall make adoption assistance payments to the adoptive parent for children eligible for Title IV-E Adoption Assistance, including those children under the jurisdiction of the Tribe that have a judicial or culturally based conceptual framework of rules or law for formalizing a "custom [customary] adoption" that does not terminate parental rights of the birth parents.

**3.06 Title IV-E Administrative Funds for Foster Care Program:** Federal matching funds based on federal cost allocation principles will be made available for reimbursement of allowable administrative expenditures necessary for the proper and efficient administration of the Title IV-E foster care and adoption program. The Tribe shall submit for reimbursement the eligible administration expenditures on a quarterly basis.

The following are examples of allowable administrative costs:

- 1) Referral to services;
- 2) Preparation for and participation in judicial determinations;
- 3) Placement of the child;

- 4) Development of the case plan;
- 5) Case reviews;
- 6) Case management and supervision, including
  - Health and Safety visits;
  - Notification to parents of change in the foster placement for the child(ren);
  - Notification to the foster parents of court hearings;
  - Notification regarding any changes in visits with the child(ren).
- 7) Recruitment and licensing of foster homes and institutions, including the cost of home studies and criminal records checks;
- 8) A proportionate share of related agency overhead;
- 9) Foster care rate setting;
- 10) Management information system, and;
- 11) Tribe's federally established indirect rate used in calculating the administrative and training reimbursement claim.

Allowable administrative costs do not include the costs of social services provided to the child, the child's family or foster family to ameliorate or remedy personal problems, behaviors or home conditions, since these are considered direct services.

**3.07 Title IV-E Training:** Federal matching funds are available for the short and long term training of child welfare personnel employed by or preparing for employment in the Tribe's child welfare agency in accordance with federal regulations. All training activities and costs funded under Title IV-E shall be included in the Tribe's federal Child and Family Services Plan, or if the Tribe does not submit an annual Child and Family Services Plan to DHHS, in the Tribe's training plan that is sent to DSHS/CA for inclusion in the state's annual Child and Family Services Plan. For training plans included in the state's Child and Family Services Plan, the state shall review the training plan to assure compliance with federal regulations. The training plan may be amended by the Tribe and sent to DSHS/CA anytime during the year. The Tribe shall submit for reimbursement of eligible training expenditures on a quarterly basis. Foster parents and staff of licensed or approved child care institutions providing foster care shall be eligible for short-term training at the initiation of or during their provision of care. FFP directly related to such training shall be limited to travel and per diem.

**3.08 Title IV-E Eligibility Determination:** DSHS/CA shall be responsible for determining eligibility for Title IV-E. The Tribe shall provide eligibility related information to DSHS/CA to assist DSHS/CA in determining Title IV-E eligibility within 5 working days of the child being placed in out of home care.

**3.09 Limitation:** This Program Agreement is limited to children under the legal jurisdiction of the Tribe and shall not affect DSHS/CA's rights and responsibilities concerning children who are in DSHS/CA's care under the jurisdiction of the state court system.

#### **4.00 TERMS AND CONDITIONS REGARDING USE OF TITLE IV-E MONIES TO MAKE FOSTER CARE MAINTENANCE PAYMENTS**

The Tribe shall be responsible for submitting a Title IV-E application/information packet for each child in out of home care including those placed in non-licensed relative care to DSHS/CA. DSHS/CA shall be responsible for the determination and ongoing re-determination of Title IV-E eligibility/reimbursability, fair hearings and appeals, rate setting and reimbursing foster care

maintenance payments made by the Tribe for Title IV-E eligible children based upon the following terms and conditions:

**4.01 Availability of Federal Financial Participation (FFP):** FFP is available for each child:

- 1) who would meet the requirements of section 406(a) or 407 of the Social Security Act (as in effect on July 16, 1996) but for his or her removal from the home of a relative specified in section 406(a), or who may be linked to the home of a relative specified in section 406(a) per U.S. Court of Appeals, 9<sup>th</sup> circuit court, *Rosales vs. Thompson* decision 2004, if the removal from his or her home:
  - a) was the result of judicial determination to the effect that continuation therein would be contrary to the welfare of such child and that reasonable efforts have been made, prior to the placement of the child in foster care, to prevent or eliminate the need for removal of the child from their home and to make it possible for the child to return to his or her home (as defined in Section 9- Prevention and Reunification Services); or
  - b) occurred pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian; and
- 2) whose placement and care in a foster family home or child care institution (as defined in section 472(c) of the Social Security Act) is the responsibility of the Tribe while this Program Agreement is in effect and who would have received the federally funded Aid to Families with Dependent Children (AFDC) under the State plan approved under section 402 of the Social Security Act (as in effect on July 16, 1996) in or for the month in which either a voluntary agreement was entered into or court proceedings leading to removal of the child from the home were initiated.
- 3) DSHS/CA shall redetermine the eligibility and reimbursability of each child every six months after the case is determined Title IV-E eligible. The Tribe shall complete and submit the on-going redetermination paperwork to DSHS/CA for a redetermination of eligibility. DSHS/CA shall give the Tribe at least 30 days written notice prior to the date that on-going redetermination paperwork is due.
- 4) For continued Title IV-E reimbursability of each child, a judicial determination is required that reasonable efforts to finalize permanency within 12 months from the date the child is considered to have entered placement in foster care (original placement date) under the supervision of the Tribe or the Tribal child welfare agency. This judicial determination is required every 12 months thereafter until the permanency plan is finalized.

**5.00 ELIGIBLE MAINTENANCE REIMBURSEMENTS**

**5.01 Types of Maintenance Payments:** Foster care maintenance payments for a child in foster care may cover:

- 1) the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to the child, reasonable travel expenses for child visitation with parents, sibling, family, and other significant caretakers, employment related child care for the foster parent; and
- 2) in the case of institutional care, the reasonable costs of administration and operation of such institutions as are necessarily required to provide the items noted in paragraph 5.01(a);

- 3) foster care costs of the child of a minor parent, when that child is placed with his/her minor parent who is a dependent under Tribal Court jurisdiction or in a voluntary placement with the Tribe, and the payment to the minor parent's foster parent includes the reimbursement funds for the child of the minor parent.

Adoption support payments (including custom [customary] adoptions) are **not** considered foster care reimbursement payments. The adoption support payments are made directly to the adoptive family.

**5.02 When Made:** Foster care maintenance payments using Title IV-E federal funds are made only on behalf of eligible children who are:

- 1) placed with a licensed foster care provider, regardless if payments are made to such individual or to a Tribe, public or nonprofit private child placement or child care agency; or
- 2) in a child care institution which is licensed and eligible for foster care payments as a family home or group care, regardless if the payments are made to such institution, Tribe, or to a public or nonprofit private child placement or childcare agency. Such payments are limited to include only those items which are included in the term "foster care maintenance payments" (defined in section 475(4) of the Social Security Act).

**5.03 Limitations and Licensing:** Foster care payments shall be made for the care of children in foster family homes, private child care institutions, or public child care institutions accommodating no more than 25 children, which are fully licensed by the state, certified by a Child Placing Agency licensed by the state or licensed by a Tribe who has established their own (Tribe's) licensing standards for licensing foster homes on the Tribe's Reservation. For Tribes that establish licensing standards for licensing foster homes on the Tribe's reservation, the Tribe shall adopt, maintain and utilize foster care licensing standards that are accepted by the federal Administration for Children and Families as part of the State of Washington's Title IV-E plan.

**Federal reimbursement is not available for such children who are in detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of delinquent children.**

## 6.00 VOLUNTARY PLACEMENTS

**6.01 Requirements for Voluntary Placement:** Foster care maintenance payments from Title IV-E federal funds shall be made in cases of voluntary placement of a minor child placed out of the home by or with the participation of the Tribe only if:

- 1) placement of the child has been requested by the child's parent or legal guardian; and
- 2) there is a written voluntary placement agreement, binding on all parties to the agreement, which specifies at a minimum the legal status of the child and the rights and obligations of the parent(s) or guardian(s), the child, and the Tribe while the child is in placement.

Note: A voluntary placement that proceeds to adoption will not qualify for the federal adoption support program unless there has been at least one Title IV-E foster care maintenance payment on the child's behalf during the current out of home placement episode.

**6.02 Judicial Determination Required for Extension:** Federal reimbursement may be claimed only for voluntary foster care maintenance expenditures made within the first 180 days after the date of the original foster care placement unless there is a judicial determination by the Tribal Court



within the first 180 days of the date of placement to the effect that the continued voluntary placement is in the best interest of the child.

**6.03 Revocation of Voluntary Placement:** Revocation shall be in accordance with Tribal guidelines.

## **7.0 CASE REVIEW REQUIREMENTS**

The Tribe will provide the case management activities required to meet the service needs of the child and/or the child's family in support of the development of the each child's case plan.

The Tribal court must conduct periodic reviews of the child's case plan. At a minimum, there must be six month periodic reviews and twelve month permanency planning reviews once the child is placed in out of home care.

**7.01 Individual Safety and Service Plan (ISSP) Initial Criteria:** To meet the case plan requirements of section 471(a)(16), 475(1), and 475(5)(A) and (D) of the Social Security Act, the Tribe agrees that the ISSP will:

- 1) be a written document that is a discrete part of the case record, that meets the requirements of DSHS/CA, in a format determined by the Tribe, which is sent to the parents or guardian(s) of the foster child;
- 2) be developed within a reasonable period, but no later than sixty (60) days from the time the Tribe assumes responsibility for providing services, including placing the child;
- 3) include a description of the services offered and the services provided to prevent removal of the child from the home and to reunify the family, including a description of the cultural appropriateness of such services;
- 4) include a description of the type of home or institution in which the child is to be placed, and a description of the placement caregiver's responsibilities;
- 5) include a discussion of the safety and the appropriateness (cultural and otherwise) of the placement and of the judicial determination made or to be requested with respect to the child in accordance with section 472(a)(1) of the Social Security Act;
- 6) include a plan for assuring that the child receives safe and proper care, for providing services to the parent(s) in order to improve the conditions in the parent(s) home to facilitate the child's return to his or her own safe home, or for providing a permanent placement of the child;
- 7) include a plan for assuring that services are provided to the child and foster parents in order to address the needs of the child while in foster care;
- 8) include a discussion of the appropriateness of the services that have been provided to the child under the plan;
- 9) for a child sixteen (16) years of age or older, include a written description of the programs and services that will help such child prepare for the transition from foster care to independent living;
- 10) in the case of a child with respect to whom the permanency plan is adoption, including Tribal custom [customary] adoptions, or placement in another permanent home, document the steps the Tribe is taking to find an adoptive family or other permanent living

- arrangement for the child such as placement with an adoptive family, a fit and willing relative, a legal guardian, or another planned permanent living arrangement, and/or to finalize the adoption or legal guardianship. At a minimum, such documentation shall include child specific recruitment efforts used by the Tribe;
- 11) be designed to achieve placement in a safe setting that is the least restrictive (most family-like) setting available, that is in close proximity to the home of the parents, and which is consistent with the best interest and special needs of the child;
  - 12) if the child has been placed in a foster family home or child-care institution a substantial distance from the home of the parent(s), or in a different state, set forth the reasons why such placement is in the best interest of the child;
  - 13) if the child has been placed in foster care in a state outside the state in which the child's parent(s) are located, assure that an authorized caseworker from either that state or another Tribe, visits the foster home or institution no less frequently than every three (3) months and submits a report as requested to the Tribe;
  - 14) assure that the permanency hearings determine whether an out-of-state placement continues to be appropriate and in the best interest of the child;
  - 15) to the extent available and accessible, incorporate the health and education records of the child, and provide the information to the child's care provider including:
    - a) the names and addresses of the child's health and educational providers;
    - b) the child's grade level performance;
    - c) the child's school record;
    - d) assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;
    - e) a record of the child's immunizations;
    - f) the child's known medical problems;
    - g) the child's medications; and
    - h) any other relevant health and education information concerning the child determined to be appropriate by the Tribe's child welfare services program.
  - 16) Provide that a child's health and education record (as described in #15 above) is reviewed and updated, and supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster care.

**7.02 Individual Safety and Service Plan--Review Dependency/Permanency Criteria:** The Tribe shall implement a case review system which meets the requirements of section 475(5) of the Social Security Act and assures that a case review of the status of each child who has been placed in foster care or another out-of-home arrangement will be made no less frequently than once every six (6) months from the date the child is considered to have entered foster care, as defined in Section 9.05 by the Tribal Court in order to:

- 1) review the placement and plan for assuring that the child receives safe and proper care;
- 2) determine the continuing need for and appropriateness of the placement;
- 3) determine the extent of compliance with the case plan;
- 4) determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement;

- 5) project a likely date by which the child may be returned and safely maintained at home or placed for adoption or legal guardianship;
- 6) if the child is placed out of state, determine whether the out-of-state placement continues to be appropriate and in the best interest of the child; and
- 7) in the case of a child who has attained age sixteen (16), determine the services needed to assist the child to make the transition from foster care to independent living.

The ISSP review shall include an update of the child's Health and Education Record.

The Tribal child welfare services program shall give a copy of the ISSP to the child's care provider. The section of the ISSP regarding services offered to the parent(s) can be limited for confidentiality reasons.

## **8.00 PERMANENCY HEARING, PROCEDURAL SAFEGUARDS**

**8.01 When Required:** A Dependency Review/Permanency Hearing, must be held for each child in foster care under the responsibility of the Tribe if the Tribe claims state or federal IV-E reimbursement for the costs of foster care maintenance payments. To meet this requirement, the hearing must take place within (twelve) 12 months of the date the child is considered to have entered foster care (as defined in Section 9.05) and not less frequently than every twelve (12) months thereafter during the continuance of foster care.

**8.02 Determination:** For the purposes of this requirement, a Dependency Review/Permanency Hearing shall determine the permanency plan for the child that includes whether, and if applicable when:

- 1) the child will be returned to the parent;
- 2) the child will be placed for adoption and the Tribe will file a petition for termination of parental rights; or
- 3) the child will be placed in a custom [customary] adoption that gives the child a permanent parent-child relationship with someone other than child's birth parents even though the child's birth parents' parental rights are not terminated; or
- 4) the child will be referred for legal guardianship or, in cases where the Tribe has documented to the satisfaction of the Tribal Court a compelling reason for determining that it would not be in the best interests of the child to return home and that termination of parental rights and/or guardianship are not appropriate, the child may be placed in another planned permanent living arrangement by determination of the Tribal court.

The following are examples of compelling reasons:

- (i) The case of an older teen who specifically requests that emancipation be established as his/her permanency plan;
- (ii) The case of a parent and child who have a significant bond but the parent is unable to care for the child because of an emotional or physical disability and the child's foster parents have committed to raising him/her to the age of majority and to facilitate visitation with the disabled parent; or
- (iii) the Tribe has identified another planned permanent living arrangement for the child.

In cases where the child is placed out of state, the Tribal court shall also determine whether the placement continues to be in the best interest of the child.

In the case of a child who has attained age (16) sixteen, the Tribal court shall determine the services needed to assist the child to make the transition from foster care to independent living.

### **8.03 Procedural Safeguards:**

As procedural safeguards, the Tribe shall notify the parents:

- 1) when a hearing before the Tribal Court is scheduled;
- 2) when their child is moved from one placement to another; or
- 3) of any determination affecting their visitation rights.

The foster parents (if any) of a child and any pre-adoptive parent or relative providing care for the child shall be provided with notice of the date, time, and location of any review or hearing to be held with respect to the child, and an opportunity to be heard, except that shall not be construed to require that any foster parent, pre-adoptive parent, or relative providing care for the child be made a party to such a review or hearing solely on the basis of such notice and opportunity to be heard.

## **9.00 PREVENTIVE AND REUNIFICATION SERVICES**

**9.01 Reasonable Efforts:** Reasonable efforts shall be made to preserve and reunify families, to prevent or eliminate the need for removing the child from the child's home, and to make it possible for the child to safely return to the child's home. When making reasonable efforts, the child's health and safety shall be the paramount concern. In any case in which the agency supervising the placement of the child is required pursuant to the Indian Child Welfare Act (ICWA), 25 USC 1912(d), to make active efforts to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family, the reasonable efforts requirements of this Program Agreement shall be construed in a manner consistent with the active efforts requirement of ICWA.

**9.02 Consistency with Permanency Plan:** If continuation of reasonable efforts to reunify is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

**9.03 When Reasonable Efforts Are Not Required:** Reasonable efforts to make it possible for a child to be returned to his or her home, as described in section 471(a)(15)(B) of the Social Security Act, shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that the parent:

- 1) has subjected the child to aggravated circumstances (as defined by the applicable law, which definition may include but need not be limited to abandonment, torture, chronic abuse, or sexual abuse);
- 2) committed murder (which would have been an offense under section 1111 (a) of Title 18, United States Code, if the jurisdiction of the United States) of another child of the parent;
- 3) committed voluntary manslaughter (which would have been an offense under section 1112(a) of Title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

- 4) has aided or abetted, attempted, conspired, or solicited to commit a murder or a voluntary manslaughter;
- 5) has committed a felony assault that results in serious bodily injury to the child or another child of the parent; or
- 6) has had his or her parental rights to a sibling terminated involuntarily.

**9.04 Hearing Required:** If reasonable efforts of the type described in section 471(a)(15)(B) of the Social Security Act are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with Section 9.03 of the Program Agreement, a permanency hearing as described in section 475(5)(C) of the Social Security Act shall:

- 1) be held for the child within thirty (30) days after the determination; and
- 2) reasonable efforts shall be made to finalize and to place permanently the child in a timely manner in accordance with the permanency plan.

**9.05 Calculating When a Child Enters Foster Care:** A child shall be considered to have entered foster care on the original placement date (OPD) which is defined as the begin date for the most current, unbroken out-of-home placement on which the child was legally removed from the custody of the parents or legal guardians via court order or written voluntary placement agreement. This is the date that the Tribe has been given physical custody of the child.

## **10.00 TERMINATION OF PARENTAL RIGHTS**

**10.01 When Required; Exceptions:** The Tribe – in the case of a child who has been in foster care under the responsibility of the Tribe for fifteen (15) of the most recent twenty-two (22) months, or if a court of competent jurisdiction has determined a child to be an abandoned infant, or has made a determination that the parent has committed murder of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent – shall file a petition to terminate the parental rights of the child's parents and, concurrently, shall identify, recruit, process, and approve a qualified family for adoption unless:

- 1) the child is being cared for by a relative; or
- 2) the Tribe has documented in the case plan compelling reasons for determining that filing such a petition would not be in the best interests of the child; or
- 3) the Tribe has not provided the family of the child, consistent with the time period in the Tribe's case plan, such services as the Tribe deems necessary for the safe return of the child to the child's home if reasonable efforts to make it possible for the child to safely return home are required to be made with respect to the child.

## **11.00 STANDARDS FOR FOSTER FAMILY HOME, ADOPTIVE HOMES, AND CHILD CARE INSTITUTIONS**

**11.01 Tribal Standards:** Parties recognize and agree that the Tribe may establish and maintain standards for foster family homes, adoptive homes, and childcare institutions for children under the jurisdiction of the Tribe and on the Tribe's Reservation. The standards shall be reasonably in accord with standards recommended by national organizations concerned with standards for such institutions or homes, including standards related to admission policies, safety, sanitation,

and protection of civil rights and shall be applied by the Tribe to all foster family homes, adoptive homes, or childcare institutions receiving funds under Title IV-E pursuant to this Program Agreement. The Tribe shall adopt, maintain and utilize foster care licensing standards that are accepted by the federal Administration for Children and Families as part of the State of Washington's Title IV-E plan. Criminal background checks are required as a condition for licensure in accordance with federal regulation (42 USC 671(A)(20)).

Placement of a child with a DSHS-CA employee who is licensed by the Tribe must be reviewed by the state prior to the placement of the child in caregiver's home.

- 11.02 Other Foster Homes.** The Tribe can become a state contracted Child Placing Agency to license foster homes that are not located on the Tribe's Reservation. These foster homes will be certified by the Tribe and licensed by the state.

## **12.00 SAFEGUARDING/MAINTAINING INFORMATION AND RECORDS RETENTION**

- 12.01 Confidentiality:** The Tribe must have safeguards restricting use of or disclosure of confidential information concerning individuals assisted under the Title IV-E plan that meet the standards set forth in 42 U.S.C. sec. 671 (8).
- 12.02 Foster Care Licensing Records:** The Tribe must maintain the licensing records for each foster family homes, adoptive homes, or childcare institutions receiving state or Title IV-E funds. The Tribe shall maintain closed foster care licensing files for 6 (six) years from the date the license expired or was withdrawn. For revoked or denied foster care licensing files, the Tribe must maintain the records indefinitely due to future liability issues if the foster home or facility obtained a license at a later date.
- 12.03 Record Maintenance:** The Tribe will maintain all IV-E tribal records pertaining to Title IV-E eligibility and maintenance payments for the entire time period for which a child is in out-of-home care, and a minimum of four (4) years after the child has left care.

## **13.00 REPORTING REQUIREMENTS**

- 13.01 Child Abuse Reporting:** The Tribe has exclusive jurisdiction to investigate allegations of child abuse or neglect occurring in a foster home licensed by the Tribe.

The Tribe shall notify the Department contact for licensing of Tribal approval or termination of any foster care license.

The Tribe also will notify the Department of any founded allegation of child abuse or neglect occurring in a foster home licensed by the Tribe. The Tribe agrees to provide this informational in order to participate with other child welfare providers in an attempt to keep central records within the State of Washington on individuals who care for or who seek to care for children, disabled persons or vulnerable adults. The information maintained by the Department will be kept confidential according to Washington State law.

- 13.02 DHHS Review:** The Tribe and DSHS/CA acknowledge that the federal Department of Health and Human Services (DHHS) and DSHS/CA conduct periodic reviews of state agencies that receive and distribute Title IV-E funds, and that DHHS and DSHS/CA require as a part of such reviews that case files on children receiving Title IV-E support be made available for inspection at a Tribal designated location or other mutually agreed to location. Upon reasonable advance written notice, the Tribe will make available for review by DHHS or DSHS/CA personnel the case file and provider files on the children in foster care under the jurisdiction of the Tribe whose foster care providers receive Title IV-E funds. The Tribe agrees to make the

records/files described herein available at all reasonable times at the Tribe's designated location for review by DHHS or DSHS/CA. The files shall at all times remain the property of the Tribe and shall be returned to the Tribe immediately upon completion of the review process.

- 13.03 Technical Assistance:** The parties further agree that the Tribe may request DSHS/CA's technical assistance in assuring that the case files contain the proper documentation.
- 13.04 Reports:** The Tribe will make reports in such form and containing such information on the Tribe's Title IV-E program as is required by either the DSHS/CA or DHHS.
- 13.05 Verification:** The Tribe will comply with such provisions as the DHHS and DSHS/CA may from time to time find necessary to assure the correctness and verification of such reports.

## **14.00 PROCEDURES FOR PAYMENTS**

- 14.01 DSHS/CA Eligibility Worker:** DSHS/CA shall designate staff within DSHS/CA to be the eligibility worker for Title IV-E foster care payment applications made by the Tribe pursuant to this Program Agreement, and will notify the Tribe of that designated staff.
- 14.02 Required Documentation:**
1. The Tribe shall complete the required eligibility packet for each child's Title IV-E determination. This paperwork shall be submitted to the person within DSHS/CA who has been designated as the DSHS/CA eligibility worker dealing with claims from the Tribe.
  2. The Tribe shall complete the required\_AFCARS reporting for each child that comes within the jurisdiction of the Tribe . This information is gathered on the form that is sent to DSHS/CA regarding the IV-E payment, and placement information.
  3. The Tribe shall complete and submit administrative and training summary claim reports and worksheets as provided by the state on a quarterly basis.
- 14.03 Foster Care Maintenance Payments on Behalf of a Child:** If the DSHS/CA eligibility worker determines that the child is eligible for such foster care, DSHS/CA shall make foster care maintenance payments directly to Tribe. The Tribe in turn shall make the maintenance payments to the provider where the child or children are placed.
- 14.04 Retroactive Eligibility:** Any funds collected based upon retroactive eligibility that impacts the Tribe's administration or training claim will be reimbursed to the Tribe.
- 14.06 Adoption Assistance:** When a child is legally free for adoption or meets the Tribe's custom (customary) adoption rules or policy, the Tribal caseworker shall notify the DSHS/CA worker, who will refer the case for review to determine if adoption assistance is appropriate.

The adoption assistance payments are made directly to the adoptive parent and not through the Tribe's child welfare program.

## **15.00 FINANCIAL RESPONSIBILITY**

The Office of Child Support shall be notified by DSHS/CA of children placed into out of home care in accordance with federal regulations.

## **16.00 TRUST ACCOUNTS**

All income that is not exempt from Title IV-E resource/asset calculations (e.g., child support, SSI, SSA, Veterans) will be accounted for by DSHS/CA. The Tribe shall inform DSHS/CA of any income received

by the child or by a caretaker on behalf of a child so that a trust account for the child may be established. Trust accounts may reduce the federal claim and state match.

## 17.00 MISCELLANEOUS TERMS AND CONDITIONS

- 17.01 Duration:** This Program Agreement shall remain in effect until terminated.
- 17.02 Modification:** This Program Agreement may be altered, amended, or waived by a written Program Agreement Amendment executed by both parties.
- 17.03 Update:** This Program Agreement shall be reviewed annually at a meeting of the parties or at any time at the written request of either party. Either party may propose modifications.
- 17.04 Termination:** Either party may terminate this Program Agreement upon sixty (60) days written notice to the other party, provided that, before termination of this Program Agreement, the terminating party makes good faith efforts to discuss, renegotiate, and modify this Program Agreement or to resolve disputes.
- 17.05 Conflict with Federal Law, Regulation, or Policy:** If there are any sections of this Program Agreement which are in conflict with current or future federal law, regulations, or policy pertaining to Title IV-E, the prevailing federal law, regulation, or policy shall take precedence.
- 17.06 Consents; Reasonableness; Good Faith:** No party shall unreasonably deny, withhold, or delay any Consent or approval required or contemplated for any action or transactions proposed to be taken or made hereunder. The parties agree to cooperate fully with each other and to act reasonably and in good faith and in a timely manner in all matters hereunder so that each of them may obtain the benefits to which they are entitled hereunder and for which they have negotiated. The parties agree to negotiate in good faith and without delay as to all matters requiring negotiation
- 17.07 Notice:** Any notice required or permitted to be given to a party by this Program Agreement must be in writing, addressed to the other party at the address indicated below or at such other address as either party shall hereafter furnish the other in writing, and (i) delivered by certified mail by the Postal Service of the United States of America, postage pre-paid, or (ii) hand-delivered by courier or by a nationally recognized and reputable overnight delivery service.

Notice shall be deemed to have been given by regular mail when deposited in the United States mail, postage pre-paid, as evidenced by the date and time stamp. A notice sent by certified mail, return receipt requested, shall be deemed given upon receipt. If notice is given by a nationally recognized and reputable overnight delivery service, notice shall be deemed given when it is actually received by the party.

If to the Port Gamble S'Klallam Tribe:

Marilyn Olson  
Port Gamble S'Klallam Tribe  
31912 Little Boston Road NE  
Kingston, WA 98346

If to the Washington Department of Social and Health Services:

Jann Hoppler, Office Chief, Federal Funding Office  
14<sup>th</sup> & Jefferson  
PO Box 45710  
Olympia, WA 98504-5710



- 17.08 Headings:** The headings to the various Sections of this Program Agreement are inserted only for convenience of reference and are not intended, nor shall they be construed, to modify, define, limit, or expand the intent of the parties.
- 17.09 Delay or Omissions:** No delay or omission to exercise any right, power, or remedy accruing under this Program Agreement shall impair such right, power, or remedy, nor shall it be construed to be a waiver of or acquiescence in a breach of or default under this Program Agreement.
- 17.10 Availability of Funds:** The Washington Legislature grants DSHS/CA authority to obligate funds for a maximum of one year. The year period begins on July 1 and ends on the following June 30. If such funding is not received, this Program Agreement may be amended or terminated as provided herein.