

JOINT POWERS AGREEMENT
BETWEEN
CHILDREN, YOUTH AND FAMILIES DEPARTMENT
AND
THE NAVAJO NATION DIVISION OF SOCIAL SERVICES

THIS AGREEMENT is entered into by and between Children, Youth and Families Department (CYFD) and The Navajo Nation Division of Social Services (NNDSS), an Indian Entity.

WHEREAS, the signatories are public agencies authorized to enter into Joint Powers Agreements, in Accordance with and pursuant to the Joint Powers Agreements Act, Sections 11-1-1 et seq. NMSA 1978;

WHEREAS, the CYFD is a public agency, pursuant to Sections 9-2A-1 et seq. NMSA 1978, empowered to receive and administer federal and state funds for the provision of prevention and treatment services to care, protect and assist in the positive development of children and their families;

WHEREAS, the NNDSS is a public agency empowered by the Indian Child Welfare Act of 1978, 225 U.S.C. Section 1901 et seq., to administer and provide social services for children, youth and families;

WHEREAS, the parties, in accordance with and pursuant to applicable state and federal laws, desire to jointly exercise their respective powers to provide Family Preservation/Family Support (FP/FS) services for children, youth and families;

NOW THEREFORE, the CYFD and the NNDSS, in consideration of the mutual covenants and agreements herein contained, do hereby agree to enter into this JPA to provide FP/FS services to children, youth and families as follows:

I. Purpose:

To provide FP/FS services to children, youth and families on the Navajo Nation Reservation.

II. Terms of Agreement:

The Navajo Nation shall:

- A. Implement a Family Preservation/Family Support (FP/FS) project administered by the NNDSS to increase permanency of placement for children, to decrease abuse and neglect, to increase family functioning, and to implement an integrated services system;
- B. Establish and maintain partnerships through collaboration between the Navajo Nation, New Mexico State Government, the health care delivery system, and private community providers in order to work toward the implementation of an integrated service system;

- C. Develop family plans based on the Family Preservation/Family Support Family Centered Assessment Tool (FCAT), which are strength-based, and identify goals of the family;
- D. Continue representation at all required meetings and trainings with CYFD's FP/FS Unit for the coordination and refinement of all tools and instruments to insure cultural appropriateness of Navajo families;
- E. Participate through data collection, trainings, and meetings with CYDS's FP/FS Evaluation component;
- F. Investigate, in cooperation with CYFD, alternative funding mechanisms for FP/FS services development and explore Navajo Nation resources for partnership with the FP/FS Training Component in order to provide training and technical assistance to Navajo Nation Social Workers in FP/FS philosophy and implementation; and
- G. Submit quarterly reports on program activities within one month after the end of each quarter to the Department. The first will be due by October 31, 1998; the second by January 31, 1999; the third by April 30, 1999; and the fourth by July 31, 1999. These reports will outline the progress in each of the above stipulated terms.

The Department shall:

- A. Transfer to the NNDSS forty thousand dollars (\$40,000.00) in quarterly payments of ten thousand dollars (\$10,000.00) in accordance with the schedule in Letter G. above. This will fund the provision of FP/FS through the NNDSS provided that CYFD receives the required quarterly program and expenditure reports by the end of each specified quarter.
- B. Provide information to the NNDSS on "Outcome Funding: A New Approach to Targeting Grants and Budgets" now being implemented in the Prevention and Intervention Division of the Department to convert all services funded by the State of New Mexico for children, youth and family programs to outcome approach government contracting; and
- C. Provide technical assistance to the NNDSS on the development and implementation of FP/FS services through the Training Component.

III. Period of Agreement:

This agreement shall become effective on August 1, 1998 or upon approval by the Department of Finance and Administration, whichever is later, and shall terminate on July 31, 1999, unless terminated pursuant to Article VIII, Termination of Agreement.

IV. Payment:

CYFD agrees to transfer to the NNDSS ten thousand dollars (\$10,000.00) quarterly in Federal Family Preservation/Family Support funds contingent upon receipt from the NNDSS of the required quarterly program and expenditure reports as described in Article II, Letter G. The total amount payable to the NNDSS will not exceed forty thousand dollars (\$40,000.00). Expenditure of the \$40,000.00 by the NNDSS shall be reimbursed pursuant to the Financial Information sheet attached hereto as Exhibit A and incorporated herein by reference.

V. Administering Agency:

The administering agency is CYFD.

VI. Conditions Concerning Payment:

Payments made by CYFD utilizing federal funds are contingent upon receipt by CYFD of currently anticipated funds. In the event of future reductions of such funds, CYFD reserves the right to reduce payments and services provided for herein, or in the alternative, to exercise the right of termination.

VII. Return of Funds:

Upon termination of this agreement or after the services provided for herein have been rendered, surplus money, if any, shall be returned by the NNDSS to CYFD.

VIII. Termination of Agreement:

This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination.

IX. Funds Accountability:

The parties shall provide for strict accountability of all monies made subject to this agreement. The NNDSS or its contractors shall maintain fiscal records, follow generally accepted accounting principles and account for all receipts and disbursements of funds transferred to the NNDSS pursuant to this agreement. The NNDSS will include all monies made subject to this agreement in the NNDSS annual audit and will provide CYFD with a copy of the annual audit.

X. Maintenance of Records:

CYFD shall maintain records as required of an administering state agency pursuant to applicable state law and regulation. The NNDSS shall maintain fiscal and programmatic records relative to those funds and activities that have been made subject to this agreement for a minimum of three years.

XI. Amendments:

This agreement shall not be altered, changed, or amended except by a instrument, in writing, executed and approved by both parties. All amendments are subject to the approval of the Department of Finance and Administration.

XII. Assignment:

The NNDSS shall not assign or transfer any interest in this agreement or assign any claims for money due or to become due under this agreement without the prior written approval of CYFD. For any assignment or transfer of interest in this agreement, the NNDSS is solely responsible for the work produced under such sub-agreements.

XIII. Applicable Law:

This agreement shall be governed by the applicable laws of the United States and the State of New Mexico.

XIV. Liability:

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability for New Mexico incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq., NMSA 1978, as amended. Any liability of the Navajo Nation is subject to the immunities and limitations of the Navajo Nation Sovereign Immunity Act, NNC§ 551 et seq.

XV. Arbitration:

SECTION ONE - Matters to be Submitted to Arbitration:

All disputes and controversies of every kind and nature between the parties 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.

SECTION TWO - Procedure:

A. 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.

B. Within 20 days after such demand, each party shall name its arbitrator, or in default of such naming, such arbitrator shall be named by the American Arbitration Association, and the two arbitrators so selected shall name a third arbitrator within 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 30 days of the request therefor, the appointment shall be made by the American Arbitration Association.

C. 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.

D. The arbitration hearing shall be heard at such time and place in New Mexico as designated by the arbitrators on at least 20 days' written notice to the parties hereto agree to be bound by such award.

E. 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.

F. 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.

SECTION THREE - Arbitration as Bar to Suit:

A. 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 arbitrable as set forth in this agreement.

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

SECTION FOUR - 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.

SECTION FIVE - 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.

SECTION SIX - Non-Applicability of Uniform Arbitration Act

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

XVI. Direct Federal Grant:

The parties mutually agree that should the NNDSS be awarded a direct federal grant for Child Protective Services provided under this Agreement, this Agreement shall immediately terminate and the NNDSS will reimburse CYFD for money received for services delivered during any period of time covered by the federal grant.

XVII. Acquisition of Property:

The parties agree that no property shall be acquired by the NNDSS as a result of this agreement.

XVIII. Execution of Documents:

CYFD and the NNDSS agree to execute any document(s) necessary to implement the terms of this agreement.

IN WITNESS WHEREOF, CYFD and the NNDSS have caused this agreement to be executed, effective August 1, 1998.

THE NAVAJO NATION

CHILDREN, YOUTH AND FAMILIES
DEPARTMENT

Milton Grosvenor, Sr.

President, Navajo Nation

Date: AUG 11 1998

Deborah Hartz

Secretary

Date: 8/17/98

APPROVED AS TO LEGAL SUFFICIENCY:

Rogin M. Tompkins
Office of General Counsel

Date: 8/17/98

DEPARTMENT OF FINANCE AND ADMINISTRATION:

J. Sanchez
Contract Officer 8/28/98

Date: 8/31/98