

Resolution No. 19 -14

Resolution Regarding the Implementation of a 161 Agreement Between Polk County and the St. Croix Chippewa Indians of Wisconsin

TO THE HONORABLE SUPERVISORS OF THE COUNTY BOARD OF THE COUNTY OF POLK:

Ladies and Gentlemen:

WHEREAS, 1983 Wisconsin Act 161 (hereinafter "the Act") became effective March 23, 1984; and

WHEREAS, the Act allows County Human Services to work with Tribes in a collaborative manner regarding Native American Children who are placed out of the home pursuant to Tribal and State laws governing child welfare services; and

WHEREAS, many Native American children live in Polk County; and

WHEREAS, the St. Croix Chippewa Indians of Wisconsin are a sovereign government and that maintains a Tribal Court and has an Indian Child Welfare Department; and

WHEREAS, it is important that families, who have children placed out of their home pursuant to a Circuit Court or a Tribal Court Order, are provided due process and receive appropriate services for purposes of reunification and/or other appropriate permanency goals; and

WHEREAS the Indian Child Welfare Act, which has been codified into Wisconsin Statutes, illustrates the strong public policy interest in protecting the cultural integrity of the child welfare system for Native American Children.

NOW, THEREFORE, BE IT RESOLVED, pursuant to Section 66.0301, Wis. Stats., that the Polk County Board of Supervisors approves the implementation of the attached 161 Agreement between Polk County and the St. Croix Chippewa Indians of Wisconsin.

BE IT FURTHER RESOLVED that the Polk County Board of Supervisors directs the Program Manager of the Polk County Human Services Department and the County Board Chairperson to sign the Agreement.

Funding Source/ Funding Amount:	
Date Reviewed as to Appropriations:	
Committee Recommendation as To Appropriation:	<i>Patricia M. Schmidt</i>
Effective Date:	
Dated Submitted To County Board	
Submitted By:	<i>[Signature]</i>

<p>Review By County Administrator:</p> <p><input type="checkbox"/> Recommended</p> <p><input type="checkbox"/> Not Recommended</p> <p><input type="checkbox"/> Reviewed Only</p> <hr/> <p>Dana Frey, County Administrator</p>	<p>Review By Corporation Counsel:</p> <p><input checked="" type="checkbox"/> Approved as to Form</p> <p><input checked="" type="checkbox"/> Recommended</p> <p><input type="checkbox"/> Not Recommended</p> <p><input type="checkbox"/> Reviewed Only</p> <hr/> <p><i>Jeffrey B. Fuge</i> Jeffrey B. Fuge, Corporation Counsel</p>
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Acknowledgement of County Board Action

Mark As Appropriate:

At its regular business meeting on June, 17, 2014, the Polk County Board of Supervisors considered and acted on the above resolution, Resolution No. 19-14: Resolution to <Insert Title>

_____, as follows:

- Adopted by a vote of _____ in favor and _____ against.
- Adopted by majority voice vote.
- Defeated by a vote of _____ in favor and _____ against.
- Defeated by majority voice vote
- Action Deferred by Procedural Action, as follows: _____

SIGNED BY: *William F. Johnson, IV*
William F. Johnson, IV, County Board Chairperson

Attest: *Carole T. Wondra*
Carole T. Wondra, County Clerk

AGREEMENT

THIS AGREEMENT, made and entered into this 17th Day of June, 2014 and ending on December 31, 2014, by and between **POLK COUNTY HUMAN SERVICES**, (hereinafter referred to as "the **COUNTY**"), and the **ST. CROIX CHIPPEWA INDIANS OF WISCONSIN** (hereinafter referred to as "the **TRIBE**").

WITNESSETH:

- 1) **Purpose.** It is the purpose of this agreement to clarify relationships between the Tribe and the County in providing for the health, safety, and welfare of Indian children residing in Polk County; to provide and improve systems for services, referral and mutual assistance between the Tribe and County; and to establish procedures and standards under which the parties shall implement the provisions of 1983 Wisconsin Act 161. Delinquency cases as defined in ss. 938.12 are not provided for under this agreement.
- 2) **Definitions.** As used in this agreement, the following terms shall have the meanings specified herein:
 - a) "Minor" or "Child": A person who is under the age of eighteen (18) years and who is a member of, or is eligible for membership in the Tribe, or who is the child of a member of the Tribe, or who is an American Indian child domiciled within the boundaries of the Tribe's Reservation, and who meets the residency requirements within Polk County.
 - b) "Child-in-Need-of-Care": means any child in need of care as defined in sec. 602.01 of the Tribal Children's Code.
 - c) "Child Custody Proceeding": means any proceeding as defined in 25 U.S.C. sec. 1903, and any proceeding involving a child under the age of ten who is alleged to have committed an act, which if committed by an adult would be deemed a crime.
 - d) "Foster Care": A person and/or residence licensed as a foster home by the Tribe, the State of Wisconsin, or a County agency.
 - e) "Tribe": Unless stated otherwise in this agreement, said term shall refer to the St. Croix Chippewa Indians of Wisconsin and all its agencies, employees, agents and representatives.
 - f) "Tribal Court": The Court set up and maintained by the St. Croix Chippewa Indians of Wisconsin.
 - g) "County": Unless stated otherwise in this agreement, said term shall refer to Polk County and all its agencies, employees, agents and representatives.
- 3) **Preventive Services.** It is mutually understood and agreed that Tribe's ICW Department and County Human Services staff shall meet quarterly, on a day and time to be determined, for the following purposes:

- a) Identify families who may be in need of services by the parties to this agreement;
 - b) Review the case status of families who are being provided services by either Tribal or County staff;
 - c) Coordinate services provided to Tribal families living in Polk County by either Tribal or County staff, in order to assure that all appropriate services are in fact being provided, to identify the primary service provider, and to establish a case plan for provision of services;
 - d) Review and revise, as appropriate, any established case plan for Tribal families;
 - e) Review adherence to and compliance with this agreement and review new cases;
 - f) Minutes must be kept; the Polk County Department of Human Services and Tribe's Indian Child Welfare Department shall jointly provide input to their respective governments; the Tribe may attend the Polk County public hearings on the Human Services budget and attend the Human Services Board meeting with follow-up at the budget presentation meeting. Polk County Department of Human Services may participate in an annual program report to the Tribal Governing Board.
 - g) Perform any and all other functions mutually agreed upon by the social services staff of the parties.
- 4) **Protective Services Investigations.** It is mutually understood and agreed by the parties hereto that the following procedures shall be exclusively utilized in the investigation of matters concerning the possible existence of child abuse and/or neglect involving a child residing on the Tribe's Reservation:
- a) 24-Hour Availability. The County shall provide 24 hour availability of staff for conducting emergency investigations as the Tribe currently does not have a 24 hour ICW Department. In the event of emergency placements, the Tribe's Indian Child Welfare Department shall be contacted by the County as soon as possible following such placement. Investigations shall then be conducted jointly pursuant to section 4.b.
 - b) Joint Investigation. It shall be the priority of the parties to conduct joint protective services investigations, unless such investigation is not practicable after diligent attempts to contact the other party compatible with the nature and time constraints of appropriate investigation. Joint investigations shall not be required where the Tribe investigates a complaint of neglect under provision 4(g) of this agreement which does not meet the definition of neglect contained in Sec. 48.981(1)(d), Wis. Stats. When the Tribe investigates a complaint, the Tribe shall provide the County with all case worker summaries related to the investigation as soon as possible after completion. The County shall provide written findings to the other party within sixty (60) days of investigation by the WISACWIS electronic reporting document and send a copy to the Tribe.

- c) Child Welfare Complaint Received by County. Upon receipt of a child welfare complaint of suspected child abuse or neglect, indicating that a child may be a "minor-in-need-of-care", the County shall immediately contact the Tribe. The parties shall thereafter determine the mechanism by which an investigation in accordance with sec. 48.981, Wis. Stats., shall proceed.
 - d) Immediate Danger: Unavailability. If either party cannot be contacted after all reasonable efforts have been made, and the party is in receipt of information which gives cause to believe that a child may be in immediate danger, the County shall proceed to investigate under the provisions of sec. 48.981, Wis. Stats., and the Tribe shall continue to investigate under the Tribe's Children's Code. Notice of cause to believe that the child is in immediate danger shall be conveyed to the other party as soon as practicable, and shall in no event be conveyed more than 24 hours thereafter, excluding weekends and holidays. The investigating party or parties shall, within five working days of referral, provide to the other party, written findings, including the intake form and protective plan.
 - e) Non-Emergency; Unavailability. If either party cannot be contacted after all reasonable efforts have been made, and the party is in receipt of intake information which gives cause to believe that a child may be a "child-in-need-of-care", that party shall proceed to investigate the child's circumstances. The written initial intake findings of such an investigation shall be conveyed to the other party as soon as practicable, and shall in no event be conveyed more than 72 hours thereafter, excluding weekends and holidays.
 - f) Abuse or Neglect Complaint Received by Tribe. The Tribe shall immediately, upon receipt of complaint, inform the County of all complaints alleging abuse or neglect of a child. The parties shall thereafter determine the mechanism by which an investigation in accordance with sec. 48.981, Wis. Stats., shall proceed.
 - g) Child Welfare Complaint Received by Tribe. The Tribe may request the assistance of the County in investigation of any child welfare cases. When the matter being investigated does not meet the statutory definition of abuse or neglect, the parties acknowledge that tribal customs govern the determination.
- 5) **Standards for Conducting Protective Services Investigations.** It is mutually understood and agreed by the parties that the actions of the County under Section 4, above, are subject to the requirements of sec. 48.981, Wis. Stats., and the State/County contract. The County shall complete a WISACWIS electronic reporting form on all cases reported or referred to it by the Tribe.
- i) It is further mutually understood and agreed that the actions of the Tribe under Section 4, above, are subject to the provisions of the St. Croix Tribal Court Code and the Tribal Children's Court Code. The Tribe further agrees to assist the County in complying with the applicable state law.

- 6) **Tribal Court Orders.** It shall be agreed that the Tribal Court order for each case will specify the following (said orders shall be issued within ten (10) calendar days of removal of child):
- a) Continued placement of the child in his or her home would be contrary to the welfare of the child.
 - b) Reasonable efforts to prevent the removal of the child from the home were made or that reasonable or active efforts were not possible prior to the removal of the child from his or her home and must be made no later than sixty (60) days from the date of the child's removal from home.
 - c) At Tribal Court Judicial Status Review hearings, which shall occur at least once every 12 months, the Tribal Court shall make findings that reasonable efforts were made to achieve the goal of the child's permanency plan, unless the return of the child to the home is not the goal of the permanency plan because any of the circumstances specified in Wis. Stat. 48.355 (2d)(b) 1.-5., or comparable St. Croix Children's Code section apply.
 - d) The Tribal Court shall forward to the Agency Designee of Polk County Human Services copies of petition, court notice, court order and pre-dispositional report. Indian Child Welfare Department shall forward to the County copies of the permanency plan, and independent living plan.
 - e) All findings in Tribal Court Orders must be specific to the child and document with specificity upon what information those findings are made.
- 7) **Emergency Placement by County.** In the event that a protective services investigation is performed by the County under the circumstances specified in Section 4, above, and further, that such investigation reveals that a child is in immediate danger from his or her surroundings, the County may remove said child and place him or her temporarily in accordance with the placement provisions of the Indian Child Welfare Act, 25 U.S.C. Sec. 1915(b):
- a) a member of the Indian child's extended family; or
 - b) a foster home licensed, approved, or specified by the Indian child's Tribe; or
 - c) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
 - d) an institution for children approved by an Indian Tribe or operated by an Indian Organization which has a program suitable to meet the Indian child's needs.
 - e) The County further agrees to inform the Tribe of any such emergency placement no more than 24 hours thereafter, excluding weekends and holidays.
- 8) **Placements by Tribe.**
- a) Other than emergency placements made by the County as discussed above, all placements shall be made by the Tribe.
 - b) The Tribe may place with one of the following:
 - i) A member of the child's family; or,
 - ii) A foster home licensed by the Tribe
 - c) The following placement options may only be made with the express consent of the County's Program Manager or designee:
 - i) A foster home licensed by the County

- ii) A foster home licensed by a private agency (“treatment” foster homes);
- iii) A licensed group home;
- iv) A facility licensed to provide institutional care;
- d) The Tribe agrees to contact the Dept. of Health & Family Services Interstate Compact Office on the placement of children in cases where children are referred for tribal placement across state lines. The Tribe will work cooperatively with the County to assure Tribal children are afforded the protection through the compact.
- e) The County recognizes the Tribe’s sovereignty and agrees to accept the Tribe’s judgment as to the appropriateness of placement and availability of resources in cases where the compact is employed.

9) **Requisites of Tribal Monitoring of Out-of-Home Placements.** In monitoring and providing services to children who have been placed elsewhere than the home of their parent or "relative", the Tribe shall appoint a case manager and shall establish and carry out the following procedures:

a) **Permanency Plan.** A permanency plan for each child in out-of-home placement shall be established which conforms to the provisions of sec. 48.38(4), Wis. Stats. The Tribe shall provide a copy of said plan to the County within sixty (60) days after the child’s removal from home, if the permanency plan is not included in the pre-dispositional report.

i) A Judicial hearing shall be held every year and a judicial status review or an administrative review shall be held within every six months of the judicial hearing. The conduct of the judicial review or administrative review shall conform to the provisions Tribe’s Children's Code and Wisconsin Statutes relating to permanency planning. The County shall be provided a copy of the original petition upon which the case is based at the same time it is filed with the Tribal Court. The Tribal Court will furnish the County with any notice of hearing which is issued and a copy of any order resulting from said hearing with the statutory provisions related to permanency planning.

ii) In the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under the Tribe’s law) or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter 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, the Tribe shall file a petition to terminate the parental rights of the child’s parents unless--

(1) the child is being cared for by a relative;

(2) the Tribe has documented in the court report a compelling reason for determining that filing such a petition is not in the best interests of the child; or

(3) the Tribe or such other agency as is primarily responsible for providing services to the child and the family has not provided to the family of the child,

consistent with the time period in the child's permanency plan, such services necessary for the safe return of the child to the child's home, if reasonable efforts are required by the court order or permanency plan.

- b) In all out of home placements a face to face contact with the child by the case worker shall take place every thirty days. Whenever a Tribal ICW worker makes contacts the worker's contacts shall be documented and sent to Polk County for input into WISACWIS. The Tribe shall provide this service for tribal children placed in a tribal licensed facility.

10) **Notice to County of Tribal Placements.**

- a) The Tribe further agrees to notify the County's Department of Human Services within 48 hours of making any out-of-home placement of a child, and to provide written notice of such placement within five (5) days thereafter.
- b) When the Tribe provides the Tribal Court with notice of change in placement a copy of said notice shall be sent to the County.
- c) The Tribe will similarly notify the County of the termination of any out-of-home placement. Included in the written notice, when a non-relative placement is made or terminated by an order of the Tribal Court, shall be a copy of the Court's order.

11) **Funding for Out-of-Home Placements Made by Tribe.** Payment by the County for the care and support of Indian children placed by the Tribe in homes other than those of the parent or custodian shall be made in the following circumstances:

- a) Placement with Relative. The Tribal agency shall make Kinship Care payments for children placed by the Tribe with a relative of said children.
- b) Placement in Foster Home. The County shall make foster care payments for children placed by the Tribe in the licensed foster home, when such placement is pursuant to an order of the Tribal Court in a "child-in-need-of-care" proceeding.
- c) Financial Eligibility. Payment by the County pursuant to this section shall apply only to those children placed by the Tribe who do not have the financial resources with which to pay for such care, and who meet the eligibility criteria of federal and Wisconsin law. The Tribal Court may determine the financial ability of the child's parent or other legally responsible person to contribute to the child's support. The Tribe may refer collections of child support to the County. Polk County shall receive a copy of the court order.
- d) Documentation Required for Payment. No funds will be expended by the County for the care of children placed by the Tribe for which case and permanency plans have not been provided within the time periods specified herein, above, or for which a copy of a required order of the Tribal Court is not provided.

- e) In an emergency out of home placement by the Tribe, to reimburse the foster parents a Polk County juvenile intake worker must make a written determination, with copies to the Tribe, that the out of home placement meets the standards set forth in Wis. Stat. 48.205 or 938.205.
- 12) **Financial Limitations on Funding.** It is mutually understood and agreed that payment for placement under section 11, above, is subject to the following conditions.
- a) Foster Care Payment. Payment by the County for placement of a child by the Tribe in a foster home pursuant to this Agreement is contingent upon available federal, state and County funds. Payment is also contingent upon the child being a resident of the County. The County will inform the Tribe of the status of all funds available for tribal foster placement at the outset of each year, and no less frequently than once each quarter thereafter.
 - b) Group Home and Institutional Foster Care. It is further understood by the parties to this agreement that payment will be made by the County for placements made by the Tribe in a group home or institution only upon mutual consent of the Tribe and County to such placement.
 - c) County Fund Limit. It is further understood that the County commits no funds for out-of-home placement payments other than those that would be available were the out-of-home placement made by the Circuit Court.
- 13) **Amount of Financial Support Available to Caretakers.** The parties understand and agree that any and all payments made by the County under this Agreement, shall be in the amount determined by Wisconsin payment guidelines, as such are established from time to time and also as determined by supplemental and exceptional guidelines as determined by the County worker.
- 14) **Procedural Requisites for Tribal Out-of-Home Placements.** It is mutually understood and agreed that out-of-home placements made by the Tribe, and for which the County is providing financial support, shall be subject to the following administrative prerequisites:
- a) Case Record. The Tribe shall establish a case record.
 - b) Dispositional Report. The Tribe's ICW Department shall file with the Tribal Court a written report, a copy of which shall also be provide to the County, supporting the following findings to be made by the Tribal Court:
 - i) That the child required to be placed is a "minor-in-need-of-care";
 - ii) Continued placement of the child in his or her home would be contrary to the welfare of the child.
 - iii) Reasonable efforts to prevent the removal of the child from the home were made, or were not possible. If reasonable efforts were not possible, the Report needs to provide the specific circumstances that made such efforts not possible.
 - iv) Reasonable efforts were made to achieve the goal of the child's permanency plan.

- 15) **Information Cooperation and Consultation.** It is further mutually agreed that the following types of information will be provided by each party to the other, as circumstances arise:
- a) Licensed Foster Homes. The parties shall furnish to each other a complete list of all licensed foster homes, and a copy of the license issued to each foster home, a copy of the foster home application, the foster home study, and criminal background checks, and shall update such listing as is necessary in order to maintain its currency.
 - b) Indian Child Welfare Act Notices. The County shall furnish all notices of the Polk County Court to the Tribe which are required by the provisions of the Indian Child Welfare Act, 25 U.S.C. Sec. 1912.
 - c) License Revocation. The parties shall furnish to each other written notice of any revocation of a license issued to a foster home, and the effective date of such revocation.
- 16) **Confidentiality.** It is mutually understood and agreed that all information concerning child custody proceedings shall be kept confidential, and that such information shall be revealed, to the extent not prohibited by applicable Tribal, federal or Wisconsin law, only to those persons who require such information in order to exercise rights secured by the Indian Child Welfare Act or recognized by this agreement.
- 17) **Contact Persons.** All notices or contacts required by this agreement to be provided to the Tribe shall be directed to the Director of the Tribe's Indian Child Welfare Department. All notices or contacts required under this agreement to be provided to the County shall be directed to the Agency Designee of the County's Health and Human Services.
- a) Indian Child Welfare Director
24663 Angeline Avenue
Webster, WI 54893
(715) 349-2195
 - b) Polk County Human Services Department
Attn: Program Director
100 Polk County Plaza
Balsam Lake, WI 54810
(715) 485-8400
- 18) **Full Faith and Credit.** Pursuant to 25 U.S.C. § 1911(d), The County accords full faith and credit to public acts, records and judicial proceedings of any other entity.
- 19) **Jurisdiction and Resulting Responsibilities.** It is mutually understood that the Tribe has exclusive court jurisdiction of all child custody proceedings, pursuant to its resumption of said jurisdiction under the procedure established in the Indian Child Welfare Act, 25 U.S.C. Sec. 1918. The County recognizes the Tribe's sovereignty and agrees to accept the Tribe's judgment as to the appropriateness of placement, subject to availability of resources. The County will afford full faith and credit to Tribal Court Orders.

20) Modification and Term Agreement.

- a) Modification. This agreement may be modified as mutually agreed upon by the parties, and such modification may be initiated by either party.
- b) Term. The term of this agreement shall be for one (1) year, which shall begin on January 1, 2014 and ending on December 31, 2014. The agreement may be extended thereafter by mutual agreement of the parties for a term not exceeding one (1) year at a time.

ST. CROIX CHIPPEWA INDIANS OF WISCONSIN

Dated: 5-6-14 By: [Signature]
Chairperson
St. Croix Tribe

POLK COUNTY

Dated: 07.28.2014 By: [Signature]
William F. Johnson, IV, Chairperson
Polk County Board of Supervisors

INDIAN CHILD WELFARE DEPARTMENT

Dated: May 6, 2014 By: [Signature]
Director

POLK COUNTY HUMAN SERVICES

Dated: _____ By: _____
Kay Confer
Program Manager

ACKNOWLEDGED AND REVIEWED:

Indian Child Welfare, Consultant
Division of Safety and Permanent
Wisconsin Department of Children and Families

STATE OF WISCONSIN)
)ss
COUNTY OF POLK)

I, Carole T. Wondra, Clerk for Polk County, do hereby certify that the attached is a true and correct copy of Resolution No. 19-14, that was adopted by the Polk County Board of Supervisors on June 17, 2014.

Carole T. Wondra 6-19-14
Carole T. Wondra Date
Polk County Clerk