#1162-17779

INTERGOVERNMENTAL AGREEMENT

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Between The

QUILEUTE TRIBE

And

THE WASHINGTON STATE

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

1. AUTHORITY

THIS AGREEMENT is entered into between the Quileute Tribe (hereafter Tribe) and the Washington State Department of Social and Health Services (hereafter Department or DSHS) pursuant to their respective governmental authorities. The Tribe is authorized to enter into this Agreement pursuant to CONST. AND BYLAWS OF THE QUILEUTE TRIBE, art. III, art. IV, §1(a), (j). The Department is authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, RCW 39.34, which permits any State agency to enter into a cooperative agreement with an Indian Tribe for their mutual advantage and cooperation.

RCW 74.08A.040 authorizes the State to coordinate and cooperate with eligible Indian Nations that elect to operate a Tribal TANF Program as provided for in Pub. L. 104-193 and 109-171 and to transfer a fair and equitable share of maintenance of effort funds (MOE) to the eligible Indian tribe.

Section 412 of the Social Security Act requires payment of federal TANF funds to Indian Nations with approved TANF plans. The Nation will provide services under its approved TANF plan in a manner that best serves the needs of its service area and population.

2. PURPOSE

It is the intention of the parties that this Agreement be liberally construed to effectuate its intent and purposes. The Tribe and the Department enter into this Agreement to:

- Transfer state maintenance of effort funds (MOE funds) from the Department to the Tribe.
- Work in partnership to coordinate state and tribal benefits and services.
- Recognize the government-to-government relationship between the tribes and the United States Government.

- Honor the tribes' inherent right to design and operate culturally relevant and appropriate programs on behalf of the population served.
- Increase the quality and efficiency of state and tribal benefits and services to Washington State Indian people and other eligible clients served by tribes.

3. DEFINITIONS

The Tribe and the Department agree to the following definitions for the purposes of this Agreement.

1. Federal and State MOE Requirements (MOE Requirement): All federal and state laws and regulations that pertain to a State's ability to classify funds as Maintenance of Effort (MOE). These requirements include, but are not limited to: 42 USC 601(a), 45 CFR 260.20, 42 USC 609(a)(7), 45 CFR 263, RCW 74.08A.040, OMB Circulars A-87 and A-133, and 45 CFR 92.
2. Retrocession: The process by which an Indian nation voluntarily terminates and cedes back (or returns) a tribal TANF program to the appropriate state and federal entities, consistent with federal regulations. Retrocession includes the voluntary relinquishment of the authority to obligate or spend previously awarded state and federal funds before that authority otherwise expires.
3. State Maintenance of Effort Funds (MOE): Federally required expenditures of State funds in programs which fulfill specific Federal requirements and which serve TANF eligible families. Available DSHS MOE funding can be found in the enacted budgets.
4. TANF (Temporary Assistance for Needy Families): a program authorized by the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) (Pub. L. 104-193), reauthorized under the Deficit Reduction Act of 2005 (DRA) (Pub. L. 109-171), and codified in Title IV-A of the Social Security Act, operated by states and Indian nations to provide financial assistance and employment and training services to eligible, needy families.
5. TFAP (Tribal Family Assistance Plan): Means the plan for implementation of the Tribal TANF program under Section 412(b) of the Social Security Act.
6. Tribal TANF Program: Means a TANF program developed by an eligible Indian Nation, or consortium of Nations, and approved by the Administration for Children and Families under Section 412 of the Social Security Act.
7. WorkFirst: The state's welfare reform program which provides support services and activities to TANF recipients and low-income families so they can find jobs, keep jobs, and become self-sufficient.
8. HHS: United States, Department of Health and Human Services.
9. Annual Report means a report consisting of all information, including and operational and financial information, required by federal and/or state law for the

contracted services and funds included in this Agreement or in subsequent amendments to this Agreement.

10. Client: means an individual, or family, that is eligible for services under the terms of this Agreement.

11. General Terms and Conditions (GT&Cs): means the current "DSHS and Indian Nation Agreement on General Terms and Conditions" in effect between the Parties.

12. Intergovernmental TANF Agreement, (IGA), or Agreement: means this Agreement between the Tribe and the Department.

13. Monitoring: includes any planned and ongoing or periodic activity that measures and ensures the Tribe's compliance with the terms, conditions and requirements of this Agreement and subsequently approved Tribal Services Plan.

14. Parties: means the Quileute Tribe and DSHS, who are the Parties to this Agreement.

15. Program Agreement: means any DSHS Indian Nation Program Agreement; Interagency Agreement; Indian Nation Intergovernmental Work Order; or Core Provider Agreement in effect between the Quileute Tribe and DSHS.

16. Single Point of Contact: means the DSHS office designated by the Department and the tribal office designated by the Tribe to facilitate the flow of operational information, about this Agreement, between the tribe and the Department.

17. Statute: means any federal, tribal or state law now in existence or any successor, amended or replacement law.

4. REFERENCED AGREEMENTS

The Indian Nation and DSHS Agreement Regarding General Terms and Conditions (GT&Cs), currently in effect between the Parties, is incorporated into this Intergovernmental TANF Agreement by reference, except where this Agreement differs from the GT&Cs.

Performance Plan and Budget attached and incorporated as Exhibit "A".

5. TFAP AND SERVICE POPULATION

1. The Quileute Tribe has an HHS approved Tribal Family Assistance Plan (TFAP), which is incorporated into this Agreement by reference. The TFAP is effective from 5/1/2010 to 4/30/2013

2. Consistent with its federally approved TFAP, the Tribe agrees to continue to serve all Indian families residing in the Forks CSO service areas with the exception of those residing on the Quinault, Makah and Hoh Reservations as well as excluding all

Hoh tribal members. The Tribe's TFAP specifically includes all Indian families residing on the Quileute Reservation.

3. The Department and the Tribe determined that there were 150.6 Indian families receiving public assistance benefits in 1994, based on the Tribe's identified service population as identified in their TFAP.

4. The Tribe has received federal approval of their TFAP indicating that they have complied with the requirements of the federal policy (TANF-ACF-PI-05-03, May 11, 2005 Program Instruction) relating to serving Indian families on or near the reservation service areas, including the policy provisions relating to notification of other Nations with overlapping near reservation areas.

6. TRANSFER OF STATE FUNDING

1. For purposes of this Agreement, the state fiscal year is July 1 to June 30.

2. Subject to availability of State MOE funds, and the provisions of Section 7, subsection 1, the Department agrees to transfer to the Tribe for the period January 1, 2011 to April 30, 2013, up to the amount of $1,043,124 in State MOE funds. Payments will be made in accordance with the State MOE Payment and Reporting Schedule, Exhibit B, attached and incorporated.

3. The Department agrees to pay the annual MOE amounts to the Tribe in State Fiscal Year lump sum annual payments, after the receipt and acceptance by the Department of the completed A-19 Invoice Voucher and receipt and acceptance of the reports required under Section 7 of the IGA. Payment shall be considered timely if made by the Department within thirty (30) calendar days after receipt of the properly completed A-19 and reports.

4. The Department agrees to timely review submitted A-19s and timely inform the Tribe regarding any missing information or documentation.

5. For each SFY's payment, the Tribe may submit an A-19 invoice voucher and required reports as early as July 1 of the SFY for which the Tribe is requesting payment. However, each annual A-19 must be submitted no later than thirty (30) days after the end of the requested reimbursement state fiscal year. Annual A-19s submitted to the Department after these dates shall not be paid, unless authorized by the Secretary of the Department.

6. If there are significant legislative changes impacting either Party, each reserves the right to renegotiate this Agreement.

7. The Tribe will not charge the Department for services if the Tribe has charged or will charge the State of Washington or any other party, under any other contract or agreement, for the same services.

8. The Department will notify the Tribe of any projected or anticipated budget increase or decrease that affects any program or service contained in its TFAP. This

includes one time surplus funding that could be obligated for unmet needs in services and program development.

7. REPORTING AND REDISTRIBUTION OF FUNDS

1. For each state fiscal year (SFY), if the Tribe does not spend MOE funds in an amount equal to the MOE funding awarded for this annual period, the difference between the amount awarded and the amount spent will be subtracted from the MOE funding awarded to the Tribe for the next SFY(s).

2. The Parties acknowledge that if additional reporting requirements are imposed on the state that necessitates additional reporting by the Tribe, the Tribe will submit additional reports upon reasonable notice of the requirement.

3. The Parties agree that, at a minimum, the report will contain all information, including operational and financial information, required by applicable Federal and/or State law for the Tribal TANF program or in subsequent amendments to the Tribe's TFAP or to this Agreement.

4. Each Party will communicate with the Single Point of Contact identified by the other Party in this Agreement to discuss reporting or other issues relative to this Agreement.

5. Program related communications may continue among program personnel and need not go through the Single Point of Contact.

6. The Department's use of information contained in tribal reports is strictly limited to the purposes for which the reports were required. Unless approved by the Tribe in writing, the Department will not use tribal information or data in any manner other than the purposes for which the reports were required.

7. The Tribe shall maintain all accounting records in accordance with government requirements and generally accepted accounting principles, and all transactions will be made in compliance with federal OMB circulars A-87 and A-133.

8. The Tribe shall furnish an electronic copy of the executive summary of the Tribe's most recent annual A-133 Single Audit Report within 30 days of the Tribe's submission of the report to the federal government. The copy shall be provided to:the Department of Social and Health Services single point of contact.

<u>State MOE Funds and Caseload</u>

9. The Tribe agrees to provide timely and complete quarterly reports regarding its expenditure of State MOE funds and the number of eligible families served with these funds to the Department. The Department agrees to timely review submitted reports and timely inform the Tribe regarding any missing information or documentation.

10. MOE and caseload reports from the Tribe are mandatory to meet state reporting requirements regarding the use of State MOE funds, as outlined in the November 27,

2000 TANF Policy Announcement (TANF-ACF-PA-00-4) issued by the United States HHS, and incorporated by reference.

11. To report the number of families served, the Tribe will complete and submit Quarterly to the Department reporting form, "WA-TT-CR-01", which is attached and incorporated as Exhibit "C". The WA-TT-CR-01 form will be submitted within 40 days after of the end of each quarter of the federal fiscal year – i.e. by November 10th, February 10th, May 10th and August 10th.

12. To report the State MOE funds expended the Tribe will complete and submit quarterly to the Department reporting form ACF-196T Tribal TANF Financial Report Form, which is attached and incorporated as Exhibit "D". The ACF-196T reporting form will be submitted within 40 days after of the end of each quarter of the federal fiscal year – i.e. by November 10th, February 10th, May 10th and August 10th.

13. Any funds received by the Tribe under this Agreement shall remain subject to the reporting requirements of this section at all times, notwithstanding the termination, withholding, reduction, or conclusion of the funding period provided under this Agreement. To the extent that the Tribe retains and spends any funds subsequent to the termination or conclusion of the funding period under this Agreement, the Tribe shall submit all required reports no later than 40 days after the end of the calendar quarter in which State MOE funds are expended.

Peformance Measure Data

14. To report the agreed upon performance measure data the Tribe shall:

The Tribe and the Department have agreed to the measures that the Tribe will report to the Department. The performance measures are listed below and described in incorporated Exhibit F.

15. The performance measure data will be submitted within 40 days after the end of each quarter of the federal fiscal year – i.e. by November 10th, February 10th, May 10th and August 10th.

8. RESPONSIBILITIES OF THE QUILEUTE TRIBE

1. The Quileute Tribe has designated the following party as its Single Point of Contact for communication regarding operational and financial elements of this Agreement: Quileute TANF Coordinator

2. The Tribe shall provide services as described in its current Tribal Family Assistance Plan (TFAP). Services provided, as well as Tribal program and fiscal management, shall conform to applicable federal, tribal and/or state laws and regulations.

3. The Tribe shall comply with all applicable federal and state laws and regulations and OMB circulars governing the use of state MOE funds.

4. Consistent with its federally approved TFAP, the Tribe shall make the final determination of tribal membership of families applying for Tribal TANF services. The

Tribe shall also determine whether such families meet the eligibility criteria for Tribal TANF services.

5. Prior to the end of the period covered by the Tribe's current and approved TFAP the Tribe will submit its new TFAP and an official request for a fiscal amendment for State MOE funds for the next period to the Department.

9. RESPONSIBILITIES OF THE DEPARTMENT

1. The Department has designated the following party as its Single Point of Contact for communication regarding operational and financial elements of this agreement.

   Tribal Relations Program Administrator – TANF
   State Tribal Relations Unit
   Community Services Division
   Economic Security Administration
   DSHS
   P.O. Box 45857
   Olympia, WA 98504-5857
   Tel. (360) 725-4656

2. The Department shall promptly respond on a case-by-case basis to any written request by the Tribe regarding the Tribe's eligibility to access any newly funded services.

3. The Department shall promote good faith efforts to continue the education and training of staff and contractors about tribal governments.

4. When requested by the Tribe, the Department will support the Tribe in its efforts to obtain waivers of regulatory requirements associated with the services in its TFAP.

5. The Department shall honor tribal law that meets or exceeds the requirements set forth in federal or state law as it pertains to this Agreement.

   Compliance Testing

   a. The Department may test compliance with the terms of this Agreement in a combination of ways, including but not limited to:

      i. Review of an Annual Report submitted by the Tribe to the Department
      ii. Review of the executive summary from the Tribe's federal Single Audit Act report.

   b. The Department will provide at least thirty (30) calendar days notice to the Tribe prior to any on-site inspection and, at the request of the Tribe, consider cultural or tribal activities that might take precedence when scheduling on-site visits.

10. IMPLEMENTATION AGREEMENTS

1. The Department and the Tribe shall complete (or update) an Operating Agreement describing the working relationship between the Department of Social and Health Services Region 6 and the Tribe, including procedures for the effective transfer of cases and coordination of services that shall be performed by each party.

2. This Operating Agreement shall also include provisions to ensure that a family receiving assistance under the Tribe's TFAP may not receive assistance from another state or tribal TANF program.

3. The Department shall work in cooperation with the Tribe to provide Tribal TANF recipients with access to Basic Food (Food Stamps), Medical Assistance, and Working Connections Child Care benefits for all recipients who meet the State's eligibility criteria. Child care policy is now set by the new Department of Early Learning (DEL) which is a separate agency from DSHS.

4. The Tribe does not have its own Title IV-D child support program.

5. To provide for the transfer of information on tribal family cases and for the ongoing coordination of services for these families, the Department and the Tribe will sign a data share agreement as a condition of receiving State MOE funds under this Agreement.

11. LIABILITY OF TRIBE FOR FAILURE TO COMPLY WITH FEDERAL AND STATE MOE REQUIREMENTS

Where the Tribe expends funds in a manner inconsistent with federal and state MOE requirements or cannot demonstrate that it spent funds consistent with State MOE requirements, the Tribe shall be liable to the Department in an amount equal to such funds as were improperly expended or are unaccounted for.

12. FUNDING REMEDIES

The Department maintains, upon 30 days' written notice stating the reason for the exercise of a funding remedy, the authority to suspend, withhold, and reduce funding under this Agreement for the following reasons:

1) The Tribe does not provide the Department with reports required under this Agreement in a timely fashion;

2) Reports provided by the Tribe lack required information;

3) The Department has a reasonable basis to believe that the Tribe is spending or has spent funds provided under this Agreement inconsistent with federal and state MOE requirements;

4) The Tribe is unable to timely demonstrate that it spent funds under this agreement consistent with federal and state MOE requirements;

5) An A-133 audit or federal site visit concludes that the Tribe is either misusing federal funds, cannot properly document that expenditures were proper, or is out of compliance with federal TANF requirements; or

6) The Tribe otherwise does not comply with the terms and conditions of this Agreement.

If the Tribe wishes to contest Department action taken under Sections 11 or 12, it may do so by utilizing the dispute resolution process described in Section 13. Action taken under Section 11 or 12 shall be suspended pending the outcome of the dispute resolution process described in Section 13.

13. CONFLICT RESOLUTION

1. The Parties agree to work cooperatively to accomplish all of the terms of this Agreement, however, acknowledge that there may be instances in which either the Tribe or the Department has not complied with the conditions of this Agreement or that clarification is necessary to interpret provisions of this Agreement. In such an instance, the Tribe and the Department shall attempt to resolve the matter through discussions. If unsuccessful, the Tribe and the Department agree to refer the matter to non-binding mediation.

2. Either Party may request that a mediator be selected to assist in resolving any conflict or dispute. The mediator shall be jointly selected and shall be approved by both the Tribe and the Department. The cost of a mediator shall be born equally by the Tribe and the Department, with neither Party using funds dedicated for the programs or services contained in this Agreement.

3. If the mediator cannot resolve the conflict or dispute then the issue shall be brought before a Disputes Board. The Disputes Board shall consist of three (3) individuals; one (1) selected by the Tribe, one (1) selected by the Department and a third party to be chosen by the first two. The Disputes Board shall review all issues, concerns and conflicts with a goal to determine acceptable solutions for both parties. The decisions of the Disputes Board shall be final and binding on both parties.

4. For the purposes of the agreement this provision supersedes Section 8, Disputes, contained in the current "DSHS and Indian Nation Agreement on General Terms and Conditions."

5. Nothing in this Section is, or shall be deemed to be, a waiver of the Quileute Tribe's sovereign immunity to an action in any administrative or legal forum or to the payment to the State of any funds owned, held, or administered by the Quileute Tribe, other than State MOE funds transferred under this Agreement.

14. AMENDMENT, WAIVER AND TERMINATION

1. This Agreement or any provision may be altered, amended, or waived only by written agreement signed by both Parties. The Parties may use the Amendment form attached and incorporated as Exhibit "E" to amendment this Agreement. The Parties acknowledge that the Department has published the TRIBAL-STATE MOE PARTICIPATION PARTNERSHIP PLAN IN TRIBAL TANF, which, although not binding on the Tribe, may be referenced for guidance in negotiating amendments of this Agreement.

2. For this Agreement, either Party may terminate the Agreement by giving the other Party forty-five (45) calendar days' written notice.

3. Termination under this Agreement is the termination of funding, which means the Department's obligation to provide future payments of state MOE funds under Exhibit B and the Tribe's obligation to provide services with the future MOE funds.

4. This section applies if the Tribe continues to receive federal funding and operates a Tribal TANF Program. If the Tribe terminates both federal and state funding and their entire Tribal TANF Program, then it is a retrocession covered under Section 16.

15. CONTINUING ENFORCEABILITY

This Agreement shall remain enforceable until the last A-133 audit of the funding is satisfactorily resolved.

16. RETROCESSION

If the Tribe chooses to retrocede its Tribal TANF program prior to the end of its three-year plan, it agrees to provide the Department with notification at the same time that it notifies the Secretary of HHS. All future scheduled State funded payments shall be discontinued and any State MOE funds not expended or obligated on Tribal TANF activities as of the retrocession date shall be returned to the Department within forty-five (45) calendar days of the retrocession date.

17. TERM

THIS AGREEMENT shall become effective January 1, 2011 and end on April 30, 2013, unless extended or terminated prior to that date, as provided herein.

18. SURVIVABILITY.

The terms and conditions contained in this Agreement that by their sense and context are intended to survive the expiration or termination of this Agreement shall so survive.

19. EXECUTION

THE FOLLOWING REPRESENTATIVES, by virtue of their respective representative capacities hereby approve this Agreement as affirmed by their signatures below.

Date 12-20-2010

Anna Rose Counsell-Geyer
Chairperson
Quileute Tribe

Date 1/7/11

Susan N. Dreyfus
Secretary
Department of Social & Health Services

Date 1/4/11

Troy Hutson
Assistant Secretary
Economic Services Administration