

COOPERATIVE AGREEMENT

between

THE STATE OF OREGON

DEPARTMENT OF HUMAN SERVICES

OFFICE OF VOCATIONAL REHABILITATION SERVICES

and

THE CONFEDERATED TRIBES OF WARM SPRINGS

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This Agreement is between the Oregon Department of Human Services, Office of Vocational Rehabilitation Services, hereinafter called "the State," and the Confederated Tribes of Warm Springs, hereinafter called "the Confederated Tribes."

I. LEGAL AUTHORITY

P.L. 105-220, Title IV, Rehabilitation Act of 1973 as amended by the Rehabilitation Act of 1998 (sections 101,102 and 121); ORS 190.110 and 344.530.

II. DEFINITIONS

The State and the Confederated Tribes agree to the following definitions for the purposes of this Agreement:

- A. American Indian: An individual who is a member of and enrolled in a federally recognized tribe, i.e., Federal or State Indian Band, Rancheria, Pueblo, Colony and Community including any Alaskan Native Village or Regional Village Corporation.
- B. Concurrent Services: Both the State and the Confederated Tribes providing different services to the same client at the same time.
- C. Courtesy Supervision: A counselor providing a point of contact locally for a client, when a client relocates for schooling, employment etc.

- D. **Enrolled Member:** Any individual who is enrolled as a member of the Warm Springs Confederated Tribes or any other federally recognized American Indian Tribe.
- E. **Indian Tribe or Tribe:** Any Federally recognized American Indian Band, Rancheria, Pueblo, Colony, Community of Regional Village.
- F. **IPE:** Individualized Plan for Employment as defined in the Rehabilitation Act.
- G. **Joint Counselors:** The primary counselors from each vocational rehabilitation program when a client is receiving services from both programs.
- H. **OVRS:** Office of Vocational Rehabilitation Services of the State of Oregon.
- I. **Primary Counselor:** The Vocational Rehabilitation Counselor responsible for the development of the client's original IPE, if not developed jointly.
- J. **The Rehabilitation Act:** The Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et.seq,
- K. **Rehabilitation Services:** Those services to applicants and eligible individuals of WSVRP or OVRS as defined in the Rehabilitation Act.
- L. **Reservation:** The Warm Springs Reservation.
- M. **Tribal Governing Body:** Those duly elected or appointed representatives of the Confederated Tribes of Warm Springs. The representatives must have authority to enter into contracts, agreements, and grants on behalf of their constituency.
- N. **WSVRP:** A vocational rehabilitation program as authorized in Section 121 of the Rehabilitation Act (amended 1998) and established within the Human Services Division of the Confederated Tribes of Warm Springs known as the Warm Springs Vocational Rehabilitation Program shall be inclusive of the reservation including an area 65 aerial miles beyond the boundaries of the Confederated Tribes of Warm Springs .

III. PURPOSE

To implement and maintain a cooperative system for providing vocational rehabilitation services to enrolled members of the Confederated Tribes of the Warm Springs Reservation of Oregon, members living off the reservation, and other American Indians with disabilities who reside within the service boundaries of the Warm Springs Reservation. This Agreement is implemented for: 1) the purpose of enhancing, to the greatest extent possible, the ability to provide efficient and effective vocational rehabilitation services to eligible enrolled American Indians residing within the service boundaries of the Warm Springs Reservation; 2) to facilitate cultural awareness and improve professional skills among staff; and 3) to establish the working relationship between the Confederated Tribes and the State in the implementation of WSVRP services.

IV. TERM

This Agreement shall become effective [1/18/2017], or on a date at which every party has signed this Agreement, whichever date is later. This Agreement shall terminate on September 30, 2019, unless otherwise extended or terminated prior to that date.

V. ELEMENTS OF THE AGREEMENT

A. Both parties agree that:

1. The Confederated Tribes of the Warm Springs is a federally recognized Indian Tribe. The Warm Springs Reservation was established by the 1855 Treaty of Middle Oregon, federal 12 statute 963.
2. For the purposes of this Agreement, the Governing Body of the Confederated Tribes of Warm Springs is the Tribal Council AND the Individual(s) signing this Agreement certify that they have been granted the authority to act on behalf of the Confederated Tribes by the Governing Body.
3. The State has the responsibility to serve eligible residents of the State of Oregon. For the purposes of this Agreement, the Confederated Tribes will provide vocational rehabilitation services to eligible American Indians living within the service boundaries of the Warm Springs Reservation who are members of any federally recognized tribe. The State has primary responsibility to serve individuals living within the Reservation who are not enrolled members of a federally recognized tribe or American Indians who are members of a federally recognized tribe living outside the service boundaries of the Confederated Tribes. Any individuals for whom the State does not have primary responsibility under this Agreement may still choose to seek services from the State instead of the Confederated Tribes.
4. The State and the Confederated Tribes may concurrently provide vocational rehabilitation services to any American Indian who is a member of any federally recognized tribe within the service boundaries of the Warm Springs Reservation or whose primary residence is within the State of Oregon, as the State and the Confederated Tribes mutually deem appropriate. When the State and the WSVRP concurrently provide vocational rehabilitation services, each case file shall contain the IPE of both the State and the WSVRP: Concurrent provision of services shall be based upon evidence that substantial non-duplicated service(s) from both agencies are necessary to achieve a successful outcome.
5. When the State and the Confederated Tribes provide vocational rehabilitation services concurrently, in accordance with paragraph 4 above:

- a. The State and the Confederated Tribes will make independent determinations of eligibility for their respective vocational rehabilitation programs.
 - b. Concurrent IPEs shall be cooperatively developed and recorded with each agency. IPE amendments may be made by either agency so long as it is shared and does not duplicate the services being provided by the other agency.
 - c. In developing an IPE, the counselor(s) of record may consider cultural issues based on information provided by persons who are recognized by the Confederated Tribes as knowledgeable in Tribal Customs of the American Indian client's Tribe.
 - d. The counselors of record for both the State and the Confederated Tribes will confer on a regular basis to review each case for the purpose of ensuring that IPE goals are being met and services are being coordinated to the benefit of the client.
 - e. When a service/action is being performed by one counselor of record, that counselor will ensure that the other counselor of record is notified in a timely manner.
6. The State and the Confederated Tribes will offer courtesy supervision within the scope of the Rehabilitation Act and this Agreement, upon request as needed, when OVRS/WSVRP eligible and enrolled American Indian clients relocate on or off the Warm Springs Reservation, to accomplish the objectives of their IPE. The counselor providing courtesy supervision has no authority to change authorized services, or the client's Individual Plan for Employment (IPE) as developed by the Primary Counselor.
 7. The State and the Confederated Tribes will adopt and implement measures which ensure that confidential data maintained in accordance with 34 CFR 361.35: protection, use, and release of personal information. The State and the Confederated Tribes will share information as necessary to prevent duplication of services, and staff of the State and the Confederated Tribes will inform clients that information is shared on a routine basis for this purpose.
 8. Encourage and make possible the participation of the State's staff in training regarding American Indian culture that will enhance the State's ability to provide culturally relevant services to American Indians.
 9. Encourage and make possible the participation of the Confederated Tribes' staff in training regarding vocational rehabilitation topics.

B. The Confederated Tribes Agrees to:

1. Consult with the State VR agencies on the State Plan and on the development of new State policies and procedures.
2. Refer to the State Vocational Rehabilitation agencies those persons who live within the Warm Springs Reservation boundaries, are not American Indians, and desire vocational rehabilitation services.
3. Refer to the State Vocational Rehabilitation agencies American Indians who claim to have disabilities and who are living near the Reservation, as they become known to WSVRP.
4. Meet with the State to coordinate and resolve any jurisdictional issues that may arise.
5. Assume primary responsibility for the case management for eligible American Indians residing within the Warm Springs Reservation.

C. The State Agrees to:

1. Consult on the Confederated Tribes Section 121 Funds reapplication to the United States Department of Education, Rehabilitation Services Administration for continued funding.
2. Cooperate in the provision of vocational rehabilitation services to all eligible American Indians who are members of any federally recognized tribe and live within the Warm Springs Reservation.
3. Inform all American Indians who are members of any federally recognized tribe and live within the Warm Springs Reservation of the services available from WSVRP and offer to refer them to that program.
4. Meet with the Confederated Tribes to coordinate and resolve any jurisdictional issues that may arise.
5. If the Confederated Tribes' federal funding is discontinued under Section 121, the State will consider, on a case-by-case basis, whether or not to continue the WSVRP client's IPE, based on the State's eligibility criteria and other policies effect at the time WSVRP's funding was discontinued.

VI. GENERAL TERMS OF THE AGREEMENT

- A. Termination: This Agreement may be terminated by mutual consent of both parties, or by either party upon 60 days' notice in writing.

- B. **Annual Meeting:** Director of the State and WSVRP administration will meet annually to review this Agreement and consider Amendments.
- C. **Consideration:** There is no monetary consideration under this Agreement. However, the parties acknowledge the exchange and receipt of other valuable consideration in the spirit of intergovernmental cooperation to the benefit of all by collaborating and coordinating the provision of vocational rehabilitation services to American Indians who are individuals with disabilities. No travel or other expenses are authorized.
- D. **No Third Party Beneficiaries:** The State and the Confederated Tribes are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of the Agreement.
- E. **State Tort Claims Act:** The Confederated Tribes, its members, employees, and agents are not officers, employees, or agents of the State as those terms are used in ORS 30.265.
- F. **Indemnity:** The Confederated Tribes shall indemnify, defend and hold harmless the State of Oregon and its Department of Human Services, its officers, agents, and employees, from all claims, suits or actions of any nature arising out of activities of the Confederated Tribes, its officers, subcontractors, agents or employees under this Agreement. To the extent permitted by Article XI, Section 7 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 to 30.300, the State shall indemnify the Confederated Tribes, its officers, divisions and employees against liability for damage to life or property that may arise from the implementation of this Cooperative Agreement to the extent of liability arising out of the negligence of the State. The State shall not be required to indemnify or defend the Confederated Tribes for any liability arising out of the wrongful act of officers, employees or agents of the Confederated Tribes.
- G. **Severability:** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

H. **Written Notice:** All written notices regarding this Agreement shall be sent to the parties at the following addresses:

The State:

Trina Lee, Administrator

Office of Vocational Rehabilitation Services

Oregon Department of Human Services

500 Summer Street NE, E-87

Salem, OR 97301-1120

Confederated Tribes:

Jacqueline R. Minson, Program Director

The Confederated Tribes of Warm Springs

PO Box C

Warm Springs, OR 97761

Any written notice hereunder shall become effective as of the date of mailing, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may hereafter be specified by notice in writing.

- I. **Amendment:** The terms of this Agreement may not be waived, altered, modified, supplemented or amended, except by written amendment signed by the parties.

- J. **Merger:** This Agreement constitutes the entire agreement between the parties on the subject matter hereof. These are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

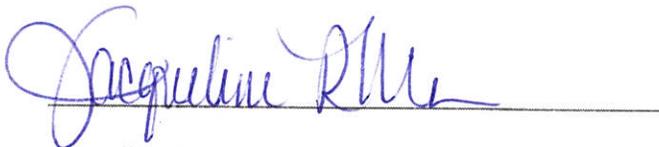
- K. **Waiver:** Waiver by either party of any breach of this Agreement shall not be construed as a waiver of any other breach.

- L. **Sovereign Immunity:** Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of the Tribe, which immunity is hereby expressly asserted.

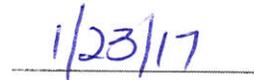
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VI. SIGNATURES

The Confederated Tribes:



Jacqueline R. Minson



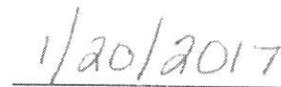
Date

The Confederated Tribes' of Warm Springs
Reservation of Oregon

The State:



Trina Lee, VR Administrator



Date

Office of Vocational Rehabilitation Services