INDIAN CHILD WELFARE INTERGOVERNMENTAL AGREEMENT BETWEEN THE UTAH DEPARTMENT OF HUMAN SERVICES, DIVISION OF CHILD AND FAMILY SERVICES AND THE NAVAJO NATION

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INDIAN CHILD WELFARE INTERGOVERNMENTAL AGREEMENT BETWEEN THE UTAH DEPARTMENT OF HUMAN SERVICES, DIVISION OF CHILD AND FAMILY SERVICES AND THE NAVAJO NATION

This Intergovernmental Agreement, herein called "Agreement," is between the STATE OF UTAH acting through its Division of Child and Family Services, herein called "DCFS," and the Division of Social Services of the NAVAJO NATION, herein referred to as "NATION," a Federally Recognized Indian Tribe.

I. Purpose and Policy

A. In 1978, the Congress of the United States adopted the Indian Child Welfare Act, hereinafter called "ICWA," Public Law 95-608, codified as 25 U.S.C. § 1901-1963, "to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families," 25 U.S.C. § 1901.

B. The ICWA authorizes Indian tribes and states to enter into agreements aimed at furthering the purposes of the ICWA 25 U.S.C. § 1919. The State of Utah may enter into Cooperative Agreements with tribes as provided in the Utah Joint Powers Act. Pursuant to these laws, the NATION and DCFS hereby enter into this Agreement, subject to the terms and conditions set out below.

C. DCFS and the NATION recognize that:

1. There is no resource more vital to the continued existence and integrity of the NATION than its children.

2. As trustee, the United States has a direct interest in protecting Indian children who are members of or eligible for membership in an Indian tribe.

3. DCFS has a direct interest in protecting Native American culture and encouraging the cultural diversity of the citizens of the state of Utah.

4. This Agreement is entered into under 25 U.S.C. § 1919 and is predicated on a government-to-government relationship between the state of Utah and the NATION in a spirit of cooperation, coordination, communication, collaboration, and good will.

5. Both voluntary and involuntary proceedings are of critical interest to the NATION to:
   a. Prevent cultural separation of Navajo children from their families and their Navajo community.

b. Ensure Navajo children who are taken into state custody maintain contact with their Navajo culture.

c. Ensure that the values of Navajo culture are preserved.

D. DCFS and the NATION agree that:

1. The primary purpose of this Agreement is to protect and further the best interests of the Navajo child and his or her Navajo family.

2. The general welfare including the health, care, safety, and supervision of the child is the primary concern when providing services to a Navajo family.

3. Every effort will be made to ensure that the child will be raised within his or her family and the Navajo culture.

E. In fulfilling the terms of this Agreement, DCFS and the NATION will act in accordance with the full faith and credit, provisions of the ICWA, contained in 25 U.S.C. § 1911(d). The ICWA requires that the United States, every state, and every Indian tribe give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to public acts, records, and judicial proceedings of any other entity.

F. DCFS and the NATION support the provision of Section 1911 (b) of the ICWA to transfer state court proceedings for foster care placement or the termination of parental rights of Navajo children not domiciled or residing within the Nation to the jurisdiction of the tribe upon petition of the NATION or the Navajo child's parent or Indian custodian, absent good cause to the contrary. The NATION and DCFS recognize that the ICWA provides that either parent may object to the transfer of the proceedings.

G. Section 1919 (a) of the ICWA provides that states and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements that may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements that provide for concurrent jurisdiction between states and Indian tribes. DCFS and the NATION desire to provide for the orderly transfer of jurisdiction over child custody proceedings and to enter into an agreement respecting care and custody of Navajo children, in accordance with the provisions of the ICWA.

H. This Agreement shall be construed in the spirit of cooperation and in a manner that protects and promotes the best interest of Navajo children and the security of Navajo families.

I. This Agreement shall be interpreted in a manner that reflects the values of Navajo culture, custom, and tradition.

II. Definitions

A. "Courtesy supervision" is the conduct of routine case activities by one agency at the request of another. Each request for supervision will include provisions regarding purpose, conditions, time lines, goals, and appropriate reporting and follow up.

B. "Concurrent jurisdiction" exists when the state and the Navajo Nation could assert jurisdiction over a child custody proceeding.

C. "DCFS" is the state of Utah, Division of Child and Family Services.

D. "Domicile" means more than physical presence alone of the child at the time of the actions giving rise to any court proceeding covered by this Agreement. Domicile is the intended permanent legal home of the child established by the child's parents or other legal custodian. The domicile of a child is that of the natural mother unless otherwise established by the father.

E. "Extended family" means the minor's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first and second cousins, stepparent, godparent, or other individual approved by consensus through Navajo clan or kinship.

F. "Indian child" means any unmarried person who is under the age of 18 years and is either: (a) a member of an Indian tribe, or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

G. "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

H. "Intervention in a judicial proceeding" occurs when the NATION intervenes in a state court child custody proceeding pursuant to 25 U.S.C. § 1911 (c). The NATION becomes a party to the state court proceeding and the state retains jurisdiction over that child to make a final disposition of the child, subject to the mandates of the ICWA.

I. "Jurisdiction" means the authority, capacity, power, or right of a court of law to take judicial action with respect to a child as provided in Navajo Nation, state or federal law. Jurisdiction of a court over a child shall not be determinative of which governmental entity is responsible for providing benefits associated with a Navajo child otherwise eligible for those benefits.

J. "Parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established.

K. "Transfer of jurisdiction" occurs when the NATION petitions a state court for a transfer of jurisdiction over a child custody proceeding from the state to the NATION pursuant to 25 U.S.C. § 1911 (b), and the state court grants the petition.

L. "Navajo Nation family court" means a court with jurisdiction over child custody proceedings, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe, which is vested with authority over child custody proceedings of the NATION.

M. "Disrupted adoption" means an adoption that ends prior to finalization.

N. "Dissolved adoption" means a finalized adoption that has been terminated.

III. General Provisions

DCFS and the NATION acknowledge that this Agreement binds them and their successors should the duties and responsibilities of DCFS and the NATION be delegated or transferred by their respective governments.

A. Verification of membership with the NATION shall be determined by the NATION. Membership inquiries shall be referred by DCFS to the NATION ICWA Office designated in Section IV.B for processing. The NATION ICWA Office will coordinate with the Navajo Enrollment office for final verification and enrollment. The NATION ICWA Office shall make a determination of membership of a referred minor within 30 working days from the time sufficient background information is provided to the NATION. If insufficient information to verify membership is provided, the NATION will request additional information from DCFS in writing within ten working days of receiving the inquiry concerning the minor's membership. If DCFS is not able to provide additional information, the NATION will be notified, and the NATION will make a determination on the status of the child within 30 days. If the NATION does not respond, DCFS can proceed as if the child is not a Navajo child.

B. DCFS will follow the statutory confidentiality restrictions of Utah Law in the performance of its responsibilities under this Agreement. The NATION will follow the confidentiality restrictions of the Navajo Nation Privacy and Access to Information Act 2 NNC Section 81 et seq.; and as applicable the Federal Privacy Act, 5 U.S.C. Section 552(a), HIPPA requirements and pertinent DCFS and NATION policies in performance of its responsibilities under this Agreement.

C. DCFS and the NATION recognize that when a Navajo child is the subject of a child custody proceeding, the full disclosure of information between DCFS and the NATION in relation to the Navajo child is proper and in the best interests of the Navajo child. DCFS will make information, reports, and records relating to Navajo children available to the NATION to the extent contained in the ICWA, 25 U.S.C. § 1911(d) and authorized by DCFS policy and other state and federal confidentiality statutes and administrative rules.

D. DCFS and the NATION acknowledge that exclusively, federal law governs the disclosure of alcohol or drug abuse treatment records.

E. Expert witness. On a case-by-case basis, the NATION will provide DCFS with the names of qualified experts on issues of tribal customs regarding child rearing, parenting, and the role of extended family members raising Navajo children. If expert testimony is required, DCFS will consider the use of the experts identified by the NATION.

F. DCFS and the NATION will share information in any child custody proceeding involving a Navajo child. DCFS staff will testify in Navajo Nation family court upon issuance of a written request by the NATION. Social Services staff of the NATION will testify in state court upon issuance of a written request by DCFS.

G. When establishing a permanency plan for a Navajo child, DCFS will provide notice to the NATION. The NATION shall be invited to all Child and Family Team Meetings/Case Consultations and may participate by phone. DCFS will consider the recommendations of the NATION when developing, preparing, and implementing any permanency plan for a Navajo child.

H. It is mutually agreed that there shall be established a Coordination Committee of representatives of DCFS and the NATION that shall meet quarterly or as needed to address such issues as:

1. Coordination and communication between parties.

2. Clarification of interpretation of this Agreement.

3. Reviews of policies and procedures.

4. Caseload trends and their implications.

5. Matters of mutual concerns.

6. Navajo customs.

7. Federal, state, and tribal laws and regulations.

I. DCFS shall designate a liaison person in the DCFS administration who will be the primary point of contact with the NATION regarding DCFS' rules and practice guidelines and issues related to implementation of this Agreement. DCFS' liaison may be contacted at:

Indian Child Welfare Program Manager
Division of Child and Family Services
120 North 200 West, #225
Salt Lake City, Utah 84103
Telephone: (801) 538-4146
Fax: (801) 538-3993

J. The NATION shall designate a liaison person within its administration who will be the primary point of contact with the NATION'S administration regarding the NATION'S rules, policies, financial needs, and issues related to implementation of this Agreement. The NATION liaison may be contacted at:

The Navajo Nation
Division of Social Services/ICWA Office
P.O. Box 1930
Window Rock, Arizona 86515
Telephone: (928) 871-6806
Fax: (928) 871-7667

K. DCFS shall comply with the terms of this Agreement when it provides greater protection for the rights and role of the NATION than requirements of DCFS administrative rules, provided there is no violation of applicable laws and administrative rules.

IV. Notice

DCFS shall make reasonable efforts to determine whether any child taken into custody is a Navajo child and, if so, DCFS shall give notice to the NATION in accordance with U.S.C. Title 25 § 1912.

A. Type of proceeding: DCFS shall notify the NATION, as provided in this Agreement, of any instance where DCFS has received physical custody of a Navajo child and/or DCFS has reason to believe a child is a Navajo child. DCFS will notify the NATION of the following actions:

1. Involuntary proceedings involving placement of a Navajo child: foster care placement or a change in placement, termination of parental rights, permanent guardianship, and pre-adoptive placement.

2. Voluntary proceedings involving placement of a Navajo child: foster care placement, pre-adoptive placement, permanent guardianship, and relinquishments of parental rights.

3. Judicial hearings in all proceedings to which the NATION is entitled to notice under subsections 1 and 2 above, and any change in hearing dates and times.

4. Any disrupted or dissolved adoption of a Navajo child.

B. DCFS shall provide notice of the actions listed in Section IV.A of this Agreement when such proceedings involve a Navajo child to:

The Navajo Nation
Navajo Children and Family Services/ICWA Office
P.O. Box 1930
Window Rock, Arizona 86515
Telephone: (928) 871-6806
Fax: (928) 871-7667

C. Time limits: DCFS shall give notice in the circumstances described in Section IV.A as follows:

1. When commencing a child custody proceeding in state court involving a child DCFS has reason to believe is a Navajo child, DCFS shall give a courtesy notice by telephone within 24 hours (excluding weekends and holidays) of commencing the action. Notice shall include information about the scheduled court appearances. In addition, DCFS shall give written notice to the NATION contact office by registered mail, return receipt requested, as soon as possible after commencing the action, but in no event, no later than five days after the telephone notice.

2. When taking court ordered legal custody of a child DCFS has reason to believe is a Navajo child, DCFS shall give notice by telephone within 24 hours (excluding weekends and holidays) of taking physical custody of the child. The assistant attorney general's office shall give written notice to the NATION contact office by registered mail, return receipt requested, within five days of the telephone notice (excluding weekends and holidays).

3. DCFS shall notify the NATION by telephone of any changes in scheduled hearings involving a child DCFS has reason to believe is a Navajo child, within 24 hours (excluding weekends and holidays).

4. DCFS shall notify the NATION by telephone within 24 hours (excluding weekends and holidays) of taking protective custody of a child DCFS has

reason to believe is a Navajo child who is placed in emergency kinship care.

D. Contents of the ICWA notice: The oral and written notices required by this Agreement shall include the information in the ICWA Notice Form (see Appendix A) prepared by DCFS in a child custody proceeding, to the extent such information is available upon reasonable inquiry. In addition, the following information shall be provided:

1. With the consent of the court, a copy of all pleadings, such as orders, motions and petitions.

2. Information about the child's circumstances, including the name and date of birth of the child, the basis for the juvenile court's jurisdiction over the child, the date and time of any juvenile court proceeding regarding the child, and the reason for placement of the child.

3. Identification of any special needs of the child.

4. Names of all parties participating in the proceeding and the addresses and phone numbers of the parties or their attorneys.

E. Documentation of notice: All contacts and attempts to contact the NATION shall be documented in the DCFS case file.

V. Intervention

A. A delay in moving to intervene may occur if insufficient information has been provided to the NATION to verify membership, eligibility for membership, or status of a child or parent. Pursuant to Section 1911(c) of the ICWA, the NATION may seek to intervene at any point in a child custody proceeding.

B. If the NATION declines or fails to intervene in a particular case, DCFS shall continue to inform the NATION about the state court proceeding involving the child by providing the NATION with notice of all hearings in that case. With the consent of the court, DCFS shall also provide copies of all motions, orders, petitions, and other pleadings filed with the court.

C. A comprehensive case summary filed with the court and other relevant documents shall be provided to the NATION. DCFS shall notify the NATION immediately after any change in circumstances of the child, reports of abuse or neglect, proposed changes in placement, a parent's completion of requirements for reunification, or changes in the permanency plan for the child. The report prepared by DCFS for a Citizen Review Board may be used.

VI. Jurisdiction

A. Exclusive jurisdiction in the Navajo Nation Family Court:

1. The NATION shall have exclusive jurisdiction over any "child custody proceeding" as set forth in Section IV.A involving a Navajo child who resides or is domiciled within the Navajo Nation. Where a Navajo child is a ward of the Navajo Nation family court, the Nation shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the Navajo child.

2. The "Navajo Nation" is defined in the ICWA as all land within the limits of the Navajo Reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation; all dependent Navajo communities within the borders of Utah; all Navajo allotments, the Indian titles to which have not been extinguished, including rights-of-way running through same; and any other lands, title to which is either held by the United States for the benefit of the Navajo Nation or Navajo individuals, or held by the Navajo Nation subject to a restriction by the United States against alienation.

B. State or tribal legal jurisdiction:

1. If a Navajo child is not domiciled or residing within the Navajo Nation and is involved in a state court proceeding for foster care placement or termination of parental rights, a petition for transfer of the proceeding to the Navajo Nation family court may be filed in state court and jurisdiction shall be determined in accordance with Section 1911(b) of the ICWA. It shall be the policy of DCFS that a petition to transfer by the NATION will be favored whenever permitted by the ICWA. It shall be the policy of the NATION to request transfer only upon a determination that such transfer is in the best interests of the Navajo child and family. DCFS and the NATION agree to work cooperatively in all child custody proceedings to protect the best interests of the Navajo child and his or her natural family.

2. On the NATION'S receipt of certified written notice, representatives of DCFS and the NATION will make efforts to arrange a staffing to discuss whether jurisdiction in DCFS or the NATION would be in the best interest of the Navajo child and, if warranted, legal intervention. When selection has not been made between DCFS and the Navajo Nation family court jurisdiction, DCFS shall proceed in accordance with Utah law until such time legal intervention and jurisdiction is transferred to the NATION. The NATION retains the right to legally intervene and transfer jurisdiction at any stage of the child custody proceeding as permitted by Section 1911 (c) of the ICWA.

3. Where a state court intends to dismiss a child custody proceeding for lack of jurisdiction, DCFS shall notify the NATION before the case is dismissed. In such cases, DCFS shall contact the NATION ICWA Office designated in Section IV.B supra.

4. When DCFS has jurisdiction of a case involving a Navajo child residing within the Navajo Nation, DCFS social workers shall be permitted to enter the Navajo Nation to provide appropriate social services to the child and his/her family. When the NATION has jurisdiction of a case involving a Navajo child residing off the Navajo Nation, NATION social workers shall be permitted into Utah to provide appropriate social services to that child and his/her family. Arrangements may also be made in other individual cases to provide social services on or off the Navajo Nation by DCFS and the NATION where such arrangements will be in the best interests of the child and/or family being served. DCFS social workers may request the assistance of Navajo police in appropriate circumstances. NATION social workers may request the assistance of state, county, or city police in appropriate circumstances.

VII. Child Protective Services

A. DCFS shall be primarily responsible for receiving and investigating reports of suspected child abuse or neglect concerning Navajo children who are alleged to be abused and neglected off the Navajo Nation. Upon receiving a report of suspected child abuse or neglect, DCFS shall take immediate steps to investigate the report and insure the safety of the child even though there may be a question as to whether the child resides on or off the Navajo Nation or whether the child is Navajo or non-Navajo.

1. If a Navajo child is taken into protective custody, DCFS will telephonically notify the NATION'S ICWA office, with formal notification following. DCFS will give oral and written notification within 24 hours (excluding weekends and holidays).

2. The NATION will make arrangements to assume custody of the Navajo child who is a resident or domiciliary of the Navajo Nation.

B. The NATION's regional offices shall be primarily responsible for receiving and investigating reports of suspected child abuse or neglect concerning children who reside or are located within the Navajo Nation.

1. If the NATION receives a referral for child protective services concerning a non-Indian child who is found within the Navajo Nation, the NATION shall take whatever action is necessary to insure the immediate safety of the child.

2. The case will then be referred by telephone to the appropriate region intake office with written confirmation to follow within 24 hours (excluding weekends and holidays).

C. DCFS will be responsible for the cost of custodial care for non-Indian children. The NATION will be responsible for the cost of custodial care for Indian children residing on the Navajo Nation. If a Navajo child resides and is domiciled off the Navajo Nation and the Navajo child is in the custody of DCFS, DCFS shall be responsible for that Navajo child, including payment for shelter care.

D. Primary responsibility for following up on treatment and services to the non-Indian child and his/her family will lie with the appropriate DCFS office, unless representatives of the NATION and DCFS mutually agree upon other arrangements at a staffing held within 30 days after DCFS' receipt of written confirmation.

E. If a Navajo child is taken into DCFS protective custody during normal working hours and DCFS has determined that the child should be released to his or her family, DCFS may release the Navajo child to his or her family in less than 24 hours provided that DCFS has conferred with or made reasonable efforts to confer with the NATION ICWA Office designated in Section IV.B supra, to determine whether there is an open case concerning that child. If the NATION does not want the Navajo child released to his/her family, the NATION shall proceed in accordance with the provisions Section VI.A.1.

VIII. Placement Preferences

A. Adoption pursuant to the policies of Section 1915 (a) of the ICWA. In the absence of good cause to the contrary, preference in adoption placement of a Navajo child shall be given in the following order:

1. A member of the Navajo child's extended family.

2. Other members of the NATION.

3. Other adoptive family approved by the NATION.

B. Foster or pre-adoptive dispositions. In the absence of good cause to the contrary, upon a judicial finding that a Navajo child is a neglected and/or abused child, DCFS shall recommend one of the following dispositions, listed in order of priority:

1. Permit the Navajo child to remain with his or her parent(s), guardian, or custodian.

2. Place the Navajo child with an extended family member.

3. Place the Navajo child in a foster home that has been licensed or designated by the NATION, if a suitable home is available that is within reasonable proximity to the parent(s).

4. Place the Navajo child in an Indian foster home that has been licensed by DCFS, if a suitable home is available that is within reasonable proximity to the parent(s).

5. Place the Navajo child in a residential facility approved by the NATION.

6. Place the Navajo child in a foster home approved by DCFS.

C. DCFS shall consider the NATION'S customs and laws regarding custody and placement of children in the placement of Navajo children. DCFS shall refer questions of Navajo custom and law to the NATION. In any proceeding in which DCFS is unable to comply with placement preferences established by this Agreement, the DCFS social worker assigned to the case shall send a report explaining the active efforts made to comply with the ICWA placement preference requirements, pursuant to the ICWA, Section 1912 (d). DCFS shall contact the NATION within five days (excluding weekends and holidays) of the placement. The Nation may request that DCFS re-evaluate its placement decision.

D. DCFS shall place a Navajo child in need of foster care or pre-adoptive placement in the least restrictive setting that most approximates a family setting and meets the child's special needs. DCFS shall place the child within reasonable proximity to his or her home, taking into account any special needs of the child. DCFS shall place siblings together whenever possible. If it is not possible to place siblings together, DCFS shall make active efforts to assure continuing contact among siblings, except if continuing contact compromises the safety of one or more of the children.

E. All foster homes must meet Social Security Act Title IV-E licensing standards. The state shall recognize foster homes within or outside Navajo Indian Country which are certified, approved, or licensed by the NATION as meeting the foster home licensing requirements under state law, and the NATION shall recognize state foster home licensing which are certified, approved, or licensed by the state as meeting the foster home licensing requirements under Utah state law as meeting the requirements of the NATION.

F. The state may place Navajo children in foster homes licensed by the NATION and the NATION may place Navajo children in foster homes licensed by the state if the state and the NATION mutually agree upon such placement. Upon request, the NATION may allow the state to do home studies and certification on possible

foster or pre-adoptive homes within Navajo Indian Country and submit them to the Navajo Nation.

IX. Foster Care Pre-Adoptive Placements

A. Upon receiving custody (including joint custody) of a Navajo child, the state shall assume responsibility for all costs of foster care (in either foster homes licensed by the NATION or by the state), supervision, and social services. When jurisdiction of the matter is transferred to the NATION, the NATION and the state shall meet in order to determine which social services shall be paid for by the NATION and which social services shall continue to be paid by the state. For Social Security Act Title IV-E eligible children, the social services shall continue to be paid for by the state to the same extent that the state would pay for services for other citizens of the state of Utah.

B. The NATION agrees that if it is necessary for a Navajo child in the legal custody of DCFS to be removed from the foster home licensed by the NATION or located on the Navajo Nation either due to an order of a state or tribal court or due to a determination that removal is in the best interest of the Navajo child and the removal is recommended at a staffing between DCFS and the NATION, the NATION will assist in removing the Navajo child from the Navajo Nation and transferring physical custody of the child to DCFS.

C. DCFS agrees that if it is necessary for a child in the legal custody of the NATION to be removed from a foster home licensed by DCFS either due to an order of a state or tribal court or due to a determination that removal is in the best interests of the child and the removal is recommended at a staffing between DCFS and the NATION, DCFS will assist in removing the child from the foster home and transferring physical custody of the child to the NATION.

D. The supervision of the placement of a Navajo child by DCFS in a foster home licensed by the NATION shall be a cooperative agreement between DCFS and the NATION. Any change in such placement shall be staffed and coordinated between DCFS and the NATION'S assigned case manager.

E. The supervision of the placement of a Navajo child by the NATION in a foster home licensed by DCFS shall be a cooperative agreement between the NATION and DCFS. Any change in such placement shall be staffed and coordinated between the NATION and DCFS.

F. The NATION shall notify the state within two working days from the time the NATION becomes aware of any emergency situation involving the care or well-being of a Navajo child placed by the state in a foster home licensed by the NATION. The NATION shall notify the region director or region associate director of the appropriate state office. The NATION shall take whatever steps

are necessary to insure the well-being of the child until the state can respond to the emergency situation.

G. The state shall notify the NATION within two working days from the time the state becomes aware of any emergency situation involving the care or well-being of a Navajo child placed by the NATION in a foster home licensed by the state. The state shall notify the NATION'S appropriate agency social services office. The state shall take whatever steps are necessary to insure the well-being of the Navajo child until the NATION can respond to the emergency situation.

X. Adoptive Placements –Voluntary and Involuntary

A. DCFS and the NATION shall coordinate efforts in locating suitable adoptive families for Navajo children.

B. All adoptions of Navajo children shall be made in accord with the ICWA placement preferences, absent good cause to the contrary.

C. If a Navajo child is involved in an independent adoption proceeding in which the state is involved in any manner, the state shall oppose waiver of the ICWA placement preferences, absent good cause to the contrary. The state shall immediately notify the NATION when it becomes aware of any independent adoption involving a Navajo child, whether or not the state is a party to the adoption proceeding. In the event the state becomes aware of a private independent adoption of a Navajo child, the state will notify the adoption agency of the ICWA requirements.

D. The NATION shall, with authorization of the applicants, provide DCFS with the names and home studies of prospective adoptive homes in order to assist DCFS in complying with the placement preferences established in this Agreement and 25 U.S.C. § 1915, and those of tribal custom. DCFS may conduct home studies of prospective adoptive homes of tribal members. The NATION shall assist in the assessment process, which may include conducting a home study. In the event the NATION is unable to conduct a home study, the NATION may request assistance from DCFS.

E. DCFS shall review all documents served on DCFS pursuant to the Adoption Act where DCFS consent is required to determine whether a Navajo child is involved. If a Navajo child is involved:

1. DCFS shall require that petitioners provide proof of efforts to notify the NATION of the adoption.

2. If petitioners do not provide proof of efforts to notify the NATION, DCFS shall notify the court that proof of notice to the NATION has not been provided.

3. If information from petitioners is insufficient to determine whether a Navajo child is involved, DCFS shall request additional information from petitioners. If petitioners fail to provide additional information and DCFS continues to have reason to believe that a Navajo child is involved and that petitioners have not complied with the requirements of the ICWA, DCFS shall notify the court of these facts.

XI. Parental Rights – Voluntary Termination (shall be in accordance with U.S.C. Title 25 Section §1913)

A. Consent; record; certification; invalid consents: Where any parent or Indian custodian voluntarily consents to foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to or within ten days after birth of the Indian child shall not be valid.

B. Foster care placements; withdrawal of consent: Any parent or Indian custodian may withdraw consent to a foster care placement under state law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

C. Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody: In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

D. Collateral attack; vacation of decree and return of custody; limitations: After the entry of a final decree of adoption of an Indian child in any state court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption, which has been effective for at least two years, may be invalidated under the provisions of this subsection unless otherwise permitted under state law.

XII. Remedial Services

A. As soon as DCFS becomes aware that a Navajo child, parent, or custodian is in need of services to make it possible for the child to safely remain in or return to the home, DCFS shall:

1. Assess the strengths and needs of the child and family and, unless efforts to reunify the Navajo child with his/her Indian custodian are deemed futile by DCFS and by the state court having jurisdiction over the child, develop a service plan that is designed to make it possible for the child to safely remain in or return to the home.

2. Identify and incorporate values and practices of the Navajo Nation and Indian cultures that can contribute to developing a service plan and services to the family.

3. Consider involving peers, family members, tribal social service resources, and community representatives in the case planning and service delivery process when the NATION and DCFS agree that it is in the best interests of the Navajo child.

4. Make active efforts to provide remedial services to the same extent that services are available to non-Indian families when eligible. In addition, DCFS and the NATION shall assess and identify barriers to the Navajo child and family accessing needed services. DCFS shall make active efforts to overcome identified barriers. Examples may include providing transportation, providing access to and transmittal of documents, and providing access to visits, counseling, and treatment.

B. DCFS and the NATION shall make every reasonable effort, if it is in the best interest of the child, to allow a parent to visit a Navajo child who is in foster care or in cases where DCFS has not made a formal decision to seek termination of parental rights or a pre-adoptive placement. Efforts may include, but are not limited to, services to address barriers to the parent exercising visitation including providing accommodations, transportation, and other identified services or programs determined necessary for the parent to exercise visitation rights.

C. Where appropriate, extended family members, Indian custodians, and qualified experts may be consulted in developing or amending plans.

XIII. DCFS Staff Training

A. DCFS shall include training on the ICWA and this Agreement as part of DCFS' staff training plan. DCFS further agrees to provide the ICWA and Indian cultural awareness training for DCFS employees statewide on a regular basis, preferably annually.

B. The NATION shall provide cultural training to DCFS staff.

XIV. Changes and Cancellation of Agreement

A. Either party may cancel this Agreement at any time after 180 days written notice of the intent to cancel, provided that, before cancellation of the Agreement, the parties agree to make good faith efforts to discuss, renegotiate, and modify the Agreement. Cancellation shall not affect any action or proceeding over which a court has already assumed jurisdiction.

B. In the event any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, that holding shall not invalidate or render unenforceable any other provision of this Agreement.

XV. Effective Date

This Agreement shall become effective upon the date all necessary signatures to this Agreement are obtained.

XVI. Effect of Prior Agreements

This Agreement supersedes all prior written and oral agreements, covenants, and understanding between DCFS and/or its agency offices and the NATION concerning the subject matter described herein. However, any separate agreement the parties have executed concerning foster care maintenance and/or adoption assistance payments remains in full force and effect. For purposes of this Agreement, the individual signing on behalf of a party certifies that they have authority to act on behalf of the party.

XVII. Sovereign Immunity

Nothing herein shall be construed as a waiver of the NATION's or the State of Utah's sovereign immunity.

IN WITNESS WHEREOF, THE PARTIES HEREBY AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT BETWEEN THE STATE OF UTAH, DEPARTMENT OF HUMAN SERVICES, DIVISION OF CHILD AND FAMILY SERVICES AND THE NAVAJO NATION.

Approved by the Navajo Nation

President Joe Shirley, Jr. — Date DEC 0 4 2007

Cora Maxx-Phillips, Executive Director, Division of Social Services — Date 8/6/07

Approved by the State of Utah

Governor Jon M. Huntsman, Jr. — Date 6/27/07

Approved by the Department of Human Services

Lisa-Michele Church, DHS Director — Date 6·25·07

Approved by the Division of Child and Family Services

Duane Betournay, DCFS Director — Date 6/25/07

Reviewed for Legal Sufficiency

Mark May, Assistant Utah Attorney General — Date June 25, 2007

Navajo Nation Attorney General — Date 12/12/07

Approved by the Department of Finance and Administration

N/A
State Contracts Officer — Date