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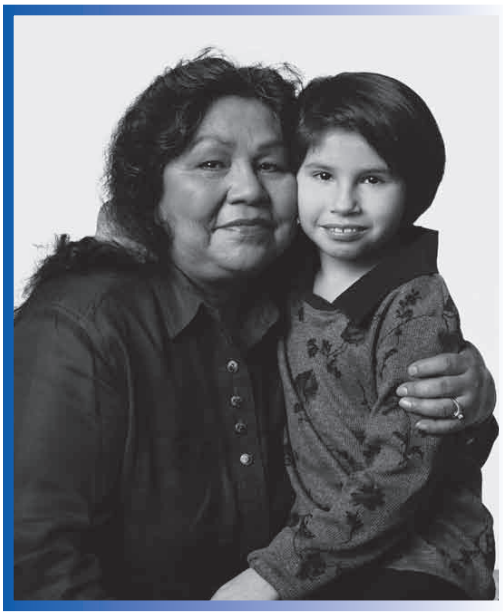
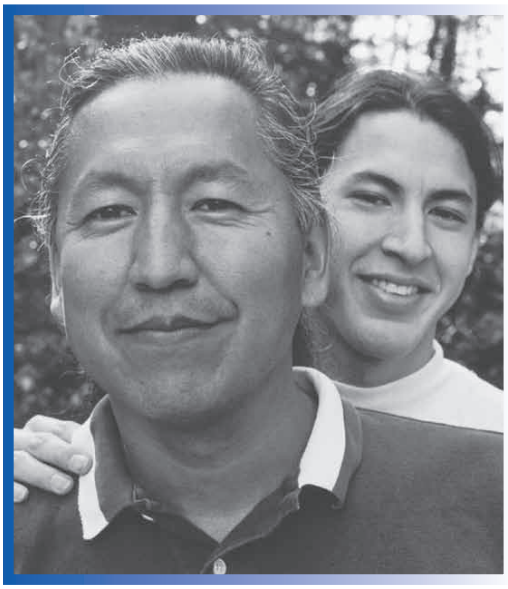
2007 Tribal/ State Agreement





Tribal/State Indian Child Welfare Agreement as amended in 2007

February 2007

Minnesota Department of **Human Services**

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TRIBAL/STATE AGREEMENT

February 22, 2007

TRIBAL/STATE AGREEMENT

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PART I

INTRODUCTION

PART I. INTRODUCTION

A. HISTORY

From a historical perspective, the majority of federal policies directed at American Indian people provided an experience that was extremely negative. In particular, both Indian tribes and child welfare professionals were critically concerned about the results of federal, as well as state and local child welfare policies, in terms of the destruction of Indian families. Prior to 1978, Indian children were being placed in foster care at a nationwide rate ten to twenty times that for non-Indian children. These children often lost all connections with their families, extended families, tribes, and cultural heritage.

Public Law 95-608, the federal Indian Child Welfare Act of 1978, codified at 25 U.S.C. §§ 1901 *et seq.*, was passed to remedy this problem of disproportionately large numbers of Indian children being placed in foster care. The law recognized "that there is no resource . . . more vital to the continued existence and integrity of Indian tribes than their children" and that there has been a failure by non-Indian agencies "to recognize the essential tribal relations of Indian people and the culture and social standards prevailing in Indian communities and families." 25 U.S.C. § 1901.

In passing the Indian Child Welfare Act, Congress stated:

> It is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operations of child and family service programs. 25 U.S.C. § 1902.

Minnesota established the above concepts as state policy and passed the Minnesota Indian Family Preservation Act (Minn. Stat. §§ 260.751 to 260.835) in 1985 to strengthen and expand parts of the federal act. The Minnesota law and its amendments emphasize the State's interest in supporting the preservation of the tribal identity of an Indian child and recognize tribes as the appropriate entities to provide direction to the State as to the best interests of tribal children. In addition, Minnesota child protection statutes must be construed consistently with the Indian Child Welfare Act. See Minn. Stat. § 260C.168 (2006).

These two laws apply specifically to the provision of child welfare services to Indian children. Indian children are entitled also to all rights granted other children under any other federal or state law when those rights are not in conflict with federal law and when the state statute provides greater protection for the preservation of Indian family unity, extended family members, and continued tribal affiliation. The federal Indian Child Welfare Act takes precedence over all state laws and all other federal laws that may

conflict regarding Indian child welfare cases, unless the state law or other federal law provides a higher standard of protection for the rights of the parent(s) or Indian custodian(s). 25 U.S.C. § 1921. The goal is to ensure that the Indian children remain with their parents whenever possible. If that is not possible, then placement must be with the extended family, and when that is not possible, then with an Indian custodian of the child's tribe, and when that is not possible, an Indian person and thereafter with a person of Indian descent.

The Indian Child Welfare Act authorizes the states and Indian tribes to enter into agreements concerning the care and custody of Indian children and jurisdiction over child custody proceedings involving such children. 25 U.S.C. § 1919. The Commissioner of Human Services is authorized to enter into this Agreement on behalf of the State of Minnesota. Minn. Stat. § 260.771, subd. 5 (2006). The Department of Human Services (hereafter "the Department") and the Tribes signing this Agreement, hereby enter into this Agreement to further the national policy declared in 25 U.S.C. § 1902, to protect the best interests of Indian children and promote the stability and security of Indian tribes and families.

B. PURPOSE

This Agreement is intended to coordinate the abilities and to maximize the guidance, resources and participation of tribes in order to remove barriers from the process that impede the proper care of Indian children. The Agreement is directed at child welfare activities of the State through its local social services systems and attempts to impact the State's judicial systems. It represents the development of a comprehensive working relationship between each of the eleven tribes located within the geographical bounds of the State of Minnesota and the Minnesota Department of Human Services for the delivery of child welfare services.

This Agreement states the policies and procedures agreed to by both the tribes and the State and specifies the roles and duties of each in the implementation of child welfare services to Indian families and children. It is the intent of the parties to this Agreement, the Minnesota Department of Human Services and each of the eleven tribes located within the geographical bounds of the State of Minnesota, that this Agreement applies to all Indian children in Minnesota, regardless of whether the child's Tribe, Band or Nation executed this Agreement, as all Indian children subject to any child custody proceeding are guaranteed the protections set forth in the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act. The State agrees to apply the protections of the Agreement to *all* Indian children in Minnesota who are covered by the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act.

The purpose of this Agreement is to protect the long term best interests, as defined by the tribes, of Indian children and their families, by maintaining the integrity of the Tribal family, extended family and the child's Tribal relationship. The best interests of Indian children are inherently tied to the concept of belonging. Belonging can only be realized for Indian children by recognition of the values and ways of life of the child's Tribe and

support of the strengths inherent in the social and cultural standards of tribal family systems. Family preservation shall be the intended purpose and outcome of these efforts.

The foundation of this Agreement is the acknowledgment that Indian people understand that their children are the future of their tribes and vital to their very existence. An Indian child is sacred and close to the creator.

The United States Supreme Court has determined that distinct congressional treatment of Indians is not a prohibited racial classification. The Court determined that deferential treatment provided under Congressional acts is allowed by the "special relationship" that the federal government has established with Indian tribes. The Court found a special relationship was derived from the separate constitutional status of Indian tribes under the United States Constitution. Morton v. Mancari, 417 U.S. 535, 551-554 (1974).

The State recognizes its responsibilities to protect Indian children as required by the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act and the clear intent of those laws to protect an Indian child's sense of belonging to family and tribe. The State further recognizes that executing these responsibilities will require collaboration with the tribes and the use of the guidance, resources and participation of a child's tribe.

The parties to this Agreement intend by this Agreement to strengthen implementation of the letter, spirit and intent of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act. The parties to this Agreement further intend to ensure that any Department regulations, directives, policies or manual instructions are applied consistently with the terms of this Agreement, the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act.

The parties to this Agreement intend that this Agreement shall not affect any existing agreements between the tribes and local social service agencies or other agencies using a higher standard of protection to the relationship between Indian children and their families and their tribes than this Agreement.

C. LEGAL AUTHORITY

Pursuant to the laws of the State of Minnesota, the Department of Human Services has the authority and responsibility to support and strengthen the integrity of families and to protect and contribute to the welfare of children of the State through a comprehensive and coordinated program of public child welfare services. The Department also has the responsibility and authority to ensure that the local social service agencies and private placement agencies follow applicable federal and state laws, rules, and regulations and this Agreement. Minn. Stat. § 256.01, subd. 2(c) (2006).

1. Jurisdiction

The Indian Child Welfare Act provides that tribes have exclusive jurisdiction "over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law." 25 U.S.C. § 1911 (a). In addition, "[w]here an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child." Id.

No provision of this Agreement is intended to change the jurisdictional provisions set forth in the Indian Child Welfare Act in any manner. In addition, any reference or statement or conclusion regarding Public Law 280 shall not be interpreted to include the Red Lake Nation Reservation and the Bois Forte Band of Chippewa or any other Tribe over which Public Law 280 jurisdiction has been retroceded by the State of Minnesota.

The parties to this Agreement commit to adhere to the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act so that appropriate care is provided to Indian children in state Child in Need of Protection or Services ("CHIPS") and permanency proceedings. The parties acknowledge that, as sovereigns, they may disagree as to the extent of each others' authority, power and jurisdiction in such proceedings. The parties agree, however, that the fundamental purpose of the federal and state laws and the fundamental purpose for making this Agreement is to secure and to preserve an Indian child's sense of belonging to her or his family and Band or Tribe. They agree that cooperating to combine their abilities and resources to provide effective assistance to Indian children and their families is the best means to reach this shared goal.

The parties recognize that the necessary understanding of an individual tribe's history, religion, values, mores, and child-rearing practices is best obtained from each tribe. To ensure that services that are compliant with the Indian Child Welfare Act are provided to an Indian child and her or his family, the parties agree to use their stated cooperation and collaboration to obtain guidance from tribal resources before actions are taken that could disrupt an Indian child's relationship to family and tribe.

The State further recognizes that collaboration between counties and tribes is crucial in obtaining the best results for an Indian child. At a minimum, best practices require that a local social service agency immediately notify designated tribal authorities and request their assistance to enter the reservation when a situation arises that requires assessment of or investigation into the safety or well-being of an Indian child, or a child whose Indian identity is not known, and who resides or is domiciled on a reservation. To achieve the best protection for an Indian child and family, it is the sense of the State that the local social service agency will work with tribal authorities and the Department to conduct joint

investigations and assessments of allegations of maltreatment or neglect of Indian children. This understanding does not apply to issues arising solely within the jurisdiction of the Red Lake Nation and the Bois Forte Band of Chippewa or any other Tribe over which Public Law 280 jurisdiction has been retroceded by the State of Minnesota.

It is also the sense of the State that counties should forge local agreements with tribes concerning procedures for promptly and effectively sharing information concerning the safety or well-being of an Indian child who resides or is domiciled on a reservation to which Public Law 280 may apply. These local agreements should establish the framework for conducting joint investigations and assessments of allegations of maltreatment or neglect of Indian children within established time frames. At any county or tribe's request, the State agrees to offer technical assistance in drafting such a local agreement.

This Agreement specifically recognizes that the tribes are the sole interpreters of their constitutions and any tribe may grant its tribal court jurisdiction to hear and determine Indian child welfare matters at its discretion.

The parties agree that the local social service agencies and private child placing agencies are required under federal and state law to inquire if a child who may be at risk of out-of-home placement is an Indian child and to identify the child's tribe(s).

2. Notice to Tribes

The parties agree that the tribe(s) shall be timely notified by registered mail with return receipt requested, so that the tribe(s) may participate in a child custody proceeding or may choose to exert tribal jurisdiction over the child. 25 U.S.C. §§ 1911(b) and 1912(a). If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary of the Interior in like manner. Id.

The parties agree that when an Indian child is taken into emergency protective care, the court administrator, or designee, should, as soon as possible and before any hearing takes place, inform the county attorney; the responsible social services agency; the child; and the child's counsel, guardian ad litem, parent(s), legal custodian(s), spouse, Indian custodian(s), and Indian tribe(s), by telephone or facsimile of the date, time and place of the emergency protective care hearing. See Minn. R. Juv. Prot. P. 32.03, subd. 2. Appropriate tribal contacts are available through the Bureau of Indian Affairs website.

The Tribes agree to make good faith efforts to respond to the notice.

3. **Transfer to Tribal Courts**

The parties recognize that Minnesota case law has determined that a "transfer of jurisdiction over Indian child custody matters to tribal authorities is mandated by the Indian Child Welfare Act whenever possible." In re the Matter of the Welfare of B.W., 454 N.W.2d 437, 446 (Minn. Ct. App. 1990). The parties recognize that tribes are parties to child custody proceedings under the Minnesota Rules of Juvenile Protection Procedure. Minn. R. Juv. Prot. P. 21.01, subd. 1(c); see also Minn. Stat. § 260.761, subd. 6 (2006).

a. The parties agree that, except in emergencies, the following child custody proceedings must be transferred to tribal court:

(1) any such proceeding involving a ward of the tribal court; or

(2) any such proceeding involving an Indian child who resides or is domiciled within the reservation of such Tribe. 25 U.S.C. § 1911(a).

b. The parties agree that, except in emergencies, upon petition of a parent, an Indian custodian or an Indian child's Tribe any child placement/custody proceedings involving an Indian child who neither resides nor is domiciled within the reservation of such child's Tribe, must be transferred to the tribal court, unless:

(1) Good cause to the contrary exists for the transfer. Good cause is a fact-specific inquiry to be determined on a case-by-case basis. If a petition to transfer proceedings is filed, the court may find good cause to deny the petition if any one of the following circumstances exists:

(a) The Indian child's tribe does not have a tribal court as defined by the Indian Child Welfare Act to which the case can be transferred and no other Tribal Court has been designated by the Indian child's tribe. Dep't of the Interior Bureau of Indian Affairs Guidelines for State Courts; Indian Child Custody Proceedings (hereafter "Bureau of Indian Affairs Guidelines"), 44 Fed. Reg. No. 228, 67,584, 67,595 at C.3(a) (Nov. 26, 1979). The Indian Child Welfare Act defines "tribal court" broadly to include courts and "any other administrative body of a tribe which is vested with authority over child custody proceedings." 25 U.S.C. § 1903(12);

(b) The petition is inexcusably filed when the proceeding is already at an advanced stage. The parties understand that

fundamental tribal values may guide the timing by a tribe to petition for a transfer; or

(c) The evidence necessary to decide the case could not be adequately presented in the tribal court without undue hardship to the parties or the witnesses and the tribal court is unable to mitigate the hardship by any means permitted in the tribal court's rules. Without evidence of undue hardship, distance alone should not defeat transfer.

(2) Either parent objects to the transfer, or

(3) The tribal court declines the transfer. 25 U.S.C. § 1911 (b).

Socio-economic conditions and the perceived adequacy of tribal or Bureau of Indian Affairs social services or judicial systems may not be considered in a determination that good cause exists. The parties agree that, whenever a local social service agency or any other party opposes a transfer of jurisdiction based on good cause, such party has the burden of establishing good cause not to transfer and must provide a written explanation of its opposition to the tribe(s) and to the parties who support the transfer. See Bureau of Indian Affairs Guidelines, 44 Fed. Reg. 67,584, 67,595 at C.3(b) (i) – (iv), (c), (d) (Nov. 26, 1979) (as modified).

4. Intervention

In any state court proceeding, for the foster care placement of, or termination of parental rights to an Indian child, the Indian custodian of the child, and the Indian child's tribe, shall have the right to intervene at any point in the proceeding pursuant to 25 U.S.C. § 1911(c); Minn. R. Juv. Protection P. 21.01, subd. 1 (c).

5. Full Faith and Credit for Public Acts, Records, and Judicial Proceedings of Tribes

"The United States, every state, every territory or possession of the United States, and every Indian tribe, shall 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 the public acts, records, and judicial proceedings of any other entity." 25 U.S.C. § 1911(d). The Department recognizes its responsibility to adhere to this mandate.

6. Adoption and Safe Families Act

The parties understand that states must comply with both the Adoption and Safe Families Act and the Indian Child Welfare Act. A provision of the Adoption and Safe Families Act recognizes that the provision does not "affect the application of

the Indian Child Welfare Act." 42 U.S.C. § 674(d)(4). In addition, the Department of Health and Human Services has explained that its regulations implementing the Adoption and Safe Families Act do not supersede the Indian Child Welfare Act requirements. See 65 Fed. Reg. 4029 (January 25, 2000); see also 42 U.S.C. §§ 622 (b) (11) and 675 (5)(E); 45 CFR 1356.21 (i).

7. **Inter-Ethnic Adoption Provision**

The Multi-Ethnic Placement Act and its amendments, known as the Inter-Ethnic Adoption Provision, shall not be construed to affect the application of the Indian Child Welfare Act. 42 U.S.C. § 1996b(3) (2006).

D. INTERPRETATION OF AGREEMENT

This Agreement shall be liberally construed so as to achieve a result consistent with the policy and intent of the Indian Child Welfare Act, the Minnesota Indian Family Preservation Act and the following placement preferences:

1. Indian children should be kept with their families;

2. Indian children who must be removed from their homes should be placed within their own families and Indian tribe(s);

3. The Department shall follow the tribal order of placement preferences consistent with 25 U.S.C. § 1915(c).

Any ambiguity in this Agreement shall be resolved in favor of a result that is most consistent with these placement preferences.

The phrase "and/or", which is used throughout this Agreement as a conjunction between "designated tribal representative" and "qualified expert witness" is not meant in any way to imply that the "designated tribal representative" can be excluded in favor of a "qualified expert witness." The phrase is used solely as a matter of convenience, as there may be times that the "designated tribal representative" and the "qualified expert witness" are the same person, and there may be times when both participate.

In calculating timelines under this Agreement, if no specific reference is made to the inclusion or exclusion of holidays and weekends, the following rules will apply: Saturday, Sunday, and holidays shall be excluded for computation when the period of time is less than seven (7) days. When the period of time is seven (7) days or more, Saturdays, Sundays, and holidays shall be included in the computation unless the Minnesota Indian Family Preservation Act dictates otherwise.

E. DEFINITIONS

The following definitions shall apply to this Agreement unless such application is inconsistent with the Indian Child Welfare Act or the Minnesota Indian Family Preservation Act.

1. "**Acknowledge**" means any action on the part of the unwed father to hold himself out as the biological father of an Indian child. "Acknowledged father" also means a father as defined by tribal law or custom.

2. "**Adoptive Placement**" means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

3. "**Agreement Compliance Contact**" meanns a person designated by a tribe and a person designated by the Department to represent her or his respective entities as a liaison between the Tribe and the Department in the implementation of this Agreement.

4. "**Active Efforts**" means a rigorous and concerted level of case work that uses the prevailing social and cultural values, conditions and way of life of the Indian child's tribe to preserve the child's family and to prevent placement of an Indian child and, if placement occurs, to return the child to the child's family at the earliest time possible. "Active efforts" sets a higher standard than "reasonable efforts" to preserve the family, to prevent the break-up of the family, and to reunify the family, as defined by Minnesota law. See Minn. Stat. § 260.012(c) (2006).

   Active efforts require acknowledging traditional helping and healing systems of an Indian child's Tribe and using these systems as the core to help and to heal the Indian child and family. See 25 U.S.C. § 1912(d); Bureau of Indian Affairs Guidelines, 44 Fed. Reg. 67,584, 67,595 at D.2 (Nov. 26, 1979). Before the local social service agency makes a decision that will affect a child's well-being, or when an out of home placement is contemplated, the local social service agency must seek guidance from the Indian child's Tribe on how that family is structured, how the family can seek help, what family and Tribal resources are available and what barriers the family faces at that time that could threaten its preservation. The local social service agency should work with the child's Tribe and family to develop an alternative plan to placement.

   Active efforts are required throughout the local social service agency's involvement with the family. The parties to this Agreement identify the following as potential active efforts:

   a. Notifying and requesting the involvement of the tribe(s) or designated tribal representative(s) to participate in the case at the earliest point possible and actively soliciting their advice throughout the case.

b. Requesting that tribally designated representative(s) with substantial knowledge of prevailing social and cultural standards and child-rearing practices within the tribal community, evaluate the family circumstances and assist in developing a case plan that uses tribal and Indian community resources.

c. Providing concrete services and access to both tribal and non-tribal services including, but not limited to, financial assistance, food, housing, health care and transportation when needed. Such services are to be provided in an on-going manner throughout the case to directly assist the family in accessing and engaging in those services.

d. Arranging visitation (including transportation assistance) that will take place, whenever possible, in the home of the parent(s), Indian custodian(s), other family members, or in some other non-institutional setting, to keep the child in close contact with parent(s), siblings, and other relatives, regardless of their age, and to allow the child and those with whom the child is visiting to have natural and unsupervised interaction whenever consistent with protecting the child's safety. When the child's safety requires supervised visitation, consulting with tribal representative(s) to determine and arrange the most natural setting that ensures the child's safety.

e. Consulting with the tribe(s) about the availability of tribal support for the family, including traditional and customary practices as well as other existing tribal services and using these tribally based family preservation and reunification services whenever available. If no tribally based services are available, referring parent(s), Indian custodian(s), and children to other Indian agencies for services.

f. Consulting with extended family members for help and guidance, and using them as a resource for the child. If there is difficulty working with the family, seeking assistance from an agency, including tribal social services, with expertise in working with Indian families.

g. Using available tribal, other Indian agency and state resources that exist and that are appropriate for the child and family.

h. Providing services to extended family members to allow them to be considered for placement of the child.

See generally Minnesota Department of Human Services, Social Services Manual, XIII-3500-3687; In re the Welfare of M.S.S., 465 N.W.2d 412 (Minn. Ct. App.1991).

5. **"Best Interests of an Indian Child"** means compliance with and recognition of the importance and immediacy of family preservation, using Tribal ways and strengths to preserve and maintain an Indian child's family. The best interests of an Indian child will support the child's sense of belonging to family, extended family, clan and Tribe. Best interests of an Indian child are interwoven with the best interests of the Indian child's Tribe. Best interests must be informed by an understanding of the damage that is suffered by Indian children if family and child tribal identity and contact are denied. Congress has not imposed a "best interests" test as a requirement in Indian Child Welfare Act child custody proceedings. See Bureau of Indian Affairs Guidelines, 44 Fed. Reg. 67,584, 67,592 at D.3. (Nov. 26, 1979). See generally Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989); In re the Adoption of M.T.S., 489 N.W.2d 285, 288 (Minn. Ct. App. 1992).

6. **"Case Plan"** means a written plan prepared by the local social service agency jointly with the parent (s), Indian custodian or guardian of the child; the child's tribe and in consultation with the guardian ad litem and the child's foster care providers or representative of the residential facility, and where appropriate, the child. If the child is in placement solely or in part due to the child's emotional disturbance, the mental health provider shall be included. This document should outline the requirements set forth in Minnesota Statutes sections 245.4871, subds. 19 or 21; 245.492, subd. 16; 256B.092; 256E.08; 260C.212, subd. 1; or 626.556, subd. 10, whichever is applicable; Minnesota Rules of Juvenile Protection Rule 37; and the Department of Human Services, Social Services Manual, XIII-3500-3687. In addition, the parties agree that the focus shall be on family preservation and elimination of the issues underlying the child protection proceeding.

7. **"Child Custody or Placement Proceeding"** means foster placement, termination of parental rights, pre-adoptive placement, adoptive placement, or transfer of legal custody to a member of the Indian child's extended family, long term foster care, or any other placement determination referenced in Minn. Stat. § 260C.201 (2006). Such term or terms shall not include a placement based upon an act which, if committed by an adult would be deemed a crime, or upon an award in a divorce proceedings of custody to one of the parents. However, as set forth in the Indian Child Welfare Act, the term or terms do apply to all other domestic relations proceedings in which an Indian child is the subject of a child custody proceeding as defined in the Indian Child Welfare Act including but not limited to the transfer of legal custody of an Indian child to a member of the child's extended family.

   Such terms include placements based upon juvenile status offenses. Minn. Stat. § 260.755, subd. 3 (2006). Such terms also include any third party custody or de facto custody actions wherein custody of the Indian child may be transferred to any individual other than the Indian child's parent. Minn. Stat. § 257C.02(a) (2006); Gerber v. Eastman, 673 N.W.2d 854 (Minn. Ct. App. 2004); In re the Custody of A.K.H., 502 N.W. 2d 790 (Minn. Ct. App. 1993).

8. "**Data**" means all records, files, (including microfilm or computer files), case notes, and all other information regarding an Indian child regardless of whether such files containing the information are open or closed.

9. "**Department of Human Services**" ("the Department") means the state agency with ultimate responsibility for the provision of state child welfare services that has met the compliance requirements under P.L. 96-272 and received certification by the federal government.

10. "**Designated Tribal Representative**" means an individual designated in writing by the Indian child's tribe to represent the tribe in child custody proceedings.

11. "**Domicile**" means a person's true, permanent home, or the place to which she or he intends to return even though actually residing elsewhere; a child's domicile is determined by the domicile of her or his parent(s), even if the child has never resided at the parent(s)' domicile. "Domicile" is not necessarily synonymous with "residence," and one can reside in one place but be domiciled in another. For adults, domicile is established by physical presence in a place in connection with a certain state of mind concerning one's intent to remain there. Since most minors are legally incapable of forming the requisite intent to establish a domicile, their domicile is determined by that of the custodial parent. On occasion a child's domicile will be in a place where the child has never been. Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989).

12. "**Emergency**" means a condition caused by the action or inaction by an Indian child's parent or Indian custodian that puts the child at risk of imminent physical damage or harm. The emergency only exists while there is an immediate risk, and once that passes, the emergency no longer exists.

13. "**Extended Family**" shall be defined by the law or custom of the Indian child's tribe or in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or step-parent. 25 U.S.C. § 1903(2).

14. "**Foster Placement**" means any and all initial and subsequent actions involving the removal of an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where the parental rights have not been terminated.

15. "**Good Cause Not to Follow the Placement Preferences**" For the purposes of foster care, pre-adoptive, adoptive placement or other permanency placements, a determination of good cause not to follow the order of preference set out in the

Act should be limited to a finding by the court of one or more of the following considerations.

a. The request of the biological parent(s) or child, when the child is of sufficient age where appropriate. If the sole basis for the preference of the parent or child is to avoid application of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act, the court should reject the preference.

b. The extraordinary physical or emotional needs of the child requiring highly specialized treatment services as established by the testimony of a qualified expert witness and, if necessary, an expert witness as defined herein.

c. The unavailability of suitable families for placement, after a diligent search consistent with the active efforts standard has been completed for families meeting the preference criteria.

See The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. 67,584, 67,595 at F.3 (Nov. 26, 1979) (as modified).

Bonding or attachment to a foster family alone without the existence of any of the above conditions is not good cause to keep an Indian child in a lower preference or non-preference home. See In re Adoption of M.T.S., 489 N.W.2d 285 (Minn. Ct. App. 1992); Department of Human Services, Social Services Manual, XIII-3521.

The burden of establishing the existence of good cause to modify placement preferences shall be on the party urging that the preferences not be followed. See The Bureau of Indian Affairs Guidelines, 44 Fed. 67,584, 67,595 at F.3 (Nov. 26, 1979).

16. "**Good Cause Not to Transfer Jurisdiction to Tribal Court**" shall have the meaning set forth above in Part I.C.3 (Transfer to Tribal Courts).

17. "**ICWA**" means the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963.

18. "**Indian Child Welfare Act Contact Person**" means a person(s) designated by a tribe in writing to receive formal notice regarding Indian child custody or placement proceedings. The parties agree this should include designation of the person's title, in the event that the designated representative is no longer in that position.

19. "**Imminent Physical Damage or Harm**" means a threat of immediate physical injury; emotional harm to a child is not sufficient.

20. **"Indian"** means any person who is a member of any Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in the Alaska Native Claims Settlement Act. 43 U.S.C. § 1606; 25 U.S.C. § 1903(3); Minn. Stat. § 260.755, subd. 7 (2006).

21. **"Indian Child"** means any unmarried person who is under age eighteen and is (a) either a member of an Indian tribe; or (b) eligible for membership in an Indian tribe. Minn. Stat. § 260.755, subd. 8 (2006). A termination of parental rights does not sever the child's membership or eligibility for membership in the tribe or other rights as an Indian.

The parties agree that this statutory definition of an Indian child applies without exception in any child custody proceeding. Whether an Indian child is part of an Indian family or has established a connection to her or his tribe is not a consideration in determining the applicability of the Indian Child Welfare Act or the Minnesota Indian Family Preservation Act to an Indian child. The parties to this agreement explicitly reject any existing Indian family exception or doctrine.

A determination by the tribe that a child is a member or eligible for membership in the tribe is conclusive. The Bureau of Indian Affairs Guidelines, 44 Fed. Reg. No. 228, 67,584, 67,586 (Nov. 26, 1979). In re S.N.R., 617 N.W. 2d 77, 84 (Minn. Ct. App. 2000).

22. **"Indian Child's Tribe"** means the tribe in which an Indian child is a member or eligible for membership. For an Indian child who is a member of or eligible for membership in more than one tribe, the determination of the child's tribe is best made by the respective tribes with whom the child is a member or eligible for membership. If that determination has not been made, or if a dispute exists between the tribes, the Court shall designate the tribe with which the child has more significant contacts. Such a determination shall not prohibit any other interested tribes from participating in child custody proceedings. Any such participating tribe should have access to information regarding the family. See Minn. Stat. § 260.755, subd. 9 (2006); 25 U.S.C. § 1903(5). The extent of the child's contact with the Tribe shall not be used to challenge a determination that the child is an Indian child.

23. **"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. 25 U.S.C. § 1903(6); Minn. Stat. § 260.755, subd. 10 (2006).

24. **"Indian Organization"** means any group, association, partnership, corporation or other legal entity owned or controlled by Indians, or a majority of whose members are Indian. 25 U.S.C. § 1903(7). See also Minn. Stat. § 260.755, subd. 11 (2006).

25. **"Indian Tribe"** means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians

by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. § 1602(c). 25 U.S.C. § 1903(8); see also Minn. Stat. § 260.755, subd. 12 (2006).

26. "**Legal Custody**" means the legally enforceable duty, responsibility, and authority to provide care and control of a child as interpreted by the Minnesota juvenile court system or tribal court when transferring legal responsibility for care from a parent, Indian custodian, or legal guardian to the local social service agency, court services agency, or individual pursuant to a court order.

27. "**Local Social Services Agency**" means the local agency under the authority of the county welfare or human services board or county board of commissioners that is responsible for human services. Minn. Stat. § 260.755, subd. 13 (2006).

28. "**MIFPA**" means the Minnesota Indian Family Preservation Act. Minn. Stat. §§ 260.751 to 260.835 (2006).

29. "**Parent**" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including but not limited to adoptions under tribal law or custom. This definition does not include an unmarried father whose paternity has not been acknowledged or established. 25 U.S.C. § 1903(9); Minn. Stat. § 260.755, subd. 14 (2006).

30. "**Permanency Planning for Indian Children**" means a process designed to help Indian children live in their own families as defined by the Indian Child Welfare Act. This process should offer continuity of relationships with nurturing parents, extended family members regardless of age, and tribal caregivers. This process is designed to provide the child an opportunity to develop and maintain lifetime familial relationships. When an Indian child is unable to live with her or his own parents or Indian custodians, permanency planning may include transfer of permanent legal and physical custody to a relative, long term foster care, customary/cultural adoptions, or adoption in District Court. Customary/cultural adoptions include traditional adoptions recognized by tribal practice, custom or tradition. The parties to this Agreement acknowledge that the traditions, customs and values of many tribes do not accept actions intended to terminate parental rights or other actions that can effect a severing of the parent/child relationship. The parties acknowledge that all permanency options have the potential to extinguish the relationship between the parent and the child.

31. "**Placement Preferences**" means the following: an Indian child's tribe's order of preference by resolution, public acts, records or judicial proceedings, shall be followed by the agency or court effecting the placement so long as the placement is the least restrictive setting appropriate to the particular needs of the child. 25 U.S.C. § 1915(c).

Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting that most approximates a family and in which the child's special needs, if any, may be met. The child shall also be placed within reasonable proximity to her or his home, taking into account any special needs of the child.

a. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement in the following descending order:

(1) a member of the Indian child's extended family;

(2) a foster home licensed, approved, specified or acknowledged by the Indian child's tribe;

(3) an Indian foster home licensed or approved by an authorized non-Indian licensing authority;

(4) 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. 25 U.S.C. § 1915(b).

b. In any adoptive placement of an Indian child under state law, a preference shall be given, in the absence of good cause to the contrary, to a placement in the following descending order:

(1) a member of the Indian child's extended family;

(2) other members of the Indian child's tribe;

(3) other Indian families. 25 U.S.C. § 1915(a).

An out of home placement of an Indian child with her or his siblings or half siblings in a non-relative, non-Indian home does not meet the placement preference requirements. This type of placement does not constitute a placement with "family" or with "relatives." The child's family, relatives or kinship relationships shall be determined in regard to the parent(s) and/or Indian custodian(s), not to other children in the placement home. See Department of Human Services, Social Services Manual, XIII-3500-3687.

32. **"Pre-Adoptive Placement"** means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement. 25 U.S.C. § 1903(1)(iii).

33. **"Qualified Expert Witness"** The Indian Child Welfare Act prohibits foster care placement or termination of parental rights unless a district court determines by

clear and convincing evidence and evidence beyond a reasonable doubt, respectively, after hearing testimony of qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. See 25 U.S.C. § 1912 (e) and (f). In the spirit of this Agreement, the State encourages counties to seek a qualified expert witness from a list of qualified expert witnesses that the Indian child's Tribe has designated. The qualifications of a tribally designated qualified expert witness shall not be subject to challenges in Indian child custody proceedings.

a. When use of a tribally designated qualified expert witness is not possible, the State and Tribes recognize that persons with the following expertise and capacities will meet the requirements for a qualified expert witness. While not every qualified expert witness will demonstrate knowledge and understanding of each of these criteria, the parties encourage consideration of these criteria when establishing qualified expert witnesses to offer testimony concerning whether continued custody of the child by the parent or Indian custodian is likely to result in serious physical or emotional damage to the child:

   (1) Membership in the child's tribe or significant experience with the child's tribe;

   (2) Knowledge and understanding of the meaning of membership in the child's tribe;

   (3) Knowledge and understanding of the meaning of clan relationships and extended family relationships in the child's tribe;

   (4) Knowledge and understanding of the meaning of traditional and contemporary child rearing practices within the child's tribe;

   (5) Knowledge and understanding of traditional disciplinary measures used within the child's tribe;

   (6) Knowledge and understanding of ceremonial and religious practices and cultural traditions within the child's tribe;

   (7) Knowledge and understanding of medicine and traditional healing of the child's tribe; and

   (8) Knowledge and understanding of the effect of acculturation or assimilation within the child's tribe.

b. The parties agree that the criteria above inform, and do not supplant, current Minnesota law, which defines a "qualified expert witness" as:

(1) a member of the Indian child's tribe, who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child rearing practices;

(2) a lay expert witness who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe; or

(3) a professional person who has substantial education and experience in the area of her or his specialty and substantial knowledge of prevailing social and cultural standards and child rearing practices within the Indian community.

See In re the Custody of S.E.G., 521 N.W.2d 357, 364-65 (Minn. 1994) (citing with modification the Bureau of Indian Affairs Guidelines, 44 Fed. Reg. 67,584, 67,595 at D.4.(b)); see also Minnesota Rules 9560.0221, subpart 3.G.(2005).

34. **"Reservation"** means Indian Country as defined in 18 U.S.C. § 1151 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation. 18 U.S.C. § 1151; 25 U.S.C. § 1903(10); Minn. Stat. § 260.755, subd. 18 (2006).

35. **"Residence"** means the place where the person currently lives or has established a place of abode; provided that if the law or custom of the Indian child's tribe defines this term differently then the tribal definition shall control.

36. **"Secretary"** means the Secretary of the Interior. 25 U.S.C. § 1903(11); Minn. Stat. § 260.755, subd. 19 (2006).

37. **"State Court"** means any juvenile or family court of the State of Minnesota that has jurisdiction over a child custody proceeding.

38. **"Termination of Parental Rights"** ("TPR") means any action resulting in the termination of the parent-child relationship. 25 U.S.C. § 1903(1)(ii). No order for involuntary termination of parental rights shall be made in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of a qualified expert witness or qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(f). In addition, the petitioner must prove beyond a reasonable doubt one or more grounds for termination of parental rights pursuant to state statute. Minn. Stat. § 260C.301 (2006). Termination of parental rights includes any voluntary or

involuntary action as part of a step-parent adoption and an adoption consent pursuant to Minn. Stat. § 259 (2006); see also 25 U.S.C. § 1913.

39. **"Transfer of Permanent Legal Custody to a Relative"** means the permanent transfer of legal and physical custody of an Indian child to an extended family member. Minn. Stat. § 260C.201, subd. 11(d) (2006).

40. **"Trial Home Visit"** means the child is returned to the care of the parent or Indian custodian from whom the child was removed for a period not to exceed six months. Minn. Stat. § 260C.201, subd. 1(3) (2006).

41. **"Tribal Court"** means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe that is vested with authority over child custody proceedings. 25 U.S.C. § 1903(12).When a tribe designates the tribal court of another tribe to act on its behalf, the term shall also include the tribal court of the other tribe.

42. **"Tribal Social Services Agency"** means a tribal program or a tribe's agent however named, with responsibility for provision of social services to Indian families and children. Minn. Stat. § 260.755, subd. 21 (2006).

43. **"Voluntary Foster Placement"** means an out of home foster placement by a social services agency away from the home of the parent, Indian custodian or legal guardian where a parent may have the child returned upon demand. Voluntary foster placement requires court certification as well as a signed voluntary placement agreement that specifies the child's legal status and spells out the rights and obligations of the child, parent(s) or Indian custodian and agency, including the duty of the agency to return the child upon demand. The consent must be executed in writing and recorded before a judge in a court of competent jurisdiction and must be 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. 25 U.S.C. § 1913 (a), (b); Minn. Stat. § 260.755, subd. 22 (2006).

44. **"Voluntary Relinquishment"** means the free-will, non-coerced consent of a parent or Indian custodian to permanently give up custody of a child, to have parental rights terminated and then have the child placed for adoption. The consent must be executed in writing and recorded before a judge in a court of competent jurisdiction and must be 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. 25 U.S.C. § 1913.

45. **"Ward of Tribal Court"** means an Indian child who is so considered by a tribal court. The ward of a tribal court is not necessarily the same as a "state ward" in which a child is free for adoption. An Indian child may be a ward of a tribal court without having parental rights terminated.

PART II

GENERAL AGREEMENT IMPLEMENTATION PROVISIONS

PART II. GENERAL AGREEMENT IMPLEMENTATION PROVISIONS

A. INDIAN CHILD WELFARE ACT and MINNESOTA INDIAN FAMILY PRESERVATION ACT COLLLABORATION EFFORTS

The parties agree to meet annually by June 30th and thereafter to address systemic issues related to compliance with the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act and to address possible legislative resolutions.

At this meeting, the parties will review possible remedial legislation to strengthen compliance with the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act and enforcement of those Acts based on all appropriate and relevant data and statistics that the parties have shared prior to June 30th of each year. If a legislative agenda is agreed upon, the parties will consult with each other on the preparation of legislative proposals. Enforcement mechanisms that may be discussed include legislative proposals, rule revision, Department bulletins or training, review of Indian foster and adoptive home training and recruitment efforts, and the development of the registry of Indian foster and adoptive homes.

B. PURCHASE OF SERVICES

As provided by the Minnesota Indian Family Preservation Act, if permitted by law and existing funding allocations, the Department agrees to purchase, at the request of a tribe, "child welfare services" (as defined in 42 U.S.C. § 625(a)(1)) and "social services" (as defined in 42 U.S.C. § 1397), by contract from the tribe, Indian organization or any other organization recognized and approved by a tribe as providing culturally appropriate child welfare services to Indian families. In addition, if requested by the tribe, and required by law and permitted by existing funding allocations, the Department also agrees to purchase by contract, from these entities, all "other services" provided by the Department to or on behalf of Indian children and families. This agreement also recognizes the possibility that the State may provide a block grant to a tribe for the provision of culturally appropriate services to Indian children. In compliance with all federal and state laws and regulations governing the utilization of funds provided through purchase of services contracts, the tribe from whom services are purchased will provide such services to or on behalf of Indian children and families. All of the agreements set forth in the foregoing paragraph are subject to state and federal law and available funding resources.

Purchase of services contracts shall be separately negotiated agreements between the Department and each tribe. These contracts will be renegotiated as specified in the contract. The Department agrees to provide the tribes a timely opportunity to participate in the development of the biennial budget proposals. Budget formulation participation may be limited to matters pertinent to securing funds to finance the Department's purchase of services contracts with the tribes. However, the Department will solicit input from the tribes on all issues that are related to securing funds to finance the Department's purchase of services contracts with the tribe(s).

Executed purchase of services contracts will be available from the Department upon request. Should any provisions of this Agreement and the contracts conflict, the provision of the contracts shall govern, but shall not diminish the protections afforded to Indian children as set forth in this Agreement. If a conflict occurs, this Agreement shall be amended by consent of both the Department and the Tribes to reflect the provisions set forth in the contracts.

C. CONTINUING DEPARTMENT RESPONSIBILITY FOR SERVICES

In addition to services specifically established for Indian families in this Agreement or otherwise, the Department recognizes the responsibility of the State and local social service agencies to make available to Indian families all of the other services available to any other family in the circumstances covered by this Agreement. Existing services must not be reduced because of the availability of services through this Agreement. The parties agree that local social service agencies must honor tribal court orders for placement and provision of services in compliance with Title 25 of the United States Code, section 1911(d), which requires every state to give full faith and credit to the public acts, records and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings. The exercise of tribal court jurisdiction does not mean a withdrawal, decrease, or denial of county social services.

D. AGREEMENT COMPLIANCE CONTACT

At the time of signing, each party to this Agreement shall designate an Agreement Compliance Contact person for purposes of implementing this Agreement.

The name(s) of the contact person(s) for the tribe(s) or her or his designee(s) will be provided to the Department in writing, and this information will be updated by the tribe(s) upon any change.

A supervisor or her or his designees within the Minnesota Department of Human Services, or Child Safety and Permanency Division, shall be the Department's contact person. The Department shall notify the tribes in writing of the identity of the Department's contact person, and this information will be updated by the Department upon any change.

E. DEPARTMENT'S SOCIAL SERVICE MANUAL

To reflect the changes made to this Agreement in 2007, the Department, in consultation with the Tribes signing this Agreement, will review and revise the current section entitled "American Indian Children" in the Department's Social Services Manual (XIII-3500 through XIII – 3687). Such revision will take place within 120 days after this Agreement is signed. The updated Manual shall be available electronically.

F. CONFIDENTIALITY OF RECORDS/INFORMATION

Any obligation under this Agreement by the Department to disclose or transmit confidential records, documents, or information to the tribe(s) or to involve the tribe(s) in case planning activities that necessitate disclosure of private or confidential information is strictly conditioned upon:

1. Federal or state laws that require or authorize the Department or the local social service agency to disclose private or confidential information to the tribe(s), it being understood that in order to achieve the purposes of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Action, a tribe must have access to all data including confidential information regarding an individual with respect to its members; or

2. Entry of a state or tribal court order, with jurisdiction over the parties and the subject matter, which authorizes the disclosure of confidential information to tribes.

If joint assessment or investigation do not occur, and when a local social service agency or private child placing agency determines that an Indian child is in a dependent or other condition that could lead to an out-of-home placement and requires that continued involvement of the agency with the child for a period in excess of thirty days, the agency shall send notice of the condition and of the initial steps taken to remedy it to the Indian child's tribal social service agency within seven days of the determination. Minn. Stat. § 260.761, subd. 2 (2006). At this time and any subsequent stage of its involvement with an Indian child, the agency shall, upon request, give the tribal social services agency full cooperation including access to all files concerning the child.

G. QUALIFIED EXPERT WITNESSES

In all child custody or placement proceedings involving an Indian child, a qualified expert witness shall be an individual who meets the requirements set forth in the definition herein. The parties agree that a tribe's choice of qualified expert witnesses is solely a tribal determination and may include more than one qualified expert witness who will not be subject to challenge by the Department. Each tribe that participates in this Agreement agrees to maintain its list of qualified expert witnesses. The tribe's list of qualified expert witnesses will be a resource available to the court regardless of the tribe's determination to take part in a proceeding. Other parties may also propose qualified expert witnesses.

As distinguished from a qualified expert witness in an Indian Child Welfare Act/Minnesota Indian Family Preservation Act proceeding, an expert witness means a person as defined in Minnesota Rules of Evidence 702 whose testimony does not substitute for the testimony of a qualified expert witness under the Indian Child Welfare Act as defined herein.

H. APPLICABILITY OF AGREEMENT TO STATE LICENSED CHILD PLACEMENT AGENCIES

The Commissioner of Human Services supervises the public human services and child welfare programs, administered by local social service agencies, including private child placing agencies. Minn. Stat. § 256.01, subd. 2(c) (2006). A local social services agency shall make the services of its public child welfare program available as required by law, the Commissioner, or the Courts. Local social service agencies shall also cooperate with other agencies, public, private or Tribal, in dealing with the problems of children and their families. The duties of the local social service agencies shall be performed in accordance with the standards and rules that may be promulgated by the Commissioner to achieve the purposes intended by law and to comply with all relevant requirements of federal law, including the Indian Child Welfare Act; the Minnesota Indian Family Preservation Act and this Agreement. See Minn. Stat. § 393.07 (2006).

I. COMPLIANCE WITH THE INDIAN CHILD WELFARE ACT, THE MINNESOTA INDIAN FAMILY PRESERVATION ACT AND THIS AGREEMENT

1. Department Staffing

To the extent that funding is available, the Department agrees to establish or to maintain one or more positions that shall be filled by a qualified person with knowledge of and experience with tribal identities in Minnesota and Indian child welfare. The Department will include representation from the Indian Child Welfare Advisory Council in the hiring process. The job duties will include strengthening and monitoring services to American Indian children and families provided by the local social service agencies and private child placement agencies and ensuring compliance with the requirements of the Indian Child Welfare Act, Minnesota Indian Family Preservation Act and this Agreement. Such compliance shall be monitored in a manner that is mutually acceptable to the individuals referred to in Part II, Section D of this Agreement, as the agreement compliance contact.

2. Department Compliance Requirements

a. Minnesota Statutes § 256M.20, subd. 3, defines the responsibility of the Department to establish and to maintain a monitoring program that will reduce non-compliance with federal laws and federal regulations by county agencies that might result in federal fiscal sanction.

b. P.L. 103-432 mandates the State to outline the measures that it will take to assure compliance with the Indian Child Welfare Act. In complying with P.L. 103-432, the Department shall adhere to GOAL V of the TITLE IV-E State Plan, "MAINTAIN AND STRENGTHEN COMPLIANCE WITH THE INDIAN CHILD WELFARE ACT," emphasizing Objective E, numbers 3 and 6.

c. The Department further agrees to maintain quality assurance through the Child and Family Services Review Process, as set forth in Minn. Stat. § 256.017. In cases involving tribal children, services reviewed will include notification to tribe and adherence to tribal placement preferences. In addition to interviewing clients and their families, the process will include assessments on compliance from tribal representatives and tribal service providers to gauge the agency's diligence in meeting the needs of tribal children and to promote positive outcomes. The final review report will be provided to the county and posted on the Department's website.

3. Problem Solving Arenas for Issues of Non-Compliance

a. Resolution Process. The parties agree that prompt tribe-to-state and tribe-to-county resolution of problems that affect tribal family receipt of services is an effective way to ensure compliance with the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act. Accordingly, when a report of non-compliance is made, the Department, through its Indian Child Welfare Program Consultant, and the affected Tribe, through its designated tribal representative, will take immediate steps to communicate with each other about the situation and to begin a process to resolve the problem. Anyone may make a report of non-compliance.

(1) Steps in Resolution Process. When a complaint is made to the Indian Child Welfare Program Consultant, he or she will, within three business days of receipt of such report, contact the designated representative of the affected Tribe, the reporter, and the county agency to notify them of the report. The Indian Child Welfare Program Consultant will then promptly gather from the reporter, the affected Tribe, and the county agency, the pertinent information necessary to resolve the dispute. Such information will be promptly shared with the tribal representative from the affected Tribe and with the other parties involved in resolving the dispute. The Indian Child Welfare Program Consultant will provide the parties copies of the laws applicable to the matter. In direct consultation with the tribal representative from the affected Tribe, the Indian Child Welfare Program Consultant may schedule conference calls or meetings at an agreed upon time, allowing all parties sufficient time to review all pertinent information. The parties agree to maintain the confidentiality of the information shared.

(2) Documentation of Dispute Resolution. If the parties reach resolution of the dispute, the Indian Child Welfare Program Consultant will document the problem and resolution, and provide

that documentation to all the parties to the dispute, including the reporter. Summaries of the problems addressed and their agreed-upon resolutions shall be shared by the Department with the Tribes, the Ombudsperson for American Indian Families, and the American Indian Child Welfare Advisory Council.

b. Other Existing Mechanisms to Address Non-Compliance. In addition to the resolution process described above, other avenues exist to address issues of non-compliance. These alternatives include directing allegations of non-compliance to the Ombudsperson for American Indian Families, using the fair hearing process created by Minnesota Statutes § 256.045, or initiating or pursuing legal remedies or resolutions.

J. INTER-AGENCY COORDINATION

The tribes and the Department agree to coordinate with other agencies affected by the terms of the Agreement. Such coordination includes training, on-going consultation, development and negotiation of agreements with other agencies, and other appropriate measures to ensure that this Agreement is understood and effectively implemented. To help ensure coordination, understanding, and implementation of this Agreement, the Department strongly encourages local social service agencies, whose service areas include a tribe or who have at least one Indian child on their caseload, to invite tribal representation on their multidisciplinary child protection team. The Department will continue to provide such encouragement through correspondence and training, and in the Department's Social Services Manual informing local social service agencies of the importance of including tribal representation on the multidisciplinary child protection team.

K. TRAINING

1. The Department/Local Social Service Agency/Private Agency Staff Training

The Department will continue to provide training on the Indian Child Welfare Act, the Minnesota Indian Family Preservation Act and this Agreement in its CORE child protection training under Minn. Stat. § 626.5591. The Department will also provide training regarding the Department's Social Services Manual and other relevant training to strengthen services to Indian children and families. The Department will continue to invite tribal participation on the Minnesota Child Welfare Training Steering Committee to jointly develop an annual plan for on-going training.

a. Indian child welfare services training will include but not be limited to the following areas:

(1) Purposes of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act and this Agreement;

(2) Child Welfare Investigations and Assessments;

(3) Procedures to be followed to implement this Agreement, the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act;

(4) Notice requirements;

(5) Provision of protective services;

(6) Provision of emergency foster care placement services;

(7) Legal requirements to effect involuntary foster care placement or termination of parental rights;

(8) Voluntary foster care placement and termination of parental rights;

(9) Placement preference requirements;

(10) Active efforts requirements;

(11) Qualified expert witness requirements;

(12) Records maintenance;

(13) Adoption of Indian children;

(14) Tribes in Minnesota; and

(15) Information on government to government relationship(s), sovereignty issues, P.L. 83-280.

b. At a minimum, the knowledge and understanding required to accurately assess the risk to an Indian child should include, but not be limited to, the impact of the following factors:

(1) The tribal values, beliefs, religion, customs, ways of being and family recognition system of the child's tribe;

(2) Behaviors and responses stemming from traditional ways of life through assimilated ways of life;

(3) Socio-economic context of the care and condition of the family's home and children: Importance of sharing resources with extended family;

(4) Reality of negative historical experience of Indian people toward non-Indian governmental systems;

(5) Different cultural requirements of social interaction including reticence and passivity indicating respect;

(6) Recognizing tribal family retention of traditional disciplinary methods and extended family clan support; and

(7) Condition of parenting skills due to historic isolation and abuse.

The Department agrees to notify the tribe of child welfare services training provided by the Department or others for staff for local social service agencies, private child placing agencies, and tribal child welfare services.

2. Judicial System/Law Enforcement Training

The Department and the tribes agree to offer, as possible, cooperative on-going training programs to educate judges, lawyers, law enforcement personnel, advocates, guardians ad litem, and probation officers who are involved in Indian child custody proceedings, about the provisions of this Agreement, the Indian Child Welfare Act, the Minnesota Indian Family Preservation Act, and the special cultural and legal considerations pertinent to such proceedings.

3. Payment for Training

The Department agrees to seek grants and/or reimbursement under Title IV-E, the Child Abuse Prevention and Treatment Act and other federal programs, for the training specified in this Agreement.

L. WAIVER/AMENDMENTS

1. Waiver

A duly designated representative of the Department and a tribe, on a case-by-case basis, may agree in writing to waive any of the provisions of this Agreement. The waiver shall identify the provision to be waived, the case or circumstances to which the waiver is applicable, the reason for the waiver and the duration of the waiver.

Any provision of this Agreement may be waived generally by consensus between the Department and the tribes, without regard to a particular case or circumstance. A general effect waiver of any provision(s) of this Agreement shall take effect upon the date the parties sign a written agreement to the waiver. The waiver may be indefinite or may be for a specified length of time.

2. **Amendments**

The parties may amend or modify this Agreement and/or procedures manual at any time upon mutual consent of the Department and the tribes. Amendments shall be effective when approved in the same manner as required for approval of the original Agreement, unless the parties provide otherwise. All amendments shall be attached as appendices to this Agreement.

M. RESOLUTION OF DISPUTES REGARDING INTERPRETATION OF THIS AGREEMENT

The parties agree that, upon the request of any party, disputes arising between any signatory Tribe and the Department concerning the application and interpretation of this Agreement shall be referred to a duly designated representative (or representatives) of the Department and the Tribe for a good faith effort to resolve the dispute. If a resolution is reached, the decision shall be binding upon the Department and upon the participating Tribe. Notice of the dispute and ultimate resolution shall be shared with all of the other signatory Tribes, but none of the Tribes who did not participate in the dispute resolution process shall be bound by the decision. Use of this dispute resolution process does not affect in any manner the abilities of any party to use the waiver and termination remedies provided for in Part II, Sections L and N of this Agreement.

If a state or federal law is amended, neither the Tribe(s) nor the Department will be required to comply with any section of this Agreement that would be out of compliance with, or not required by existing law.

N. TERMINATION OF AGREEMENT

This Agreement shall remain in effect until revoked by one of the parties. The termination of the Agreement by the State with a particular Tribe or by a Tribe shall not invalidate this Agreement as to the other tribes.

This Agreement or any part thereof may be revoked upon 180 days written notice to the other party. The notice shall state the reasons for and the effective date of the revocation.

Prior to notification or revocation, a party considering revocation shall, whenever possible, seek to cooperatively explore with the other party ways in which to avoid revocation.

Prior to the effective date of any revocation, the parties agree to cooperate in assuring the revocation will not unnecessarily result in a break in service or in disruption of the services provided to Indian children and families.

PART III

FUNDING ISSUES

PART III. FUNDING ISSUES

A. FOSTER CARE MAINTENANCE PAYMENT

It is the position of the Department and the Tribes that, to the extent an Indian child is otherwise eligible for foster care maintenance payments under Minnesota law, the local social service agency shall pay for the cost of foster care of Indian children who are placed by a state or tribal court or through a voluntary placement agreement in licensed foster homes or homes licensed or approved by the Tribes. It is the position of the Department and the Tribes that the local social service agency's obligation is subject to the same eligibility standards and rates of support applicable to other children for whom the local social service agency pays foster care. In any case where the tribal court orders placement through a local social services agency, the court shall provide to the local agency notice and an opportunity to be heard regarding the placement.

Determination of the county of financial responsibility for the placement shall be made by the local social service agency in accordance with Minn. Stat. § 256G.02, subd. 4 (2006). Disputes concerning the county of financial responsibility shall be settled in the manner prescribed in Minn. Stat. § 256G.09 (2006). Minnesota Department of Human Services Bulletin No. 04-68-10 "County Responsibilities for Children Under Tribal Court Jurisdiction" (Nov. 24, 2004). This responsibility also applies to local social service agencies that serve the Red Lake Nation and the Bois Forte Band of Chippewa or any tribal jurisdiction wherein the State legislature has enacted a retrocession of its Public Law 280 jurisdiction to the United States.

B. ADOPTIVE PLACEMENT COSTS

Subject to the rules of the Commissioner and the provisions of Minn. Stat. § 259.67, subd. 7, a child-placing agency licensed in Minnesota or any other state, or local or tribal social services agency shall receive a reimbursement from the Commissioner equal to 100 percent of the reasonable and appropriate cost of providing adoption services for an Indian child eligible for reimbursement of costs pursuant to Minn. Stat. § 259.67, subd. 7, up to the statutory maximum. Adoption services may include adoptive family recruitment, counseling, and special training when needed. Agencies eligible for reimbursement for adoption services as well as eligibility criteria for a child, are described in Minn. Stat. § 259.67, subd. 7.

A licensed child-placing agency or local or tribal social service agency, seeking reimbursement under this subdivision shall enter into a reimbursement agreement with the Commissioner before providing adoption services for which reimbursement is sought. No reimbursement under this section shall be made to an agency for services provided prior to entering a reimbursement agreement. Separate reimbursement agreements shall be made for each Indian child and separate records shall be kept on each child for whom a reimbursement agreement is made. Minn. Stat. § 259.67, subd. 7. Funds encumbered and obligated under such an agreement for the child remain available until the terms of the agreement are fulfilled or the agreement is terminated.

Children certified as eligible for adoption assistance who are protected under the Indian Child Welfare Act should, whenever possible, be served by the tribal governing body, tribal courts, or a licensed Indian child-placing agency.

C. ADOPTION ASSISTANCE PAYMENT

The Department, in coordination with the tribe's social services agency, agrees to provide adoption assistance payments to adoptive parents who have obtained the adoption of a child through a tribal court, provided that the child and the adoptive parents meet all of the program eligibility requirements set forth in 42 U.S.C. §§ 670 through 679a and the requirements of Minn. Stat. § 259.67, as well as other applicable federal and state regulations.

D. FUTURE FUNDING

The Department agrees to continue to work with the tribes regarding social service funding issues and re-evaluate future funding possibilities.

PART IV

MISCELLANEOUS PROVISIONS

PART IV. MISCELLANEOUS PROVISIONS

A. REVIEW OF FOSTER CARE AND PREADOPTIVE PLACEMENT

The local social service agency is required by P.L. 96-272, Social Security Act, Title IV, Part E., § 475(5)(B) to conduct an administrative review of all voluntary and involuntary foster placements and preadoptive placements of Indian children not less than every six months unless such reviews are being conducted by tribal or state court. In any review of the foster or preadoptive placement of an Indian child, the local social service agency will notify the tribe, parent(s), Indian custodian(s), extended family members, and the child if over the age of twelve (12). Notice must be sent at least fourteen (14) days prior to the review. Each tribe in which the child is eligible for membership will receive notice and has a right to participate in the review and shall have access to all files and documents pertaining to placement. A child over the age of twelve also shall have a right to participate in the review. In reviews of foster placements where parental rights have been terminated, the parent(s) or Indian custodian(s) of the child will not be notified of the review and do not have a right to participate.

At a minimum, the review will evaluate the suitability of the foster or preadoptive placement, including but not limited to the suitability of the placement under the Indian Child Welfare Act, the necessity of continuing the child in foster or preadoptive placement, and the prospect for terminating the placement and returning the child to the custody of the parent(s) or Indian custodian(s) or permanent placement of the child. The review will also evaluate the suitability and effectiveness of the services rendered to the child and family as they reflect the family's Tribal values and beliefs, and efforts made to insure tribally appropriate contact with parent(s), Indian custodian(s), siblings, and extended family, regardless of age.

B. RECRUITMENT/REGISTRY OF FOSTER AND ADOPTIVE HOMES

1. Recruitment

The Department and the tribe(s) agree to cooperate to develop a plan to recruit Indian foster and adoptive homes. The recruiting plan may include plans to utilize the media, Indian organization resources, mailing to members of such organizations, door-to-door solicitation within Indian communities, national and regional adoption resource exchange, and other means likely to succeed in securing Indian foster and adoptive homes for Indian children. The Department and Tribes shall provide training to assist potential Indian foster care providers to comply with tribal or state licensing standards for foster or adoptive homes. Each Tribe will determine how it may share its list of licensed homes, including tribal affiliation, name and county of residence, with the Department. The agency attempting to place a child with that family may contact the tribal licensing agent to request additional information regarding the family.

2. Assessment of Prospective Foster or Adoptive Homes

The parties recognize that an Indian child's tribal identity is a crucial element of her or his well being and must be protected when a child may be removed from the child's home. The parties agree that an assessment of the ability of a prospective foster parent to parent an Indian child shall take into account the following:

a. Motivation for application at this time;

b. Existing family relationships, attitudes and expectations regarding own children and parent-child relationships, especially where such existing attitudes and relationships might affect the foster child;

c. Personal characteristics necessary to provide continuity of care throughout the child's need for placement:

(1) Ability to accept Indian child's relationship with own parent(s);

(2) Willingness to help Indian child learn about the child's situation;

(3) Willingness to ask what a foster parent needs to know to be helpful to the Indian child;

(4) Capacity to avoid attribution to a person based on assumptions about child's background;

(5) Ability to acknowledge that attribution and understand why it can be wrong;

(6) Understanding how culture affects the way people act or react differently to the same situation or how they think about other people or their property or values;

(7) Capacity to discern that an Indian child is experiencing needs that the child is unable to communicate; and

(8) Expectation of how people should react to authority, generosity, or kindness.

d. Attitudes of significant members of extended family regarding child placement;

e. Ability to love and accept child as the child is;

f. Capacity of parent(s) to provide for foster child's needs while giving proper consideration to own children;

g. Foster parents' own children's attitudes toward accepting an Indian foster child;

h. Ability to relate to natural parent(s) who may have neglected or abused the child; and

i. Understanding that there may be multiple means to convey displeasure with the conduct of an Indian foster child.

3. Registry

The Department agrees to establish and maintain a registry of all Indian homes licensed by the State of Minnesota, licensed or approved by a tribe, and available to receive Indian children for foster care or adoption. The registry will identify the name, address, tribal affiliation of the home, whether the home is licensed or approved by the Department or a tribe, and whether the home is available for foster or adoptive placement or both. The registry will also identify for each home any preconditions to the acceptance of a child, such as, willingness to only accept a relative, a member of the same tribe, a child without mental or physical handicap, or that the home has indicated no preconditions. Upon request, a tribe shall have access to any of the records maintained as part of the registry in accordance with the Data Practices Act and other applicable Minnesota Laws.

C. INTER-STATE COMPACT ON THE PLACEMENT OF CHILDREN

Whenever the Department is considering whether to place an Indian child pursuant to the Inter-State Compact on the placement of children, the Department will follow the provisions of the Indian Child Welfare Act, the Minnesota Indian Family Preservation Act and this Agreement, including placement preferences requirements for Indian children.

1. Indian Children Being Sent From Other States

If the transfer forms indicate that the child is Indian, the Department will not approve the transfer or placement until documentation is furnished stating that the child's tribe has been notified.

In responding to the sending state's request, the Department shall be governed by the best interests of the Indian child as set forth in this Agreement. If the child is an Indian child, and the proposed placement is not within the order of preference identified in the Indian Child Welfare Act, the Department shall not accept the child for placement in Minnesota unless the placement meets the good cause exception to the placement preferences as set forth in the Indian Child Welfare Act and relevant case law and the definitions herein. In making the determination as to whether the placement meets the "good cause exception" to the placement

preferences, the Department shall contact the sending state and instruct it to get a letter from the Indian child's tribe.

2. Requests by Minnesota to Send Indian Children to Another State

Whenever the Department makes a request to another state that an Indian child be sent there for purposes of foster care, preadoptive or adoptive placement, the Department will instruct the sending agency to provide notice to the Tribe.

3. Review of Indian Children Currently in Placement

Following the effective date of this Agreement, the Department will provide the tribal social service agencies with information on all Indian children currently in placement, who have been sent under the compact to another state, or who have been sent by another state to the State of Minnesota. If resources permit, the Department will make such reports to the tribal social service agencies annually. The information shall include information received by the Department on the Interstate Compact Application Request To Place Child form that is used by the Department for the interstate placement of children.

If a tribe learns of a placement of an Indian child that fails to meet the placement preferences or the good cause exceptions set forth in the Indian Child Welfare Act, the Minnesota Indian Family Preservation Act, or this Agreement, upon notice from the tribe, the Department will cooperate with the tribe in remedying the placement so that it conforms with the Indian Child Welfare Act, the Minnesota Indian Family Preservation Act and this Agreement.

4. Tribal Placements

Upon request by the Indian child's tribe, the Department will assist the tribe in the placing of Indian children from Minnesota to another state.

5. Retention of Jurisdiction

The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of placement.

D. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

If a tribe determines to adopt as tribal law the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), the tribe agrees to provide notice to the Department of such enactment. Minn. Stat. §§ 518D.101 – 518D.317 (2006).

[Signatories to the 2007 Tribal/State Agreement]

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Date: February 22, 2007

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