# The Indian Child Welfare Act Memorandum of Agreement between the State of Arizona through its Department of Child Safety and the Navajo Nation through its Navajo Division of Social Services.

**TITLE:** The Indian Child Welfare Act Memorandum of Agreement between the State of Arizona through its Department of Child Safety and the Navajo Nation through its Division of Social Services.

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# THE INDIAN CHILD WELFARE ACT MEMORANDUM OF AGREEMENT BETWEEN THE STATE OF ARIZONA THROUGH ITS DEPARTMENT OF CHILD SAFETY AND THE NAVAJO NATION THROUGH ITS DIVISION OF SOCIAL SERVICES.

This Memorandum of Agreement ("MOA" or "Agreement") is between the STATE OF ARIZONA acting through its Department of Child Safety (hereinafter "DCS") and the NAVAJO NATION, acting through its Division of Social Services (hereinafter "NATION"), a federally recognized Indian Tribe.

## I. AUTHORITY

A. In 1978, the Congress of the United States adopted the Indian Child Welfare Act (hereinafter "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.

C. DCS is duly authorized to execute and administer agreements under A.R.S. § 8-453. DCS is authorized by A.R.S. § 11-951 et seq. to enter into agreements for the joint exercise of any power common to the contracting parties as to the governmental functions necessary to public health, safety, and welfare, and the proprietary functions of such public agencies.

D. The Department of the Interior issued Regulations on June 14, 2016, effective December 12, 2016, 25 CFR Part 23, 81 FR 38864; and issued revised Guidelines for state courts in December 2016.

E. Pursuant to these laws, the NATION and DCS hereby enter into this Agreement, subject to the terms and conditions set out below.

## II. PURPOSE AND POLICY

A. DCS and the NATION recognize that:

1. There is no resource that is more vital to the continued existence and integrity of the NATION than its own children;
2. The United States has a direct interest, as trustee, in protecting Indian children who are members of or eligible for membership in an Indian tribe;
3. DCS has a direct interest in protecting Native American culture and encouraging the cultural diversity of the citizens of the State of Arizona;
4. This Agreement is entered into and is predicated on a government to government relationship between the State of Arizona through DCS and the NATION in a spirit of cooperation, coordination, communication, collaboration, and good will; and

5. Both voluntary and involuntary proceedings are of critical interest to the NATION to:
   a. Prevent any cultural separation of Navajo children from their families and their Navajo community;
   b. Ensure that Navajo children who are removed from their homes maintain their Navajo culture; and
   c. Ensure that the values of Navajo culture are preserved.

B. DCS and the NATION agree that:

1. The primary purpose is to protect and further the best interests of the child and his/ her family.
2. The health, care, safety, well-being, and supervision of the child are the primary concerns when providing services to a family;
3. Where possible, the child will be raised within his/ her family and the Navajo culture; and
4. The parties will work cooperatively in all child custody proceedings to protect the best interest of the Navajo child and the legal rights of his/her parents or Indian custodian.

C. DCS and the NATION agree to support an orderly transfer of jurisdiction in accordance with 25 U.S.C. § 1911.

## III. DEFINITIONS

A. "Active Efforts" means affirmative, active, thorough and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. Where an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent(s) or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the NAVAJO NATION and should be conducted in partnership with the Navajo child and the Navajo child's parents, extended family members, Indian custodians, and the NATION. Active efforts are to be tailored to the facts and circumstances of the case and may include, for example:

1. Conducting a comprehensive assessment of the circumstances of the Navajo child's family, with a focus on safe reunification as the most desirable goal;
2. Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;
3. Identifying, notifying, and inviting representatives of the NATION to participate in providing support and services to the Navajo child's family and in family team meetings, permanency planning, and resolution of placement issues;
4. Conducting or causing to be conducted a diligent search for the Navajo child's extended family members, and contacting and consulting with extended

family members to provide family structure and support for the Navajo child and the child's parent(s);

5. Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the NATION;
6. Taking steps to keep siblings together whenever possible;
7. Supporting regular visits with parent(s) or Indian custodian(s) in the most natural setting possible as well as trial home visits of the Navajo child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;
8. Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Navajo child's parent(s) or, when appropriate, the child's family, in utilizing and accessing those resources;
9. Monitoring progress and participation in services;
10. Considering alternative ways to address the needs of the Navajo child's parent(s) and, where appropriate, the family, if the optimum services do not exist or are not available;
11. Providing post-reunification services and monitoring.

B. "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.

C. "Concurrent jurisdiction" exists when the state court and the NATION both have jurisdiction over a child custody proceeding.

D. "Disrupted adoption" means an adoptive placement that ends prior to finalization.

E. "Dissolved adoption" means a finalized adoption where parental rights have been subsequently terminated or voluntarily relinquished.

F. "Domicile" means more than the child's physical presence alone at the time of the actions giving rise to any court proceeding covered by this Agreement. Domicile means (1) for a parent or Indian custodian, the place at which a person has been physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain indefinitely even though the person may be currently residing elsewhere; (2) for a Navajo child, the domicile of the Navajo child's parent(s) or Indian custodian or guardian. In the case of a Navajo child whose parents are not married to each other, the domicile of the Navajo child's custodial parent.

G. "Extended family" means a person who has reached the age of eighteen and who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, stepparent, godparent, or other individual approved by consensus through a Navajo family clan.

H. "Indian child" means any unmarried person who is under the age of eighteen (18) 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.

I. "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.

J. "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) and the NATION becomes a party to the State court proceeding.

K. "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.

L. "Navajo Nation Family Court" means the court of the Navajo Nation vested with authority over child custody proceedings on the Navajo Nation.

M. "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.

N. "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.

## IV. GENERAL PROVISIONS

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

A. This Agreement applies to any unmarried child under the age of eighteen (18) who is a member or is eligible for membership and is the biological child of a member of the NATION. In addition, in regards to this agreement, unless it otherwise stated "written notice" can be by electronic means.

B. Verification of enrollment or eligibility for enrollment is necessary to determine whether the ICWA applies, and ultimate responsibility for verification rests with the NATION. The NATION's verification of membership or eligibility shall be conclusive.

1. DCS shall refer membership and eligibility inquiries to the Navajo Nation ICWA Office designated in Section IV.F for processing.

2. To process verifications in a timely manner it is essential for DCS to forward information regarding the child and parent(s), which should include, as available, the name(s) of the parent(s); the parent(s)'s date(s) of birth; the child's name and date of birth; census number(s) of parent(s) and child; and the Certificate(s) of Navajo Indian Blood of the parent(s) and child.
3. If DCS provides insufficient information to verify membership or eligibility, the NATION will request additional information concerning the child's membership or eligibility from DCS in writing.
4. If DCS has reason to know that the subject child is a Navajo child, DCS shall treat the case as an ICWA case until such time as the NATION has notified DCS of the ineligibility of the subject child or the Court determines that ICWA does not apply.

C. DCS and the NATION recognize that when a Navajo child is the subject of a State child custody proceeding, the free flow of all information between DCS and the NATION is proper and necessary and in the child's best interests.

1. DCS will follow Federal and State statutory confidentiality requirements in the performance of its responsibilities under this Agreement.
2. The NATION will follow the confidentiality requirements of the Navajo Nation Privacy and Access to Information Act, 2 NNC § 81, *et. seq.* and other applicable laws and regulations.
3. DCS and the NATION will share information in any child custody matter. DCS and the NATION will comply with their respective policies in performance of their responsibilities under this Agreement.

D. The parties mutually agree that there shall be established a group of representatives of DCS and the NATION which shall meet quarterly or as needed to address such issues as:

1. Coordination and communication between parties;
2. Interpretation of this Agreement;
3. Reviews of policies and procedures;
4. Caseload trends and their implications;
5. Matters of mutual concern;
6. Navajo customs and laws;
7. Federal, State, or Navajo laws and regulations; and
8. Other issues that may arise as deemed appropriate.

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

The Department of Child Safety – ICWA Designee
3003 North Central, S/C 010-23
Phoenix, Arizona 85012

Telephone Number: (602) 255-2500

F. 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, and issues related to implementation of this Agreement. The NATION's liaison may be contacted at:

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

G. DCS shall invite the NATION to any meetings or staffings concerning a Navajo child. DCS and the NATION will cooperate when developing and preparing any case plan for a Navajo child and his/her family.

H. Expert Witness

1. When ICWA expert testimony is required, the NATION will provide DCS with the names of persons qualified to testify as expert witnesses on issues of tribal customs regarding child rearing and parenting.
2. DCS will consider the use of an expert identified by the NATION, with preference given to the NATION's social worker or an expert identified by the NATION. The DCS worker assigned to the child custody proceedings concerning the Navajo child shall not testify as an ICWA expert.
3. DCS will conduct witness preparation and provide all documents related to the expert's testimony to the expert witness prior to the court hearing.
4. Protective services staff of DCS will testify when necessary in Navajo Nation Court upon the NATION's issuance of a letter requesting appearance. Social services staff of the NATION will testify when necessary in State court upon DCS's counsel's issuance of a letter requesting appearance.
5. If the NATION's identified witness cannot appear for a scheduled hearing, the ICWA office will notify DCS, by electronic means or phone, as soon as possible but no later than seventy-two (72) hours before that scheduled hearing to allow DCS to make other arrangements, if necessary.
6. If the NATION's witness does not appear for a scheduled hearing, DCS will notify the ICWA Program Manager following the hearing of the next scheduled hearing, case name, and name of that witness who was scheduled to appear.

I. If a Navajo child dies while in DCS custody, DCS will consult with the NATION, if necessary, regarding final arrangements for the child.

## V. NOTICE

A. DCS must use due diligence to determine whether any child taken into custody is a Navajo child.

B. As provided in Section V.C, herein, DCS shall notify the NATION in writing in any instance where DCS has received physical custody of or initiated a protective services action regarding a child that DCS knows or has reason to believe is a Navajo child as follows:

1. Involuntary proceedings involving placement, including foster care placement or a change in foster care placement, termination of parental rights proceeding, permanent guardianship, and pre-adoptive placement of a Navajo child;
2. Voluntary foster care placement pursuant to A.R.S. § 8-806 when the child is not returned to the parent upon expiration of the ninety (90) day placement agreement or upon demand of the parent;
3. Judicial hearings in all proceedings to which the NATION is entitled to notice under (1) and (2) above, and any change in hearing dates and times;
4. Any disrupted or dissolved adoption of a Navajo child who has been placed from DCS custody; and
5. Emergency placements, as follows:

    a. When DCS knows or has reason to believe a child who is taken into custody pursuant to A.R.S. § 8-821 is a Navajo child, DCS shall give notice by telephone within forty-eight (48) hours (excluding weekends and holidays) of taking physical custody of the child, or after subsequently learning that the child is believed to be a Navajo child.
    b. When DCS knows or has reason to believe that a child is a Navajo child, at the time of filing a dependency petition in State court, DCS shall give notice by telephone within forty-eight (48) hours (excluding weekends and holidays) of commencing the action. Notice shall include information about the scheduled court appearances.
    c. DCS through counsel shall give written notice to the NATION contact office by certified mail, return receipt requested.
    d. DCS shall notify the NATION by telephone as soon as possible, but in any event no later than forty-eight (48) hours (excluding weekends and holidays) after learning of them, of any changes in scheduled hearings involving a child that DCS knows or has reason to believe is a Navajo child.
    e. As soon as possible after taking custody of a child DCS knows or has reason to believe is a Navajo child, DCS shall attempt to notify extended family members known to DCS who may be suitable to provide care for the child. DCS and the NATION shall actively assist one another in identifying a placement that complies with the ICWA placement preferences.
    f. DCS shall intervene on reports that are imminently life threatening and shall notify the NATION including, if necessary, the Navajo Law Enforcement, within forty-eight (48) hours (excluding weekends and holidays) from the time DCS obtains custody. DCS will consult with the NATION about

alternative placement options. DCS and the NATION shall actively assist one another in identifying a placement that complies with the ICWA placement preferences.

g. As provided by relevant confidentiality law, DCS will notify the NATION within five (5) working days (excluding weekends and holidays) of any known adoption disruption or dissolution involving a Navajo child when the adoptive placement was a result of a voluntary relinquishment or termination of parental rights. DCS and the NATION shall actively assist one another in identifying a placement that complies with the ICWA placement preferences.

C. Contents of Notice

The oral and written notices required by this Agreement shall include information required in the ICWA Notice form prepared by DCS to the extent such information is available upon reasonable inquiry. In addition, the following information shall be provided:

1. A copy of all pleadings, such as orders, motions, and petitions, in the child custody proceeding.
2. Information about the child's circumstances, including the child's name and date of birth, the basis for the juvenile court's jurisdiction, the date and time of any State court proceeding, 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, including addresses and phone numbers of the parties or their attorneys.
5. Direction on how to participate telephonically in the proceedings.

D. Documentation of Notice. DCS shall document all contacts and attempts to contact the NATION in its case file.

## VI. INTERVENTION AND PROVISION OF DOCUMENTS

A. The NATION may seek to intervene at any point in the proceeding involving a Navajo child pursuant to 25 U.S.C. § 1911(c).

B. Whether the NATION intervenes or not, DCS, through counsel, will request the court to endorse the NATION on all minute entries concerning the case and will provide copies of all pleadings filed by DCS. Until the NATION legally intervenes, DCS's counsel will send all pleadings to the address listed in Section IV.F, *supra*. If and when the NATION intervenes, DCS's counsel will send pleadings to the NATION's counsel.

C. DCS shall provide the NATION with copies of all reports, including attachments that it files with the court.

## VII. JURISDICTION AND TRANSFER

A. Exclusive Jurisdiction.

1. The NATION shall have exclusive jurisdiction over any "child custody proceeding," as set forth in Section V.B of this Agreement, 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. When DCS assumes emergency custody of a child that is subject to the NATION's exclusive jurisdiction, both the NATION and DCS will coordinate efforts to have the NATION reassume custody of the child.
3. Where a State court intends to dismiss a child custody proceeding for lack of jurisdiction, DCS shall notify the NATION ICWA Office by telephone before the case is dismissed, if possible, and if not, then as soon as possible after the dismissal.
4. When a Navajo Department of Family Services (DFS) office is contacted to take custody of a Navajo child in the exclusive jurisdiction of the NATION but refuses to take custody, DCS will contact the DFS Department Manager and the Human Services and Government Unit, Navajo Department of Justice by phone at the following numbers:

   Department of Family Services
   (928) 871-6556

   Human Services and Government Unit
   Navajo Department of Justice
   (928) 871-6935 / (928) 871-6936 / (928) 871-6275
5. When the NATION asserts exclusive jurisdiction over a Navajo child, a representative from the NATION will confirm that fact in writing to the assigned Assistant Attorney General, if known, or to the DCS investigator, who will immediately forward that communication to the Attorney General's Office. This communication may be by email from an official Navajo Nation email address.

B. Concurrent 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 Court may be filed in State court and jurisdiction shall be determined in accordance with 25 U.S.C. § 1911(b).
2. Upon the NATION's receipt of certified written notice, representatives of DCS and the NATION will make efforts to arrange a staffing to discuss whether jurisdiction in State or Navajo Nation Court would be in the child's best

interests. In the absence of a joint decision, DCS shall proceed in accordance with Arizona statutes and policy, the ICWA, and this Agreement.

3. When the State court has jurisdiction of a case involving a Navajo child and DCS places the child on the Navajo reservation, DCS case managers shall notify and coordinate any services with the NATION. When the Navajo Nation Family Court has jurisdiction of a case involving a Navajo child residing off the Navajo reservation, NATION social workers shall be permitted to provide appropriate services to the child and his/her family.
4. DCS and the NATION may request assistance of the appropriate law enforcement agencies when necessary.
5. When DCS has jurisdiction of a Navajo child who resides or is domiciled off the Navajo reservation but who has been transported to the reservation, the NATION will assist with locating the child and, if necessary, domesticating a State court order to give custody of the child to DCS.

C. Transfer

1. The NATION agrees to make reasonable efforts to file a motion with the State court to transfer jurisdiction. A delay in moving to transfer may occur if the information requested regarding membership or eligibility of the child or parent(s) has not been provided to the NATION. Notwithstanding any other provision of this Agreement, the NATION may seek to transfer at any point in the proceeding.
2. Nothing in this Agreement shall limit the rights of DCS and the NATION in a hearing upon a motion to transfer the proceedings to a Navajo Nation Family Court pursuant to 25 U.S.C. § 1911(b).
3. Any attempts by DCS to object to transfer for good cause will conform to the provisions of 25 CFR § 23.118.

## VIII. CHILD PROTECTIVE SERVICES

A. DCS shall have primary responsibility for receiving reports of suspected child abuse or neglect concerning Navajo children domiciled or located off the Navajo reservation.

B. Upon taking a child into custody for suspected child abuse or neglect, DCS shall take immediate steps to ensure the safety of the child even though there may be a question as to whether the child resides on or off the Navajo reservation or whether the child is Navajo or non-Navajo. DCS will notify the NATION ICWA Office in writing, which can be by electronic means. DCS may take a child into temporary custody as outlined in State law, including the requirements of A.R.S. § 8-821.

C. The NATION's Division of Social Services, Department of Family Services Offices shall be responsible for assuming custody of a Navajo child that is a resident or domiciled on the Navajo reservation, including making contact with the DCS office that has assumed emergency custody of the child. The NATION will send a letter upon receipt confirming the referral.

D. The NATION's Division of Social Services, Department of Family Services Offices shall be primarily responsible for receiving and investigating reports of suspected child abuse or neglect concerning children who are domiciled or are located within the Navajo reservation. If the NATION receives a referral for child protective services concerning a non-Indian child who is located within the Navajo reservation, the NATION shall take whatever action is necessary to ensure the immediate safety of the child.

1. The NATION will refer the case by telephone, with written confirmation following, to the Statewide Child Abuse Hotline at 1-888-767-2445 within forty-eight (48) hours (excluding weekends and holidays) of receiving the report.
2. DCS will be responsible for the cost of sheltering for cases that are in the process of transfer involving non-Indian children within the Navajo reservation.

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

F. Primary responsibility for follow-up treatment and services on the Navajo reservation to the non-Indian child and his/her family will lie with the appropriate DCS District Office, unless representatives of the NATION and DCS mutually agree upon other arrangements at a staffing held within thirty (30) days after DCS receives written confirmation from the NATION of services it has provided to that point.

G. When DCS takes a Navajo child who is domiciled or resides on the Navajo reservation into custody and DCS has determined that the child should be released to his/her family, DCS may release the Navajo child to his/her family in less than forty-eight (48) hours, only if DCS has made reasonable efforts to confer or has conferred with the appropriate Navajo Nation Department of Family Services Office or the NATION ICWA Office designated in Section IV.F, *supra*, to determine whether or not there is an open case concerning that child or family.

## IX. REMEDIAL SERVICES

A. DCS shall provide emergency intervention to Navajo children and families who reside off the Navajo reservation to ensure the child's safety, including completing a safety assessment pursuant to DCS policy. In cases where DCS expects removal to result in a dependency petition, DCS shall make active efforts as stated above, section III.A, pursuant to 25 CFR § 23.120, as well as the following:

1. Engage the child's family and the NATION to the greatest extent possible in planning for voluntary intervention that minimizes DCS intrusion while ensuring the child's safety.

2. Assist the child's family or the NATION in identifying a relative or friend who can care for the child temporarily during the intervention.
3. When appropriate, place the child in voluntary foster care upon written consent by the parent(s) and DCS before a judge of competent jurisdiction.
4. Request assistance from the NATION's ICWA social workers to incorporate values and practices of Navajo culture that can contribute to providing services to the family.
5. Consider involving peers, family members, tribal social service resources, and community representatives in case planning and service delivery process when the NATION and DCS agree that it is in the child's best interests.
6. Whenever possible, DCS will develop a service plan that is designed to make it possible for the child to be reunited with the parent(s) or Indian custodian.

B. DCS shall inform and consult with the NATION regarding any significant changes, including disruption or change of placement, significant medical or behavioral health issues, reports of abuse or neglect, and runaway incidents.

C. Absent a court order to the contrary, DCS and the NATION shall make reasonable and active efforts to allow visitation between the parent(s)/Indian Custodian and the child who is (1) in foster care; (2) the subject of a proceeding in which DCS has not made a formal decision to seek termination of parental rights; or (3) in a pre-adoptive placement. Efforts may include, but are not limited to, services to address barriers to the parent(s)/Indian custodian exercising visitation including providing accommodations, transportation, and other identified services or programs determined necessary for the parent(s)/Indian custodian to exercise visitation rights.

D. DCS may consult extended family members, Indian custodians, and qualified experts in developing or amending case plans when appropriate.

## X. PLACEMENT

A. Preferences

1. Adoptive Placements

DCS shall make adoption placements in accordance with 25 U.S.C. § 1915 and 25 CFR §§ 23.130 and 23.131. In the absence of good cause to the contrary, placement of a Navajo child shall be made in the following order of placement preference:

a. Extended family members;
b. Navajo Nation member adoptive parents, where one or both of the adoptive parent(s) is a Navajo Nation member;
c. Native American adoptive parents, where one or both of the adoptive parent(s) is an enrolled member of a federally recognized Indian tribe; or
d. Other adoptive family approved by the NATION.

2. Foster Care and Pre-Adoptive Placements

DCS shall place the child in the least restrictive setting which most approximates a family and in which the child's special needs, if any, may be met. DCS shall place the child within reasonable proximity to his/her home, taking into account any of the child's special needs. In the absence of good cause to the contrary, DCS shall place the child in the following order of preference with:

a. The child's extended family member;
b. A foster home licensed, approved, or specified by the NATION;
c. A Native American foster home licensed or approved by a non-Indian licensing authority; or
d. An institution for children licensed or designated by DCS and approved by the NATION that has a program suitable to meet the child's needs.

B. DCS shall recognize that a foster home approved or licensed by the NATION meets the licensing requirements of DCS. The NATION shall recognize that a foster home licensed by DCS meets the licensing requirements of the NATION. DCS may place Navajo children in foster homes licensed by DCS if DCS and the NATION mutually agree upon such placement or such placement is ordered by the State court.

C. Upon taking legal custody of a Navajo child, DCS shall assume responsibility for all costs of foster care (in foster homes licensed by either the NATION or DCS), supervision, and support services, until legal jurisdiction of the matter is transferred to the NATION. At that time, the NATION shall assume responsibility for all such costs, subject, however, to the emergency provisions of Section VIII.E, supra.

D. The NATION agrees that if it is necessary for a Navajo child in the legal custody of DCS to be removed from the foster home licensed by the NATION or located on the Navajo reservation either due to an order of a State or Navajo Nation court, or after a staffing between DCS and the NATION that removal is in the child's best interest, the NATION will assist in removing the child from the Navajo reservation and transferring physical custody of the child to DCS.

E. DCS agrees that if it is necessary for a child in the NATION's legal custody to be removed from a foster home licensed by DCS either due to an order of a State or Navajo Nation court, or after a staffing between DCS and the NATION that removal is in the child's best interests, DCS will assist in removing the child from the foster home and transferring physical custody of the child to the NATION.

F. The NATION shall notify DCS as soon as practical but no later than forty-eight (48) hours (excluding weekends and holidays) from the time the NATION becomes aware of an emergency situation involving the care, safety, or well-being of a child placed by DCS in a foster home licensed by the NATION. The NATION shall notify the Statewide Child Abuse Hotline. The NATION shall take necessary action to ensure the safety and well-being of the child until DCS can assume responsibility.

G. DCS shall notify the NATION as soon as practical but no later than forty-eight (48) hours (excluding weekends and holidays) from the time DCS becomes aware of any emergency situation involving the care, safety, or well-being of a Navajo child placed by DCS or the NATION in a foster home licensed by DCS. DCS shall place the Navajo child in emergency foster care and notify the NATION's ICWA office as provided in Section V.B, supra. DCS shall take necessary action to ensure the safety and well-being of the child until the NATION can assume responsibility.

H. When placing a child, DCS will consider the NATION's customs and law regarding custody and placement. In any proceeding in which DCS is unable to comply with placement preferences established by this Agreement, the DCS case manager assigned to the case shall document efforts made to comply with the ICWA placement preferences requirement as identified in 25 U.S.C. § 1912(d). DCS shall contact the Nation within five (5) days of the placement (excluding weekends and holidays).

I. DCS and the NATION shall actively assist one another in identifying a placement that complies with the placement preferences. When necessary, DCS may come onto the Navajo reservation to complete a home assessment and/or study home study on a potential relative home, so long as DCS has coordinated with the NATION to conduct such services.

J. DCS and the NATION shall agree to place siblings together whenever possible. If it is not possible to place siblings together, DCS shall make active efforts to ensure continuing contact among siblings, unless continuing contact compromises the safety or well-being of one or more of the children.

K. To ensure the safety and nurturing of Navajo children, all foster home providers will be licensed and adoptive homes will be certified under federal, state, and/or Navajo law, with the exception of relative or kinship homes, when appropriate. The parties agree that:

1. All persons who apply to become either a foster care provider or adoptive resource for a Navajo child, including all adults who reside in the home, shall complete a criminal background records check pursuant to DCS and/or the NATION's policies and procedures, as applicable.
2. A criminal records check must be completed before DCS may use the potential home for either foster care or as an adoptive home.
3. Information gathered in the criminal records check may result in DCS rejecting the potential foster or adoptive home for good cause pursuant to 25 U.S.C. § 1915, Title IV-E.
4. Information gathered in a criminal records background check is confidential under state, federal, and Navajo laws. The parties acknowledge that pursuant to these confidentiality requirements, specific information obtained in a criminal records check cannot be shared between DCS and the NATION. Therefore, the parties agree that, should either party conduct a criminal records background check that reveals that good cause exists not to license, certify,

designate, or approve a home pursuant to 25 USC § 1915 of or 42 U.S.C. 671 § 471.20.A, i and ii, the home shall not be licensed, certified, designated, or approved as either a foster home or potential adoptive home. If either party does not approve a potential foster care or adoptive home because of the background check, that party shall inform the other of that fact in writing.

5. If DCS places a Navajo child into a kinship placement, all adults living in that placement home must submit fingerprints for a background check.

L. The parties acknowledge the importance of the Navajo culture to the child and recognize that the NATION may offer to be a resource in providing specific cultural information through videos, heritage, celebrations, and tribal related matters to the Navajo child, his/her foster or adoptive parent(s) and relative caretaker(s). DCS can inform foster homes of the NATION's resources as provided by the NATION.

M. Good cause to depart from the placement preferences cannot be based on the socioeconomic status of one placement compared to the other or due to the ordinary bonding with a non-preferred placement that flowed from time spent in a non-preferred placement that was made in violation of the ICWA.

N. DCS does not have to go through the Interstate Compact on the Placement of Children (ICPC) to complete the placement when placing a Navajo child on the Navajo reservation in New Mexico or Utah. DCS and the NATION will staff together to come to a mutual decision on interstate placements, including discussing appropriate financial resources and services.

1. Instead of contacting the New Mexico or Utah ICPC office, DCS will contact the NATION to determine if the NATION consents or does not consent to the placement.
2. If the NATION accepts placement, the NATION will provide monitoring and reports to DCS.
3. DCS will contact the NATION to enter the reservation to make contact with the identified placement, as necessary.

## XI. VOLUNTARY PROCEEDINGS

Voluntary relinquishments of parental rights by any parent(s) or Indian custodian shall be completed in accordance with 25 U.S.C. § 1913 and 25 CFR § 23.124.

## XII. ADOPTIVE PLACEMENTS – VOLUNTARY AND INVOLUNTARY

A. DCS and the NATION shall actively assist one another in identifying a placement that complies with the placement preferences listed in Section X.A, *supra*.

B. The NATION shall, with authorization of the applicants, provide DCS with the names and home studies of prospective adoptive homes in order to assist DCS in complying with the placement preferences established in this Agreement, 25 U.S.C. § 1915, and those of Navajo custom.

C. DCS may conduct home studies of tribal members who wish to be adoptive placements and in compliance with X.I, *supra*. The NATION shall assist in the assessment process, which may include conducting a home study.

## XIII. STAFF TRAINING

DCS shall provide training on the ICWA and this Agreement to all DCS staff assigned to these proceedings. DCS agrees to continue providing cultural competency training at initial hire or shortly thereafter for DCS employees assigned to these proceedings. DCS will coordinate periodically with the NATION to provide specific cultural awareness training regarding working with Navajo children and families.

## XIV. CHANGES AND CANCELLATION OF AGREEMENT

A. Either party may cancel this Agreement at any time after one hundred-eighty (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 that a court of competent jurisdiction holds any provision of the Agreement invalid or unenforceable, that holding shall not invalidate or render unenforceable any other provision of this Agreement.

C. Modifications within the scope of this Agreement shall be made by mutual consent of the parties and by the issuance of a written modification, signed and dated by all parties, prior to performing any changes. Either party shall give written notice to the other party of any non-material alteration that affects the provisions of this Agreement. Non-material alterations that do not require a written amendment are as follows:

1. Change of address, telephone number, e-mail address, or other contact information for the parties or to whom notice should be sent; and
2. Change in authorized signatory.

D. If this Agreement would expire at the end of its term but the NATION and DCS are actively negotiating a new Agreement, the parties may, upon written notice, agree to continue this Agreement for a term of one year or until the new Agreement is signed, whichever occurs first.

E. This Agreement is subject to cancellation under A.R.S. § 38-511, cancellation of state contracts.

F. Dispute Resolution

The Nation and DCS agree to comply with mandatory court-ordered arbitration under A.R.S. §§ 12-1518(B) and 12-133, as applicable. Nothing in this provision will be construed as a waiver of the NATION's sovereign immunity.

## XV. TERMS AND CONDITIONS

A. The parties agree to comply with Chapter 9, Title 41, Arizona Revised Statutes (Civil Rights), Arizona Executive Order No. 2009-09, and any other federal or state laws relating to equal opportunity and non-discrimination, including the Americans with Disabilities Act, as applicable.

B. Pursuant to A.R.S. §§ 35-214, 35-215, and 41-2548, all books, accounts, reports, files, and other records relating to this Agreement shall be subject, at all reasonable times, to inspection and audit by the State during the term of this Agreement and for five (5) years after the termination of this Agreement.

C. This Agreement shall be subject to available funding, and nothing in this Agreement shall bind the State to expenditures in excess of funds authorized and appropriated for the purposes outlined in this Agreement.

D. This Agreement in no way restricts the parties from participating in similar activities with other public or private agencies, organizations, and individuals.

E. Nothing in this Agreement shall be construed as limiting or expanding the statutory responsibilities of the parties in performing the functions beyond those granted to them by law, or as requiring the parties to expend any sum in excess of its appropriations.

## XVI. EFFECTIVE DATE

This Agreement shall become effective upon the date all necessary signatures to this Agreement are obtained and will remain in force for ten (10) years from the effective date unless changed or canceled as described in Section XIV of this Agreement.

## XVII. MANNER OF FINANCING

The NATION and DCS will each be responsible for the cost of its own activities. Funding for DCS activities comes from the State General Fund appropriation.

## XVIII. EFFECT OF PRIOR AGREEMENTS

This Agreement supersedes all prior written and oral agreements, covenants, and understanding between DCS 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.

IN WITNESS WHEREOF, THE PARTIES HEREBY AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT BETWEEN THE STATE OF ARIZONA THROUGH

ITS DEPARTMENT OF CHILD SAFETY AND THE NAVAJO NATION THROUGH ITS DIVISION OF SOCIAL SERVICES, NAVAJO CHILDREN AND FAMILY SERVICES.

**Approved by the Navajo Nation**

Jonathan Nez, President
Navajo Nation

09.18.19
Date

Deannah Neswood-Gishey, Executive Director
Division of Social Services

8.28.19
Date

**Approved by the State of Arizona**

Gregory McKay, Director
Department of Child Safety

5/20/19
Date

**Approved as to Form**

Shawn Fuller, General Counsel,
Department of Child Safety

5/28/19
Date

Doreen N. McPaul, Attorney General
Navajo Nation

9/5/19
Date

# RESOLUTION OF THE
# NAABIK'ÍYÁTI' STANDING COMMITTEE OF THE
# 24th NAVAJO NATION COUNCIL -- First Year, 2019

## AN ACTION

**RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES COMMITTEE, BUDGET AND FINANCE COMMITTEE, AND NAABIK'ÍYÁTI' COMMITTEE; APPROVING THE RENEWAL OF THE INDIAN CHILD WELFARE ACT MEMORANDUM OF AGREEMENT BETWEEN THE STATE OF ARIZONA THROUGH ITS DEPARTMENT OF CHILD SAFETY AND THE NAVAJO NATION THROUGH ITS NAVAJO DIVISION OF SOCIAL SERVICES, NAVAJO CHILDREN AND FAMILY SERVICES**

**BE IT ENACTED:**

**SECTION ONE. AUTHORITY**

A. The Health, Education and Human Services Committee has the power to review and recommend Navajo Nation agreements and contracts negotiated with federal, state, regional, and tribal governments. 2 N.N.C. § 401(B)(6)(b).

B. The Health, Education and Human Services Committee serves as the oversight committee of the Division of Social Services. 2 N.N.C. § 401(C)(1).

C. The Budget and Finance Committee has the power to authorize, approve and accept agreements, including contracts and grants, between the Navajo Nation and any federal, state or regional authority upon the recommendation of the standing committee which has the oversight of the division, department or program which has applied for the agreement, or upon recommendation of the Chapter. 2 N.N.C. § 301(B)(15).

D. The Naabik'íyáti' Committee has the power to review and continually monitor the programs and activities of federal and state departments and to assist development of such programs designed to serve the Navajo People and the Navajo Nation through intergovernmental relationships between the Navajo Nation and such departments. 2 N.N.C. § 701(A)(7).

**SECTION TWO. FINDINGS**

A. The Navajo Division of Social Services is requesting approval of the renewal of the Indian Child Welfare Act Intergovernmental Agreement between the State of Arizona through its Department of Child Safety and the Navajo Nation

through its Navajo Division of Social Services, Navajo Children and Family Services, which Agreement is attached as **Exhibit A.**

B. The Navajo Nation hereby finds it is in the best interests of the Navajo Nation to approve the renewal of the Indian Child Welfare Act Intergovernmental Agreement between the State of Arizona through its Department of Child Safety and the Navajo Nation through its Navajo Division of Social Services, Navajo Children and Family Services.

**SECTION THREE. APPROVING THE RENEWAL OF THE INDIAN CHILD WELFARE ACT MEMORANDUM OF AGREEMENT BETWEEN THE STATE OF ARIZONA THROUGH ITS DEPARTMENT OF CHILD SAFETY AND THE NAVAJO NATION THROUGH ITS NAVAJO DIVISION OF SOCIAL SERVICES, NAVAJO CHILDREN AND FAMILY SERVICES**

The Navajo Nation hereby approving the renewal of the Indian Child Welfare Act Intergovernmental Agreement between the State of Arizona through its Department of Child Safety and the Navajo Nation through its Navajo Division of Social Services, Navajo Children and Family Services.

**CERTIFICATION**

I, hereby, certify that the foregoing resolution was duly considered by the Naabik'íyáti' Committee of the 24th Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 14 in Favor, and 00 Opposed, on this 8th day of August 2019.

Honorable Seth Damon, Chairman
Naabik'íyáti' Committee

Motion: Honorable Thomas Walker, Jr.
Second: Honorable Nathaniel Brown

Chairman Seth Damon not voting