\*\*NOTE: *This is a template and a guide for developing a working agreement between a tribe and the DSHS Children’s Administration. The terms of the final agreement between a tribe and CA will depend on the needs and resources of both parties.*

**MEMORANDUM OF UNDERSTANDING BETWEEN [TRIBE] AND DSHS CHILDREN’S ADMINISTRATION FOR SHARING RESPONSIBILITY IN DELIVERING CHILD WELFARE SERVICES TO CHILDREN OF THE [TRIBE]**

# INTRODUCTION

This memorandum of agreement is entered into between the [Tribe ICW Program] (the Tribe or Nation) and the Washington State Department of Social and Health Services Children’s Administration (CA), each acting in its representative capacity. This Agreement is based on the fundamental principles of the government-to-government relationship acknowledged in the 1989 Centennial Accord, federal Indian Child Welfare Act, the Washington State Indian Child Welfare Act, and the collaborative relationship developed by the Tribe and CA through contract, practice, and policy, including the DSHS 7.01 Administrative Policy. A compilation of laws stating CA’s authority and guiding its child welfare activities is set forth in Attachment B of this agreement.

This Agreement recognizes the sovereignty of the Tribe and of the State of Washington and each respective sovereign’s interests.

The Tribe and CA acknowledge that a court of either the Tribe or State of Washington may have jurisdiction over a child welfare proceeding. Each acknowledges that the law of the jurisdiction in which a child welfare judicial proceeding is initiated and maintained is sovereign within that jurisdiction and governs the proceeding.

# purpose

Washington State law authorizes CA to provide for the care of Indian children who are in the custody of an Indian tribe, pursuant to a tribal court order, subject to the same eligibility standards and rates of support applicable to children in the custody of the CA, pursuant to a state juvenile court order. The purpose and objective of this agreement is to clarify the roles and responsibilities of the Tribe and CA, to clarify the responsibilities of the Tribe and CA when Child Protective Services are provided to tribal children, to enhance coordination and cooperation between the Tribe and CA in providing appropriate child welfare services to Indian children who are under the jurisdiction of the tribal court, and to coordinate with the Tribe when its children are in the custody of CA and under the jurisdiction of a state juvenile court. The overarching purpose of this agreement is the safety and well-being of Indian children.

# authority

The Indian Child Welfare Act (ICWA), 25 U.S.C. § 1919, authorizes states and tribes to enter into agreements for the care and custody of Indian children. Under the Tribal-State Agreement, both the Tribe and CA are authorized to enter into this agreement. Additionally, the Tribe is specifically authorized to enter into this agreement by **[Tribe may want to enter something here such as the Tribal code or Tribal resolution # or Tribal Council]**. CA is specifically authorized to enter into this agreement by RCW chapter 39.34, the Interlocal Cooperation Act, which permits an agency to enter into an agreement with an Indian tribe for their mutual advantage and cooperation. CA recognizes that the Tribe’s execution of this agreement does not constitute a waiver of its right to sovereign immunity.

# Definitions

**“Jurisdiction”** as used in this agreement means the legal authority of a state or tribal court to hear a juvenile dependency action or other related juvenile matter. The Tribe and CA acknowledge that either or both of their child welfare programs may be involved in providing services, including Child Protective Services and Child Welfare Services, to Tribal children regardless of whether a court action has been initiated, or which court has jurisdiction over a child’s case.

**“Indian child”** for purposes of applying the Indian Child Welfare Act means an unmarried and unemancipated Indian person who is under eighteen years of age and is either: (a) A member of an Indian tribe; or (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. The Tribe has sole authority to determine whether a child is a member or eligible for membership in the tribe.

**[“Tribal child”]** for purposes of case planning and services means a child who is not a member or eligible for membership in the Tribe, but who is considered to be part of the Tribal Community.

**“Notice”** for purposes of compliance with the state and federal Indian Child Welfare Acts means the legal Notice required under RCW 13.38.070 and 25 U.S.C. § 1912 to inform tribes of (1) the initiation of an action to place an Indian child in foster care or to terminate parental rights of an Indian child and (2) the tribe’s right to intervene. For purposes of this agreement and collaboration between the tribe and CA, notice means communication by the most expedient means – for example, by telephone, email, letter, personal contact, or fax.

# V. child protective services

**NOTE:***The Tribe and CA recognize the importance of working together to protect children from abuse or neglect. The process for determining who has responsibility for providing Child Protective Services in cases where child abuse or neglect is alleged to have occurred on the reservation will be negotiated between the tribe and CA. Some possible options are listed under the heading “Suggested Options for CPS Investigations” below the Introduction. The parties are free to develop other options.*

***Introduction***

1. CA will follow the agreed process for contacting and coordinating with Washington State federally recognized Tribes when there is an intake involving a family that is or may be affiliated with a Tribe. Notification will be in writing, or by phone, fax, or email, within 24 hours, including cases that are not screened in by CA for investigation. The method and time of notification will be documented by CA. The method preferred by the Tribe is by (phone at 000.000.000; or email at ……..).
2. If an allegation involves apparent criminal activity, Tribal/State/Local law enforcement in the jurisdiction where the alleged abuse or neglect occurred will be notified.
3. The Tribe and CA each agrees to inform the other of the outcome of CPS investigations that result in a “founded” for abandonment, child abuse, or child neglect involving Indian children.
4. If a child who is the victim of a CPS allegation does not live on the reservation, but is an Indian child of the tribe, and if the allegation is founded, or if CA determines the child is in danger in the home of the parent or other caregiver, CA will notify the Tribe of its intent to provide services or to file a dependency petition and give the Tribe an opportunity to file the petition in Tribal Court or to take primary responsibility for providing services.
5. CA is in the process of implementing a two-path response to allegations of child abuse and neglect. Allegations that are screened-in for a response will be assigned by CA to either (1) the traditional investigative pathway or (2) to the new alternative Family Assessment Response pathway.

***Possible Options for CPS Investigations***

**NOTE:** *The following options are suggestions and may be modified or substituted with other working arrangements based on needs, resources, or practices of the Tribe or local CA office.*

***CPS Investigative or FAR Services On Tribal Lands***

OPTION 1. The Tribe specifically requests CA to independently respond to all screened-in child abuse/neglect allegations occurring on Tribal lands.

1. Referrals received by the Tribe (including law enforcement) would be forwarded to CA for assessment and response.
2. Tribe will be notified within 24 hours of any allegation (whether screened in or not) received by CA and is responsible for protecting the child while the child is on Tribal land, if necessary, prior to and during any response period .
3. CA is required to follow state law when providing Child Protective Services.
4. If the case is assigned to the investigative path, CPS investigation will be completed within 60 days and Tribe will be given the investigative report (no matter what the finding) and any documentation needed to support the filing of a dependency action in Tribal court.
5. If the case is assigned to the Family Assessment Response pathway, the FAR assessment and provision of services and supports will be complete within 45 days or, if the family is engaged in services that require the case to remain open longer, and the family agrees to the extension, within 90 days.
6. In either investigative or FAR cases, CA will ask the Tribe to participate in the delivery of voluntary services and supports.

OPTION 2. Tribe will respond to allegations of child abuse or neglect occurring on Tribal lands, unless the Tribe makes a specific written request that CA respond to the referral.

1. CA’s CPS Intake will notify the Tribe within 24 hours if a child abuse or neglect referral has been received by CA, alleging the abuse or neglect occurred on Tribal lands.
2. CA will advise the referent (including mandated reporters) that the Tribe investigates or responds to allegations of abuse or neglect which reportedly occurred on Tribal lands and that the Tribe will be notified of the allegation.
3. At the conclusion of the Tribe’s investigation, the Tribe will notify CA regarding founded allegations, providing names, allegations and outcomes so that the information may be included in the state child abuse and neglect registry.
4. If the Tribe has an alternative response, similar to FAR, or if voluntary services are needed by a family during a Tribal CPS investigation, CA will assist the Tribe in accessing services and supports for the family.
   1. Children served by the Tribe are eligible for services funded and contracted by CA. Eligibility for these services must be consistent with the eligibility criteria used for children served by CA.
   2. A description of the services and supports currently available to families and children under the CPS program, including a limited description of the eligibility criteria for those services, is attached to this agreement as Attachment A.
   3. When the Tribe requests CPS services for children and youth being served Tribal CPS, CA will:
5. Assign the case to a specific worker, selected by CA, who will assist the Tribal social worker in accessing services and supports.
6. Maintain a file consisting of the referral information, the Tribal assessment or investigation, voluntary service plan, and payment/resource information.
7. Work with the Tribal social worker to determine what services and supports would best meet the needs of the child and family.
   1. Information needed by CA to determine eligibility will be provided by the Tribal social worker prior to service approval and will be supplemented by the Tribal social worker when requested. The Tribe is responsible for recommending and overseeing the administration of services.
   2. CA will provide a point of contact to assist the Tribe in accessing CPS voluntary services. The CA point of contact is the Tribe’s contact for requesting services and will work with the tribe to clarify eligibility for services, to expedite services and to verify payment. The CA point of contact will be available to assist, or arrange for another worker to assist the Tribe in preparing the necessary documentation to request adolescent services and will invite the Tribal social worker to attend staffings to approve intensive services, such as Behavior Rehabilitation Services, specialized teen mother programs, and services for sexually aggressive youths.
   3. The Tribe will provide a point of contact to work with CA on service issues.
   4. The CA and tribal contacts are listed in Attachment C.

OPTION 3. The Tribe specifically asks CA to take the lead on the CPS response and agrees to assist in facilitating the investigation or Family Assessment Response. The Tribe is responsible for protecting the child while the child is on Tribal lands before and during the investigation or Family Assessment, if necessary. The Tribe and CA will collaborate on the response and concurrently serve the child and family during the response.

CA will determine whether the allegation of child abuse or neglect should be screened in and will determine the type of CPS response (investigation or FAR). CA is required to follow state law and its own policies in responding to child abuse or neglect allegations.

***CPS Investigation Pathway***

1. CA’s CPS investigator directs all aspects of the investigation, including but not limited to deciding which social workers will interview which individuals and which social workers will gather other information.
2. A Tribal social worker will have the opportunity to be present during interviews and investigations of child abuse/neglect allegations.
3. CA will consult with the Tribe in making the determination whether the allegation is founded or unfounded. Ultimate responsibility for making the decision is CA’s.
4. CPS investigations should be completed within 60 days and Tribe will be given the investigative report (no matter what the finding) and any documentation needed to file a dependency action in Tribal court.
5. If the allegation is founded for abuse or neglect, under RCW ch. 26.44 and WAC ch. 388-15, the subject of the investigation has a right to challenge that finding under state law.

***CPS FAR Pathway***

1. CA’s FAR worker has ultimate responsibility for assessing the family’s needs and strengths and for arranging for and providing services and supports.
2. The CA worker will contact the identified Tribal worker and will give that worker an opportunity to participate in the assessment and be present at family and community meetings to determine safety and service plans.
3. CA and the Tribe will collaborate to identify and develop community supports and services for the family and will concurrently serve the family.
4. The Tribe may determine that it will continue, at is own expense, to provide community or tribal supports and services to the family after the FAR assessment and services are concluded. The Tribe acknowledges that FAR is time limited – to 45 days or, if the family is actively engaged in services that will require the case to remain open longer and the family agrees, to a maximum of 90 days.

***CPS Investigative or FAR Services Off Tribal Lands***

The Tribe and CA agree to collaborate in providing CPS investigative or FAR services and supports to Indian children who are alleged to be abused or neglected off Tribal lands.

CA’s CPS Intake will notify the Tribe within 24 hours if a child abuse or neglect referral has been received by CA, alleging the abuse or neglect occurred off the reservation and will give the Tribe an opportunity to participate in the CPS response, either an investigation or FAR.

Based on state law and its policies and screening tools, CA will decide whether the response will be an investigation or FAR.

***CPS Investigation Pathway***

1. CA’s CPS investigator directs all aspects of the investigation, including but not limited to deciding which social workers will interview which individuals and which social workers will gather other information.
2. A Tribal social worker will have the opportunity to be present during interviews and investigations of child abuse/neglect allegations.
3. CA will consult with the Tribe in making the determination whether the allegation is founded or unfounded. Ultimate responsibility for making the decision is CA’s.
4. CPS investigation should be completed within 60 days and Tribe will be given the investigative report (no matter what the finding).
5. If the allegation is founded for abuse or neglect, under RCW ch. 26.44 and WAC ch. 388-15, the subject of the investigation has a right to challenge that finding under state law.

***CPS FAR Pathway***

1. CA’s FAR worker has ultimate responsibility for assessing the family’s needs and strengths and for arranging for or providing services and supports,
2. The CA worker will contact the identified Tribal worker and will give that worker an opportunity to participate in the assessment and be present at family and community meetings to determine safety and service plans.
3. CA and the Tribe will collaborate to identify and develop community supports and services for the family.
4. The Tribe may determine that it will continue, at is own expense, to provide community or tribal supports and services to the family after the FAR assessment and services are concluded. The Tribe acknowledges that FAR is time limited – to 45 days or, if the family is actively engaged in services that will require the case to remain open longer and the family agrees, to a maximum of 90 days.

# VI. services FOR CHILDREN UNDER THE JURISDICTION OF THE TRIBAL Court

1. The Tribal court has exclusive jurisdiction over any child custody proceeding involving an Indian child who resides on or is domiciled on the Tribe’s reservation.

2. Children served by the Tribe are eligible for services funded and contracted by CA. Eligibility for these services must be consistent with the eligibility criteria used for children served by CA.

3. A description of the services currently available to families and children, including a limited description of the eligibility criteria for those services, is attached to this agreement as Attachment A.

4. When the Tribe requests child welfare services for children and youth being served by the Tribe, CA will:

1. Assign the case to a specific social worker, selected by CA, but who recognizes that the Tribe has custody of and decision making authority over the child, and who is willing to accept the customs and traditions of the Tribe. The CA social worker will not be responsible for case management, but instead will assist the Tribal social worker in accessing services.
2. Maintain a child file consisting of the referral information, the Tribal case plan, Tribal court documents, and payment information.
3. Work with the Tribal social worker to determine what services would best meet the needs of the child and, at the request of the Tribe, pursue intensive services for the child, using established CA procedures. The CA social worker will help make the Tribe aware of appropriate services available through CA, as well as how to access those services.

5. Information regarding eligibility will be provided by the Tribal social worker and supplemented by the Tribal social worker when requested. The Tribal social worker has responsibility for recommending and overseeing the administration of services.

6. CA will provide a point of contact to assist the Tribe in accessing services. The point of contact is the Tribe’s contact for requesting services and will work with the tribe to clarify eligibility for services, to expedite services and to verify payment.

The CA point of contact will be available to assist, or arrange for another worker to assist, the Tribe in preparing the necessary documentation to request adolescent services and will invite the Tribal social worker to attend staffing’s to approve intensive services, such as Behavior Rehabilitation Services, specialized teen mother programs, and services for sexually aggressive youths.

The Tribe will provide a point of contact to work with CA on service issues.

The CA and tribal contacts are listed in Attachment C.

# VII. sERVICES FOR INDIAN CHILDREN UNDER THE jurisdiction of THE statE COurt

1. If an Indian child as defined by state and federal law is the subject of a dependency action filed by CA in the juvenile court of the State of Washington, CA will timely notify the Tribe of its right to intervene in the action. The Tribe has the right to intervene at any point in a State Juvenile Court proceeding involving a child who is a member of or is eligible for membership in the Tribe. CA agrees to assist the Tribe in achieving intervention in such cases.

2. If jurisdiction of the action is not transferred to Tribal court, then the Tribe will designate a specific person or position to work with the CA social worker to assist in locating an appropriate placement and to consult with the CA social worker in developing an appropriate case plan.

3. If CA has placement authority for an Indian child, placement shall be within reasonable proximity to the child’s home when possible and appropriate. Placement decisions shall be consistent with the following Tribal preferences *[This is dependent on the specific tribe.]*:

* *Tribe’s or ICWA’s Placement priority should be listed here*

1. The Tribe will designate an individual who has authority and responsibility for providing an expert witness for state court dependency and termination proceedings governed by the Indian Child Welfare Act. The Tribe agrees that it will provide an expert witness at the time and place of any trial in which an Indian expert is required.
2. The Tribe and CA will work together to develop a plan for any Indian child who is placed in a non-Tribal foster home to assist the child in developing or maintaining an understanding of the Tribe’s customs, traditions and history.
3. If the child is a Tribal child, but is not an Indian child under ICWA, CA and the tribe will collaborate and concurrently serve child to find an appropriate placement and to develop a plan to assist the child in developing or maintaining an understanding of the Tribe’s customs, traditions and history.

# VIII. information sharing and confidentiality

1. It is the policy of both the Tribe and CA to share with each other full information about a child that will assist the other in protecting the child and in assessing the child’s need and eligibility for and receipt of services. CA is required to follow state and federal laws governing confidentiality of children’s records. The Tribe agrees that it will follow state and federal law, or tribal law, if the Tribal Code meets or exceeds state and federal law requirements to protect the records of children receiving services from CA.
2. Pursuant to a separate agreement the Tribe has full access to the Statewide Automated Child Welfare Information System (SACWIS), known as FamLink

# IX. collaborative Actions

*This section could include a specific item – such as CA assisting the Tribe in getting IV-E agreement or in accessing adoption support benefits for families.*

1. CA, through the Alliance for Child Welfare Excellence will provide Tribal ICW staff with the opportunity to take advantage of relevant trainings that are available to CA staff . A catalog of courses will be sent to the Tribe electronically at [email address] by the Alliance on a quarterly basis.

2. The Tribe will provide technical assistance and consultation on Native American cases, as requested by CA.

3. The Tribe will designate at least one candidate from the Tribe for representation on the Local Indian Child Welfare Advisory Committee.

# X. conflict resolution

The Tribe and CA agree that if a dispute arises under this agreement, the process set forth in the 7.01 Policy or in the General Terms and Conditions of the Intergovernmental Agreement will apply. A copy of the applicable process is set forth in Attachment D.

# XI. Effect and Modification

This is a working document to guide the Tribe and CA in supporting Indian children in need of services. Its description of services may be changed as programs are added or eligibility requirements are changed. Contact persons, services and other subjects set forth in the Attachments may be updated at any time at the request of either party.

This agreement will be reviewed every two years and will continue in effect until modified or terminated. However, this agreement may be modified at any time by mutual agreement of the Tribe and CA. Any modification may be reflected in an addendum and attached to the agreement.

This agreement is subject to state and federal law and Tribal code, as they exist and as amended during the course of this agreement.

ATTACHMENTS

**ATTACHMENT A – list of services available through CA**

*To be developed by CA.*

**ATTACHMENT B**  Laws governing child welfare services

**ATTACHMENT C –** Tribal and CA contact list

**ATTACHMENT D -** Dispute resolution process

**ATTACHMENT E –** Tribal juvenile code

If the tribe has a juvenile code that is going to be relied on for definitions or standards, then it should be attached as these codes are not always easy to find. **ATTACHMENT C – Points of Contact**

**CPS:**

Notice related to CPS issues will be provided to Tribe by contacting:

Name

Address

Phone

Email.

Notice related to CPS issues will be provided to CA by contacting:

Name

Address

Phone

Email

**SERVICES:**

The CA tribal liaison for children under 12 years old who are served under this agreement is:

Name

Address

Phone

Email

The CA tribal liaison for children older than 12 years of age is

Name

Address

Phone

Email

If emergency or after-hours services are needed by a child in Tribal care, the contact is:

Intake….

The Tribal point of contact is:

Name

Address

Phone

Email

**ATTACHMENT E –** Dispute resolution

In light of the sovereign government status of Tribes, when consultation alone has not been successful in resolving issues at the regional level, Tribes have the authority to raise the issues to the Assistant Secretary, Secretary, or the Governor.

[From 2007 7.01 Policy]