

## TRIBAL STATE AGREEMENT

BETWEEN THE NATIVE VILLAGE OF BARROW SOCIAL SERVICES DEPARTMENT  
AND THE STATE OF ALASKA, DEPARTMENT OF HEALTH & SOCIAL SERVICES

### Section 1. Statement of Purpose

Based on their government to government relationship, the State of Alaska (hereinafter "the State"), through its Department of Health & Social Services, Division of Family and Youth Services (hereinafter "DFYS") and the Native Village of Barrow (hereinafter "the Tribe"), through its Social Services Department (hereinafter "Tribal Social Services") enter into this Tribal-State Agreement in order to provide continued protection and services for the children in the Barrow community subject to the jurisdiction of the Native Village of Barrow. This Tribal-State Agreement is intended to set out a practical process for cooperation in child-protection in Barrow and throughout the state when the child is believed to be a member or eligible for membership in the Native Village of Barrow.

### Section 2. Statement of Common Principles

This Tribal State Agreement is based on the following shared principles and beliefs:

- Children are a society's single-most important resource;
- The Indian Child Welfare Act was enacted to protect the best interests of tribal children and to promote the stability and security of tribes and families by the establishment of minimum standards for the removal of tribal children from their families and the placement of such children in foster, guardian or adoptive homes which will reflect the unique values of their culture;

- Children who belong to the Native Village of Barrow and reside within the State of Alaska are a valuable resource to both the State of Alaska and the Native Village of Barrow and both parties have a desire to protect these children;
- Cross-jurisdictional coordination and cooperation is the best way to protect and provide continuity of care to the shared resource of tribal children residing in Alaska;
- Respect for the government-to-government relationship, as well as the institutional knowledge and experience of each party to this Tribal-State Agreement results in good child protection policy and practice; and
- Protecting each child's safety, well-being and cultural identity must continue as our paramount focus.

### Section 3. Definitions

- A. Custody—The right and responsibility for the legal or physical care, control and maintenance of a child.
- B. Domicile—A person's permanent home to which the person intends to return even when absent. A child acquires a "domicile of origin" at birth, which is the domicile of the parents and which continues until a new one, "a domicile of choice," is acquired. For the child of an unwed mother, the domicile of origin is the mother's domicile. The child's domicile may be a place where the child is not, and has never been, physically present.
- C. Jurisdiction—A court's authority to accept cases and rule on legal matters.
- D. Residence—The place where a person is currently living.
- E. If any term used in this agreement is defined in the Indian Child Welfare Act, 25 USC 1903, it shall have the same meaning in this document unless otherwise defined by this agreement.

#### Section 4. Jurisdiction

- A. Pursuant to the approval of its Petition for Reassumption of Exclusive Jurisdiction by the Secretary of the Interior, effective September 7, 1999, the Native Village of Barrow has exclusive jurisdiction over Indian child custody proceedings involving Indian children who are enrolled or eligible for enrollment with the Native Village of Barrow and reside or are domiciled within the Native Village of Barrow, an area coterminous with the City of Barrow. 64 Fed. Reg. 36391 (July 6, 1999).
- B. On September 10, 1999, the Native Village of Barrow and DFYS entered into an Interim Memorandum of Agreement, which was subsequently amended by mutual agreement, providing for concurrent state and tribal jurisdiction over children needing protection before tribal services were fully available. The state courts shall continue to exercise jurisdiction over any child taken into custody prior to September 10, 1999, or under the Interim Memorandum of Agreement, as amended, and still in the custody of DFYS on the effective date of this agreement, subject to the Tribe's right to petition for transfer of jurisdiction to tribal court.
- C. A child in Alaska who is a member or eligible for membership in the Native Village of Barrow but residing and domiciled outside the Native Village of Barrow is subject to the concurrent jurisdiction of the courts of the State of Alaska and the courts of the Native Village of Barrow.
- D. In cases where the state exercises jurisdiction over a Native Village of Barrow tribal child who resides and is domiciled outside Barrow, the Tribe may move, pursuant to 25 USC 1911(b), to transfer jurisdiction to tribal court.

- E. If an Indian child is made a ward of the tribal court, the Tribe shall retain exclusive jurisdiction of that child, regardless of domicile or residence, so long as the child remains a ward of the tribal court.

#### Section 5. Full Faith and Credit

- A. Pursuant to 25 USC 1911(d), the State and Tribe shall give full faith and credit to each other's public acts, records and judicial proceedings to the same extent that they give full faith and credit to the public acts, records and judicial proceedings of any other entity.

#### Section 6. General Practice

- A. In any proceeding involving a child where DFYS has reason to believe the child may be a child within the jurisdiction of the Native Village of Barrow, DFYS shall presume the child to be an Indian child until an affirmative determination is made by Tribal Social Services regarding the child's status.
- B. When Tribal Social Services receives a Report of Harm about a child and the child does not appear to be within the Tribe's jurisdiction, it will immediately notify DFYS for investigation by calling or faxing to one of the contact numbers in Addendum A. DFYS will provide any updated contact numbers to Tribal Social Services through its Barrow Office.
- C. When DFYS receives a report of harm involving a child who may be a member of or eligible for membership in the Native Village of Barrow, DFYS will immediately notify Tribal Social Services by calling or faxing one of the contact numbers in Addendum A. Tribal Social Services will provide any updated contact numbers to DFYS through its Barrow Office.
- D. Reports of Harm received by DFYS regarding children in Barrow who may be within the Tribe's jurisdiction will be prioritized for investigation according to DFYS policy. DFYS maintains primary responsibility for the receipt of reports of harm and their subsequent

investigation, until the child has been determined to be within the Tribe's exclusive jurisdiction. When practicable, DFYS and Tribal Social Services will coordinate efforts during the investigation of these reports. Any emergency removal deemed necessary by DFYS shall proceed pursuant to 25 USC 1922 and applicable state law.

- E. Within 48 hours of notification by DFYS of a Report of Harm, Tribal Social Services will determine whether the child involved is a member of or eligible for membership with the Native Village of Barrow and notify DFYS in writing of its determination. If the child is determined to be within the Tribe's jurisdiction before DFYS has removed the child, Tribal Social Services shall assume responsibility for completing the investigation and pursuing appropriate steps to protect the child. If DFYS finds it necessary to remove the child before the determination is made and the child is determined to be within the Tribe's jurisdiction, Tribal Social Services shall advise the court orally at the first hearing or by immediately filing written notice and DFYS shall move to dismiss the state court proceeding.
- F. If a determination of whether the child is a member of or eligible for membership in the Native Village of Barrow cannot be made in the first 48 hours, DFYS shall proceed under applicable state law and DFYS policy.
- G. So long as the child's status has not been determined and the child remains in state custody, DFYS and its representatives shall manage the case and provide services as they do for other children in custody and their families.
- H. At the first hearing on the petition for custody in state court, or at the first hearing following its receipt of notice pursuant to the ICWA, the Tribal Social Services shall:

1. Notify the court that the child is an Indian child of the Native Village of Barrow residing or domiciled in Barrow and the tribe is asserting its exclusive jurisdiction over the proceeding;
  2. Notify the court that the child is an Indian child of the Native Village of Barrow but not residing or domiciled in Barrow and the tribe intends to intervene in the judicial proceedings;
  3. Notify the court whether a determination can be made prior to adjudication since the tribe has not yet established membership, eligibility, residency or domicile; or
  4. Notify the court that the child is not an Indian child of the Native Village of Barrow.
- I. If DFYS has taken custody of a child who is later determined to be within the exclusive jurisdiction of the Native Village of Barrow, DFYS and Tribal Social Services will coordinate efforts so that the child's transition to tribal jurisdiction will not cause a disruption in care and services.

#### **Section 7. Placement**

- A. The parties agree that a child subject to the jurisdiction of the Native Village of Barrow can be placed for special services in a state licensed placement upon an order of the tribal court if:
1. DFYS has agreed in advance in writing to use of a bed in its facility;
  2. The proposed foster parent or placement facility has agreed to placement based on written terms offered by the tribe, and
  3. The tribal court finds there is good cause to believe that the child and family can receive more appropriate services from the state licensed placement.

### **Section 8. Cases Where the State of Alaska Retains Jurisdiction**

- A. DFYS understands that guardianship is the tribe's preferred permanency plan for its children in state custody when reunification is not feasible. DFYS also understands that there are permanency options available under tribal written and customary law that may be more appropriate and can be affected in Tribal Court.
- B. While Tribal Social Services will provide assistance in locating placements within ICWA preferences for tribal children in state custody, the ultimate responsibility for finding placements that comply with ICWA rests with DFYS.

### **Section 9. Sharing of Information**

- A. All information and material in the possession of DFYS or Tribal Social Services, whether in oral or written form shall be considered confidential information and may only be disclosed by either party, to the extent permitted by the applicable tribal, state or federal law.
- B. If DFYS or an employee of the agency has information or records relating to a child, or the family of a child, over whose child protection proceeding the Tribe is exercising jurisdiction, the DFYS records custodian or employee may be called to testify before the tribal court. The Native Village of Barrow will pay the expenses related to taking such testimony by telephone, deposition or in person, including travel and per diem at the level ordinarily paid to witnesses under tribal law.
- C. If the Tribal Social Services or an employee of the agency has information or records relating to a child, or the family of a child, involved in a child protection proceeding within State court jurisdiction, the Tribal Social Services records custodian or employee may be subpoenaed to testify before the court. The State of Alaska will pay the expenses related to

taking such testimony by telephone, deposition or in person, including travel and per diem at the level ordinarily paid to witnesses under state law.

- D. In the interest of cooperation and effective child protection, Tribal Social Services and DFYS agree to disclose any unprivileged information regarding a particular case not prohibited by applicable tribal, federal or state law. All requested information shall be provided within 30 days of the request. All oral requests shall be followed by a written request.

#### **Section 10. Sharing of Resources & Inter-Agency Collaboration**

- A. Because protecting the child's safety, well-being and cultural identity continues as our paramount focus, there is a need to assist the family in acquiring the services necessary to meet this goal. As much as is practicable and allowed by law, the Tribal Social Services and DFYS agree to share resources to provide the best services possible to the child and family, regardless of jurisdiction.
- B. As much as is practicable and allowed by law, Tribal Social Services and DFYS agree to assist each other with finding foster homes and identifying and setting up services. All requests for assistance shall be made in writing and replied to in writing.
- C. Tribal Social Services and DFYS, recognizing the need for a more formalized statement about the sharing of resources, including a pass through of Title IV-E funds, agree to continue to pursue discussions to develop a separate agreement.

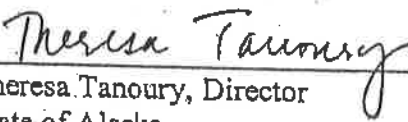
#### **Section 11. Term & Amendment of Agreement**

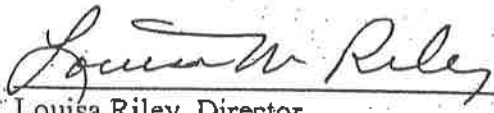
- A. The term of this agreement shall be three years from the date of its signing, and shall become effective November 1, 2002. The parties may enter into a review process six months prior to its expiration to determine whether they will renew it, with or without amendment. If no

formal review of this agreement is made prior to the expiration date, this agreement shall automatically extend an additional three years from the expiration date.

- B. Either party may terminate this agreement by providing notice in writing to the other party at least 180 days before the proposed date of termination.
- C. During the life of this agreement, either party may seek an amendment by sending its proposed amendment in writing to the other party and requesting a meeting if necessary. The other party shall acknowledge the request within 30 days. Any amendment becomes effective only upon acceptance by both parties.

DATED: September 27, 2002

  
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Theresa Tanoury, Director  
State of Alaska  
Department of Health & Social Services  
Division of Family & Youth Services

  
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Louisa Riley, Director  
Native Village of Barrow  
Social Services Department

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AND THE STATE OF ALASKA, DEPARTMENT OF HEALTH & SOCIAL SERVICES**

**ADDENDUM A**

**Contact Information for the State of Alaska Department of Health & Social Services**

**Director's Phone: 907/465-3191**

**Barrow Office Supervisor: 907/852-3397**

**Barrow Office Fax: 907/852-3392**

**Barrow Office Cell Phone: 907/852-1558  
907/852-1449  
907/852-1570**

**P.O. Box 1079  
Barrow, Alaska 99723**

**Contact Information for the Native Village of Barrow Social Services Department**

**Director's Phone: 907/852-8908**

**Family Advocate's Phone: 907/852-8906**

**Department's Dedicated Fax: 907/852-4413**

**After-Hours Cell Phone: 907/852-1549**

**P.O. Box 1130  
Barrow, Alaska 99723**