

**CHILD WELFARE AGREEMENT**  
**Between The**  
**UTE INDIAN TRIBE**  
**OF THE UINTAH & OURAY RESERVATION**  
**And The**  
**STATE OF UTAH**

This Agreement is entered into by and between the Ute Indian Tribe of the Uintah and Ouray Reservation (the "Tribe"); and the State of Utah Department of Human Services, Division of Child and Family Services and Office of Licensing (the "State"). It takes the place of an earlier agreement, which expired on October 1, 2004.

**PREAMBLE**

The Tribe and the State recognize that raising Ute children in an environment that promotes and preserves the tribal language, culture, and history will enable the Tribe to maintain its political independence, economic security, and cultural integrity. Assuring the health, safety and welfare of Ute children is, and has been, the collective responsibility of the Tribe and the State. To that end, the Tribe and the State are committed to developing a Ute child welfare system that provides culturally appropriate child protection and family services to Ute children and their families.

**PURPOSE**

The purpose of this Agreement between the Tribe and State is to:

- a. Prevent the inappropriate cultural separation of Ute children from their families, and preserve the unique values and traditions of the Ute culture;
- b. Identify, access, and maximize all available state and federal revenues to expand and enhance child welfare services for Ute children;
- c. Share resources and expertise between the Tribe and the State in addressing the needs of Ute children;

- d. Assure that Ute children are provided a permanent home and are healthy, safe, and protected;
- e. Provide an array of culturally appropriate and community based child welfare services to Ute children and their families; and
- f. Promote cooperation and collaboration among all agencies that serve Ute children.

### **SCOPE OF THE AGREEMENT**

The Tribe and the State shall work cooperatively to protect abused, neglected or dependent Ute children and provide the necessary services to prevent the breakup of Ute families and to provide permanent and safe homes for Ute children.

The Tribe and State shall co-locate their child welfare staff on the Uintah and Ouray Reservation and provide professional, technological, and financial resources to support and implement this Agreement.

### **ASSUMPTIONS AND PRINCIPLES**

In developing and administering a comprehensive child and family services program, the Tribe and the State shall be guided by the following assumptions and principles:

- a. Each Ute child is entitled to live in a safe and nurturing environment that reflects and is respectful of the unique values and traditions of the Ute culture and that permits each child to realize his or her full potential; and
- b. The primary responsibility for protecting the health, safety and welfare of Ute children rests with the Tribe. The State will provide support to assist the Tribe in meeting that primary responsibility.

## **CONFIDENTIALITY**

The Tribe and State shall adhere to all confidentiality restrictions legally applicable. Release of confidential information shall be governed by Utah Code Annotated 62A-4a-412 and 63G-2-101, et seq.

### **UTE INDIAN TRIBE CHILD WELFARE DEVELOPMENT TEAM**

The Tribe shall appoint at least three persons and the State shall appoint at least three persons who shall constitute and comprise the Ute Indian Tribe Child Welfare Development Team (the "Development Team"). The Development Team shall be responsible for:

- a. Developing functional plans to implement this Agreement in consultation with child welfare and social services workers, health care professionals, child care providers, educators, law enforcement official, Ute parents, and such other persons as are deemed advisable;
- b. Presenting any functional plans and any proposed amendments to this Agreement to the Tribal Business Committee and appropriate State officials for their review, revision and signature;
- c. Monitoring the implementation of the Agreement and the functional plans;
- d. Ensuring on-going communications and coordination between the Ute Family Center, the Tribal Business Committee and the State;
- e. Consulting with the Tribal and State line officers and workers of the Ute Family Center who are directly responsible for the day-to-day implementation of this Agreement to understand and solve any problems associated with implementing this Agreement and the functional plans;
- f. Attempting to resolve any impediments to or problems associated with implementing this Agreement; and
- g. At appropriate intervals, advising the Tribal Business Committee and the appropriate State officials about the progress of implementing this Agreement.

## **INDIAN CHILD WELFARE ACT**

The Tribe and State, through their joint efforts, shall comply with the provisions of the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901, *et seq.*) Hereinafter referred to as "ICWA":

In accordance with ICWA, the Division of Child and Family Service ("DCFS") shall notify the Tribe when a Ute child who does not reside within that territory over which, pursuant to this Agreement, the Tribe has exclusive jurisdiction, is the subject of a state court child custody proceeding, including a proceeding for foster care placement, pre-adoptive placement, termination of parental rights or adoptive placement. The notice shall advise the Tribe that it has the absolute right to intervene in the State court proceedings and to request an extension of up to twenty (20) days of any hearing scheduled in the proceeding. The notice shall also advise the Tribe that it has a qualified right to request a transfer of the proceedings to tribal court. DCFS shall not oppose the Tribe's intervention in the State court proceedings to tribal court. DCFS will not oppose Tribe's intervention in the State court proceedings and any motion by the Tribe to transfer the proceedings to tribal court except in those cases where either parent objects or the court determines that good cause exists not to transfer the case.

## **ELIGIBILITY**

This Agreement will apply to Ute children who meet the definition of a Ute "Indian child" as contained in ICWA:

Any unmarried person who is under age eighteen and is either (a) a member of the Ute Indian tribe or (b) is eligible for membership in the Ute Indian tribe.

The Ute Indian Tribe's ICWA Committee must approve exceptions to these criteria. The ICWA Committee will meet and determine jurisdiction. The Committee will notify the state of decision regarding jurisdiction of said child.

The Tribe shall decide all questions of membership in the Tribe or eligibility for membership in the Tribe, and such decisions shall be conclusive and irrefutable for purposes of court jurisdiction or ICWA.

## **UTE INDIAN TRIBE JURISDICTION**

The Tribe has a compelling interest in promoting and maintaining the integrity of the Tribe as a society and as a culture. The Tribe, through its Tribal Court, shall determine the type of care received by Ute children and families within its jurisdiction, except as described below in this agreement.

Nothing in this Agreement shall be construed to give the State or its agent's jurisdiction over Ute tribal members on the Uintah and Ouray Reservation, except as described below in this agreement. The Tribe shall have exclusive jurisdiction over any child custody proceeding involving a Ute child who resides on the Uintah and Ouray Reservation.

## **STAFF RESOURCES**

To carry out the terms of this Agreement, DCFS agrees to assign a limited number of its social workers to the Ute Family Office to coordinate child welfare work with Tribal social services workers based in that location. DCFS also agrees to provide limited financial support to assist the Tribe in staffing child welfare work on the Reservation.

DCFS will endeavor to ensure that all persons assigned to work at the Ute Family Center are sensitive to and supportive of the values and traditions inherent in the Ute culture.

The Tribe recognizes that the provision of child welfare services to Ute children and their families on the Reservation is its responsibility. Through the Ute Family Center the Tribe agrees to provide expertise and advice to DCFS to assist it in providing culturally appropriate assistance to Ute children living off the Reservation.

## **COOPERATIVE RELATIONSHIP**

### **A. Testimony in Other Party's Court**

Social services staff of DCFS may testify in Tribal Court upon receipt of advance oral or written request. Social services staff of the Tribe may testify in State court, including State Administrative Hearings, upon receipt of advance oral or written request. When required by subpoena, DCFS social workers shall testify in Tribal court and Tribal social workers shall testify in State court and Administrative Hearings.

### **B. Case Conference**

If DCFS and the Tribe disagree about the advisability of transfer of a case, placement or of the provision of services to a Ute child or the child's family, a case conference shall be held to attempt to resolve the parties' differences. If they cannot agree, DCFS shall proceed in accordance with the Utah State Law until such time as the state court rules on transfer of jurisdiction, placement or other provision of services.

### **C. Cooperative Efforts and Rights of Social Worker and Licensor in Other Jurisdiction**

When DCFS provides services for a child residing within the Ute Reservation, or when the Office of Licensing provides licensing services for a home on the Ute Reservation, the Tribe grants general permission for the State staff to enter its reservation in order to provide such services.

### **D. Child Protective and Licensing Services**

#### **1. Responsibility**

Child Protective Services investigations will be the responsibility of the Ute Tribal Social Services and the BIA police for allegations that have occurred on the reservation. The Ute Tribe may request the assistance of DCFS in fulfilling this responsibility.

The Office of Licensing shall investigate to determine whether a foster home on the reservation, that is licensed by the Office of Licensing, has violated any laws relating to licensure, including licensing Administrative Rules.

## **2. Notification**

If DCFS receives a report of suspected child abuse or neglect occurring on the Reservation, DCFS will immediately notify Tribal child protective service workers and/or the BIA Police so that necessary protective measures can be taken to ensure the safety of the child.

If DCFS or the Tribe receives a report of suspected child abuse or neglect or observes violations of any laws relating to licensure in a foster home on the reservation, that is licensed by the Office of Licensing, DCFS and the Tribe will immediately notify the Office of Licensing.

## **3. Release of Ute Children**

### **a. No State Court Proceeding Filed**

If a Ute child is taken into DCFS custody and DCFS subsequently determines that the release of the child to his/her family is appropriate, DCFS shall inform the Tribe's appropriate social services office regarding the child's release

### **b. State Court Proceeding Pending**

If a Ute child is the subject of a pending State court proceeding and DCFS subsequently determines that the release of the child to his/her family is appropriate through dismissal of the state court action, DCFS shall consult with the Tribe's social services office regarding the child's release.

## **E. Foster Care and Pre-Adoptive Placements**

### **1. Foster Homes**

All foster homes must meet Social Security Act Title IV-E licensing standards.

- a. The State shall give full faith and credit to foster homes which are certified, approved or licensed by the Tribe.
- b. The Tribe shall give full faith and credit to foster homes, which are licensed by the Office of Licensing.
- c. DCFS may place Ute children in foster homes licensed by the Tribe and the Tribe may place Ute children in foster homes licensed by the Office of Licensing if such placement is mutually agreed upon by the Tribe and DCFS.

Upon request, the Tribe may allow DCFS to do home studies on possible foster or pre-adoptive homes and submit them to the Ute certification, approval or licensing process.

## **2. Licensing Standards**

If available the Tribe shall utilize its own foster care licensing, approval or certification standards in determining the suitability of homes to provide foster care within the Ute Reservation. The Tribe shall not license, certify or approve foster care homes that are in the State of Utah and outside of the Ute Reservation without first obtaining a Child Placing Foster license from the Office of Licensing.

The Office of Licensing shall utilize its own foster care licensing standards when asked by the Tribe or DCFS to determine the suitability of homes to provide foster care both within and outside of the Ute Reservation.

The Tribe shall provide the State with a copy of foster care licensing standards and procedures utilized by the Tribe to license foster care homes within the Ute Reservation.

The Tribe may obtain the current foster care licensing standards and procedures utilized by the Office of Licensing to license foster care homes upon request or on-line at <http://le.utah.gov/~code/TITLE62A/62A02.htm> and <http://www.rules.utah.gov/publicat/code/r501/r501.htm>.

The Office of Licensing is authorized to and shall monitor, investigate, and enforce current foster care licensing standards and procedures in each foster

home it has licensed. The Tribe shall assist the Office of Licensing if the Office of Licensing requests support in performing these duties.

In the event that the Office of Licensing determines that a current or prospective foster home is not in compliance with its current foster care licensing standards and procedures, it may deny, place conditions on, suspend, or revoke the foster care license by serving a notice of agency action. The Tribal Court shall have no jurisdiction regarding an administrative action by the Office of Licensing concerning a foster home licensed by the Office of Licensing. The sole remedy available for a foster home applicant or licensee to appeal the notice of agency action is through an Administrative Hearing conducted by the Department of Human Services Office of Administrative Hearings, in accordance with Utah Code Annotated Title 63, Chapter 46b, Administrative Procedures Act.

### **3. Changes in Standards**

Either party shall coordinate with the other all changes in foster care licensing standards and procedures within thirty (30) days after the effective date of such changes.

### **4. Responsibility for Costs**

Upon receiving custody of a Ute child living off the Reservation, DCFS shall assume responsibility for costs of foster care in foster homes licensed by the Tribe or by the Office of Licensing. The intention of this agreement is that on a future date (yet to be determined) the tribe shall assume financial responsibility for those within their jurisdiction.

### **5. Coordination**

The Tribe and DCFS shall coordinate efforts in locating the most suitable foster care and pre-adoptive placement for Ute children in accordance with the placement preferences described in the ICWA and according to Ute custom. Such coordination shall occur through case conferences between designees of the Tribe and DCFS.

## **6. Assistance in Removal**

### **a. Removal from Foster Care Placement within the Ute Reservation**

The Tribe agrees that, if a Ute child in the legal custody of DCFS is to be removed from a foster home which is located within the Ute Reservation (due to an order of a State court, or due to a determination that removal is in the best interests of the Ute child and the removal is recommended by a case conference between DCFS and the Tribe), the Tribe shall assist in removing the Ute child from the Ute Reservation and transferring physical custody of the Ute child to DCFS.

### **b. Removal from Foster Care Placement Outside of the Ute Reservation**

DCFS agrees, that if a Ute child in legal custody of DCFS is to be removed from a foster home outside of the Ute Reservation (due to an order of the Tribal court, or due to a determination that removal is in the best interest of the Ute child and the removal is recommended by a case conference between DCFS and the Tribe), DCFS shall assist in removing the Ute child from the foster home and transferring physical custody of the Ute child to the Tribe.

## **7. Cooperation in Supervision**

a. The supervision of the placement of a Ute child by DCFS in a foster home on the Ute Reservation shall be a cooperative effort. Any change in such placement shall be made pursuant to a case conference between DCFS and the Tribe.

b. The supervision of the placement of a Ute child by the Tribe in a foster home outside of the Ute Reservation shall be a cooperative effort. Any change in such placement shall be made pursuant to a case conference between DCFS and the Tribe.

## **8. Notice of Emergencies in Foster Care Placement.**

a. The Tribe shall notify DCFS within two working days from the time the Tribe becomes aware of any emergency situation involving the care or

well-being of a Ute child placed by DCFS in a foster home. The Tribe shall take whatever steps are necessary to insure the well-being of the Ute child until the State can respond to the emergency situation.

- b. DCFS shall notify the Tribe within two working days from the time DCFS becomes aware of any emergency situation involving the care or well-being of a Ute child placed by the Tribe in a foster home. DCFS shall take whatever steps are necessary to insure the well-being of the Ute child until the Tribe can respond to the emergency situation.

#### **I. STATE PARTICIPATION IN TRIBAL COURT**

The State's attorneys may appear in Tribal court and represent the State. The attorneys shall be subject to all rules governing the practice of law in the Tribal Court.

#### **TERM**

This Agreement shall become effective upon signature of all parties and shall expire five years from that date. The Tribe, DCFS, and the Office of Licensing shall sign any amendments to this Agreement in writing. All disputes arising under this Agreement will be handled through good faith negotiation between the Tribe and the State through the Development Team.

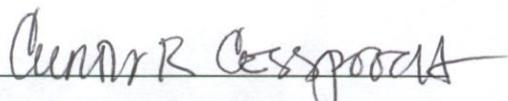
This Agreement may be terminated by either of the parties with or without cause by giving one hundred eighty days (180) days prior written notice to the other party pursuant to ICWA 25 U.S.C. USC 1919(b). This Agreement may be amended at any time by writing signed by the Tribe, DCFS, and the Office of Licensing. However, no termination shall relieve either party from continuing to provide services to Ute children and their families that are ongoing at the time of the termination.

## SOVEREIGN IMMUNITY

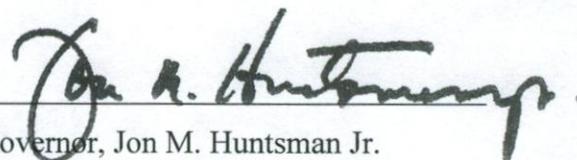
This Agreement is not intended to, nor shall it be deemed to, waive the sovereign immunity of the Tribe or of the State.

WE, THE UNDERSIGNED, HEREBY AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT BETWEEN THE UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION AND THE STATE OF UTAH DEPARTMENT OF HUMAN SERVICES, DIVISION OF CHILD AND FAMILY SERVICES AND OFFICE OF LICENSING.

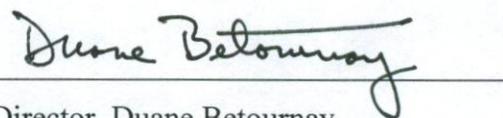
SIGNED THIS 9 DAY OF December, 2008.

  
Chairman, Curtis Cesspooch  
Ute Indian Tribe

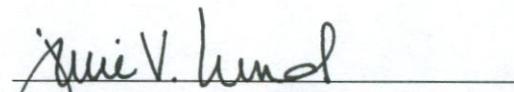
  
Director, Floyd Wyasket  
Ute Indian Tribe Social Services

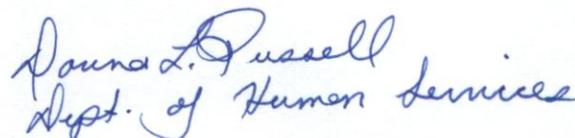
  
Governor, Jon M. Huntsman Jr.  
State of Utah

  
Executive Director, Lisa-Michele Church  
Department of Human Services

  
Director, Duane Betournay  
Division of Child and Family Services

  
Director, Ken Stettler  
Office of Licensing

  
Julie Lund, Child Protection Division Chief

  
Dawn Russell  
Dept. of Human Services