

**Indian Child Welfare Act Intergovernmental
Agreement Between the New Mexico Children,
Youth and Families Department and the Pueblo
of Tesuque Tribe.**

May 9, 2011

TITLE: Indian Child Welfare Act Intergovernmental Agreement Between the New Mexico Children, Youth and Families Department and the Pueblo of Tesuque Tribe.

Table of Contents

- I. Purpose and Policy**
- II. Definitions**
- III. General Provisions**
- IV. Notice**
- V. Intervention**
- VI. Transfer of Jurisdiction**
- VII. Child Protective Services**
- VIII. Remedial Services**
- IX. Placement Preferences**
- X. Foster Care – Pre-Adoptive Placements**
- XI. Voluntary Relinquishments**
- XII. Adoptive Placements– Voluntary and Involuntary**
- XIII. CYFD Staff Training**
- XIV. Changes and Cancellation of Agreement**
- XV. Effective Date**
- XVI. Effect of Prior Agreements**
- XVII. Sovereign Immunity**

INDIAN CHILD WELFARE ACT INTERGOVERNMENTAL AGREEMENT
BETWEEN THE NEW MEXICO CHILDREN, YOUTH AND FAMILIES
DEPARTMENT AND THE PUEBLO OF TESUQUE DIVISION OF SOCIAL
SERVICES.

This Intergovernmental Agreement (IGA) is between the STATE OF NEW MEXICO acting through its Children, Youth and Families Department herein called "CYFD", and the Pueblo of Tesuque Tribe, herein referred to as "TRIBE", a federally recognized Indian Tribe.

I. PURPOSE AND POLICY

- A. In 1978, the Congress of the United States adopted the Indian Child Welfare Act (hereafter ICWA), Public Law 95-608, codified as 25 USC Sections 1901-1963, "to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families," 25 USC Section 1901. The ICWA authorizes Indian tribes and states to enter into Agreements aimed at furthering the purposes of the ICWA (25 USC Section 1919). The State of New Mexico may enter into Cooperative Agreements with tribes as provided in the New Mexico Joint Powers Act and the New Mexico Children's Code (NMSA 32A-1 et seq.). Pursuant to these laws, the TRIBE and CYFD hereby enter into this Agreement, subject to the terms and conditions set out below.
- B. CYFD and the TRIBE recognize that:
1. There is no resource that is more vital to the continued existence and integrity of the TRIBE than its 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. CYFD has a direct interest in protecting Native American culture and encouraging the cultural diversity of the citizens of the State of New Mexico;
 4. This Agreement is entered into under 25 USC Section 1919 and the New Mexico Children's Code (herein "NMCC") (NMSA 32A-1 et seq.), and is predicated on a government to government relationship between the STATE OF NEW MEXICO and the TRIBE in a spirit of cooperation, coordination, communication, collaboration and good will;
 5. Both voluntary and involuntary proceedings are of critical interest to the TRIBE:
 - (a) To prevent any inappropriate cultural separation of Pueblo of Tesuque children from their families and their Pueblo of Tesuque community;

II. DEFINITIONS

1. "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.
2. "Concurrent jurisdiction" exists when the state court and the TRIBE both have jurisdiction over a child custody proceeding.
3. "Domicile" means more than physical presence alone of the child at the time of the actions giving rise to any court proceeding covered by this Agreement. Domicile is the intended permanent legal home of the child established by the child's parents or other legal custodian. The domicile of a child is that of the natural mother unless otherwise established by the father.
4. "Extended Family" means the minor's grandparent, aunt or uncle, second cousins, stepparent, godparent or other individual approved by consensus through a Pueblo of Tesuque family clan.
5. "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.
6. "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.
7. "Intervention in a judicial proceeding" occurs when the TRIBE intervenes in a State court child custody proceeding pursuant to 25 USC Section 1911 (c). The TRIBE becomes a party to the State court proceeding and the State retains jurisdiction over that child to make a final disposition of the child, subject to the mandates of ICWA.
8. "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 Pueblo of Tesuque, 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 Pueblo of Tesuque child otherwise eligible for those benefits.
9. "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.

10. "Transfer of Jurisdiction" occurs when the TRIBE petitions a State Court for a transfer of jurisdiction over a child custody proceeding from the State to the TRIBE pursuant to 25 U.S.C. Section 1911 (b), and the State Court grants the petition.
11. "Pueblo of Tesuque Family Court" means a court with jurisdiction over child custody proceedings, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe, which is vested with authority over child custody proceedings of the Pueblo of Tesuque.
12. "Disrupted adoption" means an adoptive placement that ends prior to finalization.
13. "Dissolved adoption" means a finalized adoption where parental rights have been subsequently terminated or voluntarily relinquished.

III. GENERAL PROVISIONS

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

- A. This Agreement applies to any unmarried child under the age of eighteen who is a member of the TRIBE, or is eligible for membership and is the biological child of a member of the TRIBE, herein referred to as Pueblo of Tesuque child."
- B. Verification of membership with the Pueblo of Tesuque is the sole responsibility of the TRIBE. The TRIBE's verification of membership shall be conclusive.
 1. Membership inquiries shall be referred by CYFD to the Pueblo of Tesuque ICWA Office designated in Section IV.B. for processing. The TRIBE ICWA Office shall make all applications for enrollment in the Pueblo of Tesuque.
 2. The TRIBE ICWA Office shall make a verification of membership of a referred minor within ten (10) working days from the time sufficient background information is provided to the TRIBE.
 3. If insufficient information to verify membership is provided, the TRIBE will request additional information from CYFD in writing within ten (10) working days of receiving the inquiry concerning the minor's membership.
 4. If CYFD is not able to provide additional information, the TRIBE will be notified and will make a verification on the status of the child within 30 days. If the TRIBE does not respond, CYFD may proceed as if the child is not a Pueblo of Tesuque child.

- C. CYFD will follow the statutory confidentiality restrictions of the New Mexico Children's Code and HIPPA requirements in the performance of its responsibilities under this Agreement. The TRIBE will follow the confidentiality restrictions of the Pueblo of Tesuque, Federal Privacy Act, 5 U.S.C. Section 552(a), HIPAA requirements and pertinent CYFD and TRIBE policies in performance of its responsibilities under this Agreement.
- D. CYFD and the TRIBE will share information in any child custody matter where there is a transfer of jurisdiction or cooperative placement efforts. Protective Services staff of CYFD will testify when necessary in Pueblo of Tesuque Family Court upon issuance of a letter from the TRIBE. Social Services staff of the TRIBE will testify when necessary in state court upon issuance of a letter requesting appearance by CYFD.
- E. It is mutually agreed that there shall be established a Coordination Committee of representatives of CYFD and the TRIBE 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. Pueblo of Tesuque customs and laws;
 7. Federal, State or Tribal laws and regulations;
 8. Other issues that may arise as deemed appropriate.
- F. The TRIBE shall be placed on the CYFD mailing list of proposed rule changes and provided notice of proposed rule changes as provided in CYFD's administrative rules. Pueblo of Tesuque and CYFD will update contact information and mailing lists on a periodic basis.
- G. CYFD shall designate a liaison person in CYFD administration who will be the primary point of contact with TRIBE regarding CYFD's rules and policies and issues related to implementation of this Agreement. CYFD's liaison may be contacted at:

Native American Liaison
Children, Youth and Families Department
P.O. Drawer 5160
Santa Fe, New Mexico 87502
Telephone Number: 505-412-0093
FAX Number: 505-827-4474

- H. The TRIBE shall designate a liaison person within its administration who will be the primary point of contact with the TRIBE's administration regarding the TRIBE's rules, policies, financial needs and issues related to implementation of this agreement. The TRIBE liaison may be contacted at:

Mr. Fredrick Vigil, Interim General Services Division
Director/ Housing Director
Pueblo of Tesuque
RR 42, P.O. Box 360-T
Santa Fe, New Mexico 87506
Telephone: 505-670-4750 FAX: 505-982-2331

- I. The TRIBE shall be invited to the following CYFD staff meetings concerning a Pueblo of Tesuque child: The mandatory meetings pursuant to 32A-4-19 (B) and 32A-4-25.1 (A) and CYFD change of plan staff meetings. CYFD will consider the preference of TRIBE when developing, preparing and implementing any permanency plan for a Pueblo of Tesuque child.
- J. CYFD and the TRIBE recognize that when a Pueblo of Tesuque child is the subject of a child custody proceeding the free flow of information between CYFD and the TRIBE in relation to the Pueblo of Tesuque child is proper, necessary to the administration of the child protective services laws of the STATE OF NEW MEXICO and the TRIBE, and is in the best interests of the Pueblo of Tesuque child. CYFD will make information, reports and records relating to Pueblo of Tesuque children available to the TRIBE to the extent authorized by the New Mexico Children's Code, NMSA 32A-4-6 (C), CYFD policy and other state and federal confidentiality statutes and administrative rules. Pueblo of Tesuque will make information, reports and records relating to Pueblo of Tesuque children available to the CYFD to the extent authorized by Pueblo of Tesuque law, Pueblo of Tesuque policy and other federal confidentiality statutes and administrative rules.
- K. CYFD and the TRIBE acknowledge that the disclosure of alcohol or drug abuse treatment records is governed exclusively by federal law.
- L. **Expert Witness**
On a case-by-case basis, the TRIBE will provide CYFD with the names of persons qualified to testify as expert witnesses on issues of tribal customs regarding child rearing, parenting and the role of

extended family members raising Pueblo of Tesuque children. If expert testimony is required, CYFD will consider the use of one of the experts identified by the TRIBE.

- M. CYFD shall comply with the terms of this Agreement when the Agreement provides greater protection for the rights and role of the TRIBE than requirements of CYFD administrative rules, provided there is no violation of applicable laws and administrative rules.

IV. NOTICE

CYFD shall make reasonable efforts to determine whether any child taken into custody is a Pueblo of Tesuque child and, if so, CYFD must give notice to the TRIBE in accordance with Section 1912 of the ICWA.

A. **Type of Proceeding**

CYFD shall notify the TRIBE, as provided in section IV.B of this Agreement, of any instance where CYFD has received physical custody of or initiated a protective services action regarding a child that CYFD knows or has reason to believe is a Pueblo of Tesuque child of the following actions known to CYFD:

1. Involuntary proceedings involving placement of a Pueblo of Tesuque child: foster care placement or a change in foster care placement, termination of parental rights proceeding, permanent guardianship and pre-adoptive placement;
2. Voluntary proceedings involving placement of a Pueblo of Tesuque child: foster care placement, pre-adoptive placement, relinquishments, permanent guardianship and consent to termination of parental rights;
3. Judicial hearings in all proceedings to which the TRIBE is entitled to notice under (a) and (b) above, and any change in hearing dates and times;
4. Any disrupted or dissolved adoption of a Pueblo of Tesuque child who has been placed from CYFD custody.

- B. CYFD shall provide notice of the actions listed in Section IV.A of this Agreement when such proceedings involve a Pueblo of Tesuque child to:

Pueblo of Tesuque
Social Services Department/ICWA
RR 42, P.O. Box 360-T
Santa Fe, New Mexico 87506
Telephone: 505-690-8152 FAX: 505-955-7791

C. Time Limits

CYFD shall give notice in the circumstances described in Section IV-A as follows:

- 1. When a child CYFD knows or has reason to believe is a Pueblo of Tesuque child is taken into custody pursuant to NMSA 1978 32A-4-6, CYFD shall give notice by telephone within 24 hours (excluding weekends and holidays) of taking physical custody of the child, or within 24 hours after subsequently learning that the child is believed to be a Pueblo of Tesuque child. CYFD shall give written notice to the TRIBE contact office by registered mail, return receipt requested, within five (5) days of the telephone notice (excluding weekends and holidays).**
- 2. At the time of filing a neglect/abuse or Families In Need of Court Ordered Services petition in State court involving a child CYFD knows or has reason to believe is a Pueblo of Tesuque child, CYFD shall give notice by telephone within 24 hours (excluding weekends and holidays) of commencing the action. Notice shall include information about the scheduled court appearances. In addition, CYFD shall give written notice to the TRIBE contact office by registered mail, return receipt requested, as soon as possible after commencing the action, but in no event, no later than five (5) days after the telephone notice (excluding weekends and holidays).**
- 3. CYFD shall notify by telephone of any changes in scheduled hearings as soon as possible, involving a child CYFD knows or has reason to believe is a Pueblo of Tesuque child, but in any event, no later than 24 hours (excluding weekends and holidays) after learning of the change.**
- 4. CYFD shall notify by telephone within 24 hours (excluding weekends and holidays) of taking custody of a child CYFD knows or has reason to believe is a Pueblo of Tesuque child to extended family members known to CYFD who may be suitable to provide care for the child. In individual cases, the TRIBE and CYFD may agree that the TRIBE will assume responsibility for notifying the extended family members.**
- 5. CYFD shall intervene on referrals that are imminently life threatening and shall notify the TRIBE within 24 hours (excluding weekends and holidays) from the time**

CYFD obtains custody. CYFD will consult with the TRIBE about alternative placement options.

6. CYFD shall notify the adoption court when CYFD receives notice pursuant to an independent adoption of a child CYFD knows or has reason to believe is a Pueblo of Tesuque child, pursuant to 32A-5-6 NMSA 1978.
7. Within five (5) days (excluding weekends and holidays) of CYFD learning of a disrupted or dissolved adoption of a Pueblo of Tesuque child placed by CYFD, CYFD shall notify the TRIBE. If the adoptive placement was a result of a voluntary relinquishment, the TRIBE shall assist CYFD in identifying and locating the child's parent(s) and extended family members. If the adoptive placement was a result of a termination of parental rights, the TRIBE shall assist CYFD in identifying and locating the child's extended family members.

D. Contents of Notice

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

1. With the consent of the court, 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 name and date of birth of the child, the basis for the juvenile court's jurisdiction over the child, the date and time of any juvenile court proceeding regarding the child and the reason for placement of the child;
3. Identification of any special needs of the child; and,
4. Names of all parties participating in the proceeding and the addresses and phone numbers of the parties or their attorneys.

E. Documentation of Notice

All contacts and attempts to contact the TRIBE shall be documented in CYFD's case file.

V. INTERVENTION

The TRIBE may seek to intervene at any point in the proceeding, pursuant to 1911(c) of the ICWA.

VI. TRANSFER OF JURISDICTION

- A.** The TRIBE agrees to make reasonable efforts to file a motion to transfer jurisdiction in children's court proceedings involving a Pueblo of Tesuque child. A delay in moving to transfer may occur if insufficient information has been provided to the TRIBE to verify membership, eligibility for membership or status of a child or parent. Notwithstanding any other provision of this Agreement, The TRIBE may seek to transfer at any point in the proceeding.
- B.** If the TRIBE declines or fails to transfer in a particular case, CYFD shall continue to inform the TRIBE about the State court proceeding involving the child by providing the TRIBE with notice of all hearings in that case. With the consent of the court, CYFD shall also provide copies of all motions, orders, petitions and other pleadings filed with the court.

A comprehensive case summary filed with the court and other relevant documents filed as attachments shall be provided to the TRIBE. CYFD shall provide a summary to the TRIBE immediately after any significant change in circumstances of the child, reports of abuse or neglect, proposed changes in placement, a parent's completion of requirements for reunification or changes in the permanency plan for the child. The report prepared by CYFD for a Citizen Review Board review may be used when available.

- C.** Exclusive jurisdiction in the Pueblo of Tesuque Family Court:

The TRIBE shall have exclusive jurisdiction over any "child custody proceeding" as set forth in Section IV.A of this Agreement, involving a Pueblo of Tesuque child who resides or is domiciled within the Pueblo of Tesuque. Where a Pueblo of Tesuque child is a ward of the Pueblo of Tesuque Family Court, the TRIBE shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the Pueblo of Tesuque child.

- D.** Concurrent Jurisdiction.

- 1.** If a Pueblo of Tesuque child is not domiciled or residing within the Pueblo of Tesuque 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 Pueblo of Tesuque Family Court may be filed in state court and jurisdiction shall be determined in accordance with Section

1911(b) of the ICWA. It shall be the policy of CYFD that a petition to transfer by the TRIBE will be favored whenever permitted by ICWA. It shall be the policy of the TRIBE to request transfer only upon a determination that such transfer is in the best interests of the Pueblo of Tesuque child and family. CYFD and the TRIBE agree to work cooperatively in all child custody proceedings to protect the best interests of the Pueblo of Tesuque child and his or her natural family.

2. Upon the TRIBE's receipt of certified written notice, representatives of CYFD and the TRIBE will make efforts to arrange a staffing to discuss whether jurisdiction in CYFD and TRIBE would be in the best interests of the Pueblo of Tesuque child. When a decision has not been made between CYFD and the Pueblo of Tesuque Family Court jurisdiction, CYFD shall proceed in accordance with the New Mexico Children's Code and Adoptions Act until such time legal intervention and jurisdiction is transferred to the TRIBE.
3. Where a State court intends to dismiss a child custody proceeding for lack of jurisdiction, CYFD shall notify the TRIBE before the case is dismissed. In such cases, CYFD shall contact the TRIBE ICWA Office designated in Section IV.B supra.
4. When CYFD has jurisdiction of a case involving a Pueblo of Tesuque child residing within the Pueblo of Tesuque, CYFD social workers shall be permitted to enter the Pueblo of Tesuque to provide appropriate social services to the child and his/her family. When the TRIBE has jurisdiction of a case involving a Pueblo of Tesuque child residing off the Pueblo of Tesuque, TRIBE social workers shall be permitted into New Mexico to provide appropriate social services to that child and his/her family. Arrangements may also be made in other individual cases to provide social services on or off the Pueblo of Tesuque by CYFD and the TRIBE where such arrangements will be in the best interests of the child and/or family being served. CYFD social workers may request the assistance of Pueblo of Tesuque police in appropriate circumstances. TRIBE social workers may request the assistance of State, County, or City police in appropriate circumstances.

E. Proceedings to Transfer Jurisdiction

Nothing in this Agreement shall limit the rights of CYFD and the Pueblo of Tesuque in a hearing upon petition to transfer the

proceedings to tribal court pursuant to Section 1911 (b) of the ICWA.

VII. CHILD PROTECTIVE SERVICES

- A. CYFD shall have primary responsibility for receiving reports of suspected child abuse or neglect concerning Pueblo of Tesuque children domiciled or located off the Pueblo of Tesuque. Upon receiving a report of suspected child abuse or neglect, CYFD 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 Pueblo of Tesuque or whether the child is Pueblo of Tesuque or Non-member of Tesuque. The case will be referred by telephone, with written confirmation following, to the TRIBE ICWA Office as provided in Section IV.B supra, within twenty-four (24) hours (excluding weekends and holidays).

The TRIBE will make arrangements to assume custody of the Pueblo of Tesuque child who is a resident or domiciliary of the Pueblo of Tesuque.

- B. The TRIBE's ---- office(s) 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 Pueblo of Tesuque. If the TRIBE receives a referral for child protective services concerning a Non-Indian child who is found within the Pueblo of Tesuque, the TRIBE shall take whatever action is necessary to ensure the immediate safety of the child.

1. The case will then be referred by telephone, with written confirmation following, to the Statewide Central Intake at 1-800-797-3260 within twenty-four (24) hours (excluding weekends and holidays).

2. CYFD will be responsible for the cost of custodial care for Non-Indian children within the Pueblo of Tesuque.

- C. The TRIBE will be responsible for the cost of custodial care for Indian children residing on the Pueblo of Tesuque. If a Pueblo of Tesuque child resides and is domiciled off the Pueblo of Tesuque and the Pueblo of Tesuque child is in the custody of CYFD, CYFD shall be responsible for that Pueblo of Tesuque child, including payment for shelter care on behalf of the child.

- D. Primary responsibility for follow up treatment and services to the on Pueblo of Tesuque Non-Indian child and his/her family will lie with the appropriate CYFD county office, unless representatives of the TRIBE and CYFD mutually agree upon other arrangements at a staffing held within thirty (30) days after CYFD's receipt of written confirmation.
- E. If a Pueblo of Tesuque child is taken into CYFD custody during normal working hours and CYFD has determined that the child should be released to his or her family, CYFD may release the Pueblo of Tesuque child to his or her family in less than twenty-four (24) hours provided that CYFD has conferred with or made reasonable efforts to confer with the TRIBE's ICWA Office designated in Section IV.B supra, to determine whether there is an open case concerning that child. If the TRIBE does not want the Pueblo of Tesuque child released to his/her family the TRIBE shall proceed in accordance with the provisions in Section VI.A.

VIII. REMEDIAL SERVICES

- A. As soon as CYFD becomes aware that a Pueblo of Tesuque child, parent and/or custodian who are domiciled off the Pueblo of Tesuque, are in need of services to make it possible for the child to safely remain in or return to the home, CYFD shall:
 - 1. Assess the strengths and needs of the child and family and, unless efforts to reunify the Pueblo of Tesuque child with his/her Indian custodian are deemed futile by CYFD and by the state court having jurisdiction over the child, develop a service plan that is designed to make it possible for the child to safely remain in or return to the home.
 - 2. Identify and incorporate values and practices of the Pueblo of Tesuque and Indian cultures that can contribute to providing services to the family.
 - 3. Seek to design culturally appropriate services that are responsive to the Pueblo of Tesuque and Indian values.
 - 4. Consider involving peers, family members, tribal social service resources and community representatives in the case planning and service delivery process when the TRIBE and CYFD agree that it is in the best interests of the Pueblo of Tesuque child.
 - 5. Make active efforts to provide remedial services to the same extent that services are available to non-Indian families when eligible. In addition, CYFD and the TRIBE shall assess and identify barriers to the Pueblo of Tesuque child and family accessing needed services. CYFD shall make active efforts to overcome identified barriers. Examples may include

providing transportation, providing access to and transmittal of documents and providing access to visits, counseling and treatment.

- B. **CYFD and the TRIBE shall make reasonable and active efforts to allow a Pueblo of Tesuque parent to visit a Pueblo of Tesuque child who is either:**
 - (1) In foster care;
 - (2) The subject of a proceeding in which CYFD has not made a formal decision to seek termination of parental rights; or
 - (3) in a pre-adoptive placement. Efforts may include, but not limited to, services to address barriers to the parent exercising visitation including providing accommodations, transportation and other identified services or programs determined necessary for the parent to exercise visitation rights.
- C. **Where appropriate, extended family members, Indian custodians and qualified experts may be consulted in developing or amending plans.**

IX. PLACEMENT PREFERENCES

- A. **Pursuant to the Adoption policies of Section 1915 of the ICWA and NMSA 1978, Section 32A-5-5, in the absence of good cause to the contrary, preference in adoption placement of a Pueblo of Tesuque child shall be given in the following order:**
 - 1. **Extended family members;**
 - 2. **Pueblo of Tesuque member adoptive parents, which means that one or both adoptive parent(s) must be a Pueblo of Tesuque member;**
 - 3. **Indian adoptive parents, which means that one or both adoptive parent(s) must be an enrolled member of a federally recognized Indian Tribe; or**
 - 4. **Other adoptive family approved by the TRIBE.**
- B. **Foster Care Placements**

Any Pueblo of Tesuque child received into the legal custody of CYFD shall be placed in the least restrictive setting which most approximates a family and in which his or her special needs, if any, may be met. In the absence of good cause to the contrary, CYFD will place the child in the following order of preference.

 - 1. **Permit the Pueblo of Tesuque child to remain with his or her parent(s), guardian or custodian;**
 - 2. **An extended family member of the child, if a suitable home is available that is within reasonable proximity of the parent(s);**

3. A foster home that has been licensed or designated by the TRIBE, if a suitable home is available that is within reasonable proximity to the parent(s);
4. An Indian foster home that has been licensed by CYFD, if a suitable home is available that is within reasonable proximity to the parent(s).
5. A foster home approved by CYFD that is consented to by the TRIBE, if a suitable home is within reasonable proximity of the parent(s).
6. An institution for children licensed or designated by CYFD and which is approved by the TRIBE that has a program suitable to meet the child's special needs.

C. Pre-Adoptive Placements

Any Pueblo of Tesuque child being placed in a pre-adoptive placement shall be placed where his or her special needs, if any, will be met. In the absence of good cause to the contrary, CYFD will place a Pueblo of Tesuque child in a pre-adoptive placement in the following order of preference:

1. A member of the child's extended family.
2. Another family of the TRIBE.
3. Another Indian family.
4. A non-Indian family approved by the TRIBE.

D. CYFD shall consider the TRIBE's customs and law regarding custody and placement of children in the placement of Pueblo of Tesuque children. CYFD shall refer questions of Pueblo of Tesuque custom and law to the TRIBE. In any proceeding in which CYFD is unable to comply with placement preferences established by this Agreement, the CYFD social worker assigned to the case shall send a report explaining the active efforts made to comply with ICWA placement preference requirements, pursuant to ICWA, Section 1912 (d). CYFD shall contact the TRIBE within five (5) days of the placement (excluding weekends and holidays). The TRIBE may request that CYFD re-evaluate its placement decision.

E. CYFD shall place a Pueblo of Tesuque child in need of foster care or pre-adoptive placement in the least restrictive setting that most approximates a family setting and meets the child's special needs, CYFD shall place the child within reasonable proximity to his or her home, taking into account any special needs of the child. CYFD shall place siblings together whenever possible. If it is not possible to place siblings together, CYFD shall make active efforts to assure continuing contact among siblings, except if continuing contact compromises the safety of one or more of the children.

- F.** If a Pueblo of Tesuque child has been placed out of their home but not placed with extended family members and suitable extended family members are made known to CYFD, CYFD will make active efforts to place the child with those newly identified family members. When additional extended family members are identified, CYFD need not re-contact previously known family members. CYFD will notify the TRIBE and extended family members designated by the TRIBE of CYFD's placement assessment and CYFD's decision regarding placement of the child with the newly identified extended family members.
- G.** In the placement of a Pueblo of Tesuque child, the placement preference of the child's parent(s) shall be considered where such preference is appropriate and consistent with ICWA and this Agreement.
- H.** To insure that foster care and adoptive homes certified, designated or approved under state and tribal law provide a safe and nurturing placement for Pueblo of Tesuque children, the parties:
1. Agree that all persons who apply to become either a foster care provider or adoptive resource for Pueblo of Tesuque children, including all adults who reside in the home, shall complete a criminal background records check pursuant to CYFD and Pueblo of Tesuque policy and procedures.
 2. Agree that a criminal records check must be completed before CYFD may use the proposed home for either foster care or as an adoptive home;
 3. Acknowledge that information gathered in the criminal records check may result in CYFD rejecting the proposed foster or adoptive home for good cause pursuant to Section 1915 of the ICWA, 42USC 671, section 471.20.A, i and ii of the Title IV-E and Section IX. A, B or C of this Agreement; and
 4. Acknowledge that information gathered in a criminal records background check is confidential and protected under both state and federal and tribal law. The parties also acknowledge that pursuant to these confidentiality requirements, specific information obtained in a criminal records check cannot be shared between CYFD and the TRIBE. Therefore, the parties agree that, should either party conduct a criminal records background check that reveals that good cause exists not to certify, designate or approve a home pursuant to Section 1915 of the ICWA and 42USC 671, section 471.20.A, i and ii of the Title IV-E, the home shall not be certified, designated or approved as either a foster home or potential adoptive home.

5. Acknowledge the importance of the Pueblo of Tesuque culture to the Pueblo of Tesuque child and recognize that the TRIBE may offer to be a resource in providing specific cultural information through videos, heritage, celebrations and tribal related matters to the Pueblo of Tesuque child, their foster/adoptive parents and relative caretakers.

X. FOSTER CARE PRE-ADOPTIVE PLACEMENTS

- A. CYFD shall recognize foster home certified, approved or licensed by the TRIBE as meeting the foster home licensing requirements under State law and the TRIBE shall recognize CYFD foster home licensing as meeting the requirements of the TRIBE. CYFD may place children in foster homes licenses by the TRIBE and the TRIBE may place Pueblo of Tesuque children in foster homes licensed by CYFD if such placement is mutually agreed upon by CYFD and the TRIBE.
- B. Upon taking legal custody of a Pueblo of Tesuque child, CYFD shall assume responsibility for all costs of foster care (in both foster homes licensed by the TRIBE and CYFD, supervision and social services, until legal jurisdiction of the matter is transferred to the TRIBE, at which time the TRIBE shall assume responsibility for all such costs, subject however, to the emergency shelter care provisions of Section VII supra.
- C. CYFD and the TRIBE shall coordinate efforts in locating the most suitable foster care and pre-adoptive placement for Pueblo of Tesuque children in accordance with the placement preference described in the ICWA and as provided in accordance with this Agreement.
- D. The TRIBE shall utilize its own foster care licensing, approval or certification standards in determining the suitability of homes to provide foster care on the Pueblo of Tesuque and its own procedure for the approval of Indian foster homes. When the child is in the custody of CYFD, the TRIBE shall complete the home study within (45) days.
- E. The TRIBE agrees that if it is necessary for a Pueblo of Tesuque child in the legal custody of CYFD to be removed from the foster home licensed by the TRIBE or located on the Pueblo of Tesuque due to: (1) an order of a State or tribal court, or, (2) a determination after a staffing between CYFD and the TRIBE that removal is in the best interest of the Pueblo of Tesuque child, the

TRIBE will assist in removing the Pueblo of Tesuque child from the Pueblo of Tesuque and transferring physical custody of the child to CYFD.

- F. CYFD agrees that if it is necessary for a child in the legal custody of the TRIBE to be removed from a foster home licensed by CYFD either due to an order of a State or tribal court or due to a determination that removal is in the best interests of the child and the removal is recommended at a staffing between CYFD and the TRIBE, CYFD will assist in removing the child from the foster home and transferring physical custody of the child to the TRIBE.

- G. The TRIBE shall notify CYFD within twenty four (24) hours (excluding weekends and holidays) from the time the TRIBE becomes aware of any emergency situation involving the care, safety or well being of a child placed by CYFD in a foster home licensed by the TRIBE. The TRIBE shall notify the Statewide Central Intake. Provided, however, that the TRIBE shall take whatever steps are necessary to insure the safety and well being of the child until CYFD can assume its responsibility.

- H. CYFD shall notify the TRIBE within twenty four (24) hours (excluding weekends and holidays) from the time CYFD becomes aware of any emergency situation involving the care, safety or well being of a Pueblo of Tesuque child placed by CYFD or the TRIBE in a foster home licenses by CYFD. CYFD shall place the Pueblo of Tesuque child in emergency foster care. CYFD shall notify the TRIBE's ICWA Office as provided in Section IV.B supra. Provided, however, that CYFD shall take whatever steps are necessary to ensure the safety and well being of the child until the TRIBE can assume its responsibility.

XI. VOLUNTARY RELINQUISHMENTS

Voluntary consents to foster care and voluntary relinquishments of parental rights by any parent or Indian custodian shall be taken in accordance with Section 1913 of the ICWA.

XII. ADOPTIVE PLACEMENTS – VOLUNTARY AND INVOLUNTARY

- A. CYFD and the TRIBE shall coordinate efforts in locating suitable adoptive families for Pueblo of Tesuque children.

- B. The TRIBE shall, with authorization of the applicants, provide CYFD with the names and home studies of prospective adoptive homes in order to assist CYFD in complying with the placement preferences established in this Agreement and Section 1915 of the ICWA, and those of tribal custom. CYFD may conduct home studies of prospective adoptive homes of tribal members. The TRIBE shall assist in the assessment process, which may include conducting a home study.

- C. CYFD shall review all documents served on CYFD pursuant to the Adoption Act (NMSA 32A-5-1 et seq.) where CYFD consent is required to determine whether a Pueblo of Tesuque child is involved. If a Pueblo of Tesuque child is involved:
 - 1. CYFD shall require that petitioners provide proof of efforts to notify the TRIBE of the adoption.
 - 2. If petitioners do not provide proof of efforts to notify the TRIBE, CYFD shall notify the court that proof of notice to the TRIBE has not been provided.
 - 3. If information from petitioners is insufficient to determine whether a Pueblo of Tesuque child is involved, CYFD shall request additional information from petitioners. If petitioners fail to provide additional information and CYFD continues to have reason to believe that a Pueblo of Tesuque child is involved and that petitioners have not complied with the requirements of ICWA, CYFD shall notify the court of these facts. In addition, CYFD shall not waive the 90-day waiting period unless and until it can determine that a Pueblo of Tesuque child is not involved.

XIII. CYFD STAFF TRAINING

CYFD shall include training on ICWA and this Agreement as part of CYFD's Protective Services staff training plan. CYFD further agrees to provide ICWA and Indian cultural awareness training for CYFD protective services employees statewide at initial hire, and bi-annually. CYFD agrees to invite and provide notice of CYFD sponsored training to the TRIBE office identified in III.H. The TRIBE agrees to invite and provide notice of TRIBE sponsored training to the CYFD office identified in III.G.

XIV. CHANGES AND CANCELLATION OF AGREEMENT

- A. Either party may cancel this Agreement at any time after 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 any provision of the Agreement is held invalid or unenforceable by a court of competent jurisdiction, that holding shall not invalidate or render unenforceable any other provision of this Agreement.

XV. EFFECTIVE DATE

This Agreement shall become effective upon the date all necessary signatures to this Agreement are obtained.

XVI. EFFECT OF PRIOR AGREEMENTS

This Agreement supersedes all prior written and oral agreements, covenants and understanding between CYFD and/or its agency offices and the TRIBE 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.

XVII. SOVEREIGN IMMUNITY

Nothing herein shall be construed as a waiver of the TRIBE'S or the STATE OF NEW MEXICO's sovereign immunity.

IN WITNESS WHEREOF, THE PARTIES HEREBY AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT BETWEEN THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT OF THE STATE OF NEW MEXICO AND THE PUEBLO OF TESUQUE.

Approved by the Pueblo of Tesuque

Mark Hutchell
Governor

05.25.11
Date

Nicole T
Director, Social Services

5.31.11
Date

Approved by the Children, Youth and Families Department

Yolanda Berumen-Deines
Secretary Yolanda Berumen-Deines

6/15/11
Date

Reviewed for Legal Sufficiency

Lisa Fitting
Chris Romero Lisa Fitting
CYFD Chief General Counsel
Assistant

6/7/11
Date

Mark D. Whelan
Pueblo of Tesuque Attorney

5.25.11
Date

Approved, Department of Finance and Administration

Ronald Clifford
~~State Contracts Officer~~
Secretary *pk*

9/26/11
Date

ADDENDUM

XVIII. SECTION 11-1-4 NMSA 1978 CERTIFICATION

Pursuant to 11-1-4 NMSA 1978 both parties hereby certify that:

1. No State funds are involved.
2. No property as a result of joint exercise of powers are involved.
3. No surplus funds will be involved since there is no disbursement of funds as a result of this agreement

Approved by the Pueblo of Tesuque

Mark Hutchee

Governor

09.07.11

Date

[Signature]
Director, Social Services

9.13.11

Date

Approved by the Children, Youth and Families Department

Yolanda Berumen-Deines
Secretary Yolanda Berumen-Deines

9/21/11
Date

Reviewed for Legal Sufficiency

Lisa Fitting
Lisa Fitting, CYFD General Counsel

Marion R. V. Sagguy
Pueblo of Tesuque Attorney

9/20/11
Date

9/19/11
Date

Approved, Department of Finance and Administration

Theresa Clifford
Secretary

pk

Department of Finance and Administration

9/26/11
Date