

THE INDIAN CHILD WELFARE ACT MEMORANDUM OF UNDERSTANDING BETWEEN THE STATE OF ARIZONA THROUGH ITS DEPARTMENT OF CHILD SAFETY AND THE PASCUA YAQUI TRIBE THROUGH ITS SOCIAL SERVICES PROGRAM

This Memorandum of Understanding (MOU) is entered into by and between the State of Arizona on behalf of its Department of Child Safety, hereinafter referred to as “DCS”, and the Pascua Yaqui Tribe, through the Department of Social Services, hereinafter referred to as “Tribe”, in accordance with the Indian Child Welfare Act of 1978.

I. PURPOSE AND POLICY

A. Purpose

This MOU is predicated on a government to government relationship formed in the spirit of communication, cooperation, coordination, and good will for the purpose of providing guidance and interpretation in the application of the provisions of the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et seq., hereinafter referred to as “ICWA” or the “Act” and the 2016 Federal Regulations, 25 C.F.R. 23. Section 1919 of the Act provides that the States and Indian tribes are authorized to enter into agreements with each other respecting the care and custody of Indian children and jurisdiction over child custody proceedings.

It is the expressed intent of both parties to share resources and expertise in addressing the needs of Pascua Yaqui children; to facilitate the provision of services; and to promote cooperation among agencies dedicated to the welfare of children. However, this MOU in no way diminishes the DCS’ legal responsibility to deliver services to Pascua Yaqui families who reside or are present within the State of Arizona.

B. Policy

The DCS 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 are eligible for membership in an Indian Tribe.

3. The State has a direct interest in protecting the cultural diversity of the citizens of the State of Arizona.
4. The Tribe has an interest in promoting and maintaining the integrity of the Tribe as a society, to preserve the unique values of the culture, to promote and strengthen families, and to protect the best interests of the children. Where possible, the child will be raised within his or her family and the Pascua Yaqui culture.
5. DCS and the Tribe have an interest in preventing any cultural separation of children from their families and Tribe and to ensure the placement of all children in a manner which preserves the unique value of the Pascua Yaqui culture.

II. GENERAL PROVISIONS

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

- A. This MOU applies to any unmarried child under the age of eighteen (18) who is an enrolled member of the Pascua Yaqui Tribe, or eligible for enrollment with the Pascua Yaqui Tribe and is the biological child of an enrolled member of the Pascua Yaqui Tribe. See "Pascua Yaqui Tribe Membership Determination."
- B. DCS and the Tribe recognize that when a child is the subject of a State child custody proceeding, the free flow of all information between DCS and the Tribe in relation to the child is proper and necessary and in the best interests of the child.
 1. DCS will follow all applicable Federal and State, confidentiality requirements in the performance of its responsibilities under this MOU. The Tribe will follow the confidentiality requirements of the Pascua Yaqui Tribal Code; Federal Privacy Act, 5 U.S.C. § 552(a); and HIPAA requirements, in addition to Federal and State confidentiality requirements, as applicable.
 2. DCS and the Tribe will share information in any child custody matter. DCS and the Tribe will comply with their respective policies in performance of their responsibilities under this MOU. When reasonable and obtainable, DCS and the Tribe will assist one another upon request with obtaining the other entity's child welfare, education, or law enforcement records.
- C. The parties mutually agree that there shall be an established group of representatives of DCS and the Tribe which shall meet quarterly or as needed to address such issues as:
 1. Coordination and communication between parties;
 2. Interpretation and Review of this MOU;

3. Reviews of policies and procedures;
4. Caseload trends and their implications;
5. Matters of mutual concern;
6. Pascua Yaqui Tribe customs and laws;
7. Federal, State, or Tribal laws and regulations; and
8. Other issues that may arise as deemed appropriate.

- D.** DCS shall designate a liaison within its administration who will be the primary point of contact with the Tribe regarding DCS's rules, policies, and issues related to the implementation of this MOU. DCS's liaison may be contacted at:

The Department of Child Safety – DCS Tribal Liaison
3003 North Central, 23rd Floor
Phoenix, Arizona 85012
Telephone Number: (602) 255-2500

- E.** The Tribe's Social Services Department's Director and Program Manager will be the primary points of contact with the Pascua Yaqui Tribe's administration regarding the Tribe's rules, policies, and issues related to the implementation of this MOU. The Tribe's Social Services Department's Director and Program Manager may be contacted at:

Pascua Yaqui Tribe Social Services Child Welfare Department
4567 West Calle Tetakusim
Tucson, Arizona 85757
Telephone Number: (520) 883-5060

III. PASCUA YAQUI TRIBE MEMBERSHIP DETERMINATION

A. Determination of Tribal Membership

Determination of membership or eligibility for membership in the Pascua Yaqui Tribes is the sole responsibility of the Tribe.

B. Inquiry of Tribal Membership

1. The Department shall make diligent efforts to work with families and the Tribe to identify children who are subject to the Indian Child Welfare Act. The Department shall refer membership and eligibility inquiries to the Tribe as soon as possible to determine jurisdiction. The Tribe has ultimate responsibility for verification and its determination is conclusive.
2. Membership inquiries shall be referred by DCS for processing to ICWA@pascuayaqui-nsn.gov. DCS shall provide the Tribe with the name, date of birth, and (if available) social security number of each child and parent; DCS

shall also provide such information regarding any known relative who is believed to be a member of the Tribe. The Tribe shall attempt to verify membership or eligibility for membership of a referred child in writing within ten (10) working days from the time sufficient background information is provided by DCS.

3. The time DCS workers are awaiting response to inquiries by DCS to the Tribe for membership status shall not relieve DCS of the notice requirements of 25 U.S.C. § 1912 (a).

C. Email/Telephone Advisement

Upon receiving physical custody of a Pascua Yaqui child, DCS shall email the Pascua Yaqui Tribe ICWA Supervising Attorney at ICWA@pascuayaqui-nsn.gov or telephone within forty-eight (48) hours of taking physical custody of the Pascua Yaqui child to advise of the status of the investigation and to discuss (a) whether the child is in the care, custody and control of the Tribe's Social Services Department, (b) whether the Tribe has a recommendation as to temporary placement, (c) whether there are any jurisdictional issues and (d) the date and time of any Team Decision Making Meetings or any court hearings. Any telephone calls made by DCS to the Tribal Social Services Department shall be directed to the Tribe's ICWA Supervising Attorney.

D. After Hours/Holidays/Weekends

For emergencies outside of normal business hours, the Tribe's Social Services on-call employee can be reached by contacting the Tribe's Police Department at (520) 879-5500.

IV. NOTICE

A. Proceedings For Which Notice Shall Be Given

DCS shall give informal written and/or telephonic notice to the Tribe's ICWA Supervising Attorney when DCS is a party to and is aware or has reason to believe a Pascua Yaqui child is involved in voluntary, in-home, or involuntary child custody proceeding (as defined in 25 U.S.C. § 1903 (1)) for foster care placement, termination or relinquishment of parental rights, pre-adoptive and adoptive placements, adoption, guardianship, and emergency custody obtained under a temporary custody notice or court order.

B. Service of Notice

Formal notice shall be given in accordance with the requirements of 25 U.S.C. § 1912 (a) and served upon the Tribe's designated tribal agent as provided in the Federal Register, by registered or certified mail, return receipt requested.

C. Contents of Notice

The Notice shall contain (a) the name, date of birth, social security number, membership number of the child, (b) all names known, date of birth, social security number, membership number of the child's biological mother and father, maternal and paternal grandparents and great grandparents, or other known relatives, and (c) a copy of the petition, complaint or other document by which the proceeding was initiated.

D. Response to Notice

The Tribe shall attempt to verify membership or eligibility for membership of a referred child in writing within ten (10) days of a notice that compiles with the requirements of this Section, and give notice of the Tribe's intentions concerning intervention in and/or transfer of the judicial proceeding. If the Tribe receives a non-complying notice from DCS, the Tribe may request additional information from DCS in writing within ten (10) days of receiving the non-complying notice. DCS will provide the requested information to the Tribe in writing within (10) days of receipt of the request for additional information. A determination of membership or eligibility for membership by the Tribe shall be conclusive. However, membership or eligibility status can change when there is new information about newly discovered parents. A claim by the parent or custodian of the child that the child is a member or is eligible for membership in the Tribe shall be presumed to be correct unless DCS is notified otherwise by the Tribe.

If no response or request for additional information is received within the time specified, DCS shall proceed as if the child is not a member or eligible for membership, until such time that additional information is learned pursuant to A.R.S. § 8-815, or from another source that the Act might apply. If such additional information that the child is or may be a member or eligible for membership is learned, DCS promptly shall provide written notice to the Tribe in accordance with this section. Whether or not the Tribe has timely responded to a notice from DCS, the Tribe reserves the right in accordance with 25 U.S.C. § 1911 (c), to intervene at any stage of a child custody proceeding as defined in 25 U.S.C. § 1903 (1).

E. Death

DCS will promptly notify the Pascua Yaqui Tribe of the death of a Pascua Yaqui child in DCS custody and will consult with the Pascua Yaqui Tribe regarding final arrangements for the child.

V. INTERVENTION BY THE TRIBE

If the Tribe intervenes in a child custody proceeding, DCS shall add the Tribe to its disclosure procedures and shall provide copies of all pleadings, motions, notices of hearings and orders filed in that case; copies of all medical, psychological, treatment, visitation and any other disclosures received by DCS in the case; copies of case plans,

case status reports, home studies; and any other information disclosed in the case or requested by the Tribe.

DCS shall give the Tribe reasonable and adequate notice of all case conferences and staffing and the opportunity to participate fully in case conferences and staffing, as well as the development of the case plan, the identification of culturally appropriate services and necessary active efforts for family reunification, and determination of placement preferences. Those individuals whose input or assistance would be helpful may be invited as well, such as child care providers, family members, friends of the family, and treatment providers.

VI. TRANSFER OF JURISDICTION

A. General

When requested by the Tribe, DCS shall support the transfer of State Juvenile Court child custody proceedings to the Tribe's Juvenile Court pursuant to 25 U.S.C. § 1911 (b). DCS and the Tribe desire to provide for the orderly transfer of jurisdiction over child custody proceedings. The Tribe shall assume full case responsibilities once the State Court enters the Order dismissing the State Court case.

Prior to transfer to Tribal Court, DCS will provide the Tribe with the birth certificate and social security card for each child, if in its possession, and all medical and educational records for each child.

B. Challenges to Petitions to Transfer Jurisdiction

DCS agrees that where there has been full compliance with the notice requirements of the Act and this MOU, petitions to transfer jurisdiction pursuant to 25 U.S.C. § 1911 (b) filed on or before the filing of a Motion or Petition to Terminate Parental Rights shall be considered timely.

C. Pre-Transfer Staffing

Prior to transfer of jurisdiction, when appropriate, DCS and the Tribe shall hold a pre-transfer case plan staffing to address the continuation of services currently in place for reunification or permanent placement of the child and to identify appropriate community-based services that shall be provided to the family upon transfer of jurisdiction. DCS and the Tribe shall make a good faith effort to use services available through DCS, the community, the Tribe, and other sources, to continue offering services. Nothing herein shall preclude the Tribe from assuming full case responsibility upon transfer in the absence of a pre-transfer staffing or in the absence of an agreement on reunification services.

VII. PLACEMENT PREFERENCES

A. Tribe's Resolution Establishing a Different Order of Placement

The Tribe's Council has adopted by Resolution the Pascua Yaqui Tribe Child Welfare Policy Act of 2002 pursuant to 25 U.S.C. § 1915 (c), which sets forth the Tribe's order of placement for all child custody proceedings. (Attached hereto as Exhibit A.) The Tribe shall file a Notice of Placement Preferences attaching the Resolution within ten (10) days of filing its Motion to Intervene.

B. Coordination for Locating Suitable Preference Placements

DCS and the Tribe Shall coordinate efforts in locating the most suitable foster care, guardianship, pre-adoptive and adoptive placement that complies with the Pascua Yaqui Tribe Child Welfare Policy Act of 2002. Throughout the duration of the case, DCS shall inquire of parents, guardians, relatives, the children, and others whether there are any family members who could be utilized for placement for the children.

The Tribe will attempt to identify and provide DCS with the names and/or home studies of prospective foster homes in order to assist DCS in complying with the placement preferences. When necessary, DCS may conduct home studies on prospective placements located within the territorial boundaries of the Tribe, as long as DCS has coordinated with the Tribe. The wishes of the prospective family should be taken into consideration. The Tribe shall have the option of conducting a home study on any prospective placement located on the reservation. In cases where DCS retains jurisdiction, DCS will assess prospective placements submitted by the Tribe, in accordance with DCS policy.

C. Social and Cultural Standards

Any foster care, pre-adoptive or adoptive placement shall be the least restrictive setting which shares similar social and cultural standards of a Pascua Yaqui Tribe family in which the child's special needs, if any, may be met. DCS shall consult with the Tribe regarding all questions which relate to Pascua Yaqui social and cultural standards.

D. Inability of DCS to Comply with Placement Preferences

In any proceeding in which DCS is unable to comply with the ICWA placement preferences pursuant to this Section, DCS shall document the diligent efforts made to comply with the order of preference and shall disclose such documentation to the parties.

E. Preference of a Parent and Request for Anonymity

In the placement of Pascua Yaqui child, the preferred placement of the child's parent(s) may be considered when such placement is in the best interests of the child. The parties agree that a parent's request that the child not be placed with a member of the Tribe or in

an Indian home shall not be the sole determining factor in deciding the child's placement. The request of a parent to remain anonymous shall not outweigh the right of the Tribe to be informed and to make decisions regarding the placement of the child, or outweigh the right of a child to be raised within the Tribe's culture or a Native American culture. Therefore, parents requesting anonymity shall be informed that the Tribe will be notified and that the Tribe will make an independent determination with respect to the sensitivity of the parents' concerns.

F. Tribe's Licensing Standards

DCS recognizes that the Tribe utilizes its own foster care licensing standards and procedures in determining the suitability of foster homes. DCS recognizes that the Tribe shall utilize its own guardianship and pre-adoptive placement certifications and procedures in determining the suitability of permanent guardianship and pre-adoptive homes. The Tribe shall provide DCS with a copy of the Tribe's current foster care licensing standards and procedures, and the current guardianship and adoption certification standards and procedures, and any future modification thereto.

DCS shall recognize foster, guardianship and pre-adoptive homes which are licensed, approved, or certified by the Tribe and located upon the Reservation. Upon court order, DCS shall place Pascua Yaqui children in foster homes licensed by the Tribe, that are located on the Reservation, if such placement is recommended by the Tribe and supported by a written home study prepared by the Tribe and a cleared criminal background check performed by the Tribe. The parties agree that home studies performed by the Tribe pursuant to the Tribe's licensing standards are public acts or records of the Tribe entitled to full faith and credit pursuant to 25 U.S.C. § 1911 (d). DCS agrees, in order to place a Pascua Yaqui child as soon as possible, to review the results from a quick check in order to determine whether to place a child pending the receipt of the formal home study and cleared background check. Placements are subject to the approval of the Juvenile Court. DCS shall be responsible for all costs associated with the placement of children in its care, custody, and control, even if the placement has been approved as a result of the Tribe Home Study or a Tribal Foster Care License or Verification for as long as the child remains in DCS's legal custody, or until the case is transferred to the legal jurisdiction of the Tribe.

Nothing contained herein shall be interpreted or construed as authorization for DCS staff to perform home studies within the territorial jurisdiction of the Tribe. The Tribe may allow DCS to do home studies on possible foster or pre-adoptive homes within the Tribe's Reservation. The Tribe shall recognize foster homes licensed by DCS under Arizona State law.

Provided a relative is licensed by the State or the Tribe, that placement may serve as a "foster home", "foster care", "pre-adoptive" or "adoptive home".

G. Responsibility for Costs

When Pascua Yaqui children in the care, custody and control of DCS are placed in licensed foster or pre-adoptive homes, whether or not on the Reservation and whether or not the Tribe conducted the home study and approved the placement, DCS shall assume all responsibility for all costs of foster care, which may include supervision, costs of transportation for visitation, and therapeutic services.

VIII. PERMANENCY PREFERENCES

A. Pascua Yaqui Preference

The culture, customs and traditions of the Pascua Yaqui Tribe generally do not favor severance or termination of parental rights. The Tribe has a strong preference for permanent guardianship over termination of parental rights. DCS shall hold a case plan staffing which specifically includes tribal representatives in order to identify potential permanent caregivers and alternatives to termination and adoption. In deciding which permanent case plan is appropriate, DCS shall give deference to the Tribe's position opposing termination of parental rights and will work with the Tribe to identify potential permanent placement alternatives to termination and adoption. The Tribe will assist DCS and coordinate efforts in identifying alternative options.

IX. REMOVAL AND PRELIMINARY PROTECTIVE HEARING

A. E-mail Notice of the Removal

When DCS knows or has reason to believe a child who is taken into custody pursuant to A.R.S. § 8-821 is a Pascua Yaqui child, DCS shall give notice by email to ICWA@pascuayaqui-nsn.gov within forty-eight (48) hours (excluding weekends and holidays) of taking physical custody of the child, or after subsequently learning that the child is believed to be a Pascua Yaqui child.

B. Waiver of the 10-day Notice

The Tribe reserves the right to determine whether to waive the requirement for 10 days notice and proceed with the PPH or request an additional 20 days to prepare for the PPH pursuant to 25 U.S.C. § 1912 (a).

X. COOPERATION WITH CASE MANAGEMENT

A. Enrollment of Pascua Yaqui Children

When a child is eligible for enrollment with the Pascua Yaqui Tribe, DCS shall assist the assigned ICWA case worker with the Tribe in obtaining the child's birth certificate and social security, if in its possession, so that the child may be enrolled with the Tribe.

B. Supervision of Children Placed on the Reservation

When Pascua Yaqui children in the care, custody and control of DCS are placed within the territorial jurisdiction of the Tribe in accordance with the provisions of this MOU, DCS shall have the primary responsibility for case management decisions and documentation requirements. However, DCS and the Tribe shall cooperate in case work and coordinating home visits to the maximum extent possible.

When DCS is providing services for a child residing within the Pascua Yaqui Reservation, DCS staff may enter the Pascua Yaqui Reservation in order to provide benefits to the child and family after approval from the Tribe's assigned ICWA case worker and, time permitting, the Tribal case manager may accompany the DCS worker

C. Assistance in Removal

For Pascua Yaqui children in the care, custody and control of DCS who are placed within the territorial jurisdiction of the Tribe in accordance with the provisions of this MOU, the Tribe shall assist DCS in the event the safety of the child necessitates removal of the child from the home or otherwise ordered by the State Juvenile Court. DCS shall contact the Tribe in advance to make arrangements for the removal of the child and alternate placement of the child. For emergencies outside of normal business hours, the Tribe's Social Services on-call employee can be reached by contacting the Tribe's Police Department at (520) 879-5500.

D. Emergency Removal by the Tribe

For Pascua Yaqui children in the care, custody and control of DCS who are placed within the territorial jurisdiction of the Tribe accordance with the provisions of this MOU, the Tribe is authorized to take whatever steps are necessary to prevent imminent danger or harm to the child and to ensure the well-being of the child until such time as DCS can respond to the emergency situation. The Tribe shall notify DCS immediately but not more than forty-eight (48) hours from the time the Tribe becomes aware of any emergency situation involving the care or well being of the child. Notification shall be made to the DCS Hotline and to the assigned DCS case manager or their supervisor.

E. Dismissal of State Proceedings

Where a State court intends to dismiss a child custody proceeding upon motion by DCS involving a Pascua Yaqui child for lack of jurisdiction, the DCS assigned case worker shall notify the Tribe through its designated ICWA E-mail address at ICWA@pascuayaqui-nsn.gov before the case is dismissed, if possible, and if not, then as soon as possible after the dismissal.

XI. CHILD PROTECTIVE SERVICES

A. Duty to Safeguard Child

When either the Tribe or DCS receives a report of suspected child abuse or neglect within their respective jurisdictions, the receiving party shall investigate the report, in accordance with their established agency procedures, evaluate the child's situation, and take necessary protective measures to ensure the safety of the child. DCS shall notify the Tribe at 520-975-2796 and email a copy of the report to ICWA@pascuayaqui-nsn.gov, for reports involving children domiciled on the reservation.

B. Emergency Custody of Pascua Yaqui Child Residing Within the Pascua Yaqui Reservation.

In order to prevent imminent danger or harm to a Pascua Yaqui child who may reside or be domiciled within the Pascua Yaqui Reservation but who is temporarily absent from the Reservation, DCS may take emergency custody of a Pascua Yaqui child. DCS shall proceed with necessary legal action to assure that the child is protected until the Tribe's Social Services Department is notified and takes custody of the Pascua Yaqui child.

C. Release of Pascua Yaqui Children

1. No State Court Proceeding Filed

If a Pascua Yaqui child is taken into DCS's custody and DCS subsequently determines that the release of the child to his/her family is appropriate, DCS shall inform the Tribe's Social Services Department regarding the child's release.

2. State Court Proceeding Pending

If a Pascua Yaqui child is the subject of a pending State court proceeding and DCS subsequently determines that the release of the child to his/her family is appropriate through dismissal of the State court action, DCS shall notify the Tribe regarding the child's release.

XII. VOLUNTARY INTERVENTIONS

DCS shall engage the Tribe to the greatest extent possible in planning for voluntary interventions that minimize department intrusion while ensuring the safety of Pascua Yaqui children and that do not necessitate the filing of a dependency petition in juvenile court. Alternatives that may be considered include 1) providing additional safeguards or resources so that the child can remain in the home; 2) assisting the child's parent(s), guardian or Indian custodian in identifying a relative or friend who can care for the child temporarily during the investigation; 3) assisting the child's parent, guardian or Indian custodian and child to leave the home and go to a safe situation; 4) placing the child in voluntary foster care upon written consent before a judge of competent jurisdiction.

XIII. CONFIDENTIALITY

A. Child Protective Services Proceedings

All information concerning child protective services proceedings shall be cooperatively shared among the Tribe, DCS and State and Federal officials within the parameters of applicable Tribal, State and Federal law.

XIV. TESTIMONY IN OTHER PARTY'S COURT

Social services staff or DCS may testify in the Pascua Yaqui Juvenile Court upon receipt of advance oral or written request, or subpoena when required. Social services staff of the Pascua Yaqui Tribe may testify in State court upon receipt of advance oral or written request, or subpoena when required.

XV. EXPERT WITNESS

A. Competent Testimony

Persons with the following characteristics are most likely to meet the requirements of the Act for testimony from a qualified expert witness for purposes of Pascua Yaqui child custody proceedings:

1. A member of the Tribe who is recognized by the Pascua Yaqui Tribe as knowledgeable in Yaqui customs as they pertain to family organization and child rearing practices.
2. A person having substantial experience in the delivery of child and family services to the Pascua Yaqui community and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Tribe.
3. A professional person having substantial education and/or experience related to child and family services for Indians.

B. Pascua Yaqui Tribe Designee

The Tribe agrees to provide ICWA expert witness testimony when in agreement. If the Tribe will not provide the expert witness testimony, the Tribe will advise the assigned State Assistant Attorney General to the case, and the State will call its own expert witness. The requirement for the "testimony" of a qualified expert witness may not be satisfied by the submission of an affidavit, unless the parties are in agreement.

C. Judicial Determination of Expert Qualifications

DCS and the Tribe acknowledge that the final determination of what constitutes an expert witness shall be made by the judge exercising jurisdiction.

XVI. DISPUTE RESOLUTION

It is mutually agreed that any issues arising from this MOU, such as the coordination and communication between the parties, disputes over interpretation of this MOU; reviews of policies and procedures, caseload trends and their implications; and matters of mutual concern, shall be addressed by the DCS and tribal liaison at the DCS district meeting. The appropriate government and agency representatives will be invited to attend the meetings.

If those discussions fail to resolve the dispute, the Director of the Tribe's Department of Social Services, the Director of the Arizona Department of Child Safety, and representatives of the Offices of the Arizona Attorney General and the Tribe's Attorney General shall meet in an effort to resolve the dispute through good faith negotiation.

This MOU is not intended to, nor should be deemed to, waive the sovereign immunity of the Tribe or of the State of Arizona.

XVII. CHANGES AND CANCELLATION OF MOU

A. Changes

Any provision of this MOU may be altered, varied, modified, or waived only if such alteration, modification or waiver is: (1) reduced to writing; (2) signed by authorized representatives of both parties; and (3) attached to the original of this Agreement. However, changes in addresses or persons identified within do not constitute an alteration or modification.

B. Cancellation

Either party may cancel this agreement at any time after one hundred-eighty (180) days written notice of the intent to cancel, provided that before cancellation of the agreement, the parties agree to make good faith efforts to discuss, renegotiate, and modify the agreement. Cancellation shall not affect any action or proceeding over which a court has already assumed jurisdiction.

In the event that a court of competent jurisdiction holds any provision of the agreement invalid or unenforceable, that holding shall not invalidate or render unenforceable any other provision.

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

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

2) Change in authorized signatory.

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

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

XVIII. PROGRAM UTILIZATION AND REVIEW

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

XIX. TERMS AND CONDITIONS

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

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

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

XVII. MANNER OF FINANCING

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

XIX. EFFECTIVE DATE AND PRIOR AGREEMENTS

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

This MOU supersedes all prior written and oral agreements, covenants and understanding between DCS 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 purpose of this agreement, the individual signing on behalf of a party certifies that they have authority to act on behalf of the party.

IN WITNESS WHEREOF, THE PARTIES HERE TO HAVE SIGNED THIS MEMORANDUM OF UNDERSTANDING.

STATE OF ARIZONA

By: 
Director, DCS

Date: 8/23/2022

PASCUA YAQUI TRIBE

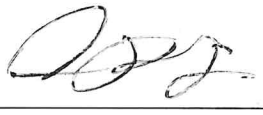
By: 
Chairman

Date: 8/23/2022

REVIEWED AS TO FORM

By: 
General Counsel, DCS

Date: 8/23/2022

By: 
Attorney General

Date: 8/23/2022