

MEMORANDUM OF AGREEMENT

STATE OF SOUTH CAROLINA, SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES AND
THE CATAWBA INDIAN NATION

This Memorandum of Agreement is hereby being entered into by and among the State of South Carolina, South Carolina Department of Social Services (hereinafter "the Department") and the Catawba Indian Nation (hereinafter "C.I.N.") for the purposes of ensuring the Department's compliance with USCA Title 25, Chapter 21, Section 1901 et seq. (hereinafter "ICWA").

1) AUTHORITY TO ENTER

This agreement is being entered into pursuant to the 25 USCA, Chapter 21 Section 1919, which allows states and Indian tribes to enter into agreement with each other respecting the care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for the orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction.

2) STATE REQUIREMENTS OF CONFIDENTIALITY

The parties to this Agreement understand and agree that the confidentiality provisions of South Carolina Code of Laws Sections 63-7-940 and 63-7-1990 and must be considered and taken into consideration in determining when and how the Department may and is required to notify C.I.N. pursuant to the notice requirements of ICWA as found in Section 1912 of 25 USCA, Chapter 21. Notwithstanding the foregoing, state law may not supersede federal law, including ICWA and The Indian Child Protection and Family Violence Prevention Act (25 USC Section 3205). In addition, the parties acknowledge and agree that the overriding goal of ICWA of the continued existence and integrity of Indian tribes requires the Department to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in C.I.N. community and families.

3) REQUIRED NOTICES

Any notice to be sent to the C.I.N. shall be sent to the following contact information in the required format and/or manner as set out in ICWA:

Ms. Linda Love
Director of Social Services
Catawba Indian Nation
996 Avenue of the Nations
Rock Hill, SC 29730

or as otherwise revised in writing from time to time by the C.I.N.

Attached to this agreement as an exhibit is a sample Notice which the parties agree is acceptable to determine if the C.I.N. is an appropriate party and chooses to be involved in a case.

4) ON GOING DEPARTMENT RESPONSIBILITY FOR ICWA REQUIRES DEPARTMENT INVOLVEMENT

In all child abuse and/or neglect cases, regardless of stage, the Department acknowledges that it has a continuing duty to determine whether the provisions of ICWA are applicable to the family. Towards this end, Human Service Policy Section 719 requires during the initial contact with the family that an inquiry be made as to the following: (1) is the child a member of a federally-recognized tribe and, if the child is not, (2) are either of the biological parents a member of a federally recognized tribe AND IF SO, is the child eligible for membership.

If either of the above questions is answered in the affirmative, the Department acknowledges that ICWA applies and, the Department shall comply with the ICWA notice provisions as outlined in Section 3 above.

If the Department is not able to determine the answer to the questions above, then the Department acknowledges that it has an on-going obligation to continue to attempt to ascertain this information.

The Department and the C.I.N. acknowledge that if the parents provide information clearly refuting that their child is an Indian Child as defined by ICWA, after reasonable inquiry to ascertain the truth and completeness of the information, then the Department is not required to undertake any further inquiry unless the Department receives other information, including but not limited to, information from a third party that the information provided by the parents is incorrect. At that time, the Department shall make an inquiry of the C.I.N. as to the family's/child's membership.

The Department and the C.I.N. acknowledge that the definition of a "parent" under ICWA does not include an unwed father where paternity has not been acknowledged or established. To qualify as a parent, an unwed father need only take reasonable steps to establish or acknowledge paternity. Such steps may include acknowledging paternity in the action at issue or establishing paternity through DNA testing.

5) INCORPORATION OF DEPARTMENT POLICIES

Incorporated by reference into this agreement are the following Department's Human Services Policy and Procedures Manual Sections:

- A) Section 710 as it pertains to efforts to identify Indian Children during intake.
- B) Section 719 as it pertains to the Department notifying the tribal office during investigations in order to coordinate those investigations and possible placement with tribal authorities.
- C) Section 723 as it pertains to cases involving Indian Children.

- D) Section 754 which specifically adopts ICWA as an official policy of the Department.
- E) Section 810 requiring immediate notification of an Indian Tribe upon the entry into foster care of an Indian Child.
- F) Section 811 as it pertains to the transfer of placement and care responsibly of a child from the State to a Tribe.

The current versions of those policy sections are attached and incorporated by reference into this agreement. The parties further acknowledge that nothing in this agreement limits or prevents the Department from amending the above policy sections as the Department feels, in its sole discretion is appropriate. Any substantial revision provides a point of entry for the C.I.N. to suggest revision of this Agreement to accommodate the changes or to terminate.

6) DEPARTMENT'S INVOLVEMENT WITH INDIAN CHILDREN BELONGING TO OTHER FEDERALLY-RECOGNIZED TRIBES

When the Department has involvement with Indian Children belonging to another federally-recognized tribe, the Department shall provide the contact information of the C.I.N. so that the other tribe or Indian parents can contact the C.I.N. to request assistance. Nothing in this agreement shall be deemed to require the C.I.N. to render such assistance and any such assistance shall be in the sole discretion of the C.I.N. In addition, nothing in this agreement shall be deemed to require the Department to notify C.I.N. of any such child.

7) PROBABLE CAUSE HEARINGS

When a child enters foster care, the parties acknowledge that the Department must comply with South Carolina Code of Laws Section 63-7-710 which requires the Family Court to schedule a probable cause hearing within seventy-two hours of the time the child enters care. The parties acknowledge that in certain circumstances, ICWA allows for the emergency removal or placement of a child under the applicable state law. To comply with South Carolina state law, the parties agree that neither will object to the completion of this hearing as a violation of the ten (10) day notice provision of ICWA as found in Section 1912 (a) for the duration of this agreement.

8) REVIEW AND AMENDMENTS

The parties agree that this Agreement shall be reviewed at least semi-annually beginning in 2017, or more frequently if warranted, to determine what, if any amendments should be made to the same. If no amendments are needed, then this agreement shall remain in full force and effect. If amendments are needed due to practice issues and/or statutory changes, this agreement shall remain in full force and effect until either terminated by the parties as set forth below or until a new agreement has been negotiated unless otherwise required by law.

9) TERMINATION

This Agreement may be terminated by either party by sending notice of such termination in writing to the other party by certified mail, return receipt requested. Said termination shall be

effective thirty-five (35) days after said notice has been mailed. The parties may, by mutual agreement, terminate this agreement immediately. Notices shall be given as follows:

AS TO C.I.N.

Ms. Linda Love
Director of Social Services
Catawba Indian Nation
996 Avenue of the Nations
Rock Hill, SC 29730

Or as otherwise revised in writing from time to time by the C.I.N.

AS TO DSS

Director
South Carolina Department of Social Services
Post Office Box 1520
Columbia, South Carolina 29202-1520

Or as otherwise revised in writing from time to time by the Department

10) SEVERABILITY

If for any reason any paragraph, section, portion or provision of this Agreement shall be held by a court or other tribunal to be invalid or unenforceable, it is agreed by both parties that such a holding shall not affect the enforceability of any other paragraph, section, portion or provision of this Agreement.

11) GOVERNING LAW

The parties acknowledge and agree that this Agreement shall be considered to have been made in South Carolina, and the laws of the State of South Carolina shall govern this Agreement.

12) ENTIRE AGREEMENT

This document constitutes the entire Agreement and understanding of the parties with respect to all matters covered herein. It supersedes all prior arrangements and understandings between the parties with respect to the matters covered herein, and may not be changed orally, and no change or attempted waiver of any of the provisions hereof shall be binding unless in a writing, signed by an authorized officer or representative of the party against whom the same is sought to be enforced.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed, both intending to be fully and legally bound, on this 21st day of March, 2016.

Catawba Indian Nation

South Carolina Department of Social Services

By: Chief William Harris,
in his representative capacity



By: V. Susan Alford
Director – South Carolina Department
of Social Services