

**MEMORANDUM OF AGREEMENT BETWEEN LUMMI NATION AND  
DEPARTMENT OF SOCIAL AND HEALTH SERVICES CHILDREN'S  
ADMINISTRATION FOR SHARING RESPONSIBILITY IN DELIVERING CHILD  
WELFARE SERVICES TO CHILDREN OF THE LUMMI NATION**

**I. INTRODUCTION**

This MEMORANDUM OF AGREEMENT (MOA) is entered into between the Lummi Nation (the Nation), a federally recognized tribe and signatory to the 1855 Treaty of Point Elliott, and the Washington State Department of Social and Health Services Children's Administration (CA), each party acting pursuant to their respective governmental authorities.

The Nation is authorized to enter into this MOA under Article VI, Section 1 of the Lummi Constitution and Bylaws of the Lummi Reservation, Washington.

The CA is authorized to enter into this MOA by RCW chapter 39.34, the Interlocal Cooperation Act, which permits an agency to enter into an agreement with an Indian tribe for their mutual advantage and cooperation. Furthermore, the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1919, authorizes the State of Washington to enter into agreements for the care and custody of Indian children.

This MOA is based on the fundamental principles of the government-to-government relationship acknowledged in the 1989 Centennial Accord and recognizes the sovereignty of the Nation and of the State of Washington and each respective sovereign's interests. Upon duly authorized execution of this MOA, any existing child welfare agreement between the Nation and CA will be superseded.

The Lummi Children's Services Department and the CA each have delegated authority over providing comprehensive child welfare services and additional supportive services. Washington State law authorizes CA to provide for the care of Indian children who are in the custody of an Indian tribe, pursuant to a tribal court order, subject to the same eligibility standards and rates of support applicable to children in the custody of the CA pursuant to a state juvenile court order. CA recognizes that the Nation has a compelling interest in promoting and maintaining the governmental, social, economic and cultural integrity of the Nation.

The Nation and CA acknowledge that it is the Nation's position that it has exclusive jurisdiction over Lummi Children wherever found and that the Nation desires to assert its jurisdiction and authority to protect Lummi Children and bring them home. The Nation and CA acknowledge that a court of either the Nation or State of Washington may have jurisdiction over a child welfare proceeding. Each acknowledges that the law of the jurisdiction in which a child welfare judicial proceeding is initiated and maintained is sovereign within that jurisdiction and governs the proceeding.

## **II. PURPOSE**

The overarching purpose of this MOA is the safety and well being of Lummi Children. The purpose and intent of this MOA is to clarify the roles and responsibilities of the Nation and the CA, to enhance coordination and cooperation between the Nation and the CA in providing appropriate child welfare services to children who are under the jurisdiction of the Nation's court, and to facilitate CA coordination with the Nation when its children are in the custody of CA and under the jurisdiction of a state juvenile court.

## **III. JURISDICTION**

The Nation and CA enter into this MOA based on the premise that pursuant to RCW 37.12.010(5), CA and the Nation have concurrent civil jurisdiction with respect to child welfare matters covered by this MOA. It is further premised on the Nation's right under the state and federal Indian Child Welfare Acts to intervene at any point in a State Juvenile Court proceeding involving a child who is a member of the Lummi Nation or is eligible for membership and is the biological child of a member. For children who do not meet the Indian child definition, permissive intervention under state law may be sought. CA shall support the Lummi Nation in achieving intervention in either case.

The parties understand that the Nation believes it has exclusive jurisdiction over child welfare matters involving Lummi children, in circumstances involving termination of parental rights, involuntary foster care placement and adoption proceedings, application of dependency neglect, children in need of supervision and child abuse laws.

The Lummi Nation and CA acknowledge that either or both may be involved in providing services to Lummi children regardless of which court in which a child's dependency case is being heard. CA acknowledges the authority of the Lummi Nation to protect and care for its children. The Lummi Nation Tribal Court has jurisdiction over Lummi Children, wherever they may reside, consistent with Title 8 of the Lummi Code of Laws. Under the federal and Washington State Indian Child Welfare Acts, the Lummi Nation Tribal Court retains exclusive jurisdiction over Indian Children, as defined by ICWA, who reside or are domiciled on the Lummi Reservation, with the exception that Washington law authorizes concurrent jurisdiction for situations requiring emergency removal or placement.

The parties understand and agree that it is the intention of the Lummi Nation to assume jurisdiction over all Lummi children residing on the Lummi Reservation. However, both parties also acknowledge that there may be unique situations requiring CA to initiate an action in State Court at the request of the Lummi Nation and when such action is authorized by State law.

## **IV. CHILD PROTECTIVE SERVICES**

The Nation and the CA recognize the importance of working together to protect children from abuse or neglect. It is agreed that:

1. CA Child Protective Services (CPS) shall lead the investigation in every case in which an allegation of child abuse or neglect of a child who resides on the Reservation is received by CA
2. CA will notify the Nation of all allegations of child abuse or neglect involving a Lummi child by telephone and in writing (by fax or e-mail) as soon as practicable, but always within 24 hours for all cases, including those that are not screened-in by CA for investigation. The method and time of notification will be documented by CA
  - a. CA will provide notification in time for an LCS caseworker to have the opportunity to be present for investigations conducted on the Reservation, in Whatcom and Skagit Counties and in the service area of CA's Smokey Point DCFS office. In these locations, the Nation will provide an LCS caseworker to be present during interviews and investigations of child abuse/neglect allegations, and to consult with the CPS investigator. For all other investigations Lummi will provide a caseworker to be present when it is possible for Lummi to do so. In all cases, a Lummi caseworker will be available for consultation by telephone. However, in no case shall the absence or unavailability of a Lummi caseworker excuse the CA from its responsibility to properly investigate allegations of child abuse or neglect.
  - b. CA will consult with the LCS caseworker provided by the Nation in making the determination whether the allegation is founded or unfounded. Ultimate responsibility for making the decision is CA's.
  - c. CA will consult with the LCS caseworker provided by the Nation in making the determination whether the removal of a child and/or the filing of a dependency action is necessary. Ultimate responsibility for making the decision is CA's.
  - d. The Court in which a dependency petition is filed shall be determined based on where the child/family is domiciled, subject to the provisions of Section IV-3 (below) and to the Nation's right to intervene in any proceeding involving an Indian child defined by ICWA and move to have the case transferred to the Nation's courts.
  - e. Where the child is domiciled on the Lummi Reservation and CA CPS recommends after investigation that a dependency petition be filed to protect the child's health, safety or welfare, the CA CPS social worker will write a declaration outlining the basis for the need to file dependency and submit the declaration to Lummi Children's services. CA will accept placement requests from Lummi law enforcement or LCS in licensed foster care pending the tribe's ability to secure a tribal placement. CPS will then conclude its involvement except as otherwise outlined in this agreement.
  - f. CA CPS will not attend court hearings in Lummi Tribal Court unless there has been a written request, preferably by subpoena, for a worker to appear and provide testimony as a witness in a specific case.

- g. CA's CPS investigation shall be completed within 60 days and the Nation shall be provided the investigative report (no matter what the finding) within five business days of completion.
  - h. CA is required to apply Washington law in the execution of its investigations. Therefore, determinations of abuse or neglect will be made using state law and CA rules; specifically, WAC Chapter 388-15. If CA finds that abuse or neglect has occurred, the subject of the investigation will have the right to challenge that finding under state law
- 3. If a child who is the victim in a CPS allegation does not live on the Lummi Reservation, but is a Lummi Child, and if the allegation is founded, or if CA determines the child is in danger in the home of the parent or other caregiver, CA will notify the Lummi Nation of its intent to file a dependency petition and give the Nation an opportunity to file the petition in Lummi Tribal Court or to take primary responsibility for providing services. In addition, Lummi may intervene in state court proceedings and move to transfer the proceeding to Lummi Tribal Court.
  - 4. CPS referrals that occur within the boundaries of the Lummi Reservation alleging sexual or physical abuse or other potential criminal actions will be investigated in cooperation with the Lummi Nation Police Department and as necessary the Whatcom County Sherriff's Department and the Federal Bureau of Investigation.
  - 5. Each CPS investigator who is or may be assigned to a case involving a Lummi Child shall meet at least once annually with Lummi for training on and exposure to Lummi cultural and family values. The CA will also provide Lummi with meaningful opportunity to participate in CA hiring decisions for CPS investigators in order to assure that Lummi cultural and family values are appropriately understood in the selection of such investigators.

## **V. SERVICES FOR CHILDREN UNDER THE JURISDICTION OF THE TRIBAL COURT**

Children who are within the legal custody of the Lummi Nation Court are eligible for services funded and contracted by CA. Eligibility for these services must be consistent with the eligibility criteria used for children served by CA. A description of the services currently available to families and children, including a limited description of the eligibility criteria for those services, is attached to this Agreement as Attachment A.

- 1. When the Nation requests child welfare services for children under the legal custody of the Nation and being case managed by the Lummi Children's Services, CA will:

- a. Assign the case to a specific social worker selected by CA. The selected social worker must recognize that the Nation has custody of and decision making authority over the child, and the selected social worker must be willing to accept the customs and traditions of the Nation. The CA social worker will not be responsible for case management, but will assist the Lummi caseworker in accessing services for which the child is eligible.
  - b. Maintain a child file consisting of the referral information, the Nation's case plan, the Nation's Court documents and payment information.
  - c. Work with the Lummi caseworkers to determine what services would best meet the needs of the child and, at the request of the Nation, pursue intensive services for the child, using established CA procedures. The CA social worker will help make the Nation aware of appropriate services available through CA, as well as how to access those services.
  - d. Consistent with CA policy and existing law, perform and provide Washington state name and date of birth criminal history and fingerprint-based criminal history checks and Famlink checks until such time as the tribe is able to conduct such checks on its own. This is offered for the purpose of child welfare cases, payment only cases and shared services cases when the Nation is unable to perform such checks. This does not include NCIC database checks.
2. When the Nation requests child welfare services for children under the legal custody of the Nation, the Nation will:
    - a. Provide information regarding eligibility through the Nation caseworker and supplement, through the Nation caseworker, when requested.
    - b. Provide recommendations and oversee the administration of services through the Lummi caseworker.

The Nation and CA points of contact who will coordinate for the access of services are listed in Attachment B. The CA point of contact shall work with the Nation to clarify eligibility for services, to expedite services and to verify payment. The CA point of contact shall also be available to facilitate assignment of another CA worker to assist the Nation in preparing the necessary documentation to request adolescent services and shall notify the Lummi caseworker of staffings required for approval of intensive services (such as Behavior Rehabilitation Services, exceptional foster care, specialized teen mother programs and services for sexually aggressive youths).

## **VI. SERVICES FOR LUMMI CHILDREN WHOSE CASES ARE IN STATE COURT**

1. If an Indian Child is the subject of a dependency action filed by CA in the juvenile court of the State of Washington, CA, through its legal counsel, will timely notify the Lummi Nation of its right to intervene in the action in accordance with the federal and state Indian Child Welfare Acts. Notice shall be given to the Nation at the earliest possible time to allow intervention at a time and in a manner that does not unduly delay the proceedings. However, nothing in this provision shall be interpreted or applied to limit the Nation's right to intervene at any stage of the proceedings
2. If a dependency action is initiated in state court involving an Indian child as defined by ICWA and is not transferred to the Tribal court, then the Nation will:
  - a. Designate an LCS caseworker to assist CA in locating an appropriate placement. The LCS caseworker and CA social workers shall collaborate in developing an appropriate case plan.
  - b. Timely provide an "expert witness" to appear. .
  - c. The Lummi Nation and CA will work together to develop a plan for any Lummi child placed in a non-Lummi foster home to ensure the child's original cultural identity is preserved.
3. If CA has placement authority for a Lummi child (i.e. the dependency action is in state court) placement shall always take into account the child's extended family and cultural affiliation and shall be made in accordance with the priorities set out in Title 8 of the Lummi Code of Laws (Children's Code) as amended from time to time. At present those priorities are:

With grandparents;  
With other adult relatives;  
With tribal members of the child's tribe;  
With members of other tribes;  
With community members; and  
With non-tribal members who are sensitive to and committed to encourage and maintain the child's access to the child's inherent tribal heritage, culture, traditions and history;  
and contact with the child's tribe.
4. CA shall staff cases involving Lummi Children with the Lummi Child Consultation Team unless the Nation requests the case to be staffed by the Local Indian Child Welfare Advisory Committee.

## **VII. INFORMATION SHARING AND CONFIDENTIALITY**

It is the policy of both the Nation and CA to share with each other full information about a child that will assist the other in protecting the child and in assessing the child's need, eligibility for, and receipt of services. CA is required to follow state and federal laws governing confidentiality of children's records. The Nation agrees that it will follow state and federal law on confidentiality. The Nation shall also follow Tribal law if such standards meet or exceed state and federal law requirements to protect the records of children receiving services from CA.

CA agrees to share information with the Nation about any Indian child who lives on the Reservation and about any child or who is otherwise recognized as a member of the Lummi Nation to the fullest extent permitted under the law. This information will be provided to the Nation.

The Nation and CA agree that a separate agreement will be entered into granting the Nation full access to the FamLink Information System. Once entered into, this FamLink Agreement shall supersede the preceding paragraphs.

## **VIII COLLABORATIVE ACTIONS**

The CA and Nation agree to the following actions and/or services:

1. CA, through the Washington State Alliance for Child Welfare Excellence, will provide the Lummi Children's Services Department with the opportunity to take advantage of relevant trainings that are available to CA staff and will provide notification to the Nation of these relevant training opportunities in sufficient time to allow Lummi to participate in them.
2. The Nation will collaborate on management of Lummi cases, as requested by CA, and will provide a Lummi caseworker for each CPS investigation involving a Lummi Child.
3. The Nation will designate at least two candidates from the Nation for representation on the Whatcom County Local Indian Child Welfare Advisory Committee (LICWAC)
4. The Nation and CA shall work collaboratively to detail procedures that shall govern the services each provides.
5. The Nation will provide caseworkers to be present in the CA's investigations of allegations of child abuse or neglect, as detailed in Section IV-2(a) above.

## **IX CONFLICT RESOLUTION**

The Nation and CA understand that there may be times when a question is raised by either party or a disagreement regarding the application or interpretation of this MOA. If the question involves policy issues, it shall be resolved through government to government consultation. In all other cases, the Nation will attempt to resolve the matter with discussion starting at the lowest level and working up, with the following designated levels:

1. CA Supervisor-Tribal ICW Lummi Children's Services Child Welfare Supervisor Lead Case Manager.
2. CA Area Administrator/CA Supervisor-Tribal ICW Lummi Children's Services Program Manager/Lummi Children's Services Child Welfare Supervisor.
3. CA Regional Director-Tribal ICW Behavioral Health Senior Manager. Lummi Family Services Director
4. CA Assistant Secretary-Executive Direction of Health and Human Services. Lummi General Manager

Either party may request that a mediator be selected to assist in resolving a conflict or dispute. The mediator shall be jointly selected and shall be approved by both the Nation and Department. The cost of the mediator shall be born equally by the Nation and the Department.

If the conflict or dispute cannot be resolved through mediation, then the issue shall be brought before a Dispute Board. The Disputes Board shall consist of three individuals, one selected by the Nation, one selected by the Department and a third party to be chosen by the first two. The Dispute Board shall review all issues, concerns and conflicts with a goal to determine acceptable solutions for both parties. The decisions of the Disputes Board shall be final and binding on both parties.

Nothing in this MOA shall be construed as a waiver of tribal sovereign immunity.

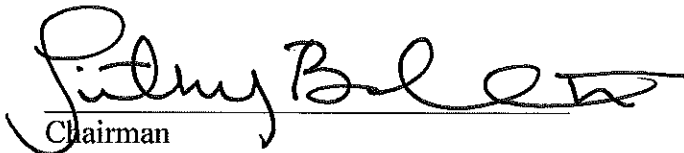
Nothing in this MOA shall be construed to prevent the Nation as a sovereign Nation from raising any disagreement or question with Officials of the State of Washington or United States.

## **X. EFFECT AND MODIFICATION**

This is a working document to guide the Nation and CA in supporting Indian children in need of services. This MOA or any of its terms may be amended by mutual written agreement of the Nation and CA. This Agreement will be reviewed every two years and will continue in effect until modified or terminated.

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Chairman  
Lummi Nation

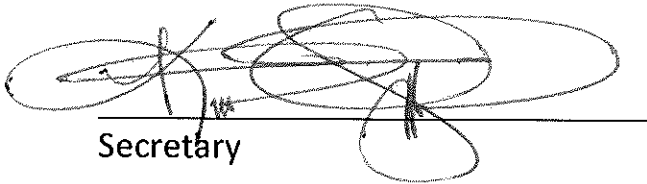
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Date

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ICW Program Manager  
Lummi Children's Services

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Date

  
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DSHS Children's Administration  
Assistant Secretary

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Date

  
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Secretary

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Date

2/28/14

ATTACHMENT A - List of services available through CA

ATTACHMENT B - Tribal and CA contact list

Notice related to CPS issues will be provided to Lummi Nation by contacting:

Name Lummi Children's Services – Attn: Amy Finkbonner or Larisa Koenig  
Address P.O. Box 1024, Ferndale WA 98248  
Phone 360-384-2324  
After Hours Contact:  
Email [amyf@lummi-nsn.gov](mailto:amyf@lummi-nsn.gov) or [larisak@lummi-nsn.gov](mailto:larisak@lummi-nsn.gov)

Notice related to CPS issues will be provided to CA by contacting:

Name Indian Child Welfare CPS Supervisor – Attn: Alex Fitzstrawn  
Address 1720 Ellis Street #100  
Phone 360.647-6100 or CPS Intake 1-866-829-2154  
Email [FIAP300@dshs.wa.gov](mailto:FIAP300@dshs.wa.gov)

**SERVICES:**

The CA point of contact under this Agreement is:

Name Carmelita Adkins  
Address 840 N Broadway Bldg B Ste 540, Everett, WA 98201  
Phone 425.339.2914  
Email [carmelita.adkins@dshs.wa.gov](mailto:carmelita.adkins@dshs.wa.gov)

NOTE: If emergency or after-hours services are needed by a child in Tribal care, the CA contact is:

The Tribal point of contact is:

Name Lummi Children's Services – Attn: Amy Finkbonner or Larisa Koenig  
Address P.O. Box 1024, Ferndale WA 98248  
Phone 360-384-2324  
After Hours Contact:  
Email [amyf@lummi-nsn.gov](mailto:amyf@lummi-nsn.gov) or [larisak@lummi-nsn.gov](mailto:larisak@lummi-nsn.gov)

After-hours Supervisors:

Nancy Maher, (206) 369-9748 or Angela Edwards (425) 583-7131

Address 500 1st Ave S Ste 300, Seattle, WA 98104

ATTACHMENT C - Title 8 of the Lummi Code of Laws (Children's Code)