

CHILD SUPPORT AGREEMENT (“this Agreement”) BETWEEN THE KALISPEL TRIBE OF INDIANS (TRIBE) AND THE STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, DIVISION OF CHILD SUPPORT (DCS)

Preamble

The Tribe and the State of Washington, through DCS, acknowledge that they each are sovereign and that they each have jurisdiction over domestic relations, including child support matters. DCS acknowledges that the Tribe, as a sovereign power, has a compelling interest in promoting the integrity of the Tribe as a society and culture, and that it is of vital importance to the Tribe to exercise its sovereign authority in matters involving the Tribe’s children and their interests.

The Tribe and DCS (“the parties”) desire to enter into this Agreement to manifest a cooperative government-to-government relationship with regard to child support establishment and enforcement, in order to promote the well being of the Tribe’s children. The parties acknowledge a preference for resolution, in Tribal Court, of paternity establishment cases where at least one party is American Indian and all of the parties are subject to, or consent to, Tribal Court jurisdiction, child support establishment and modification cases where the non-custodial parent resides on the Tribe’s reservation, and child support enforcement cases where the non-custodial parent is employed by the Tribe, a Tribal enterprise, or an Indian owned business located on the Tribe’s reservation. DCS acknowledges that the setting of child support amounts, the determination of collection methods, and the determination of all matters related to child support by Tribal Court, in these cases, is a proper exercise of the Tribe’s sovereignty. The parties enter into this Agreement in a spirit of good will, cooperation and communication, in order to promote the sovereignty of the Tribe and to insure delivery of child support services for the Tribe’s children. It is the purpose of this Agreement to provide procedures that will carry out the above-expressed intent of the parties.

1. STATE OF WASHINGTON CHILD SUPPORT CASES

DCS shall file the following cases (“DCS case”) in Tribal Court where the custodian of the child has received public assistance on behalf of the child from the State of Washington, the custodian of the child has requested child support enforcement services from DCS, or another State or Tribe has asked DCS to pursue the case:

- (a) DCS paternity establishment case: where at least one party is American Indian and all of the parties are subject to, or consent to, Tribal Court jurisdiction;
- (b) DCS child support establishment case: where the non-custodial parent resides on the Reservation;
- (c) DCS child support modification case: where the non-custodial parent resides on the Reservation; and

- (d) DCS child support enforcement case: where the non-custodial parent is employed by the Tribe, a Tribal enterprise, or an Indian owned business located on the Reservation.

## 2. DCS CHILD SUPPORT CASES – APPLICABLE LAW

In any DCS case, the Tribal Court shall apply the laws, resolutions, ordinances, customs or codes of the Tribe, and the laws of the United States, including the Federal Full Faith and Credit for Child Support Orders Act, 28 U.S.C. 1738B et seq. In any DCS case, the non-custodial parent may raise any defense, including a claim of in-kind or traditional or customary support, unless the Tribal Court finds the defense is not available under the doctrine of res judicata. In any DCS case, if the issue before the Tribal Court is limited to interpreting the terms of a foreign child support order, which has been recognized and given full faith and credit by the Tribal Court, the Tribal Court shall apply the law of the forum that issued the foreign child support order.

## 3. DCS PATERNITY CASES - TESTING

In a DCS paternity case, the Tribal Court may order that any of the parties submit to genetic testing according to the procedures provided for such testing under DCS' current contract with its testing facility and at the currently applicable costs to DCS for such testing. If the Tribal Court finds a man to be the father of the child, based on such test results, it may order him to reimburse DCS the costs of the test. Regardless of such testing results, it shall be in the sole discretion of the Tribal Court to decide whether any party shall be ordered to reimburse DCS such costs.

## 4. DCS CHILD SUPPORT CASES – GARNISHMENTS

In the exercise of the Tribe's sovereignty, DCS may seek and the Tribal Court may issue, an order (writ) garnishing the non-custodial parent's compensation received from the Tribe, a Tribal enterprise or an Indian owned business ("Garnishee"), for the limited purpose of enforcing child support orders. "Compensation" shall mean wages, salary, commissions, bonuses, and periodic payments for the non-custodial parent's retirement, pension, and insurance plans. Any such writ may be obtained only in Tribal Court and not in any other court. The amount of such garnishment shall not, in any case, exceed twenty-five percent (25%) of the non-custodial parent's net earnings computed for each pay period of the non-custodial parent. "Net earnings" shall mean compensation minus deductions required under law by federal, state or Tribal government, but excluding deductions voluntarily undertaken by the non-custodial parent, for example, for repayment of a loan from a bank or credit union. Any writ shall order the Garnishee to withhold the wages and pay over to the Washington State Support Registry the amounts stated in the writ and order the Garnishee to file an answer to the writ with Tribal Court. If a Garnishee fails to withhold the wages of the non-custodial parent within thirty (30) days of service of a valid writ, the Tribal Court may, at the request of

DCS, or the custodial parent, find the Garnishee liable for payment of the amounts required under the writ of garnishment to the extent of wages owed by the Garnishee to the non-custodial parent on or after the date of service of the writ on an appropriate payroll officer of the Garnishee.

5. DCS CHILD SUPPORT CASES – MODIFICATIONS

The Tribal Court may modify a foreign child support order, which has been recognized and given full faith and credit by the Tribal Court, if neither the custodian, the non-custodial parent, nor the child continue to reside in the jurisdiction that issued the prior foreign child support order, or if all of the parties (including DCS) provide written consent to such modification by the Tribal Court (“DCS modification case”). In a DCS modification case, the Tribal Court shall have the authority to modify a prior child support order prospectively only, from the date that the DCS modification case was filed. In a DCS modification case, the Tribal Court may order the non-custodial parent, prospectively, to provide in-kind, traditional or customary support (“non-cash support”) for the child, in lieu of cash payments required under the prior order; provided that, the Tribal Court shall reduce such non-cash support to a money amount and the total amount of such non-cash support shall not exceed fifty percent (50%) of the cash payments required under the prior order.

6. DCS CHILD SUPPORT CASES – IRS CERTIFICATIONS

In any DCS case where DCS, based on a prior DCS administrative or Washington State Superior Court child support order, seeks to certify to the IRS debts which have been assigned in that case to DCS (for purposes of garnishing the non-custodial parent’s federal income tax refunds), the non-custodial parent may request a hearing in Tribal Court, limited to the issue of whether DCS may make such certification, so long as (1) the non-custodial parent is informed of his/her right to ask DCS for administrative or Conference Board review of the case, (2) Tribal Court has personal jurisdiction over the non-custodial parent and the custodian, and (3) DCS and the custodian are given notice of, and an opportunity to be heard at, such hearing. Upon such hearing, the Tribal Court may order DCS not to make such certification to the IRS, if the Tribal Court finds substantial evidence that the resulting garnishment is more likely than not to cause the non-custodial parent, or his or her immediate family, to suffer substantial financial hardship.

7. DCS CHILD SUPPORT CASES – CHARGE-OFF

If a prior DCS administrative or Washington State Superior Court child support order has been recognized and given full faith and credit by the Tribal Court, and the non-custodial parent owes child support arrearages to DCS, the non-custodial parent may request a hearing in Tribal Court (“DCS charge-off case) to request that some or all of the arrearages be charged-off, so long as (1) the non-custodial parent is informed of his/her right to ask DCS for administrative or a Conference Board review of the case, (2) Tribal Court has personal jurisdiction over the non-custodial parent and the custodian, and (3) DCS and the custodian are given notice of, and an opportunity to be heard at, the hearing. At the hearing, the Tribal Court may charge-off some or all of arrearages owing to DCS, or set a schedule for repayment of the

arrearages by the non-custodial parent, if the Tribal Court finds substantial evidence that: (1) the non-custodial parent, or his or her immediate family will suffer substantial financial hardship if the non-custodial parent is required to repay the arrearages; (2) the probable costs to DCS to collect the arrearages exceed the amount of the arrearages; (3) the non-custodial parent and DCS have reached a settlement on the claim; (4) there is an error or legal defect in the claim for such arrearages; or (5) the arrearages are based on an administrative default order and imputed income to the non-custodial parent that did not reflect the non-custodial parent's actual income during the arrearages period. In a DCS charge-off case, the Tribal Court may credit the non-custodial parent with any non-cash support which the non-custodial parent proves, on the Tribal Court record, he or she has provided to the child during the period that arrearages owing to DCS accrued under the prior order(s); provided that the Tribal Court shall reduce the credit for such non-cash support to a cash amount which shall not exceed fifty percent (50%) of the cash payments required under such prior order(s); provided further that, the non-custodial parent shall not be entitled to a refund of the amount by which such credit exceeds the amount of child support already paid by the non-custodial parent.

#### 8. DCS CHILD SUPPORT CASES – PAYMENT TO REGISTRY

In any DCS case where (1) the custodian is receiving public assistance from the State of Washington on behalf of a child; or (2) child support arrearages are owed to another Tribe, a State or to the custodian and the other Tribe, State or the custodian has requested child support enforcement services from DCS; the Tribal Court shall order that any current child support payments and/or arrearage payments to be made by the non-custodial parent, or by a Garnishee pursuant to a writ of garnishment, shall be sent to the Washington State Support Registry.

#### 9. TRIBAL CHILD SUPPORT CASES– NOTICE TO DCS & RIGHT TO INTERVENE

In any child support case filed in Tribal Court, the Tribal Court will ask the parties if any of them have received public assistance on behalf of the child(ren) involved in the case, from the State of Washington, or if any of them have requested child support enforcement services from DCS. If any party answers affirmatively, the Tribal Court shall provide notice to DCS and shall permit DCS to intervene as a party in such case.

10. If the Tribe chooses to develop a Tribal Child Support Schedule or Guidelines, DCS shall assist the Tribe in developing such Schedule or Guidelines. DCS agrees to provide technical assistance to, and training of, Tribal personnel, as reasonably requested.

11. DCS and the Tribe agree that, upon reasonable request of the other, and solely for child support establishment and enforcement purposes, each party shall provide the other with the following information in its possession, with respect to the non-custodial parent, custodian or child: employment status, employer, salary, physical address, mailing address, and medical insurance coverage.

12. If one party believes that the other has violated a provision of this Agreement, that clarification is necessary to interpret any provision of this Agreement, or that a change in Title IV-D of the Social Security Act, or its implementing regulations, may require a modification of the provisions of this Agreement, the parties will discuss and resolve the issues informally. Either party may terminate this Agreement upon thirty (30) days written notice to the other party. Cases pending in Tribal Court on the termination date shall be completed to final judgment or final appeal decision, according to the terms of this Agreement.

13. Nothing in this Agreement shall limit the right of any individual to bring his or her own separate paternity, child support or modification case in any forum of his or her choice.

14. DCS and the Tribe shall each bear its own expenses in implementing this Agreement.

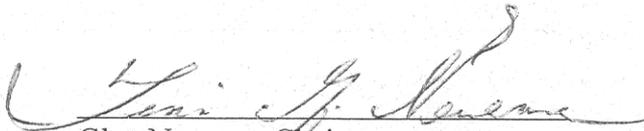
15. This Agreement constitutes the entire agreement between DCS and the Tribe on child support matters and supercedes any prior agreement between DCS and the Tribe on child support matters.

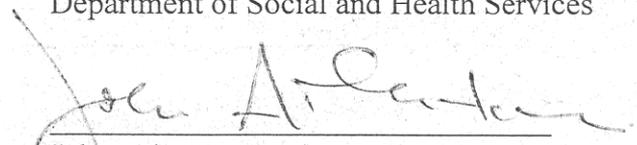
On the 8 day of January, 2003, DCS and the Tribe hereby approve this Agreement, through the following persons, each in their representative capacities:

Kalispel Tribe of Indians

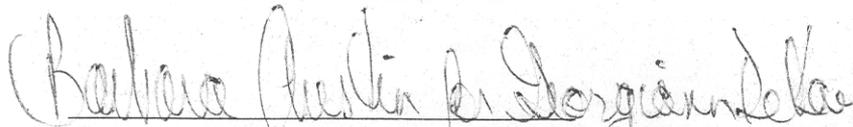
State of Washington

Department of Social and Health Services

  
Glen Nenema, Chair  
Kalispel Business Committee

  
John Atherton, Assistant Secretary  
Economic Services Administration

Department of Social and Health Services  
Economic Services Administration

  
Georgiann DeKay, Director  
Division of Child Support