**SHOALWATER BAY INDIAN TRIBE**

P.O. Box 130 • Tokeland, Washington 98590  
Telephone (360) 267-6766 • FAX (360) 267-6778

**SHOALWATER BAY INDIAN TRIBE  
RESOLUTION #02-08-06-09**

WHEREAS, the Shoalwater Bay Tribe is a Federally recognized Tribe Headquartered on the Shoalwater Bay Indian reservation in the State of Washington; and


WHEREAS, the Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Tribe in accordance with their Constitution and By-laws; and

WHEREAS, the Shoalwater Bay Council has the responsibility to promote the safety and welfare of all Tribal families;

NOW THEREFORE BE IT RESOLVED, that the Shoalwater Bay Tribal Council hereby approves the Tribal/State Child Support Enforcement Agreement

**CERTIFICATION**

The above Resolution was passed at a regular Council meeting held February 08, 2006 at the Shoalwater Bay Tribal Center at which a quorum was present.  FOR  
 AGAINST  ABSTAIN

  
Charlene Nelson, Chairman  
Shoalwater Bay Indian Tribe

  
Lynn Clark, Secretary  
Shoalwater Bay Indian Tribe



STATE OF WASHINGTON  
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

PO Box 9162 • Olympia WA 98507-9162  
DCS Website: <http://www.dshs.wa.gov/dcs/>

March 23, 2007

Shoalwater Bay Tribe  
Attention: Carol Johnson  
2373 Old Tokeland Rd  
Po Box 130  
Tokeland, WA 98590

Subject: Child Support Agreement

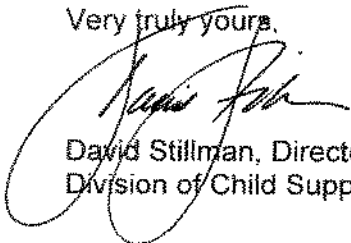
Dear Ms. Johnson,

I am writing to provide you with an original copy of the recently signed Child Support Agreement between the Shoalwater Bay Tribe and the State of Washington Division of Child Support.

I would also like to thank you and your staff, particularly Kathirine Horne, for the time invested in negotiating and drafting this agreement. I am confident that through our cooperative efforts, we can provide quality, culturally-relevant child support services to members of your tribe and those that work for your tribe. I look forward to hearing about the collaboration and results that will come about as a result of this new cooperative agreement.

Please don't hesitate to contact Brady Rossnagle at (360) 725-4659 or me at (360) 664-5441 if you have any questions or concerns.

Very truly yours,



David Stillman, Director  
Division of Child Support

cc: Brady Rossnagle, State Tribal Relations Unit  
Deb Marley, Asst. Secretary DSHS Economic Services Administration



# **CHILD SUPPORT AGREEMENT BETWEEN THE SHOALWATER BAY TRIBE**

**AND**

## **THE STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, DIVISION OF CHILD SUPPORT**

### **Preamble**

The State of Washington, Department of Social and Health Services, Division of Child Support (DCS) acknowledges the Shoalwater Bay Tribe (Tribe), as a sovereign power, has a compelling interest in promoting its tribal culture, and that it is essential to that end that the Tribe exercises its authority over matters involving the Tribe's children and their interests. The Tribe and DCS desire to enter into this Agreement in order to promote the well-being of the Tribe's children.

The Tribe and DCS acknowledge their mutual sovereignty and acknowledge each party has jurisdiction over domestic relations, including child support matters.

The Tribe and DCS declare that there are a significant number of families where the parent responsible for child support is employed by the Tribe; or where at least one family member is a tribal member; and where the custodial parent resides in the State of Washington.

The Tribe is authorized to enter into this Agreement pursuant to the Tribe's Constitution and the Tribal Code. DCS is authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, Revised Code of Washington, Chapter 39.34. Both the Tribes and the States are encouraged to enter into cooperative agreements pursuant to 42 USC 654(33) and RCW 26.25.10.

The parties intend that this Agreement be liberally construed to effectuate its intent and purposes.

### **Purpose**

The Tribe and DCS declare that it is in their mutual interests to agree upon procedures to establish and enforce Child Support obligations in the Shoalwater Bay Tribal Court, and have them adjudicated by that court, according to the Tribe's laws and customs, where the Shoalwater Bay Tribal Court has jurisdiction.

This agreement will (a) outline the procedures for the reciprocal granting of full faith and

credit to, and enforcement of certain child support orders and judgments sought to be enforced by the Tribe, the Shoalwater Bay Tribal Court or DCS; and (b) further identify procedures whereby DCS can file certain child support establishment cases in the Shoalwater Bay Tribal Court, according to the Tribe's laws and customs, and have them adjudicated by that court.

This Agreement is intended solely to coordinate child support establishment and enforcement services for tribal member families and tribal employee families and does not address custody or visitation issues presented by the cases under this agreement.

### **Article I State of Washington Child Support Cases**

The State of Washington, Department of Social and Health Services, Division of Child Support ("DCS") shall file the following cases ("DCS case") in the Shoalwater Bay Tribal Court where the custodian of the child has received public assistance on behalf of the child from the State of Washington, or the custodian of the child has requested child support services from DCS, or another state, tribe or country has asked DCS to pursue the case:

1. DCS paternity establishment case: where one or both parties are tribal members, or consent to Tribal Court jurisdiction;
2. DCS child support establishment case: where the non-custodial party is a tribal member;
3. DCS child support modification case: where the non-custodial is a tribal member or where the order was entered by the Shoalwater Bay Tribal Court, and where the Tribal Court has jurisdiction;
4. 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, or otherwise owns assets available for garnishment through the Shoalwater Bay Tribal Court.

### **Article II Applicable Law**

In any DCS case, the governing law shall be this agreement, 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, [and state law where appropriate]. The

non-custodial parent may raise any defense, including a claim of in-kind, traditional or customary support, equitable estoppel, or other defense, unless the Tribal Court finds the defense is not available under the doctrine of res judicata.

The immunity of the Tribe from suit in the Shoalwater Bay Tribal Court and no other court, is waived for the limited purpose of allowing enforcement of child support orders meeting the provisions of this agreement. The Tribe shall not be liable for any support award, penalty, interest, cost or attorneys' fees if the Tribe fails to act as required by a court order or statute.

### **Article III 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 state or tribal public assistance on behalf of the child(ren) involved in the case, or if any of them have requested child support enforcement services from DCS. If any party answers affirmatively or in any case where a state or a tribe has an assignment, the Tribal Court shall provide notice to the appropriate agency. The Tribe agrees to permit DCS to intervene as a party when the State of Washington has an interest in the case.

### **Article IV Full Faith and Credit of Child Support Orders**

DCS shall give full faith and credit to any order issued by the Tribal Court in accordance with this Agreement and the Federal Full Faith and Credit For Child Support Orders Act, 28 U.S.C. 1738B et seq. The Tribe, in and through its Tribal Court, shall give full faith and credit to any order presented by DCS for recognition and enforcement by the Tribal Court, in accordance with this Agreement and the Federal Full Faith and Credit For Child Support Orders Act, 28 U.S.C. 1738B et seq.

### **Article V Tribal Court Charge-Off Procedures**

The Tribe and DCS recognize that federal law prohibits retroactive modifications of child support obligations and DCS shall not recognize or enforce retroactive modifications. In DCS Enforcement Cases, where a debt is owing to the State of Washington by a non-custodial parent for past public assistance

paid on behalf of a child, DCS and the Tribe agree that the Tribal Court may, upon request by the non-custodial parent, grant a partial or total charge-off of such debts subject to RCW 74.20A.220 so long as the Tribal Court follows procedures set forth in Section V of the Implementation Provisions located in Addendum A of this Agreement.

DCS shall not approve a reduction in the child support debt owed to the custodial parent without the custodial parent's approval.

#### **Article VI Miscellaneous**

1. Nothing in this Agreement shall limit the right of any individual to bring his or her own separate paternity case or Child Support case in any forum of his or her choice.
2. DCS and the Tribe shall each bear its own expenses that each may incur in implementing its respective responsibilities under this Agreement.
3. In the event that the federal government determines that any provision of this Agreement would violate the State of Washington's IV-D Plan, said provision shall be null and void to the extent of such violation, but the remaining provisions of this Agreement shall be in full force and effect.
4. This Agreement and the Implementation Provisions constitute 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.
5. Nothing in this Agreement is intended to, nor shall it affect, the inherent authority of the Tribe to initiate any case in tribal, state or federal court to enforce any right of the Tribe or of any of its members.

#### **Article VII Termination**

Either party, upon thirty (30) days written notice to the other party may terminate this Agreement.

Cases pending in Tribal Court as of the date of termination of this Agreement shall, notwithstanding said termination, be completed to final judgment or final appeal decision, according to the terms of this Agreement.

### Article VIII Review and Clarification

This Agreement shall be reviewed at the request of either party. The parties will discuss any concerns they may have with the implementation or interpretation of this Agreement. The Tribe and DCS acknowledge that there may arise instances where one party believes that the other has violated a provision of this Agreement; or that clarification is necessary to interpret a provision of this Agreement; or that a change in Title IV-D of the Social Security Act, or its implementing regulations; or changes in State or Tribal Law may require a modification of the provisions of this Agreement. In such an instance, the parties agree that they will first each make a good faith effort to resolve the matter amicably through mutual discussion and agreement. If the matter cannot be resolved through such efforts, the parties may, by mutual agreement, request that a mediator resolve the dispute. It shall not be a requirement that such mediation be invoked or exhausted before a party invokes the provisions of Article VII of this Agreement.

DCS and the Tribe hereby approve this Agreement, through the following persons, each in their representative capacities:


The Shoalwater Bay Tribe

  
\_\_\_\_\_  
Carol Johnson, Tribal Administrator

Date

2-12-07

The State of Washington  
Division of Child Support

  
\_\_\_\_\_  
David Stillman, Director

Date

3/19/07

**ADDENDUM A**  
**IMPLEMENTATION PROVISIONS**

**Section I Paternity Cases**

In a DCS paternity case, where the Tribal Court has jurisdiction, it 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 the test results, it may order him to reimburse DCS the costs of the test. Regardless of the testing results, it shall be in the sole discretion of the Tribal Court to decide whether any party shall be ordered to reimburse DCS these costs.

**Section II Establishment Cases**

DCS, through its authorized representative, shall file a Petition in Tribal Court for Establishment of Child Support on behalf of the child, to pursue final judgment and appeal such final judgment, pursuant to the tribal code so long as:

1. The custodian of the child is receiving or has received public assistance on behalf of the child from the State of Washington, the custodian has requested child support enforcement services from DCS, or there has been a request to DCS to establish the child support obligation for the child on behalf of a tribe, another state or country; and
2. The non-custodial parent is a tribal member or is otherwise subject to the jurisdiction of the Tribal Court.

**Section III Enforcement Cases**

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, insurance [at the Tribe's discretion, this may include, any per capita payments owed to the non-custodial parent]. Any writ of garnishment may be obtained only in Tribal Court and not in any other court. The maximum amount of the garnishment of the non-custodial parent's net earnings computed for each pay period, shall not exceed that specified in Tribal Code. "Net earnings" shall mean compensation minus deductions required under law by federal, state or Tribal government, excluding voluntary deductions 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 send them 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.

#### **Section IV Modification Cases**

The Tribal Court may prospectively modify a foreign child support order that has been recognized and given full faith and credit by the Tribal Court according to the provisions of the federal Full Faith and Credit for Child Support Orders Act, 28 U.S.C. 1738B et seq., attached herein at Addendum B. Modifications are prospective from the date that DCS filed the case, and may include 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 reduces the non-cash support to a money amount not to exceed fifty percent (50%) of the cash payments required under the prior order.

#### **Section V Charge-off Cases**

A non-custodial parent in a DCS case under this agreement may request a hearing in Tribal Court to request charge off of some or all of the arrearages. In order for DCS to give full faith and credit to child support orders under this section, the Tribal Court must certify that (1) Tribal Court has

personal jurisdiction over the non-custodial parent and the custodian, (2) the non-custodial parent is informed of his/her right to ask DCS for administrative or a Conference Board review of the case, and (3) DCS and the custodian are given notice of, and an opportunity to be heard at, such hearing.

At the hearing, the Tribal Court may charge-off some or all of the arrearages owing to DCS, and may establish a repayment schedule for 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 arrearage 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 may not exceed fifty percent (50%) of the cash payments required under the prior order(s). The non-custodial parent shall not be entitled to a refund of any credit granted by the Tribal Court for non-cash support.

#### **Section VI 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 any current child support payments and/or arrearage payments by the non-custodial parent, or by the Garnishee, to be made to the Washington State Support Registry, Washington State Support Registry, PO Box 45868, Olympia, WA 98504.

## **Section VII Tribal Child Support Schedule**

If the Tribe chooses to develop a Tribal Child Support Schedule or Guidelines, upon request, 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.

## **Section VIII Exchange of Information for Child Purposes**

In order to achieve the purposes of this Agreement, the Tribe and DCS agree that, upon reasonable written request, it will promptly provide any of the following information in its possession with respect to either the non-custodial parent or the custodian: verification of employment, name of employer, salary, physical address, mailing address, birth dates, social security number, and medical insurance coverage for the non-custodial parent or the custodian and any of his/her children. The Tribe and DCS agree that the information described in this paragraph shall be used solely for purposes of establishing and enforcing child support obligations. The Tribe and DCS agree to comply with federal, Washington State and Shoalwater Bay Tribal laws and regulations, with regard to the confidentiality of the information described in this paragraph.

## **Section IX Service of Process on the Reservation**

The Tribe agrees that, notwithstanding any Code provision to the contrary, when initiating any case pursuant to this Agreement, DCS may accomplish service of process of the initial pleadings on the party(ies) who reside on the Reservation, by delivering the appropriate pleadings by U.S. postage certified mail "restricted delivery return receipt requested" and by providing sufficient proof of such certified mailing to the party(ies) to the Tribal Court. DCS and the Tribe agree that DCS may, alternately, accomplish such service of process by requesting the services of the Tribal Police with payment by DCS of the applicable fee for such services.

## ADDENDUM B

### FULL FAITH AND CREDIT FOR CHILD SUPPORT ORDERS ACT

#### 28 U.S.C. 1738B et. seq.

- (a) **General Rule.**--The appropriate authorities of each State—
- (1) shall enforce according to its terms a child support order made consistently with this section by a court of another State; and
  - (2) shall not seek or make a modification of such an order except in accordance with subsections (e), (f), and (i).
- (b) **Definitions.**--In this section:
- "child" means—
- (A) a person under 18 years of age; and
  - (B) a person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a State.
- "child's State" means the State in which a child resides.
- "child's home State" means the State in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the State in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month period.
- "child support" means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.
- "child support order"—
- (A) means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and
  - (B) includes—
    - (i) a permanent or temporary order; and
    - (ii) an initial order or a modification of an order.
- "contestant" means—
- (A) a person (including a parent) who—
    - (i) claims a right to receive child support; (ii) is a party to a proceeding that may result in the issuance of a child support order; or (iii) is under a child support order; and
  - (B) a State or political subdivision of a State to which the right to obtain child support has been assigned.
- "court" means a court or administrative agency of a State that is authorized by State law to establish the amount of child support payable by a contestant or make a modification of a child support order.
- "modification" means a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order.
- "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country (as defined in section 1151 of title 18).
- (c) **Requirements of Child Support Orders.**--A child support order made by a court of a State is made consistently with this section if—

- (1) a court that makes the order, pursuant to the laws of the State in which the court is located and subsections (e), (f), and (g)—
    - (A) has subject matter jurisdiction to hear the matter and enter such an order; and
    - (B) has personal jurisdiction over the contestants; and
  - (2) reasonable notice and opportunity to be heard is given to the contestants.
- (d) **Continuing Jurisdiction.**--A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is the child's State or the residence of any individual contestant unless the court of another State, acting in accordance with subsections (e) and (f), has made a modification of the order. [Subject to HR 4 changes.]
- (e) **Authority To Modify Orders.**--A court of a State may modify a child support order issued by a court of another State if--
- (1) the court has jurisdiction to make such a child support order pursuant to subsection (i); and
  - (2) (A) the court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child's State or the residence of any individual contestant; or
  - (B) each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume continuing, exclusive jurisdiction over the order.
- (f) **Recognition of Child Support Orders.**--If 1 or more child support orders have been issued with regard to an obligor and a child, a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:
- (1) If only 1 court has issued a child support order, the order of that court must be recognized.
  - (2) If 2 or more courts have issued child support orders for the same obligor and child, and only 1 of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized.
  - (3) If 2 or more courts have issued child support orders for the same obligor and child, and more than 1 of the courts would have continuing, exclusive jurisdiction under this section, an order issued by a court in the current home State of the child must be recognized, but if an order has not been issued in the current home State of the child, the order most recently issued must be recognized.
  - (4) If 2 or more courts have issued child support orders for the same obligor and child, and none of the courts would have continuing, exclusive jurisdiction under this section, a court having jurisdiction over the parties shall issue a child support order, which must be recognized.
  - (5) The court that has issued an order recognized under this subsection is the court having continuing, exclusive jurisdiction under subsection (d).
- (g) **Enforcement of Modified Orders.**--A court of a State that no longer has continuing, exclusive jurisdiction of a child support order may enforce the order with respect to non-modifiable obligations and unsatisfied obligations that accrued before the date on which a modification of the order is made under subsections (e) and (f).
- (h) **Choice of Law.**—
- (1) In general.--In a proceeding to establish, modify, or enforce a child support order, the forum State's law shall apply except as provided in paragraphs (2) and (3).

- (2) Law of state of issuance of order.--In interpreting a child support order including the duration of current payments and other obligations of support, a court shall apply the law of the State of the court that issued the order.
- (3) Period of limitation.--In an action to enforce arrears under a child support order, a court shall apply the statute of limitation of the forum State or the State of the court that issued the order, whichever statute provides the longer period of limitation.

(i) **Registration for Modification.**--If there is no individual contestant or child residing in the issuing State, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another State shall register that order in a State with jurisdiction over the non-movant for the purpose of modification.