I. INTRODUCTION

The various states have a unique legal relationship with each sovereign Indian government, as affirmed and described in federal law. This relationship is set forth in the Constitution of the United States, treaties, statutes, laws, and court decisions. This document by design affirms the government-to-government relationship between the State of Michigan and each Indian government located within the State of Michigan.

The philosophies for development of Tribal consultation agreements build upon the political and legal foundations found in state and federal statutes, treaties, and executive orders.

The Indian Child Welfare Act (ICWA) is a federal law which defines the best interests of Indian children and places various legal requirements upon the states to protect Indian children and families; and other federal laws such as Title IV-E of the Social Security Act also provide mechanisms for the protection and well-being of the children of the Tribes.

The Honorable Jennifer M. Granholm, Governor, State of Michigan, signed Executive Directive 2004-5, Tribal-State Relations, on May 12, 2004. The Executive Directive requires each executive branch department and agency to establish guidelines to accommodate requests for meaningful and timely consultation with Indian Tribes prior to the enactment of legislation, promulgation of regulations, or adoption of policies that have Tribal implications.

Government-to-government relations involve respectful and cooperative communication and dealings that are designed to achieve a consensus, to the extent possible, before a decision is made or an action is taken. The goal is to implement programs in a collaborative manner. The Michigan Department of Human Services (the Department) is committed to such government-to-government relations with the federally-recognized Tribal governments of Michigan (Tribes). The Department will employ its best efforts to achieve positive outcomes from its consultation and collaboration with Tribes. The goal of this agreement is to improve the planning for, delivery of, and access to programs and services for children and families by Indian governments, communities, and people. We will achieve this by developing principles of and a process for consultation on children and family policies in Michigan. It is for this purpose that this agreement has been developed.

The Department is a comprehensive state agency which has responsibility for establishing policies and providing services in a wide variety of program areas, including child welfare and other children and family related programming.

Many of these services are provided directly through the State's legal and contractual relationships with private child welfare agencies, and local county departments. These services are also often provided by Tribal agencies through a contractual relationship between the Department and Tribal governments or Tribal governments and the federal government.

Each of the federally-recognized sovereign Tribes in the State of Michigan is recognized by the State for its unique status, self-government, and self-determination. The Department respects the fundamental principles that establish and maintain the relationship between Indian governments and the Department. The Department affords Indian governments the same respect afforded to other governments.

The Department recognizes and respects the inherent right of each individual Tribe to establish its own intertribal organization and to determine through what mechanisms consultation, collaboration and negotiation should take place. This is in addition to government-to-government consultation provided for by this agreement and otherwise required by federal and state laws and policies.

The Department, its partner agencies, and the Tribes have a responsibility for a variety of programs serving children and families. As residents of the State of Michigan, Tribal citizens are equally entitled to services afforded to all residents of the State. As citizens of a sovereign Tribal nation, Tribal citizens are also entitled to those services afforded to all citizens of that Tribe. Whether the services are provided through Tribal agencies or directly through the Department's partner agencies, it is critical that Department administrators and the leadership of the Tribes located within the state, and their respective representatives, consult with one another to assure the availability and successful delivery of needed services and other assistance.

II. OBJECTIVES

The objectives of this agreement are:

A. To create a collaborative relationship to improve the enforcement of the Indian Child Welfare Act and child welfare services provided to federally-recognized Tribal citizens.

B. To formalize the procedures and expectations for the Department to implement a government-to-government relationship and to foster consultation with and encourage the participation of representatives of Tribes in policy development and program activities.

C. To promote and develop methods of consulting with Tribes and to involve their tribally identified representatives in the Department's decision-making process in order to assure that the needs of Tribal citizens are met.

D. To enhance State compliance with applicable law and obligations to the satisfaction of respective parties to this agreement.

III. GUIDING PRINCIPLES

The Department is committed to improving and maintaining effective government-to-government relations with Michigan's Indian Tribes, bands, and communities. The development of mutual understanding – with cultural awareness, sensitivity, and responsiveness is necessary for effective consultation on policies and collaboration on program development and operations. Towards achieving this goal, the Department will utilize the following principles in its consultation with Tribal governments. Integration of these principles into the Department's planning and management activities will help produce positive and desired outcomes within the children and families programs and services for Tribal citizens.

A. It is important to recognize the uniqueness of each Indian community's culture, governmental structure and processes, demographics, geography (e.g.) where Tribal citizens are located, and other factors.

B. Consultation involves respectful and timely communication between sovereign governments in a cooperative process that strives to achieve a consensus before a decision is made or an action is taken.

C. Working directly with Indian Tribes in a government-to-government manner will result in an effective, efficient, and sustainable consultation process.

D. Consultation with Tribal governments when developing and implementing, policies and programs, regulations, and other activities that are anticipated to directly affect Indian Tribes or their citizens is necessary and respectful. This includes topics presented by the Tribes on which they would like consultation.

E. Promotion of cooperation among affected parties is the best way to implement initiatives and resolve issues of mutual concern.

IV. PURPOSE AND METHODS

The State of Michigan, represented for purposes of this agreement by its Department of Human Services with the concurrence of the Tribes as sovereign entities, will diligently seek to maintain an ongoing and meaningful process for communicating general concerns, program and funding priorities, respective roles in the provision of services to federally-recognized Tribal citizens, and other high-level matters of mutual concern.

The Michigan Department, in consultation with the federally-recognized Tribal governments located within the state, establishes this agreement requiring Department staff to consult with tribal governments on Department policies and activities. This agreement formalizes the collaborative relationship that the Department and Tribes have established in creating, contracting for, and accessing child welfare and other children and family related programming for Tribal communities and their citizens statewide.

ANNUAL MEETINGS

The Department, in consultation with Tribal leadership, shall assume the responsibility for scheduling an annual consultation session at which the Department Director or Department Deputy Director will be present. The consultation must include invitations to, at a minimum, the following individuals or their designees:

- Pokagon Band of Potawatomi Indians
- Saginaw Chippewa Indian Tribe

- Grand Traverse Band of Ottawa and Chippewa Indians
- Little Traverse Bay Band of Odawa Indians
- Lac Vieux Desert Band of Lake Superior Chippewa Indians
- Match-E-Be-Nash-She-Wish Band of Pottawatomi
- Sault Ste. Marie Tribe of Chippewa Indians
- Bay Mills Indian Community
- Nottawaseppi Huron Band of the Potawatomi
- Hannahville Indian Community
- Keweenaw Bay Indian Community
- Little River Band of Ottawa Indians

The agenda, date, and location of the consultations session shall be determined jointly by the Department and Tribal leaders identified above.

It shall be part of the consultation agenda for at least one meeting during each calendar year to review and evaluate the accomplishments and effectiveness of the previous year's action plan and to establish mutual goals for the current year's action plan. The agenda will also include a current Department organizational chart. In addition, the Department will prepare a summary of the previous year's committees and other bodies that indicates the involvement of Tribal representatives and the Tribal affiliation of those representatives.

OTHER MEETINGS

The Department, in consultation with Tribal leadership, shall assume the responsibility for scheduling additional consultation sessions at his or her discretion. In addition, any Tribal Representative may request meetings or other consultation with the Department Director or other Department representatives.

ANNUAL ACTION PLAN

The Department management including but not limited to Children's Services, Field Operations, Legal, and Native American Affairs

(NAA) shall establish, in conjunction with appropriate program staff, an annual action plan by which this government-to-government consultation agreement shall be implemented. The action plan shall include:

- Programs: A list of programs and services available to Tribal citizens, including an overview of and training on Department programs and a Department organizational chart.
- Policy and Program Development: Description of new or potential initiatives, programs, and policies affecting Tribes.
- Priorities: Prioritized topics and issues for discussion and, as necessary, resolution with the Tribes.
- Consultation Process: The procedures to be used to consult with Tribes on existing and new policies and programs.
- Evaluation Process: The process to determine the effectiveness of the action plan with respect to the consultation process and to the programmatic, fiscal and other aspects of applicable Department programs identified in the action plan.

TRAINING

It shall be part of consultation agendas to establish regular, ongoing training sessions for appropriate Department employees. The purpose of this training is to educate Department employees and others regarding the requirements of a meaningful government-to-government relationship, including historical and cultural perspectives from the Tribes, and information about the importance of consensus building, Tribal sovereignty, Tribal government, and Tribal services. The Department shall make every effort to involve Tribal Leaders or their designees in the development of the curriculum and provision of the training.

RELATIONSHIP TO FEDERAL LAW

No action taken in accordance with this agreement shall conflict with or circumvent Federal laws, mandates, rules, or regulations governing the programs, procedures, or practices of either the Department or Michigan's federally-recognized Tribes.

V. RESOLUTION OF ISSUES

In any given year, specific issues affecting one or more Tribes and the Department may arise. These issues may be raised by either a Tribe or the Department and may occur at various levels within either party. The following process is to be used when such issues arise.

TIMELINESS OF RESPONSE

Within ten (10) business days after receiving a formal request from either party, the receiving party shall respond with a resolution of the issue or a projected timeframe for resolution of the issue. The parties may negotiate the timeframe for resolution. For the Department, the primary place to submit such a request will be the Office of Native American Affairs (NAA).

INITIAL DISCUSSION

When an issue arises and an employee of either a Tribe or the Department contacts an employee of the other entity, they will discuss the issue and attempt to resolve it. If higher level involvement is required, the process described in Subsection V.C. will be followed.

If resolution or non-resolution of the issue would affect a Tribe or Tribes other than the Tribe involved, then further discussion must occur as described in Subsection V.C.

ISSUES REQUIRING HIGHER LEVEL OF INVOLVEMENT

If higher level involvement is needed, the issue will be raised to the appropriate level in a Division or the Department for resolution. Within a Division or other subunit of the Department, the appropriate manager will assume responsibility for contacting the Tribe and attempting to resolve the issue. Resolution shall be sought through the Division hierarchy prior to being referred to the Department level. Should resolution not occur at the Division level and it is advanced to the Department level, the Tribal Representative, with the support and assistance of the Director's Office, will facilitate contact between the appropriate Department

staff or managers and the Tribe. Communication between those parties shall occur as soon as is reasonably possible, subject to Subsection D, to determine if the issue can be resolved. If the issue is resolved, no further action is required. If the issue cannot be resolved at the Department level, the Tribe will be informed of the mechanism to raise the issue with the Governor.

ISSUES AFFECTING MORE THAN ONE TRIBE

If it is determined that resolution or non-resolution of the issue will affect more Tribes than just the Tribe presently involved in the discussion, the Department program representative who is involved with the issue will, after consultation with the Department, make contact with the Tribe to inform them of the change in focus. A designee of the Department staff shall notify all affected Tribes and initiate the resolution process. Communication involving all of the potentially affected parties will occur in a timely manner and will be facilitated by the Department.

If the issue is resolved through agreement of the involved parties, no further action is required. If the issue cannot be resolved, then the issue shall be raised to higher level authorities as described in Subsection V.

VI. OUTREACH TO TRIBAL GOVERNMENTS ON COMMITTEES AND WORKGROUP

During the normal course of business, it is often necessary for the Department to establish committees, councils, workgroups, or similar bodies to provide advice and recommendations to the Department. Management of the Department, in creating such committees, councils, workgroups, or similar bodies that deal with policies or programs affecting Tribal governments or Tribal citizens, shall inform Tribal Representatives, in writing, of their creation. The person who will chair or facilitate the body shall communicate with all Tribes regarding any proposed policies or programs under consideration in order to solicit Tribal input.

LONG-TERM AND ONGOING BASIS

If the Department or any Division establishes any ongoing or long-term advisory committee, commission, or similar body, the Department shall invite meaningful Tribal representation and participation based upon scope and focus of the respective meeting. A request for Tribal participation will be sent to the Tribal Representative of each Tribe, in writing, of the nature and purpose of the body; and the instructions for submitting designee nomination(s) for committee participation. The Department will defer to the Tribe's determination of whether or not to designate a candidate to serve on the body. The Department will select Tribal representation for committee participation from the Tribal candidate submissions or likewise from the Tribal Social Service Directors Coalition of Michigan if so designated. When the Department is advised by a committee or council created by state statute, executive order, or other mechanism with appointments made by the Governor or other appointing authorities outside of the Department, the Department will give similar notice to each Tribal Representative allowing the opportunity for him or her to identify interest in appointment consideration, unless some other appointing process or authority is mandated. The Department will accept Tribal candidate submissions for committee participation from the Tribal Social Service Directors Coalition of Michigan if so designated.

SHORT-TERM AND AD HOC BODIES

If the Department or a subunit of a Division establishes any external ad hoc committee or workgroup which affects Tribes or Tribal citizens, the appropriate individual in the Department shall contact the Tribal Representatives that are affected by the work of the committee or workgroup. The contact shall initially be in writing and shall include a description of the nature and purpose of the body, the anticipated outcome, the qualifications of the representative desired, what expenses will be reimbursed, and the time commitment required for serving on the body. The Tribal Representatives, after any necessary consultation, will determine whether or not to submit an individual for selection by the Department to serve on the committee or workgroup; or likewise from the Tribal Social Services Coalition of Michigan if so designated.

APPENDIX A: GLOSSARY

For purposes of this consultation agreement the following terms and definitions will apply:

Child Welfare: means the system of services and programs for children and families who may have issues related to safety, special care and treatment, or other assistance designed to assure the well-being of children.

Cultural awareness and sensitivity: means having due knowledge or and regard for the behavior patterns, civilization, customs, arts, beliefs, institutions, and all other achievements and manifestations of human work and thought as expressed in a particular community.

Consultation means a process used to facilitate communication, interaction, and the exchange of views and perspectives between the Department and each of the federally-recognized Tribes in Michigan.

Department means the Michigan Department of Human Services.

Government-to-Government means communication and dealings between sovereign governments, their agencies, and other official entities.

Sovereign means independent of the control of another government or governments.

Tribe or Tribal Government means a sovereign government of an Indian citizens, embracing and occupying lands and territory, and having jurisdiction over same, lying within the geographical boundaries of the State of Michigan, which sovereignty is recognized by the Government of the United States and subject to the Constitution, laws, and treaties of the United States, which also may be known as a federally-recognized Indian Tribe.