Memorandum of Understanding between the Washoe Tribe of Nevada and California and the County of Alpine, California

This Memorandum of Understanding ("MOU") is made effective as of March 6th, 2014, by and between the County of Alpine (the "County"), a political subdivision of the State of California, and the Washoe Tribe of Nevada and California (the "Tribe"), a federally recognized Indian tribe.

RECITALS

WHEREAS, the Tribe consists of approximately 1600 members; and

WHEREAS, the Tribe is a federally recognized Indian tribe organized under Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. §476) and has jurisdiction over child dependency cases that arise in Washoe Indian Country which spans two states, Nevada and California; and

WHEREAS, the County is a political subdivision of the State of California and Alpine County Health and Human Services (hereafter "County" or "HHS") is a department of Alpine County with delegated authority to provide public health and human services and programs to children, families and adults; and

WHEREAS, HHS is mandated by federal and state law to investigate and respond to all allegations of suspected child abuse and neglect; and

WHEREAS, the Tribe has tribal trust lands within the County known as Woodsford Indian Community (Colony), the Wade Property, and the Sacramento Public Domain Trust Allotments (hereafter collectively known as "Trust Lands"); and

WHEREAS, the Tribe reassumed exclusive jurisdiction effective March 25, 1996, over child custody proceedings on the Trust Lands pursuant to the Indian Child Welfare Act, 25 U.S.C. §1918 and published in the Federal Register at 61 Fed. Reg. 1779 (January 23, 1996); and

WHEREAS, individuals, adults and children, residing on the Trust Lands are citizens of Alpine County, the State of California, and the United States; and

WHEREAS, the Tribe and HHS are committed to a mutually supportive working relationship and to work in concert to provide supportive services to those citizens residing on the Trust Lands;

NOW, THEREFORE, the Parties hereby agree to the following:

1. Definitions.

The terms not defined elsewhere in this MOU shall have the following meanings:

"Child" means a person who is less than eighteen (18) years old and has not been emancipated by order of a court of competent jurisdiction.

"Child Protective Services" means those services as defined in Title 8 of the Washoe Law and Order Code and the California Department of Social Services Division 31 Regulations, respectively, as each may be amended from time to time.

"County" means the County of Alpine, California, a political subdivision of the State, and its departments and subdivisions.

"Court" or "Juvenile Court" means the Juvenile Court of the Washoe Tribe of Nevada and California.

"Department" or "HHS" means the Department of Health and Human Services of Alpine County and the Alpine County Child Protective Services.

"Department of Social Services" or "Washoe DSS" means the Washoe Tribe of Nevada and California Department of Social Services.

"Exclusive jurisdiction" means that jurisdiction exercised by the Tribe, effective March 25, 1996, over child custody proceedings in Tribal Court, on the Trust Lands pursuant to the Indian Child Welfare Act, 25 U.S.C. §1918 and published in the Federal Register at 61 Fed. Reg. 1779 (January 23, 1996).

"Foster home" means placement with a person or family whose home has been licensed by the Tribe or the County or an approved and recognized private entity.

"Indian" means any person who is: a member of a federally recognized tribe, band or community, or any other person on the Tribal Lands who is recognized by the Washoe community as an Indian.

"Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

"Indian Child Welfare Act" or "ICWA" means the Act codified at 25 U.S.C. §1901 et seq. enacted by Congress in 1978.

"MOU" means this Memorandum of Understanding, as the same may be amended by written agreement from time to time.

"Party" means the Tribe or the County.

"Parties" means the Tribe and the County.

"Reservation" means certain contiguous and non-contiguous lands located within Alpine County and identified by the legal description on file with the Bureau of Indian Affairs, or any such land, which is held by the United States of America in trust for the benefit of the Tribe.

"Resides" or "Residence" when used with respect to the residence of the child, means the place where the child himself/herself actually resides and does not mean a legal residence or domicile of his or her parent or guardian.

"Superior Court" means the Superior Court of Alpine County, California sitting as a juvenile court.

"Tribal Council" means the Tribal Council of the Washoe Tribe of Nevada and California.

"Tribal Court" means the Tribal Court of the Washoe Tribe of Nevada and California.

"Tribe" means the Washoe Tribe of Nevada and California, a federally recognized tribe.

"Trust Lands" means those lands indentified in 61 Fed. Reg. 1779 (January 23, 1996) as the Woodsford Community (Colony), the Wade Property and the Sacramento Public Domain Allotments, known collectively herein as the "Trust Lands".

"Washoe tribal member" means that individual whose name appears on the Current Tribal Membership Roll of the Washoe Tribe of Nevada and California.

2. Term. The term of this MOU shall begin upon its execution by the parties, and shall terminate sixty calendar days after either party to this agreement gives written notice of termination.

3. Purpose. The purpose of this MOU is to share resources and expertise between the Tribe and the County thereby increasing the provision of comprehensive child welfare services to children and families within the Parties' service areas. The Parties agree and are prepared to protect the health and safety of children, to provide an array of child welfare services to children and their families, to promote cooperation and

collaboration among all the agencies serving children and their families, to prevent the inappropriate cultural separation of children from their families, and to preserve the unique values and culture of the Tribe. To fulfill these purposes the Parties hereby agree to the following:

A. The Tribe and the County have worked progressively towards a strong, trusting relationship. The Parties agree to work closely to provide comprehensive child welfare services and supportive services to residents on Trust Lands.

B. The Parties reaffirm ongoing efforts to ensure compliance with the requirements of the Federal Indian Child Welfare Act, and the codification of that Act in California. The County acknowledges the sovereignty of the Tribe and respects those laws enacted by the Tribe that govern its membership and those residing on Trust Lands.

C. The County supports exclusive tribal jurisdiction and the Tribe's regard and dedication for their most vested interests, their children.

D. The Department and the Tribe hereby commit to open communication and sharing of information with regard to accessing and making services available to residents on Trust Lands.

E. When legally permissible the Parties agree to written releases of information to one another when requested for the purpose of case management and provision of services.

F. The Parties will make every effort to maintain the confidentiality of case-related information and maintain the privacy of children and their families.

G. The Tribe hereby grants to the County access to the Trust Lands to provide comprehensive child welfare and family preservation services to children and families on Trust Lands pursuant to procedures developed by the Parties.

4. Provision of Services.

A. The Department will accept referrals from the Tribe for the provision of services to residents of Alpine County.

B. The County will make foster care resources available to the Tribe as capacity allows for residents on Trust Lands within Alpine County.

C. The Parties acknowledges that they have limited resources and capacity to provide preventative and reunification services and agree to structure case plans and services for children and families in a manner that is cost efficient and cost effective.

D. The County authorizes payments for children residing in Alpine County for comprehensive child welfare services using the eligibility criteria for children being served in Alpine County. All services for which the family/child is eligible include services provided by Alpine County Social Services, Alpine County Public Health Department, Alpine County Behavioral Health Department and all subcontractors of those Departments.

E. The Parties agree to partner in the provision of services and to utilize all available services within the County to assist children and families. This shall include utilization of tribal services to the extent capacity and resources allow. Services shall include all services provided by the Washoe Tribe.

5. Service Acknowledgement. The Parties shall develop a service plan for each child and/or family in need. Each service plan will identify the specific service provider(s) and each child's and/or family's eligibility. Should a family member refuse services or select another provider, said refusal/selection shall be duly noted in the service plan.

6. Assignment. The County shall not assign (by operation of law or otherwise), this MOU without the prior written consent of Tribe.

7. Indemnification. The Parties covenant and agree to indemnify and hold each other harmless from any liability, loss, damage or expense, including assessable legal fees, arising out of the negligent performance of their respective obligations under this MOU. The Parties agree that they shall co-operate with each other in the defense of any such action, including providing each other with prompt notice of any such action and the provision of all material documentation.

8. Dispute Resolution.

In an effort to foster good government – to – government relationships, the Parties agree to the dispute resolution procedures set forth in this section.

A. Meet and Confer.

The Parties shall make their best efforts to resolve claims arising under this MOU by good faith negotiations whenever possible. Any disputes between the Parties shall first be subjected to a process of meeting and conferring in good faith in order to foster a spirit of cooperation in the implementation of the terms of this MOU as follows:

(i) A Party shall give the other Party, as soon as possible after the event giving rise to the dispute, written notice setting forth, with specificity, the claims of the dispute.

(ii) The Parties shall meet and confer in a good faith attempt to resolve such dispute through negotiation not later than 10 days after receipt of notice, unless the Parties agree to an extension of time.

B. Mediation.

If a dispute is not resolved to the satisfaction of the Parties, the Parties agree that they shall engage in mediation to resolve the dispute. The Parties shall agree on a mediator or in the event the Parties cannot agree on a mediator, they shall choose from a panel of three mediators and that mediator shall choose a mediator to resolve the dispute. The Parties agree that mediation is less costly than arbitration.

C. Limited Waiver of Sovereign Immunity.

The sovereign immunity of the Tribe shall continue in full force except to the extent that it is expressly waived by this MOU. Members of the Tribal Council and officials, employees, and agents of the Tribal Government, Washoe Tribal TANF, or any other wholly-owned tribal instrumentality or department remain immune from suit for actions taken during the course and within the scope of their duties in their respective roles.

(i) This provision shall not be construed to confer any right to bring an action in any other forum, nor as acquiescence by the Tribe or any Tribal instrumentality or department to a claim of jurisdiction by a court or agency of any other sovereign.

(ii) The sovereign immunity of the Tribe or any Tribal instrumentality or department are not waived in any way with regard to any claim that does not arise out of, or is not connected with or relating to this MOU.

(iii) The sovereign immunity of the Tribe or any Tribal instrumentality or department are not waived in any way with regard to any claim or award for punitive damages.

(iv) The Parties acknowledge and agree that this MOU, except as otherwise specified, is not intended to constitute, and shall not be construed as constituting, a submission by the Tribe to the jurisdiction of the (a) the County or any of its subdivisions, departments or courts, (b) any of its or their respective officials, employees inspectors or contractors, or (c) any of its or their respective laws, rules, regulations, ordinances, general plans or specific plans.

(v) This MOU is not intended to, and shall not be construed to, create any right on the part of any third party to bring any action or otherwise enforce any of its terms.

(vi) Subject to the provisions of this MOU, the Tribe expressly waives sovereign immunity and any defenses based thereon in favor of the County, but not as to any other person or entity, as to any dispute which specifically arises

under this MOU and not as to any other action, matters or disputes. The Tribe does not waive its sovereign immunity with resects to (a) actions by third parties or (b) disputes between the Tribe and the County which do not specifically arise under this MOU.

D. Enforcement.

The resolution of the dispute by the mediator shall be final and the Parties hereby agree that any enforcement of the resolution shall be in Washoe Tribal Court.

9. Miscellaneous

This MOU may be modified or amended only by a written instrument executed by the Tribe and the County pursuant to the same authorizations used to execute this MOU in its original form.

This MOU is the entire agreement between the parties and supersedes all prior written and oral agreements, if any, with respect to the subject matter hereof.

All notices required by this MOU shall be deemed to have been given when made in writing and delivered or mailed to the respective Parties and their representatives at their respective addresses as set forth below or such other addresses as they may provide to the other Party from time to time:

For Alpine County:
Alpine County Clerk
P.O. Box 158
Markleeville, CA 96120

For Washoe Tribe of Nevada and California:
Office of the Chairman
919 Highway 395 South
Gardnerville, Nevada 89410

Section headings appearing in this MOU are for convenience of reference only and shall not affect the substantive interpretation of the respective sections.

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IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding effective on the day and year first written above.

COUNTY OF ALPINE

By: _____
Donald M. Jardine, Chair
Board of Supervisors

WASHOE TRIBE OF NEVADA AND CALIFORNIA

By: _____
Darrel D. Kizer, Chairman
Washoe Tribal Council