

INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN
LA CONNER SCHOOL DISTRICT
AND THE
SWINOMISH INDIAN TRIBAL COMMUNITY
CONCERNING THE ASSESSMENT, COLLECTION AND DISTRIBUTION OF
SWINOMISH INTERIM TRUST IMPROVEMENT USE AND OCCUPANCY TAXES

THIS AGREEMENT (herein "Agreement") is made and entered into by and between the Swinomish Indian Tribal Community, a Federally recognized Indian tribe (herein the "Tribe") and La Conner School District, a political subdivision of the State of Washington (herein the "LCSD") pursuant to the authority granted by Chapter 39.34 RCW, Interlocal Cooperation Act. LCSD and the Tribe may be individually referred to herein as a "Party", and collectively referred to herein as the "Parties."

WHEREAS:

1. Skagit County, on behalf of itself, the State of Washington, and local taxing districts, assessed permanent improvements on land owned by the United States and held in trust for the Tribe and Indians within the Swinomish Indian Reservation ("Swinomish Reservation"), issued notices and tax bills to the owners of such improvements for payment of tax on the improvements to be paid in 2011, 2012, 2013 and either in April 2014 (full year payment) or in April 2014 and October 2014 (half-year payments), and collected, received, enforced and distributed such taxes to the State, County and local taxing districts
2. On July 30, 2013, the United States Court of Appeals for the Ninth Circuit issued its decision in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization*, 724 F.3d 1153, also known as the "Great Wolf Lodge decision," ruling that Washington state and local taxes may not be imposed on permanent improvements on land owned by the United States and held in trust for Indians, without regard to the ownership of the improvements.
3. On March 31, 2014, the Washington State Department of Revenue issued Property Tax Advisory PTA 1.1.2014, concluding that state and local governments cannot assess property tax on permanent improvements built on land held in trust by the United States for Indians.

4. Under Washington law, a claim for refund of taxes must be filed with the county treasurer within three years after the due date of the payment sought to be refunded, (RCW 84.69.030(1)(b)), and an action for a refund that is not granted within six months of the date of filing of the claim for refund may be filed within one year after the date of filing of the refund claim, (RCW 84.69.120). According to the Department of Revenue “FAQs for County Assessors” concerning the *Great Wolf Lodge* decision, a claim for refund for taxes due on April 30, 2011 must have been filed by April 30, 2014.
5. LCSD and other local taxing districts adopted 2014 budgets anticipating continued tax receipts based on the value of permanent improvements on trust land within the Swinomish Indian Reservation.
6. Skagit County has received tax payments in 2014, and has requested continued payment of remaining “second half” 2014 tax payments due October 31, 2014, based on and taxing the value of permanent improvements on trust land within the Swinomish Indian Reservation.
7. In order to help maintain continuity of services and budget predictability, the Tribe and the County desire to take joint and cooperative action to provide certainty and stability to affected local taxing districts concerning tax revenues received in and/or for tax years 2011, 2012, 2013 and 2014 that were based on and taxed the value of permanent improvements on trust land within the Swinomish Indian Reservation.
8. Similarly, in order to help maintain continuity of services and budget predictability, the Tribe and LCSD desire to take joint and cooperative action to provide certainty and stability concerning tax revenues received in and/or for tax years 2011, 2012, 2013 and 2014 that were based on and taxed the value of permanent improvements on trust land within the Swinomish Indian Reservation.
9. The Tribe and LCSD jointly desire to prevent creation of a “tax-free zone” related to improvements on trust land within the Swinomish Reservation that would not be subject to State, County or Tribal tax.
10. The Tribe and LCSD desire to take joint and cooperative action to help reduce disruption in the transition between State and County taxation of improvements on trust land to Tribal taxation.

NOW, THEREFORE, in order to jointly and cooperatively address and accomplish the foregoing, the Parties agree to the following:

1. PURPOSE: The purpose of this Agreement is to establish the respective responsibilities and obligations of the Parties in taking joint and cooperative action in the

collection and distribution of Swinomish Interim Trust Improvement Use and Occupancy Taxes (herein "Interim Trust Improvement Tax").

- 1.1 The Tribe has adopted an Interim Trust Improvement Use and Occupancy Tax Code imposing taxes on the use and occupancy of permanent improvements on trust lands within the Swinomish Reservation for 2011, 2012, 2013, and 2014 based upon the County assessed value of those improvements for each such year, and taxing the use and occupancy of the improvements at a rate equal to the total of the tax rates imposed by the State, County and local taxing districts for each such year.
- 1.2 The Parties agree that the Interim Trust Improvement Use and Occupancy Tax Code is a necessary, lawful and valid exercise of the Tribe's power, authority and jurisdiction.
- 1.3 The Parties agree that the duties and responsibilities assumed by LCSD in this Agreement concerning the Interim Trust Improvement Use and Occupancy Tax Code are necessary, lawful and valid actions within LCSD's power, authority and jurisdiction.

2. **TRIBE-COUNTY TAX INTERLOCAL AGREEMENT:** The Tribe and Skagit County are expected to enter into an agreement pursuant to Chapter 39.34 RCW, Interlocal Cooperation Act, concerning the Assessment, Collection and Distribution of Swinomish Interim Trust Improvement Use and Occupancy Taxes (hereafter "Tribe-County Tax ILA"), pursuant to which the Tribe and County are expected to agree to perform as follows:

- 2.1 The Tribe will perform the following duties and obligations pursuant to the terms of the Tribe-County Tax ILA as it may be approved and executed by the Tribe and County:
 - 2.1.1 The Tribe will authorize the County to collect on behalf of the Tribe as the Tribe's agent the Interim Trust Improvement Taxes on use and occupancy of permanent improvements on trust lands within the Swinomish Reservation for 2011, 2012, 2013 and 2014 utilizing the County's ordinary governmental assessment, notification, billing and enforcement processes and procedures without regard to the decision in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization* or Department of Revenue issued Property Tax Advisory PTA 1.1.2014.
 - 2.1.2 The Tribe will transmit to the County for distribution in accordance with the Tribe-County Tax ILA any Interim Trust Improvement Taxes on use and occupancy of permanent improvements on trust lands within the Swinomish Reservation for 2011, 2012, 2013 and 2014 that are paid

directly to the Tribe without protest or a request for refund, or for which a refund request is denied in a decision that is final.

- 2.1.3 The Tribe will authorize the County to distribute on behalf of the Tribe as the Tribe's agent the Interim Trust Improvement Taxes on use and occupancy of permanent improvements on trust lands within the Swinomish Reservation for 2011, 2012, 2013 and 2014, as if those taxes had been collected on behalf of the State, County and other taxing districts, utilizing the County's ordinary governmental processes and procedures without regard to the decision in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization* or Department of Revenue issued Property Tax Advisory PTA 1.1.2014.
- 2.1.4 The Tribe will authorize the County to adjudicate and resolve taxpayer claims and disputes concerning County assessments, notices, billings, collections, protests and claims for refunds, on behalf of the Tribe as the Tribe's agent concerning the Interim Trust Improvement Taxes on permanent improvements on trust lands within the Swinomish Reservation for 2011, 2012, 2013 and 2014, to pay and to recoup from the State, County departments and accounts, and local taxing districts as applicable any approved or mandated refunds, including any refunds that may result from an administrative or judicial ruling that any portion of the Tribe-County Tax ILA or of the Interim Trust Improvement Tax is invalid, utilizing the County's ordinary governmental processes and procedures without regard to the decision in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization* or Department of Revenue issued Property Tax Advisory PTA 1.1.2014.
- 2.1.5 The Tribe will affirm and ratify the County's collection and distribution on behalf of the Tribe as the Tribe's agent of the Interim Trust Improvement Taxes on permanent improvements on use and occupancy of trust lands within the Swinomish Reservation for 2011, 2012, 2013 and 2014, and resolution of claims and disputes concerning County assessments, billings, collections, protests and claims for refunds, utilizing the County's ordinary governmental processes and procedures without regard to the decision in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization* or Department of Revenue issued Property Tax Advisory PTA 1.1.2014.
- 2.1.6 The Tribe will provide to the County current electronic data concerning the location of trust land parcels within the Swinomish Reservation, and will provide updates of such data to the County as may be reasonably requested by the County.

- 2.2 The County will perform the following duties and obligations pursuant to the terms of the Tribe-County Tax ILA as it may be approved and executed by the Tribe and County:
- 2.2.1 The County will collect on behalf of the Tribe as the Tribe's agent the Interim Trust Improvement Taxes on use and occupancy of permanent improvements on trust lands within the Swinomish Reservation for 2011, 2012, 2013 and 2014, utilizing the County's ordinary governmental assessment, notification, billing and enforcement processes and procedures without regard to the decision in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization* or Department of Revenue issued Property Tax Advisory PTA 1.1.2014.
 - 2.2.2 The County will distribute on behalf of the Tribe as the Tribe's agent the collected Interim Trust Improvement Taxes on use and occupancy of permanent improvements on trust lands within the Swinomish Reservation for 2011, 2012, 2013 and 2014, as if those taxes had been collected on behalf of the State, County and other taxing districts, utilizing the County's ordinary governmental processes and procedures without regard to the decision in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization* or Department of Revenue issued Property Tax Advisory PTA 1.1.2014.
 - 2.2.3 The County will adjudicate and resolve taxpayer claims and disputes concerning County assessments, notices, billings, collections, protests and claims for refunds, on behalf of the Tribe as the Tribe's agent concerning the Interim Trust Improvement Taxes on use and occupancy of permanent improvements on trust lands within the Swinomish Reservation for 2011, 2012, 2013 and 2014, and will pay and recoup from the State, County departments, funds and accounts, and local taxing districts as applicable any approved or mandated refunds, including any refunds that may result from an administrative or judicial ruling that any portion of the Tribe-County Tax ILA or of the Interim Trust Improvement Tax is invalid, utilizing the County's ordinary governmental processes and procedures without regard to the decision in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization* or Department of Revenue issued Property Tax Advisory PTA 1.1.2014.
 - 2.2.4 The County will provide the Tribe with current electronic data concerning any refunds issued for 2011, 2012, 2013 or 2014 of taxes paid on improvements located on trust land parcels within the Swinomish Reservation, and will provide updates of such data as may be reasonably requested by the Tribe.

3. RESPONSIBILITIES.

3.1.1 The Tribe agrees to engage in continued negotiation with Skagit County of an agreement pursuant to Chapter 39.34 RCW, Interlocal Cooperation Act, concerning the Assessment, Collection and Distribution of Swinomish Interim Trust Improvement Use and Occupancy Taxes and, if and when the Tribe and County agree upon the terms of such an agreement, to formally approve, execute and comply with its terms.

3.1.2 LCSD agrees to accept and comply with determinations and adjustments made by the County, in accordance with the Tribe-County Tax ILA if and as executed and approved by the Tribe and County, in adjudicating and resolving taxpayer claims and disputes concerning County assessments, notices, billings, collections, protests and claims for refunds, on behalf of the Tribe as the Tribe's agent concerning the Interim Trust Improvement Taxes on permanent improvements on trust lands within the Swinomish Reservation for 2011, 2012, 2013 and 2014, including the County's payment, recoupment or adjustment from LCSD of any approved or mandated refunds, including any refunds that may result from an administrative or judicial ruling that any portion of this Agreement, the Tribe-County Tax ILA or of the Interim Trust Improvement Tax is invalid, utilizing the County's ordinary governmental processes and procedures without regard to the decision in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization* or Department of Revenue issued Property Tax Advisory PTA 1.1.2014; *provided*, however, that LCSD may utilize any applicable procedures under the laws of the State of Washington for resolving disputes with the County arising from such payments, recoupment or adjustment.

4. TERM OF AGREEMENT: This Agreement shall become effective upon the date that (1) both Parties have approved and executed the Agreement and (2) the Tribe and County have approved and executed the Tribe-County Tax ILA. The term of this Agreement shall be through April 30, 2018, which is one year following the last date on which a refund request can be lawfully submitted to the County in connection with 2014 taxes, unless sooner terminated pursuant to the terms herein or unless the Parties agree that all of their obligations under this Agreement have been fulfilled.

5. COSTS AND EXPENSES: Each Party shall be solely responsible for all of its own costs and expenses of carrying out the activities and obligations which that Party assumed pursuant to the terms of this Agreement.

6. ADMINISTRATION: The following individuals are designated as representatives of the respective Parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the Party making the change shall notify the other Party.

6.1 LCSD's representative shall be:

Dr. Tim Bruce, Superintendent
305 N. 6th
Post Office Box 2103
La Conner, WA 98257
Phone: (360) 466-3171
Email: tbruce@lcsd.wednet.edu

6.2 The Tribe's representative shall be:

Swinomish Chief Financial Officer
11404 Moorage Way
LaConner, WA 98257
Phone (360) 466-7204
Email: mburke@swinomish.nsn.us

7. TREATMENT OF ASSETS AND PROPERTY: No fixed assets or personal or real property will be jointly or cooperatively, acquired, held, used, or disposed of pursuant to this Agreement.

8. NO PARTNERSHIP OR JOINT VENTURE: No partnership and/or joint venture exists between the Parties, and no partnership and/or joint venture is created by and between the Parties by virtue of this Agreement. No agent, employee, contractor, subcontractor, consultant, volunteer, and/or other representative of one Party shall be deemed an agent, employee, contractor, subcontractor, consultant, volunteer, or other representative of the other Party unless specifically stated in this Agreement.

9. NO THIRD PARTY BENEFICIARIES: This Agreement is not intended to nor does it create any third party beneficiary or other rights in any third person or party, including, but not limited to, the general public, property owners or taxpayers on trust land within the Swinomish Reservation, or any other organization or entity, or any agent, contractor, subcontractor, consultant, employee, volunteer, or other representative of any party.

10. USE OF DOCUMENTS AND MATERIALS PRODUCED:

10.1 LCSD shall have the right to use and distribute any and all documents, writings, programs, data, public records or other materials prepared by any party (and/or any party's contractors, consultants, and/or subcontractors) that are provided to LCSD by the Tribe for use by LCSD in connection with performance of this Agreement. The Parties recognize and agree that any documents and/or materials arising from and/or related to this Agreement that are provided to LCSD by the Tribe may be subject to public disclosure pursuant to applicable law (including, but not limited to RCW 42.56). LCSD cannot and does not represent and/or guarantee that any specific data, documents and/or information

will not be released, even if the release of such may be (or may arguably be) exempt or otherwise preventable by law.

10.2 The Tribe shall have the right to use and distribute any and all documents, writings, programs, data, public records or other materials prepared by any party (and/or any party's contractors, consultants, and/or subcontractors) that are provided to the Tribe by LCSD for use by the Tribe in connection with performance of this Agreement. The Parties recognize and agree that any documents and/or materials arising from and/or related to this Agreement that are provided to the Tribe by LCSD are not subject to public disclosure by the Tribe pursuant to Washington law applicable to the State or political subdivisions of the State (including, but not limited to RCW 42.56).

11. MUTUAL DEFENSE OF AGREEMENT:

11.1 The Parties acknowledge that the Interim Trust Improvement Tax and actions taken or obligations assumed by the Parties pursuant to, in accordance with or related to this Agreement and by the Tribe and the County in the Tribe-County Tax ILA may be subjected to legal challenge(s). The Parties acknowledge their shared interest in upholding the legality of such Tax, this Agreement, and the Tribe-County Tax ILA, and actions and obligations undertaken pursuant to the Tax, Agreement and ILA, so as to provide certainty and stability to LCSD concerning tax revenues that have been received or anticipated for 2011, 2012, 2013 and 2014.

11.2 In order to further this shared interest, the Parties agree that each will, upon the written request of the other, participate actively and in good faith in any litigation challenging one or both Parties' actions taken or obligations assumed pursuant to, in accordance with or related to this Agreement, the Tribe-County Tax ILA or the Interim Trust Improvement Tax Code that is implemented by this Agreement, in order to defend such actions, obligations, Agreement, ILA and Tax. The nature of a Party's participation in such litigation may be through intervention or argument as a friend of the court. The Parties agree that they will discuss in good faith the nature of each other's participation, but that each Party retains the authority and discretion to determine the form of its participation pursuant to this Paragraph.

12. LIABILITY: Each Party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions or those of its officials, officers, agents, or employees to the fullest extent required by law. It is further agreed that no liability shall attach to the Tribe or LCSD by reason of entering into this Agreement except as expressly provided herein.

13. MATERIAL BREACH AND TERMINATION: In the event of a material breach of this Agreement by either Party that is not cured within forty-five (45) days of receipt of written notice of the claimed breach (and such additional reasonable time as may be

agreed upon by the Parties), the non-breaching Party hereto may terminate this Agreement by giving sixty (60) days notice in writing of the uncured breach either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the other Party's last known address. Any claim of a material breach or any notice of termination shall be subject to dispute resolution in accordance with Section 20. If such dispute resolution is invoked, the termination of the Agreement shall not be effective until the completion of the dispute resolution proceedings resulting in a final order directing termination of the Agreement.

14. **CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS:** The Agreement may be changed, modified, amended or waived only by written agreement executed by the Parties hereto. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

15. **SEVERABILITY:** In the event any term or condition of this Agreement or the Tribe-County Tax ILA or application thereof to any person or circumstances, or any term of the Swinomish Interim Trust Improvement Use and Occupancy Tax, is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this Agreement are declared severable.

16. **STATUS OF AGREEMENT:** This Agreement is in addition to, and is not intended to replace, substitute, modify, or otherwise amend any other agreements by and between the Parties. Any other agreements by and between the Parties shall continue in full force and effect.

17. **ENTIRE AGREEMENT:** This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

18. **CAPTIONS & COUNTERPARTS:** The captions in this Agreement are for convenience and reference only and do not define, limit, or describe the scope or intent of this Agreement. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

19. **NEUTRAL AUTHORSHIP:** Each of the terms and provisions of this Agreement have been reviewed and negotiated, and represents the combined work product of the Parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the Party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement. The Parties represent that they have had a full and fair opportunity to seek legal advice with respect to the terms of this Agreement and have either done so, or have voluntarily chosen not to do so. The Parties represent and warrant that they have fully read this Agreement, that they understand its meaning and effect, and that they enter

into this Agreement with full knowledge of its terms. The Parties have entered into this Agreement without duress or undue influence.

20. DISPUTE RESOLUTION AND LIMITED WAIVER OF SOVEREIGN IMMUNITY

20.1 **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of Washington State and any applicable Federal law. Venue for the Washington State Superior Court shall be Skagit County, Whatcom County, or Snohomish County pursuant to the terms of this Agreement.

20.2 **Arbitration.** Any controversy, claim or dispute concerning the making, formation, validity and performance of this Agreement, and issues related to the existence, interpretation and enforceability of the arbitration provisions of this Agreement, shall be subject to mandatory arbitration conducted by a single arbitrator in either Skagit or King County, whichever is most efficient for the Parties and the arbitrator.

20.2.1 Arbitration under this Section 20 shall be governed by the Washington Uniform Arbitration Act, RCW 7.04A; provided, however, that the consolidation provisions in RCW 7.04A.100, and punitive damages provisions in RCW 7.04A.210(1),(5) are not applicable to any arbitration under this section; and provided further that the remaining provisions in RCW 7.04A.210 are subject to Subsection 20.4 of this Agreement.

20.2.2 A competent arbitrator shall be chosen by agreement of the Parties. If the Parties are unable to agree on an arbitrator within thirty (30) calendar days of a Party demanding arbitration, either Party may request that a judge of the Washington State Superior Court appoint an arbitrator. Each Party shall pay one-half the arbitrator's fee. Each Party shall pay its own attorneys' fees, costs and expenses.

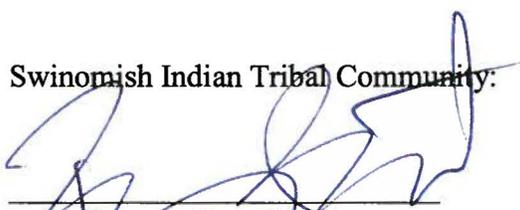
20.2.3 The Parties may jointly agree to stay mandatory arbitration proceedings pending voluntary mediation of the controversy, claim or dispute before a mediator jointly chosen by the Parties.

20.3 **Compelling, Enforcing, Reviewing, Modifying and Confirming Arbitration.** The Parties agree that pursuant to Subsection 20.2 of this Agreement and in accordance with RCW 7.04A the Washington State Superior Court shall have the authority to compel or enforce arbitration and to review, modify or confirm an arbitration award. In the event that any such judicial proceedings are initiated, the prevailing Party shall be entitled to its reasonable attorney's fees and costs incurred in compelling arbitration or confirming an arbitration award. To the extent that the Superior Courts of the State of Washington are determined not to have jurisdiction over this Agreement and its enforcement, the arbitration award herein may, in the alternative, be enforced in the U.S. District Court for

the Western District of Washington pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*

20.4 Limited Waiver of Sovereign Immunity. Except as expressly provided in this Section 20, nothing in this Agreement is intended to be or shall constitute or shall be construed as a waiver, limitation or modification of the sovereign immunity of the Swinomish Indian Tribal Community from unconsented suit. The Tribe hereby waives its sovereign immunity only with regard to arbitration proceedings or proceedings in the Washington State Superior Court or U.S. District Court for the Western District of Washington described in this Section 20 "Dispute Resolution," entering judgment on an arbitrator's award and enforcing in Washington State Superior Court (pursuant to Title 6 RCW) or U.S. District Court for the Western District of Washington, such judgment. This limited waiver relates only to legal actions by LCSd seeking any relief or enforcement of rights authorized by this Agreement and not to legal actions by any other person, corporation, partnership, or entity whatsoever. This limited waiver authorizes relief compelling the Tribe to take action expressly required by this Agreement and/or awarding monetary damages against the Tribe for breach of this Agreement. The Tribe agrees to maintain Commercial General Liability insurance coverage with limits of liability of at least One Million Dollars (\$1,000,000) during the term of this Agreement. The Tribe agrees to provide a certificate of said insurance to LCSd upon request. The Tribe (as authorized by resolution[s]) does not waive, limit, or modify its sovereign immunity from uncontested suit except as expressly provided in this Section 20. This limited waiver does not extend to proceedings in any other forum, regarding any other matter, or create any rights in any person who is not a party to the Agreement. This limited waiver does not authorize punitive damages against either Party. Upon execution of this Agreement, and if requested, the Tribe will provide to LCSd resolution(s) from the Swinomish Indian Senate ratifying this Agreement and this Limited Waiver of Sovereign Immunity.

Swinomish Indian Tribal Community:



Brian Porter, Vice-Chair
Swinomish Tribal Senate

(Date: 10/23, 2014)

Mailing Address:

11404 Moorage Way
LaConner, WA 98257

