

INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN LA CONNER SCHOOL DISTRICT AND THE
SWINOMISH INDIAN TRIBAL COMMUNITY
CONCERNING THE ASSESSMENT, COLLECTION AND DISTRIBUTION OF
SWINOMISH 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 "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 (herein "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 years prior to and including 2014, 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. In order to help maintain continuity of services and budget predictability, the Tribe and the County agreed through an Interlocal Cooperative Agreement 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.
5. Similarly, in order to help maintain continuity of services and budget predictability, the Tribe and LCSD agreed through an Interlocal Cooperative Agreement 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.

6. The Tribe and LCSD continue to 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.
7. To further these goals, the Tribe has adopted the Swinomish Trust Improvement Use and Occupancy Tax Code (herein "Trust Improvement Tax" or "Use and Occupancy Tax") imposing taxes on the use and occupancy of permanent improvements on trust lands within the Swinomish Reservation based upon the Tribe's assessed value of those improvements, 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 Levy Code 1580 (or an equivalent subsequent Levy Code generally applicable to improvements on similarly situated non-trust properties) each such year.
8. To the extent LCSD receives supplemental funding, such as through levy equalization or an alteration in the state's funding mechanism for school districts, the Parties agree to negotiate in good faith as to whether an adjustment is appropriate to the Tribe's contribution under this Agreement.
9. In building upon the Parties' commitment to joint and cooperative action and mutual goals of reducing disruption in the transition between State and County taxation of improvements on trust land to Tribal taxation and maintaining continuity of services and budget predictability embodied in the Parties' 2014 Interlocal Cooperative Agreement, the Parties reaffirm the goals and purposes of that Agreement and commit to the shared goal of establishing staff working groups to exchange information and engage in consultation regarding future funding opportunities, cooperative action and agreements related to Tribal educational funding. The Parties collectively recognize the importance of such consultation and collective action and hope to strengthen and maintain strong ties and bonds through mutual support, direct communication and continuity of services.

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 present and establish the respective responsibilities and obligations of the Parties regarding the collection, distribution, and application of the Trust Improvement Tax to LCSD's educational mission and to further the Parties' shared goals of ensuring all LCSD students receive high-quality, first-rate educational instruction and opportunities.

1.1 The Parties agree that the Trust Improvement Use and Occupancy Tax Code is a necessary, lawful and valid exercise of the Tribe's power, authority and jurisdiction.

2. TERM OF AGREEMENT: This Agreement shall become effective upon the date that both Parties have approved and executed the Agreement. The term of this Agreement shall be

through the earlier of December 31, 2016 or the date on which all payments are made pursuant to Section 3.1 of this Agreement, unless sooner terminated pursuant to the terms herein.

3. RESPONSIBILITIES.

3.1 Responsibilities of the Tribe

3.1.1 The Tribe agrees to pay to LCSD the total amount of \$400,000.00 from revenues received by the Tribe pursuant to assessments in 2016 of taxes owing under the Trust Improvement Tax. To the extent LCSD receives levy equalization funding from the State of Washington, the Parties agree to negotiate in good faith as to whether an adjustment is appropriate to the Tribe's contributions under this Agreement.

3.1.2 The Tribe's first payment to LCSD will be made in June 2016 in an amount calculated as follows:

- (a) dividing the amount of the 2016 Trust Improvement Tax revenues received by the Tribe, as of May 31, 2016, by the total 2016 Trust Improvement Tax revenues assessed by and owing to the Tribe, and
- (b) multiplying the resulting fraction times \$400,000.00.

3.1.3 The Tribe's second payment will be made in December 2016 in an amount calculated as follows:

- (a) dividing the amount of the 2016 Trust Improvement Tax revenues received by the Tribe, as of November 30, 2016, by the total 2016 Trust Improvement Tax revenues assessed by and owing to the Tribe, and
- (b) multiplying the resulting fraction times \$400,000.00, and
- (c) subtracting the amount previously paid by the Tribe to LCSD pursuant to Section 3.1.2 of this Agreement.

3.1.4 If the Tribe has not received sufficient 2016 Trust Improvement Tax revenues by November 30, 2016 to pay LCSD a total of \$400,000.00 in and by December 2016, then the Tribe shall periodically pay LCSD additional amounts that Tribal receipts of additional 2016 Trust Improvement Tax revenues may allow, until such time as no further 2016 revenues are received by the Tribe or when LCSD has been paid a total of \$400,000.00.

- (a) The amount of the additional payments shall be calculated in a manner consistent with the formula in Section 3.1.3, utilizing an appropriate date after November 30, 2016 to determine the revenues receipts for purposes of such calculations.

- 3.1.5 The Tribe agrees to pay the additional amount of \$50,000.00 from revenues received by the Tribe pursuant to assessments in 2016 of taxes owing under the Trust Improvement Tax, to be utilized by LCSD solely and exclusively for support of student technology needs.
- 3.1.6 The Tribe acknowledges its shared interest with LCSD in providing an educational curriculum that includes Native American history, culture, language and government in Washington State in general and in the geographic area served by the LCSD, particularly the Swinomish Indian Reservation, by providing information and assistance to LCSD in fully implementing the following according to a schedule agreed upon in good faith between the Tribe and LCSD:
- (a) Customizing the LCSD's "Since Time Immemorial" curriculum as follows:
 - (1) by incorporating material concerning Native Americans in the geographic area served by the LCSD, particularly the Swinomish Indian Reservation;
 - (2) by developing other classes such as freshman research, English/Language Arts and electives;
 - (b) Teaching and giving second-language credit for Lushootseed for grades K-12.
- 3.1.7 The Tribe acknowledges that the implementation of the customized "Since Time Immemorial" curriculum and the teaching and giving of second-language credit for Lushootseed as discussed above requires historical, cultural and linguistic resources that may not currently be readily available to LCSD. The Tribe will work to assist with gathering, obtaining as necessary and providing such resources for the implementation of the customized "Since Time Immemorial" curriculum and the teaching and giving of second-language credit for Lushootseed. LCSD's implementation of that curriculum and the second-language teaching and credit for Lushootseed is dependent upon the Tribe assisting with gathering, obtaining and providing such resources to LCSD.

3.2 Responsibilities of LCSD

- 3.2.1 In accordance with the mutual responsibilities provided in Section 9, LCSD acknowledges its shared interest with the Tribe in public support of and compliance with the Use and Occupancy Tax so as to provide certainty and stability to LCSD and the Tribe. In order to further those interests, LCSD will act consistent with RCW 42.17A.555, WAC 390-05-271 and WAC 390-05-273 to provide the public with information regarding the Use and Occupancy Tax.

3.2.2 LCSD acknowledges its shared interest with the Tribe in providing an educational curriculum that includes Native American history, culture, language and government in Washington State in general and in the area served by the LCSD, particularly the Swinomish Indian Reservation. As described and acknowledged by the Tribe in Section 3.1.6, LCSD may not currently have historical, cultural and linguistic resources readily available to implement the customized curriculum as described in Section 3.1.5. If the Tribe is able to assist with gathering, obtaining as needed and providing such resources, LCSD will implement the customized curriculum as described in Section 3.1.5 by implementing the following according to a schedule agreed upon in good faith between the Tribe and LCSD:

- (a) Customizing the LCSD's "Since Time Immemorial" curriculum as follows:
 - (1) by incorporating material concerning Native Americans in the area served by the LCSD, particularly the Swinomish Indian Reservation;
 - (2) by developing other classes such as freshman research, English/Language Arts and electives;
- (b) Teaching and giving second-language credit for Lushootseed for grades K-12.

3.2.3 LCSD agrees to provide the Tribe with:

- (a) an estimated annual LCSD budget at a time consistent with the schedule by which such budgets are developed, and
- (b) such information concerning LCSD finances and services as the Tribe may reasonably request.

4. **COSTS AND EXPENSES:** Each Party shall each 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.

5. **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.

5.1 LCSD's representative shall be:

Superintendent of the La Conner School District
305 N. 6th
P.O. Box 2103
La Conner, WA 98257
Phone: (360) 466-3171
Email: tbruce@lcsd.wednet.edu

5.2 The Tribe's representative shall be:

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

6. 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.

7. 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.

8. 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.

9. MUTUAL DEFENSE OF AGREEMENT:

9.1 The Parties acknowledge that the Trust Improvement Tax and actions taken or obligations assumed by the Parties pursuant to, in accordance with or related to this Agreement may be subjected to legal challenge(s). The Parties acknowledge their interest in upholding the legality of such Tax and this Agreement, and actions taken and obligations assumed pursuant to the Tax and this Agreement, so as to provide certainty and stability to LCSD and the Tribe.

9.2 The Parties agree that each will, upon the written request of the other, participate 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 or the Trust Improvement Tax Code that is implemented by this Agreement, in order to defend such actions, obligations, Agreement and Tax. The nature of a

Party's participation in such litigation may be through intervention or as a friend of the court, or other form of participation to be determined by the participating Party. 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.

10. INDEMNIFICATION: Except as provided to the contrary herein, each Party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to the fullest extent required by law, and further agrees to save, indemnify, defend, and hold the other Party harmless from any such liability for the wrongful and/or negligent acts or omissions of the indemnifying Party or of the indemnifying Party's officials, officers, agents, or employees. It is further provided that no liability shall attach to the Tribe or LCSD by reason of entering into this Agreement except as expressly provided herein.

11. 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 18. 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.

12. 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.

13. SEVERABILITY: In the event any term or condition of this Agreement or application thereof to any person or circumstances, or any term of the Swinomish 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. DISPUTE RESOLUTION AND LIMITED WAIVER OF SOVEREIGN IMMUNITY

18.1 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.

18.2 Arbitration. Any controversy, claim or dispute concerning the making, formation, validity, obligations under or breach 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.

18.2.1 Arbitration under this Section 18 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 18.4 of this Agreement.

18.2.2 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 initially pay one-half the arbitrator's fee but the prevailing Party shall be awarded its share of such fees, in addition to its reasonable attorneys' fees, costs and expenses.

18.2.3 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.

- 18.3 Compelling, Enforcing, Reviewing, Modifying and Confirming Arbitration. The Parties agree that pursuant to Subsection 18.2 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.
- 18.4 Limited Waiver of Sovereign Immunity. Except as expressly provided in this Section 18, 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 18 "Dispute Resolution and Limited Waiver of Sovereign Immunity," 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 and LCSD agree 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 and LCSD agree to name each other as additional insureds on the Commercial General Liability insurance policy obtained pursuant to this Agreement and to provide each other with a certificate of said insurance. 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 18. 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 when requested, the Tribe will provide to LCSD resolution(s) from the Swinomish Indian Senate ratifying this Agreement and this Limited Waiver of Sovereign Immunity.

