

INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN
SKAGIT COUNTY FIRE PROTECTION DISTRICT 13
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 Fire District 13, a junior taxing district of the State of Washington (herein the "FD13") pursuant to the authority granted by Chapter 39.34 RCW, Interlocal Cooperation Act. FD13 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 the value of 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 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 FD13 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 FD13 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. The Tribe has agreed to contribute \$250,000 to FD13 in 2018, payable pursuant to the procedure set out in Paragraph 2 and subsequent subparagraphs, below.

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 Trust Improvement Use and Occupancy Taxes (herein "Trust Improvement Tax").

- 1.1 The Tribe has adopted a Trust Improvement Tax Code 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.
- 1.2 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.
- 1.3 The Parties agree that the duties and responsibilities assumed by FD13 in this Agreement concerning the Trust Improvement Tax Code are necessary, lawful and valid actions within FD13's power, authority and jurisdiction.

2. RESPONSIBILITIES.

- 2.1 The Tribe agrees to pay to FD13 the total amount of \$250,000.00 from revenues received by the Tribe pursuant to assessments in 2018 of taxes owing under the Trust Improvement Tax.
- 2.2 The Tribe's first payment to FD13 will be made in June 2018 in an amount calculated as follows:
 - (a) dividing the amount of the 2018 Trust Improvement Tax revenues received by the Tribe, as of May 31, 2018, by the total 2018 Trust Improvement Tax revenues assessed by and owing to the Tribe, and

- (b) multiplying the resulting fraction times \$250,000.00.
- 2.3 The Tribe's second payment will be made in December 2018 in an amount calculated as follows:
 - (a) dividing the amount of the 2018 Trust Improvement Tax revenues received by the Tribe, as of November 30, 2018, by the total 2018 Trust Improvement Tax revenues assessed by and owing to the Tribe, and
 - (b) multiplying the resulting fraction times \$250,000.00, and
 - (c) subtracting the amount previously paid by the Tribe to FD13 pursuant to Paragraph 2.2 of this Agreement.
- 2.4 If the Tribe has not received sufficient 2018 Trust Improvement Tax revenues by November 30, 2018 to pay FD13 a total of \$250,000 in and by December 2018, then the Tribe shall, subject to subparagraph (b) below, periodically pay FD13 additional amounts that Tribal receipts of additional 2018 Trust Improvement Tax revenues may allow, until such time as no further 2018 revenues are received by the Tribe or when FD13 has been paid a total of \$250,000.
 - (a) The amount of the additional payments shall be calculated a manner consistent with the formula in Paragraph 2.3, utilizing an appropriate date after November 30, 2018 to determine the revenues receipts for purposes of such calculations.
 - (b) After December 31, 2020, periodic payments of the 2018 contribution will be suspended until such time as the Tribe has utilized tax lien foreclosure proceedings on all properties with taxes delinquent for a period of at least two years and the Tribe has received payment in full of all such 2018 delinquent taxes. At that time, FD13 will be paid the remaining unpaid amount contributed by this Agreement.
- 2.5 FD13 agrees to provide the Tribe with (a) an estimated annual FD13 budget at the time FD13 submits its contribution request and (b) such information concerning FD13 finances and services as the Tribe may reasonably request.
- 2.6 Any contribution amounts that may be authorized by the Swinomish Senate for years after 2018 under this Interlocal Agreement will be memorialized in annual Addenda executed by the parties with the same formality as this Interlocal Agreement and shall be paid out pursuant to and in accordance with this Paragraph 2.
 - (a) Periodic payments of such future contributions that are unpaid as of December 31 of the third year after assessment of the taxes from

which the contribution is authorized will be suspended and paid in a manner consistent with Paragraph 2.4(b).

2.7 FD13 agrees that any future funds contributed in subsequent years will be utilized only for such purposes as may be specified in the Addendum for such year.

3. 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, 2020 or the date on which all payments are made pursuant to Paragraph 2 of this Agreement, unless sooner terminated pursuant to the terms herein.

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 FD13's representative shall be:

District Fire Chief
PO Box 1007
17433 Snee-Oosh Road
La Conner, WA 98257
Phone: (360) 466-1224
Email: royhorn@cnw.com

5.2 The Tribe's representative shall be:

Swinomish Tax Administrator
PO Box 679
11404 Moorage Way
La Conner, WA 98257
Phone: (360) 542-7622
Email: aneely@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 shared interest in upholding the legality of such Tax and this Agreement, and actions and obligations undertaken pursuant to the Tax and this Agreement, so as to provide certainty and stability to FD13 and the Tribe concerning anticipated tax revenues for 2018.

9.2 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 or the Trust Improvement Tax Code, 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 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.

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 FD13 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 Paragraph 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 Tax Code, 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 AND 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 Paragraph 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 paragraph; and provided further that the remaining provisions in RCW 7.04A.210 are subject to Subparagraph 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 Subparagraph 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 Paragraph 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 Paragraph 18 ("Dispute Resolution"), entering judgment on an arbitrator's award and enforcing such judgment in Washington State Superior Court (pursuant to Title 6 RCW) or U.S. District Court for the Western District of Washington. This limited waiver relates only to legal actions by FD13 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 FD13 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 Paragraph 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 if requested, the Tribe will provide to FD13 resolution(s) from the Swinomish Indian Senate ratifying this Agreement and this Limited Waiver of Sovereign Immunity.

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