

INTERLOCAL COOPERATIVE AGREEMENT  
BETWEEN  
SKAGIT COUNTY  
AND THE  
SWINOMISH INDIAN TRIBAL COMMUNITY  
CONCERNING THE ASSESSMENT, COLLECTION AND CONTRIBUTION OF  
SWINOMISH TRUST IMPROVEMENT USE AND OCCUPANCY TAXES  
AND  
ADMINISTRATION OF COUNTY AND TRIBAL TAX SYSTEMS

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 Skagit County, a political subdivision of the State of Washington (herein the "County") pursuant to the authority granted by Chapter 39.34 RCW, Interlocal Cooperation Act and the Swinomish Constitution. The County 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 2014, 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, regardless of 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 Reservation.

5. The Tribe and the County 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.
6. The Tribe and the County desire to take joint and cooperative action to help reduce disruption in the transition from State and County taxation of improvements on trust land to Tribal taxation.
7. The County possesses extensive data related to the nature, value and past taxation of improvements on trust land within the Swinomish Reservation.
8. The County has extensive experience in administration of property taxes, and has developed expertise, policies, procedures, standardized documents and protocols for administration of these taxes.
9. The County's data, expertise, policies, procedures, documents and protocols, including but not limited to those of the County Assessor and Treasurer, have been and will be of assistance to the Tribe in the further implementation of its Use and Occupancy Tax Code. The Tribe recognizes the value of this assistance, and the County has been and remains willing to make these available to the Tribe, with due regard for minimizing any impact upon County operations and resources.
10. The Tribe wishes to contribute \$50,000 from collected Use and Occupancy Tax revenue to the County for the sole and exclusive use of Medic 1 in 2017.
11. The County and Tribe agree that the Tribe will act as the collector and distributor of taxes from the owners of two improvements on Parcel numbers P129543 and P129544 that are located on both fee simple and trust land and are therefore subject to both County/State taxation and Tribal taxation.
12. The County and the Tribe recognize the existence of current and potential for future confusion and errors by taxpayers, lenders and title companies in compliance with the County and/or Tribal tax requirements, and wish to cooperate to implement their respective tax systems as efficiently and harmoniously as possible.

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 transition from County/State property taxation to implementation, and collection and distribution, of Swinomish Trust Improvement Use and Occupancy Taxes (herein "Use and Occupancy Tax").

- 1.1 The Tribe has adopted a Trust Improvement Use and Occupancy 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, 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.
- 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 the County in this Agreement concerning the Trust Improvement Use and Occupancy Tax Code are necessary, lawful and valid actions within the County's power, authority and jurisdiction.
- 1.4 The Parties agree that the duties and responsibilities assumed by the Tribe in this Agreement concerning the Trust Improvement Use and Occupancy Tax Code, the collection and distribution of taxes on improvements located on both fee simple and trust land and the cooperative administration of County/State property tax and the Tribal Use and Occupancy Tax are necessary, lawful and valid actions within the Tribe's power, authority and jurisdiction.

2. RESPONSIBILITIES: The Parties to this Agreement mutually agree as follows:

**2.1 The Tribe:**

- 2.1.1 The Tribe agrees to pay to the County, for the sole and exclusive use of Medic 1, the total amount of \$50,000.00 from revenues received by the Tribe pursuant to 2017 taxes owing under the Use and Occupancy Tax.
- 2.1.2 The Tribe's first payment to the County for Medic 1 will be made upon approval of this Agreement in an amount calculated as follows:

(a) dividing the amount of the 2017 Use and Occupancy Tax revenues received by the Tribe, as of May 31, 2017, by the total 2017 Trust Improvement Tax revenues assessed by and owing to the Tribe, and

(b) multiplying the resulting fraction times \$50,000.00.

2.1.3 The Tribe's second payment will be made in December 2017 in an amount calculated as follows:

(a) dividing the amount of the 2017 Use and Occupancy Tax revenues received by the Tribe, as of November 30, 2017, by the total 2017 Use and Occupancy Tax revenues assessed by and owing to the Tribe, and

(b) multiplying the resulting fraction times \$50,000.00, and

(c) subtracting the amount previously paid by the Tribe to the County pursuant to Section 2.1.2 of this Agreement.

2.1.4 If the Tribe has not received sufficient 2017 Use and Occupancy Tax revenues by November 30, 2017 to pay the County a total of \$50,000 in and by December 2017, then the Tribe shall periodically pay the County additional amounts that Tribal receipt of additional 2017 Use and Occupancy Tax revenues may allow, until such time as no further 2017 revenues are received by the Tribe or when the County has been paid a total of \$50,000.

(a) The amount of the additional payments shall be calculated in a manner consistent with the formula in Section 2.1.3, utilizing an appropriate date after November 30, 2017 to determine the revenues received for purposes of such calculations.

2.1.5 The Tribe is the addressing authority for the Swinomish Indian Reservation. As such, the Tribe has jurisdiction and is solely responsible to ensure that addresses meet Tribal public safety standards, and to mitigate any conflicts in on-Reservation addresses.

## 2.2 **The County:**

2.2.1 The County will utilize funds received from the Tribe's contribution of \$50,000.00 from revenues received by the Tribe pursuant to 2017 taxes owing under the Use and Occupancy Tax to pay solely and exclusively for services provided by or expenses incurred by Medic 1.

2.2.3 The County agrees to provide the Tribe with (a) an estimated 2018 Medic 1 budget no later than November 30, 2017 and (b) such

information concerning Medic 1 finances and services as the Tribe may reasonably request.

- 2.2.4 The County will continue to record and to post electronically on its publicly available website information and documents concerning the transfer of ownership of improvements located on leased trust property within the Swinomish Reservation.
  - 2.2.5 In 2017 the Tribe will assume addressing services and assign addresses for all new structures. The Tribe will assign the address, notify all interested parties and agencies, and send a new address plaque to the homeowner. The Tribe and County may negotiate and memorialize by separate Inter Local Agreement the terms for any provision by the County of services or materials for assigning and posting new addresses in 2017.
  - 2.2.6 The Tribe and County agree to engage in continued government-to-government consultation with the shared objective of reaching agreement on a phased transfer from the County to the Tribe of road rights-of-way and road maintenance, repair and improvement responsibility within the Reservation. The Tribe previously proposed that the Swinomish Village sections of Pioneer Parkway, Reservation Road and Snee-Oosh Road depicted and described in Addendum 1 to this Agreement be identified as Phase 1, and that the continued consultation between the Tribe and County prioritize agreement on the transfer of responsibility and rights-of-way for these roads.
- 2.4 The Tribe and the County will continue to cooperate in the collection and distribution of taxes relating to improvements located on both fee simple and leased trust land.
- 2.4.1 The Tribe will assess, calculate, prepare and send tax bills for, collect and record the total amount of County/State property taxes and Tribal Use and Occupancy Taxes owing in connection with such improvements. Such taxes shall be billed by the Tribe as Use and Occupancy Taxes.
  - 2.4.2 The Tribe and County agree that the distribution of tax revenue collected in 2015 and thereafter for improvements that are located on both fee simple and leased trust land will be as follows, with these percentages subject to prospective adjustment in a future InterLocal Agreement pursuant to the results of a BLM survey:

P129543, 900 Cowichan Place – 83% - County, 17% - Tribe  
P129544, 901 Cowichan Place – 67% - County, 33% - Tribe

- 2.4.3 The Tribe shall pay to the County the amount of tax payments received that are allocated to property tax on the improvements on fee simple land, as determined pursuant to Section 2.4.2. The amount of such payments shall be paid in accordance with the schedule set forth in Sections 2.1.2 through 2.1.4 and when paid pursuant to the agreement, shall be considered timely.
- 2.4.4 The County shall make every effort to avoid sending delinquency notices to the taxpayers of P129543 and P129544.
- 2.4.5 The Tribe and the County will each bear their own costs in the cooperative collection, allocation and distribution of taxes relating to improvements located on both fee simple and leased trust land.
- 2.5 The Tribe and County will cooperate in resolving problems or issues that may arise relating to the administration of the County/State property tax and the Tribal Use and Occupancy Tax on the Swinomish Reservation.
  - 2.5.1 By way of example, but not limitation, the Tribe will transmit to the County any property tax payments relating to improvements on fee simple property that may be incorrectly paid to the Tribe rather than the County, and the County will transmit to the Tribe any Use and Occupancy Tax payments relating to improvements on leased trust property that may be incorrectly paid to the County rather than the Tribe. Transmittals pursuant to this paragraph shall be made to the other Party within 60 days of receipt to the extent possible.

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, 2017 or the date on which all payments are made pursuant to Section 2.1.1 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, or which that Party carries out as part of its ordinary governmental activities regardless 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 The County's representative shall be:

Skagit County Administrator  
1800 Continental Place  
Mount Vernon, WA 98273-5623  
Phone: (360)336-9300  
Email: timh@co.skagit.wa.us

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 or fee simple 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. USE OF DOCUMENTS AND MATERIALS PRODUCED:

9.1 The County 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 County by the Tribe for use by the County 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 County by the Tribe may be subject to public disclosure pursuant to applicable law (including, but not limited to RCW 42.56). The County 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.

- 9.2 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 the County 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 the County 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).

#### 10. MUTUAL DEFENSE OF AGREEMENT:

- 10.1 The Parties acknowledge that the Use and Occupancy 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 the State, County, local taxing districts and Tribe concerning tax revenues anticipated for 2017.
- 10.2 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 Use and Occupancy 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 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.

11. 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 County by reason of entering into this Agreement except as expressly provided herein.

12. 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 19. 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.

13. 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.

14. SEVERABILITY: In the event any term or condition of this Agreement or application thereof to any person or circumstance, 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.

15. 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.

16. 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.

17. 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.

18. 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.

## 19. DISPUTE RESOLUTION AND LIMITED WAIVER OF SOVEREIGN IMMUNITY

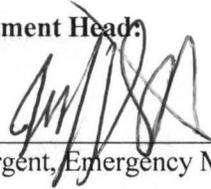
- 19.1 **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of Washington State and any applicable Federal law. Venue for the Washington State Superior Court shall be Skagit County, Whatcom County, or Snohomish County pursuant to the terms of this Agreement.
- 19.2 **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.
- 19.2.1 Arbitration under this Section 19 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 19.4 of this Agreement.
- 19.2.2 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.
- 19.2.3 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.
- 19.3 **Compelling, Enforcing, Reviewing, Modifying and Confirming Arbitration.** The Parties agree that pursuant to Subsection 19.2 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.*

- 19.4 Limited Waiver of Sovereign Immunity. Except as expressly provided in this Section 19, 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 19 "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 Skagit County 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 the County 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 19. 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 the County resolution(s) from the Swinomish Indian Senate ratifying this Agreement and this Limited Waiver of Sovereign Immunity.



**Department Head:**

  
\_\_\_\_\_  
Jeff Sargent, Emergency Medical Services Director

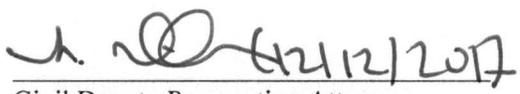
**Approved as to content:**

  
\_\_\_\_\_  
Dave Thomas, Skagit County Assessor

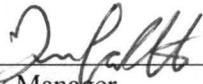
**Attest:**

  
\_\_\_\_\_  
Linda Hammer  
Clerk of the Board

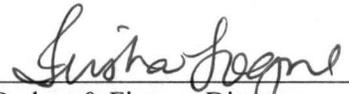
**Approved as to form:**

  
\_\_\_\_\_  
Civil Deputy Prosecuting Attorney

**Approved as to indemnification:**

  
\_\_\_\_\_  
Risk Manager

**Approved as to budget:**

  
\_\_\_\_\_  
Budget & Finance Director

