

**INTERLOCAL COOPERATION ACT AGREEMENT  
FOR MUTUAL AID  
BETWEEN  
SKAGIT COUNTY AND  
THE SWINOMISH INDIAN TRIBAL COMMUNITY**

THIS AGREEMENT (“Agreement”) is entered into under the Interlocal Cooperation Act (Chapter 39.34 RCW), and the Tribal Police Officers Act, chapter 10.92 RCW, and under the Constitution of the Swinomish Tribal Community, between Skagit County and the Swinomish Indian Tribal Community (“Tribe” or “Tribal”) in order to provide mutual aid as provided herein.

WHEREAS law enforcement agencies, such as the Skagit County Sheriff’s Office and the Swinomish Tribal Police, have the responsibility for protecting lives and property and keeping the peace; and

WHEREAS effective law enforcement depends upon the ability of responding officers to take emergency action to protect lives and property and to preserve the peace, without regard to jurisdictional limitations; and

WHEREAS the Tribal Police Officers Act, Laws 2008 c 224 (EHB 2476), chapter 10.92 RCW, provides a means to grant tribal police officers authority to act as general authority Washington peace officers and to act beyond the exterior boundaries of the Swinomish Indian Reservation; and

WHEREAS tribal police officers who qualify as general authority Washington peace officers under chapter 10.92 RCW have authority to enforce the criminal and traffic laws of the state under a notice of consent issued pursuant to the Washington Mutual Aid Peace Officers Power Act and do not require a special commission from the sheriff or police chief of the local jurisdiction to enforce such laws; and

WHEREAS it is necessary and desirable that a cooperative agreement be executed for the purpose of effectuating efficient law enforcement within Skagit County and the boundaries of the Swinomish Indian Reservation; and

WHEREAS it is not intended that the traditional law enforcement responsibilities of the signatory agencies be altered or that the agencies' existing authority be diminished, but rather that they be empowered to act in appropriate situations; and

WHEREAS it is intended that tribal police officers who have successfully fulfilled the requirements of RCW 43.101.157 and who are employed by a tribal authority which has provided sufficient proof of insurance to the Office of Financial Management for the State of Washington and in all other respects qualified to act under the Tribal Police Officers Act shall be eligible to act as general authority Washington peace officers; and

WHEREAS it is further intended by the parties that Swinomish Tribal Police officers who have qualified to act under the Tribal Police Officers Act shall be given consent to act within Skagit County; and

NOW, THEREFORE, the parties agree as follows:

1. **PURPOSE:** The Tribal Police Officers Act requires adequate vehicular and professional liability insurance, tribal police officer certification, and an interlocal agreement before a tribal police officer may be recognized and authorized to act as a general authority Washington police officer. This agreement is intended to recognize the further cooperation between the parties and support the Tribe's participation in local law enforcement efforts.

2. **RESPONSIBILITIES:**

a. **PEACE OFFICER AUTHORITY:** Upon approval by the state Office of Financial Management, a Swinomish Tribal Police Officer who is authorized under the Tribal Police Officers Act shall be recognized and authorized to act as a general authority Washington peace officer. All of the activity of that officer shall be in accord with the laws of the State of Washington and the United States of America.

b. **TRIBAL AUTHORITY:** This agreement shall not expand or diminish the authority or jurisdiction of any tribal court or other tribal authority.

c. **GEOGRAPHIC AUTHORITY:** The authority granted herein shall be coextensive with the exterior boundaries of the Swinomish Indian Reservation, except that a Swinomish Tribal Police officer who is commissioned or granted authority under RCW 10.92.020 and this Agreement may act beyond the exterior boundaries of the Swinomish Indian Reservation as authorized under RCW 10.93.070, including authorization by issuance of a letter of consent in accordance with Paragraph 3 of this Agreement.

d. **NO AGENCY OR EMPLOYEE STATUS:** The authority granted herein shall not create an agency or employee status between any Swinomish Tribal Police officer and any state or local government, and a Swinomish Tribal Police officer shall not be subject to the direction of any state or local government, unless the state or local government shall have separately created a special commission for any Swinomish Tribal Police officer.

e. **SOVEREIGNTY RETAINED:** Nothing in this Agreement shall affect the existing status and sovereignty of the Swinomish Tribal Community, whose traditional lands and territories lie within the borders of the State of Washington. Further, all immunities from liability and exemptions under state, federal, or tribal laws, ordinances and regulations which law enforcement officers have, in their own jurisdiction and in the jurisdiction for whom they are acting as law enforcement officers shall be effective in the jurisdiction in which they are giving assistance, unless otherwise prohibited by law.

f. **STATE AND LOCAL ENFORCEMENT:** Nothing in this agreement limits, impairs, expands or otherwise affects the existing authority under state or federal law of state or local law enforcement officers to enforce state law within the exterior boundaries of an Indian reservation or to enter Indian country in fresh pursuit, as defined in RCW 10.93.120, of a person suspected of violating state law, where the officer might otherwise not have jurisdiction.

g. **PROMPT REPORTING:** Any Swinomish Tribal Police officer issuing any Notice of Infraction, issuing any criminal citation, making any arrest, or completing any incident report while acting in the capacity of a general authority Washington peace officer pursuant to this Agreement shall be responsible for filing any required notices and citations with the appropriate court and shall enter information concerning such notices or citations and any incident report into the Spillman law enforcement record system within forty-eight (48) hours of the incident giving rise to the notice, citation, or arrest. When a probable cause statement and supporting documentation are required, such documents shall also be provided to the Skagit County Prosecuting Attorney within forty-eight hours or as directed by the Skagit County Prosecuting Attorney.

h. **COURT PROCESS:** Any notice of infraction or citation issued by a Swinomish Tribal Police officer while acting in the capacity of a general authority Washington peace officer pursuant to this Agreement shall be to a Washington State court. Any citation or infraction issued by a Swinomish Tribal Police officer within the exterior boundaries of the Swinomish Indian Reservation pursuant to Swinomish Tribal Police authority under Federal and/or Tribal law shall be cited to Federal or Swinomish Tribal Court.

i. **INVESTIGATIONS/WARRANTS AND ARREST:** Any investigation, warrant, or arrest undertaken pursuant to this Agreement shall be in accordance with applicable state or federal law.

j. REFERRAL TO PROSECUTING AUTHORITY: Whenever any matter is going to be referred to the Skagit County Prosecuting Attorney for the consideration of filing criminal charges, the Tribe agrees to provide all necessary reports and/or complete all necessary paperwork as required by the Skagit County Prosecuting Attorney.

k. EVIDENCE RECEIPT, SAFEGUARDING, AND RETENTION: Whenever any matter is referred to the Skagit County Prosecuting Attorney for the consideration of filing criminal charges, the responsible Swinomish Tribal Police officer(s) shall properly receipt all property and evidence and provide a complete inventory sheet of having done so in accordance with applicable Swinomish Tribal Police procedures. All property so receipted shall be safeguarded and maintained in a secure environment that may be accessed for viewing. A log shall be kept of all persons with access to the property and said log shall indicate who removes and returns property. No property shall be released except upon written directive of the Skagit County Prosecuting Attorney, court order, or by the Chief of the Swinomish Tribal Police or his or her designee. Tribe agrees to retain the property in accordance with any period of retention established by the Skagit County Prosecuting Attorney.

l. SUBPOENA/DISCOVERY: All rules of discovery in a criminal case shall apply to matters undertaken pursuant to this Agreement, and the Tribe agrees that its law enforcement personnel, including but not limited to Swinomish Tribal Police officers and evidence custodians, will honor and comply with a subpoena or other court process issued in connection with criminal proceedings undertaken pursuant to this Agreement.

m. NOTIFICATION TO PROSECUTING ATTORNEY: In the event that any Swinomish Tribal Police officer who has been certified by the Washington State Criminal Justice Training Commission should become decertified, the Tribe agrees to immediately notify the Skagit County Sheriff and the Skagit County Prosecuting Attorney. In the event that any Swinomish Tribal Police officer shall be the subject of any sustained finding of misconduct involving truthfulness or other instance that may be considered as "Brady" material (*Brady v. Maryland*), such finding shall be immediately reported to the Skagit County Prosecuting Attorney.

n. JAIL BOOKINGS: The Tribe shall be responsible for the payment of any booking fee or other cost for bookings at the Skagit County jail required for detention of Tribal members or other persons who are cited into Swinomish Tribal Court. The Tribe is not responsible for the payment of any booking fee or other cost for bookings required for detention of persons who are cited into State Court.

o. PRE-TRIAL INTERVIEWS and MOTIONS: The Tribe agrees that its personnel shall be available at reasonable times and upon reasonable notice for any necessary pre-trial interviews, depositions, or motions.

p. FOLLOW-UP INVESTIGATION: In the event that the County Prosecuting Attorney requires or requests follow-up investigation on any matters which originated with the Tribe and which were undertaken pursuant to this Agreement, the Tribe agrees to assign such person or persons as are necessary to accomplish this request.

3. NOTICE OF CONSENT: Under authority of RCW 10.93.070, upon execution of this agreement and the Tribe's qualification of its Tribal Police officers as general authority Washington peace officers, the Skagit County Sheriff may issue his letter of consent to such officers and authorize them to enforce the criminal and traffic laws of the State of Washington in areas outside the exterior boundaries of the Swinomish Indian Reservation and within Skagit County. Tribal Police officers acting under a letter of consent will follow their own agency's procedures and will remain the employees of the Tribe. Such officers shall notify and request assistance from the Skagit County Sheriff as soon as practicable under the circumstances when the Sheriff's authority is being exercised, and shall transport and turn over any arrestee to the Skagit County Sheriff. Officers holding commissions or special commissions from more than one state or local jurisdiction will be deemed to be acting under the commission or special commission of the party which would have primary jurisdiction under the laws of Washington for such matters.

4. TERM OF AGREEMENT: This agreement shall be effective for a period of ten (10) years, and shall be deemed renewed successfully for ten (10) additional years at the end of each term of renewal, unless a party has earlier terminated the Agreement as set forth in Paragraph 9.

5. MANNER OF FINANCING: No transfer of funds is intended by this agreement. Each party is responsible for its own costs.

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.

Skagit County's representative shall be the Skagit County Sheriff.  
Skagit County Sheriff  
600 South Third Street  
Mount Vernon, WA 98273

The Swinomish Tribal Community's representative shall be the Tribal Chief of Police:  
Chief of Police  
17353 Reservation Road  
La Conner, WA 98257

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. INDEMNIFICATION: Except as otherwise 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 its officials, officers, agents, or employees, 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. When a Swinomish Tribal Police officer is acting under the authority of a letter of consent from the Skagit County Sheriff, the Tribe will indemnify, defend, and hold harmless Skagit County from liability or expense arising out of or related to the negligent or otherwise tortious actions or omissions of the Swinomish Tribal Police officers; *provided* that the aggregate amount of such indemnity arising out of each incident shall not exceed amount(s) available to pay such claims under the insurance policy(s) or self-insurance applicable to the claim. The Tribe will continuously insure or self-insure, and Skagit County and, where applicable, each agency of the State or its political subdivisions will continuously insure or self-insure against the wrongful exercise of jurisdiction, including the liability herein assumed. Policies of insurance or programs of self-insurance required hereunder will name as an additional insured each signatory (and the officers and employees of such signatory) whose police officers have been granted a special commission, or whose officers are recognized and authorized to act as a general authority Washington peace officer pursuant to this Agreement, by the primary insured. Each such policy of insurance or self-insurance will require notice in accordance with the applicable insurance policy to each of the signatory parties hereto, who are required to be insured, prior to the effective date of any cancellation or reduction of coverage. Policies of insurance or self-insurance obtained by the parties for the benefit of other parties hereto shall, to the extent of policy coverage, expressly prohibit the insurer or self-insured from asserting a defense of sovereign immunity to claims for indemnification pursuant to this Paragraph made under the policy or self-insurance by a party or officers or employees of a party. Policies of insurance obtained by the Tribe and found adequate by the Office of Financial Management, pursuant to RCW 10.92.020(2)(a), shall satisfy the requirements of this Paragraph. Each Party will provide evidence of such insurance or self-insurance to the satisfaction of each other party.

9. TERMINATION: Any party hereto may terminate this Agreement upon thirty (30) days notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the other party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination. Termination of this Agreement by any party shall not affect or diminish authority exercised prior to delivery of required notice of termination. Termination of this Agreement shall not relieve any party of its agreement to insure *without interruption* and to indemnify the other party as required herein for the liability or expense arising out of actions prior to the time termination becomes effective.

10. **CHANGES, MODIFICATIONS, AMENDMENTS, AND WAIVERS:** No changes, modifications or amendments to this Agreement shall be valid or binding upon the parties unless such changes, modifications or amendments are in writing and executed by the parties. Waiver of breach of any term or condition of this Agreement must be contained in a writing executed by the parties and shall not be considered a waiver of any prior or subsequent breach.

11. **SEVERABILITY:** In the event any term or condition of this Agreement or application thereof to any person or circumstances 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.

12. **ENTIRE AGREEMENT:** This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. 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.

13. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Washington as to interpretation, validity and performance.

14. **DISPUTE RESOLUTION, LIMITED WAIVER OF SOVEREIGN IMMUNITY AND VENUE**

A. **Mediation.** Any controversy, claim or dispute, including claims and counterclaims by the parties concerning the making, formulation, validity, obligations and duties under and/or breach of the requirements in Paragraph 8 herein, including that the Tribe indemnify and continuously insure, and issues related to the existence, interpretation and enforceability of the mediation and arbitration provisions of this Agreement, shall be subject to mandatory mediation. A competent mediator shall be chosen by agreement of the parties. If the parties are unable to agree on a mediator, either party may request that a judge, pursuant to Section C appoint a mediator. The Tribe reserves the right to revoke its limited waiver of sovereign immunity if Skagit County fails to appear for mediation pursuant to this Section A.

B. **Arbitration.** If not resolved within fifteen (15) days after selection or appointment of a mediator (or such longer period as may be mutually agreed upon by the parties), any controversy, claim or dispute, including claims and counterclaims by the parties, concerning the making, formation, validity, obligations and duties under and/or breach of the requirement in Paragraph 8 herein that the Tribe indemnify or continuously insure, and issues related to the existence, interpretation and enforceability of the mediation and arbitration provisions of this Agreement, but excluding issues regarding or related to the sovereign immunity of the Tribe, shall be adjudicated exclusively by binding arbitration conducted by the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules of the AAA then in effect. The arbitration shall take place in the administrative offices of Skagit County, or such

other place as the parties may agree. One neutral arbitrator and the expedited procedures of such rules shall be used. The arbitrator shall have the power and authority to grant legal and equitable remedies in accordance with the provisions of this Agreement. Under no circumstances shall the arbitrator make any determinations regarding the Tribe's sovereign immunity from uncontested suit. The arbitrator shall have the authority to authorize or require discovery of the kinds provided for by the Washington Rules of Civil Procedure. The decision of the arbitrator shall be final and binding. The costs of arbitration shall be borne equally by the parties unless the arbitrator rules otherwise.

C. *Compelling and Enforcing Arbitration.* Mediation and arbitration pursuant to Sections A, B, D, and E may be compelled and a decision of the arbitrator pursuant to Sections B or D may be enforced through appropriate judicial proceedings initiated in the United States District Court for the Western District of Washington ("Federal Court"). In the event that Federal Court lacks jurisdiction over that proceeding, a proceeding to judicially compel mediation or arbitration or seek judicial enforcement of the arbitration decision may be brought in state courts of competent jurisdiction within the State of Washington, or, at the election of the County, in the Swinomish Tribal Court. In the event that such judicial proceedings are initiated, the prevailing party (as defined by the laws of Washington) shall be entitled to an award by the court of reasonable attorneys' fees and costs.

D. *Disputes Regarding or Related to Sovereign Immunity.* Any dispute regarding or related in any way to the sovereign immunity of the Tribe shall be resolved in Federal Court (Western District of Washington). In the event that the Federal Court determines that it lacks jurisdiction over the proceeding, the dispute regarding the sovereign immunity of the Tribe may be resolved, at the sole election of the County, in either Swinomish Tribal Court or by binding arbitration before a retired Federal judge chosen by agreement of the parties. If the parties are unable to agree as to the appointment of a retired Federal judge to serve as arbitrator, either party may request the appointment of an arbitrator pursuant to Section B. If the County elects to have the dispute regarding or related to the Tribe's sovereign immunity resolved before a retired Federal judge, the judge shall have the authority to award costs and reasonable attorney's fees if he finds that either of the parties' arguments, if made in U.S. District Court, would violate Federal Rule of Civil Procedure 11 (as in effect as of the date of execution of this Agreement).

E. *Limited Waiver of Sovereign Immunity.* Except as otherwise expressly provided in this Section E, nothing in this Agreement is intended to be or shall constitute or be construed as a waiver, limitation or modification of the Tribe's sovereign immunity from unconsented suit. The Tribe expressly grants a limited consent to submission, pursuant to Sections A, B, D, and E, of disputes arising under this Agreement only from its failure to indemnify or continuously insure as required in Paragraph 8 herein, and hereby waives its sovereign immunity with regard to mediation pursuant to Section A, to arbitration pursuant to Section B, to lawsuits pursuant to Section C solely seeking to compel such mediation or arbitration or seeking enforcement of an arbitration decision concerning disputes arising under this Agreement only from its failure to indemnify or continuously insure, and lawsuits pursuant to Section D solely seeking to resolve claims arising under this Agreement regarding or related to the sovereign immunity of the Tribe.

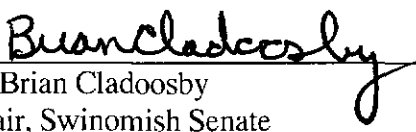


This limited waiver relates only to legal actions by Skagit County seeking any relief or enforcement of rights authorized by this Agreement and not to legal actions by any other person, corporation, partnership, or entity whatsoever. This limited waiver authorizes relief compelling the Tribe to take action expressly required by this Agreement and/or awarding monetary damages against the Tribe for breach of this Agreement, provided, however, that any such damage award shall not exceed amount(s) available to pay such claims under the insurance policy(s) or self-insurance applicable to the claim. The Tribe does not waive, limit, or modify its sovereign immunity from uncontested suit except as expressly provided in this Section E. 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.

15.. CONFLICT WITH PRIOR AGREEMENT: In the event of a conflict between the terms of this Agreement and the terms of a Cooperative Law Enforcement Agreement Between the Swinomish Indian Tribal Community and Skagit County (as currently in effect or as extended), the terms of this Agreement shall control.

IN WITNESS WHEREOF, The Swinomish Indian Tribal Community has executed this Agreement this 7th day of July, 2011.

THE SWINOMISH INDIAN TRIBAL COMMUNITY

by:   
M. Brian Cladoosby  
Chair, Swinomish Senate

Mailing Address:

11404 Moorage Way  
LaConner, WA 98257  
Phone: (360) 466-7200

IN WITNESS WHEREOF, Skagit County has executed this Agreement this 25 day of July, 2011.

APPROVED:

BOARD OF COUNTY COMMISSIONERS  
SKAGIT COUNTY, WASHINGTON

Ron Wesen

Ron Wesen, Chairman

Kenneth A. Dahlstedt

Kenneth A. Dahlstedt, Commissioner

ABSENT

Sharon D. Dillon, Commissioner

RECOMMENDED:

By: Will Reichardt  
Sheriff Will Reichardt

By: Lisha Logne  
Budget & Finance Director

APPROVED AS TO INDEMNIFICATION:

By: Brenee Kadomas 7/14/2011  
Risk Manager

APPROVED AS TO FORM:

By: M. [Signature] (7/12/2011)  
Deputy Prosecuting Attorney

ATTEST:

Linda Hammer  
Clerk of the Board