

INTERGOVERNMENTAL AGREEMENT
between
Washington State Department of Transportation
and
Puyallup Tribe of Indians
GCB 2953

This Intergovernmental Agreement (“Agreement”) is entered into between the Washington State Department of Transportation (“WSDOT”) and the Puyallup Tribe of Indians (“Tribe”), (collectively “Parties”).

RECITALS

- A. The State of Washington, through WSDOT, owns and operates several state highways through the Puyallup Indian Reservation including Interstate 5, SR 167 and SR 509.
- B. WSDOT intends to ask the legislature to authorize it to collect tolls on SR 167 and SR 509 for the Gateway SR 167 Completion Project (“Project”).
- C. The Project will extend SR 167 through the heart of the Puyallup Indian Reservation, the current and historical homeland of the Puyallup Tribe and its members. During the government-to-government consultation, the Tribe has insisted that WSDOT not impose tolls on the Tribe, its vehicles, and its Tribal members’ vehicles.
- D. Both the State of Washington and the Tribe were party to the Puyallup Tribe Land Claims Settlement Agreement dated August 28, 1988, ratified by Congress in P.L. 101-41, implemented in part by Washington state legislation enacted in 1989, adopted by the court in *Puyallup Tribe of Indians v. Union Pacific Railroad Co.*, Civil No. C84-359TC (W.D. Wash. March 24, 1990), and subsequent modifications.
- E. The State of Washington and the Tribe were party to the Third Limited Modification of the Settlement Agreement dated March 24, 2015. This modification was undertaken in accordance with the “Modification Procedure to the Settlement Agreement,” which was filed with the court on December 31, 1991. The purpose of this modification was to resolve a dispute between the State and Tribe as to Section VIII(A)(4) of the Land Claims Settlement Agreement regarding state jurisdiction and governmental authority. Rather than litigate the proper interpretation of this provision, the State and Tribe agreed that the State would not assess excise taxes and fees against Puyallup tribal members on fee land and rights-of-way within the surveyed 1873 Puyallup Reservation boundaries, defined in the Settlement Agreement and in P.L. 101-41 § 12 as the “1873 Survey Area.”
- F. In order to avoid litigation and the attendant delay it would cause for the Project, and in order to carry out the intent of WSDOT to facilitate both this Project and its ongoing working relationship with the Tribe for the benefit of all in the community, this Interagency

Agreement addresses the issue of tolls on the Project in a manner consistent with the Settlement Agreement and the Third Limited Modification.

- G. The Third Limited Modification of the Settlement Agreement was undertaken pursuant to a modification procedure with the court in 1991, predating action by the legislature to institute Tolls within the 1873 Survey Area. Because a toll is a type of fee, and the State has already agreed not to assess such fees against Puyallup members, an exemption does not need to be granted by the Washington State Transportation Commission as the state tolling authority.
- H. Consistent with the terms of the land claims settlement agreement and subsequent modifications, WSDOT agrees it will not collect Tolls on Puyallup tribal members and tribal government vehicles traveling on state highways within the 1873 Survey Area identified in the Settlement Agreement.

IT IS MUTUALLY AGREED AS FOLLOWS:

I. GENERAL

Consistent with the Puyallup Tribe of Indians Land Claims Settlement and Third Limited Modification, the WSDOT agrees that Puyallup Tribal Member vehicles and Puyallup Tribal Government vehicles shall be exempt from any Tolls collected within the boundaries of the 1873 Survey Area, including the portions of the SR 167 and SR 509 Spur that fall within the 1873 Survey Area. For the purposes of this Agreement, "Tolls" are defined as applying to all users of the highway and would not include any Express Toll Lanes or High Occupancy Toll Lanes.

II. TRIBAL MEMBERS

- A. Tribal Members will not be Tolloed on any current and future state highways and interstates within the 1873 Survey Area. This exemption will not apply to any toll facilities outside of the 1873 Survey Area.
- B. Tribal Members will be given a transponder at no charge for each vehicle registered to a tribal member (either a *Good to Go!* Sticker pass or a *Good to Go!* Flex Pass).
- C. It will be the tribal member's responsibility:
 - 1. To present valid tribal identification and vehicle registration when obtaining a *Good to Go!* Sticker Pass or Flex Pass.
 - 2. To inform *Good to Go!* if a vehicle is no longer registered to them.
 - 3. To contact *Good to Go!* if they wish to register a new vehicle.
- D. There will be outreach opportunities, prior to the opening of the highway to traffic, where WSDOT will come to tribal offices and events to educate on protocol, distribute

transponders, and open new accounts. WSDOT will coordinate with the tribe on the frequency, dates, times and location of these events.

- E. Members will be required to open a *Good to Go!* Account linked to a transponder for each registered vehicle in their name. Multiple vehicles can be linked to the account. Tribal members will only be charged for tolls incurred on facilities outside of the 1873 Survey Area.
- F. Members will have three options for account types:
 - 1. Zero Balance Account – requires a valid credit card number on file
 - 2. Prepaid Account – requires a \$30 Deposit
 - 3. Pay By Mail Account – tolls incurred on facilities outside the 1873 Survey Area will be billed to the customer at a Pay By Mail rate.
- G. Trips taken within the 1873 Survey Area with a transponder and an account will be automatically exempted in the *Good to Go!* back-office and will not debit the member's account or create a toll bill.

III. TRIBAL GOVERNMENT VEHICLES

- A. Vehicles owned by the Puyallup Tribe of Indians or one of its subsidiaries, and operated by officials or employees for tribal government or business purposes will not be Tolloed on any current and future state highways and interstates within the 1873 Survey Area. This exemption will not apply to any toll facilities outside of the 1873 Survey Area.
- B. A government invoice account will be created that will exempt tribal government vehicles for trips on the Gateway SR 167 and SR 509 Spur within the 1873 Survey Area.
- C. Each vehicle will require a transponder, which will be provided by WSDOT at no charge (either a *Good to Go!* Sticker pass or *Good to Go!* Flex Pass).
- D. The Tribal Government will identify an administrative point of contact for the government invoice account.

IV. AMENDMENT

This Agreement may be amended by written amendment. Such amendments and changes made under this Agreement shall be made in writing and signed by Lead Representatives of all the Parties, as noted in Section IX, LEAD AND DESIGNATED REPRESENTATIVES. Any supplemental agreement shall be agreed upon in writing prior to undertaking any work or incurring any costs covered by such amendment.

V. NO OBJECTION TO TOLLING PROGRAM

As long as WSDOT is in compliance with the provisions of this Agreement and all applicable laws, the Tribe agrees that it will not object to or otherwise oppose the state of Washington's imposition of tolling within the 1873 Survey Area, if so authorized by the legislative and executive branches of the state of Washington.

VI. AUTHORITY TO SIGN

The Tribe represents, warrants, and covenants that it has the authority to enter into this Agreement, and that its execution and delivery have been duly authorized by Tribal Resolution. As part of this Agreement, the Tribe will furnish a copy of the resolution of the Tribal Council granting authority of the undersigned to execute this Agreement on behalf of the Tribe no later than five (5) business days following execution of this Agreement.

The WSDOT represents, warrants and covenants that it has the authority to enter into this Agreement, and that its execution and delivery have been duly authorized.

VII. DISPUTE RESOLUTION PROCESS

The Parties shall make good faith efforts to quickly and collaboratively resolve any dispute arising under or in connection with this Agreement. The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this Agreement.

A. Informal Resolution. The informal resolution process begins at the staff level and is raised to the higher organizational levels, if necessary.

B. In the event that the Parties are unable to resolve the dispute, the Parties shall submit the matter to non-binding mediation facilitated by a mutually agreed upon, mediator. The Parties shall share equally in the cost of the mediator.

C. Any claim not resolved by mediation may be submitted by either party to binding arbitration, to which each Party hereby agrees to be bound. Arbitration when held shall be conducted by a neutral arbitrator selected by agreement of the parties. Arbitration shall be as agreed upon by the parties, or if the parties cannot agree, shall follow the commercial arbitration rules of the American Arbitration Association. Fees and costs of the arbitrators shall be divided equally by the parties. Enforcement of an arbitration order may be had in Pierce County Superior Court.

VIII. WAIVER OF SOVEREIGN IMMUNITY

A. The Tribe agrees to waive its sovereign immunity for the limited purpose of permitting WSDOT to enforce this Agreement, to arbitrate any disputes arising under this Agreement, and for enforcing any arbitration award or order. This limited waiver applies only to WSDOT and may not be assigned or transferred.

- B. The provisions of this Section shall survive the termination of this Agreement.

IX. LEAD AND DESIGNATED REPRESENTATIVES

Lead Representatives

- a. Puyallup Tribe of Indians
Chairperson
Puyallup Tribe of Indians
E. 3009 Portland Avenue
Tacoma, WA 98404
253-573-7800
- b. WSDOT
Secretary of Transportation
Washington State Department of Transportation
310 Maple Park Avenue SE
P.O. Box 47300
Olympia, WA 98504-7300
(360) 705-7000

Designated Representatives

- a. Puyallup Tribe of Indians
Tribal Project Manager
The Puyallup Tribe of Indians
E. 3009 Portland Avenue
Tacoma, WA 98404
253-573-7800
- b. WSDOT
Toll Division Director
Washington State Department of Transportation
401 2nd Ave S Ste 300
Seattle, WA 98104
206-464-1217

The Parties hereto agree to the terms and conditions of this Agreement as of the day and year last written below.

<p>PUYALLUP TRIBE OF INDIANS</p> <p>Date: <u>9/5/18</u></p> <p>By: <u>Bill Sterud</u></p> <p>Bill Sterud, Chairman Puyallup Tribe of Indians</p> <p>APPROVED AS TO FORM</p> <p>By: <u>John Howard Bell</u></p> <p>John Howard Bell, Attorney</p> <p>Date: <u>10/30/18</u></p> <p>By: <u>John Bell</u></p>	<p>WASHINGTON STATE DEPARTMENT OF TRANSPORTATION</p> <p>Date: <u>11/1/18</u></p> <p>By: <u>Roger Millar</u></p> <p>Roger Millar, Secretary Washington State Department of Transportation</p> <p>APPROVED AS TO FORM</p> <p>By: <u>Bryce Brown</u></p> <p>Bryce Brown, Senior Assistant Attorney General, State of Washington</p> <p>Date: <u>11-5-18</u></p> <p>By: <u>BRYCE BROWN</u></p>
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