

INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN
PUBLIC UTILITY DISTRICT NO. 1 OF SKAGIT COUNTY
AND
SWINOMISH INDIAN TRIBAL COMMUNITY

THIS AGREEMENT is made and entered into by and between the Swinomish Indian Tribal Community, hereinafter referred to as Tribal Community, and Public Utility District No. 1 of Skagit County, Washington, hereinafter referred to as District, pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

1. PURPOSE: The purpose of this agreement is to provide a framework under which the District may provide materials, equipment, and personnel to assist the Tribal Community with emergency repairs to failed or damaged system infrastructures and additional technical services as requested.

2. RECITALS

A. The District is authorized to operate water systems pursuant to Title 54 RCW and employs certified water system operators for its water systems in Skagit County.

B. The District is willing to provide the Tribal Community's water system with temporary operators ("Crew") and equipment to meet the Tribal Community's needs as provided in Section 3, Paragraph A. A Crew typically consists of a Foreman, two Journeymen Watermen, and a dump truck, backhoe & trailer, crew truck, or other equipment as required.

C. Emergency Repairs

- i. From time to time the Tribal Community has a need for emergency equipment and personnel to provide or assist with emergency repairs to failed or damaged system infrastructures.
- ii. The District is willing to provide the Tribal Community with certified water system operators, equipment, and materials on an as needed basis at a reimbursement rate equal to District cost, including overhead and administrative fees, for labor, equipment, materials, tools, and incidentals, including any overtime hours incurred to reasonably meet the needs of the Tribal Community and in accordance with Section 3. These rates are subject to change based upon the Labor Agreement between the District and Teamsters Local #231.
- iii. The Tribal Community is willing to pay for all expenses incurred by the District for such services as tracked with a Job Order (JO) plus District paid taxes and overhead and administration fees.

D. Technical Assistance

- i. From time to time the Tribal Community has a need for technical assistance with operations, maintenance, and construction activities.

- ii. The District is willing to provide certified water system operators and technical staff on an as needed basis including any overtime hours incurred to reasonably meet the needs of the District and Tribe and in accordance with Section 3. These rates are subject to change based upon the Labor Agreement between the District and Teamsters Local #231.
- iii. The Tribal Community is willing to pay for all expenses incurred by the District for such services as tracked with a Job Order (JO) plus District paid taxes and overhead and administration fees.

E. The Parties desire to enter into this agreement pursuant to RCW 39.34, the Interlocal Cooperation Act, to assist the Tribal Community with continued operation of its System and to utilize the District's certified operators and equipment on an as-needed basis.

NOW, THEREFORE, in light of the foregoing Recitals, which are incorporated herein as part of the agreement of the Parties, and the mutual terms, conditions, and covenants set forth below, the Parties agree as follows:

3. District's Obligations.

A. Emergency and Call-Out Services. The District will provide Crew resources and equipment to meet the Tribal Community's water system emergency operational needs as requested by the Tribal Community providing such District resources are available at the time of the request. The operational needs of the District's facilities will take precedence over any work requested by the Tribal Community. Subject to District priorities taking precedence and the availability of crews and equipment, the District will provide emergency and call-out services, based on a two hour minimum during a regular work week (Monday through Friday), on week-ends, and after regular business hours (8 a.m. to 5 p.m.) to the Tribal Community as needed upon request.

B. Work Order. The District will create a Work Order to track all time and material expenses incurred by the District for any assistance requested by the Tribal Community. Rates charged to the Tribal Community for labor, including overtime, equipment, and materials shall be at the District's current rates for labor and equipment. Material costs will reflect current purchase price through District vendors.

C. Overhead and Administration Fees. The District will add 20% as administration costs to each invoice that is billed to the Tribal Community. Added to the District's labor rates are a fringe benefit labor cost of 60% and warehouse handling expenses of 35% for materials removed from District's warehouse inventory.

D. Approval and Authorization of Work. The request by the Tribal Community may be initially approved by oral agreement by the District's Engineering Manager (or his/her designee). All oral agreements will be followed with written confirmation or written notice to proceed with the work. If the work is completed without written confirmation, the lack of a written confirmation will not affect the Tribal Community's obligation to pay the costs of the work.

E. Invoice. The District shall provide an itemized invoice to the Tribal Community for services rendered based on actual expenditures incurred on the Job Order plus District paid taxes and overhead and administration fees.

F. District Employees. District personnel involved in this Agreement shall remain District employees paid from District funds with reimbursement from the Tribal Community.

G. Auditor Filing. The District shall in compliance with RCW 39.34, upon execution of this Agreement, file it with the Auditor of Skagit County.

4. Tribal Community Obligations.

A. Overtime. The Tribal Community acknowledges that the District's water system operators or Crew are also providing service to District facilities and therefore, depending on the needs of the District system and the District's facilities, overtime may be incurred and the Tribal Community agrees to reimburse the District for all overtime incurred for work performed under this agreement.

B. Reimbursement. The Tribal Community shall reimburse the District within 30 days of receipt of each invoice. The Tribal Community agrees to pay actual costs incurred on the Work Order plus taxes and overhead and administration fees enumerated above. Any estimates provided by the District are not binding and the Tribal Community is responsible for all costs of the work regardless of the accuracy of any estimate that may have been provided by the District prior to the start of work.

C. Insurance. Tribe shall provide liability insurance coverage for the duration of this Agreement for its officers, agents and employees' activities while they are involved in the performance of this Agreement in an amount not less than one million dollars (\$1,000,000). The District's Auditor shall be provided proof of such insurance within thirty (30) days of the execution of this Agreement and the District will be named as an additional insured as respects this Agreement. If the Tribal Community is self-insured, evidence of one million dollars (\$1,000,000) per occurrence coverage for general liability shall be provided to the District's Risk Manager by the administrator of the self-insurance program.

D. Indemnification. 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 to the fullest extent required by law, and further agrees to save, indemnify, defend, and hold the other party harmless from any such liability. It is further provided that no liability shall attach to either party by reason of entering into this Agreement except as expressly provided herein.

E. Communication. The Tribal Community shall be responsible for all contact with and notice to its customers with regard to any interruption of services.

5. Tribal Community May Provide Assistance to District upon Request. The parties recognize that the primary purpose of this Agreement is to outline the responsibilities of the Parties when the Tribal Community receives assistance from the District. The parties recognize

that there may also be times that the Tribal Community will be able to offer assistance to the District through its certified water manager and use of its equipment. If the District requests assistance from the Tribal Community, the terms of this Agreement will apply to that work. The rates to be charged by the Tribal Community will be agreed upon in advance of any work being done.

6. Organization/Administration.

A. General Manager (or designee) shall be the Administrator of this Agreement for the District insofar as it relates to the coordination and implementation of the emergency services.

B. The Chairman of the Swinomish Indian Tribal Community (or designee) shall be the Administrator of this Agreement for the Tribal Community insofar as it relates to agreed upon services.

7. No Warranties or Guarantees. The District makes no warranties or guarantees the Crews and/or equipment will be available to complete work as requested by Tribe. Further, the District makes no warranties or guarantees as to the timeliness in response to a request, the level of service in response to a request, or the ability to restore service to Tribal Community customers within any particular time frame.

8. Term and Effective Date of Agreement. The effective date of this Agreement shall be May 5, 2015. This agreement may be terminated upon sixty (60) days written notice by either Party.

9. No Joint Venture or Cross-Representation. No joint venture exists between the Tribe and the County, and no joint venture is created by and between the Tribe and the County by virtue of this Agreement. No agent, employee, contractor, subcontractor, consultant, volunteer, or other representative of the parties shall be deemed an agent, employee, contractor, subcontractor, consultant, volunteer, or other representative of the other party. The District is an independent contractor with respect to all activities associated with this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the Parties. The District and its employees shall not be entitled to any benefits afforded Tribal Community employees. The District shall be solely responsible for withholding federal income tax and associated employment related taxes from wages paid to its employees.

10. Applicable Law, Dispute Resolution, and Limited Waiver of Sovereign Immunity.

10.1 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of Washington State and any applicable Federal law. The venue for Superior Court shall be Skagit County Superior Court.

10.2 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 County.

10.2.1 Arbitration under this Section 10 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 10.4 of this Agreement.

10.2.2 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 Skagit County 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.

10.2.3 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.

10.3 Compelling, Enforcing, Reviewing, Modifying and Confirming Arbitration. The Parties agree that pursuant to Subsection 10.2 of this Agreement and in accordance with RCW 7.04A the Skagit County 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.*

10.4 Limited Waiver of Sovereign Immunity. Except as expressly provided in this Section 10, 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 Skagit County Superior Court or U.S. District Court for the Western District of Washington described in this Section 10 "Dispute Resolution," entering judgment on an arbitrator's award and enforcing in Skagit County Superior Court (pursuant to Title 6 RCW), such judgment. This limited waiver relates only to legal actions by Public Utility District #1 of 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 10. 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.

11. **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 residents in the vicinity of the Project, or any agent, contractor, subcontractor, consultant, volunteer, or other representative of either party.

12. **Notices.** Any notices shall be effective if personally served upon the other Party or if mailed by registered or certified mail, return receipt requested, to the following addresses, or such other address as a Party may designate in writing and shall be deemed given on the date of mailing:

13. **Remedies.** In the event of default of any provision of this Agreement, the non-defaulting Party shall have all rights and remedies existing at law including the right to recover monies paid and wrongfully expended, and to seek other damages allowed by law.

14. **Entire Agreement and Severability.** This Agreement contains the entire Agreement between the Parties with respect to the subject matter hereof and supersedes all prior Agreements or understandings between the Parties with respect thereto. 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.

15. **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.

IN WITNESS WHEREOF, the Parties have executed this Agreement this 20th day of May, 2015.

PUBLIC UTILITY DISTRICT NO. 1
OF SKAGIT COUNTY

By: R. Brown

Title: General Manager

SWINOMISH INDIAN TRIBAL
COMMUNITY

By: Brian Cladosky

Title: Chairman



Main Office: 360.466.3163
Facsimile: 360.466.5309

Swinomish Indian Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476
* 11404 Moorage Way * La Conner, Washington 98257 *

May 7, 2015

Mark C. Handzlik, P.E.
Assist. Eng. Manager
PUD #1 of Skagit County
1415 Freeway Drive
P.O. Box 1436
Mount Vernon, WA 98273

Re: Interlocal Agreement

Dear Mr. Handzlik:

Enclosed are two copies of the Interlocal Agreement between Skagit PUD and the Tribe, which was signed by the Senate at Tuesday's Senate meeting. Please sign both copies, retaining one for your records and returning the other to my attention.

If you have any questions, don't hesitate to contact me at (360) 466-7369 or aengstrom@swinomish.nsn.us.

Sincerely,

A handwritten signature in blue ink that reads "Alicia Engstrom".

Alicia Engstrom
Paralegal

Enclosures