

INTERLOCAL AGREEMENT FOR FIRE AND EMERGENCY MEDICAL SERVICES

THIS Interlocal Agreement for Fire and Medical Protection Services ("Agreement") is made and entered into this 26th day of OCTOBER, 2006 by and between MASON COUNTY FIRE DISTRICT #4, a municipal corporation of the State of Washington ("District"), and the SQUAXIN ISLAND TRIBE, a federally recognized Indian Tribe ("Tribe").

WHEREAS, the District provides fire protection and emergency medical services;
and

WHEREAS, the Tribe is in need of fire protection and emergency medical services; and

WHEREAS, the District and Tribe believe it to be in their best interests to pool resources and cooperate with one another to insure adequate emergency services are provided to persons and properties within the District's service area; and

WHEREAS, the District and Tribe entered a Memorandum of Understanding (MOU) on October 4, 2002, and its purpose was to provide terms of understanding for the construction of a new fire station, the long term lease of that station by the District, and the provision of fire/medical protection services to the Tribe; and

WHEREAS, the MOU anticipated an agreement would be entered post date of the MOU, such agreement to legally bind the parties to terms for the construction of the fire station, the long term lease of the station to the District, and the provision of fire protection and emergency medical services to the Tribe; and

WHEREAS, Agreements such as this one are authorized and made pursuant to the provisions of Chapters 39.34 (Interlocal Cooperation Act) and 52.12 (Fire Protection Districts) of the Revised Code of Washington.

NOW, THEREFORE, the parties agree as follows:

1. Fire Station Construction.

The fire station shall be built on real property, more particularly described in **Exhibit A**. The Tribe shall build and construct a fire station consistent with the design plans and bid documents attached as **Exhibit B**.

Consistent with the bid documents the Tribe shall bear all costs of construction for the fire station. The District represents and warrants it has reviewed Exhibits A and B, and such plans and bid adequately meets their needs for a fire station. In the event the District requests any changes to the plans, or requests change orders during course of construction, such changes shall be made at the expense of the District.

2. Fire Station Lease.

Simultaneous with the execution of this Agreement, the District and Tribe shall execute the Lease Agreement, attached as **Exhibit C**.

3. Services Provided by District.

The District shall furnish personnel, equipment, and services necessary to provide fire protection and emergency medical services (collectively referred to as "Services") to any and all individuals, buildings, facilities and structures located on the following properties: (1) the exterior boundaries of the Squaxin Island Tribe Reservation; (2) any land or property held in trust by the United States of America for benefit of the Squaxin Island Tribe or its members; and (3) any land in which the Squaxin Island Tribe either owns, or has an ownership interest in. All of the properties and individuals thereon shall hereinafter be collectively referred to as the "Serviced Properties". The Services shall be provided in the same manner and to the same standards as such services are provided by the District to other individuals and properties within the District service area. Nothing contained herein shall be construed as creating an obligation on the part of the District to provide Services to the Tribe for any individuals or properties located outside the District service area, as such area now exists, or may exist in the future.

4. Term.

The term of this Agreement shall be for fifteen (15) years, commencing on the ___ day of _____, 200_, and continuing through the ___ day of _____, 20___. This Agreement shall be automatically extended for any period of time in which the Lease Agreement is extended and/or in effect, it being the intent of the parties this Agreement and the Lease Agreement are to be simultaneous in their terms.

This Agreement shall automatically terminate upon: (1) mutual agreement of the parties; or (2) in the event the Lease (Exhibit C) is not entered, or the Lease is entered but is terminated earlier than its intended term.

5. Consideration.

In consideration and payment for the Services provided by the District, the Tribe shall: (1) at its sole expense and cost, build and construct a fire station consistent with the plans and bid as set out in **Exhibits A and B**; and (2) enter the Lease Agreement as set out in **Exhibit C**. The parties acknowledge the stated consideration is based upon the

Services the District presently provides the Tribe, and the District may be entitled to additional consideration as the Tribe's need for Services increase.

Whenever the annual number of service calls and responses to Serviced Properties exceeds one-hundred and fifty percent (150%) of the baseline number (as established below), the District shall be entitled to additional consideration and/or payment for the increase in Services¹. The baseline number shall be calculated as follows:

- (a) The original baseline number shall be the total number of District service calls and responses to the Serviced Properties for the calendar year of 2005;
- (b) The baseline number shall be adjusted in January of each year by increasing the previous year's baseline number by six percent (6%).
- (c) The District shall maintain records relating to calls/responses made to the Serviced Properties consistent with Paragraph 6, below, and in January of each year provide the Tribe written notice and calculation of the adjusted baseline number.

To obtain additional consideration pursuant to the terms of this Agreement, the District shall provide the Tribe written notice and proof relating to the number of calls and responses relative to the baseline number, and request additional consideration for Services provided. Upon receipt of the written notice by the Tribe, the parties agree to negotiate in good faith the terms concerning additional consideration. Any increase in consideration shall only be applied prospectively, and be limited to reasonable costs associated solely for the increase in Services. Such increase in consideration shall not include costs involved in providing Services for the baseline number of calls/responses, as adjusted annually. In the event the parties are unable to mutually agree on such terms within ninety (90) days date in which the Tribe receives the District's written notice, the matter shall be submitted to arbitration consistent with Paragraph 9, below.

4. Coordination and Planning.

The chief fire officers and/or personnel of the fire and emergency response departments of the District and Tribe shall use their best efforts to frequently visit each other's activities for guided familiarization tours consistent with local security requirements and, as feasible, to jointly conduct pre-fire and/or pre-emergency planning inspections and drills.

¹ By way of an example, if the baseline is 100 for any given year, the District would be entitled to request additional consideration if the total annual calls and responses for that year exceeds 150.

The District and the Tribe shall use their best efforts to mutually establish pre-emergency plans which shall indicate the types of and locations of potential problem areas where initial pre-designated emergency assistance would be appropriate.

The District and the Tribe shall coordinate pre-fire and special event planning so as to ensure effective fire suppression, building evacuation, and delivery of Services. Such coordination may include without limitation:

- (a) Coordination of District training activities related to or arising from the services provided by the District under this Agreement;
- (b) Coordination of commercial and public building pre-fire walk-throughs (or on such other schedule as is consistent with the District's provision for non-Serviced Properties);
- (c) Coordination of first aid and CPR training to Tribal staff and members as reasonably requested by the Tribe;
- (d) Coordination with the Washington State Patrol when responding to hazardous material incidents;
- (e) Coordination with the Water Department for inspection and flow-testing all hydrants on Serviced Properties;
- (f) Reviewing plans for large group activities (such as festivals and fairs);
- (g) Review of minimum fire safety standards for Serviced Properties;
- (h) Review of regulations for open burning and regulations addressing uncontrolled fire; and
- (i) Identification of safety hazards on serviced properties.

The Tribe shall coordinate with the District and the Mason County Fire Marshal in planning, designing and constructing new buildings, structures and other improvements on real property being developed within the Tribe's jurisdiction. Such coordination shall include, without limitation, the Tribe providing the District and the Mason County Fire Marshal with a reasonable opportunity to review plans and drawings for such improvements prior to their construction. The District and the Mason County Fire Marshal shall have the opportunity to provide comments related to the District's ability to provide service to the new improvements prior to their construction. Further, the District, consistent with any recommendations of the Mason County Fire Marshal, reserves the right, in its sole discretion, to qualify service to and/or to withhold service to improvements designed and/or constructed in such a manner that the improvements, as determined by the District in its sole discretion, exceed the capabilities of the District's equipment and/or such pose an unusual, excessive or otherwise unacceptable threat to the District's personnel or equipment.

The District and the Tribe recognize that different standards relating to the Services may be in effect in their respective jurisdictions. The parties are encouraged and directed to share any concerns relating to compliance with the standards, and to exercise good faith in an attempt to make dissimilar standards compatible in their application.

The technical heads of the fire and emergency response departments for the District and Tribe are authorized and directed to meet and draft any detailed plans and procedures of operation necessary to effectively implement this Agreement. Such plans and procedures shall become effective upon ratification by the signatory parties.

5. Access to Serviced Properties. The Tribe hereby gives permission to the District to enter upon any Serviced Properties consistent with the terms of this Agreement.

6. Reports. The District shall provide quarterly reports to the Tribe indicating the number and nature of calls and responses to the Serviced Properties. The District shall also provide an annual report to the Tribe summarizing the number and type of emergency calls/responses to the Serviced Properties in the preceding year.

The District shall maintain all records required by the Washington State Auditor's Office which reflect the costs of fire protection and other services provided within the District service area. These documents and records shall be subject to inspection or review by the Tribe, or authorized agents of the Tribe.

7. Contract Management. Management of the Services provided to the Tribe by the District shall be vested in the District Fire Chief. Any requests for records or documents or any other inquiries by the Tribe shall be submitted to the District Fire Chief. The Fire Chief shall be the District's contract person for all other communications regarding the conduct of work under this Agreement.

8. Waiver of Sovereign Immunity; Governing Law; and Venue. The Tribe expressly waives immunity from suit on this Agreement, and any requirement that remedies be exhausted in any Squaxin Island Tribe forum, including the Squaxin Island Tribal Court. This waiver is limited to claims asserted in Mason County Superior Court, and to claims asserted by the District. The District may not assign or otherwise transfer this waiver of immunity to any third-party. This Agreement shall be interpreted according to general principles of common law relating to contracts and contractual disputes. The substantive and applicable case law and statutory law of the State of Washington and the Squaxin Island Tribe (as such case law or statutes exist as of the date of this Agreement) shall be considered and utilized in any dispute.

9. Dispute Resolution. In the event of a dispute between the Tribe and the District, such dispute shall be resolved pursuant to the following dispute resolution procedure:

9.1 Mediation. In the event of any dispute, claim, question or disagreement ("Dispute") arising from or relating to this Agreement or the breach thereof, the parties hereto agree first to try in good faith to settle the dispute by mediation through the Thurston County Dispute Resolution Center or other similar service mutually agreed to by the parties before resorting to binding arbitration.

9.2 Arbitration. If a party in good faith concludes that a Dispute is not likely to be resolved by mediation, then all Disputes shall be finally and exclusively settled by arbitration. Arbitration shall be commenced by either party placing the other party on written notice of their intent to arbitrate. Within ten (10) days after the commencement of arbitration, the parties shall mutually agree upon a single arbitrator. If mutual agreement on a single arbitrator does not occur, each party shall select one person to act as arbitrator, and the two selected arbitrators shall select a third arbitrator within ten (10) days of their appointment. The place of arbitration shall be within Mason County. The award shall be made within one hundred twenty (120) days of the filing of the notice of intent to arbitrate, and the arbitrators shall agree to comply with the schedule before accepting appointment. However, this time limit maybe extended by agreement of the parties or by the majority of the arbitrators, if necessary. Any award rendered in any such arbitration proceeding shall be final and binding.

9.3 Rules Regarding Arbitration. The arbitrator(s) shall apply the Mandatory Arbitration Rules, as found in the Washington Court Rules, for any and all pre-hearing and hearing procedural/evidentiary matters.

9.4 Enforcement. Judgment upon any award rendered by the arbitrators against either party may be entered in the Superior Court of Mason County or the United States District Court, Western District of Washington, and such proceeding shall be conducted subject to the rules and procedures thereof; provided, however, that the parties agree that the selected courts shall have only the power to enter and enforce, but not to review or modify, the arbitrators' award. Both parties agree to accept and be bound by the award of the arbitrators or a judgment, ruling or order enforcing the arbitration award which is final.

9.5 Waiver of Administrative Remedies. The parties hereby waive any right any one of them has to require the exhaustion of any administrative remedies before commencing the dispute resolution process described herein or any action in a court of competent jurisdiction, and agrees not to assert the claim or defense of failure to exhaust any administrative or other remedies in any action brought in the manner provided herein above.

10. Hold Harmless, Indemnification. The District shall defend, indemnify, and hold the Tribe harmless against all liabilities, damages, costs, and expenses, including attorneys' fees, arising from any negligent or wrongful act or omission by the District or the District's officers, contractors, licensees, agents, servants, employees, or guests, arising from any breach of this Agreement. The Tribe shall defend, indemnify, and hold the District harmless against all liabilities, damages, costs, and expenses, including attorneys' fees, arising from any negligent or wrongful act or omission by the Tribe or the Tribe's officers, contractors, licensees, agents, servants, employees, or guests, arising from any breach of this Agreement. The Tribe shall use legal counsel reasonably

acceptable to the District in defense of any action within the Tribe's defense obligation. The provisions of this section 10 shall survive expiration or termination of this Agreement. Nothing in this Agreement shall be interpreted to create third party rights in any entity not a signatory to this Agreement.

11. Notices. All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

Mason County Fire District #4: Chair, Mason County Fire District #4
2970 Arcadia Rd. S.E.
Shelton, Wa. 98584

Squaxin Island Tribe: Executive Director
10 SE Squaxin Lane
Shelton, Washington 98584
360.426.9781

And to: Squaxin Island Legal Department
3711 SE Old Olympic Hwy
Shelton, Washington 98584
360.432.1771 (o)
360.432-3699 (f)

All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

12. Waiver. Failure by either party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, shall not constitute a waiver of any such breach or any other covenant, agreement, term or condition. Either party, by written notice, and only by written notice may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

13. Captions. The captions of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Agreement.

14. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

15. **Neutral Authorship.** Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of both parties. 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.

16. **Time of Performance.** Time is specifically declared to be of the essence of this Agreement and of all acts required to be done and performed by the parties hereto.

17. **Entire Agreement.** The entire agreement relative to the Services is contained in this Agreement. This Agreement supersedes all previous understandings and agreements, whether written or oral. This Agreement is to be read in conjunction with Exhibits A, B, C and the October 4, 2002 MOU, provided: to the extent any terms of Exhibits A, B, C or the MOU conflict with the terms of this Agreement, the terms of this Agreement shall control. It is expressly understood between the parties the compensation paid to the District for Services under the terms of this Agreement shall replace, supplant and control the terms for compensation contemplated and set out in the October 4, 2002 MOU.

18. **Survivability.** All covenants, promises and performances which are not fully performed as of the date of termination shall survive termination as binding obligations.

19. **Modification.** This Agreement may be modified or amended only by mutual agreement of all parties, and upon execution of a written document signed by both parties.

20. **Authority to Sign.** The individuals signing below represent and warrant they have the legal authority and capacity to execute this Agreement, and to bind the respective interests of the District and Tribe.

21. **Assignment.** This Agreement may not be assigned by either party without the written approval of all parties. It is expressly agreed that in the event the District is merged or consolidated with another fire district, the Tribe will approve of such merger and consolidation, and all rights and duties under this Agreement shall be assumed by the new entity.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Dated: October 19, 2006

[Signature]
SQUAXIN ISLAND TRIBE
BY: RAYMOND PETERS
ITS: EXECUTIVE DIRECTOR

Dated: OCTOBER 19, 2006

[Signature]
MASON COUNTY FIRE DISTRICT #4
BY:
ITS: CHAIRPERSON

STATE OF WASHINGTON)
) : ss
County of Mason)

I certify that I know or have satisfactory evidence that Curtis Bennett is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this 19th day of October, 2006.

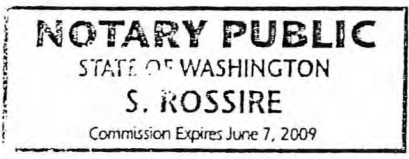


[Signature]
Print Name: Darlene A Krise
NOTARY PUBLIC in and for the State of Washington, residing at W 91st St Rt 108
My Appointment Expires 4/25/2007 Shelton WA

STATE OF WASHINGTON)
) : ss
County of MASON)

I certify that I know or have satisfactory evidence that RAYMOND PETERS is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this 20th day of October, 2006.



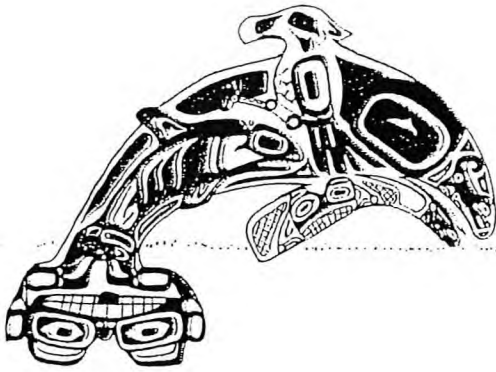
S. Rossire
Print Name: S. ROSSIRE
NOTARY PUBLIC in and for the State of
Washington, residing at Sumner
My Appointment Expires June 7, 2009

Exhibit A (Legal Description)

A tract of land in the Northwest quarter (NW $\frac{1}{4}$) of the Northwest quarter (NW $\frac{1}{4}$), Section twenty (20), Township nineteen (19) North, Range three (3) West, W.M., described as follows:

Commencing at a point on the West line of said Northwest Quarter (NW $\frac{1}{4}$) of the Northwest quarter (NW $\frac{1}{4}$) at its intersection with the Northerly right-of-way line of Old Olympic Highway, as now constructed and in use; thence Southeasterly, along the Northerly right-of-way line of said Old Olympic Highway, 370 feet to the point of beginning of the tract of land hereby described; thence continue Southeasterly along said Northerly right-of-way line, 198.5 feet, more or less, to the Westerly right-of-way line of the Northern Pacific Railway Company; thence Northeasterly, along said right-of-way line, 260 feet, more or less, to the Southerly right-of-way line of the Whitener County Road; thence Westerly, along the Southerly right-of-way line of said Whitener County Road, 300 feet, more or less, to the Northeast corner of a tract of land heretofore conveyed by Bertha V. Munson, a widow, to Lester M. Baker and Elizabeth J. Baker, husband and wife, by deed dated February 6, 1943, recorded March 9, 1943, under Auditor's File No. 104662; thence Southwesterly 200 feet, more or less, to the point of beginning.

EXCEPTING THEREFROM road rights-of-way.



SQUAXIN ISLAND TRIBE

RESOLUTION NO. 06- 95

of the

SQUAXIN ISLAND TRIBAL COUNCIL

WHEREAS, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and

WHEREAS, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources and rights of the Tribe; and

WHEREAS, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government; and

WHEREAS, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; and

WHEREAS, the Squaxin Island Tribe entered into a State-Tribal Gaming Compact providing for, among other matters, that 2% of the net win from table games be reserved for mitigating adverse impacts of Class III gaming; and

WHEREAS, the Squaxin Island Tribe is authorized to enter into intergovernmental agreements under state and tribal law with the Mason County Fire District #4; and

WHEREAS, Mason County Fire District #4 has demonstrated to the satisfaction of the Squaxin Island Tribe the costs and benefits of emergency and fire services; and


WHEREAS, the Squaxin Island Tribe desires to enter into a long term agreement providing for fire protection services and construction of a fire facility;

NOW THEREFORE BE IT RESOLVED, that the Squaxin Island Tribal Council hereby authorizes approval of the Interlocal Agreement for Fire and Emergency Medical Services and the MCFD #4/SIT Lease Agreement, copies attached.

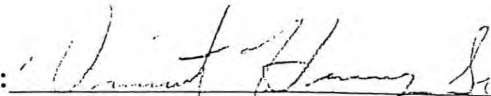
NOW THEREFORE BE IT FINALLY RESOLVED, that the Squaxin Island Tribal Council authorizes the Executive Director to be the Tribe's signatory and representative in all future matters requiring Tribal authorization on this particular contract, and that these authorities shall be for the duration of this contract.

CERTIFICATION


The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 12th day of October, 2006, at which time a quorum was present and was passed by a vote of 4 for and 0 against, with 0 abstentions.



James L. Peters, Chairman

Attested by: 

Vincent Henry, Sr., Secretary



Andrew D. Whitener, Vice Chairman

