



# SQUAXIN ISLAND TRIBE

## RESOLUTION NO. 13- 22

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 its 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**, it is the best interests of the Tribe to enter into an agreement with the LOTT Clean Water Alliance ("LOTT") that facilitates joint projects to benefit water quality and/or habitat improvement, including in the Deschutes Basin; and

**WHEREAS**, it is necessary for the Tribe to waive its inherent sovereign immunity to the extent necessary to make the terms and conditions of the Deschutes River Stream Flow Benchmarks Project Interlocal Agreement mutually enforceable; and

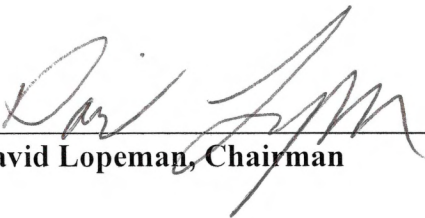
**NOW THEREFORE BE IT RESOLVED**, that the Tribe is authorized to enter into the Deschutes River Stream Flow Benchmarks Project Interlocal Agreement; and

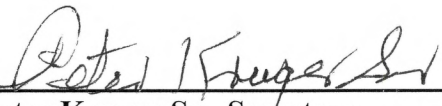
**BE IT FURTHER RESOLVED**, that the Tribe waives its inherent sovereign immunity to the following extent for this Interlocal Agreement:

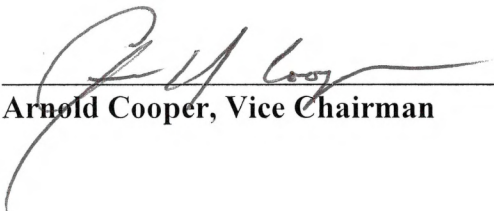
Limited sovereign immunity waiver. The Squaxin Island Tribe agrees to a limited waiver of sovereign immunity during the term of this Agreement, only as to enforcement of this Agreement and, if damages are involved, only up to and not exceeding the Tribe's insurance coverage limits

**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 28<sup>th</sup> day of March, 2013, at which time a quorum was present and was passed by a vote of 4 for and 0 against, with 0 abstentions.

  
\_\_\_\_\_  
**David Lopeman, Chairman**

Attested by:   
\_\_\_\_\_  
**Peter Kruger Sr., Secretary**

  
\_\_\_\_\_  
**Arnold Cooper, Vice Chairman**

**DESCHUTES RIVER STREAM FLOW  
BENCHMARKS PROJECT  
INTERLOCAL AGREEMENT**

This Agreement is made and entered into this 28th day of February 2013, by and between the Squaxin Island Tribe and the LOTT Clean Water Alliance, herein referred to as “LOTT” and jointly as “Parties.”

WHEREAS, the Squaxin Island Tribe submitted a proposal to LOTT to consider 50% funding of a project to develop stream flow benchmarks for the Deschutes River up to a maximum of \$40,000; and,

WHEREAS, benchmarks established by the proposed project will form a standard against which efforts to restore flow to the over-appropriated Deschutes River can be evaluated; and,

WHEREAS, formation of a standard to evaluate in stream flows is an important component in regional water quality and habitat improvement efforts for which LOTT has an active interest; and

WHEREAS, since 2004 LOTT has been working with the Squaxin Island Tribe in an effort to identify and cooperate on projects designed to benefit water quality or habitat improvement; and

WHEREAS, LOTT has set aside funds in its Capital Budget since 2004 to support such joint projects; and

WHEREAS, the Squaxin Island Tribe agrees that funds expended by LOTT for the proposed project help fulfill LOTT’s commitment to work on joint projects that benefit water quality and/or habitat in the Budd Inlet; and

WHEREAS, on January 9, 2013, the LOTT Board authorized the LOTT Executive Director to enter into an Agreement with the Squaxin Island Tribe after first considering details of the proposed project, as outlined in Exhibit A attached hereto, and incorporated by reference; and

WHEREAS, RCW 39.34.030 permits public agencies, including tribes and subdivisions of state government, to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage; and

WHEREAS, RCW 39.34.080 authorizes a public agency to contract with another public agency to perform any governmental service which each public agency is authorized to perform, provided that such contract shall be authorized by the governing body of each party to the contract; and



WHEREAS, it is necessary for the Parties to enter into an agreement to set forth the terms, conditions, and requirements for the proposed project;

NOW, THEREFORE, in consideration for the terms and conditions in this Agreement and in the documents incorporated herein, the Parties agree as follows:

**I. Purpose/Objective**

The purpose of this Agreement is for LOTT to fund the proposed project, as described generally in Exhibit A attached hereto, up to 50% of project costs or the sum of \$40,000, whichever amount is less, inclusive of all applicable sales and use tax.

**II. Scope of Agreement/Work**

LOTT's involvement in the project is limited to funding as described in this Agreement, unless otherwise authorized in writing by the LOTT Executive Director or his designee and agreed to by the Squaxin Island Tribe. The Squaxin Island Tribe will provide LOTT with draft written reports concerning the proposed project for review and comment, and provide progress updates to LOTT staff throughout the pendency of the project.

**III. Payment**

LOTT will remit payment to the Squaxin Island Tribe in accordance with this Agreement upon satisfactory written proof of costs for the proposed project. Funding provided by LOTT can only be used for the proposed project, and for no other purpose. The Squaxin Island Tribe agrees to allow LOTT access to any project or financial records necessary to verify use of the funds provided by LOTT. Any funds provided by LOTT must be spent on the project within 6 months of the Effective Date, or by completion of the project, whichever amount of time is less. Should LOTT determine that funds are not spent by the Squaxin Island Tribe in the manner required under this Agreement, such funds will be promptly refunded to LOTT upon written request.

**IV. Indemnification**

The Squaxin Island Tribe agrees to defend, indemnify and hold LOTT, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including reasonable attorney fees, arising out of or in connection with the Squaxin Island Tribe's performance of the Agreement, up to the amount of its applicable insurance coverage, except for injuries and damages caused by the sole negligence of LOTT. The sufficiency of the amount of applicable insurance coverage shall be approved by LOTT within 30 days of the effective date of this Agreement. If the amount of insurance coverage is determined by LOTT to be insufficient, LOTT may terminate this Agreement

upon written notice sent within 30 days of the effective date of this Agreement without recourse.

LOTT agrees to defend, indemnify and hold the Squaxin Island Tribe, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including reasonable attorney fees, arising out of or in connection with LOTT's performance of the Agreement, up to the amount of its applicable insurance coverage, except for injuries and damages caused by the sole negligence of the Squaxin Island Tribe. The sufficiency of the amount of applicable insurance coverage shall be approved by the Squaxin Island Tribe within 30 days of the effective date of this Agreement. If the amount of insurance coverage is determined by the Squaxin Island Tribe to be insufficient, the Squaxin Island Tribe may terminate this Agreement upon written notice sent within 30 days of the effective date of this Agreement without recourse.

**V. Joint Board**

This Agreement creates no Joint Board and no separate legal entity.

**VI. Duration of Agreement**

This Agreement shall be effective until completion of work unless otherwise terminated in the manner described under the termination section of this Agreement, except for those terms by their nature that survive this Agreement.

**VII. Termination of Agreement**

This Agreement may be terminated upon thirty (30) days notice to the other party using the method of notice provided for in this Agreement. If this Agreement is terminated by the Squaxin Island Tribe prior to completion of the proposed project, it shall promptly reimburse LOTT for any expenditure incurred by LOTT related to the proposed project as described in this Agreement.

**VIII. Entire Agreement**

This Agreement sets forth all terms and conditions agreed upon by the Squaxin Island Tribe and LOTT and supersedes any and all prior agreements oral or otherwise with respect to the subject matter addressed herein.

**IX. Disputes under this Agreement**

In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, or the breach thereof, the Parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. If the Parties do not reach such resolution within a period of sixty (60) days from the date the dispute first arose, then, upon written notice by a Party to the other, all disputes,

claims, questions, or differences shall be referred to *non-binding* arbitration administered by the Washington Arbitration & Mediation Service, 600 University Street, Suite 900, Seattle.

This Contract shall be construed and enforced in accordance with the laws of the State of Washington, and the Parties agree that in any litigation, jurisdiction and venue shall be in the Superior Court in and for the County of Thurston.

**X. Limited Sovereign Immunity Waiver**

The Squaxin Island Tribe agrees to a limited waiver of sovereign immunity during the term of this Agreement, only as to enforcement of this Agreement and, if damages are involved, only up to and not exceeding the Tribe's insurance coverage limits.

**XI. Recording**

Prior to its entry into force, this Agreement shall be filed with the Thurston County Auditor's Office or posted upon the websites or other electronically retrievable public source as required by RCW 39.34.040.

**XII. Notice**

Any notice required under this Agreement shall be to the party at the address listed below and shall become effective three days following the date of deposit in the United States Postal Service.

Squaxin Island Tribe:

Jeff Dickison, Assistant Natural Resources Director  
10 SE Squaxin Lane  
Shelton, WA 98584

LOTT Clean Water Alliance:

Karla Fowler, Community Relations & Environmental Policy Director  
500 Adams Street NE  
Olympia, WA 98501

**XII. Equal Opportunity to Draft**

The Parties have participated and had an equal opportunity to participate in the drafting of this Agreement, and the Exhibits, if any, attached. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.



**XIII. Effective Date**

This Agreement shall take effect on the date of the last authorizing signature affixed hereto.

**SQUAXIN ISLAND TRIBE**

**LOTT CLEAN WATER ALLIANCE**

By: \_\_\_\_\_  
\_\_\_\_\_  
Squaxin Island Tribe

By: \_\_\_\_\_  
Michael D. Strub, Executive Director  
LOTT Clean Water Alliance

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Kevin Lyon, Director  
Squaxin Island Legal Department

By: \_\_\_\_\_  
Rick Hughes, General Counsel  
LOTT Clean Water Alliance

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_