



SQUAXIN ISLAND TRIBE

RESOLUTION NO. 20-54 of the SQUAXIN ISLAND TRIBAL COUNCIL

WHEREAS, the Squaxin Island Tribe (the "Tribe") is a federally recognized tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. s 1523);

WHEREAS, the Tribe is organized under a Constitution and By-Laws originally ratified by the Tribe on May 15, 1965, and approved by the Secretary of the Interior on July 8, 1965, amended November 20, 1998, and approved by the Secretary of the Interior on December 11, 1998, and as most recently amended and ratified by the Tribe on October 20, 2000, and approved by the Secretary of the Interior on October 25, 2000;

WHEREAS, the Squaxin Island Tribal Council (the "Tribal Council") is the duly elected governing body of the Tribe and exercises substantial governmental duties and powers, including 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;

WHEREAS, this Resolution is adopted pursuant to the authority found in Article III, Sections 1 (a), (b), (f) and (i) of the Constitution;

WHEREAS, the Squaxin Island Reservation has exhausted its available water to serve on-reservation housing and other needs; without more water, new housing cannot be built. On-Reservation housing is extremely popular and demand far outstrips supply. There is a lengthy wait list for housing at all times and many families have combined generations under one roof out of necessity. Poverty and homelessness remain problems for many Tribal members, and the lack of affordable, on-Reservation housing means many tribal members still live in crowded or unsanitary locations. These living conditions cause COVID-19 to transmit more readily and prevent those with a positive test or symptoms from quarantining or isolating effectively;

WHEREAS, Taylor Shellfish, a seafood company with facilities located near the Reservation, needs additional water to provide for its growth, redundancy and reliability;

WHEREAS, the Tribe and Taylor Shellfish Company Inc. ("Taylor Shellfish") jointly applied to the Washington Department of Ecology for a new groundwater right permit, and were granted separate permits that were substantially as requested;

WHEREAS, while Taylor Shellfish, Taylor Timber Investment Co. and the Tribe ("Parties") are currently negotiating an MOU of larger scope that will address numerous issues related to the Permits and water system, the Parties desire to promptly enter into an Interim MOU so that work may proceed as quickly as possible to (1) evaluate the capacity of existing Taylor Shellfish wells, and (2) install a new well to support the needs of both permits. Time is of the essence in light of the Tribe's current pressing needs, its desire

to take advantage of available funding, Taylor's limited ability to contribute necessary funds at the present time in light of the Covid pandemic, the limited availability of well-drilling contractors, and the time required to drill a well of this size;

WHEREAS, the Tribe has not secured funding to build a well or to bring water from the well to Reservation housing. The timeline for construction prior to COVID was uncertain. With the current emergency expected to extend at least through the school year, the Tribe is electing to expend Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") funds to accelerate construction of the water system to bring new housing to the Reservation as quickly as possible and prevent infection and reinfection in crowded living circumstances, as well as provide a sanitary safe place to live for additional Tribal members;

WHEREAS, the Interim MOU contains a limited waiver of sovereign immunity to enforce the terms of this Interim MOU;

WHEREAS, in order to induce Taylor to complete and execute the Interim MOU, it is necessary for the Tribal Council to ratify and approve the terms of the Interim MOU; to authorize execution of any and all documents required; and to grant a limited waiver of sovereign immunity;

NOW THEREFORE BE IT RESOLVED, that the Squaxin Island Tribal Council hereby agrees to enter into the attached Interim MOU with Taylor to expeditiously facilitate (1) evaluating the capacity of existing Taylor Shellfish wells; and (2) installing a new well to support the needs of both permits; and (3) to address cost-sharing.

NOW THEREFORE BE IT RESOLVED, the Tribal Council specifically limits its waiver of sovereign immunity for the purposes of this Interim MOU to the limited waiver as stated in Paragraph 10 titled Limited Waiver of Sovereign Immunity, and as further described in 11 (Limitations on Liability):

10. Limited Waiver of Sovereign Immunity. The Tribe expressly retains all rights and benefits of sovereign immunity. Nothing in this Interim MOU shall be deemed as a waiver of sovereign immunity or as increasing the Tribe's liability beyond any statutory or other limitation of liability, except as expressly stated herein.

The Tribe hereby grants and provides a limited waiver of sovereign immunity to enforce the terms of this Interim MOU. This limited waiver of sovereign immunity shall apply in binding arbitration and enforcement of the award as described in paragraph 9.

This waiver does not extend to and is not for the benefit of any third party and shall not be enforceable by any third party or by any assignee of the Parties; nor does it extend to any other type of action or to any other forum or regarding any other matter. No award for punitive damages of any kind may be made or enforced against the Tribe. The limited waiver of sovereign immunity shall apply during the period of performance of this Interim MOU.

Any payment of a monetary judgment arising from a resolution or judgment under this Interim MOU shall be limited as described in paragraph 11.

11. Limitations on Tribe's liability. In no event shall either the Tribe's or Taylors's total, aggregate liability under the Interim MOU exceed \$240,000 plus any agreed cost overrun under paragraph 2.c, regardless of whether such liability arises in contract or tort. Neither

the Tribe nor Taylor shall not be liable for any indirect, incidental, special, punitive or consequential damages, or any loss of profits, revenue, data or data use.

NOW BE IT FURTHER RESOLVED, the terms and conditions of the Interim MOU are hereby authorized and ratified. The Chairman, or in his absence the Administrator, is hereby authorized to execute and deliver on behalf of the Tribe the Interim MOU, as well as any revisions of the same prior to their execution as they shall determine, together with any and all other documents, financing statements, consents, representations and warranties required, including but not limited to those required by the Washington Departments of Ecology and Health in order to effect the transactions contemplated by the Interim MOU.

In addition, the Chairman, or in his absence the Administrator, is hereby authorized to execute and deliver (1) any agreement or document that in the opinion of the officer executing or delivering any such agreement or document may be necessary or appropriate in connection with the Interim MOU and (2) any amendment or revision to any such agreement or document which in the opinion of the officer executing or delivering any such agreement of document may be necessary or appropriate.

NOW BE IT FURTHER RESOLVED, that the Administrator is authorized to draw down from CARES Act funds that amount authorized by the Interim MOU.

CERTIFICATION

The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted via telephone poll of the Squaxin Island Tribal Council, held on this 26 day of October 2020, at which time a quorum was present and was passed by a vote of 5 for and 0 against, with 0 abstentions.

Kristopher K. Peters
Kristopher K. Peters (Oct 26, 2020 11:57 PDT)

Kris Peters, Chairman

Jeremie Walls
Attested by: Jeremie Walls (Oct 31, 2020 10:08 PDT)
Jeremie Walls, Secretary

Charlene Krise
Charlene krise (Oct 31, 2020 10:06 PDT)

Charlene Krise, Vice Chairman











2020-10-26 Final Resolution - Taylor Tribe Interim MOU


Final Audit Report

2020-10-31


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**INTERIM MEMORANDUM OF UNDERSTANDING
BETWEEN
SQUAXIN ISLAND TRIBE,
TAYLOR SHELLFISH COMPANY, INC., AND TAYLOR TIMBER INVESTMENT CO.**

This Interim Memorandum of Understanding ("Interim MOU") is entered into by and between the Squaxin Island Tribe, a federally-recognized Indian Tribe (hereinafter "the Tribe"), Taylor Shellfish Company, Inc., a Washington corporation ("Taylor Shellfish"), and Taylor Timber Investment Co., a Washington corporation ("Taylor Timber") (hereinafter, "Taylor Shellfish and Taylor Timber are referred to collectively as, "Taylor"), as of October 25, 2020 ("the Effective Date"). This Interim MOU is made in consideration of the promises, covenants, and agreements contained herein.

RECITALS

The Tribe and Taylor (collectively hereinafter, "the Parties") recognize and affirm the following:

A. Taylor Shellfish needs additional water to provide for its growth, redundancy and reliability, and the Tribe needs additional water to, among other things, increase affordable, on-Reservation housing for Tribal members who currently live in crowded or unsanitary locations, as on-Reservation housing demand far outstrips supply, and address reliability issues because the Tribe's existing drinking water supply wells are vulnerable to drought.

B. In 2017, the Tribe and Taylor Shellfish entered into a MOU that addressed issues related to jointly applying for a new groundwater right permit from the Washington State Department of Ecology ("Ecology").

C. In September 2020, Ecology declined to issue a jointly-held permit, but granted Taylor Shellfish and the Tribe separate groundwater permits ("Permits"), Nos. G2-30737A ("the Taylor Permit") and G2-30737B ("the Tribe Permit"), that were substantially as requested. The Permits share, among other things, the same points of withdrawal and source of mitigation.

D. The Parties are currently negotiating an MOU of larger scope ("Main MOU") that will address numerous issues related to the Permits and water system, including but not limited to: installing a production well on Taylor Timber property, which is described in Exhibit A, attached hereto and incorporated by this reference ("the Well Site"); evaluating the capacity of current Taylor Shellfish wells; acquiring land to apply mitigation water; operating and monitoring the water system and the mitigation required by the Permits; selecting a Satellite Management Agency to operate and manage the water system; addressing permitting issues; executing an easement(s) and well sharing agreement(s); and allocating responsibility and determining cost-sharing for these tasks.

E. In light of the Tribe's current pressing needs, its desire to take advantage of available funding, Taylor's limited ability to contribute necessary funds at the present time in light of the Covid pandemic, the limited availability of well-drilling contractors, and the time

required to drill a well of this size, the Parties are entering into this Interim MOU so that the Work (as defined below) may proceed as quickly as possible.

UNDERSTANDING

Now, therefore, the Parties agree as follows:

1. **Purpose.** The purpose of this Interim MOU is to expeditiously facilitate the Work while the Parties negotiate the Main MOU. Among other things, the Main MOU will determine the manner in which Taylor contributes its 50% share of the Work.

2. **Definitions.**
 - a. "Work" means: (1) evaluating the capacity of existing Taylor Shellfish wells, and (2) installing a new well at the Well Site to support the needs of both Permits.

 - b. "Costs" as used in paragraphs 3 and 4 means only those costs owing and paid to the Contractor and to the Consultant for the Work, and does not mean other costs, including the Parties' respective internal costs, that are likely to be addressed in the Main MOU. Costs are estimated to not exceed \$240,000.

3. **Commitments of the Tribe.** The Tribe, as part of its commitment and consideration for this Interim MOU, agrees to the following actions:
 - a. The Tribe will retain well-drilling contractor Hokkaido Drilling, Inc. ("Contractor") to perform the Work before the end of 2020.

 - b. The Tribe will retain water rights consultant Coho Water Resources ("Consultant") to consult with the Contractor in performing the Work.

 - c. The Tribe is responsible for contributing 50% of the Costs, but shall contribute and incur 100% of the Costs now in light of Taylor's commitment to later contribute its 50% share in a manner that will be reflected in the Main MOU.

 - d. Any mutually-agreed Cost overruns shall be shared by the Parties 50/50.

 - e. The Tribe will work with Consultant and Contractor to keep Taylor informed regarding the progress of the Work, including but not limited to (i) ensuring that the Consultant and Contractor have followed all of the requirements for drilling the new well in the Taylor Shellfish Permit and the Tribe Permit, (ii) specifically identifying the location of the new well on the Well Site before drilling the new well, and (iii) discussing any potential Cost overruns before said Costs are incurred.

4. **Commitments of Taylor.** Taylor, as part of its commitment and consideration for this Interim MOU, agrees to the following actions:

- a. Taylor Timber shall grant access to the Tribe, Contractor, and the Consultant to the Well Site in order to accomplish the Work.
- b. Taylor is responsible for 50% share of the Work and shall make its contribution in a manner that will be reflected in the Main MOU.
- c. In the unlikely event that the Parties are unable to execute the Main MOU, Taylor shall reimburse the Tribe for 100% of the Costs, including mutually-agreed Cost overruns.
- d. Any mutually-agreed Cost overruns shall be shared by the Parties 50/50.

5. **Mutually Agreed Cost Overruns.** In order to be subject to the 50/50 split, the Parties must agree in writing to the amount of the Cost overrun before it is incurred.

6. **Parties Respective Powers and Authorities.** The undersigned representatives of each Party have all necessary powers and authority to enter into this Interim MOU and to consummate the transaction herein contemplated.

7. **Contacts.** The Parties designate the following individuals as leads for purposes of this Interim MOU, who will closely coordinate and serve as primary contacts with the Contractor and Consultant:

For the Tribe: Marvin Campbell, Tribal Administrator, mcampbell@squaxin.us, (360) 463-7260.

For Taylor: Diani Taylor E., General Counsel, dianit@taylorshellfish.com, 406-498-3229.

8. **Term.** The term of this Interim MOU shall last until either the event specified in the Main MOU, or until Taylor has repaid the Tribe for its 50% share of Costs.

9. **Dispute Resolution.** In the event that the Parties cannot reach agreement on any particular matter subject to this Interim MOU, the Parties agree to submit the matter to nonbinding dispute resolution. The first step is for the designated contacts for the Tribe and Taylor to meet and confer to resolve the issue. If the designated contacts cannot resolve the matter in thirty (30) days, the matter will be referred to Taylor General Counsel Diani Taylor and Tribal Administrator Marvin Campbell, who shall have sixty (60) days to resolve the matter. If at the end of the sixty-day period, the matter is not resolved to satisfaction of the Parties, the Tribe and/or Taylor may proceed to binding arbitration that is conducted under Judicial Arbitration and Mediation Services (JAMS) rules. Prior to invoking arbitration, the Parties may agree to mediation, in which event the Parties will use their best efforts to select a mediator as

soon as possible. The mediator's costs and attendant costs of mediation shall be borne equally by the Tribe and Taylor .

If the Parties cannot agree on a single arbitrator, a three-person arbitration panel shall be selected as follows: the Tribe and Taylor shall each select an arbitration panel member and the two selected panelists shall select a third. If the panelists cannot agree on a third arbitrator, the third arbitrator shall be selected by JAMS. The arbitration shall be administered by JAMS pursuant to its Expedited Procedures as now written or hereafter amended. The arbitrator's award shall be binding upon the Parties and no appeal shall be permitted, except for a request to vacate under RCW 7.04A.230 or 9 U.S.C. § 10.

10. Limited Waiver of Sovereign Immunity. The Tribe expressly retains all rights and benefits of sovereign immunity. Nothing in this Interim MOU shall be deemed as a waiver of sovereign immunity or as increasing the Tribe's liability beyond any statutory or other limitation of liability, except as expressly stated herein.

The Tribe hereby grants and provides a limited waiver of sovereign immunity to enforce the terms of this Interim MOU. This limited waiver of sovereign immunity shall apply in binding arbitration and enforcement of the award as described in paragraph 9.

This waiver does not extend to and is not for the benefit of any third party and shall not be enforceable by any third party or by any assignee of the Parties; nor does it extend to any other type of action or to any other forum or regarding any other matter. No award for punitive damages of any kind may be made or enforced against the Tribe. The limited waiver of sovereign immunity shall apply during the period of performance of this Interim MOU.

Any payment of a monetary judgment arising from a resolution or judgment under this Interim MOU shall be limited as described in paragraph 11.

11. Limitations on Tribe's liability. In no event shall either the Tribe's or Taylors's total, aggregate liability under the Interim MOU exceed \$240,000 plus any agreed Cost overrun under paragraph 2.c, regardless of whether such liability arises in contract or tort. Neither the Tribe nor Taylor shall be liable for any indirect, incidental, special, punitive or consequential damages, or any loss of profits, revenue, data or data use.

12. Fees and costs. Each Party to this Interim MOU will bear its respective fees and expenses incurred in connection with the preparation, negotiation, execution and performance of this Interim MOU; provided, however, that if any Party shall commence legal action to specifically enforce or otherwise seek redress under, or for breach of, this Interim MOU, the prevailing Party in such action shall be entitled to recover its costs and reasonable attorneys' fees and costs incurred to arbitrate, enforce or defend the action, including costs and fees incurred in any appellate proceeding.

13. Interpretation. This Interim MOU has been fairly and freely negotiated by the Parties and has been reviewed by legal counsel for each of the Parties, each of whom has had the

full opportunity to modify the draftsmanship hereof, and, therefore, the terms of this Interim MOU shall be construed and interpreted without any presumption or other rule requiring constructional implementation against the Party causing the drafting of the Interim MOU.


14. Counterparts/Facsimile Execution. The Interim MOU may be executed in any number of counterparts, each of which will be an original, but all of which will constitute one contract, binding on the Tribe and Taylor, even though the signatures of all Parties may not appear on any one counterpart. For purposes of this Interim MOU, original instruments or telephonic or electronic mail facsimiles in any number of counterparts, all of which together shall constitute one and the same of a signed counterpart of the Interim MOU.

15. Amendment. This Interim MOU may not be modified or amended except by the written agreement of the Parties.

This Interim MOU is accepted as of the Effective Date by the Parties whose signatures are set forth below.

TAYLOR SHELLFISH COMPANY, INC.

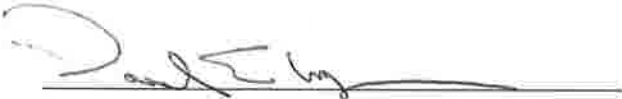
SQUAXIN ISLAND TRIBE



Jeff Pearson, President

Marvin E. Campbell
Marvin E. Campbell (Oct 26, 2020 10:32 PDT)

TAYLOR TIMBER INVESTMENT CO.



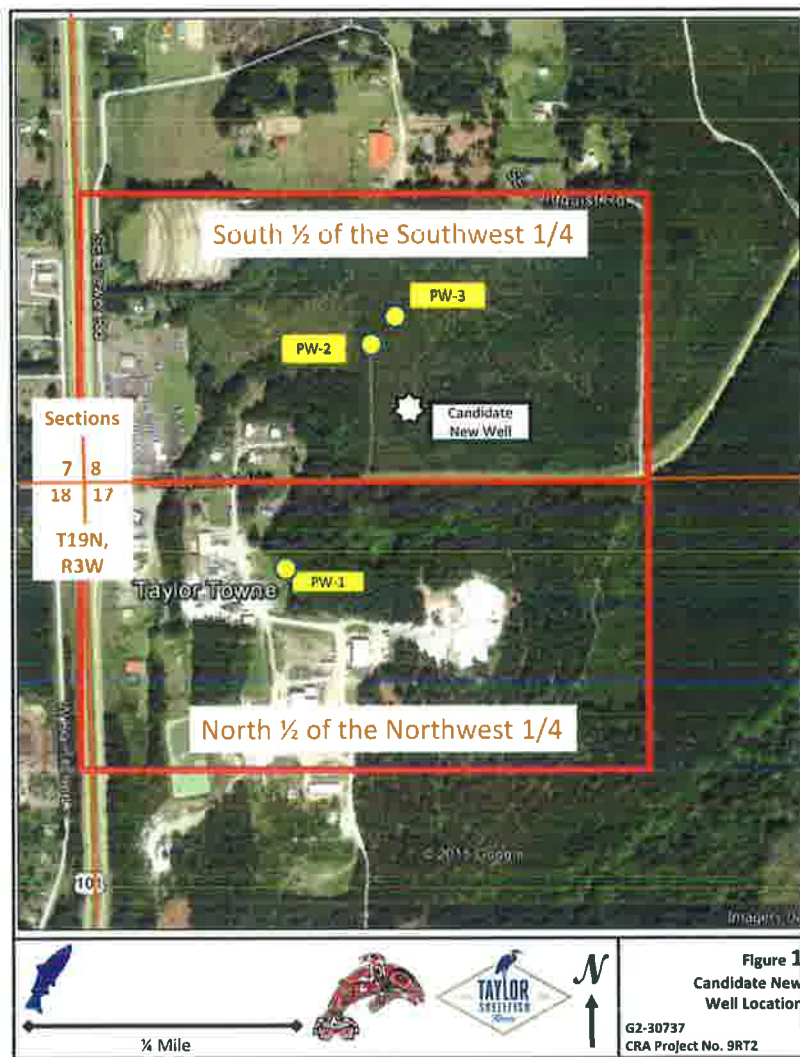
Paul Taylor, President

Exhibit A: Legal Description and Map of Well Site

The Southeast quarter (SE ¼) of the Southwest quarter (SW ¼) of Section eight (8), Township nineteen (19) North, Range three (3) West, W.M., EXCEPTING THEREFROM right-of-way for Lynch County Road No. 15500, EXCEPTING THEREFROM right-of-way for Nordquist County Road No. 15710, and EXCEPTING THEREFROM road rights-of-way.

Parcel Nos. 31908-34-00000 and 31908-34-00010

TOGETHER WITH and SUBJECT TO easements, restrictions, covenants, reservations, agreements, and conditions of record.



Coho Water Resources






Final Interim MOU. 102620

Final Audit Report

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