RESOLUTION NO. 09-80

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 Tribe has negotiated the terms of a contract for reconstruction of a segment of Washington Hwy. 108 with Rodarte Construction, Inc. ("Contractor"), as is evidenced by the following documents:

1. Form of Agreement Between Owner and Contractor for Construction Contract (Stipulated Price) Funding Agency Edition;
2. Standard General Conditions of the Construction Contract Funding Agency Edition; and
3. Supplementary Conditions

[Collectively known as the Contract Documents]; and

WHEREAS, in order to induce Contractor to complete and execute the Contract Documents and perform the same, it is necessary for the Tribal Council to ratify and approve the terms of the

Contract Documents; to authorize execution of any and all documents required; to issue a limited waiver of sovereign immunity; to consent that the Tribe enter dispute resolution and/or be sued in Tribal and potentially federal courts in disputes related to the transaction; and to consent to the potential application of certain substantive laws of Washington.

NOW THEREFORE BE IT RESOLVED, by the Tribal Council as follows:

Section 1. Contract Documents. The terms and conditions of the above-described Contract Documents are hereby authorized and ratified. The Chairman, David Lopeman, or in his absence the Vice-Chairman, Arnold Cooper, is hereby authorized to execute and deliver on behalf of the Tribe, the Contract Documents, as well as any non-material 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 by the Contractor or federal agency or its representatives in order to effect the transactions and implementation of the Contract Documents.

Section 2. Choice of Law Authorization.

A. The parties to any contract, agreement, or other like document related to the transaction described in Section 1 of this Resolution, including the Tribe and any department, program, or corporation of the Tribe, are hereby permitted and authorized to include in the document a stipulation providing that a designated body of laws will govern the interpretation and enforcement of the document(s), and

B. The Tribal Court shall, in cases brought before the Court over which it has jurisdiction and involving the document, use the designated body of laws for the interpretation and enforcement of the document.

Section 3. Choice of Law. The Contract Documents shall create the rights and remedies that would apply and shall be governed by and construed in accordance with the laws of the state of Washington (without regard to principles of conflict of laws), including the Washington Uniform Commercial Code.

Section 4. Waiver of Exhaustion of Tribal Remedies. The Council for itself and on behalf of the Tribe consents and agrees that it shall not be necessary in any litigation or arbitration or dispute resolution proceedings pertaining to the transactions described in the Contract Documents or other transactions relating thereto, that there first be any deferral to or exhaustion of remedies in the Tribal Court of the Tribe, any other tribal court or dispute resolution tribunal, or the Council. The Council agrees for itself and on behalf of the Tribe not to assert that the Tribal Court of the Tribe or any other courts or dispute resolution tribunals created by the Tribe, including but not limited to the Council itself, shall have jurisdiction as an adjudicative tribunal over any case or controversy or proceeding pertaining to said transaction or the Contract Documents unless the same is initiated by or consented to in writing by the Contractor.

Section 5. Choice of Venue; Submission to Jurisdiction. The Council for itself and on behalf of the Tribe consents and agrees that the United States District Court for the Western District of Washington, the federal appellate courts, and the Washington state courts of general jurisdiction, including their appellate courts, shall have jurisdiction in any dispute regarding the interpretation or enforcement of the Contract Documents.

Section 6. Waiver of Sovereign Immunity. The Council for itself and on behalf of the Tribe expressly and irrevocably waives the sovereign immunity of the Tribe from suit for causes of action by Contractor with respect to the obligations and indebtedness evidenced by the Contract Documents and consents to be sued in the United States District Court for the Western District of Washington, the United States Claims Court (in actions that would be within its jurisdiction where the United States is a defendant), the Washington state courts of general jurisdiction, and the Squaxin Island Tribal Court, to enforce the terms of the Contract Documents, or to compel or enforce arbitration; provided, any action to enforce an arbitration award shall be filed only in the Squaxin Island Tribal Court or in the Federal District Court of the Western District of Washington; provided further, the waiver of sovereign immunity expressed herein is limited to the Contractor and its successors and assigns under the Contract Documents. The Council for itself and on behalf of the Tribe agrees that the Tribe will not raise sovereign immunity as a defense in any legal action brought by Contractor, its successors or assigns, to enforce the terms of the Contract Documents.

Section 7. Arbitration.

Any dispute or claim arising under this Agreement may be resolved by binding arbitration. Such arbitration proceedings will be determined in accordance with the streamlined rules of JAMS and the terms of this section. In the event of any inconsistency, the terms of this section shall control.

The arbitration shall be administered by JAMS and conducted in Thurston County, Washington. All Claims shall be determined by one arbitrator; however, if claims exceed Five Million Dollars ($5,000,000), upon the request of any party, the claims shall be decided by three arbitrators. All arbitration hearings shall commence within ninety (90) days of the demand for arbitration and close within ninety (90) days of commencement and the award of the arbitrator(s) shall be issued within thirty (30) days of the close of the hearing. However, the arbitrator(s), upon a showing of good cause, may extend the commencement of the hearing for up to an additional sixty (60) days. The arbitrator(s) shall provide a concise written statement of reasons for the award.

The arbitrator(s) will have the authority to decide whether any claim is barred by the statute of limitations and, if so, to dismiss the arbitration on that basis. For purposes of the application of the statute of limitations, the service on a party of a demand for arbitration under applicable JAMS rules is the equivalent of the filing of a lawsuit. Any dispute concerning this arbitration provision or whether a claim is arbitrable shall be determined by the arbitrator(s).

The arbitrator(s) shall have the power to award legal fees pursuant to the terms of this Agreement.

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 13th day of August 2009, 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: FOR
Peter Kruger, Secretary

Arnold Cooper, Vice Chairman