

**INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND
THE STILLAGUAMISH TRIBE OF INDIANS
FOR WOOD ACQUISITION TO SUPPORT JIM CREEK RESTORATION PROJECT**

Execution through December 31, 2023

This Interlocal Agreement Between Snohomish County and the Stillaguamish Tribe of Indians for Wood Acquisition to Support Jim Creek Restoration Project (this “Agreement”), is made by and between Snohomish County, a political subdivision of the State of Washington (the “County”), and the Stillaguamish Tribe of Indians, a federally-recognized Indian Tribe (the “Tribe”).

RECITALS

- A. The Surface Water Management Division of the Snohomish County Department of Conservation and Natural Resources will be restoring a portion of Jim Creek to improve salmon habitat (the “Project”);
- B. The Project will use Engineered Log Jam Structures (ELJs) to address multiple limiting factors of salmonid species of concern by increasing key piece wood density and deep pool frequency for cover and refuge, adding hydraulic complexity to promote localized erosion and depositional patterns, and accumulating recruited wood and debris in Jim Creek;
- C. The Tribe offered to sell the County structural wood pilings (long, straight logs) for use in the Project;
- D. The Tribe offered 51 structural wood pilings at a cost of \$600 each. It is estimated that raw costs to the County of similar wood pieces would be \$1,000 to \$1,500 each;
- E. The Project is funded by Recreation and Conservation Office Grant # 22-1031 and Department of Ecology Water Quality Grant # WQC-2023-SnCoCN-00093. Both funders for this Project support the use of the surplus structural wood pilings from the Tribe; and
- F. RCW 39.34.080 authorizes public agencies, including the County and the Tribe, to enter into contracts to perform governmental services, activities, or undertakings.

AGREEMENT

NOW, THEREFORE, in consideration of the respective agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Tribe agree as follows:

1. PURPOSE OF AGREEMENT

The purpose of this Agreement is for the Tribe to sell structural wood pilings and logs with rootwads to the County at a reduced price to support the Jim Creek Restoration Project.

2. DURATION OF AGREEMENT

- A. The term of this Agreement is execution through December 31, 2023, (the “Term”) unless terminated sooner as provided herein. In the event funding becomes unavailable for work to be performed pursuant to this Agreement, all work shall terminate in accordance with provisions of this Agreement upon the last day of funding.
- B. As provided by RCW 39.34.080, this Agreement shall not take effect unless and until it has (i) been duly executed by both parties, and (ii) either filed with the County Auditor or posted on the County’s Interlocal Agreements website.

3. SCOPE OF WORK

- A. The Tribe shall provide to the County the following materials for use in the Project:
 - (1) 51 structural wood pilings (long, straight logs) comprised of either Doug fir or larch. The pilings are from Eugene, Oregon and are straight, non-twisted pilings. Some of the butt ends may exceed 18 inches, but each piling is specified to be driven by a pile driving cap with an 18-inch to 20-inch internal diameter tubular steel pipe affixed to the underside of a vibratory head. The cost for each piling shall be \$600.00.
 - (2) Several logs with rootwads (approximately 20-40), of varying sizes and lengths, with many pieces over 18” in diameter are available for use by the County. There is no cost for any of the logs with rootwads. The County may take possession of the logs or not take possession of the logs in its sole discretion.
- B. The Tribe will make the materials available on property owned by the Tribe north of SR 530 along 310th St NE. The County shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to collecting, transporting, and delivering the materials.

4. PERFORMANCE

The County agrees to collect all materials in a timely and professional manner. The County may use subconsultants or subcontractors to complete any portion of the work. The Tribe shall make the materials available to the County upon request of the County any time between the execution of this Agreement and December 31, 2023, as long as the County provides the Tribe seven (7) calendar days advance notice of the date it will collect the materials. At any time the County or the Tribe cannot fulfill its responsibilities under this Agreement, either party shall notify thereof in writing with an explanation of why said

responsibilities cannot be fulfilled.

5. ADMINISTRATION OF AGREEMENT

Each party to this Agreement shall designate an individual who may be designated by title or position to oversee and administer such party's participation in this Agreement. The parties' Administrators shall be the following individuals:

County's Administrator:

Snohomish County Dept. of Conservation
and Natural Resources
Surface Water Management
Attn: Lisa Tario
3000 Rockefeller Ave, M/S 303
Everett, WA 98201
lisa.tario@snoco.org
(425) 388-3079

Tribe's Administrator:

Stillaguamish Tribe of Indians
Natural Resources Department
Attn: Scott Rockwell
P.O. Box 277
Arlington, WA 98233
srockwell@stillaguamish.com
(360) 722-6571

6. COMPENSATION

The total compensation due to the Tribe under this Agreement shall in no event exceed thirty thousand six-hundred dollars (**\$30,600**). The County shall have the right to reject all or any portion of the materials if the County has a reasonable basis to believe that the material provided by the Tribe is not consistent with the description of the materials provided in this Agreement.

7. INVOICING AND PAYMENT

The Tribe shall submit one invoice to the County at \$600 each for the 51 structural wood pilings. Any additional logs with rootwads taken by the County in its sole discretion is free of charge and will not be invoiced. The County shall pay the invoice within thirty (30) days of receipt unless it objects under Section 9 of this Agreement.

8. AUDIT AND INSPECTION

The County and the Tribe shall maintain records pursuant to this Agreement in accordance with generally accepted accounting principles and practices consistently applied. The County and Tribe's records shall be available for inspection and audit by one another, the State Auditor, federal auditors, and any persons duly authorized by the parties. The County and the Tribe shall preserve and make such records available to said parties until expiration of six (6) years from the date of final payment under this Agreement.

9. ENTIRETY OF AGREEMENT

This Agreement constitutes the entire agreement between the County and the Tribe and supersedes all proposals, oral and written, and all other communication between the parties

in relation to the subject matter of this Agreement. No other agreement exists between the County and the Tribe with regards to the instant subject matter except as expressly set forth in this instrument. Except as otherwise provided herein, no modification of this Agreement shall be effective until reduced to writing and executed by both parties.

10. AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be altered or amended by mutual agreement of both parties. Such alterations or amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

11. TERMINATION

Either party may terminate this Agreement upon twenty (20) days' prior written notice to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

A. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion, the County may terminate this Agreement by providing written notice to the County fifteen (15) days prior to such withdrawing, reduction or limitation of funding. The termination shall be effective on the date specified in the termination notice. The Tribe shall continue to perform its obligations through the date of termination. The obligation of the County to make final payment shall survive the termination of this Agreement.

B. If for any cause either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party shall give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within fifteen (15) working days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

12. RIGHTS AND REMEDIES

In no event shall any payment by the County to the Tribe constitute a waiver by the County of any breach of covenant or any default that may exist on the part of the Tribe. The making of any such payment by the County while any such breach or default exists shall in no way impair or prejudice any of the County's rights and remedies, hereby expressly recognized, to recover payments or portions thereof, to which the Tribe was not entitled under this Agreement, where any payments were made by mistake, or to pursue any other remedy available to the County with respect to breach or default of this Agreement.

13. INSURANCE

The County maintains a fully-funded self-insurance program as defined in chapter 2.90 of the Snohomish County Code for the protection and handling of the County's liabilities, including injuries to persons and damage to property, automobile liability, professional liability, and workers compensation. The self-funded program will respond if an incident occurs involving negligence of County employees acting in the scope of their employment. The Tribe acknowledges, agrees and understands that the County is self-funded for all its liability exposures.

The Tribe agrees, at its own expense, to maintain, through its self-funded program, coverage for all its liability exposures for this Agreement. The Tribe agrees to provide at least 30 calendar days prior written notice of any material change in its self-funded program and, if requested, will provide a letter of self-insurance as adequate proof of coverage.

The Tribe further acknowledges, agrees, and understands that the County does not purchase Commercial General Liability insurance and is a self-insured governmental entity; therefore, the County does not have the ability to add any party as an additional insured.

14. HOLD HARMLESS

The Tribe agrees to protect, defend and hold harmless the County, its elected and appointed officials, employees and agents, from and against all claims, demands and causes of action of any kind or character, including any cost of defense and attorney's fees, arising out of any actions, errors or omissions of the Tribe, its officials, employees and agents in performing this Agreement except for those arising out of the sole negligence of the County.

The County shall indemnify, defend and hold harmless the Tribe and its commissioners, officers, employees and agents from and against any and all liabilities, losses, claims, damages, costs, demands, fines, judgments, penalties, obligations and payments, together with any reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and out-of-pocket expenses and reasonable costs and expenses of investigation) (collectively referred to as "Damages") incurred in connection with any of the foregoing, to the extent they result from, relate to or arise out of or in connection with: (i) any failure of the County, and its elected officials, officers, employees, agents, contractors and/or subcontractors to perform or observe any term, provision, covenant, agreement or condition hereunder to be performed or observed by or on behalf of the County; or (ii) any wrongful and/or negligent act and/or omission of the County and its elected officials, officers, employees, agents, contractors and/or subcontractors.

In no event shall the County be responsible for indemnifying the Tribe for damages caused by or resulting from the sole negligence of the Tribe, and its elected officials, officers, employees, agents, contractors and/or subcontractors.

15. LIMITED WAIVER OF SOVEREIGN IMMUNITY

The Tribe expressly reserves all of its inherent sovereign rights as a federally recognized Indian tribe, including sovereign immunity from suit in any state, federal or tribal court without the Tribe's consent. By entering into this Agreement, the Tribe hereby grants a limited waiver of sovereign immunity to the County only, subject to, and conditioned on the following:

A. This limited waiver of immunity shall not extend to interpretation of the Treaty of Point Elliot, 12 Stat. 927, or the rights reserved by the Tribe under that Treaty. This waiver of immunity shall not extend to, or be used for, or to, the benefit of any other person or entity of any kind or description whatsoever, including any successor or assign of the County.

B. To the extent that jurisdiction obtains, this limited waiver of immunity shall be deemed consent to jurisdiction only of the Snohomish County Superior Court.

C. The limited waiver of immunity in favor of the County shall commence and become effective as the effective date of this Agreement and shall remain in effect for three (3) years from the ending date or early termination of this Agreement. Notwithstanding any applicable statute of limitations or other law, upon expiration of the above three (3) year period, this limited waiver of immunity shall be deemed withdrawn without further action by the Tribe or notice to the County.

D. Except as authorized in Section F below, nothing contained in this Agreement shall be deemed consent to levy of any judgment, lien or attachment upon any assets, property or interest of the Tribe.

E. Nothing in this Agreement or any activity of the Tribe shall implicate or in any way involve the trust assets or credit of the Tribe or any of its members.

F. The Tribe hereby expressly waives sovereign immunity to suit only upon a claim of indemnification by the County pursuant to this Agreement. The limit for any claim of indemnification will be the insurance limit required by this Agreement. The parties agree that in discharging this indemnification obligation, where the required insurance is procured, the County shall look only to the proceeds of the insurance procured by the Tribe herein and the policy of insurance obtained by the Tribe shall prohibit the insurer from asserting a defense of sovereign immunity to a claim made under the policy. The Tribe agrees to assign over to the County, at its request, any and all of its rights against the insurer to effectuate a payment of its indemnification provision.

16. RELATIONSHIP TO EXISTING LAWS

This Agreement shall be governed by the laws of the State of Washington and the parties stipulate that any lawsuit arising out of or relating to the performance, breach, or enforcement of this Agreement shall be commenced in Snohomish County Superior Court. The Tribe waives sovereign immunity as necessary to give effect to this section and the indemnification and hold harmless provisions above. This limited waiver of sovereign immunity is for the benefit of the Tribe and the County and shall not be enforceable by any third party nor by any assignee or delegate of the parties. The parties shall bear their own costs and attorney's fees in any action brought under this section

17. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives of the Agreement as determined by the County.

18. PUBLIC RECORDS ACT


This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW.

19. MISCELLANEOUS

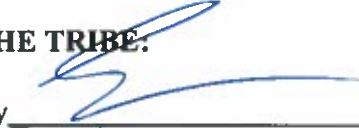
- A. No obligation in this Agreement shall limit the Tribe in fulfilling its responsibilities otherwise defined by law.
- B. No obligation in this Agreement shall limit the County in fulfilling its responsibilities otherwise defined by law.

IN WITNESS WHEREOF, the County and the Tribe have executed this Agreement as of the date of the last party to sign.

THE COUNTY:

By 
 County Executive Date


THE TRIBE:

By  07/13/23
 Eric White Date
 Title: Chairman, Board of Directors

Approved as to Form:

Digitally signed by Kisielius, Laura
 Date: 2023.08.29 17:19:37 -0700
 Kisielius, Laura
 Deputy Prosecuting Attorney

Approved as to Form:


 Stillaguamish Tribe of Indians
 Eric White
 Chairman, Board of Directors



Stillaguamish Tribe of Indians

PO Box 277 · 8322 236th St. NE
Arlington, WA 98223

BOARD OF DIRECTORS

Resolution 2023/079

APPROVING THE INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND THE STILLAGUAMISH TRIBE OF INDIANS FOR WOOD ACQUISITION TO SUPPORT JIM CREEK RESTORATION PROJECT, CONTAINING A LIMITED WAIVER OF SOVEREIGN IMMUNITY

WHEREAS, the Stillaguamish Tribe of Indians is a party to the Treaty of Point Elliott of January 22, 1855, 12 Stat. 927; and is a sovereign, Federally Recognized tribe, which the U.S. Government acknowledged on October 27, 1976; and

WHEREAS, the Stillaguamish Tribe of Indians Board of Directors is the duly constituted Governing Body of the Stillaguamish Tribe of Indians, in accordance with Articles III, IV and V of the Stillaguamish Constitution (the “Board”); and

WHEREAS, the Board, acting in the best interest of their people is embarked on a course of self-determination; and

WHEREAS, the Stillaguamish Tribe of Indians, like other federally recognized tribes, enjoys certain rights, privileges and immunities which include sovereign immunity from suit; and

WHEREAS, it is well established in law that the Tribe’s immunity from suit extends to the activities and actions of the Tribe, whether governmental or commercial; Tribal agencies; Tribal entities; and of Tribal employees, Officers, and agents as part of their job responsibilities and within the scope of their authority; and

WHEREAS, the authority to protect the Tribe as a sovereign political entity is vested in the Board under Article III and Article V, Sec. 1 of the Constitution, which Board has enumerated authority under Article V, Sec. 1 (b) to administer the affairs and assets of the Tribe, develop appropriate contracts, leases, permits, loan documents, sale agreements and, under Article V, Sec. 1(h), to exercise other necessary powers to fulfill the Board’s obligations, responsibilities and purposes as the governing body of the Tribe; and

WHEREAS, on September 7, 2017, the Board approved *Resolution 2017/139: Approving and Adopting the Limited Waiver of Stillaguamish Tribal Sovereign Immunity Ordinance*, and

WHEREAS, the sovereign immunity of the Stillaguamish Tribe may only be waived as provided in the *Limited Waiver of Stillaguamish Tribal Sovereign Immunity Ordinance* “Ordinance”; and

WHEREAS, any and all contracts and agreements and resolutions authorizing any and all waivers of Tribal Sovereign Immunity shall only be valid and enforceable if the instruments meet the requirements of the Ordinance; and

WHEREAS, pursuant to said Ordinance, any and all limited and general waivers of the Tribe’s sovereign immunity, whether in contracts, agreements, permits, leases, intergovernmental compacts, grant awards, or any other instruments shall be granted only by the Board , and the grant shall be in writing and shall be memorialized in the official records of the Board; and

WHEREAS, unless expressly designated by the Board as stipulated in §4(A) in the Ordinance, any waiver of sovereign immunity by a tribal agency, entity, arm or enterprise shall not be a waiver of the sovereign immunity of the Tribe or of any other entity, arm, enterprise or agency of the Tribe; and

WHEREAS, “limited” means that each waiver of sovereign immunity shall be limited to the amount of the contract or agreement in which the waiver is incorporated and to costs, expenses, and attorney fees directly related to that agreement only if such costs, expenses, and attorney fees are specifically included in the contract or agreement containing the waiver, and included in the Resolution approving the waiver, pursuant to §4(B) of the Ordinance; and

WHEREAS, any waivers of sovereign immunity shall be time limited, as set out in the contract or agreement and in the Resolution authorizing such waiver; and

WHEREAS, no waiver of sovereign immunity by the Tribe shall include punitive or non-economic damages; and

WHEREAS, the Stillaguamish Tribal Court shall have special jurisdiction to determine whether the Stillaguamish Tribe has validly waived its sovereign immunity in any contract or agreement, unless a condition precedent stipulated within *Chapter 4 of the Tribe’s Limited Waiver of Sovereign Immunity Ordinance* is satisfied; and

WHEREAS, the Board wishes to approve the interlocal Agreement between Snohomish County, and Stillaguamish Tribe of Indians (“Agreement”), attached hereto and incorporated by reference; and

WHEREAS, the Agreement contains a limited waiver of sovereign immunity in Section 15 on page 5 of the Agreement titled *LIMITED WAIVER OF SOVEREIGN IMMUNITY* to wit:

The Tribe expressly reserves all of its inherent sovereign rights as a federally recognized Indian tribe, including sovereign immunity from suit in any state, federal or tribal court without the Tribe's consent. By entering into this Agreement, the Tribe hereby grants a limited waiver of sovereign immunity to the County only, subject to, and conditioned on the following:

- A. This limited waiver of immunity shall not extend to interpretation of the Treaty of Point Elliot, 12 Stat. 927, or the rights reserved by the Tribe under that Treaty. This waiver of immunity shall not extend to, or be used for, or to, the benefit of any other person or entity of any kind or description whatsoever, including any successor or assign of the County.*
- B. To the extent that jurisdiction obtains, this limited waiver of immunity shall be deemed consent to jurisdiction only of the Snohomish County Superior Court.*
- C. The limited waiver of immunity in favor of the County shall commence and become effective as the effective date of this Agreement and shall remain in effect for three (3) years from the ending date or early termination of this Agreement. Notwithstanding any applicable statute of limitations or other law, upon expiration of the above three (3) year period, this limited waiver of immunity shall be deemed withdrawn without further action by the Tribe or notice to the County.*
- D. Except as authorized in Section F below, nothing contained in this Agreement shall be deemed consent to levy of any judgment, lien or attachment upon any assets, property or interest of the Tribe.*
- E. Nothing in this Agreement or any activity of the Tribe shall implicate or in any way involve the trust assets or credit of the Tribe or any of its members.*
- F. The Tribe hereby expressly waives sovereign immunity to suit only upon a claim of indemnification by the County pursuant to this Agreement. The limit for any claim of indemnification will be the insurance limit required by this Agreement. The parties agree that in discharging this indemnification obligation, where the required insurance is procured, the County shall look only to the proceeds of the insurance procured by the Tribe herein and the policy of insurance obtained by the Tribe shall prohibit the insurer from asserting a defense of sovereign immunity to a claim made under the policy. The Tribe agrees to assign over to the County, at its request, any and all of its rights against the insurer to effectuate a payment of its indemnification provision.*

; now

THEREFORE BE IT RESOLVED that the Board hereby approves the Agreement and grants the limited waiver of sovereign immunity contained in the Agreement, to the maximum amount under the Agreement, in strict conformity to its terms.

BE IT FURTHER RESOLVED that the Board hereby authorizes the Chairman, or in his absence the Vice-Chairman or Secretary, to execute the Agreement and to take all steps necessary to carry this Resolution into effect.

CERTIFICATION

As Chairman and Secretary of the Stillaguamish Tribe Board of Directors, we hereby certify that the above resolution was duly adopted at a meeting of the Stillaguamish Tribe Board of Directors held on the 13th day of July, 2023 at which time a quorum was present and a vote of 5 for 0 oppose and 0 abstain was cast.



ERIC WHITE, Chairman



KADI BIZYAYEVA, Secretary