

AGREEMENT FOR NALOXONE DISTRIBUTION

THIS AGREEMENT FOR NALOXONE DISTRIBUTION (the “Agreement”) is made and entered into this ____ day of _____, 20__, by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington (the “County”), and the _____, a federally recognized Indian tribe (the “Tribe”) (individually “Party” and collectively “Parties”).

RECITALS

A. The opioid epidemic is a public health, safety and economic crisis impacting all communities within Snohomish County and resulting in a significant loss of life to residents of Snohomish County; and

B. In exchange for data regarding opioid overdoses occurring within Snohomish County, the County currently provides naloxone to partner jurisdictions that respond within Snohomish County to opioid overdoses; and

C. Snohomish County uses opioid overdose data to track areas of high demand for naloxone in order to shift naloxone resources to the areas of highest demand as those areas change over time; and

D. The Tribe responds to emergency calls within its jurisdiction, including calls related to opioid overdoses and has a need for naloxone as well as an ability to collect data related to overdoses; and

E. The Parties recognize the public health, safety, and welfare benefits of promoting wider availability of naloxone within Snohomish County; and

F. The Parties further recognize that a significant number of naloxone doses distributed to partner jurisdictions go unused and can be redistributed to organizations in frequent contact with opioid users at risk of overdose; and

G. The Parties wish to enter into an agreement under which in exchange for overdose data, the County will provide the Tribe with naloxone, which may include extra doses to be left behind with opioid users whom the Recipient encounters, and with the further agreement that unused doses will be returned to the County for redistribution;

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. Naloxone Distribution.

In exchange for the data described in Section 5 below, the County will provide naloxone to the Tribe as available and in the County's sole discretion based on the County's analysis of opioid overdose data trends showing high need areas. The County acknowledges and agrees that the Tribe may, in its sole discretion, leave behind additional naloxone doses to active opioid users at risk of future overdose, or to friends and family on the scene. The Parties acknowledge and agree that the County is providing naloxone as-is, without express or implied warranty of any kind, including as to fitness, effectiveness and safety. The Tribe is not relying upon any oral or written representations by the County outside of this Agreement. Any use of the naloxone by the Tribe is at the Tribe's sole risk. The Tribe acknowledges and agrees that naloxone may not be as effective if improperly stored. To that end, the Tribe will store all naloxone at between 59°F to 77°F. Naloxone nasal spray may be stored for short periods up to 104°F. The Tribe will not store naloxone nasal spray in a car on hot days. The Tribe will not freeze or leave naloxone nasal spray in a car during the winter.

2. Effective Date and Duration.

This Agreement shall take effect upon full execution by the Parties. This Agreement shall remain in effect through midnight December 31, 2026, unless earlier terminated pursuant to the provisions of Section 8 below, and the term of this Agreement may be extended or renewed for up to one (1) additional three (3) year term, upon written notice from the County to the Tribe in the County's sole discretion, PROVIDED, HOWEVER, that each Party's obligations after December 31, 2023, are contingent upon local legislative appropriation of necessary funds for this specific purpose in accordance with applicable law.

3. Naloxone Liaison.

The Tribe will identify an employee to serve as the Tribe's Naloxone Liaison. The Naloxone Liaison will perform the following duties:

5.1 Overdose Data Tracking. The County actively gathers data regarding opioid overdoses throughout Snohomish County in order to identify high-need areas and shift naloxone resources towards those areas. To that end, the Naloxone Liaison will track when naloxone doses have been administered to reverse an opioid overdose regardless of whether County provided naloxone was used. For each such overdose incident, the Naloxone Liaison will track the following de-identified data on a County-provided form: (a) the name of the employee who administered the naloxone, (b) the date of administration, (c) the incident number, as assigned by the Tribe, (d) the number of doses used in the incident, (e) if the administration of naloxone resulted in a reversal of an overdose, and (f) the gender, age, and race/ethnicity, if known, of the person to whom naloxone was administered. The Naloxone Liaison will deliver the completed data tracking form to the County no later than one week after the overdose occurred.

5.2 Naloxone Distribution Tracking. The Naloxone Liaison will distribute naloxone received from the County to the Tribe's employees, including distribution to new employees. The Naloxone Liaison will also collect naloxone from employees that separate from employment with the Tribe for redistribution to other employees subject to Section 6 below. The Naloxone Liaison will maintain a current roster of all employees carrying naloxone, the dose number assigned to

each employee, its expiration date and its lot number, including any updates for replacement doses after a dose is administered or expires. The roster may include the dose number, expiration date and lot number of reserve replacement kits yet to be assigned out. The Naloxone Liaison will provide the naloxone employee roster to the County on a quarterly basis even if no changes occurred from the previous reporting period.

5.3 Naloxone Training. The Naloxone Liaison will provide training to any of the Tribe's staff who receive naloxone doses on the proper administration of naloxone as well as the guidelines for gathering opioid overdose data. Upon request from the Naloxone Liaison, the County will provide the above-described training to Tribe's staff.

4. Return of Unused Naloxone.

The Tribe agrees to return to the County any and all unused doses of naloxone when any such dose is within four months of its expiration date. The Tribe acknowledges and agrees that unexpired naloxone doses returned to the County may be redistributed into the community or to other agencies, in the County's sole discretion.

5. Hold Harmless and Indemnification.

Each Party shall protect, defend, hold harmless and indemnify the other Party, its officers, elected officials, agents and employees, while acting within the scope of their employment as such, from and against any and all claims (including demands, suits, penalties, liabilities, damages, costs, expenses, or losses of any kind or nature whatsoever including attorney's fees) arising out of or in any way resulting from such Party's own negligent acts, errors, or omissions or willful misconduct related to such Party's participation and obligations under this Agreement. Each Party agrees that its obligations under this subsection extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees or agents. For this purpose, each Party, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available against such claims under the industrial insurance act provisions of Title 51 RCW.

Further, the Tribe agrees to protect, defend, hold harmless and indemnify the County, its officers, agents, employees, and elected officials from and against any and all claims, costs, causes of action, or lawsuits (including the cost of defense) arising out of or related to the provision of naloxone to the Tribe and that the County assumes no responsibility for training in the proper administration of naloxone or the efficacy, reliability or suitability of the naloxone as provided by the manufacturer or as to warranty of any kind, express or implied, including as to fitness, effectiveness and safety. By entering into this Agreement, the Tribe accepts the naloxone subject to this indemnity, disclaimer, and the terms and conditions of this Agreement.

6. Liability Related to City Ordinances, Policies, Rules and Regulations.

In executing this Agreement, the County does not assume liability or responsibility for or in any way release the Tribe from any liability or responsibility which arises in whole or in part from the existence or effect of the Tribe's ordinances, policies, rules or regulations. If any cause,

claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such Tribe ordinance, policy, rule or regulation is at issue, the Tribe shall defend the same at its sole expense and, if judgment is entered or damages are awarded against the Tribe, the County, or both, the Tribe shall satisfy the same, including all chargeable costs and reasonable attorney's fees.

7. Compliance with Laws.

In the performance of its obligations under this Agreement, each Party shall comply with all applicable federal, state, and local laws, rules and regulations.

8. Early Termination.

Either Party may terminate this Agreement, with or without cause, upon sixty (60) days' written notice to the other Party.

9. Dispute Resolution.

In the event differences between the parties should arise over the terms and conditions or the performance of this Agreement, the Parties shall use their best efforts to resolve those differences on an informal basis. If those differences cannot be resolved informally, the matter shall be referred for mediation to a mediator mutually selected by the Parties. If mediation is not successful, either of the Parties may institute legal action for specific performance of this Agreement or for damages.

10. Notices.

All notices and other communications shall be in writing and shall be sufficient if given, and shall be deemed given, on the date on which the same has been mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the County: Snohomish County Health Department
3020 Rucker Avenue
Everett, Washington 98201
Attention:

If to the Tribe: _____

Attention: _____

The County or the Tribe may, by notice to the other given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

11. 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 Elliott, 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 a consent to jurisdiction only of the Snohomish County Superior Court.
- c. This limited waiver of immunity in favor of the County shall commence and become effective as of the effective date of this Agreement and shall remain in effect and extend for three (3) years from the ending date under Section 2 or three (3) years from earlier termination of this Agreement as set forth in Section 8 herein. Notwithstanding any applicable statute of limitations or other law, upon expiration of the above three (3) year period that extends from the ending date or early termination of this Agreement under Section 8, this limited waiver of immunity shall be deemed withdrawn without further action by the Tribe or notice to the County.
- d. Nothing contained in this Agreement shall be deemed a consent to levy of any judgment, lien or attachment upon any assets, property or interest of the Tribe except as specifically described herein.
- e. Nothing in this Agreement nor 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 provides a limited waiver of sovereign immunity to suit with respect to claims made relating to, or arising under, this Agreement by any party, to interpret or enforce the terms of this Agreement, or to a claim of indemnification by the County. 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 warrants its authority to and 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 obligation.

12. Entire Agreement; Amendment.

This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof, and supersedes any and all prior oral or written agreements between the Parties regarding the subject matter contained herein. This Agreement may not be modified or amended in any manner except by a written document executed with the same formalities as required for this Agreement and signed by the Party against whom such modification is sought to be enforced.

13. Conflicts between Attachments and Text.

Should any conflicts exist between any attached exhibit or schedule and the text or main body of this Agreement, the text or main body of this Agreement shall prevail.

14. Governing Law and Venue.

This Agreement shall be governed by and enforced in accordance with the laws of the State of Washington. The Parties agree that any lawsuit arising out of or relating to the performance, breach or enforcement of this Agreement shall be first commenced in the Federal District Court for the Western District of Washington. In the event that the federal court determines that it lacks subject matter jurisdiction to resolve the dispute between the County and the Tribe, the Parties agree to venue in the Superior Court of Snohomish County, Washington. The Parties agree that the matter shall not be pursued in superior court unless there is a federal court determination that it lacks subject matter jurisdiction. Any judicial award, determination, order, decree or other relief, whether in law or equity or otherwise, resulting from the action shall be binding and enforceable upon the Parties. The Parties each hereby waive sovereign immunity as necessary to give effect to this Agreement. This waiver is only for the benefit of the Tribe and the County, and shall not be enforceable by any third Party or by any assignee or delegate of the Parties.

15. Interpretation.

This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the Parties hereto. The captions and headings in this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

16. Severability.

If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

17. No Waiver.

Failure by either Party at any time to require performance by the other Party under this Agreement or to claim a breach of any provision of this Agreement shall not be construed as affecting any subsequent breach hereof or the right to require performance or affect the ability to claim a breach with respect hereto.

18. No Assignment.

This Agreement shall not be assigned, either in whole or in part, by either Party without the express written consent of the other Party, which may be granted or withheld in such Party's sole discretion. Any attempt to assign this Agreement in violation of the preceding sentence shall be null and void and shall constitute a default under this Agreement.

19. Warranty of Authority.

Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the Party for whom he or she purports to sign this Agreement.

20. No Third Party Beneficiaries.

This Agreement and each and every provision hereof is for the sole benefit of the City and the County. No other persons or Parties shall be deemed to have any rights in, under or to this Agreement.

21. Execution in Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

COUNTY:

TRIBE:

Snohomish County, a political subdivision
of the State of Washington

_____, a Washington

By _____
Name:
Title:

By _____
Name:
Title:

Approved as to insurance

Approved as to Form:

and indemnification provisions:

Risk Management

Tribe Attorney

Approved as to Form:

Deputy Prosecuting Attorney