

**INTERLOCAL AGREEMENT FOR  
RESIDENTIAL PLAN REVIEW & BUILDING INSPECTION SERVICES  
BETWEEN  
THE LOWER ELWHA KLALLAM TRIBE  
AND  
CLALLAM COUNTY**

This Agreement is made and entered into by and between the Lower Elwha Klallam Tribe, a sovereign and federally recognized Indian Nation (hereinafter referred to as “the Tribe”) and Clallam County, a political subdivision of the State of Washington (hereinafter referred to as “the County”) pursuant to RCW 39.34 *et. seq.* of the Washington Interlocal Cooperation Act.

**WHEREAS**, the Tribe desires residential plan review and building inspection services of various housing construction projects to ensure consistency and quality; and

**WHEREAS**, the Tribe does not have adequate personnel to review residential plans and inspect the construction of the homes being erected under the scope of these projects; and

**WHEREAS**, the County has sufficient personnel to perform residential plan reviews and building inspections and may assist the Tribe with its housing construction project; and

**WHEREAS**, the Tribe and the County both have the independent and legal authority to perform residential plan review and building inspections for housing construction projects under Article IV of the Constitution and By-laws of the Lower Elwha Tribal Community, RCW 19.27 *et. seq.*, and Title 21 of the Clallam County Code; and

**WHEREAS**, Chapter 39.34 RCW authorizes units of local government and federally recognized Indian nations to enter into interlocal agreements; and

**WHEREAS**, Article IV of the Constitution and By-laws of the Lower Elwha Tribal Community authorizes the Tribe to promote and regulate the use of tribal land.

**NOW, THEREFORE, BE IT AGREED AS FOLLOWS:**

1. Duration.

This Agreement shall commence and be effective upon execution by the parties. The Agreement shall remain in full force and effect for a period of two (2) years, or until the completion of the specific project identified below.

2. Purpose and Scope.

A. The Tribe is beginning “Phase Two” of a housing construction project, which seeks to erect several homes on parcel numbers 073135 219035 and 073135 520000. These parcels are located within the geographical boundaries of the Tribe. The Lower Elwha Housing Authority, an entity of the Tribe, is supervising the project.

B. This Agreement memorializes the terms under which the County, by and through its Department of Community Development (DCD), will provide residential plan review and building inspection services to the Tribe, so the Tribe may complete the identified

housing construction project. This Agreement pertains to only “Phase Two” of the identified project. It does not contemplate a relationship between the parties once “Phase Two” is completed.

- C. The County shall have the authority to perform the residential plan reviews, routine building inspection services, and requisite administrative functions to facilitate said reviews and inspections during the identified housing construction project.
- D. The County will provide personal services for plan review, field inspections, reasonable administrative functions, transportation, and necessary technical support consistent with RCW 19.27 *et. seq.* and Title 21 of the Clallam County Code.
- E. The Tribe will provide all other services regarding the general administration and enforcement of applicable construction standards and will be solely responsible for legal enforcement of such standards.

3. Financing.

- A. The Tribe agrees to maintain a budget sufficient to cover any/all expenditures required under this agreement. The Tribe further agrees to provide the County with 30-day advanced written notice in the event that funding for this Agreement becomes unavailable.
- B. The Tribe agrees to reimburse all compensable time accrued by County employees while performing services to the Tribe under this agreement at the agreed hourly rate of \$75 per hour. There shall be no pro-rating for partial hours.
- C. Amounts due under the terms of this Agreement shall be due and payable within thirty (30) days after receipt of an itemized invoice. The County agrees to bill the Lower Elwha Housing Authority monthly for all sums.

4. Termination.

- A. Either Party may terminate this Agreement at any time by providing 30-day written notice; EXCEPT where a fiscal emergency may require immediate termination.
- B. If this Agreement is so terminated, the terminating party shall be liable only for performance rendered prior to the effective date of termination.
- C. In the event of termination, the parties agree that any property purchased/acquired in connection with this Agreement shall remain the property of the party that purchased the property.

5. Modification.

The Tribe and County may mutually amend this Agreement. Such amendments shall not be binding unless they are in writing, signed by personnel authorized to bind the Tribe and the County, and executed with the same degree of formality as this Agreement.

6. Property.

The parties do not anticipate the need to purchase/acquire property in order to comply with the terms of this Agreement. However, should property be acquired in connection with the Agreement it shall remain with the purchasing party.

7. Administration of Agreement.

- A. The Tribe and County will each appoint a representative who will be responsible for the administration of this Agreement. Unless otherwise designated in writing, the Tribe contact person will be the Director of the Lower Elwha Housing Authority. The County contact person will be the Director of the Department of Community Development.
- B. The Agreement shall be administered pursuant to RCW 39.34.030(4)(a). The Tribe and County will coordinate the planning, organizing and scheduling of services to be rendered pursuant to this Agreement. Services rendered by the County must comply with current County labor contract requirements.
- C. Additionally, each administrator or designee will consult with each other as required regarding costs, fees, and charges, as well as changes in policies, practices, or procedures that may affect the responsibilities of the other.
- D. The contact persons, identified in this section, will try to resolve disputes that arise under this agreement between themselves or through their designated representatives.

8. General Provisions.

- A. Equipment: The County will provide its employees with any/all necessary equipment to perform their duties under this Agreement. In the event any of the County's equipment is damaged or requires replacement in connection with the County rendering services under this Agreement, the costs of repair and/or replacement will be paid by the Lower Elwha Housing Authority; EXCEPT where the cost of repair and/or replacement are the result of County employees' negligence, or where the equipment was defective or at or near the end of its service life.
- B. Building Permits: The County will not issue building permits for the proposed construction. The County's involvement is limited strictly to residential plan review, physical building inspections, and requisite administrative functions to facilitate these aims. Any reference to building permit numbers in County records is not to be interpreted as the County having issued, approved, or authorized said permit. It is the sole function of the Tribe to approve/require building permits.
- C. Residential Plan Review: The Tribe will provide the County with the six housing designs/plans it requires the County's assistance in reviewing. The Tribe will provide these designs/plans to the County, at a minimum, thirty (30) days in advance of any onsite/physical inspection.

D. Inspections: Inspections shall be arranged/performed in the following manner:

- (1) The Tribe will be responsible for advising the County of the need for initial inspections and subsequent periodic inspections. The County will normally respond to requests within 24 hours, EXCEPT, the County will only respond during normal working hours (8:30 a.m. to 4:30 p.m.), Monday through Friday, and excluding County Holidays and County Furloughs.
- (2) The County will record inspection data on forms provided by the County and will provide these daily inspection reports to the Tribe on a daily basis. The Tribe will be responsible for its own maintenance of records, ensuring compliance with appropriate standards and calling for re-inspections, as needed. The Tribe shall be solely responsible for monitoring the progress of construction covered by the Agreement and for assuring that timely calls for inspections are made.
- (3) The Tribe will be responsible for providing a contact person by name, address, and phone number for purposes of coordination and day-to-day administration of this Agreement. The Tribe will be responsible for providing copies of plans and specifications and any other documents necessary to meet standards for quality and compliance with federal and applicable building codes as well as those required by County building inspectors.
- (4) Specifically, the County will provide the following services in accordance with the Washington State Building Code and approved plans and specifications.
  - (a) Plan Review Services
  - (b) Foundation Inspections
  - (c) Framing Inspections
  - (d) Plumbing Inspections
  - (e) Mechanical Inspections
  - (f) Insulation/Energy Code Inspections
  - (g) Final Inspections
- (5) The County will NOT provide or be responsible for the following inspection activities.
  - (a) Electrical Inspections
  - (b) Fire Code Inspections
  - (c) Sanitation Inspections (sewer or water)
  - (d) Site Preparation or Suitability Inspections

9. Records and Forms:

The County agrees to maintain a system of record keeping relative to each individual housing project. Moreover, County inspectors will carry working files on the site in accordance with established County record-keeping systems. The County shall make available, upon request, to the Tribe all records, books, documents, and other material maintained, prepared or issued in the implementation of this Agreement, EXCEPT any document protected under the

attorney-client privilege or work product doctrine. All County records, working files described and generated reports shall be subject to public disclosure as required per 42.17 and 42.56 RCW.

10. Governing Law.

In the event of a dispute, this Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue for any legal action brought hereunder shall be in the United States District Court, Western District of Washington, or if that court lacks jurisdiction, the Superior Court for Thurston County.

11. Dispute Resolution.

In the event a dispute arises under this Agreement, prior to the formal filing of a legal action, the parties shall convene a Dispute Board to resolve the dispute. The Tribe shall appoint a member to the Dispute Board. The County will appoint a member to the Dispute Board. The Tribe and the County will jointly appoint a member to the Dispute Board. In the event the Tribe and County are not able to jointly agree on a third member to serve on the Dispute Board, either party may petition the Superior Court for Clallam County to appoint a third member to the Dispute Board. The Dispute Board shall evaluate and adjudicate the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto, with each party agreeing to pay its own costs and fees.

12. Defense, Indemnity, Hold Harmless.

- A. The Tribe shall defend, indemnify and hold the County and its elected officials, officers, agents, and employees, or any of them harmless from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever as a result of or related to the performance of this agreement, by reason of or arising out of any negligent act or omission of the Tribe, its officers, agents, and employees, or any of them. In the event that any suit based upon such a claim, action, loss, or damage is brought against the County, the Tribe shall defend the same at its sole cost and expense; provided that the County retains the right to participate in said suit if any principle of governmental or public laws is involved; and if final judgment be rendered against the County, its officers, agents, and employees, or any of them, or jointly against the County and the Tribe and its respective officers, agents, and employees, or any of them, the Tribe shall satisfy the same.
- B. 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 Tribal ordinances, rules or regulations. If any cause, claim, suit, action or administrative proceeding related to this agreement is commenced against the County in which the enforceability and/or validity of any such tribal ordinance, rule or regulation is at issue, and/or in which the legality of this Agreement is at issue, the Tribe shall defend the same at its sole expense and if judgment is entered or damages are awarded against the County, the Tribe shall satisfy the same, including all charges costs and attorney fees.

- C. The County shall defend, indemnify and hold the Tribe and its elected officials, officers, agents and employees, or any of them harmless from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever as a result of or related to the performance of this agreement, by reason of or arising out of any negligent action or omission of the County, its officers, agents, and employees, or any of them. In the event that any suit based upon such a claim, action, loss, or damage is brought against the Tribe, the County shall defend the same at its sole cost and expense; provided that the Tribe retains the right to participate in said suit if any principle of governmental or public and/or tribal law is involved; and if final judgment be rendered against the Tribe, its officers, agents, and employees, or any of them, or jointly against the Tribe and the County and their respective officers, agents, and employees, or any of them, the County shall satisfy the same.
- D. In executing this Agreement, the Tribe does not assume liability or responsibility for or in any way release the County from any liability or responsibility, which arises in whole or in part from the existence or effect of County ordinances, rules or regulations. If any cause, claim, suit, action or administrative proceeding related to this agreement is commenced against the Tribe in which the enforceability and/or validity of any such County ordinance, rule or regulation is at issue, and/or in which the legality of this Agreement is at issue, the County shall defend the same at its sole expense and if judgment is entered or damages are awarded against the Tribe, the County shall satisfy the same, including all costs and attorney fees.
- E. The terms of Section 12 “Defense, Indemnity, Hold Harmless” shall survive the termination or expiration of this Agreement.

13. Limited Waiver of Sovereign Immunity.

- A. For claims and demands both related to this Agreement and brought by or against the County, the Tribe authorizes a limited waiver of sovereign immunity from suit to establish liability, if any, arising under this Agreement, and to defend, indemnify and hold County harmless by reason of any and all claims and demands, as set forth herein. This limited waiver of immunity is limited to the provisions of this Agreement and shall survive the termination or expiration of this Agreement. Venue for any action against the Tribe under this limited waiver of immunity shall be in the United States District Court, Western District of Washington, or if that court lacks jurisdiction, then in the Superior Court for Thurston County.
- B. Nothing in this Agreement shall be construed to authorize any suit, execution, attachment, or judicial process against the persons or property of the Tribe or any of its officers, agents, or employees, or against the Tribe’s Tribal Council or any member thereof, other than as specifically set forth above.
- C. In addition, to the extent not already waived by the provisions of existing law, County as a political subdivision of the State, hereby waives any sovereign immunity it possesses solely for the purpose of permitting suit to establish its liability, if any, arising under this Agreement, and to defend, indemnify and hold the Tribe harmless by reason of any and all claims and demands, as set forth herein. Venue for any action filed against County

shall be in the United States District Court, Western District of Washington, or if that court lacks jurisdiction then in the Superior Court for Thurston County.

D. The terms of Section 13, "Limited Waiver of Sovereign Immunity" shall survive the termination or expiration of this Agreement.

14. Attorneys' Fees.

In the event litigation concerning this Agreement becomes necessary, the prevailing party, in addition to costs, shall be entitled to reasonable attorneys' fees as set forth by the applicable court.

15. Severability.

If any provision of this Agreement or any provision of any law, rule, or document incorporated by reference into this Agreement, shall be held invalid, such invalidity shall not affect the other provisions of this Agreement that legally can be given effect without the invalid provision. To this end, the provisions of this Agreement are declared to be severable.

16. Complete Expression.

This Agreement, and any written attachments or amendments thereto, constitutes the complete agreement of the parties and any oral representations or understandings not incorporated herein are excluded.

17. Agreement Recorded.

A copy of this Agreement will be recorded with the Clallam County Auditor and posted on the internet via the webpage of the Clallam County Department of Community Development.

18. Commencement Date.

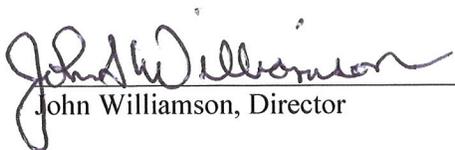
This Agreement will commence on the date the last signatory, with authority to bind his/her respective legal entity to an agreement, affixes his or her signature to the Agreement.

**IN WITNESS WHEREOF**, the parties have signed and dated this Agreement:

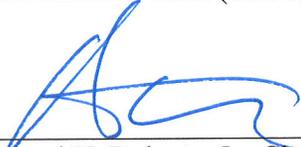
DEPARTMENT OF COMMUNITY  
DEVELOPMENT (DCD)

LOWER ELWHA HOUSING AUTHORITY

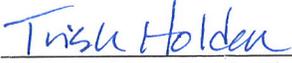
  
\_\_\_\_\_  
Sheila Roark Miller, Director

  
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John Williamson, Director

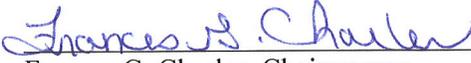
BOARD OF CLALLAM COUNTY  
COMMISSIONERS (BoCC)

  
\_\_\_\_\_  
Howard V. Doherty, Jr., Chair

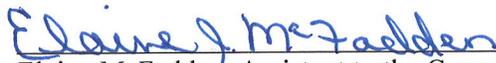
ATTEST:

  
\_\_\_\_\_  
Trish Holden, CMC, Clerk of the Board

LOWER ELWHA KLALLAM TRIBE

  
\_\_\_\_\_  
Frances G. Charles, Chairwoman

ATTEST:

  
\_\_\_\_\_  
Elaine McFadden, Assistant to the Council

Approved as to form by:

 6/13/2012  
\_\_\_\_\_  
Brian Wendt #40537  
Deputy Prosecuting Attorney  
Clallam County