

**CROSS COMMISSION LAW ENFORCEMENT AGREEMENT BETWEEN  
THE SHOALWATER BAY TRIBAL COMMUNITY  
AND  
PACIFIC COUNTY  
PREAMBLE**

THIS AGREEMENT DATED \_\_\_\_\_, is between the Shoalwater Bay Indian Tribal Community, a federally recognized Indian Tribe organized pursuant to Section Sixteen of the Indian Reorganization Act of 1934 (25 U.S.C. Section 476), hereinafter "TRIBE," and Pacific County, Washington, hereinafter "COUNTY", through the Pacific County Sheriff, hereinafter "SHERIFF."

THIS AGREEMENT IS ENTERED INTO UNDER THE Inter-local Cooperation Act (RCW 39.34), the Mutual Aid Peace Officer Powers Act (RCW 10.93), the Tribal Police Officers Act (RCW 10.93.02) and the Constitution, Bylaws and Tribal Code of the Shoalwater Indian Tribal Community.

**INTENT**

The TRIBE and the COUNTY each wish to protect the lives and property of all people within the Shoalwater Bay Indian Reservation. The TRIBE and the COUNTY, therefore, have entered into this Agreement governing certain aspects of the relationships between the COUNTY and TRIBE with respect to the use of tribal law enforcement officers in emergency situations and the commission of Tribal law enforcement officers as COUNTY deputies.

Such commission shall empower a tribal officer as described in Section V (Scope of Powers). Crimes investigated under this commission shall only be prosecuted in the courts of the State of Washington.

**ACCORDINGLY, THE PARTIES AGREE AS FOLLOWS:**

**Section I      DEFINITIONS**

As used in this Agreement:

Approved Tribal Officer: A law enforcement officer employed by the TRIBE, who has submitted to a background check and training as required by the COUNTY, and has thereafter been granted a commission by the SHERIFF.

Commission: A Pacific County deputy sheriff commission granted to an approved Tribal officer in accordance with this Agreement. The commission can be either a full or a limited commission.

Commission Card: An identification card issued by the SHERIFF to an approved Tribal officer.

Reservation: The Shoalwater Bay Indian Reservation, and all territory within the exterior boundaries thereof, including without limitation all roads, rights of way, easements, tidelands and waterways within such exterior boundaries.

## **Section II Jurisdiction**

Nothing in this Agreement shall be construed to cede any jurisdiction of either of the parties, to modify the legal requirements for arrest or search and seizure, or to accomplish any act violative of State or Federal law.

## **Section III Issuing Commissions**

The granting of deputy sheriff commissions shall be at the sole discretion of the SHERIFF or his designee. Applications for commissions shall be submitted in writing to the SHERIFF or his designee. Each application shall be accompanied by all background information on the applicant known to Tribal law enforcement by appropriate waivers allowing the standard SHERIFF's Office pre-employment investigation, and by such other information as may be required. The SHERIFF or his designee shall grant or deny each application within a reasonable period of time. The granting of a commission shall be evidenced by the issuance of a commission card to the officer receiving the commission. No commission shall be denied on the basis of race, creed, sex, color or national origin. No individual officer of the TRIBE's law enforcement agency shall be commissioned by the SHERIFF or his designee unless that officer has successfully completed the Washington State Basic Law Enforcement Academy or equivalent training. The SHERIFF or his designee shall have the power to issue full or limited commissions. If the SHERIFF or his designee issues a limited commission, he shall specify the exact scope of the commission at the time the limited commission is granted.

## **Section IV Suspension and Revocation of Commissions**

The SHERIFF or his designee may, at any time, suspend or revoke the commission of any Tribal law enforcement officer for reasons solely within his discretion. The TRIBE's Chief of Police shall receive written notice of any such suspension or revocation and the reasons for such action.

## **Section V Scope of Power**

An Approved Tribal Officer shall have a commission card in his or her possession at all times when acting pursuant to the commission. A full commission shall give an approved Tribal officer the same responsibility and authority as a deputy sheriff. An approved Tribal officer with a limited commission shall only have the responsibility and authority that is specifically granted by the limited commission. Any court actions that emanate from a limited or full commission shall be prosecuted in State court.

Tribal law enforcement officers commissioned pursuant to this Agreement shall comply with the applicable constitutional and statutory provisions concerning enforcement of State laws when exercising such authority.

Tribal law enforcement officers shall remain under the control of the TRIBE, but to the extent that they are acting under the authority of a commission, Tribal Law Enforcement Officers shall abide by the rules and regulations of the SHERIFF, all State laws and regulations, the State and Federal Constitutions, and shall be subject to the direction of the SHERIFF'S OFFICE.

## **Section VI Report of Exercise of Commission Powers**

Any action taken by an approved Tribal officer pursuant to a commission shall be immediately reported to the SHERIFF'S Office dispatcher. A written report shall be filed with the SHERIFF'S Office within three days of an enforcement action.

**Section VII     Emergency Situations**

If a law enforcement emergency arises, the SHERIFF or his designee may ask the TRIBE for the use of tribal law enforcement personnel who do not possess a full or limited commission issued by the SHERIFF or his designee. If the TRIBE provides such personnel in order to respond to the emergency situation, all of the tribal police personnel, including those tribal officers with limited and full SHERIFF commission, shall follow the orders of the incident commander.

If any tribal police personnel are used in an emergency situation, the provisions of Section VIII and IX shall apply.

**Section VIII    Hold Harmless/Indemnification**

Each of the parties to this Agreement agrees to indemnify and hold the others harmless from and against any and all loss and damage, and any and all claims, demands, suits, liabilities and payments, including cost of defense, arising in whole or in part, out of the actions or inactions of and indemnitor (including its officers and employees) that pertain to this Agreement.

However, if any losses, damages, claims, demands, suits, liabilities and payments arise out of or result from this Agreement and the COUNTY (including its officers and employees) and the TRIBE (including its officers and employees) are joint tortfeasors, each party shall be responsible to the extent that it is determined to be at fault. In addition, if the COUNTY and the TRIBE are determined to be joint tortfeasors, each party shall be responsible for paying its costs of defense. Thus, as an example, if the TRIBE (including its officers and employees) is found to be 70 percent at fault and the COUNTY (including its officers and employees) is determined to be 30 percent at fault, the TRIBE shall be responsible for paying 70 percent of the judgment (not to exceed five million dollars per occurrence) and its cost of defense, and the COUNTY shall be responsible for the remaining 30 percent and its costs of defense.

**Section IX     Insurance/Immunities**

The TRIBE agrees to maintain an insurance policy in the amount of \$5,000,000.00 per occurrence for claims arising from the actions of tribal law enforcement officers pursuant to this Agreement.

The TRIBE shall maintain this level of insurance in full force and effect during the life of this Agreement. If this Agreement is terminated for any reason, the TRIBE agrees to continue to carry this level of insurance for potential claims covered by this Agreement until such time as protection from suit is granted by the relevant statutes of limitations. This provision shall survive termination of this Agreement.

The insurance provided by the TRIBE shall include the COUNTY as an additional insured and shall be primary in the event that a claim or suit for damages is brought against both the TRIBE and the COUNTY. This insurance shall not be applied to the portion of any judgment/settlement that is deemed to be the responsibility of the COUNTY. Such insurance shall provide 30 days written notice to the COUNTY in the event of cancellation or material change and include a statement to the effect that no act on the part of the insured shall affect the coverage afforded to the COUNTY under this insurance. The insurance company or the TRIBE will provide written notice to the COUNTY within thirty (30) days after any reduction in the general aggregate or occurrence limits. The TRIBE shall provide the COUNTY with a certificate of insurance prior to the contract effective date. The COUNTY, at its option, may require a complete copy of the above insurance policy.

The TRIBE grants a limited waiver of its sovereign immunity to suit by the COUNTY pursuant to this Agreement, to the extent that claims within such suits are within the coverage and limits of the TRIBE's insurance policy, i.e., \$5,000,000.00 per occurrence. This limited waiver of sovereign immunity shall apply to any incidents that occur while this Agreement is in effect and also shall apply to any actions that are commenced after this Agreement terminates if the incident date occurred while the Agreement was in effect. Policies of insurance obtained by the TRIBE purchased pursuant to this Section shall prohibit the insurer from asserting a defense of sovereign immunity to claims that are within the coverage and limits of the policy.

All immunities enjoyed by the COUNTY law enforcement officers under State or Federal law shall inure to the benefit of Tribal law enforcement officers when acting under a full or limited commission granted by the SHERIFF or his designee under terms of the Agreement.

**Section X Oversight Committee**

A committee consisting of the TRIBE's Chief of Police, the SHERIFF or his designee, and the Pacific County Prosecutor or his designee, shall review activities and methods of performance pursuant to this Agreement. The committee shall meet as needed, to discuss the operation of the Agreement. The committee may recommend to the signatories of the Agreement any amendments to this Agreement.

**Section XI Duration/Revocation of Agreement**

This Agreement shall remain in full force and effect until December 31, 2018, or unless terminated by either party as provided in this Agreement and shall be subject to renewal by the agreement of the parties at the end of this period. Either party may terminate this Agreement at any time. Termination shall be immediately effective upon receipt of written notice.

**Section XII Amendments**

This Agreement shall not be amended except by an instrument in writing executed by the signatories below and attached to this Agreement.

**Section XIII Notice**

Any notice required or permitted to be given under this Agreement shall be deemed sufficient if given in writing and sent by registered or certified mail.

In the case of the COUNTY, notices shall be sent to: Pacific County Sheriff  
P.O. Box 27  
South Bend, WA 98586

In the case of the TRIBE, notices shall be sent to: Shoalwater Bay Tribe  
P.O. Box 130  
Tokeland, WA 98590

With a copy to: Office of Tribal Attorney Office of Tribal Attorney  
P.O. Box 130  
Tokeland, WA 98590



This Agreement shall be governed by the laws of the State of Washington, as to interpretation and performance. Any action hereunder shall be brought in the Superior Court of Washington for Pacific County.

The Tribe agrees to maintain insurance policies in the amount of \$5,000,000.00 per occurrence for claims arising from the actions of Tribal law enforcement officers pursuant to this Agreement.

The Tribe shall maintain this level of insurance in full force and effect during the life of this Agreement. If this Agreement is terminated for any reason, the Tribe agrees to continue to carry this level of insurance for potential claims covered by this Agreement until such time as protection from suit is granted by the relevant statutes of limitations. This provision shall survive termination of this Agreement.

The insurance provided by the Tribe shall include the County as an additional insured and shall be primary in the event that a claim for suit for damages is brought against both the Tribe and the County. This insurance shall not be applied to the portion of any judgment/settlement that is deemed to be the responsibility of the County. Such insurance shall provide 30 days written notice to the County in the event of cancelation or material change and include a statement to the effect that no act on the part of the insured shall affect the coverage afforded to the County under this insurance. The insurance company or the Tribe will provide written notice to the County within thirty (30) days after any reduction in the general aggregate or occurrence limits. The Tribe shall provide the County with a certificate of insurance prior to the contract effective date. The County, at its option, may require a complete copy of the above insurance policy.

The Tribe provides a limited waiver of its sovereign immunity to suit pursuant to this Agreement, to the extent only that any claims are within the coverage and limits of the Tribe's insurance policy, i.e., \$5,000,000.00 per occurrence. This limited waiver of sovereign immunity shall apply to any incidents that occur while this Agreement is in effect and also shall apply to any actions that are commenced after this Agreement terminates if the incident date occurred while the Agreement was in effect. Policies of insurance obtained by the Tribe purchased pursuant to this section shall prohibit the insurer from asserting a defense of sovereign immunity to claims made under the policy.

## **29. SEVERABILITY**

It is understood and agreed to by the parties that if any part of this Agreement is found to be invalid the validity of the remaining provisions shall not be affected and the rights and obligations of the parties shall be construed as if the Agreement did not contain the invalidated provision. If any provision herein is in conflict with any applicable statute, said provision shall be deemed inoperative, null and void, insofar as it may be in conflict therein.

## **30. INTEGRATION**

This Agreement, and any signed amendments, contains terms and conditions agreed upon by the parties. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Agreement.

## **31. NOTICE**

Any notice required or permitted to be given under this Agreement to a party shall be deemed sufficient if given in writing and sent by certified mail to the address stated below for each party, or to any other address to which the party may inform all other parties in writing with specific reference to this agreement.

The Chief of Police for the Tribe shall provide copies of the Agreement and any amendment to the Office of Financial Management and the Criminal Justice Training Commission within 10 days after the Agreement has been ratified by each party.

IN WITNESS WHEREOF, the parties hereto have hereunder set their hands to the date first above written.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2015

**SHOALWATER BAY INDIAN TRIBE**

\_\_\_\_\_  
Charlene Nelson, Chairwoman

**PACIFIC COUNTY  
BOARD OF COUNTY COMMISSIONERS**

\_\_\_\_\_  
Steve Rogers, ~~Chairman~~ Commissioner

\_\_\_\_\_  
Frank Wolfe, ~~Commissioner~~ Chairman

ATTEST:

\_\_\_\_\_  
Marie Guernsey, Clerk of the Board

\_\_\_\_\_  
Lisa Ayers, Commissioner

Approved as to form:

\_\_\_\_\_  
Mark McClain  
Pacific County Prosecutor

**PACIFIC COUNTY SHERIFF**

\_\_\_\_\_  
Scott L. Johnson, Sheriff