



**RESOLUTION No. 139-19**

**Approval of Interlocal Cooperation Act Agreement for Confinement of Lower Elwha Tribal Youth the Term of which shall be from October 1, 2019 through September 30, 2021, with a Limited Waiver of Sovereign Immunity**

**WHEREAS**, the Lower Elwha Tribal Community, also known as the Lower Elwha Klallam Tribe (the "Tribe"), is a federally recognized, self-governing Indian tribe in accordance with the Treaty of Point-No-Point of January 26, 1855, its Constitution and By-laws, approved by the Secretary of the Interior on April 29, 1968, and the Indian Reorganization Act of June 18, 1934; and

**WHEREAS**, the Lower Elwha Klallam Tribal Business Committee of the Lower Elwha Community Council is the constitutionally and duly elected representative body of the Tribe, and is responsible for ensuring the health, safety, education, welfare, social and economic development, law and order, judicial services, and housing of its tribal citizens; and to preserve and protect the culture, treaty rights, natural resources, and otherwise promoting the welfare and interests of its tribal citizens; and

**WHEREAS**, under Article IV, Section 1(a) of the Tribe's Constitution, the Tribe has the authority to negotiate and enter into agreements with other Indian tribes, the State of Washington and others, and to manage the financial resources of the Tribe; and

**WHEREAS**, the Tribe desires to engage the services of County of Clallam, a political subdivision of the State of Washington ("Clallam") for the purpose of assisting the Tribe by Clallam furnishing its facilities and personnel for the confinement of juvenile offenders from the Tribe.

**THEREFORE BE IT NOW RESOLVED THAT**, that the Business Committee hereby approves the Interlocal Cooperation Act Agreement for Confinement of Lower Elwha Tribal Youth between the Lower Elwha Klallam Tribe and County of Clallam ("Agreement"), a copy of which is attached hereto and incorporated herein; and

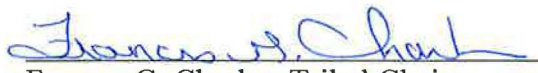
**BE IT FURTHER RESOLVED**, that in approving the Agreement, the Business Committee acknowledges and expressly approves the limited waiver of the Tribe's sovereign immunity within the Agreement under Paragraph 16; and

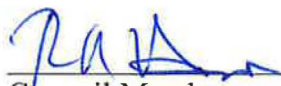
**BE IT FURTHER RESOLVED**, that the Business Committee acknowledges that Chairwoman Frances G. Charles, or Vice-Chair Russell N. Hepfer in her absence, is authorized and directed to execute the Interlocal Cooperation Act Agreement for Confinement of Lower Elwha Tribal Youth between the Lower Elwha Klallam Tribe and the County of Clallam; and

**BE IT FINALLY RESOLVED** that the Business Committee acknowledges that the Lower Elwha Klallam Tribe's Police Chief, Samuel L. White, is authorized to take all actions reasonably necessary to effectuate the matters authorized in this resolution.

**CERTIFICATION**

The foregoing resolution was presented at a duly called meeting of the Lower Elwha Klallam Business Committee held on the 2nd day of December 2019, at which 3 members were present, constituting a quorum, and the Business Committee voted to adopt by a vote of 2 FOR, 0 AGAINST, and 0 ABSTENTIONS.

  
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Frances G. Charles, Tribal Chairwoman

  
\_\_\_\_\_  
Council Member

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12/17

**INTERLOCAL COOPERATION ACT AGREEMENT FOR  
CONFINEMENT OF LOWER ELWHA KLALLAM TRIBAL YOUTH**

THIS Agreement is made and entered into by and between the **COUNTY OF CLALLAM**, a political subdivision of the State of Washington (hereinafter "CLALLAM"), and the **LOWER ELWHA KLALLAM TRIBE**, a sovereign, federally-recognized Indian Nation (hereinafter "TRIBE"), pursuant to RCW 39.34, Washington's Interlocal Cooperation Act.

1. The Availability of Juvenile Corrections Facilities: CLALLAM agrees to furnish its facilities and personnel for the confinement of juvenile offenders from the TRIBE in the same manner and to the same extent as CLALLAM furnishes said services for the confinement of its own juveniles. CLALLAM Juvenile Corrections Facilities shall be made available and furnished for juvenile offenders from the TRIBE held upon arrest, awaiting trial, and serving imposed detention terms. When at maximum capacity, housing of juvenile offenders from the TRIBE shall be at the discretion of the Director of Juvenile Services for CLALLAM or a designee.
2. Juvenile Detention Daily Fee: For the period of this Agreement, the TRIBE agrees to pay CLALLAM a daily fee for the housing of juvenile while incarcerated at a rate of \$130 per day per juvenile. The day shall begin at the time of admission and be calculated on 24-hour intervals until final discharge. There shall be no pro-rating for partial days.
3. Definition of Juvenile Offenders from the TRIBE: The phrase "Juvenile Offender from the TRIBE" as used in this Agreement shall mean a child under the age of eighteen (18) and over the age of twelve (12) arrested by law enforcement on behalf of the TRIBE, and held and confined in the Juvenile Corrections Facility pursuant to the alleged violation of a Tribal and/or State law which designates the crime for which the person is being held as a misdemeanor, gross misdemeanor, or felony.
4. Medical and/or Other Health Care Expenses: During the time and while a person is a juvenile offender from the TRIBE, the TRIBE shall be responsible for all medical, dental, mental health, and/or any other health related expenses incurred by or on behalf of the juvenile offender. If, in the judgment of the Director or a designee, needed health care cannot be provided except outside of the Clallam County Juvenile Corrections Facility CLALLAM will inform the TRIBE that a juvenile offender from the TRIBE is in need of outside care; and the TRIBE will arrange for the care to be provided and will transport and guard the juvenile during the provision of the care, during which time the juvenile will be on temporary leave status and placed in the custody of the TRIBE'S law enforcement officers. In the event that emergency care is required such that it would endanger any person or otherwise be imprudent to wait for the TRIBE to arrange for care and to transport the juvenile, CLALLAM will arrange for such emergency care and transport; and the TRIBE will bear the costs and charges associated with said outside health care, including all additional costs associated with guarding the juvenile offender outside of the CLALLAM Juvenile Corrections Facility that cannot be provided by tribal officers. If such services are necessary before admission to the Juvenile Corrections Facility can occur, then the TRIBE agrees to arrange the care and transport of said juvenile offender for the receipt of such care.
5. Designated Administrators: The Clallam County Juvenile Services Director, in consultation with the TRIBE'S Chief of Police shall administer this Agreement pursuant to RCW 39.34.030(4)(a). Each administrator or designee will consult with each other as required or annually regarding costs, fees, and charges; and regarding changes in policies,

practices, or procedures, which may affect the responsibilities of the other, and will try to resolve disputes between themselves or through their designated representatives.

6. Method and Time of Payment of Fee: Amounts due under the terms of this Agreement shall be due and payable within thirty (30) days after receipt of an itemized invoice. CLALLAM agrees to bill monthly for all sums.
7. Financing: 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 thirty (30) days advance written notice in the event that funding for this Agreement becomes unavailable.
8. Transportation: The TRIBE shall be responsible for transportation of all its juvenile offenders to the Juvenile Corrections Facility for initial intake, to and from appointments as necessary, and upon final release.
9. Copy of Arrest Warrant or Citation: The TRIBE law enforcement officers placing criminally charged juveniles in the Clallam County Juvenile Corrections Facility shall, in every instance, furnish an arrest warrant or copy of the citation to the Corrections Officer on duty at the time the youth is brought to the facility.
10. Transfer of Custody: The TRIBE law enforcement officers or law enforcement officers acting on behalf of the TRIBE placing arrested juveniles in custody shall be required to remain in the immediate presence of the juvenile offender and shall be considered to have such person in their sole custody until the corrections officer receives the completed authorization for confinement form from the TRIBE officer and audibly states that the juvenile is secured and, at such time and only then, will CLALLAM come into custody of the juvenile; provided provision for emergency situations shall be established by uniform CLALLAM administrative regulations.

When custody of a juvenile offender from the TRIBE is transferred to CLALLAM, the juvenile offender shall be subject to all applicable rules, regulations, and standards governing operation of the Juvenile Corrections Facility, including any emergency security rules imposed by the Director or a designee. Any TRIBE law enforcement officer delivering a juvenile offender to the Juvenile Corrections Facility shall comply with all rules and regulations of CLALLAM.

When a juvenile offender from the TRIBE is released to the TRIBE law enforcement personnel pursuant to paragraph 14, or is released to TRIBE law enforcement for any other reason, custody of and responsibility for said juvenile offender shall revert to the TRIBE until such time as the juvenile is returned to the Juvenile Corrections Facility and a corrections officer audibly states that the juvenile offender is again in CLALLAM'S custody.

11. Record Keeping: CLALLAM agrees to maintain a system of record keeping relative to the intake and confinement of each juvenile offender from the TRIBE in such style and manner as equivalent to CLALLAM'S records pertaining to its own juveniles. CLALLAM shall make available, upon request, to the TRIBE or its authorized representatives, copies of said record. At the time of incarceration, or any time thereafter, the TRIBE agrees to furnish appropriate legal records pertaining to the confinement of the juvenile and any such records necessary for the continued holding of said juvenile.

12. Posting of Bail: CLALLAM agrees to act as agent for the TRIBE in the receipt of bail posted pertaining to juvenile offenders from the TRIBE. During normal working hours, CLALLAM agrees to diligently and timely inform the TRIBE of such receipt and to turn over said bail bonds or monies to the appropriate court provided that bail bonds or monies received by CLALLAM during other than normal working hours shall be turned over to the appropriate court during the business hours immediately subsequent thereto. Any monies refused for receipt by the appropriate court shall be returned to the posting party as soon as practical. It shall be the responsibility of the TRIBE to send a representative to Clallam County Juvenile & Family Services to collect said bail bonds or monies during regular business hours.
13. Access to Juveniles: The TRIBE law enforcement officers and prosecutor shall have the right to interview juvenile offenders at any time inside the confines of the Juvenile Corrections Facility, subject only to necessary security rules. Interview rooms will be made available to TRIBE law enforcement officers in equal priority with those of any other law enforcement department.
14. Release of TRIBE Juvenile Offenders: No juvenile offender from the TRIBE confined in the Juvenile Corrections Facility shall be released therefrom, except under any of the following conditions:
  - a) when requested by TRIBE law enforcement;
  - b) by order of the Lower Elwha Klallam Tribal Court;
  - c) for appearance in the court in which the juvenile offender is charged;
  - d) in compliance with a writ of habeas corpus;
  - e) for interviews by the TRIBE prosecuting office or law enforcement, or the U.S. Attorney or federal investigative agents;
  - f) if the juvenile has served his sentence or the charge pending against said juvenile has been dismissed, or bail or other recognizance has been posted as required by court;
  - g) the juvenile offender does not meet detention criteria as outlined in RCW 13.40.038; 13.40.040, and 13.40.050 and standard detention criteria;
  - h) a juvenile in need of non-emergency care on temporary leave and placed in the custody of the TRIBE under paragraph 4.
15. Defense and Indemnity Agreement: CLALLAM assumes full responsibility for the health, safety, and safekeeping of all juvenile offenders from the TRIBE while in the custody of CLALLAM. CLALLAM shall defend, indemnify, and hold harmless the TRIBE and its elected officials, officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason or of arising out of any negligent action or omission of CLALLAM, 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, CLALLAM 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 CLALLAM and their respective officers, agents, and employees, or any of them, CLALLAM shall satisfy the same.

The TRIBE shall defend, indemnify, and hold harmless CLALLAM and its elected officials, officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, 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 CLALLAM, the TRIBE shall defend the same at its sole cost and expense; provided that CLALLAM 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 CLALLAM, its officers, agents, and employees, or any of the, or jointly against CLALLAM and the TRIBE and their respective officers, agents, and employees, or any of them, the TRIBE shall satisfy the same.

In executing this Agreement, CLALLAM 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 CLALLAM in which the enforceability and/or validity of any such TRIBAL ordinance, rule, or regulation is at issues, and/or in which the legality of this Agreement is at issues, the TRIBE shall defend the same at its sole expense and if judgment is entered or damages are awarded against CLALLAM, the TRIBE shall satisfy the same, including all chargeable costs and attorney's fees.

In executing this Agreement, the TRIBE does not assume liability or responsibility for or in any way release CLALLAM from any liability or responsibility which arises in whole or in part from the existence or effect of CLALLAM 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 CLALLAM ordinance, rule, or regulation is at issues, and/or in which the legality of this Agreement is at issues, CLALLAM shall defend the same at its sole expense and if judgment is entered or damages are awarded against the TRIBE, CLALLAM shall satisfy the same, including all chargeable costs and attorney's fees.

16. Limited Waiver of Sovereign Immunity: For claims and demands both related to this Agreement and brought by or against CLALLAM, the TRIBE authorizes a limited waiver of sovereign immunity from suit to establish its liability, if any, arising under this Agreement, and to defend, indemnify, and save harmless CLALLAM by reason of any and all claims and demands, as set forth herein. This limited waiver of immunity is limited to the provisions of the Agreement and shall survive the termination or expiration date of this Agreement. Venue for any action filed 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.

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 Business Committee or any member thereof, other than as specifically set forth above.

In addition, to the extent not already waived by the provision of existing law, CLALLAM, 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 save harmless the TRIBE by reason of any and all claims and demands, as set forth herein. Venue for any action filed against CLALLAM 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.

17. Attorney's Fees: In the event litigation concerning this Agreement becomes necessary, the prevailing party, in addition to costs, shall be entitled to a reasonable attorney's fee set forth by the applicable court.
18. Duration of Agreement: This Agreement shall be effective beginning October 1, 2019, and expire on September 30, 2021.
19. Termination: Either party may terminate this Agreement with a minimum of thirty (30) days written notice. In the event of termination, the parties agree that there will not be any property requiring disposition.
20. Detention Rules and Regulations: At the time that the custody of the juvenile offender from the TRIBE is transferred to CLALLAM, the juvenile offender shall be subject to all applicable rules, regulations, and standards governing operation of the CLALLAM County Juvenile Corrections Facility.
21. Severability: If any provision of this Agreement shall be 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 both parties.
22. Entire Agreement and Amendments: This Agreement contains the entire agreement of the parties and may be modified only by mutual written agreement of the parties hereto.

**LOWER ELWHA KLALLAM TRIBE:**

  
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 Frances G. Charles, Chairwoman


ATTEST:

  
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 Business Committee Member

APPROVED AS TO FORM:

  
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 Lower Elwha Klallam Tribal Attorney

**CLALLAM COUNTY COMMISSIONERS:**

 12-17-19  
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 Mark Ozias, Chair


**CLALLAM JUVENILE SERVICES**

  
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 Jody L.E. Jacobsen, Director

ATTEST:

  
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 Clerk of the Board

APPROVED AS TO FORM:

 10/24/19  
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 Deputy Prosecuting Attorney