

MODEL _____ REGION TRIBAL-PUBLIC HEALTH
MUTUAL AID AGREEMENT

DISCLAIMER

THE INFORMATION CONTAINED IN THIS DOCUMENT DOES NOT CONSTITUTE LEGAL ADVICE. USE OF ANY PROVISION HEREIN SHOULD BE CONTEMPLATED ONLY IN CONJUNCTION WITH ADVICE FROM LEGAL COUNSEL AND/OR INSURER(S). PROVISIONS MAY NEED TO BE MODIFIED, SUPPLEMENTED, OR REPLACED TO ENSURE APPROPRIATE CITATION TO OR COMPLIANCE WITH RELEVANT LAWS TO ACCURATELY REFLECT THE INTENT OF THE PARTIES TO A PARTICULAR AGREEMENT, OR TO OTHERWISE ADDRESS THE NEEDS OR REQUIREMENTS OF A SPECIFIC JURISDICTION. [This disclaimer applies to this document as a model agreement. Once the parties have modified this document and adopted their own Mutual Aid ~~Plan~~ Agreement, this disclaimer should be removed].

AGREEMENT

This _____ Tribal-Public Health Mutual Aid Agreement (“Agreement” or “MAA”) is made and entered into by the signatory Health Department or signatory Health District, or signatory County within the State of Washington that operates a public health department or division within its county government and the signatory Tribal Government(s) individually with all other signatory parties legally joining the Agreement.

Commented [A1]: Copies of each party's resolution authorizing execution of this Agreement will be attached to this Agreement.

1. **PURPOSE.** Each Party recognizes that public health emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential for the protection of lives and for best use of available assets. This Agreement shall provide for mutual assistance among the Parties in the prevention of, response to, mitigation of and recovery from, any public health emergency, public health disaster, or public health incident. The intent of this Agreement is to make equipment, personnel and other resources available to other Parties to the Agreement.
2. **DEFINITIONS.**
 - a. **Assistance:** Assistance means personnel, equipment, materials, supplies, facilities, services, and/or related resources.
 - b. **Authorized Representative:** The person or persons designated by each Party on the Mutual Aid Request Form in the Plan to request Assistance from or grant assistance to another Party pursuant to the terms of this Agreement.
 - c. **Health Information:** Written, electronic, oral, telephonic, or visual information, identifiable or population based, that relates to an individual's or population's past, present or future physical or mental health status condition, treatment, service or products purchased, and includes, but is not limited to laboratory test data or samples.
 - d. **Identifiable data or information:** The exchange or sharing of identifiable data or information that is specific to an individual or that there is a reasonable basis to believe could be used to identify an individual, as governed by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and including, but not limited to, its public health related exceptions.

- e. **Public Health Officer:** The legally qualified individual who has been appointed as the health officer for the tribe, county or district public health department, whose qualifications are set forth in tribal code or in RCW 70.05 and RCW 70.08 et seq..
- f. **Mutual Aid:** A prearranged written agreement ~~and plan~~ whereby assistance is requested and may be provided under the terms of this Agreement between two or more jurisdictions during a public health incident, emergency or disaster, or related to day-to-day public health services, communicable disease outbreak, isolation and quarantine public health services, or any other public health service or action permitted by law.
- ~~g.~~ **Mutual Aid Request Form:** The form used between the Responding and Requesting Parties to facilitate requests for mutual aid, estimate reimbursement costs, and assist in proper record keeping.
- ~~g-h.~~ **Operational Control:** Operational control means the Requesting Party has the authority to direct tasks, assignments, and use Responding Party resources to address response, mitigation, or recovery activities.
- ~~h-i.~~ **Period of Assistance:** The period of time beginning with the departure of any personnel, equipment, materials, supplies, services, and/or related resources of the Responding Party from any point for the purpose of traveling to provide assistance exclusively to the Requesting Party, and ending on the return of all of the Responding Party's personnel, equipment, materials, supplies, services, and/or related resources to their regular place of work or assignment, or otherwise terminated through written notice of the Authorized Representative of the Responding Party. With respect to facility use, the period of assistance shall commence on the date agreed upon between the Requesting and Responding Parties and shall end when the Requesting Party returns possession of the facility to the Responding Party, or when otherwise terminated through written notice of the Authorized Representative of the Responding Party.
- ~~i.~~ **Plan:** ~~A written Tribal-Public Health Mutual Aid Plan that meets the requirements set forth in Section 5, and sets forth protocols and procedures related to Mutual Aid Agreement activation, staging and deployment, field support, demobilization, reimbursement, other Mutual Aid Agreement matters, and standard operating procedures.~~
- j. **Public Health Incident, Emergency, or Disaster:** Any occurrence, or threat thereof, whether natural or caused by man, in war or in peace, to which any Party may respond pursuant to its legal authority may respond and that, in the judgment of the Requesting Party, results or may result in circumstances sufficient to exceed the capabilities of immediate local, tribal or regional public health response.
- k. **Requesting Party:** A Party that has requested assistance from a Party from another jurisdiction participating in this Agreement.
- ~~l.~~ **Responding Party:** A Party providing assistance to a Requesting Party from another jurisdiction participating in this Agreement.
- ~~l-m.~~ **Tribal-Public Health Mutual Aid Operations and Deployment Guide:** A written Tribal-Public Health Mutual Aid Operations and Deployment Guide that sets forth guidelines and procedures to facilitate the Mutual Aid Agreement including, but

not limited to, activation, staging and deployment, field support, demobilization, and reimbursement.

3. **EFFECTIVE DATE AND TERM.** This Agreement shall become effective immediately upon its execution by any one Party. After the first two such executions, this Agreement shall become effective as to any other Party upon its execution by such Party. The Agreement shall remain in effect as between each and every Party until participation in this Agreement is terminated ~~by a withdrawing Party in writing~~ pursuant to **Section 24.**

4. **AUTHORITY TO EXECUTE AGREEMENT**

a. **Tribal Party Authority.** Each Tribal Party is a sovereign governmental entity with the authority to enact and execute its own health regulations and agreements to protect the health, safety, and welfare of their communities.

b. **Health Department and Health District Authority.** **[Health Departments/Health Districts to provide authority to enter into agreement].**

5. **REQUESTS FOR ASSISTANCE.** Requests for assistance must be made by an Authorized Representative to the Responding Party's Authorized Representative. The request may be verbal or written. If verbal, the request shall be confirmed in writing using the Mutual Aid Request Form before the Period of Assistance begins, to the extent it is practical.

~~6. **TRIBAL PUBLIC HEALTH MUTUAL AID AGREEMENT PLAN.** The Parties to this Agreement agree to complete a Tribal Public Health Mutual Aid Agreement Plan. The Plan will provide procedures for each Party to:~~

- ~~a. ensure that all other Parties have their most current contact information;~~
- ~~b. participate in an initial regional exercise to coordinate operational and implementation matters;~~
- ~~c. incorporate protocols related to this Agreement into regular emergency preparedness exercises and trainings, and train in accordance with the Plan, and~~
- ~~d. exchange their emergency preparedness plans, and other documents that may be beneficial in preparing the Responding Parties' personnel to respond to a request for Mutual Aid Assistance.~~

~~7.6.~~ **WITHHOLD OR WITHDRAWAL OF ASSISTANCE.** A Responding Party may withhold or withdraw requested assistance at any time and for any reason, in its sole discretion. The Requesting Party may not interfere with a Responding Party's right to withdraw assistance.

a. **Written Notice.** A Responding Party may withdraw Mutual Aid Assistance by giving written notice to the Requesting Party. Each Responding Party agrees to give written notice to the Requesting Party ~~no less than 48 hours within a~~ reasonable period of time before withdrawing such Assistance.

b. **No Liability.** No Party shall be liable to another Party for, or be considered in breach of or default under this Agreement on account of, any withdrawal of assistance or refusal to send the requested equipment, personnel, or any other forms of mutual aid.

~~8.7.~~ **TEMPORARY GRANT OF AUTHORITY TO A PUBLIC HEALTH OFFICER.** ~~Upon execution of a Tribal resolution, a~~ Tribal Party to this ~~A~~agreement, through Tribal

resolution, may grant temporary authority to a public health officer outside their jurisdiction to enter tribal lands for specific purposes.

- a. If the Tribal Party has adopted a public health code(s) that addresses the specific public health response, ~~then~~ the Responding Party agrees that they will exercise this grant of authority in conformance with applicable tribal laws.
- b. If there is a conflict between or among tribal public health code requirements, federal, state or local law, the Responding Party may decline to accept, or withdraw its acceptance of, the authority.
- c. Either Party may withdraw, rescind, decline, or refuse this grant of authority at any time. Such withdrawal, rescission, declination or refusal of authority must be in writing directed to each Party's Authorized Representative.

~~9.8.~~ **TEMPORARY ADOPTION OF PUBLIC HEALTH CODES.** Upon execution of a Tribal resolution, a Tribal Party to this agreement may adopt public health codes from another jurisdiction or tribal model codes for specific purposes. Either Party may withdraw, rescind, decline, or refuse this grant of authority at any time. Such withdrawal, rescission, declination or refusal of authority must be in writing directed to each Party's Authorized Representative.

~~10.9.~~ **CONTROL OF RESOURCES**

- ~~a. Responding Party Personnel remain under the control of the Responding Party up to arrival at the Requesting Party's staging area. Upon arrival at the Requesting Party's staging area and check in, control of Responding Party Personnel transfers to the Requesting Party. Clinical supervision for medical personnel provided by the Responding Party will be provided by the Responding Party's Public Health Officer unless the Responding Party's Public Health Officer delegates such supervision to the Requesting Party's appropriately licensed medical provider, in writing.~~
- ~~b. The Requesting Party has operational control of Responding Party resources and non-medical personnel from the time of check-in at the designated reporting location, throughout the deployment, until the resources arrive to their originating location. For Responding Party personnel, the Requesting Party's operational control is effective until personnel arrive at their home or work duty station.~~
- ~~c. All medical personnel provided by the Responding Party will be under the clinical supervision of the Responding Party's Public Health Officer unless the Responding Party's Public Health Officer delegates such supervision to the Requesting Party's appropriately licensed medical provider.~~
- ~~d. With the exception of Section 176(a), the rights of ownership or employment remain with the Responding Party, such as disposition, compensation, and health benefits.~~
- ~~e. The Requesting Party is responsible to track accurate time of equipment usage and record accurate time of work period(s) for all Responding member-Party personnel.~~
- ~~f. The Requesting Party is responsible for providing demobilization instructions to the Responding Party and Responding Party personnel.~~

~~11.10.~~ **QUALIFICATIONS OF EMERGENCY RESPONDERS**

- a. An emergency responder ~~of the Responding Party~~ holding a license, certificate, or other permit evidencing ~~qualification~~ in a professional, mechanical, or other skill, issued by the State of Washington, a political subdivision thereof, or a Tribe is deemed to be licensed, certified, or permitted in the Requesting Party's jurisdiction~~requesting member jurisdiction~~ for the duration of the emergency, drill, or exercise, subject to any limitations and conditions the chief executive officer of the Requesting Party may prescribe in writing.
- b. Emergency responders of the Responding Party are subject to the legal limitations or conditions on the license, certificate, or other permit as prescribed in writing by the authorized representative of the Requesting Party.
- c. The Responding Party will verify that its responding personnel meet the licensure and credentialing requirements of the Requesting Party as appropriate pursuant to RCW 38.52 et seq. and WAC 118-04 et seq., if applicable and any other applicable statute, regulation or law.
- d. The Responding Party will consult with legal counsel and Emergency Management Division to ensure the personnel, volunteers as emergency workers, or covered volunteer emergency workers being sent are properly registered pursuant to RCW 38.52 et seq. and WAC 118-04 et seq., and any other applicable statute, regulation or law.

12.11. **COSTS AND REIMBURSEMENT.** The Parties agree that the costs of personnel, equipment, materials, supplies, facilities, services, and/or related resources used during the period of assistance are eligible for reimbursement as detailed in **Schedule C**. All provisions of this section are subject to any express limited waivers of sovereign immunity.

- a. **Exhaustion of Remedies.** All Parties agree to exhaust their rights to reimbursement or other payment from local, state, and/or federal governments. To the extent that any third-party payer, such as the United States Government or the State of Washington, has funds or processes available for reimbursement of a Party's activities under this Agreement, the Parties agree to cooperate fully with one another in submitting any appropriate claim(s) for reimbursement and providing copies of records necessary to submit claims.
- b. **Waiver of Reimbursement.** A Responding Party may waive or partially waive the request for reimbursement.
- c. **Reimbursement by Requesting Party.** To the extent that reimbursement is not available from third-party payers or the Responding Party does not waive reimbursement, the Requesting Party will reimburse the Responding Party for all eligible costs under this Agreement as detailed in **Schedule C**. Reimbursement shall not exceed any monetary limits established by the Requesting Party on the Mutual Aid Request Form unless the Mutual Aid Request Form is amended in writing by the parties.both parties agree in writing.
- d. **Maintenance of Records.** The Requesting Party remains responsible for ensuring that the amount and quality of all documentation regarding use of materials, supplies, equipment, facilities, services, and/or related resources is adequate to enable state, federal or tribal reimbursement. The Requesting Party will provide these records to the Responding Party as necessary.

- i. **Materials and Equipment Inventory.** The Requesting Party will create and maintain an inventory of materials and equipment sent from the Responding Party, track use and consumption, and store the materials and equipment appropriately at all times (e.g., vaccines refrigerated).
 - ii. **Record of Hours Worked.** The Requesting Party and/or the loaned employees will record on a shift-by-shift basis time sheets and/or daily logs showing hours worked.
- e. **Payment Due Date.** The Responding Party shall send the Requesting Party an invoice or invoices for all valid assistance costs and the Requesting Party shall pay the invoice(s) within sixty (60) days of receipt of each invoice.
- f. **Payment of Employee Wages.** With the exception of Section 176(a), ~~Employees~~ employees of a Responding Party shall at all times while performing Mutual Aid Assistance continue to be employees of the Responding Party for any purpose. Wages, hours and other terms and conditions of employment of Responding Party shall remain applicable to all of its employees who perform Mutual Aid Assistance under this Agreement. Responding Party shall be solely responsible for payment of its employees' wages, any required payroll taxes and any benefits or other compensation. Requesting Party shall not be responsible for paying any wages, benefits, taxes or other compensation directly to Responding Party's employees.

~~13.~~12. **WORKER'S COMPENSATION, DEATH OR INJURY BENEFITS.** Each Party shall provide for the payment of Workers' Compensation or self-insured benefits to its own injured personnel and/or to representatives of its own personnel in case such personnel sustain injuries or are killed while rendering aid under this Agreement, in the same manner and on the same terms as if the injury or death were sustained within its own jurisdiction.

~~14.~~13. **EMERGENCY RESPONDER EMPLOYMENT STATUS.** An emergency responder is not an employee of the Requesting Party and is not entitled to any right, privilege, or benefit of employment from the Requesting Party, including but not limited to, compensation, wages, salary, leave, pensions, health, or other advantage.

~~15.~~14. **RECORD KEEPING AND INFORMATION SHARING.** The Parties agree to share disease or contaminant information, including but not limited to health care information and protected health information, as permitted under 45 CFR 164.512 and RCW 70.02.050. The Parties shall maintain their own records and reports concerning the provision of any support or services under this Agreement, and patients' medical records shall be maintained at the Requesting Party's facility.

~~16.~~ **EFFECT OF DECLARATION OF EMERGENCY.** The Parties recognize that state or federal declarations of emergency, or orders related thereto, may supersede the arrangements made or actions taken for rendering Assistance pursuant to this Agreement.

15.

16. INSURANCE AND INDEMNIFICATION.

- a. The scope of the Requesting Party's duty to indemnify shall be limited to the extent of the coverage under the Requesting Party's insurance policy or policies and to the extent permitted under the Requesting Party's law, and includes claims, demands, actions, or suits arising from, or related to: (1) negligent or wrongful use of equipment or supplies on loan to the Requesting Party; or (2) ~~or faulty~~

workmanship or other negligent omissions acts, errors or omissions by the Requesting Party personnel.

b. In the event of a claim, demand, action, or suit liability, claim, demand, action, or proceeding of whatever kind or nature arising out of a specified Period of Assistance, the Requesting Member Party's duty to indemnify the Responding Party from any negligence claims arising out of a Period of Assistance shall be limited to the extent of the coverage under the Requesting Member's insurance policy or policies and to the extent permitted by the Requesting Party's applicable law.

c. Parties to this Agreement shall maintain an insurance policy that covers activities that it may undertake under this Agreement. The scope of the policy must include, at a minimum, coverage for negligent acts, errors, or omissions and coverage for meeting the indemnity conditions provided in this section.

~~—This provision~~ Nothing in this section shall not be construed as a waiver of sovereign immunity. To the extent any claim is asserted in excess of the limits established by the waiver of sovereign immunity under Florida the Requesting Party's applicable law, this provision will become null and void and shall be severed from the remainder of this Agreement.

~~a.d.~~

17. LIABILITY.

a. For purposes of immunity (including, but not limited to, worker's compensation immunity) only, an emergency responder of the Responding Party is considered an agent of the Requesting Party. No Responding Party or its officers or employees providing assistance under this Agreement is liable for any act or omission while providing or attempting to provide assistance under this chapter in good faith. For purposes of this section, good faith does not include willful misconduct, gross negligence, or recklessness.

~~—With the exception of the above-stated provision, Each Party which renders assistance under this Agreement shall be deemed to stand in the relation of an independent contractor to all other Parties, and shall not be deemed to be the agent of any other Party.~~

b.

~~a.c.~~ No Party shall be liable to another Party for, or be considered in breach of or default under this Agreement on account of, any delay in or failure to perform any obligation under this Agreement, except to make payment as specified herein.

~~a.~~ Each Party which renders assistance under this Agreement shall be deemed to stand in the relation of an independent contractor to all other Parties, and shall not be deemed to be the agent of any other Party.

b.d. No other Parties to this Agreement will be liable for reimbursement costs incurred by the Requesting Party.

e.e. Each party to this Agreement shall be legally responsible for its own acts and omissions arising under this Agreement, and that of its respective appointed and elected officials, employees, officers, agents, agencies, assigns and representatives. Nothing in this Agreement shall be construed to relieve any Party of liability for its own conduct and that of its employees.

~~d.f.~~ To the extent that a Responding Party is protected under tribal, state or federal law from liability for assisting a Requesting Party, such laws shall apply to this agreement.

~~e.g.~~ Nothing in this Agreement shall be construed to obligate any Party to indemnify any other Party from liability to third parties. Each Party hereto waives all claims against the other Parties hereto for compensation for any loss, damage, personal injury, or death occurring as a consequence of the performance of this Agreement, except those caused in whole or in part by the negligence of an officer, employee, or agent of the other Party. Neither Party waives or relinquishes any immunity or defense on behalf of itself, its officers, employees and agents as a result of the foregoing sentence or its execution of this Agreement and the performance of the covenants contained herein.

18. **TORT CLAIMS ACT.** No provision of this Agreement shall remove from any Party any protection provided by any applicable Tort Claims Act.
19. **WAIVER OF RIGHTS.** Any waiver at any time by any Party of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not constitute or be deemed a waiver with respect to any subsequent default or other matter arising in connection with this Agreement. Any delay in asserting or enforcing any right, except those related to the statutes of limitations, shall not constitute or be deemed a waiver.
20. **DISPUTE RESOLUTION.** The parties intend to resolve their disputes through direct discussion and, if such is not possible, then through the dispute resolution framework established below. All provisions of this section are subject to the Limited Waiver of Sovereign Immunity provided in this Agreement and in the Tribal Resolutions in **SCHEDULE A**. All stated time frames for resolving disputes may be lengthened by mutual consent.
- a. **Direct Discussions.** To initiate dispute resolution under this subsection, the complaining party shall first provide notice by submitting a written complaint letter to the representative of the party (as identified in this Agreement) against whom a dispute is lodged, stating therein the nature of the dispute, the requested resolution, and the factual basis supporting the requested resolution. The responsive party shall, within ten (10) business days of receiving the complaint letter, provide a written response, stating its agreement or disagreement with the nature of the dispute and the requested resolution. If the responsive party disagrees with the complaint or the proposed resolution, the written response must provide at least one alternate resolution and the factual basis supporting such resolution(s). Thereafter, the representatives of each party will, for fifteen (15) business days, make a good faith attempt to resolve the dispute through one or more direct discussions. If no mutually acceptable resolution is reached, the lead representatives will prepare a joint statement within 5 business days, which includes a chronology, a synopsis of the discussions that took place and the last stated positions of each party.
- b. **Mediation.** This section applies only to disputes regarding reimbursement as defined in Section 11 of this Agreement. If direct discussions between the parties fail to resolve the dispute, any participating party may, within five business days of completing the direct discussion process, make a written request for mediation to be conducted at a place as the parties may agree in writing. If all participating

parties agree to engage in mediation, the parties shall seek a mutually acceptable mediator. If the parties cannot reach agreement on the selection of the mediator within fifteen (15) business days of the date the written mediation request letter was received by the other party or parties, the mediation will be administered by J.A.M.S., Seattle, Washington Office using a J.A.M.S. mediator and protocol. Enforcement of a mediation agreement reached shall be the same as enforcement of an arbitration decision as set forth herein. If a party objects to proceeding with mediation, then mediation may be bypassed, and the dispute resolved pursuant to arbitration as set forth herein.

- c. **Binding Arbitration.** This section applies only to disputes regarding reimbursement as defined in Section 11 of this Agreement. Should direct discussions prove unsuccessful in resolving the dispute, and either mediation is not requested, is bypassed, or is also unsuccessful, either the complaining or responsive party may make a written demand for arbitration before a single arbitrator in Seattle, Washington or at another place as the parties may agree in writing. If the parties cannot reach agreement on the selection of the single arbitrator within fifteen (15) business days of the date the written demand letter was received, the arbitration will be administered by J.A.M.S., Seattle, Washington Office using a J.A.M.S. arbitrator. Any arbitrator selected must have a fundamental knowledge of and at least five (5) years' legal experience working with contract law and a working knowledge of Indian law, public health law, and municipal law. The arbitrator shall have the power to establish a schedule for the hearing which hearing shall be limited to no more than 2 consecutive business days to be equally divided between the parties, including preliminary discovery to the extent he or she deems necessary and proper under the circumstances and to make reasonable rules and issue orders necessary for a fair and efficient conduct of the hearing, and to conduct the hearing and administer oaths and affirmations. The arbitrator's decision shall be accompanied by an explanation as to the basis for the award. Each party will pay for its own attorneys' fees. All arbitration awards shall be binding upon the parties and non-appealable. Relief may include temporary, injunctive or other provisional remedies, along with all other remedies available in equity or at law, except as expressly limited in this Agreement.
- d. **Enforcement of Arbitration Award.** Enforcement of Arbitration Awards may only be sought for disputes regarding reimbursement as defined in Section 11 of this Agreement. The court of competent jurisdiction as described in Section 22 shall enforce the decision of the arbitrator and shall not modify, correct, alter or vacate said decision in any way unless the court finds after notice and hearing upon application of a party to the arbitration, one or more of the following: (1) the arbitration decision was procured by corruption, fraud or undue means, (2) there was evident corruption in the arbitrator, or (3) the arbitrator was guilty of the specific misconduct of refusing to hear evidence pertinent and material to the controversy which prejudiced the rights of a party. No court shall have jurisdiction to interfere in any way with any pending arbitration. No party may seek from such court any provisional remedy pending appointment of the arbitrator or the arbitrator's rendition of the award. If the court vacates the arbitration decision, then the court shall direct a rehearing either before the same arbitrator or before a new arbitrator to be chosen in the manner provided in this section. Neither the general obligation nor the full faith and credit or taxing power of a Party Tribe

will be pledged or subject to the payment of any amounts due under this Agreement or the enforcement of an arbitration award. No express waiver of sovereign immunity by this agreement or by resolution shall be deemed a consent to the levy of any enforcement of an award other than the property specifically pledged, assigned or identified in a resolution.

21. **LIMITED WAIVER OF SOVEREIGN IMMUNITY BY THE TRIBE.** The Tribal Parties to this Agreement grant a limited waiver of sovereign immunity subject to the attached **Tribal Resolutions found in Schedule A** and to the following conditions:

- a. This Limited Waiver of sovereign immunity ("Limited Waiver") applies only to enforcement of a mediation agreement or arbitration award against a Party Tribe regarding reimbursement as defined in ~~the Section 11~~ "Costs and Reimbursement" ~~section~~ of the Agreement. Such mediation agreement or arbitration award must be secured in accordance with all provisions of this Agreement.
- b. Any pledge of assets is subject to the terms of this Agreement including the requirement that This Limited Waiver shall not apply to any tribal lands nor to funds or other property held by the United States in trust for the Tribe or its members or any other tribal lands or tribal assets not specifically waived by the Tribal party.
- c. No express waiver of sovereign immunity by this Agreement or by resolution shall be deemed a consent to the levy of any enforcement of an award other than the property specifically pledged, assigned or identified in the attached Tribal Resolutions found in **SCHEDULE A**.
- d. No express waiver of sovereign immunity by this Agreement or by resolution shall be deemed a consent to the levy of any enforcement of an award that exceeds the amount specified in the Tribal Resolutions attached unless otherwise agreed to in writing.
- e. Nothing contained in this Limited Waiver shall be construed to create a contractual relationship with or a cause of action in favor of any third party against any Party Tribe or confer any benefits or rights on any third party or person.
- f. This Limited Waiver does not apply to any other claims under any other agreements among the parties.
- g. Except for the limited waiver provided for in this Agreement and the attached Resolution, nothing in this Agreement or attached Resolution shall be construed as a general or specific waiver of the Tribe's sovereign immunity, which immunities are expressly asserted.

22. **VENUE.**

- a. **Enforcement of Award Against Tribal Parties.** Upon the issuance of an arbitration award or mediation agreement, the prevailing party may seek the entry of judgment upon the award in the Tribal court of the non-prevailing party. If the non-prevailing party does not have a Tribal court, then the prevailing party may seek entry of judgment upon the award in United States District Court for this district, and if this federal court jurisdiction is not available, then state court.

Commented [A2]: NOTE: This section provides a framework only. Each tribe has its own unique legal requirements for waiving sovereign immunity. A template tribal resolution is provided in SCHEDULE A as a resource if needed. However, tribes' legal counsels will be reviewing and editing the resolutions as well as this provision to ensure the language is consistent with their tribal laws.

- b. **Enforcement of Award Against Non-Tribal Parties.** Upon the issuance of an arbitration award or mediation agreement, the prevailing party may seek the entry of judgment upon the award in the state court of the non-prevailing party.
- c. Party Tribes are not subject to the Superior Court of the State of Washington or any other state court for any purpose except as provided in this section.

23. GOVERNING LAW.

- a. **Actions Against a Tribal Party.** The law to be applied in any mediation agreement or enforcement award against a Tribal Party shall be: first, the law of the Tribe, including traditional tribal laws; second, federal law, including federal statutory and common law; and third, in the absence of appropriate tribal or federal law, the law of the State of Washington. This section shall not apply to Tribal grants of authority to a Public Health Officer that specify governing law as provided in **Section 8**.
- b. **Actions Against a Non-Tribal Party.** The law to be applied in any mediation agreement or enforcement award against a Non-Tribal Party shall be the law of the State of Washington. This section shall not apply to Tribal grants of authority to a Public Health Officer that specify governing law as provided in **Section 8**.

24. TERMINATION AND WITHDRAWAL

- a. **Termination.** A Party opting to terminate this Agreement shall provide written termination notification to the Authorized Representatives of all Parties. Notice of termination becomes effective upon receipt by all Authorized Representatives. Any terminating Party shall remain liable for all obligations incurred during its Period of Assistance until the obligation is satisfied.
- b. **Effect of Withdrawal of a Party.** Termination of participation in this Agreement by a withdrawing Party shall not affect the continued operation of this Agreement as between the remaining Party, so long as at least one Party continue to participate.

25. GENERAL TERMS

- a. **AMENDMENT.** No provision of this Agreement may be amended, altered or rescinded by any individual Party without the unanimous concurrence of the Parties. Amendments to this Agreement must be in writing and will become effective upon the approval of the modification by Parties. Amendments must be signed by each Party.
- b. **OTHER OR PRIOR AGREEMENTS.** This Agreement is not intended to be exclusive among the Parties. Any Party may enter into separate agreements with any other entity. No such separate agreement shall terminate any responsibility under this Agreement.
- c. **SUCCESSORS AND ASSIGNS.** This Agreement is not transferable nor assignable, in whole or in part, and any Parties may terminate its participation in the Agreement pursuant to **Section 24**.
- d. **INVALID PROVISION.** The provisions of this Agreement are severable. If any portion of this Agreement is determined by a court to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement will remain in full force and effect.

- e. **NOTICES.** Except as otherwise provided herein, any notice, demand, information, report, or item otherwise required, authorized or provided for in this Agreement shall be given in writing and shall be deemed properly given if (i) delivered personally, (ii) transmitted and received by telephone facsimile device and confirmed by telephone, (iii) sent by United States Mail, postage prepaid, to the Authorized Representatives of all affected Parties at the address designated by such Authorized Representative, or (iv) sent by email with electronic signature of the Party's Authorized Representative.
- f. **NO DEDICATION OF FACILITIES.** No undertaking by one Party to the other Party under any provision of this Agreement shall constitute a dedication of the facilities or assets of such Party, or any portion thereof, to the public or to the other Party. Nothing in this Agreement shall be construed to give a Party any right of ownership, possession, use or control of the facilities or assets of the other Party.
- g. **NO PARTNERSHIP.** This Agreement shall not be interpreted or construed to create an association, joint venture or partnership among the Parties or to impose any partnership obligation or liability upon any Party. Further, no Party shall have any undertaking for or on behalf of, or to act as or be an agent or representative of, or to otherwise bind any other Party.
- h. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement amongst the Party along with the following Schedules:

Schedule A: Tribal Resolutions Authorizing Execution of the Mutual Aid Agreement

Schedule B: Public Health Department/District Resolutions Authorizing Execution of the Mutual Aid Agreement

Schedule C: Eligible and Non-Eligible Costs for Reimbursement

SIGNATORIES

THIS AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes hereof, a facsimile copy of this Agreement, including the signature pages hereto, shall be deemed to be an original.

IN WITNESS WHEREOF, this Agreement has been executed and approved and is effective and operative as to each of the Parties as herein provided.

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Attachments:

**Schedule A: Tribal Resolutions
Authorizing Execution of the
_____ Mutual Aid Agreement**

By: _____
Name: _____
Title: _____
Date: _____

**Schedule B: Public Health
Department/District Resolutions
Authorizing Execution of the
_____ Mutual Aid Agreement**

**Schedule C: Eligible and Non-Eligible
Costs for Reimbursement**

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

By:

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By:

Name:

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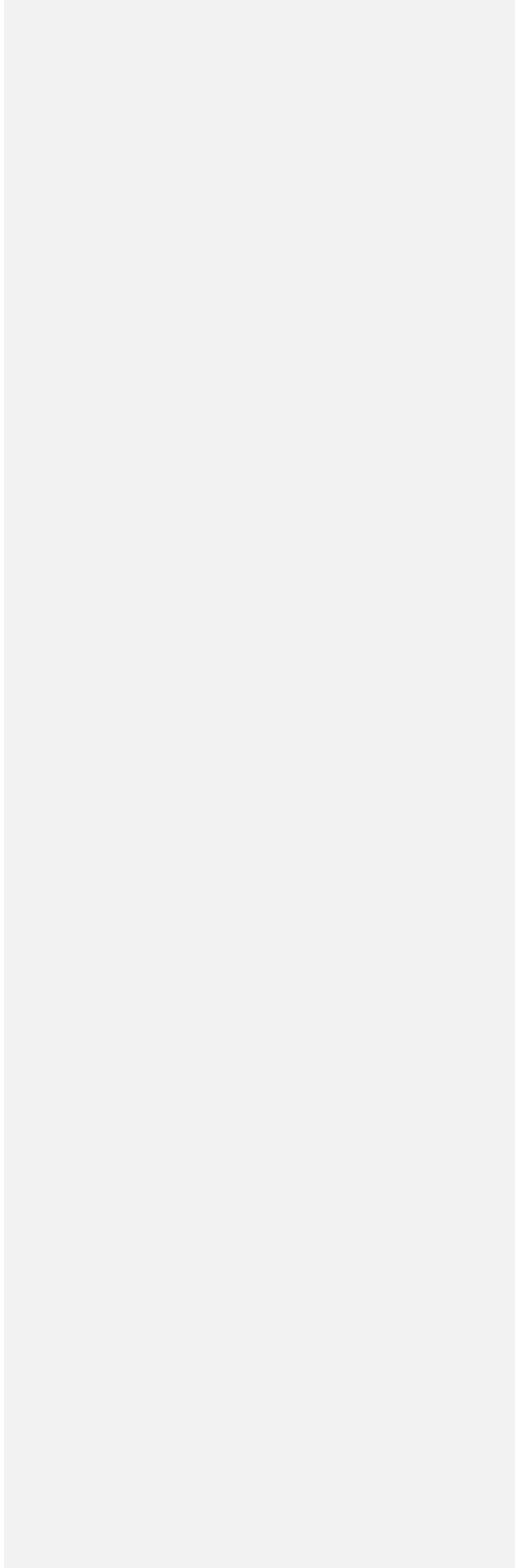
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**SCHEDULE A: TRIBAL RESOLUTIONS AUTHORIZING EXECUTIONS OF THE
_____ MUTUAL AID AGREEMENT**

DISCLAIMER: THE INFORMATION CONTAINED IN THIS DOCUMENT DOES NOT CONSTITUTE LEGAL ADVICE. USE OF ANY PROVISION HEREIN SHOULD BE CONTEMPLATED ONLY IN CONJUNCTION WITH ADVICE FROM LEGAL COUNSEL AND/OR INSURER(S). PROVISIONS MAY NEED TO BE MODIFIED, SUPPLEMENTED, OR REPLACED TO ENSURE APPROPRIATE CITATION TO OR COMPLIANCE WITH RELEVANT LAWS TO ACCURATELY REFLECT THE INTENT OF THE PARTIES TO A PARTICULAR AGREEMENT, OR TO OTHERWISE ADDRESS THE NEEDS OR REQUIREMENTS OF A SPECIFIC JURISDICTION.

**EXAMPLE RESOLUTION AUTHORIZING EXECUTION
OF THE _____ MUTUAL AID AGREEMENT**

RESOLUTION NO. _____

**THE
_____ TRIBE**

)
)
)

I.

WHEREAS, the _____ Tribe entered into the _____ with the United States of America on _____, reserving sovereign and aboriginal rights in perpetuity; and

II.

WHEREAS, the Tribal Council is aware that public health issues, emergencies and disasters cross geographical boundaries and jurisdictions.

V.

WHEREAS, the Tribal Council is aware that public health emergencies and natural disasters can quickly overwhelm the resources of any tribal, local, or state jurisdiction.

VI.

WHEREAS, the Tribal Council is aware that mutual aid agreements are an important tool to protecting the safety of communities by supporting relationships and systems to quickly and effectively request and receive assistance from neighboring jurisdictions.

VI.

WHEREAS, the Tribal Council is committed to protecting the safety and well-being of our tribal community before, during and after community emergencies and disasters.

VI.

NOW THEREFORE BE IT RESOLVED, that the Tribal Council hereby authorizes the execution of the _____ Mutual Aid Agreement.

BE IT FURTHER RESOLVED, that an emergency responder acting within his or her scope of duty under the Mutual Aid Agreement, shall not be liable to such person assisted for civil damages for any personal injuries which result from acts or omissions by such person in rendering the emergency first aid, which may constitute ordinary negligence. The immunity provided in this subsection does not apply to acts or omissions constituting gross, willful or wanton negligence.

BE IT FURTHER RESOLVED, that an emergency responder acting within his or her scope of duty under the Mutual Aid Agreement, who forcibly enters the residence of any person in order to render emergency first aid to a person whom such firefighter, police officer, security officer, emergency medical service personnel or person acting under the direction thereof reasonably believes to be in need thereof on the _____ Reservation shall not be liable to such person for civil damages incurred as a result of such entry. The immunity provided in this subsection does not apply to acts or omissions constituting gross, willful or wanton negligence.

BE IT FURTHER RESOLVED, that the Tribal Council hereby grants a limited waiver of sovereign immunity to the Parties under the _____ Mutual Aid Agreement (“Agreement”) with the following conditions:

1. This Limited Waiver of sovereign immunity (“Limited Waiver”) applies only to enforcement of a mediation agreement or arbitration award against a Party Tribe regarding reimbursement as defined in the “Costs and Reimbursement” section of the Agreement. Such mediation agreement or arbitration award must be secured in accordance with all provisions of this Agreement.
2. This Limited Waiver shall not apply to any tribal lands nor to funds or other property held by the United States in trust for the Tribe or its members.
3. No express waiver of sovereign immunity by the Agreement or by Resolution shall be deemed a consent to the levy of any enforcement of an award other than the property specifically pledged, assigned or identified below:
 - a. DEFINE/IDENTIFY PLEDGED ASSETS (e.g. an insurance policy, specific project monies/grants or streams of revenue, etc.).
4. No express waiver of sovereign immunity by the Agreement or by resolution shall be deemed a consent to the levy of any enforcement of an award that exceeds \$ _____ unless agreed to in writing.

Commented [A3]: Please note that the limited sovereign immunity waiver language is an example only. Each tribe has its own specific requirements for waiving sovereign immunity. Please ensure your tribal legal counsel reviews and edits this language to ensure it is consistent with tribal law.

5. Nothing contained in this Limited Waiver shall be construed to create a contractual relationship with or a cause of action in favor of any third party against any Party Tribe or confer any benefits or rights on any third party or person.
6. This waiver does not apply to any other claims under any other agreements among the parties.
7. Except for the limited waiver provided for in this Resolution, nothing in the Agreement or this Resolution shall be construed as a general or specific waiver of the Tribe's sovereign immunity, which immunities are expressly asserted.

C E R T I F I C A T I O N

WE HEREBY CERTIFY that on this date there was a regular meeting held of the _____ Tribal Council on the _____ Reservation, at which time a quorum was present;

WE FURTHER CERTIFY, that the above numbered resolution, was at said meeting, introduced, evaluated, and was passed by a vote of _____ FOR, _____ AGAINST, _____ ABSTAIN dated this ___ day of _____, 2017.

Chairperson

Attest:
Council Member

ATTACHMENTS:
_____ Mutual Aid Agreement

SCHEDULE C: ELIGIBLE AND NONELIGIBLE COSTS FOR REIMBURSEMENT

1. Examples of Eligible Costs for Reimbursement

a. Personnel

- i. Regular time salary, overtime salary, and fringe benefits calculated at the regular rate utilized by a local jurisdiction, political subdivision, or other entity within the Jurisdiction or Tribe, and in accordance with contractual obligations and policies of the Responding Party.
- ii. Travel time from home of record to place of employment, to include return trip, is not considered eligible for reimbursement.
- iii. Backfill (interim replacement staff costs) must be agreed upon by both parties prior to the deployment of a resource.

b. Travel

- i. Airfare (unless direct billed to the Requesting Party)
- ii. Ground transportation costs such as:
 1. Rental vehicles and fuel
 2. Taxi
 3. Shuttle
 4. Parking fees
 5. Toll fees
 6. Government-owned vehicle mileage (either a per mile mileage rate or the cost of gasoline)
 7. Personally-owned vehicle mileage (either a locally approved per mile mileage rate or the cost of gasoline)
- iii. Lodging (unless direct billed to the Requesting Jurisdiction)
 1. Meals not otherwise provided by entities of the Requesting Party
 2. The Requesting and Responding Parties will determine whether meals for reimbursement will be paid as actual cost or the GSA per diem rates (<http://www.gsa.gov>). Claims for approved actual cost meals need to be accompanied with receipts and have a direct association with the deployment.

c. Equipment

- i. Maintenance and operating costs necessary to operate equipment, vehicles and machinery required to perform the mission.

d. Commodity

- i. Consumables, supplies and materials used for the mission.

e. Other

- i. Reasonable costs to repair or replace equipment damaged during deployment while performing assigned mission. These costs should take into

consideration the depreciated value of the equipment and any insurance coverage available for the damage or loss.

- ii. Costs relating to decontamination of equipment and cleaning of personal protective equipment used in performing the mission.
- iii. Costs of purchasing and transporting supplies as requested by the Requesting Party.
- iv. Reasonable costs for maintenance of equipment to pre-deployment condition.
- v. Deployed items replacement costs: All destroyed, totaled, contaminated, or otherwise unusable items that were used on an official fully executed mission (uniform, turn out gear, etc.) should be considered eligible for replacement and should be documented as such. Further, these items should be reported as damaged as soon as known so proper recordkeeping can take place.

2. EXAMPLES OF INELIGIBLE COSTS

- a. Standby hours (time spent waiting for a deployment) is not considered eligible for reimbursement.
- b. Administrative costs associated with pre-deployment and post-deployment functions or other costs incurred by Responding Parties, unless otherwise mutually agreed upon, are not eligible for reimbursement. The intent of the Mutual Aid Agreement is to provide reimbursement for *actual costs incurred during the response*.
- c. Costs for alcohol, tobacco, toiletries, or similar items are not eligible for reimbursement.
- d. *ALL costs incurred by an entity that self-deployed without approval from both participating Parties will be ineligible.*