MUTUAL AID AGREEMENT FOR TRIBES AND LOCAL HEALTH JURISDICTIONS IN WASHINGTON STATE

This Mutual Aid Agreement for Tribes and Local Health Jurisdictions in Washington State ("Agreement" or "MAA") is made and entered into by the signatory Local Health Jurisdiction(s) within the State of Washington that operate(s) a public health department(s) or division(s) within their county government(s) and the signatory Tribal Government(s) individually with all other signatory parties legally joining the 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 and resources provided by a Responding Party in response to a request from a Requesting Party.

   b. **Authorized Representative:** The person or persons designated by each Party on the Mutual Aid Request Form to request Assistance from or grant assistance to another Party pursuant to the terms of this Agreement.

   c. **Public Health Officer:** The legally qualified individual who has been appointed as the health officer for the tribe, county or district public health jurisdiction, whose qualifications are set forth in tribal code or in RCW 70.05 and RCW 70.08 et seq.

   d. **Mutual Aid:** A prearranged written agreement 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.

   e. **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.

   f. **Operational Control:** Operational control means the limited authority to direct tasks, assignments, and use of assistance provided pursuant to a request for assistance under this Agreement to address: (a) response, mitigation, or recovery activities related to an emergency; or (b) participation in drills or exercise in preparation for an emergency. "Operational control" does not include any right, privilege, or benefit of ownership or employment such as disposition, compensation, wages, salary, pensions, health benefits, leave, seniority, discipline, promotion, hiring, or firing.

   g. **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 and resources to their regular place of work or assignment, or otherwise terminated through written notice to 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 to the Authorized Representative of the Responding Party.

h. **Personnel:** An employee of the Responding Party who is designated in writing by that Responding Party as possessing skills, qualifications, training, knowledge, or experience that may be needed, pursuant to a request for assistance under this Agreement, for: (a) response, mitigation, or recovery activities related to an emergency; or (b) participation in drills or exercises in preparation for an emergency.

i. **Public Health Incident, Emergency, or Disaster:** Any occurrence, set of circumstances, or threat thereof, whether natural or caused by man, in war or in peace that demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrence.

j. **Requesting Party:** A Party that has requested assistance from a Party from another jurisdiction participating in this Agreement.

k. **Responding Party:** A Party providing assistance to a Requesting Party from another jurisdiction participating in this Agreement.

l. **Resources:** Includes supplies, materials, equipment, facilities, energy, services, expertise, information, systems, and other assets except for personnel that may be needed, pursuant to a request for assistance under this Agreement for: (a) Response, mitigation, or recovery activities related to an emergency; or (b) participation in drills or exercises in preparation for an emergency.

3. **EFFECTIVE DATE AND TERM.** This Agreement shall become effective immediately upon its execution by any two Parties. 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 pursuant to Section 19.

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. **Local Health Jurisdiction Authority.** Each Local Health Jurisdiction Party's health officer has authority pursuant to RCW 70.05.070, Chapter 70.46 RCW and WAC 246-100 et seq., among other laws, to control and prevent the spread of any dangerous, contagious or infectious diseases that may occur within its jurisdiction and to order isolation or quarantine, if necessary. WAC 246-100-036(4) provides that a local health jurisdiction may make agreements with tribal governments to assist with investigations and instituting control measures.

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 but no later than seven (7) days after the initial request for assistance.

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 within a reasonable period of time before withdrawing such assistance to the extent it is practical.

   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 resources or personnel, or any other forms of mutual aid.

7. **TEMPORARY GRANT OF AUTHORITY TO A PUBLIC HEALTH OFFICER.** A Tribal Party to this 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, the Tribal Party shall provide the Responding Party with written copies of said code(s) in advance of the Responding Party's agreement to deploy Mutual Aid. Subject to the right to withdraw assistance as set forth in Section 6, 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.

8. **CONTROL OF PERSONNEL AND RESOURCES**

   a. Responding Party personnel remain under the control of the Responding Party up to arrival at the Requesting Party's staging area. Subject to Subsection 2(f), upon arrival at the Requesting Party's staging area and check in, control of Responding Party personnel and resources 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 clinical supervision to the Requesting Party's appropriately licensed medical provider, in writing.

   b. The rights of ownership of resources or employment such as disposition, compensation, and health benefits remain with the Responding Party.

   c. The Requesting Party is responsible to track accurate time of equipment usage and supplies, and to record accurate time worked for all Responding Party personnel.

9. QUALIFICATIONS OF RESPONDING PARTY PERSONNEL

a. Responding Party personnel 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, the federal government, or a Tribe are deemed to be licensed, certified, or permitted in the Requesting Party's jurisdiction for the duration of the emergency, drill, or exercise.

b. Responding Party personnel are subject to the legal limitations or conditions on the license, certificate, or other permit as prescribed by law or in writing by the Authorized Representative of the Requesting Party.

c. The non-tribal 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.

10. COSTS AND REIMBURSEMENT. The Parties agree that the costs of personnel and resources used during the period of assistance are intended to be eligible for reimbursement as detailed in **Schedule C** attached hereto and incorporated herein by reference. Verification of such eligibility shall be the responsibility of the Requesting Party.

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. Notwithstanding this section, and notwithstanding the exhaustion of remedies to seek reimbursement, the Requesting Party shall have primary and ultimate financial responsibility for payment to the Responding Party or Parties.

b. **Waiver of Reimbursement.** A Responding Party may waive or partially waive the request for reimbursement if authorized by law. Such waiver shall be in writing by the Responding Party's Authorized Representative or governing body.

c. **Reimbursement by Requesting Party.** To the extent that reimbursement is not available from third-party payers and the Responding Party does not waive reimbursement, the Requesting Party shall 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 if the Requesting Party submits the form prior to deployment by the Responding Party.

d. **Maintenance of Records.** The Requesting Party remains responsible for ensuring that the amount and quality of all documentation regarding use of resources and personnel is adequate to enable state, federal or tribal reimbursement. The Requesting Party will provide these records to the Responding Party upon request by the Responding Party. Responding party may also keep its own records for the purposes of invoicing and for internal and external audit purposes.

i. Resources Inventory. The Requesting Party will create and maintain an inventory of resources sent from the Responding Party. The Requesting Party will track use and consumption and store the resources appropriately at all times (e.g., vaccines refrigerated).

ii. Record of Hours Worked. The Requesting Party and the loaned employees will record on a shift-by-shift basis time sheets 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 after the Requesting Party receives the invoice.

f. **Payment of Employee Wages.** 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.

11. 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 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.

12. RESPONDING PARTY PERSONNEL EMPLOYMENT STATUS. Responding Party Personnel are not employees of the Requesting Party and are 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.

13. 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, to the degree lawfully authorized under 45 CFR 164.512 and RCW 70.02.050. Each party shall maintain the confidentiality of all patient health information and medical records in accordance with applicable state and federal laws, including, but not limited to, the HIPAA privacy regulations.

14. EFFECT OF DECLARATION OF EMERGENCY. The Parties recognize that tribal, 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. In the event any party declares an emergency or evokes emergency powers it shall promptly notify all other parties to this Agreement of such declaration.

15. LIABILITY, IMMUNITY, AND INDEMNIFICATION.

a. **Indemnification.** To the extent permitted by law, each Party, while acting as a Requesting Party, agrees to indemnify, defend and hold harmless the Responding Parties, their officers, officials, employees, volunteers and agents from any and all claims, demands, causes of action, lawsuits, costs, including without limitation attorneys' fees and expert witness fees, losses, judgments, awards or liabilities to any third party, arising out of or related to the performance of this Agreement. Such obligation shall not apply (1) to the extent that the Responding Party acted outside the scope of the Requesting Party's or its designee's direction; or (2) to

claims arising out of the Responding Party's willful misconduct, gross negligence, or recklessness.

b. For purposes of tort liability or immunity, an employee or officer of a responding member jurisdiction (who is a party to this Agreement) is considered an agent of the requesting member jurisdiction. No responding member jurisdiction 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 Agreement in good faith. For purposes of this section, good faith does not include willful misconduct, gross negligence, or recklessness.

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

d. The Parties hereto recognize that the Tribal Parties have sovereign immunity. The Parties also recognize that persons who are injured or damaged in connection with acts or omissions performed within the scope of this Agreement should have recourse for recovery for such injuries or damages based upon fault under the common law and statutes of the state of Washington. The Parties intend to provide for that recourse through insurance that each Party hereto will maintain notwithstanding such immunity.

16. INSURANCE

a. **Liability and Casualty Insurance.** For the duration of this Agreement, each Party shall maintain its own public liability and property damage insurance of at least five million ($5,000,000) of coverage against claims for injuries to persons or damage to property, which may arise from or in connection with the performance of this Agreement by its officers, officials, employees or volunteers. This insurance requirement may be satisfied by a commercial policy or policies of insurance or a self-insurance retention program adopted by a Party.

b. The commercial insurance or self-insurance program for any Party which has an immunity from suit shall be endorsed to include all parties to the Agreement, their officers, officials, employees and agents as additional named insureds. Insurance coverage shall be maintained in continuous effect during this agreement, and in the event any party's insurance expires, terminates or is cancelled, that Party shall give advance written notice to the other Parties. Proof of current active insurance by a Requesting Party may be requested by a Responding Party prior to provision of any Assistance or Mutual Aid hereunder.

c. Each Tribal policy of insurance issued under this Agreement must include a provision that the insurance shall be available to satisfy settlements or judgments arising from the tortious conduct of Tribal Party personnel, and that to the extent of policy coverage neither the sovereign tribal nation nor the insurance carrier will raise a defense of sovereign immunity to preclude an action for damages under state or federal law, the determination of fault in a civil action, or the payment of a settlement or judgment arising from the tortious conduct.

17. FEDERAL TORT CLAIMS ACT. No provision of this Agreement shall remove from any Party any protection provided by any applicable Federal Tort Claims Act.

18. 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.

19. DISPUTE RESOLUTION.

a. **Generally.** If a dispute arises between parties, the party asserting the dispute shall provide written notice to the other identifying the issues in dispute. If the dispute is not resolved within ninety days after receipt of the dispute notice by the other party, either Party to the dispute may invoke binding arbitration to resolve the dispute by giving written notice to the other Party. Within thirty days after receipt of the notice invoking binding arbitration, each Party shall furnish the other a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each Party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel. Costs of the arbitration, including compensation for the arbitrator's services, must be borne equally by the Parties participating in the arbitration and each Party bears its own costs and expenses, including legal fees and witness expenses, in connection with the arbitration proceeding. Parties to a dispute are not required to use binding arbitration, and must be in agreement to use this process before binding arbitration will be invoked.

b. **Enforcement of Arbitration Award.** The arbitration decision shall be final and may be enforced by the appropriate state or federal court as provided in Subsection 19(c) and 19(e) below. Nothing in this Section is intended to preclude the Parties from agreeing to mediation to resolve a dispute prior to involving arbitration.

c. **State or Federal Court.** Should a Party choose not to resolve a dispute through mediation or binding arbitration, the Parties agree that the dispute may be resolved in state or federal court in accordance with Subsection 19(e) below.

d. **Applicable Law.** The law to be applied against a Tribal Party shall be: first, federal law, including federal statutory and common law; and second, in the absence of appropriate 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 7.

e. **Sovereign Immunity and Jurisdiction.** By signing the Agreement, the Tribal Parties neither waive, limit, nor modify their sovereign immunity from any claim or lawsuit, except as expressly provided in this Dispute Resolution Section 19 and Section 15 and 16(c). The Tribal Parties hereby expressly and irrevocably waive their sovereign immunity (and any defense based thereon) for disputes arising out of or related to this Agreement, but only pursuant to the provisions of the Dispute Resolution Section 19 and 16(c), and for judicial proceedings before the U.S. District Court for the Western District of Washington, or if the U.S. District Court does not have jurisdiction, then the appropriate superior court in the state of Washington for the purposes of enforcement of the terms of this Agreement, confirming an arbitration award or collecting sums due and owing pursuant to and otherwise enforcing any award or judgment. The Tribal Parties hereby irrevocably consent to and submit to the jurisdiction of any arbitration or legal

proceeding convened pursuant to the terms of the Agreement, to the U.S. District Court for the Western District of Washington, and if the U.S. District Court of Washington does not have jurisdiction, then to the appropriate superior court in the state of Washington.

i. This limited waiver of sovereign immunity is solely for the benefit of the Parties to this Agreement. The Tribal Parties, by granting this limited waiver to the Parties to this Agreement, do not otherwise waive their sovereign immunity except as provided in this Agreement.

20. 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 may be given by any of the means set forth in Subsection 21(e). 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 Parties, so long as at least two Parties continue to participate.

21. GENERAL TERMS

a. **AMENDMENT.** No provision of this Agreement may be amended, altered or rescinded by any individual Party without the unanimous concurrence of all Parties. Amendments to this Agreement must be in writing and will become effective upon the approval of the modification by all Parties. Amendments must be signed by the Authorized Representative of all Parties.

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 Party may terminate its participation in the Agreement pursuant to Section 20.

d. **INVALID PROVISION.** The provisions of this Agreement are severable. If any portion of this Agreement is determined by state or federal 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 the affected Party or Parties at the address designated by such Authorized Representative, or (iv) sent by email with electronic signature of the Party's Authorized Representative. Notice given by United States

mail shall be deemed to be received three (3) business days following deposit in the mail for delivery.

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. Except as expressly provided herein, 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.

h. **NO THIRD-PARTY BENEFICIARY.** This Agreement is for the sole and exclusive benefit of the Parties hereto and shall not create a contractual relationship with, or cause of action in favor of, any third party.

i. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement amongst the Parties along with the following Schedules:

Schedule A: Tribal Resolutions Authorizing Execution of the *Mutual Aid Agreement for Tribes and Local Health Jurisdictions in Washington State.*

Schedule B: Public Health Jurisdiction Resolutions Authorizing Execution of the *Mutual Aid Agreement for Tribes and Local Health Jurisdictions in Washington State.*

Schedule C: Eligible and Ineligible 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: Charlene R. Nelson

Name: Charlene Nelson

Title: Tribal Chairwoman

Date: 9/22/17