

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE SAMISH INDIAN NATION
AND
THE CITY OF ANACORTES**

PARTIES

The Samish Indian Nation (hereinafter referred to as the "Tribe") is a federally recognized Indian tribe and party to the 1855 Treaty of Point Elliott that promulgated articles of agreement between the United States and the Tribe. The Tribe is recognized as eligible by the Secretary of the Interior for the special programs and a service provided by the United States to Indians because of their status as Indians, and is recognized as possessing powers of self-government. The Tribe is a sovereign government whose members are descendants of indigenous peoples who have resided in the Puget Sound region of Washington since time immemorial. The Tribe has a vital interest in, and responsibility for, the planning and protection of the public health, wellness, safety, education, housing, economic and social welfare and cultural and resource management needs and interests of their members.

The City of Anacortes (hereinafter referred to as "City") is a political subdivision of the State of Washington. The City has a vital interest in, and responsibility for, the planning and protection of the public health, wellness, safety, education, housing, economic and social welfare and cultural and resource management needs and interests of its residents and businesses.

The Tribe and the City ("The Parties"), recognize the contributions, both unique to and shared by the Parties, that each make to a broad cultural, economic, and historical heritage. Better communication and more systematic opportunities to work and celebrate together are understood by both Parties to further basic goals of a regional community such as promoting respect for different cultures, linking people to their heritage, fostering a sense of place, deepening community pride, encouraging civility, fostering empathy, and offering increased hope for the future.

The Parties acknowledge that certain actions on the part of either the City or the Tribe have the potential to affect aquatic habitats, fisheries, cultural resources, security, environmental resources, or economic well-being of the Parties.

The Parties recognize that the Tribe has a vital economic, cultural, and/or spiritual interest that may be affected by City activities. Further, the City's own economic and cultural interests may be influenced by activities of the Tribe.

The Parties acknowledge that success in achieving their respective goals, responsibilities, and interests can be significantly affected by the actions of the other, and it is therefore in the interests of both Parties to establish a process that facilitates cooperation between the Parties, and provides methods for better communication, continued education, and resolution of various issues.

The Parties recognize that implementation of this MOU may require educational efforts to promote understanding of the government-to-government relationship within their respective governments and with the public.

GUIDING PRINCIPLES

This memorandum of understanding (hereinafter referred to as "MOU") dated April 12, 2003, is executed between the Samish Indian Nation and the City of Anacortes in order to better achieve mutual goals through an improved relationship between sovereign Tribal government and City government

The Parties to this MOU recognize and respect the sovereignty and legal status of one another. The Parties further recognize that each has and reserves all rights, powers and remedies now or hereafter existing at law, in equity, or by statute, Treaty, or otherwise.

This MOU provides a framework that the signatory Parties agree to use to achieve the purpose of applicable laws and regulations.

This MOU does not diminish, increase, or otherwise alter the rights and entitlements of each party, and nothing herein is intended to confer jurisdiction on the City over the Tribe.

This MOU is a testament to the commitment by the Parties to strengthen their government-to-government relationship. This relationship respects the sovereign status of the Tribe and of the City, enhances and improves communications between them, and seeks to facilitate the resolution of issues.

This MOU provides a foundation for subsequent agreements between the governments of a more specific nature that outline specific tasks to address or resolve specific issues, such as,

- Road Construction and Maintenance;
- Bridge Construction and Maintenance;
- Law Enforcement and Emergency Response;
- New Business Development and Recruitment;
- Environmental Regulatory Programs and Funding;
- Archeological Protections – Attachment A;
- Fire Protection and Emergency Medical Services.

PREAMBLE

WHEREAS, the Tribe has purchased lands and properties within the jurisdiction of the City and plans to purchase additional lands (the "Tribal Property"); and

WHEREAS, the Tribe is a sovereign nation and federally restored Indian tribe and has certain legal rights to govern the lands which it owns and controls; and

WHEREAS, the Tribe and the City desire to enter into this Agreement to establish how the Tribe and the City will cooperate in connection with regulation, management, and governmental administration of the Tribal Property; and

WHEREAS, part of the Tribe's plans for the Tribal Property includes the following:

- construction, ownership, leasing and management of low income and/or subsidized housing for Tribal members and their families ("Housing Sites"); and
- Administrative Offices for the Tribe; and
- Tribal Preschool Building; and
- Title VI Elders Program.

WHEREAS, construction of the Housing Sites and other projects may be undertaken using funds provided under the federal block grant program established under Title I of the Native American Housing and Self-Determination Act of 1996, as amended (the "Block Grant Program"), and the Tribe may only use funds obtained pursuant to the Block Grant Program for rental or lease-purchase dwelling units that are owned by the Tribe if (i) such units are exempted from real and personal property taxation and (ii) the City and the Tribe have entered into this Agreement; and

WHEREAS, the Tribe and the City deem it to be in their mutual best interest to reach an understanding and agreement as to the taxation and regulation of the Tribe's activities on Tribal Property and the provision of Public Services (as defined below) by the City to facilities and persons on the Tribal Property,

WHEREAS, nothing in this agreement affects the rights of the parties and nothing herein confers any jurisdiction on the City over the Tribe.

WITNESSETH:

In consideration of the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Definitions. Whenever used in this MOU:
 - (a) "Tribe" shall have the meaning set forth in the Preamble of this Agreement.
 - (b) "Tribal Property" is defined as property owned by the Tribe and shall include at least those properties set forth on Exhibit 1 to this Agreement (Schedule of Tribal Properties). Exhibit 1 may be amended from time to time by further agreement of all Parties, but failure to amend Exhibit 1 to add a property does not exclude that property from being treated as Tribal Property if the property otherwise qualifies as such.
 - (c) "Public Services" shall mean police protection services; fire protection services; paramedic and ambulance services; sewer services; water services; publicly-funded sidewalk construction and maintenance services; road construction and maintenance services; drainage maintenance and control services; emergency services; code enforcement services; and similar services, benefits and duties to the extent provided by the City of Anacortes.
 - (d) "Housing Sites" shall have the meaning set forth in the Preamble to this Agreement, and shall include at least those properties set forth on Exhibit 2 to this Agreement (Schedule of Housing Site Properties). Exhibit 2 may be amended from time to time by further agreement of all Parties, but failure to amend Exhibit 2 to add a property does not exclude that property from being treated as a Housing Sites if the property otherwise qualifies as such.
 - (e) "Shelter Rent" shall mean the total of all charges to a residential Housing Unit for rents.
 - (f) "Taxing Body" shall mean the State of Washington, County of Skagit, City of Anacortes, or any non-tribal political subdivision or governmental unit in which any Tribal Properties are situated and which has authority to assess or levy real or personal property taxes, or to certify such taxes to a taxing body or a public officer to be levied for its use and benefit, with respect to the Tribal Property.
2. Exemption from Taxation. The City of Anacortes hereby exempts all the Tribal Property from all real and personal property taxes and special assessments levied or imposed by the City unless separately agreed to by the parties.

The City also hereby exempts from all real and personal property taxes levied or imposed by the City all Housing Sites purchased, constructed, or improved using funds provided under the Block Grant Program.
3. Payment in Lieu of Taxes for Housing Sites. With respect to Housing Sites, the Tribe agrees to make payments in lieu of taxes (hereinafter referred to as "PILOT") to the City for the cost of providing Public Services to the Housing Sites at a rate of \$150 per unit

per Housing Site per year or the maximum payable under Title 1, § 102 (d) (2), United States Code, whichever is the greater. Such payments shall be made at the time when real or personal property taxes would have been due to the City. Upon failure of the Tribe to make any PILOT, the City shall be entitled to all remedies available at law, including an action for breach of this Agreement, except that no lien against any Housing Site or other real property assets of the Tribe shall attach. Those identified Housing Sites shall remain exempt from taxation as long as title is vested with the Samish Indian Nation or a tribal agency or entity. Once the Tribe does transfer title, then the Housing Site is no longer covered by the terms of this agreement.

4. Payment in Lieu of Taxes for Tribal Properties. With respect to the Tribal Property, the Tribe agrees to make payments in lieu of taxes (hereinafter referred to as "PILOT") to compensate the City for the cost of providing Public Services to specific Tribal Properties, as follows:

- (a) The Samish Administrative Offices located at 2918 Commercial Avenue, Anacortes, WA 98221, a yearly payment of \$982.78 in 2003, increasing annually thereafter by the Seattle CPI U.

- (b) The Samish Longhouse located at 1618 D Street, Anacortes, WA 98221, a payment of \$804.16 in 2003, increasing annually thereafter by the Seattle CPI U.

Such payments shall be made at the time when real or personal property taxes would have been due to the Taxing Bodies. Upon failure of the Tribe to make any PILOT, the City shall be entitled to all remedies available at law, including an action for breach of this Agreement, except that no lien against any real property assets of the Tribe shall attach.

5. Provision of Public Services. With respect to all Tribal Properties and Housing Sites, the City shall furnish or cause to be furnished, when within its mandate to do so, Public Services of the same character and kind, under the same terms, conditions, and payment terms, and to the same extent as provided to other dwellings, buildings, residents and inhabitants within the jurisdiction of the City.
6. Compliance with Laws, Standards and Requirements for Housing Sites. The Tribe agrees to meet or exceed the substantive standards of City laws and requirements for the construction, use and maintenance of the Housing Sites.
7. Compliance with Laws, Standards and Requirements for Tribal Properties. With respect to Tribal Properties, the City recognizes and agrees that the Tribe shall exercise its sovereign powers to regulate and manage such Tribal Properties, it being understood that the Tribe intends to adopt and enforce all ordinances, standards, and requirements of the City until such time that the Tribe does adopt and enforce standards of environmental protection, building code standards, fire code standards, safety standards, etc., that are designed to provide protection and regulation of its Tribal members and others affected by its sovereign governmental authority and to meet or exceed City standards. Accordingly, the City will not seek to enforce its statutes, ordinances, standards and requirements over Tribal Property and the City agrees that it has no jurisdiction or enforcement authority over the Tribe.

8. Police and Enforcement Authorities. The Tribe and the City agree that the Housing Sites and the inhabitants thereof will be and remain subject to the civil and criminal law enforcement powers and jurisdiction of the City.

With respect to the Tribal Property, the Tribe shall exercise its powers of civil and criminal enforcement, subject to Cross-Deputization Agreements with appropriate cooperating enforcement authorities, upon entering into a law enforcement and emergency response agreement with the City.

9. Miscellaneous.

- (a) Modification. This Agreement may only be modified by a writing signed by the party against whom such modifications are sought to be enforced.
- (b) Term. The term of this Agreement shall commence upon its execution, and shall continue in effect so long as the Tribe owns Tribe Properties within the jurisdiction of the City, provided that the term shall not exceed 20 years.
- (c) Situs of the Contract; Governing Law. Each Party reserves any and all rights it may otherwise have to enforce its rights or seek resolution of the dispute under applicable law.
- (d) Notice. Any notice required to be given pursuant to this Agreement shall be delivered to the appropriate party by certified mail return receipt requested, or by overnight mail, or courier service, to the following addresses:

If to the Tribe:
Samish Indian Nation
2918 Commercial Avenue
Anacortes, WA 98221

Attn: Chairman, Tribal Council

If to the City:
Mayor
City of Anacortes
P.O. Box 547 (6th and "Q")
Anacortes, WA 98221

- (e) Further Actions. Each party agrees to execute all documents and to take all actions reasonably necessary to comply with the provisions of this Agreement and its intent.
- (f) Waivers. No failure or delay by a party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy upon the breach thereof, shall constitute a waiver of any such breach or any subsequent breach of such covenant, agreement, term or condition. No covenant, agreement, term, or condition of this Agreement and no breach thereof shall be waived, altered or modified except by written instrument.

- (g) Captions. The captions for each section and subsection are intended for convenience only.
 - (h) Severability. If any provision, or any portion of any provision, of this Agreement is found to be invalid or unenforceable, such unenforceable provision, or unenforceable portion of such provision, shall be deemed severed from the remainder of this Agreement and shall not cause the remainder of this Agreement to be invalid or unenforceable. If any provision, or any portion of any provision, of this Agreement is deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
 - (i) Third Party Beneficiary. This Agreement is exclusively for the benefit of the Parties hereto. It may not be enforced by any party other than the Parties to this Agreement, and shall not give rise to rights or liability to any third party.
 - (j) Successors and Assigns. The benefits and obligations of this Agreement shall inure to and be binding upon the Parties hereto and their respective successors and assigns. The Parties cannot assign their rights or obligations under this Agreement except with the written consent of the other Parties, except that the Tribe may, without the consent of the Governmental Unit, assign this Agreement to an instrumentality of the Tribe organized to administer programs or services or to conduct the business of the Tribe, if the other instrumentality assumes all obligations of the Tribe. No such assignment shall relieve the Tribe of any obligation under this Agreement, unless otherwise agreed by the City.
 - (k) Entire Agreement. This Agreement contains the entire understanding and agreement of the Parties hereto and supersedes all other prior agreements and understandings, written or oral between the Parties. There are no oral agreements.
 - (l) Preparation of Agreement. This Agreement was drafted and entered into after careful review and upon the advice of legal counsel; it shall not be construed for or against any party.
 - (m) Execution. This Agreement may be executed in counterparts, all of which taken together shall constitute one document.
 - (n) Authorization. Each person signing for an entity warrants that he or she is duly authorized to do so.
10. 25 U.S.C. § 81. The undersigned Parties agree that this Cooperation Agreement does not require approval under Title 25, United States Code, Section 81, and agree that neither party will assert lack of approval by the Secretary of the Interior as a defense to performance under this Agreement. If either party elects to submit the Agreement for approval (or if a court or the Secretary of the Interior determines such approval is necessary), each party agrees that they shall each support its approval, and shall make reasonable modifications to the terms of this Agreement as may be required to obtain such approval. The City agrees to be bound by this Agreement notwithstanding any failure to submit it for approval under Section 81.

11. Consultation Process. The undersigned Parties agree that if either government provides written comments, concerns and/or recommendation, they will be conveyed triggering a staff-level consultation meeting. The consultation process will provide the opportunity for both governments to come together and discuss various issues. The intent is to provide a procedural mechanism through which to voice concerns, identify problems, and explore solutions in a professional manner.
12. Resolution of Disputes. The undersigned Parties agree that should an agreement not be reached at the staff-level through the consultation process, each government will prepare a staff report for submittal to the Council of both the City and the Tribe for further consultation.

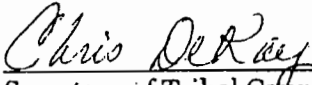
In Witness Whereof, the Tribe and the City have executed this Agreement as of the date indicated.

SAMISH INDIAN NATION pursuant to
Resolution# 2003-04-010 of the Tribal Council of
the Samish Indian Nation dated April 12, 2003

By:

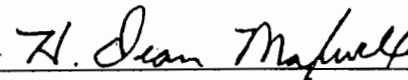

Tribal Council Chairman

Its:


Secretary of Tribal Council

CITY OF ANACORTES, pursuant to City Council Approval
on May 19, 2003

By:



Its:

MAYOR 6/20/03

ATTACHMENT A

Archeological Protections – Site # 45SK43

1. The Tribe will conduct the following work (“this work”): survey the extent of Site # 45SK43 on City owned property, stabilize the shoreline along 300 feet of City owned property immediately north of Site # 45SK43, and recommend design standards for the Tommy Thompson Parkway (“Parkway”) as this Parkway crosses Site # 45SK43.
2. The City will reimburse the Tribe for up to \$30,000 for this work and will incorporate the design standards called for in Section 1 of this Attachment into the Parkway design.
3. The Tribe will continue to support the City's efforts to develop the Tommy Thompson Parkway as a bike and pedestrian pathway.