

SHARED JURISDICTION AND LAW ENFORCEMENT AGREEMENT BETWEEN THE KALISPEL TRIBE
OF INDIANS DEPARTMENT OF PUBLIC SAFETY AND THE PEND OREILLE COUNTY SHERIFF

This AGREEMENT is entered into this _____ day of _____ 2012, by and between the Kalispel Tribe of Indians ("Tribe") and the Pend Oreille County Sheriff ("Sheriff") and collectively referred to as the "Parties".

WHEREAS, the Agreement is entered pursuant to the authority of the Tribal Police Officers Chapter under RCW 10.92, the Washington Interlocal Cooperation Act Chapter 39.34 RCW, and the formal resolutions executed by the respective governmental agencies;

WHEREAS, Chapter 10.92 RCW authorizes tribal police officers to act as general authority Washington police officers, under certain conditions, thereby giving Tribal Police Officers the same powers as any other general authority Washington peace officer to enforce state laws in Washington, including the power to make arrests for violations of state laws;

WHEREAS, the Tribe, a federally recognized sovereign Indian Tribe, has a reservation of approximately 4,600 acres of trust property ("Reservation") within Pend Oreille County ("County");

WHEREAS, law enforcement agencies have the responsibility for protecting lives and property and keeping the peace, the parties hereto are desirous of providing for the mutual protection and preservation of the public peace and for the general welfare of the communities hereto;

WHEREAS, effective law enforcement depends upon the ability of responding officers to take emergency action to protect the lives and property and to preserve the peace, without regard to jurisdiction limitations;

WHEREAS, it is not intended that the law enforcement responsibilities of either Party be altered but rather that law enforcement personnel have the authority to enforce the law in situations where they are first responders;

WHEREAS, the Tribe and the County have a longstanding history of mutual assistance and cooperation with formalized agreements dating to 1993;

WHEREAS, the purpose of this Agreement is to continue to formalize a working relationship between the Tribe and the County and to provide for the effective and efficient administration of criminal justice and investigative services in Pend Oreille County and the Kalispel Tribal Community;

WHEREAS, it is to be to the mutual benefit of the parties hereto that they enter into Agreement of mutual protection and assistance in the field of law enforcement;

WHEREAS, the Tribe and County, by resolutions, a true and certified or authenticated copy of each attached hereto, have approved this joint exercise of powers;

NOW, THEREFORE, the Tribe and the County do hereby enter into this Agreement in order to more efficiently and economically facilitate their capabilities to provide for increased cooperation in the law enforcement field.

NOW, THEREFORE, the Parties agree as follows:

DURATION

That commencing immediately, the Tribe and County agree to cooperate and assist each other to their mutual benefit in the field of law enforcement as more specifically provided herein. This Agreement shall be effective for a period of one (1) year, and shall be deemed to renew successively at the end of each term unless notice of termination is given. One of the parties may terminate this Agreement at the end of the effective period, if that party sends written notice of termination to the other party via Certified Mail, 30 days before the renewal date. The parties may also terminate the Agreement at any time by the parties jointly setting a termination date in writing.

ADMINISTRATION

Nothing in this Agreement creates a separate legal entity from the Parties. Under RCW 39.34.030, the activities of the Parties under this Agreement will be jointly administered by the Director of the Kalispel Tribe of Indian's Department of Public Safety and the Pend Oreille County Sheriff through, at a minimum, a quarterly meeting.

FINANCES

The activities of each of the Parties hereto will be financed by each of the respective Parties. No real or personal property is to be acquired or held under this Agreement. Should personal property be loaned from one party to another, it shall be returned as soon as possible upon request of the owner-party.

TRAINING REQUIREMENTS

All Tribal officers, acting under as an authorized general authority Washington peace officer will have successfully completed the requirements under RCW 43.101.157. Any applicant not meeting the requirements for certification as a tribal police officer may not act as a general authority Washington peace officer under RCW 10.92.

Parties agree to notify all signatories and the county and tribal prosecutor's offices by the next business day, in writing, should their officer become decertified.

SCOPE OF POWERS GRANTED AND RESPONSIBILITIES ASSUMED BY TRIBE

This Agreement, gives eligible Kalispel Tribal Police officers authorization to enforce the laws of the state of Washington on Trust lands within the exterior boundaries of the Reservation. Tribal Police officers acting under the authority granted by RCW 10.92 have the power to issue citations, issue notices of infraction and make arrests for violations under Washington State laws.

- A. The Kalispel Tribe will use this authority when the surrounding circumstances demand immediate action for the safety and well being of the citizenry and the on-scene law enforcement officers. This agreement does not waive the responsibility of the Sheriff in any way.
- B. The authority granted under this agreement and pursuant to RCW 10.92 will be within the exterior boundaries of the reservation trust lands. An officer commissioned under this section may act as authorized under RCW 10.93.070 beyond the exterior boundaries of the reservation trust lands. The circumstances in RCW 10.93.070 include:
 - a. Prior written consent of the Sheriff in whose primary territorial jurisdiction the exercise of the powers occurs;
 - b. In response to a request for assistance pursuant to a mutual law enforcement assistance agreement with the agency of primary territorial jurisdiction;
 - c. In response to the request of a peace officer with enforcement authority;
 - d. When the officer is transporting a prisoner; or
 - e. When the officer is executing an arrest warrant or search warrant.
- C. A Tribal officer commissioned by the County may act as authorized beyond the exterior boundaries of the reservation trust lands to enforce all Washington State criminal laws and to make arrests for criminal offenses where applicable within Pend Oreille County.
- D. A copy of any non-traffic citation or notice of infraction issued, or any incident report taken by a Tribal officer acting under the authority of RCW 10.92, must be submitted within three (3) days to the Pend Oreille County Sheriff. A non-traffic citation issued under this agreement will be to a Washington State Court. If the citation is issued to an Indian within the exterior boundaries of the Reservation, the citation will be to Tribal Court.
- E. Any authority granted under this Agreement shall not in any way expand the jurisdiction of the Kalispel Tribal Court.
- F. Nothing in this agreement limits, impairs, or otherwise affects the authority of the Kalispel Tribal Police to continue fresh pursuit of an offender beyond the exterior boundaries of the Kalispel Indian Reservation until the offender is apprehended or the

pursuit is discontinued based upon the considerations set forth in the County's pursuit policy.

SCOPE OF POWERS GRANTED AND RESPONSIBILITIES ASSUMED BY COUNTY

- A. This Agreement expressly recognizes that Pend Oreille County Sheriff's deputies, regardless of whether they possess a Tribal law enforcement commission, have the lawful authority to arrest non-Indians who commit crimes against other non-Indians or who commit victimless crimes in Indian Country where such Indian Country lies within the overall geographic jurisdiction of such agencies.
- B. Nothing in this Agreement limits, impairs, or otherwise affects the existing authority of the Pend Oreille County Sheriff to enforce state laws within the exterior boundaries of the Kalispel Indian Trust land in fresh pursuit, as defined by RCW 10.93.120, of a person suspected of violating state law, where the officer would otherwise not have jurisdiction.
- C. Nothing in this Agreement alone authorizes Pend Oreille County Sheriff deputies to assume any further jurisdiction, other than that which is already granted to them. Therefore, Pend Oreille County Sheriff deputies, without a special commission from the Kalispel Tribal Police, do not have the authority to enforce the law of the Kalispel Tribe or act as a Kalispel Tribal Officer under this Agreement.

TRAFFIC CITATIONS

The Tribal officers and Sheriff's deputies commissioned pursuant to this Agreement are authorized to issue traffic citations at all times within the exterior boundaries of the Kalispel Indian Reservation for traffic infractions as defined in Chapter 4 of the Kalispel Tribal Law and Order Code. All alleged violators who contest such citations shall appear in Tribal Court.

SPECIAL POLICE COMMISSIONS AND OTHER AGREEMENTS NOT PROHIBITED

Nothing in this agreement will be deemed to have limited the ability of either party to enter into other law enforcement agreements with each other or other jurisdictions. Mutual aid Agreements are allowed under this agreement. An agreement entered into under RCW 10.92 does not limit the ability of the County Sheriff to issue special police commissions to Tribal officers to enforce the criminal and traffic laws of the State of Washington outside the exterior boundaries of the reservation trust lands or the ability of the Kalispel Tribal Police Department from issuing special police commissions to County Sheriff deputies to enforce the criminal laws of the Kalispel Tribe of Indians.

LIABILITIES AND IMMUNITIES

- A. For purposes of civil liability under this Agreement, a Tribal police officer shall not be considered an employee of the State of Washington or the Pend Oreille County Sheriff's Department except where a state or local government has deputized a Tribal police officer as a specially commissioned officer. Neither the State of Washington and its individual employees nor any local government shall be liable for the authorization of Tribal Police officers under this agreement, nor for the negligence or other misconduct of Tribal officers.
- B. Further, under this agreement, Pend Oreille County Sheriff deputies will be deemed employees of the County and not of the Kalispel Tribe. The Kalispel Tribe of Indians will not be liable for the negligence or other misconduct of Pend Oreille County Sheriff deputies.
- C. It is understood and agreed that each agency which is a party to this agreement, its agents, employees, and insurers, do not, by virtue of this agreement, assume any responsibility or liability for the action of officers commissioned pursuant to this agreement which are performed outside the scope of their duties.

DISPUTE RESOLUTION

The parties intend to resolve their disputes through direct discussion and, if such is not possible, then through a dispute resolution framework established below. All stated time frames for resolving disputes may be lengthened by mutual consent.

(a) Direct Discussions.

To initiate dispute resolution under this Section, the complaining party will first submit a written complaint letter to the representative of the party 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 responding party will, within ten (10) working 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 responding 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 lead representatives of each party will, for fifteen (15) working 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 which took place and the last stated positions of each party.

(b) Mediation.

If direct discussions between the parties fail to resolve the dispute, any participating party may, within five (5) business days of completing the direct discussion process, make a written request for mediation to be conducted in Spokane, Washington or at another 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) working 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.

(c) Other.

In the event of unsuccessful direct discussions or mediation, the parties may mutually agree to arbitrate the dispute. If arbitration is desired, the parties must agree on a mutually acceptable arbitration process, to be evidenced in writing.

(d) Kalispel Tribal Court.

Failing all other dispute resolution processes, the Kalispel Tribal Court shall have exclusive jurisdiction over any suit that may be filed arising under or relating to this Agreement.

(e) Sovereign Immunity.

Nothing in this Agreement, or any action taken by the Kalispel Tribe, or any of its officers, agents, employees or volunteers in connection with this Agreement shall be deemed a waiver of the sovereign immunity of the Kalispel Tribe, unless such waiver is explicit and in writing and fully complies with all tribal and federal requirements for the waiver of such immunity.

Nothing in this agreement shall be construed to waive the Kalispel Tribe of Indians' sovereign immunity from suit except as articulated in RCW 10.92, which states in relevant part, "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."

INDEMNIFICATION AND INSURANCE

The Kalispel Tribe of Indians and Pend Oreille County agree to defend, indemnify and hold each other harmless from, and will assume full responsibility for, any and all allegations, losses, causes of action, costs, damages, and expenses arising out of any accident or other occurrence suffered by any person or the property of any person while engaged in activities associated with this agreement.

The Kalispel Tribe agrees to maintain a public liability insurance policy in the amount of \$1,000,000.00 pursuant to RCW 10.92. Proof of the Tribe's insurance will be provided to the County and to the State of Washington Office of Risk Management per RCW 10.92. The County will also provide proof of liability insurance to the Kalispel Tribe.

INDIAN COUNTRY IDENTIFICATION

The Kalispel Tribe of Indians shall prepare and furnish to the state, county, or city agencies current maps and legal descriptions of all known Kalispel Indian Country within Pend Oreille County, Washington, and shall promptly update the same as necessary.

ENTIRE AGREEMENT/ MODIFICATIONS

This agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the terms of this agreement. Each party to this agreement acknowledges that no representation, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone dealing on behalf of any part which is not embodied herein, and that no other agreement, statement, or promise not contained in this agreement shall be valid or binding on either party, except that any other written agreement shall be valid as between the signing parties. Modifications: Any modification of this agreement will be effective only if it is in writing and signed by both parties.

WAIVER

The failure of either party to insist on strict compliance with any terms, covenants, or conditions to this agreement by the other party shall not be deemed waiver of that term, covenant, or condition.

PARTIAL INVALIDITY

If any provisions in this agreement are held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

SEVERABILITY

The illegality or unenforceability of any word, phrase, or provision of this agreement shall not in any way affect or impair the legality or enforceability of the remaining words, phrases, or provisions of this agreement.

CERTIFICATIONS

DATED: _____

KALISPEL TRIBE OF INDIANS

Glen Nenema, Chairman

DATED: _____

PEND OREILLE COUNTY
BOARD OF COMMISSIONERS

Diane Wear, Commissioner

Laura Merrill, Commissioner

John Hankey, Commissioner

Approved as to Form:

David Bonga
Kalispel Tribal General Counsel

Thomas A. Metzger
Pend Oreille Prosecuting Attorney

James Wynecoop
Kalispel Tribe Director of Public Safety

Alan Botzheim
Pend Oreille County Sheriff