

INTER-GOVERNMENTAL AGREEMENT
Between
the Shoalwater Bay Indian Tribe and
Pacific County Department of Community Development

This inter-governmental agreement (the "Agreement") is by and between the Shoalwater Bay Indian Tribe, a federally-recognized Indian tribe, PO Box 130, Tokeland, WA, 98590 and Pacific County, a political subdivision of the State of Washington, PO Box 187, South Bend, WA 98586.

In this Agreement, the party Shoalwater Bay Indian Tribe, who is contracting to receive services, shall be referred to as "SBIT" and the party Pacific County, who will be providing the services, shall be referred to as the "County."

SBIT would like the County to provide construction-related review and inspection services throughout the construction of a commercial kitchen within the Shoalwater Bay Casino on SBIT land held in trust for the SBIT by the United State of America (the "Project"). The Project site is located at 4008 State Route 105 (parcel no. 14110317000).

In consideration of the foregoing, the covenants and agreements stated herein, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties enter into this Agreement on the following terms:

1. DESCRIPTION OF SERVICES AND PARTIES' RESPONSIBILITIES.

A. Services.

1. The County will provide a County Building Inspector to review all construction plans/drawings submitted by the contractor who is hired by the SBIT to construct the Project. The County will also provide a County Building Inspector to carry out all inspections throughout the building process. The SBIT will provide a designated representative, who shall be present at any review or inspection being conducted by the County.
2. The County will provide a County Environmental Health Specialist to review the commercial kitchen plans/drawings submitted by SBIT to the County for the Project. The County will also provide a County Environmental Health Specialist to carry out all inspections throughout the kitchen installation process. The SBIT will provide a designated representative, who shall be present at any review or inspection being conducted by the County.
3. The County will provide its services consistent with and no different from what the County would provide under a County Building Permit, but no County permit is required for the Project. The parties acknowledge the County does not have authority to issue permits for the Project on the SBIT's trust land. The County will not review this project for compliance with other land use codes.

4. The County will conduct a plan review on the construction drawings/plans submitted by either SBIT, or its contractor, for consistency with the 2009 International Building Codes. SBIT, or its contractor, shall submit two sets of plans and minimum engineering documents containing the following information: detailed site plan showing property lines, building footprint, building setbacks, ingress/egress, detailed floor plan, with all the rooms clearly identified, engineering pertaining to all structural construction, and engineering and construction drawing for the automatic sprinkler system. All floors, walls, and ceilings will be fire resistive rated. The County will return a set of the reviewed plans to the contractor and which are to remain on sight for use and reference during the duration of the construction project. The County will follow a routine inspection schedule for typical commercial projects. The County will conduct inspections on the following items: foundation system, underground plumbing/utilities servicing the building prior to cover, structural/framing, mechanical and internal plumbing, sheetrock, and final inspection. The County will not conduct electrical inspections. It is the responsibility of either SBIT or its contractor to call and request inspections from the County at least 24 hours ahead of time. The County will conduct a final inspection and walk through with SBIT and its contractor at a mutually agreed upon time.
5. The County will conduct a plan review on the commercial kitchen drawings/plans submitted by SBIT, for consistency with the Pacific County Board of Health Ordinance No. 6 and the Washington Administrative Codes for food establishments. The County Environmental Health Specialist will review the same set of plans that the Building Inspector receives. SBIT shall submit an equipment list with an identification table that can be matched to the equipment in the kitchen floor plan. The County will follow a routine inspection schedule for typical food establishment renovations. The County will not provide construction oversight. It is the responsibility of either SBIT or its contractor to call and request inspections from the County at least 24 hours ahead of time. SBIT will need to schedule the environmental health inspections directly with the County Environmental Health Specialist rather than through the typical building inspection request process. The County will conduct a final inspection and walk through with SBIT and its contractor at a mutually agree upon time.

B. *Standards.* The County will perform its review and inspection services to ensure the construction is substantially compliant with the minimum requirements for commercial kitchens 2009 International Building Codes and the Washington State Energy Code, and will perform its review and inspection services to ensure the kitchen renovation is substantially compliant with the minimum standards contained in Pacific County Board of Health Ordinance No. 6. The parties agree that notwithstanding the use of such laws for the purposes of County's obligations under this Agreement, this Agreement shall not make Washington State law applicable to the SBIT nor to the Project.

C. *Reports.* Each review or inspection will be documented on a County inspection card and be given to SBIT or an SBIT designated representative, along with the returned plans, and is to remain on-site for the duration of the project. Such reports shall at a minimum include the following information: subject matter of the review or inspection, location, date conducted, any deficiencies identified, and signatures from both the inspector and the SBIT designated representative. An additional copy of the report will also be left with the SBIT designated

representative. All written reports prepared under this Agreement shall be confidential to the SBIT.

D. Enforcement. The County will not be responsible for enforcing any laws or otherwise seeking to remedy any identified deficiency. The SBIT will be the party responsible for enforcing or otherwise seeking to remedy any deficiencies identified in the reports, but only to the extent the SBIT determines that enforcement or remedy is in the SBIT's best interests.

2. **PAYMENT.** SBIT agrees to pay an hourly rate of \$50 an hour, plus mileage to the County for services defined within this Agreement. The County will invoice monthly and the invoice will include both the environmental health and building services. Payment by SBIT will be submitted to the County by mail within 30 days of receiving the County's invoice. The County will send a receipt acknowledging the payment to the SBIT.
3. **TERM.** The term of the Agreement is eighteen (18) months, effective July 1, 2011 through December 31, 2012. This Agreement may be extended on mutual written agreement of the parties.
4. **NOTICES.** All notices required or permitted under this Agreement shall be sent to the SBIT's designated representative, shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid. Address changes by either party must be provided by written notice to the other in the manner set forth above.
5. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties and there are no other promises or conditions or any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.
6. **TERMINATION.**
 - A. *Termination in General.* SBIT and the County shall each retain the right to terminate this Agreement at any time and for any reason by submitting written notice of intention to the other party at least 60 days prior to the specified effective date of such termination.
 - B. *Expedited Termination for Cause.* A party shall have the right to terminate this contract on ten days communicated written notice if the other party has violated any of the provisions herein, or if a party deems the other party's performance of responsibilities herein identified to be substantially unsatisfactory.
 - C. *Requirements on Termination.* Except to the extent the County otherwise has a legal obligation under law applicable to the County to retain such records, all finished and unfinished documents and work papers prepared by the County pursuant to this Agreement shall, at the option of SBIT, become the SBIT's property. The SBIT will pay the County for service performed up to the date of the contract termination, except to the extent such payment is the subject of a dispute, which shall be resolved in accordance with Section 11.
7. **HOLD HARMLESS.** It is understood and agreed that this Agreement is solely for the benefit of the parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement. Each party hereto agrees to be responsible and assumes liability for its own negligent acts or omissions, or those of its

officers, employees, volunteers, or agents to the fullest extent required by law, and agrees to save, indemnify, defend and hold the other party harmless from any such liability.

8. **SEVERABILITY.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
9. **WAIVER OF CONTRACTUAL RIGHT.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver of limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
10. **DESIGNATED REPRESENTATIVES.** The parties hereby identify their designated representatives to serve as their respective points of contact for the purposes of this Agreement, as follows:

For the SBIT:

Pete Chadwick, Project Coordinator
Shoalwater Bay Indian Tribe
P.O. Box 130
Tokeland, WA 98590

For the County:

Faith Taylor-Eldred, Director
Pacific County Department of Community Develop.
PO Box 68
South Bend, WA 98586

11. **DISPUTE RESOLUTION.** The SBIT and the County agree to the following dispute resolution procedures:

A. *Meet and Confer.* In the event the SBIT or the County believes the other has committed a possible violation of this Agreement, it may request in writing that the parties meet and confer in good faith for the purpose of attempting to reach a mutually satisfactory resolution of the problem within fifteen (15) days of the date of service of such request.

B. *Notice of Disagreement.* Within 30 days of holding the meet and confer in Subsection A, if the complaining party is not satisfied with the result of the meet and confer process, the complaining party shall provide written notice to the other party identifying and describing any alleged violation of this Agreement (Notice of Disagreement), with particularity, if available, and setting forth the action required to remedy the alleged violation.

C. *Response to Notice of Disagreement.* Within 15 days of service of a Notice of Disagreement, the recipient party shall provide a written response denying or admitting the allegations set forth in the Notice of Disagreement, and, if the truth of the allegations is admitted, setting forth in detail the steps it has taken and/or will take to cure the violation. Failure to serve a timely response shall entitle the complaining party to proceed directly to arbitration, as provided in Subsection D.

D. *Binding Arbitration Procedure.* Subject to prior compliance with the Meet and Confer process set forth in Subsection A, and the Notice and Response process in Subsections B and C, either party has the right to initiate binding arbitration to enforce the terms of this Agreement. The arbitration shall be conducted in accordance with the following procedures:

1. The arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitrator shall be selected pursuant to such rules and shall be mutually agreed upon by both parties; provided that he/she must be a licensed attorney and knowledgeable in federal Indian law if the issue involves federal Indian law. The parties and the arbitrator shall maintain strict confidentiality with respect to the arbitration.
2. The arbitration shall be held in Pacific County, Washington, unless otherwise mutually agreed by the parties in writing. No discovery may be conducted without leave of the arbitrator, who shall decide whether to grant such leave based on the need of the requesting party and the burden of such discovery in light of the nature and complexity of the dispute.
3. If either party requests a hearing, the arbitrator shall set the matter for hearing. Otherwise, the arbitrator shall decide whether to set the matter for hearing.
4. The arbitrator shall be empowered to grant equitable and injunctive relief and specific performance. The arbitrator shall not have the power to award punitive damages or non-contract damages, and nothing herein shall operate or be construed as an authorization or consent by the SBIT or the County for placement of any lien on personal or real property. Any monetary award to the County by the SBIT shall not exceed the amounts due and owing under Section 2.
5. The resulting award shall be in writing and give the reasons for the decision. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
6. The costs and expenses of the American Arbitration Association and the arbitrator shall be shared equally by and between the parties unless the arbitrator rules otherwise.
7. An action to enforce any award in an arbitration held pursuant to this Section 11 may be brought in a United States District Court or Washington State Court.

12. LIMITED WAIVER OF SOVERIEGN IMMUNITY. Notwithstanding any rule of the Commercial Arbitration Rules of the American Arbitration Association or any provision of applicable law, the SBIT and the County each agree to waive their sovereign immunity from suit only for the limited purpose of enforcing an arbitration decision made under this Agreement. These waivers are granted only to the other party and not to any other individual or entity. Any award or judgment against the SBIT for money with respect to this Agreement shall only be for the amounts owing under Section 2 herein and may be enforced and collected only as against the revenues of the Tribe that are derived from the Project.

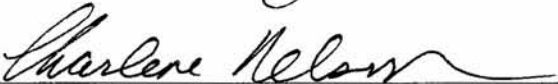
13. APPLICABLE LAW. The Arbitrator chosen under this Agreement shall apply any applicable SBIT, Washington State or federal law to the interpretation of this Agreement.

14. AUTHORIZATION. The SBIT and the County each represent and warrant that each has performed all acts required by its own laws for the validity of adoption of this Agreement and

each has the full power and authority to execute this Agreement and to perform its obligations in accordance with the terms and conditions thereof, and that the representatives executing this Agreement on behalf of such party are duly and fully authorized to so execute and deliver this Agreement.

15. **MODIFICATION.** Except as otherwise provided in this Agreement, this Agreement may be modified only by written mutual assent of both parties.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed this 7 day of July, 2011.



Charlene Nelson, Chair, Shoalwater Bay Indian Tribe

7-7-11
DATE

Faith Taylor-Eldred, Director, Pacific County
Department of Community Development

DATE