

Consent Agenda

Regular Agenda

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA REQUEST

TO: Board of Commissioners
Philip Morley, County Administrator

FROM: Sheriff Tony Hernandez

DATE: May 29, 2012

RE: Contract for Law Enforcement Services on the Hoh Reservation

STATEMENT OF ISSUE:

The Hoh Tribe has criminal jurisdiction over Indian persons who commit crimes within the boundaries of its Reservation and desires to contract with Jefferson County for enhanced law enforcement services on all lands in unincorporated Jefferson County within the Reservation. Jefferson County Sheriff's Office has successfully provided law enforcement services to the Hoh Tribe since June 2009 under a mutually beneficial arrangement and this contract continues the excellent working relationship formed during the last 2.5 years.

ANALYSIS:

This essentially continues an agreement for services which has been in place since June 2009.

FISCAL IMPACT:

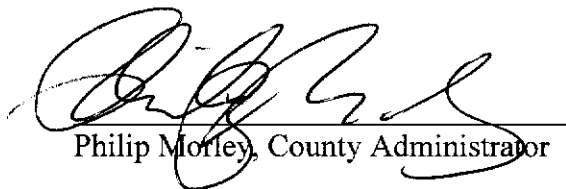
The contract pays the cost of law enforcement personnel provided to the Hoh tribe.

RECOMMENDATION:

This contract should be signed.

DEPARTMENT CONTACT: Tony Hernandez

REVIEWED BY:


Philip Morley, County Administrator

5/23/12

Date

SERVICE AGREEMENT
BETWEEN
JEFFERSON COUNTY AND
THE HOH TRIBE
FOR
LAW ENFORCEMENT ON THE HOH RESERVATION

This is an Agreement between Jefferson County, a political subdivision of the State of Washington, hereinafter referred to as the "County" and the Hoh Indian Tribe, a federally-recognized Indian Tribe, hereinafter referred to as the "Tribe." The County and the Tribe witness that:

RECITALS

WHEREAS, the Tribe has criminal jurisdiction over Indian persons who commit crimes within the boundaries of its Reservation and desires to provide law enforcement services on all lands in the unincorporated areas of Jefferson County within the Reservation boundaries.

WHEREAS, the Tribe desires to contract with Jefferson County for enhanced law enforcement services on all lands in unincorporated Jefferson County within the Reservation and has authority pursuant to its Constitution to contract with Jefferson County for such services; and

WHEREAS, the County, through the Jefferson County Sheriff's Department, hereinafter referred to as Sheriff; and is a General Authority Law Enforcement Agency as defined in R.C.W. 10.93.020 (1) and is an established law enforcement agency and possesses the power and legal authority, pursuant to chapter 10.93 R.C.W. to provide emergency and law enforcement services within Jefferson County and other jurisdictions where authorized by agreement with those jurisdictions;

NOW THEREFORE, in consideration of covenants, conditions, performances, and promises hereinafter contained, the Parties agree as follows:

1.0 Recitals

The above referenced recitals are incorporated by reference herein and constitute terms of this Agreement.

2.0 Scope of Services for County

2.1 The County shall provide law enforcement services for the Tribe on its reservation located within unincorporated Jefferson County. Except as otherwise provided in this Agreement, the County shall furnish all personnel and equipment necessary to provide these services. At the request of The Tribe, the County shall provide additional sheriff deputies available to work on a temporary basis, at applicable hourly rates to perform additional policing and protection services under the terms of this Agreement.

2.2 The County shall hire, assign, supervise, retain, and discipline all employees according to its collective bargaining agreement, civil service rules, and state and federal law. The County is acting hereunder as an independent contractor so that:

a. Control of personnel, standards of performance, discipline and any other aspects of performance shall be governed by the County. Provided however that only qualified, trained personnel meeting all of the requirements of applicable State laws or regulations shall be utilized in the performance of services under this Agreement. In the assignment of deputies, the County shall use, whenever possible, deputies who volunteer for duty under this Agreement and/or request this duty. The County and the Tribe will work together to encourage officer retention to provide continuity of service.

b. The Tribe shall retain the right to meet and confer with the Sheriff (or his or her designee) with respect to those personnel who are assigned to work under this Agreement. If The Tribe has requested the reassignment of personnel and the Sheriff (or his or her designee) does, in fact, reassign the personnel, the reassignment shall not be considered disciplinary or in any way reflect upon the performance evaluation of the deputy. Provided however, that issues of discipline or performance will be specifically handled according to County policies. Nothing in this Agreement shall prevent individuals from seeking promotional opportunities or receiving a promotion. Sole authority to appoint the Deputies to implement the County's obligations under this Agreement shall rest with the Jefferson County Sheriff.

c. In order to maintain minimum staff for the Tribe, no more than one person may be allowed to attend special unit training for each shift providing law enforcement to the Tribe.

d. The County shall provide investigative services to The Tribe following the same protocols utilized for the provision of these services to citizens of unincorporated Jefferson County with the exception of major crimes, as defined by the Major Crimes Act, 18 U.S.C. 1153 et seq., which remain within the exclusive jurisdiction of the Federal Government.

2.3 The Parties agree that the County and the Tribe shall share the responsibility for scheduling and operational assignments except that supervision of County employees shall remain the responsibility of the County under this Agreement. The Tribe and the County shall coordinate scheduling and assignment of additional policing when needed.

2.4 While assigned to the Tribe under this Agreement, County law enforcement personnel shall be free to respond to calls for service both within and outside the Tribe's Reservation and to provide Base Level law enforcement services both within and outside the Tribe's Reservation. County personnel shall be at all times available to respond to an emergency involving an immediate threat to human life or property or when in fresh pursuit as defined in R.C.W. 10.93.120.

2.5 County will coordinate transfers to minimize the time positions are vacant, as well as the impact of vacancies on the Tribe.

a. Timing and replacement of the Tribally-assigned staff who vacate the assignment will be scheduled after consultation with the Fish & Wildlife Officer.

2.6 Upon execution of this Agreement the County shall immediately provide one (1) The Supervisor shall be selected and assigned by the Sheriff of Jefferson County with the advice of Fish & Wildlife Officer.

2.7 The County and the Tribe shall retain their respective authority to make operational decisions and develop and implement policies for their agencies.

2.8 Upon execution of this Agreement the County shall also, as soon as practicable, provide one (1) Deputy utilizing the title of "Deputy to the Tribe." The Deputy to the Tribe shall be selected and assigned by the Sheriff of Jefferson County with the advice of Fish & Wildlife Officer. Final say on who shall serve as the Deputy to the Tribe shall remain with the Sheriff.

3.0 Scope of Services to be performed by the Tribe:

3.1 The Fish & Wildlife Officer shall serve as the liaison to coordinate with the Sheriff for this Agreement. The liaison shall communicate with the Sheriff regarding operational assignments relating to this Agreement and issues of concern to the Tribe, its employees and passengers.

3.2 The Tribe shall provide, at its expense, adequate office space with adequate number of workstations including related utilities, janitorial services, and furnishings. This office shall be maintained as other Tribe owned and operated offices, and equipped with limited access control and physical security counter measures for the protection of law enforcement sensitive information and records.

3.3 The County and the Tribe will jointly prepare a physical security plan, acceptable to each for the designated law enforcement work areas.

4.0 Term of Agreement

This Agreement shall have a term commencing on the date of execution of this Agreement and terminating July 31, 2014, unless either Party initiates termination as provided in Section 7.

5.0 Compensation

5.1 The Tribe will pay an amount, not to exceed two hundred thousand dollars (\$200,000.00) to be negotiated between the Parties, in one lump sum annually on October 1st following execution of this Agreement.

Payment shall be mailed to:

Jefferson County Sheriff's Department
79 Elkins Road
Port Hadlock WA 98339
Invoice shall be mailed to:

Hoh Tribe
PO Box 2167
Forks, WA 98331

5.2 The staff contract costs for 2012 and thereafter shall be increased annually as determined in the bargaining agreement negotiated by JCSO.

5.3 Compensation for employment of additional Sheriff's deputies requested by the Tribe shall be the applicable hourly rate calculated on an annual basis. The rate for additional Sheriff's deputies shall be negotiated between the Parties, based on prevailing wages and cost recovery for equipment, and shall be subject to change annually beginning January 1, 2013. The County shall give a minimum of thirty (30) days' notice to the Tribe prior to instituting a change in the above hourly rate of compensation. Invoicing for additional Sheriff's deputies shall be monthly.

6.0 Legal Requirements

The Parties shall comply with all applicable federal, state and local laws in performing this Agreement.

7.0 Termination

Either Party may terminate this Agreement for any reason upon providing written notice to the other Party six (6) months prior to the effective termination date, in which case The Tribe shall compensate the County only for the costs of these services provided through the period of time this Agreement remains in effect. This Agreement is contingent upon governmental funding. In the event that funding reductions result in a decrease in appropriations for law enforcement, the

County or the Tribe may terminate this agreement by providing six (6) months' notice to the other. Termination shall not affect the accrued rights and obligations of either party under other sections of this Agreement.

8.0 Notice

- 8.1 A transition plan shall identify and address any personnel conveyance of capital equipment to the Tribe and if applicable, workload, assignment and any other issues related to the transition. Each Party shall bear its own cost in developing a transition plan.
- 8.2 The County and the Tribe agree to use all best efforts to affect a mutual implementation of the transition plan to provide an order and effective transition of services.
- 8.3 Any notice to be given under this Agreement shall be sent either by registered mail, return receipt requested, or by personal delivery.
- 8.4 Any notice from the Tribe to be sent to the County shall be sent or delivered to:
- Jefferson County Sheriff
79 Elkins Road
Port Hadlock, WA 98339
- 8.5 Any notice from the County to be sent to the Tribe shall be sent or delivered to:
- Hoh Tribe
PO Box 2196
Forks, WA 98331
- 8.6 Notices shall become effective upon delivery or three days after being sent by registered mail, whichever occurs first.

9.0 Records

The County shall maintain adequate records to support billings for those services set forth in this Agreement. Said records shall be maintained for a period of six years after completion of this Agreement. The Tribe or any of its duly authorized representatives shall have access at any time during regular business hours, to any books, documents, papers, or records of the County that are directly related to this Agreement for the purposes of audit examinations, excerpts, or transcripts. The County is subject to the Public Records Act, codified at Ch. 42.56 RCW and records generated pursuant to this Agreement are subject to that state law.

10.0 Amendment

Provisions within this Agreement may be amended with the mutual consent of the Parties hereto. No additions to, or alteration of the terms of this Agreement shall be valid unless made in writing, formally approved, and executed by duly authorized agents of both Parties.

11.0 Additional Services

The Parties agree that during the term of this Agreement, additional similar services may be added in accordance with section 10.0, Amendments. The Parties further agree that such additional services shall be compensated at the rates negotiated by the parties for the appropriate year in which those services are added.

12.0 Waiver

No waiver by either Party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Agreement unless stated to be such through written approval by the County, which shall be attached to this Agreement.

13.0 Severability

If any of the provisions contained in this Agreement are held illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect.

14.0 Non-Discrimination

The County and The Tribe certify that they are Equal Opportunity Employers.

15.0 No Third- Party Beneficiary/Non Exclusivity

The County does not intend by this Agreement to assume any contractual obligations to anyone other than the Tribe and the Tribe does not intend by this Agreement to assume any contractual obligations to anyone other than the County. The County and the Tribe do not intend that there be any third-party beneficiary to this Agreement. The County and the Tribe agree that this is a non-exclusive Agreement and that the Tribe may employ or contract for additional police and safety services, including services provided by off-duty law enforcement officers.

16.0 Indemnification

16.1 In executing this Agreement, the County does not assume liability or responsibility for or in any way release the Tribe from any liability or responsibility which arises in whole or in part from the existence or effect of the Tribe's ordinances, rules, regulations, resolutions, customs, polices or practices. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such tribal ordinance, rule,

regulation, resolution, custom, policy or practice is at issue, then the Tribe shall defend the same at its sole expense, and if judgment specifically attributable to such tribal provisions is entered and damages are awarded against the Tribe, the County, or both, then the Tribe shall entirely satisfy the same, including all chargeable costs and reasonable attorney's fees and costs. To the extent permitted by law, the Tribe shall defend, indemnify and hold harmless the County, its officers, employees and agents from any and all costs, including reasonable attorney fees, claims, judgments, or awards of damages, resulting from the breach of this Agreement, acts or omission of the Tribe, its officers, employees or agents arising out of or in connection with the performance of this Agreement except for injuries, damages, judgments caused by the sole negligence of the County.

16.2 In executing this Agreement, The Tribe does not assume liability or responsibility for or in way release the County from any liability or responsibility which arises in whole or in part from the existence or effect of County ordinance, rules, regulations, resolutions, customs, policies, or practices. If any cause, claim, suit, action, or administrative proceeding is commenced in which the enforceability and/or validity of any such County ordinance, rule, regulation, resolution, custom, policy, or practice is at issue, the County shall defend the same at its sole expense, and if judgment is entered and damages are awarded against the County, the Tribe, or both, the County shall entirely satisfy the same, including all chargeable costs and reasonable attorney's fees and costs. To the extent permitted by law, the County shall defend, indemnify, and hold harmless the Tribe, its officers, employees, and agents from any and all costs, including reasonable attorney fees, claims, judgments, or awards or damages, resulting from the breach of this Agreement, acts or omissions of the County, its officers, employees, or agents arising out of or in connection with the performance of this Agreement except for injuries, damages and judgments caused by the sole negligence of the Tribe.

17.0 Immunity

17.1 The County and the Tribe with respect to each other only waive and will not assert against each other, any immunity under Title 51 of the Industrial Insurance laws of the State of Washington. This waiver does not extend to the employees of either Party. The County and the Tribe expressly do not waive their immunity against claims brought by their own employees. This waiver has been expressly and mutually negotiated. It is further provided that no liability shall attach to either Party by reason of entering into this Agreement, except as expressly provided herein. If the claim, suit or action for injuries, death or damages as provided for in the proceeding paragraphs of this Agreement is caused by or results from the concurrent negligence of (a) the indemnitee or the indemnitee's agents or employees, and (b) the indemnitor or the indemnitor's agents or employees, the indemnity provisions provided for in these paragraphs shall be valid and enforceable only to the extent of the indemnitor's negligence.

17.2 The parties enter into a limited mutual waiver of their respective sovereign immunities for the sole and limited purpose of enforcing the mutual indemnities in Section 17 of this Agreement, and for no other purpose. Neither party hereto waives its sovereign immunity for any other purpose or with respect to or for the benefit of any other entity, person or government. Provided, that the Tribe's limited waiver of sovereign immunity set out in this

paragraph is further limited to injunctive and declaratory relief related to the mutual indemnifications set out in this Section and to the recovery of damages to the extent covered by insurance.

17.3 Except for the limited waiver of sovereign immunity provided in this section, nothing in this agreement shall be construed as a general or specific waiver of the Tribe's sovereign immunity, which immunities are expressly asserted. Furthermore, 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 the Tribe. This limited waiver of sovereign immunity is not, and shall not be deemed to be, a consent by the Tribe to the levy of any judgment, lien or attachment on any appropriations received from any government by agreement or by grant or upon any property or revenues of the Tribe.

18.0 Insurance

The County represents and warrants that it is a self-insured entity maintaining sufficient coverage for all purposes of this Agreement. The Tribe has general liability insurance in an amount of not less than five million dollars (\$5,000,000.00) aggregate. The Tribe shall provide proof of this insurance via a "Certificate of Insurance" or other documentation within 30 days of the date when the last party to this Agreement executes this Agreement. The Tribe shall keep this insurance policy (or a policy with equal aggregate liability coverage amounts) in effect for the entire term of the Agreement.

19.0 County as Independent Contractor

The County is, and shall at all times be deemed to be, an independent contractor. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the Tribe and County or any of the County's agents or employees. The County shall retain all authority for rendition of services, standards of performance, control of personnel, and other matters incident to the performance of services by County pursuant to this Agreement.

20.0 Prosecutions

20.1 Prosecution of Criminal Cases: All criminal cases involving Indian persons as a suspect or person of interest will be referred to Hoh Tribal Prosecutor's office for prosecution, unless they fall within the definitions of the Major Crimes Act, in which case they will be referred to the United States Attorney's Office. As used herein, "Indian person" means any person enrolled in a federally recognized Indian tribe. All declinations of prosecutions of Indian persons for offenses allegedly occurring on the Reservation shall be communicated to the officer, along with an explanation for the declination, within ninety (90) days of the decision to decline and within two hundred seventy (270) days of the incident. In all cases cited into the Hoh Tribal Court, the necessary County officer(s) shall be available to testify in Tribal Court.

20.2 Referrals where the suspect or person of interest is a non-Indian shall be referred to the Jefferson County Prosecuting Attorney's Office.

20.3 Civil Infractions: All civil infractions involving both Indian and non-Indian persons will be referred to the Hoh Tribal Prosecutor's office for prosecution. All declinations of prosecutions of Indian persons for offenses allegedly occurring on the Reservation shall be communicated to the officer, along with an explanation for the declination, within ninety (90) days of the decision to decline and within two hundred seventy (270) days of the incident. In all cases cited into the Hoh Tribal Court wherein a Respondent in a civil matter contests the allegation, the necessary officer(s) shall be available to testify in Tribal Court.

20.4 In accordance with RCW 37.12.010, any alleged violations of the state statutes and regulations relating to compulsory school attendance and the acceptance or utilization of state-funded public assistance ("welfare") shall be referred to the Jefferson County Prosecutor.

21.0 Dispute Resolution.

Any dispute concerning the implementation of this Agreement shall be first directed to the Tribe's Executive Director and the designated Sheriff's Supervisor. If the dispute is not resolved between those persons, then it shall then be referred to the Tribal Business Committee and Sheriff, who shall meet to resolve such dispute. Disputes relating to the implementation of this Agreement may not be resolved in any Court or by Administrative procedure. Termination shall be the sole remedy. Provided, that disputes involved the failure of the Tribe to provide compensation for services rendered or disputes involving the failure of the County to provide services for which payment has been made may be resolved in a court of competent jurisdiction. In such action the remedy shall be limited to the recovery of money owed.

22.0 Entire Agreement

This document constitutes the entire Agreement between the Parties.

23.0 Reporting.

23.1 Reporting Districts. Reporting districts coterminous with the Reservation boundaries will be maintained to enable accurate data collection on law enforcement services provided and criminal activity.

23.2 Notification of Criminal Activity. The Deputy to the Tribe on duty will notify the Fish & Wildlife Warden and/or the Executive Director of the Tribe by telephone in the event of a significant criminal occurrence within the unincorporated area of Jefferson County within the Reservation.

23.3 Criminal Reports: Criminal reports generated by Jefferson County as a result of activities on lands within unincorporated Jefferson County within the Reservation are subject to state public disclosure and Privacy Act laws.

24.0 Law Enforcement Services:

24.1 Base Level Services. Jefferson County Sheriff's Office ("JCSO") provides basic law enforcement services to the unincorporated areas of the County, including the Reservation. Base Level Services provided to the Tribe are described in Section 3 of Attachment A.

24.2 JCSO will provide one Deputy, who will be assigned to provide the Base Level of Services to the Tribe's Reservation. The Deputy to the Tribe will not have an assigned post.

24.3 During the time the new officer is undertaking mandatory training, the Hoh Tribe agrees and understands that it shall be responsible for overtime pay, housing and other living expenses for another temporary officer.

24.4 Any equipment JCSO determines is necessary for performance under this Agreement shall be purchased by JCSO and an invoice shall be submitted to the Tribe within 30 days of purchase. The Tribe shall then reimburse JCSO for said purchases within 30 days of receiving the invoice and receipt.

25.0 Billing.

The estimated contract amount shall be paid in lump sums based on the Tribe's receipt of payments from the BIA. Additional payments shall be due within (30) days after receipt of invoices from the County.

26.0 Decisions and Policy-Making Authorities.

The County will provide the Tribal Business Committee an opportunity to interview candidates for the position of Deputy, provided for in this Agreement, and make hiring recommendations to the County. Prior to assigning such Deputy to the Tribe, the Tribal Business Committee and the Sheriff or his/her designee will confer bi-annually with the Tribal Business Committee to evaluate the Base Level Services provided under this Agreement and discuss potential changes in assignments and duties. Nothing in this Agreement shall prevent individuals from seeking promotional opportunities or receiving a promotion. Sole authority to appoint the Deputy to the Tribe shall rest with the Jefferson County Sheriff.

27.0 Special Provisions.

During the term of this Agreement, the County will encourage the stabilization of County law enforcement personnel assigned to patrol the Reservation.

IN WITNESS WHEREOF, the parties execute this Agreement. Dated this ____ day of _____, 2012.

JEFFERSON COUNTY

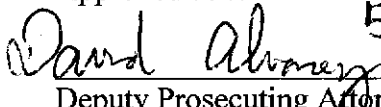
HOH INDIAN TRIBE

Chair, Jefferson County Commission,
David Sullivan



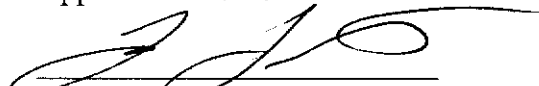
Tribal Business Committee Chairwoman,
Maria Lopez

Approved as to Form

 5/18/2012

Deputy Prosecuting Attorney
For Jefferson County

Approved as to Form



Attorney for the Hoh Tribe

EXHIBIT "A"

Scope of Services

1. The County (Sheriff), shall provide one (1) full time commissioned deputy sheriffs (Deputy to the Tribe) to provide services to the Tribe under this Agreement by following the hiring schedule defined in this Agreement.
2. The Tribe will employ a Fish & Wildlife Warden. The Deputy to the tribe will report to the Executive Director, however in the absence of the Executive Director, will report to the Fish & Wildlife Warden of the Tribe. Sheriff's Supervisors will command all assigned personnel within the Sheriff's Department on all matters relating to this agreement.
3. The County will provide police patrol and investigative services in accordance with operational plans established by the Tribe and the Sheriff. Police services shall include response to calls for service, conducting investigations, and proactive patrol of various forms to detect, prevent, and deter criminal activity and may be conducted in uniformed and non-uniformed capacity depending on the specific assignment. The deputies assigned to the Tribe will provide Base Level police services during their scheduled work shifts. The County provided patrol services shall be in cooperation with other law enforcement agencies when required. The Tribe service area is defined as within the exterior boundaries of the Hoh Indian Reservation.
4. If one of the Sheriff deputies assigned to the Tribe is absent from duty for any reason for longer than 30 days, the County will provide a replacement deputy or appropriate law enforcement officer on the first working day after the 30 days have expired. The County and the Tribe will review this issue on an annual basis.
5. During elevated national threat levels that are specific to threats against Jefferson County, the County will ensure minimum staffing for the Tribe until such time the threat level is lowered. This many require adjustments to assigned schedules and days off.
6. Deputies, under the guidance of the Sheriff's Supervisors will patrol the Tribe's jurisdiction in either vehicles provided by the Sheriff or the Tribe.
7. The Tribe will provide an orientation and training program for all Sheriff personnel assigned to familiarize these personnel with the service area, operating procedures, two way radio protocols, facilities and vehicles.
8. County shall provide the Tribe on a monthly basis and within ten (10) days of the last day of the month, a report of all services provided.
9. To the extent permitted by law, information concerning documents or performance under this Agreement shall not be released in response to any public records, disclosure requests until the Party receiving the request has given written and oral notice to the other Party.
10. The Sheriff or Sheriff's designee shall meet with the Tribe designee as needed and at least annually to discuss performance under this Agreement. The Tribe shall have an opportunity to comment on the satisfaction of the provision of the service by the County and request modifications and adjustments.
11. Radio system and appropriate protocols shall be established by the designated liaisons. County staff shall accomplish installation of the Tribe radios into Sheriff patrol cars if

issued handheld radios are shown to be inadequate. Maintenance, replacement, and upgrades of the Tribe radios shall be the Tribe's responsibility.

1 copy: Sheriff }
cc: Aud
PA

10/29/09

Hoh

SERVICE AGREEMENT
BETWEEN
JEFFERSON COUNTY AND
THE HOH TRIBE
FOR

LAW ENFORCEMENT ON THE HOH RESERVATION

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WHEREAS, the County, through the Jefferson County Sheriff's Department, hereinafter referred to as Sheriff; and is a General Authority Law Enforcement Agency as defined in R.C.W. 10.93.020 (1) and is an established law enforcement agency and possesses the power and legal authority, pursuant to chapter 10.93 R.C.W. to provide emergency and law enforcement services within Jefferson County and other jurisdictions where authorized by agreement with those jurisdictions;

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2.2 The County shall hire, assign, supervise, retain, and discipline all employees according to its collective bargaining agreement, civil service rules, and state and federal law. The County is acting hereunder as an independent contractor so that:

- a. Control of personnel, standards of performance, discipline and any other aspects of performance shall be governed by the County. Provided however that only

Service Agreement Between Jefferson County and the Hoh Tribe

qualified, trained personnel meeting all of the requirements of applicable State laws or regulations shall be utilized in the performance of services under this Agreement. In the assignment of deputies, the County shall use, whenever possible, deputies who volunteer for duty under this Agreement and/or request this duty. The County and the Tribe will work together to encourage officer retention to provide continuity of service.

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d. The County shall provide investigative services to The Tribe following the same protocols utilized for the provision of these services to citizens of unincorporated Jefferson County with the exception of major crimes, as defined by the Major Crimes Act, 18 U.S.C. 1153 et seq., which remain within the exclusive jurisdiction of the Federal Government.

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2.5 County will coordinate transfers to minimize the time positions are vacant, as well as the impact of vacancies on the Tribe.

a. Timing and replacement of the Tribally-assigned staff who vacate the assignment will be scheduled after consultation with the Director of Emergency Services and Community Safety.

2.6 Upon execution of this Agreement the County shall immediately provide one (1) Deputy in charge utilizing the title of "Deputy in charge." The Deputy in charge shall be

Service Agreement Between Jefferson County and the Hoh Tribe

selected and assigned by the Sheriff of Jefferson County with the advice of Director of Emergency Services and Community Safety.

2.7 The County and the Tribe shall retain their respective authority to make operational decisions and develop and implement policies for their agencies.

2.8 Upon execution of this Agreement the County shall also, as soon as practicable, provide one (1) Deputy utilizing the title of "Deputy to the Tribe." The Deputy to the Tribe shall be selected and assigned by the Sheriff of Jefferson County with the advice of Director of Emergency Services and Community Safety. Final say on who shall serve as the Deputy to the Tribe shall remain with the Sheriff.

3.0 Scope of Services to be performed by the Tribe:

3.1 The Director of Emergency Services and Community Safety shall serve as the liaison to coordinate with the Sheriff for this Agreement. The liaison shall communicate with the Sheriff regarding operational assignments relating to this Agreement and issues of concern to the Tribe, its employees and passengers.

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3.3 The County and the Tribe will jointly prepare a physical security plan, acceptable to each for the designated law enforcement work areas.

3.4 The Tribe will provide an office for the Deputy in charge that allows for private conversation and contains adequate space for filing and storage of intellectual assets consistent with the supervision and managing of law enforcement personnel.

4.0 Term of Agreement

This Agreement shall have a term commencing on the date of execution of this Agreement and terminating June 31, 2012, unless either Party initiates termination as provided in Section 6.

5.0 Compensation

5.1 The Tribe will pay an amount, not to exceed two hundred thousand dollars (\$200,000.00) to be negotiated between the Parties, in one lump sum annually on October 1st following execution of this Agreement.

5.2 The Tribe agrees it will pay an amount not to exceed \$50,000.00 in one lump sum upon commencement of this Agreement to compensate the County for the costs it incurs prior to the payment of the first lump sum on October 1, 2009.

Service Agreement Between Jefferson County and the Hoh Tribe

Payment shall be mailed to:

Jefferson County Sheriff's Department
79 Elkins Road
Port Hadlock WA 98339

Invoice shall be mailed to:

Hoh Tribe
PO Box 2167
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5.3 The staff contract costs for 2009 and thereafter shall be increased annually as determined in the bargaining agreement negotiated by JCSO.

5.4 Compensation for employment of additional Sheriff's deputies requested by the Tribe shall be the applicable hourly rate calculated on an annual basis. The initial 2009 rate for additional Sheriff's deputies shall be negotiated between the Parties, based on prevailing wages and cost recovery for equipment, and shall be subject to change annually beginning January 1, 2010. The County shall give a minimum of thirty (30) days notice to the Tribe prior to instituting a change in the above hourly rate of compensation. Invoicing for additional Sheriff's deputies shall be monthly.

6.0 Legal Requirements

The Parties shall comply with all applicable federal, state and local laws in performing this Agreement.

7.0 Termination

Either Party may terminate this Agreement for any reason upon providing written notice to the other Party six (6) months prior to the effective termination date, in which case The Tribe shall compensate the County only for the costs of these services provided through the period of time this Agreement remains in effect, provided this Agreement shall not be terminated before one year from the commencement of this Agreement for any reason other than lack of federal government (Bureau of Indian Affairs) funding. This Agreement is contingent upon governmental funding. In the event that funding reductions result in a decrease in appropriations for law enforcement, the County or the Tribe may terminate this agreement by providing six (6) months notice to the other. Termination shall not affect the accrued rights and obligations of either party under other sections of this Agreement.

8.0 Notice

8.1 A transition plan shall identify and address any personnel conveyance of capital equipment to the Tribe and if applicable, workload, assignment and any other issues related to the transition. Each Party shall bear its own cost in developing a transition plan.

Service Agreement Between Jefferson County and the Hoh Tribe

- 8.2 The County and the Tribe agree to use all best efforts to affect a mutual implementation of the transition plan to provide an order and effective transition of services.
- 8.3 Any notice to be given under this Agreement shall be sent either by registered mail, return receipt requested, or by personal delivery.
- 8.4 Any notice from the Tribe to be sent to the County shall be sent or delivered to:
Jefferson County Sheriff
79 Elkins Road
Port Hadlock, WA 98339
- 8.5 Any notice from the County to be sent to the Tribe shall be sent or delivered to:
Hoh Tribe
PO Box 2196
Forks, WA 98331
- 8.6 Notices shall become effective upon delivery or three days after being sent by registered mail, whichever occurs first.

9.0 Records

The County shall maintain adequate records to support billings for those services set forth in this Agreement. Said records shall be maintained for a period of six years after completion of this Agreement. The Tribe or any of its duly authorized representatives shall have access at any time during regular business hours, to any books, documents, papers, or records of the County that are directly related to this Agreement for the purposes of audit examinations, excerpts, or transcripts. The County is subject to the Public Records Act, codified at Ch. 42.56 RCW and records generated pursuant to this Agreement are subject to that state law.

10.0 Amendment

Provisions within this Agreement may be amended with the mutual consent of the Parties hereto. No additions to, or alteration of the terms of this Agreement shall be valid unless made in writing, formally approved, and executed by duly authorized agents of both Parties.

11.0 Additional Services

The Parties agree that during the term of this Agreement, additional similar services maybe added in accordance with section 10.0, Amendments. The Parties further agree that such additional services shall be compensated at the rates negotiated by the parties for the appropriate year in which those services are added.

Service Agreement Between Jefferson County and the Hoh Tribe

12.0 Waiver

No waiver by either Party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Agreement unless stated to be such through written approval by the County, which shall be attached to this Agreement.

13.0 Severability

If any of the provisions contained in this Agreement are held illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect.

14.0 Non-Discrimination

The County and The Tribe certify that they are Equal Opportunity Employers.

15.0 No Third- Party Beneficiary/Non Exclusivity

The County does not intend by this Agreement to assume any contractual obligations to anyone other than the Tribe and the Tribe does not intend by this Agreement to assume any contractual obligations to anyone other than the County. The County and the Tribe do not intend that there be any third-party beneficiary to this Agreement. The County and the Tribe agree that this is a non-exclusive Agreement and that the Tribe may employ or contract for additional police and safety services, including services provided by off-duty law enforcement officers.

16.0 Indemnification

16.1 In executing this Agreement, the County does not assume liability or responsibility for or in any way release the Tribe from any liability or responsibility which arises in whole or in part from the existence or effect of the Tribe's ordinances, rules, regulations, resolutions, customs, policies or practices. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such tribal ordinance, rule, regulation, resolution, custom, policy or practice is at issue, then the Tribe shall defend the same at its sole expense, and if judgment specifically attributable to such tribal provisions is entered and damages are awarded against the Tribe, the County, or both, then the Tribe shall entirely satisfy the same, including all chargeable costs and reasonable attorney's fees and costs. To the extent permitted by law, the Tribe shall defend, indemnify and hold harmless the County, its officers, employees and agents from any and all costs, including reasonable attorney fees, claims, judgments, or awards of damages, resulting from the breach of this Agreement, acts or omission of the Tribe, its officers, employees or agents arising out of or in connection with the performance of this Agreement except for injuries, damages, judgments caused by the sole negligence of the County.

16.2 In executing this Agreement, The Tribe does not assume liability or responsibility for or in any way release the County from any liability or responsibility which arises in whole or in part from the existence or effect of County ordinance, rules, regulations, resolutions, customs, policies, or practices. If any cause, claim, suit, action, or administrative proceeding is commenced in which the enforceability and/or validity of any such County ordinance, rule, regulation, resolution, custom, policy, or practice is at issue, the County shall defend the same at its sole expense, and if judgment

Service Agreement Between Jefferson County and the Hoh Tribe

is entered and damages are awarded against the County, the Tribe, or both, the County shall entirely satisfy the same, including all chargeable costs and reasonable attorney's fees and costs. To the extent permitted by law, the County shall defend, indemnify, and hold harmless the Tribe, its officers, employees, and agents from any and all costs, including reasonable attorney fees, claims, judgments, or awards or damages, resulting from the breach of this Agreement, acts or omissions of the County, its officers, employees, or agents arising out of or in connection with the performance of this Agreement except for injuries, damages and judgments caused by the sole negligence of the Tribe.

17.0 Immunity

17.1 The County and the Tribe with respect to each other only waive and will not assert against each other, any immunity under Title 51 of the Industrial Insurance laws of the State of Washington. This waiver does not extend to the employees of either Party. The County and the Tribe expressly do not waive their immunity against claims brought by their own employees. This waiver has been expressly and mutually negotiated. It is further provided that no liability shall attach to either Party by reason of entering into this Agreement, except as expressly provided herein. If the claim, suit or action for injuries, death or damages as provided for in the preceding paragraphs of this Agreement is caused by or results from the concurrent negligence of (a) the indemnitee or the indemnitee's agents or employees, and (b) the indemnitor or the indemnitor's agents or employees, the indemnity provisions provided for in these paragraphs shall be valid and enforceable only to the extent of the indemnitor's negligence.

17.2 The parties enter into a limited mutual waiver of their respective sovereign immunities for the sole and limited purpose of enforcing the mutual indemnities in Section 17 of this Agreement, and for no other purpose. Neither party hereto waives its sovereign immunity for any other purpose or with respect to or for the benefit of any other entity, person or government. Provided, that the Tribe's limited waiver of sovereign immunity set out in this paragraph is further limited to injunctive and declaratory relief related to the mutual indemnifications set out in this Section and to the recovery of damages to the extent covered by insurance.

17.3 Except for the limited waiver of sovereign immunity provided in this section, nothing in this agreement shall be construed as a general or specific waiver of the Tribe's sovereign immunity, which immunities are expressly asserted. Furthermore, 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 the Tribe. This limited waiver of sovereign immunity is not, and shall not be deemed to be, a consent by the Tribe to the levy of any judgment, lien or attachment on any appropriations received from any government by agreement or by grant or upon any property or revenues of the Tribe.

Service Agreement Between Jefferson County and the Hoh Tribe

18.0 Insurance

The County represents and warrants that it is a self-insured entity maintaining sufficient coverage for all purposes of this Agreement. The Tribe has general liability insurance in an amount of not less than five million dollars (\$5,000,000.00) aggregate. The Tribe shall provide proof of this insurance via a "Certificate of Insurance" or other documentation within 30 days of the date when the last party to this Agreement executes this Agreement. The Tribe shall keep this insurance policy (or a policy with equal aggregate liability coverage amounts) in effect for the entire term of the Agreement.

19.0 County as Independent Contractor

The County is, and shall at all times be deemed to be, an independent contractor. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the Tribe and County or any of the County's agents or employees. The County shall retain all authority for rendition of services, standards of performance, control of personnel, and other matters incident to the performance of services by County pursuant to this Agreement.

20.0 Prosecutions

20.1 Prosecution of Criminal Cases: All criminal cases involving Indian persons as a suspect or person of interest will be referred to Hoh Tribal Prosecutor's office for prosecution, unless they fall within the definitions of the Major Crimes Act, in which case they will be referred to the United States Attorney's Office. As used herein, "Indian person" means any person enrolled in a federally recognized Indian tribe. All declinations of prosecutions of Indian persons for offenses allegedly occurring on the Reservation shall be communicated to the officer, along with an explanation for the declination, within ninety (90) days of the decision to decline and within two hundred seventy (270) days of the incident. In all cases cited into the Hoh Tribal Court, the necessary County officer(s) shall be available to testify in Tribal Court.

20.2 Referrals where the suspect or person of interest is a non-Indian shall be referred to the Jefferson County Prosecuting Attorney's Office.

20.3 Civil Infractions: All civil infractions involving both Indian and non-Indian persons will be referred to the Hoh Tribal Prosecutor's office for prosecution. All declinations of prosecutions of Indian persons for offenses allegedly occurring on the Reservation shall be communicated to the officer, along with an explanation for the declination, within ninety (90) days of the decision to decline and within two hundred seventy (270) days of the incident. In all cases cited into the Hoh Tribal Court wherein a Respondent in a civil matter contests the allegation, the necessary officer(s) shall be available to testify in Tribal Court.

20.4 In accordance with RCW 37.12.010, any alleged violations of the state statutes and regulations relating to compulsory school attendance and the acceptance or utilization of state-funded public assistance ("welfare") shall be referred to the Jefferson County Prosecutor.

Service Agreement Between Jefferson County and the Hoh Tribe
21.0 Dispute Resolution.

Any dispute concerning the implementation of this Agreement shall be first directed to the Tribe's Executive Director and the Deputy in charge. If the dispute is not resolved between those persons, then it shall then be referred to the Tribal Council and Sheriff, who shall meet to resolve such dispute. Disputes relating to the implementation of this Agreement may not be resolved in any Court or by Administrative procedure. Termination shall be the sole remedy. Provided, that disputes involved the failure of the Tribe to provide compensation for services rendered or disputes involving the failure of the County to provide services for which payment has been made may be resolved in a court of competent jurisdiction. In such action the remedy shall be limited to the recovery of money owed.

22.0 Entire Agreement

This document constitutes the entire Agreement between the Parties.

23.0 Reporting.

23.1 Reporting Districts. Reporting districts coterminous with the Reservation boundaries will be maintained to enable accurate data collection on law enforcement services provided and criminal activity.

23.2 Notification of Criminal Activity. The Deputy in charge or Deputy to the Tribe on duty will notify the Director of Emergency Services and Public Safety and/or the Executive Director of the Tribe by telephone in the event of a significant criminal occurrence within the unincorporated area of Jefferson County within the Reservation.

23.3 Criminal Reports: Criminal reports generated by Jefferson County as a result of activities on lands within unincorporated Jefferson County within the Reservation are subject to state public disclosure and Privacy Act laws.

24.0 Law Enforcement Services:

24.1 Base Level Services. Jefferson County Sheriff's Office ("JCSO") provides basic law enforcement services to the unincorporated areas of the County, including the Reservation. Base Level Services provided to the Tribe are described in Section 3 of Attachment A.

24.2 JCSO will provide one Deputy and one Deputy in charge, who will be assigned to provide the Base Level of Services to the Tribe's Reservation. The Deputy to the Tribe and the Deputy in charge will not have an assigned post.

24.3 During the time the new officer is undertaking mandatory training, the Hoh Tribe agrees and understands that it shall be responsible for overtime pay, housing and other living expenses for another temporary officer.

24.4 Any equipment JCSO determines is necessary for performance under this Agreement shall be purchased by JCSO and an invoice shall be submitted to the Tribe within 30 days of purchase. The Tribe shall then reimburse JCSO for said purchases within 30 days of

Service Agreement Between Jefferson County and the Hoh Tribe

receiving the invoice and receipt. Any equipment purchased using Tribal or restricted Federal funds shall be the property of the Tribe and/or federal government upon the termination of this Agreement.

25.0 Billing.

The estimated contract amount shall be paid in lump sums based on the Tribe's receipt of payments from the BIA. Additional payments shall be due within (30) days after receipt of invoices from the County.

26.0 Decisions and Policy-Making Authorities.

The County will provide the Tribal Council an opportunity to interview candidates for the position of Deputy, provided for in this Agreement, and make hiring recommendations to the County. Prior to assigning such Deputy to the Tribe, the Tribal Council and the Sheriff or his/her designee will confer bi-annually with the Tribal Council to evaluate the Base Level Services provided under this Agreement and discuss potential changes in assignments and duties. Nothing in this Agreement shall prevent individuals from seeking promotional opportunities or receiving a promotion. Sole authority to appoint the Deputy to the Tribe and the Deputy in Charge shall rest with the Jefferson County Sheriff.

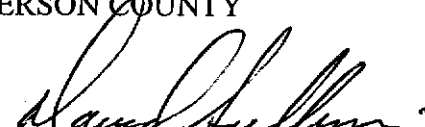
27.0 Special Provisions.


During the term of this Agreement, the County will encourage the stabilization of County law enforcement personnel assigned to patrol the Reservation.

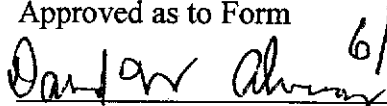
IN WITNESS WHEREOF, the parties execute this Agreement. Dated this 22nd day of June, 2009.

JEFFERSON COUNTY

HOH INDIAN TRIBE


Chair, Jefferson County Commission,
David Sullivan


Tribal Council Chairman,
Walter Ward, Sr.

Approved as to Form
 6/22/09
Deputy Prosecuting Attorney
For Jefferson County


Approved as to Form

Attorney for the Hoh Tribe

EXHIBIT "A"

Scope of Services

1. The County (Sheriff), shall provide one (1) full time Deputy in charge and as staffing becomes available one (1) full time commissioned deputy sheriffs (Deputy to the Tribe) to provide services to the Tribe under this Agreement by following the hiring schedule defined in this Agreement.
2. The Tribe will employ a Director of Emergency Services and Public Safety. The Deputy in charge will report to the Director of Emergency Services and Public Safety, however in the absence of the Director of Emergency Services and Public Safety, will report to the Executive Director of the Tribe. The Deputy in charge will command all assigned personnel within the Sheriff's Department on all matters relating to this agreement.
3. The County will provide police patrol and investigative services in accordance with operational plans established by the Tribe and the Sheriff. Police services shall include response to calls for service, conducting investigations, and proactive patrol of various forms to detect, prevent, and deter criminal activity and may be conducted in uniformed and non-uniformed capacity depending on the specific assignment. The deputies assigned to the Tribe will provide Base Level police services during their scheduled work shifts. The County provided patrol services shall be in cooperation with other law enforcement agencies when required. The Tribe service area is defined as within the exterior boundaries of the Hoh Indian Reservation.
4. If one of the Sheriff deputies assigned to the Tribe is absent from duty for any reason for longer than 30 days, the County will provide a replacement deputy or appropriate law enforcement officer on the first working day after the 30 days have expired. The County and the Tribe will review this issue on an annual basis.
5. During elevated national threat levels that are specific to threats against Jefferson County, the County will ensure minimum staffing for the Tribe until such time the threat level is lowered. This may require adjustments to assigned schedules and days off.
6. Deputies, under the guidance of the Deputy in charge will patrol the Tribe's jurisdiction in either vehicles provided by the Sheriff or the Tribe.
7. The Tribe will provide an orientation and training program for all Sheriff personnel assigned to familiarize these personnel with the service area, operating procedures, two way radio protocols, facilities and vehicles.
8. County shall provide the Tribe on a monthly basis and within ten (10) days of the last day of the month, a report of all services provided.
9. To the extent permitted by law, information concerning documents or performance under this Agreement shall not be released in response to any public records, disclosure requests until the Party receiving the request has given written and oral notice to the other Party.
10. The Sheriff or Sheriff's designee shall meet with the Tribe designee as needed and at least annually to discuss performance under this Agreement. The Tribe shall have an opportunity to comment on the satisfaction of the provision of the service by the County and request modifications and adjustments.
11. Radio system and appropriate protocols shall be established by the designated liaisons. County staff shall accomplish installation of the Tribe radios into Sheriff patrol cars if issued handheld radios are shown to be inadequate. Maintenance, replacement, and upgrades of the Tribe radios shall be the Tribe's responsibility.

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA REQUEST

TO: Board of Commissioners

FROM: Sheriff Hernandez Jefferson County Sheriff's Office

DATE: 6.16.09

RE: Service agreement between Jefferson County and
The Hoh Tribe for law enforcement on the Hoh reservation

STATEMENT OF ISSUE:

The Tribe desires to contract with Jefferson County for enhanced law enforcement services on all lands in unincorporated Jefferson County within the Reservation and has authority pursuant to its Constitution to contract with Jefferson County for such services.

ANALYSIS:

The County, through the Jefferson County Sheriff's Department is a General Authority Law Enforcement Agency as defined in R.C.W. 10.93.020 (1) and is an established law enforcement agency and possesses the power and legal authority, pursuant to chapter 10.93 R.C.W. to provide emergency and law enforcement services within Jefferson County and other jurisdictions where authorized by agreement with those jurisdictions.

FISCAL IMPACT:

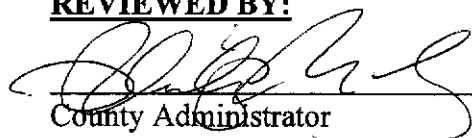
The estimated contract amount for 2009 is two hundred thousand dollars (\$200,000.00).

RECOMMENDATION:

Approve and sign the agreement, if appropriate, after final review.



REVIEWED BY:


County Administrator

6/18/09
Date