CITY OF SEQUIM - JAMESTOWN S'KLALLAM TRIBE
SANITARY SEWER COLLECTION SYSTEM OPERATIONS AND MAINTENANCE AGREEMENT
2021

WHEREAS, the Jamestown S'Klallam Tribe ("Tribe") is the owner of a sanitary sewer collection system within the Blyn Area of Clallam County; and

WHEREAS, the City of Sequim, a Washington municipal corporation ("City") owns and operates a sanitary sewer collection system including a Water Reclamation Facility within the City of Sequim; and

WHEREAS, the City and Tribe (the "Parties") entered into an interlocal Agreement ("ILA") for Wastewater Disposal on December 10, 2018 wherein the City would accept sanitary sewage from the Tribe's sanitary sewer collection system; and

WHEREAS, on June 11, 2020, the Parties entered into an Operations and Maintenance Agreement ("O&M Agreement") for certain specified maintenance of the Tribe's sanitary sewer collection system; and

WHEREAS, in the summer of 2021 the Parties agreed to terminate the 2020 O&M Agreement and replace it with this renegotiated O&M Agreement for maintenance that is beyond usual maintenance only (hereafter referred to "extraordinary maintenance"); and

WHEREAS, the Parties agree that the Tribe is not required to pay State or local taxes or fees; however, as additional inducement for the City to enter into this O&M Agreement, the Tribe will pay consideration equal to the amount of any fees or taxes levied by or against the City relating to the City's costs associated with extraordinary maintenance of the Tribe's sanitary sewer collection system. The Tribe also consents and agrees that because of the limitations described below, it will pay local taxes and fees associated with the City performing its extraordinary maintenance responsibilities under this O&M Agreement, even though it is not required to under law; and

WHEREAS, the Tribe is a sovereign entity that is not subject to the personal or subject matter jurisdiction in Washington State courts. Federal court jurisdiction is limited to matters involving a federal question or diversity of citizenship, and federal court jurisdiction cannot be conferred by agreement. Without a limited waiver of tribal immunity, the City has no remedy if the Tribe violates the terms of this O&M Agreement. In order to induce the City to enter in this renegotiated 2021 O&M Agreement the Tribe is willing to agree to a limited waiver of sovereign immunity as to subject matter and personal jurisdiction over the Tribe, strictly limited to those actions arising from or relating to this O&M Agreement and includes any judgment rendered by Washington State courts. The Tribe must pass a resolution in accordance with Tribal Code Section 22.O1.O2- Waiver of Sovereign immunity that reflects the spirit and intent of this O&M Agreement and specifically includes allowing monetary relief. Such resolution will be attached to this O&M Agreement and incorporated as "Exhibit B. Limited Waiver of Sovereign immunity". Further, since this O&M Agreement is for one-year term(s) only, and is automatically renewed for subsequent terms unless terminated, the Waiver of Sovereign immunity must account for and be applicable to all such renewals; and

WHEREAS, the recitals made above are material representations to this O&M Agreement. Based

upon that understanding, the Parties now desire to enter into this O&M Agreement for the extraordinary maintenance of wastewater collection and conveyance from the Jamestown System to the City System;

NOW, THEREFORE, in consideration of the mutual covenants and agreements between them, the parties agree as follows:

1. Definitions.

"Jamestown Sanitary Sewer Collection System" ("JSSCS") means the Tribally owned system of pipes, 4 pump stations (named Government, Long House, Blyn, and Sequim Bay Park), fittings, valves, lines, and all accessory equipment for the collection of sanitary sewage within the trust and reservation lands of the Tribe and between the JSSCS and the point of connection to the City of Sequim sewer collection system at Whitefather Way and Highway 101 within the City limits except for any service lateral or side sewer and its associated pump station associated with the Sequim Bay State Park and Sequim Bay Lodge connections.

2. The Tribe will assume all routine maintenance responsibilities including but not limited to the following services:

a. Maintenance of the Tribal JSSCS, including the following:

1) Routine operational checks of any lift stations;

2) Maintenance and repair, including emergency call-out, on the JSSCS;

3) Manpower, equipment, and materials necessary for the maintenance and repair work;

4) Sufficient reserve funds necessary to repair or replace facilities that reach the end of their service life.

3. The City will provide cleaning of the pumpstations with a vacuum truck with 10 business days' advance from Tribal staff.

4. The City will continue to provide emergency manpower and equipment by request from Tribal Staff in event of an extreme emergency that is deemed unmanageable by Tribal Staff due to the size and scope of said event, such as catastrophic failure of a pumpstation where the City's vacuum truck may become necessary to perform the needed repairs. The Tribe will make every effort to avoid any such conditions. Under no circumstances will City personnel be programmed into auto-dialers associated with facility alarms or listed on call sheets associated with for hire after-hour call-out services.

5. The Tribe is responsible for the following:

a. The Tribe agrees to administer the City's current Wastewater Source Control Program ("WSCP"), on its trust and reservation lands served by the JSSCS, as now enacted or as amended. The City will notify the Tribe whenever the WSCP has been amended and the Tribe will be given a reasonable amount of time to implement any needed changes to its system to comply with the amended WSCP;

b. The Tribe will maintain all Grease Traps and interceptors located on the Tribally Maintained Side of the Sewer Line in accordance with the City's WSCP;

c. The Tribe must provide locate services, such as "Call Before You Dig" requirements and obtain all necessary permits required for maintenance and repair of the JSSCS;

d. The Tribe must perform an inspection of taps made to the JSSCS and all new construction and taps must meet City standards;

e. The Tribe is responsible for any sewage backups or backflow within the JSSCS during jetting/cleaning operations where a backflow valve is not installed, is installed incorrectly, is defective, or otherwise operating improperly;

f. The Tribe will reimburse the City for all costs incurred in the extraordinary maintenance of the JSSCS. These costs include all City staff, administration, equipment rental using the most current FEMA equipment schedule, supplies, insurance premiums, and materials costs, plus a fringe benefit amount computed at 44% of staff costs, plus an overhead amount computed at 25% of the total monthly incurred expenses, plus a premium amount computed at 7% of the total monthly incurred expenses. The fringe benefit and overhead percentage amounts will change as the current City rate schedule changes;

g. The City will submit a bill to the Tribe for extraordinary maintenance services on a monthly basis when necessary no later than the 15th of the month following the services rendered. The Tribe will pay this bill within 30 calendar days of receipt by the Tribe. Bills are deemed received by the Tribe after 3 calendar days have elapsed since the City submitted such bill for payment. It is the Tribe's responsibility to ensure that the City has all appropriate and current billing information. Bills paid after 30 days will incur a 1% interest/penalty charge for each month or fraction thereof that payment is delayed. A payment is considered "delayed" on the 31st day after Tribe has received its billing;

h. The Tribe must notify the City of any concerns or problems regarding the billed amounts within 45 calendar days of receiving a bill for services. Thereafter the bill will stand as presented.

4. Waiver of Sovereign immunity. The Tribe is a Sovereign Nation with all of immunities attendant thereto with THE FOLLOWING EXCEPTION AS SPECIFICALLY NEGOTIATED BY THE PARTIES, and as described in Exhibit B, which is attached and incorporated into this Agreement:

> A. Tribe agrees to a limited waiver of sovereign immunity. Tribe expressly waives its right to sovereign immunity and its right to assert sovereign immunity defense in Washington State courts for the limited purpose of 1) any legal claim or complaint in the interpretation, validity, performance, and/or enforcement of this Agreement, 2) any complaints or counterclaims for monetary damages or equitable relief for any breach of this Agreement, and 3) for the enforcement of any final judgment by any Washington State court regarding such matters. This limited waiver of immunity is solely for the benefit of the City of Sequim for the purposes stated herein, and the Tribe does not waive its sovereign immunity as to any party other than the City. The Tribe agrees not to invoke sovereign immunity as a defense up to the limits of the insurance policy in connection with the enforcement of the City's rights. The Tribe further waives and agrees not to assert any doctrine requiring exhaustion of Tribal Court or administrative

proceedings before proceeding with any dispute resolution or legal remedies described in this Agreement.

B. Tribe expressly consents to the jurisdiction of the Washington State Superior Court if either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement. The Parties further agree that any such action or proceedings must be brought In Clallam County Superior Court situated in Clallam County, Washington. This waiver and consent is effective only during the term of this Agreement and all subsequent renewals, except it remains in force for such time after termination that is necessary to resolve the rights and obligations of either Party arising out of this Agreement.

5. The City will maintain liability insurance coverage on its employees and the City for all work performed on the JSSCS. The City is a member of a risk pool authorized under RCW 48.62. If requested by the Tribe, the City agrees to provide the Tribe with the City's risk pool's evidence of coverage. Upon request by the City, the Tribe will provide equivalent documentation to the City regarding its insurance coverage. Each Party agrees to notify the other within 30 calendar days of any material change in its insurance program.

6. Maintenance and Operations.

a. Regular and extraordinary maintenance performed under this O&M Agreement will be performed in accordance with the regulations of the agencies having jurisdiction. The City and Tribe must comply with the regulations of the Clallam County Road Department and the Washington State Department of Transportation for work performed within their respective rights-of-way.

b. The Tribe will be responsible for the specific daily, weekly, monthly, semi-annual, and periodic maintenance tasks.

c. The Tribe will provide the City with Monthly pumping totals in writing no later than the 5th day of the month.

7. The City will keep detailed records of staff time, equipment and materials used to maintain the JSSCS. These records will be included In the City's annual audit process. The Tribe, on request, will be given a reasonable opportunity to review the City's records concerning the maintenance of the JSSCS.

8. indemnification.

a. City. The City must indemnify, defend, and hold harmless the Tribe, its elected officials, officers, agents, and employees from all suits, claims, or liabilities of any nature, including attorney's fees, costs, and expenses, for or on account of injuries or damages sustained by any person or property, resulting from acts or omissions of and to the extent harm is caused by the City, its agents or employees in connection with extraordinary maintenance of the JSSCS or for breach of its duties under this O&M Agreement. If suit in respect to the above is filed, the City must defend the suit at the City's own cost and expense, and if judgment is rendered or settlement made requiring payment by the Tribe, its elected officials, officers, agents or employees, the City must pay the same. Should a court of competent jurisdiction determine that this indemnity agreement is subject to RCW 4.24.tL5, then in the event of liability for damages arising out of bodily injury to persons or damages to property caused or resulting

from the concurrent negligence of the City and the Tribe, its elected officials, officers, employees or agents, the City's liability hereunder must only be to the extent of the City's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the City's waiver of immunity under industrial insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties.

b. Tribe. The Tribe must indemnify, defend, and hold harmless the City, its officers, agents, and employees from all suits, claims, or liabilities of any nature, including attorney's fees, costs, and expenses, for or on account of injuries or damages sustained by any person or property, resulting from acts or omissions of and to the extent harm is caused by the Tribe, its elected officials, officers, agents or employees In connection with maintenance and operation of the JSSCS or for breach of its duties under this O&M Agreement. If suit in respect to the above is filed, the Tribe must defend the suit at the Tribe's own cost and expense, and if judgment is rendered or settlement made requiring payment by the City, its officers, agents or employees, the Tribe must pay the same. Should a court of competent jurisdiction determine that this indemnity agreement is subject to RCW 4.24.115, then in the event of liability for damages arising out of bodily injury to persons or damages to property caused or resulting from the concurrent negligence of the City and the Tribe, it elected officials, officers, employees or agents, the Tribe's liability hereunder must only be to the extent of the Tribe's negligence. The Tribe is not subject to the requirements or provisions of Title 51 RCW.

c. This section survives the termination of this O&M Agreement.

9. This O&M Agreement commences on the date it is executed by both Parties and runs for one year. Thereafter, it automatically renews year to year until such time as either Party provides 180 calendar days' advance written notice of its intention to terminate. Such termination may
be for any reason whatsoever and specifically includes nonpayment or habitual delayed payment of any undisputed funds owed to the City. This O&M Agreement provides for the City to proceed with extra-ordinary maintenance upon notice of requested services from the Tribe in accordance with notification requirements provided herein.

Authorizations and notifications for services made pursuant to this O&M Agreement are between the City Manager and the Tribal Chairman/CEO or their designees.

10. Severability. It is the interest of the Parties that if any provision of this O&M Agreement or its application is held by a court of competent jurisdiction to be illegal, invalid, or void, the validity of its remaining provisions or their application will not be affected. The remaining provisions will continue in full force and effect, and the rights and obligations of the Parties will be construed and enforced as if the O&M Agreement did not contain the particular invalid provision; however, if the invalid provision or its application is found by a court of competent jurisdiction to be substantive and to render the performance of the remaining provisions unworkable and non-feasible, or is found to seriously affect the consideration and is inseparably connected to the remainder of the O&M Agreement, then the entire O&M Agreement will be deemed null and void.

11. Complete Agreement. This O&M Agreement represents the entire agreement between the Parties concerning this subject matter. It may be amended as provided herein, or as otherwise agreed to by the legislative bodies of both Parties.

12. Successors and Assigns. This O&M Agreement inures to the benefit of and is binding upon the Parties and their respective successors and assigns, provided that neither party to it has the right to assign its rights and obligations in it without the prior written approval by the other Party of any such proposed assignment and such approval will not to be unreasonably withheld.

13. No Third-Party Beneficiaries. Except as expressly set forth in this O&M Agreement, nothing herein is intended to confer upon any person or entity, other than the Parties hereto, any rights, benefits, privileges, or obligations. No such third-party will have any right to enforce any of the terms of this O&M Agreement unless expressly stated otherwise.

14. Waiver. A waiver by either Party of any terms or conditions of this O&M Agreement will not be deemed or construed to be a waiver of any other term or condition, nor will the waiver of any breach or default by either Party under it be deemed or construed to constitute a waiver of any subsequent breach or default, whether of the same or any other term or condition of this O&M Agreement.

15. Notices. Any formal notice or communication that either party desires or is required to give to the other party must be in writing and served personally or by first class certified mail to the other Party at the addresses set forth below, or such future addresses as may be provided in writing:

City:

Clerk's Office
City of Sequim
152 West Cedar Street
Sequim WA 98382
(360) 683-4139

With a second copy directed to the City Attorney.

Tribe:

Tribal Chairman/CEO
Jamestown S'Klallam Tribe
1033 Old Blyn Hwy.
Sequim WA 98382
(360) 683-1109

This provision does not apply to informal communications between the Parties, which may be conducted by other means including email. Notifications regarding the need for, or for scheduling, any maintenance activity covered in this O&M Agreement can be conducted by informal means between Staff who have been designated by the respective Parties as the contacts for such purposes. Such communications should be in writing, or, in case of emergencies, memorialized in writing as soon after the communication as practicable.

16. Recitals Incorporated by Reference. The Recitals set forth above are hereby incorporated in this

O&M Agreement in full by this reference.

IN WITNESS WHEREOF, the City and Tribe have executed this O&M Agreement as of the date and year last written below:

CITY OF SEQUIM:

Mayor — Date: 11/29/2021

Approved as to form:

Kristina Nelson-Gross, City Attorney — Date: 11/23/2021

JAMESTOWN S'KLALLAM TRIBE:

W. Ron Allen, CEO/Tribal Chairman — Date: 11/18/2021

ATTACH EXHIBITS A (O&M Tasks, as revised) AND B (new tribal resolution – limited waiver of sovereign immunity)

EXHIBIT A

OPERATION AND MAINTENANCE TASKS

Operation and Maintenance Tasks Jamestown Sanitary Sewer Collection System (JSSCS)	
Daily	
Sequim Bay State Park Pump Station	
Verify Pumps are operational	Record on sheet
Record pump run times	Record on sheet
Check alarm status	Keep Record of alarms
Verify flow meter operation	Record on sheet
Record flow meter totalizer	Record on sheet
Sniff test to verify no odors	Record on sheet
Inspect wet well for grease build-up	If excessive grease build-up determine if vactoring is necessary
Set-up sampler or retrieve samples as needed	
Inspect wet well for sediment/debris/rock build-up	If excessive accumulation of sediment/debris/rock determine if cleaning with VAC truck is required
Weekly	
Verify operation of pump station floats (including back-up floats)	
Monthly	
Pump Stations	
Verify operation of pump stations on generator power	
Record differential pressure in biofilter	
Semi-Annual	
Pump Stations	
Exercise valves	
Vactor wet wells	
Periodic	
Pigging and other periodic work	As approved by the Jamestown S'Klallam Tribe
Jamestown S'Klallam Tribe Responsibility	
Generator fuel check	Weekly
Generator checks per manufactures recommendations and frequency	As required per manufacture

Maintenance Provided by Manufacturer Technician	
Pump inspection and maintenance	Annual
Generator inspection, load test and maintenance	Annual
MCC, Control Panel and electronic updates	As-needed
Nitrate supply	As-needed
General – Pump Station Maintenance	
Wastewater Source Control	Monthly or as-needed
Landscaping Maintenance	As-needed

EXHIBIT B
Limited Waiver of Sovereign Immunity

JAMESTOWN S'KLALLAM TRIBE

1033 Old Blyn Highway, Sequim, WA 98382 360/683-1109 FAX 360/681-4643

RESOLUTION #04-20

Operations and Maintenance Agreement with City of Sequim

WHEREAS, the Jamestown S'Klallam Indian Tribe (herein after referred to as "the Tribe") was Federally acknowledged by the Secretary of the Interior of the United States of America on February 10, 1981; and

WHEREAS, the Jamestown S'Klallam Tribal Council ("Council") is the governing body of the Tribe, in accordance with its Constitution adopted on November 19, 1983, pursuant to the provisions of Part 81 of Title 25 of the Code of Federal Regulations, as such Constitution is amended from time-to-time; and

WHEREAS, the Council and City of Sequim ("City") entered into a Joint Memorandum of Agreement, dated February 26, 2015, stating their mutual interest in having the City provide, at its regional wastewater treatment facility, wastewater treatment services, in whole or in part, to the Tribe; and

WHEREAS, the Council and City of Sequim ("City") entered into a Interlocal Agreement, dated December 10, 2018, whereby the City will provide, at its regional wastewater treatment facility, wastewater treatment services, in whole or in part, to the Tribe; and

WHEREAS, the Tribe and City staff have worked over the year to develop an Operations and Maintenance agreement (O&M agreement), where the City will provide maintenance services to the Tribe's system; and

WHEREAS, the City has requested, and the Tribe has agreed, as a condition for entering into the O&M agreement, to grant a limited waiver of sovereign immunity, pursuant to the provisions of Title 22 of the Tribal Code; now

THEREFORE BE IT RESOLVED, the Tribe expressly waives its right to sovereign immunity and its right to assert a sovereign immunity defense in Washington State courts for the limited purpose of: 1) any legal claim or complaint in the interpretation, validity, performance, and/or enforcement of the O&M agreement, 2) any complaints or counterclaims for monetary damages or equitable relief for any breach of the O&M agreement, and 3) for the enforcement of any final judgment by any Washington State court regarding such matters. This limited waiver of immunity is solely for the benefit of the City for the purposes stated herein, and the Tribe does not waive its sovereign immunity as to any party other than the City. The Tribe agrees not to invoke sovereign immunity as a defense up to the limits of its insurance policy in connection with the enforcement of the City's rights. The Tribe further waives and agrees not to assert any doctrine requiring exhaustion of Tribal Court or administrative proceedings before proceeding with any dispute resolution or legal remedies described in the O&M agreement; and

BE IT FURTHER RESOLVED, Tribe expressly consents to the jurisdiction of the Washington State Superior Court if either Party to the O&M deems it necessary to institute legal action or proceedings to enforce any right or obligation under the ILA. The Parties further agree that any such action or proceedings shall be brought in Clallam County Superior Court situated in Clallam County, Washington. This waiver and consent is effective only during the term of the O&M agreement, except it remains in force for such time after termination that is necessary to resolve the rights and obligations of either Party arising out of the O&M agreement; and

BE IT FINALLY RESOLVED, the Council approves the O&M agreement with the City for maintenance of the Jamestown wastewater system from all Tribal trust and reservation lands held now and in the future and directs the CEO of the Tribe, or his designee, to execute the O&M agreement, substantially as set forth in Exhibit A to this resolution, on behalf of the Tribe.

W. Ron Allen

W. Ron Allen, Chairman

Certification

I, Loni Greninger, Vice Chair of the Jamestown S'Klallam Tribal Council of the Jamestown S'Klallam Tribe, do hereby certify that the resolution was adopted at a regularly scheduled meeting of the Jamestown S'Klallam Tribal Council at the Tribal Office in Blyn, Washington on January 21, 2020, with a quorum approving the resolution by a vote of 3 FOR and 0 AGAINST with 0 ABSTAINING.

Loni Greninger, Tribal Council Vice Chair

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 6/29/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Maureen Shiri-Wasto
Brown & Brown of Washington, Inc. 800 5th Ave Suite 2400 Seattle WA 98104	PHONE (A/C, No, Ext): 206-676-8143 FAX (A/C, No): 206-956-9604 E-MAIL ADDRESS: mshiriwasto@bbseattle.com

INSURED	JAMES-1
Jamestown S' Klallam Tribe 1033 Old Blyn Highway Sequim WA 98382	

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : HUDSON INSURANCE COMPANY	25054
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** 838221810 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY	Y		NACL00196-14	7/1/2019	7/1/2022	EACH OCCURRENCE	$ 6,000,000
	CLAIMS-MADE [X] OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 250,000
							MED EXP (Any one person)	$ Excluded
							PERSONAL & ADV INJURY	$ 6,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 10,000,000
	POLICY [ ] PRO-JECT [ ] LOC						PRODUCTS - COMP/OP AGG	$ 6,000,000
	OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$
	DED RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N						PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) N/A						E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Interlocal Agreement for Sanitary Services and Sanitary Sewer Collection System Maintenance Agreement.
The City of Sequim is Additional Insured as required per the referenced written agreements/contracts between the City and Named Insured.

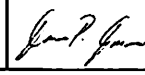
CERTIFICATE HOLDER

Clerk's Office
City of Sequim
152 W Cedar Street
P.O. Box 1087
Sequim WA 98382

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



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SOVEREIGN NATION COMMERCIAL INSURANCE COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine your rights, duties, and what is and is not covered. Subject to its terms, conditions and exclusions, this policy is a commercial insurance policy and provides coverage only with respect to the conduct of your business.

Throughout this policy, the word "Hudson" refers to Hudson Insurance Company. Words and phrases that appear within quotation marks have, wherever they appear, the special meanings set forth in the Definitions.

Coverage is only provided under the Insuring Agreements contained in this policy for which a limit of insurance is shown in the Declarations.

GENERAL PROVISIONS

The provisions listed in this section are applicable to your entire policy.

A. ASSURED

It is agreed that "Assured", wherever used in this policy, includes the entity listed in Item 1. of the Declarations (the "Named Assured") and:

1. Any official, trustee, "employee" or volunteer of the "Named Assured" while acting within the scope of his duties as such, and any person, organization, trustee or estate to whom the "Named Assured" is obligated by virtue of a legally binding contract or agreement to provide insurance such as is afforded by this policy, but only with respect to the business operations performed by or on behalf of the "Named Assured";

2. Any person while using an "automobile" owned or hired by the "Named Assured" and any person or organization legally responsible for the use thereof, provided the actual use of such owned or hired "automobile" is by the "Named Assured" or with his permission, any official, trustee or "employee" of the "Named Assured" provided the use of the owned or hired "automobile" is in connection with the business of the "Named Assured".

   However, with respect to any person or organization other than the "Named Assured", this policy does not apply:

   a. To any person or organization, or to any agent or employee thereof, operating an "automobile" sales agency, repair shop, service station, garage or public parking place, with respect to any accident arising out of the operation thereof; however, if Insuring Agreement G. of the policy Declarations indicates coverage is included for "garage keeper's and valet parking services", then this provision

does not apply to "employees" of the "Named Assured" while loading, unloading or parking an "automobile" for a guest of the "Named Assured";

b. To any employee with respect to injury to or sickness, disease or death of another employee of the same employer injured in the course of such employment in an accident arising out of the maintenance or use of any "automobile" while being maintained or used in the business of such employer;

c. With respect to any hired "automobile", to the owner or a lessee thereof, other than the "Named Assured", nor to any agent or employee of such owner or lessee; and/or

d. With respect to any non-owned "automobile", except as excess insurance over any other valid or collectible insurance, to any official or employee if such "automobile" is owned by him or a member of the same household.

B. TERRITORY

This policy applies worldwide.

C. SERVICE ORGANIZATION

Hudson" designates Alliant Specialty Insurance Services, Inc. as "Hudson's" "Service Organization". This policy is issued to the "Named Assured" on the express condition that the "Named Assured" undertakes to utilize, at all times, the services of the "Service Organization". The "Service Organization" shall perform the following duties:

1. Supervise "claims" in accordance with accepted industry standards once notice of a "loss", "claim" or "occurrence" has been made to the "Service Organization";

2. Comply with the notice and reporting requirements of "Hudson" under the terms of this policy;

3. Maintain accurate records of all reported "claims" and incidents with details of "loss" and "expense" payments;

4. Furnish loss prevention and consulting services;

5. Recommend and implement controls and monitor loss prevention programs; and

6. Furnish monthly "claims" records on an approved form.

The acceptance of these services shall be a condition precedent to any liability which may attach to "Hudson" in accordance with the terms and conditions of this policy.

"Hudson" shall have the right and opportunity, but neither the duty nor obligation, to: (i) associate with the "Named Assured" or the "Service Organization" in the defense of any "claim"; or (ii) at "Hudson's" option, assume the control of the defense of any "claim". In such event:

a. The "Named Assured" agrees to take the necessary legal measures to allow "Hudson's" counsel to associate with the "Named Assured" in, or assume the control of, the defense of any "claim" in which case the "Named Assured" and "Hudson" shall cooperate in all matters relating thereto;

during the "policy period" and up to the final resolution of all claims under this policy or three years after the end of the "policy period", whichever is later.

F. **CANCELLATION/NON-RENEWAL:** In the event of non-payment of premium by the "Assured," "Hudson" will give ten (10) days' notice of cancellation, in writing, sent certified mail to the "Assured" and all coverage afforded by this policy will terminate ten (10) days after the mailing of such notice.

Notwithstanding the aforementioned, "Hudson" may elect to cancel this policy at any time upon ninety (90) days' written notice to the "Named Assured", otherwise this policy automatically expires at the end of the "policy period".

G. If this policy is by canceled by "Hudson," for any reason other than non-payment of premium, Hudson will refund premium on a pro-rata basis. If the "Assured" cancels the policy, the refund will be on a short rate basis..**CURRENCY:** The premium, "losses" and/or "expenses" under this policy are payable in United States currency.

H. **BANKRUPTCY AND INSOLVENCY:** In the event of the bankruptcy or insolvency of the "Named Assured" or any entity comprising the "Named Assured", "Hudson" shall not be relieved of the payment of any claims hereunder because of such bankruptcy or insolvency. The Bankruptcy or insolvency of the "Assured", or any refusal or inability of the "Assured" to satisfy its obligation pursuant to this Policy will not reduce the "retained limit" as set forth on the Declarations nor will it require "Hudson" to pay any amounts within the "retained limit".

I. **OTHER INSURANCE:** If the "Assured" has other insurance, from an insurer other than "Hudson" or any other company within the Hudson Insurance Group, which provides coverage against "loss" and "expense" that is also covered by this policy, "Hudson" shall be liable, under the terms of this policy, only in excess of that coverage provided by such other insurance and no monies payable or collectible from such other insurance shall accrue to the "retained limit".

If the "Assured" has other insurance from "Hudson" or any other company within the Hudson Insurance Group which provides coverage against "loss" and "expense" that is also covered by this policy, "Hudson" shall be liable only under the terms of this policy. This provision does not apply to coverage which is specifically written as excess over coverage provided by this policy.

J. **ADDITIONAL ASSURED CLAUSE:** The interest of any additional "Assured" with respect to liability covered hereunder is included as if a separate Insuring Agreement were attached hereto to the extent of their interest as of the date of loss subject to the limits of insurance set forth in this policy.

K. **LOSS PAYMENTS:** When it has been determined by the "Service Organization" that "Hudson" is liable under this policy, "Hudson" shall thereafter promptly make payment(s) up to the applicable limit of insurance, as stated in Item 4. of the Declarations. The "Assured" will be responsible for reimbursement of the "retained limit" upon request from the "Service Organization". All adjusted claims shall be paid or made good to the "Assured" within thirty (30) days after the presentation to and acceptance by "Hudson" of satisfactory proof of interest and loss.

L. **APPEALS:** In the event the "Assured" and "Hudson" are unable to agree as to the advisability of appealing a judgment, they may, as an alternative to arbitration (Condition S. -- Arbitration), appoint a disinterested attorney, mutually agreeable to "Hudson" and the "Assured", who shall be retained and directed to render a written opinion as to his recommendation concerning such appeal. Such written recommendation shall be binding on both the "Assured" and "Hudson".

Fees of such retained attorney shall be borne equally by both parties for the services of rendering his recommendation only. The "Assured's" portion of such fee shall not apply towards the "retained limit".

M. **LITIGATION PROCEEDINGS:** No suit to recover under this policy shall be brought until ninety (90) days after the proof of loss shall have been furnished, nor at all unless commenced within twelve (12) months from the date upon which the "claim" is denied by "Hudson".

N. **SUBROGATION:** "Hudson" shall be subrogated to all rights which the "Assured" may have against any person or other entity in respect to any "claim" or payment made under this policy and the "Assured" shall do everything necessary to secure these rights and do nothing to impair them. The "Assured" shall execute any papers required by "Hudson" and shall cooperate with "Hudson" to secure "Hudson's" rights. In the event of any reimbursement obtained or recovery made by the "Assured" or "Hudson" on account of any liability, "loss" and/or "expense" covered by this policy, the net amount of such reimbursement or recovery, after deducting the actual cost of obtaining or making the same, shall be applied in the following order:

1. To the amount of "loss" and "expense" which exceeds the applicable limit of insurance of this policy;

2. To reduce "Hudson's" liability, "loss" and "expense" until "Hudson" is fully reimbursed; and

3. To reduce the "Assured's" liability, "loss" and "expense".

O. **WAIVER OF SUBROGATION:** This policy shall not be invalidated if the "Assured", by written agreement, has waived or shall waive its right of recovery from any party for "loss" and/or "expense" covered hereunder; provided that any such waiver is made prior to the happening of the "occurrence" giving rise to such "loss" and/or "expense".

P. **ASSIGNMENT:** Assignment of interest under this policy by the "Assured" shall not bind "Hudson" unless and until "Hudson's" consent is endorsed hereon.

Q. **CHANGES:** By acceptance of this policy, the "Assured" agrees that it embodies all agreements existing between the "Assured" and "Hudson" or any of their agents relating to this policy. None of the provisions, conditions or other terms of this policy shall be waived or altered except by endorsement; nor shall notice to any agent or knowledge possessed by any agent or by any other person be held to effect a waiver or change in any part of this policy.

R. **FRAUDULENT CLAIMS:** If the "Assured" shall make any "claim" knowing the same to be false or fraudulent, as regards amount or otherwise, this policy shall become void and all "claims" hereunder shall be forfeited.

S. **ARBITRATION:** All disputes which may arise between "Hudson" and the "Assured" out of or in relation to this policy (including disputes as to its validity, construction or enforceability), or for its breach, shall be finally settled by arbitration based, insofar as possible, upon the rules and procedures of the American Arbitration Association, by which "Hudson" and the "Assured" agree to be bound. In addition to the rules governing such arbitration, the parties shall have at their disposal the broadest pre-trial discovery rights as are then available under the laws and judicial rules of the jurisdiction in which the arbitration is to be held, provided that any dispute between the parties relating to discovery shall be submitted to the arbitration panel for resolution.

Unless the parties consent in writing to a lesser number, the arbitration panel shall consist of three (3) arbitrators, the first to be appointed by "Hudson", the second to be appointed by the "Assured" and the third by the two (2) arbitrators so appointed.

The arbitration proceedings shall take place in New York, NY, provided that the arbitration panel may, for the convenience of the parties and without changing the status of the arbitration proceeding, take evidence outside New York, NY.

The award of the arbitration panel may be, alternatively or cumulatively, for monetary damages, an order requiring the performance of the obligations under this policy, or any other appropriate order or remedy. The award shall assign

TRIBAL FIRST
ALLIANT UNDERWRITING SOLUTIONS

TRIBAL PROPERTY INSURANCE PROGRAM
2020-2021 NAMED INSURED
AS OF 06/09/2020

Jamestown S'Klallam Tribe
1033 Old Blyn Highway
Sequim, WA 98382

NAMED INSURED:

Jamestown S'Klallam Tribe

Northwest Native Expressions

Jamestown Point Whitney Ventures, LLC

Jamestown Excavating, Inc.

Jamestown S'Klallam Association

Jamestown Properties, Inc.

JKT Development, Inc. dba Jamestown Information Technologies

Jamestown SKlallam Tribe Economic Development Authority

JKT Development, Inc.

Carlsborg Self Storage

River Center Board

The Dungeness River Audubon Center

Jamestown S'Klallam Tribe Economic Development Authority DBA: Jamestown Networks (JNET)

Jamestown Development, Inc. dba: Jamestown Excavation

Erika Hamerquist

From: Erika Hamerquist
Sent: Thursday, July 2, 2020 11:09 AM
To: Maureen Shiri-Wasto
Subject: RE: Your Insured Jamestown S'Klallam Tribe - Contracts with City of Sequim, Washington

Thank you for the list of the Tribe's entities covered by the policy; that is very helpful.

From your responses below, it appears you are agreeing that the coverage includes coverage for any environmental damage caused by the Tribe related to the system, or transfer of toxic discharge into the City system, etc. If that is accurate, I think we are happy with the Certificate and other documentation and will add it to each agreement.

Thank you very much for your prompt response. Please let me know if our interpretation above is *not* correct.

Erika Hamerquist, Legal Secretary
Sequim City Attorney's Office
152 West Cedar Street Sequim WA 98382
(360) 681-6611 ehamerquist@sequimwa.gov

From: Maureen Shiri-Wasto <mshiriwasto@bbseattle.com>
Sent: Wednesday, July 1, 2020 10:04 AM
To: Erika Hamerquist <ehamerquist@sequimwa.gov>
Subject: RE: Your Insured Jamestown S'Klallam Tribe - Contracts with City of Sequim, Washington

Good morning Erika,

Please see below and let me know if would like to talk over the phone.

Maureen

From: Erika Hamerquist <ehamerquist@sequimwa.gov>
Sent: Tuesday, June 30, 2020 1:40 PM
To: Maureen Shiri-Wasto <mshiriwasto@bbseattle.com>
Cc: Kristina Nelson-Gross <knelson-gross@sequimwa.gov>
Subject: RE: Your Insured Jamestown S'Klallam Tribe - Contracts with City of Sequim, Washington

[External]

Hi Maureen:

Thank you for the updated certificate. It appears to be exactly the same as the one we received earlier, other than the new 2022 expiration. That is true also of the "blanket" document you sent.

The City still has all of the questions and concerns set out in our June 25th email, below. Are you able to respond to those or can we expect correspondence from someone else at your company?

Erika Hamerquist, Legal Secretary
Sequim City Attorney's Office
152 West Cedar Street Sequim WA 98382
(360) 681-6611 ehamerquist@sequimwa.gov

From: Erika Hamerquist <ehamerquist@sequimwa.gov>
Sent: Thursday, June 25, 2020 9:10 AM
To: Ethan Olesen <eolesen@bbseattle.com>; Aaron Amaral <aamaral@bbseattle.com>
Cc: Erika Hamerquist <ehamerquist@sequimwa.gov>
Subject: Your Insured Jamestown S'Klallam Tribe - Contracts with City of Sequim, Washington
Importance: High

[External]

Greetings:

The City of Sequim has two agreements with your insured, the Jamestown S'Klallam Tribe:

(1) an Interlocal Agreement for Wastewater Disposal executed in late 2018 ("ILA"), and
(2) a Sanitary Sewer Collection System [Operations and] Maintenance Agreement executed in June 2020 ("OMA"). [Note that the Tribe owns the pipes and pump stations.]

We have previously received proof of the Tribe's insurance coverage in the form of a Certificate of Liability Insurance and excerpts from Hudson's "Sovereign Nation Commercial Insurance Coverage Form" (attached). We believe you will be providing updated insurance information soon, since the current Certificate expires on July 1, 2020. We are writing to make sure the City receives evidence that the insurance coverage fully covers both agreements. Specifically, we need to confirm the following:

1) On the Coverage Form, does the reference to "Named Assured" in General Provision A.1. mean the Jamestown S'Klallam tribal government as well as the Tribe's business arm? Please provide us with the policy language that defines "business operations" as referenced in this subparagraph. In the alternative, please include language in the Certificate's Description of Operations that makes clear that the policy covers *all* of the Jamestown S'Klallam Tribe's operations. See attached named Assureds

2) Is the Tribe's coverage adequate for it to meet its obligations under paragraphs 10.2 and 10.4 of the ILA [see complete excerpts below], that is, "injuries or damages sustained by any person or property, resulting from acts or omissions of and to the extent harm is caused by the Tribe, its agents or employees in connection with maintenance and operation of the Jamestown System or for breach of its duties under this Agreement" *and* "the cost of remediation of environmental damage caused by any Tribe discharge, such as the discharge into or transfer of toxic wastes from the Jamestown System into the City System." Yes, see blanket endorsement attached

The City will accept a single Certificate and Endorsement/policy language if that is more convenient, so long as the Description of Operations describes both agreements and calls out the required coverages. For the Description box we would accept something similar to: "Re: (1) Interlocal Agreement for Sanitary Services and (2) Sanitary Sewer Collection System Maintenance Agreement. The City of Sequim is Additional Insured/Assured as required per the referenced written agreements/contracts between the City and Named Insured/Assured Jamestown S'Klallam Tribe." See attached Certificate

Pertinent excerpts from the ILA are below:

10.2 Tribe. The Tribe shall indemnify, defend, and hold harmless the City, its elected officials, officers, agents, and employees from and against all suits, claims, or liabilities of any nature, including attorney fees, costs, and expenses, for or on account of injuries or damages sustained by any person or property, resulting from acts or omissions of and to the extent harm is caused by the Tribe, its agents or employees in connection with maintenance and operation of the Jamestown System or for breach of its duties under this Agreement. If suit in respect to the above is filed, the Tribe shall defend the suit at the Tribe's own cost and expense, and if judgment is rendered or settlement made requiring payment by the City, its officers, agents or employees, the Tribe shall pay the same. Should a court of competent jurisdiction determine that this indemnity agreement is subject to RCW 4.24.115, then in the event of liability for damages arising out of bodily injury to persons or damages to property caused or resulting from the concurrent negligence of the City and the Tribe, and their elected officials, officers, employees, or agents, the Tribe's liability hereunder shall only be to the extent of the Tribe's negligence.

10.4 Insurance Requirements.

(a) The Tribe shall maintain insurance sufficient to pay any suits, claims, or liabilities of the City described in Section 10.2, above, and, in addition, the cost of remediation of environmental damage caused by any Tribe discharge, such as the discharge into or transfer of toxic wastes from the Jamestown System into the City System. The Tribe's current insurance limits are $6,000,000 per occurrence. The City presumptively agrees that the Tribe's

coverage as of the date of this Agreement is sufficient to cover known risks as of that date. The Tribe agrees, at its own expense, to maintain this insurance coverage for all of its liability exposures for this Agreement. The Tribe agrees to provide the City with at least thirty (30) days prior written notice of any material change in the Tribe's insurance program. The Tribe agrees to add the City as an additional insured on such insurance and to provide the City with an endorsement confirming the City as an additional insured on such policy or policies. The maintenance of, or lack thereof, of insurance coverage shall not limit the liability of the Tribe to the City.

Erika Hamerquist, Legal Secretary
Sequim City Attorney's Office
152 West Cedar Street Sequim WA 98382
(360) 681-6611 ehamerquist@sequimwa.gov

Please remember that insurance coverage cannot be bound, amended or cancelled by leaving an electronic message or voice mail without confirmation from a licensed representative.

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