

WASHINGTON ASSOCIATION OF SHERIFFS & POLICE CHIEFS

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Serving the Law Enforcement Community & the Citizens of Washington



MODEL POLICY FOR AUTHORIZING TRIBAL POLICE OFFICERS TO ACT AS GENERAL AUTHORITY WASHINGTON STATE PEACE OFFICERS NOVEMBER 2010

I. PURPOSE

This Model Policy addresses the authorization of tribal police officers to act as general authority Washington state peace officers. It is intended to serve as a general guideline for agencies affected by Chapter 224, Laws of 2008 (EHB 2476); RCW 10.92. A sample Interlocal Agreement (ILA) is attached to this Model Policy. The sample ILA is only intended to serve a guideline for an agency in drafting an ILA that meets the specific needs of the agency while comporting with the requirements of law. The sample ILA is not a formal part of this model policy and it is not intended to imply that an ILA must include the provisions or specific wording provided in the sample. It is recognized that there are issues unique to specific jurisdictions and in developing and adopting an ILA, each agency should consult with its appropriate counsel according to current practice.

II. DEFINITIONS

- 1. General authority Washington state peace officer** means an officer authorized to enforce the criminal and traffic laws of the state of Washington generally. RCW 10.92.010(1).
- 2. Tribal police officer** means any person in the employ of one of the federally recognized sovereign tribal governments, whose traditional lands and territories lie within the borders of the state of Washington, to enforce the criminal laws of that government. RCW 10.92.010(2).

III. BACKGROUND

During the 2008 Regular Legislative Session, the Legislature enacted Chapter 224, Laws of 2008 (EHB 2476) which authorized tribal police officers to act as general authority Washington state peace officers.

IV. SOVEREIGN TRIBAL GOVERNMENT AND LOCAL GOVERNMENT LAW ENFORCEMENT AGENCY DUTIES

Generally

State law provides that tribal police officers shall be recognized and authorized to act as general authority Washington peace officers, subject to the requirements stated below. Under state law, a tribal police officer recognized and authorized to act as a general authority Washington peace officer has the same powers as any other general authority Washington peace officer to enforce

state laws in Washington, including the power to make arrests for violations of state laws within the exterior boundaries of the reservation or as authorized under RCW 10.93.070 and RCW 10.92.020.

Requirements

State law provides that a tribal police officer may exercise the powers of law enforcement of a general authority Washington peace officer subject to the following:

- (1) State law requires that the appropriate sovereign tribal nation shall submit to the Office of Financial Management (OFM):
 - Proof of public liability and property damage insurance for vehicles operated by the peace officers and police professional liability insurance from a company licensed to sell insurance in the state.
 - A copy of an interlocal agreement with the applicable local governments with shared jurisdiction, if one has been reached pursuant to RCW 10.92.020 (10).

The tribal nation should clearly designate the agency responsible for submitting this information to the OFM under RCW 10.92.020.

The designated tribal agency should document whether OFM has either approved or rejected the adequacy of the insurance within 30 days of receipt of the insurance information and ILA, pursuant to RCW 10.92.020 (2)(a)(i).

The designated tribal agency should document on an annual basis whether the OFM has determined the insurance is or remains adequate subject to the annual OFM review required by RCW 10.92.020(2)(a)(i).

(2) State law requires that the insurance obtained by the tribal nation must be available to satisfy settlements/judgments from the tortious conduct of tribal police officers acting as general authority Washington peace officers. Therefore each insurance policy must include a provision explicitly stating that the insurance shall be available to satisfy settlements or judgments arising from the tortious conduct of tribal police officers when acting in the capacity of general authority Washington peace officer, and that to the extent of policy coverage neither the sovereign tribal nation nor the insurance carrier will raise the defense of sovereign immunity to preclude an action for damages under state or federal law, the determination of fault in civil action, or the payment of a settlement or judgment arising from the tortious conduct. RCW 10.92.020 (2)(a) (i)-(ii)

(3) As required by state law, a tribal police officer must comply with the requirements set forth under RCW 43.101.157, tribal police officer certification.

(4) State law requires that the appropriate sovereign tribal nation submit to OFM proof that certification requirements for each tribal police officer have been met. Any applicant not meeting the requirements for certification may not act as a general authority Washington peace officer.

The tribe should retain documentation regarding notice by the criminal justice training commission that the commission has notified OFM, pursuant to RCW 10.92.020 (2)(b)(i-ii), that a tribal police officer authorized as a general authority Washington state peace officer has been decertified or if the tribal government is otherwise in noncompliance with RCW 43.101.157. This documentation should include a roster of tribal officers that are authorized under 10.92, proof of officers' certification by CJTC, and copies of applicable insurance policies.

The tribe should provide notice, as soon as practicable, to any local law enforcement agency with whom it has an Interlocal Agreement that a tribal police officer authorized as a general authority Washington state peace officer has had his or her certification revoked or denied or if the tribal government is otherwise in noncompliance with RCW 43.101.157.

Local governments should retain copies of proof of certification, for each tribal officer. Proof of certification should meet the same standards as those required under RCW 43.1010 (officer certification). Interlocal agreements should state which tribal entity and which local government entity will be the repository of the documentation such as the roster of tribal officers that are authorized under 10.92, proof of officers' certification by CJTC, and applicable insurance policies.

Citations and Notice of Infractions

State law provides that a copy of any citation or notice of infraction issued or any incident report taken by a tribal police officer acting in the capacity of a general authority Washington peace officer must be submitted within three days to the municipal police chief or sheriff within whose jurisdiction the action was taken. Any citation issued under this chapter shall be to a Washington court as required by state law, except that any citation issued to Indians within the exterior boundaries of an Indian reservation may be cited to a tribal court. Any arrest made or citation issued not in compliance with this policy is not enforceable as provided in RCW 10.92.020.

Any citations issued must be on the standard state form in current use. Interlocal agreements should address whether the tribal officer may file directly with the court or with the prosecutor, and should note time restrictions for filing as per local court rule. Every reasonable effort shall be made to comply with the filing deadlines defined by court rule.

Sovereign Authority

State law provides that the authorization to act as a Washington general authority peace officer granted by RCW 10.92.020 does not in any way expand the jurisdiction of any tribal court or other tribal authority. The authority is coextensive with the exterior boundaries of the reservation, except that an officer commissioned under RCW 10.92 may act beyond the exterior boundaries of the reservation as general authority peace officers as authorized under RCW 10.93.070. Nothing in this policy impairs or affects the existing status and sovereignty of those sovereign tribal governments whose traditional lands and territories lie within the borders of the state of Washington as established under the laws of the United States.
RCW 10.92.020 (4), (5), (7).

Sheriffs' and Municipal Police Chiefs' Authority

State law provides that nothing in this policy limits, impairs, or nullifies the authority of a county sheriff to appoint duly commissioned state or federally certified tribal police officers as deputy sheriffs authorized to enforce the criminal and traffic laws of the state of Washington. RCW 10.92.020(8). Nothing in this model policy is intended to limit, impair or nullify the authority of a municipal police chief to appoint duly commissioned state or federally certified tribal police officers authorized to enforce the criminal and traffic laws of the state of Washington. Likewise, nothing in Chapter 10.92 RCW compels a county sheriff to commission a tribal police officer as a deputy sheriff.

State and Federal Authority

State law provides that nothing in this policy limits, impairs, or otherwise affects the existing authority under state or federal law of state or local law enforcement officers to enforce state law within the exterior boundaries of an Indian reservation or to enter Indian country in fresh pursuit, as defined in RCW 10.93.120, of a person suspected of violating state law, where the officer would otherwise not have jurisdiction. RCW 10.92.020(9).

Civil Liability

Pursuant to RCW 10.92.020 (6) for the purposes of civil liability, a tribal police officer is not considered an employee of the state or any local government except where a state or local government has deputized a tribal police officer as a specially commissioned officer.

Because the law enforcement function of the tribe is supported by a self governance agreement between the tribe and the Bureau of Indian Affairs, the liability for the common law torts of tribal law enforcement personnel within the scope of their duties will ordinarily be assumed by the United States under the Federal Tort Claims Act. The tribe should obtain insurance to cover its personnel in all other cases.

Brady

It is the intention that the model policy regarding Brady adopted by WASPC in November 2009 and all its provisions, including any subsequent amendments to that policy, be incorporated by reference into this model policy.

V. INTERLOCAL AGREEMENTS

Process regarding an ILA

State law requires that sovereign tribal governments and local government law enforcement agencies that will have shared jurisdiction under RCW 10.92 enter into interlocal agreements created pursuant to chapter 39.34 RCW. This must be done prior to tribal officer authorization taking effect.

In order for an ILA to be in force with regards to both tribal and local Washington State government, it must be ratified by the appropriate legislative bodies and filed with the appropriate authorities. Each party to an ILA should be familiar with the ratification process of their respective governing bodies and should inform the other whether and when an ILA has been ratified.

Tribal governments that otherwise meet the requirements of RCW 10.92.020 but do not have an ILA may submit proof of liability insurance and tribal certification to OFM to initiate the statutory process for arbitration with local governments. The tribe should retain any confirmation of receipt of the information from OFM that marks the commencement of the one year period the tribe and local government law enforcement agencies have to reach an interlocal agreement prior to submitting to binding, last best offer arbitration under RCW 7.04A. RCW 10.92.020 (10)(a).

Tribal governments should notify applicable local law enforcement agencies when they submit the required information to OFM seeking authorization but where no ILA is in place. Law enforcement agencies should inquire of a tribal government whether such information has been submitted to OFM. The interlocal agreement should specify how often this inquiry is made.

RCW 10.92.020(10)(b) requires that this model policy be considered by an arbitrator, along with other ILAs and national best practices, when considering last best offers.

Considerations in Crafting an ILA

The following are suggested provisions that local jurisdictions and tribes may consider for inclusion in the interlocal agreement. These ideas are intended to serve as guidelines for any agreement and should be tailored to meet the needs of the negotiating parties.

1. State that an ILA is not deemed to be in force unless ratified by the appropriate legislative bodies. It should provide that each party be familiar with the ratification process of their respective governing bodies, require that the parties inform the other whether and when an ILA has been ratified, and provide what the effect of a ratification failure will be.
2. State that the provisions of the Brady Model Policy adopted by WASPC in November 2009 must be complied with, outline the process for and content of, and timelines regarding how the agencies will share Brady information.
3. Clearly state how local governments will be notified of tribal officers certified under the statute;
4. Specify the criteria for selecting the parties who will negotiate the agreement and/or specify the individual parties to be included. Key stakeholders that should be included are: the county sheriff, the appropriate municipal police chief, all applicable law enforcement agencies, county prosecutors, and representatives of the tribal government and tribal police agencies.
5. Articulate a process for the right of first refusal, based on local resources and needs.
6. Jurisdictional matters should be addressed:
 - a. what geographic areas and boundaries are involved;
 - b. how a lead agency will be determined in a joint investigation;
 - c. what processes and procedures will be used for coordination and communication of joint investigations;
 - d. which agency or officers will be responsible for specified types of crimes. Jurisdictional authority may be based on specific elements of the incident in question, the tribal status of the offender/victim, whether the federal government might have jurisdiction; the PL 280 status of the tribe; the geographic location of the incident; whether a case requires specific expertise such as in child sex crimes; or whether a juvenile is the offender.
7. Clearly articulate the arbitration process, including who will conduct the arbitration in order to avoid misunderstandings. State law requires last best offer arbitration if the parties are unable to reach an ILA agreement within one year of the tribe's submission of necessary documents to OFM. However, parties should also state the type, timeline and parameters of arbitration that will govern any subsequent disputes or disagreements. 8. Include provisions related to potential cross-commissioning if desired by the parties. This may be done in a separate ILA. If the parties do not wish to engage in cross-commissioning, the agreement should clearly state that neither the sheriff nor the municipal police chief are the commissioning authority. This has liability implications, as

exposure lies with the entities authorizing tribal police officers as general Washington state peace officers. It should be noted that the new law does not prohibit a sheriff nor a municipal police chief from commissioning tribal officers; however liability would attach to the commissioning authority in those circumstances. If a sheriff or municipal police chief wishes to commission tribal officers in this manner, the commissioning authority should consider including a provision relating to waiver of sovereign immunity by the tribe and requirements for insurance as provided in the new law.

8. Renegotiation and length of term of the interlocal agreement should be included. It should specify the length of term of the agreement and whether the agreement remains in force if a new law enforcement executive takes office or until renegotiation or adjudication occurs. Parties may also include provisions that prohibit a new law enforcement executive from unilateral rescission of an interlocal agreement. It may also state that the interlocal agreement automatically remains in effect unless, on an annual basis, one party formally objects and seeks a modification. Parties should consider developing a clause providing for arbitration if no new agreement can be reached after a new law enforcement executive takes office, and/or define when mandatory arbitration will come into effect during renegotiation.
9. Mutual aid provisions should be included with reference to first responders and investigations (RCW 10.93.070).
10. Processes for communication and cooperation between officers and communities should be delineated. This should include any desired requirements on information sharing, annual reports, sharing of crime statistics, and public meetings or other outreach efforts.
11. The agreement should outline any applicable joint training regarding the ILA, cultural education, PL 280 and jurisdictional issues, Fourth Amendment and privacy rights issues (the Indian Civil Rights Act/Washington State Const. Art 1. Sec. 7), tribal fish and wildlife enforcement, or tribal gaming matters.
12. The use of jails should be addressed including booking locations and intake standards; reports and documentation and prisoner transportation.
13. Agreements should clearly articulate the parties' responsibilities regarding costs associated with the criminal justice process including jail booking fees, transport fees and medical costs and other items as determined by the parties. Provisions should include how fees will be negotiated and the process for resolving any disputed fees or other jail costs. Agreements may need to include a partial waiver of sovereign immunity by the tribe to ensure the ability of a city or county to collect any amounts owed for such costs and fees. See e.g. *Kiowa Tribe v. Mfg. Techs.*, 523 U.S. 751 (1998). The agreement should also specify the forum agreed upon to hear disputes in such matters to address issues surrounding lack of federal court jurisdiction. See e.g. *Morongo Band of Mission Indians v. California State Bd. of Equal...*, 849 F.2d 1197 (9th Cir. 1998)).
14. Agreements should consider standards for uniform incident reporting, reporting timelines, and general management and sharing of information.
15. The role of prosecutors and courts may be included in any agreement, including standards or guidelines for determining which court will be the appropriate venue. Provisions that provide that the parties will enter into a separate ILA on prosecution/court costs may be

desirable and if executed should be attached to the ILA. This agreement may include provisions on which party pays clerk of court costs, prosecution costs and court costs.

16. A process should be outlined for responding to and resolving citizen and agency complaints.
17. Responsibility for extraordinary costs or special services should be specified. These may include communication systems, SWAT resources, helicopters or any other significant or unanticipated outlay of resources.
18. The agreement should articulate what documents or records the tribal law enforcement agency will provide to the CJTC for fulfillment of the certification and revocation processes.
19. Processes for retaining, documenting and safe guarding evidence or property should be included, including ensuring compliance with RCW 63.32 and RCW 63.40.
20. Provisions regarding warrant service, subpoena and discovery, pre-trial interviews and motions should be included.
21. Provisions should be made regarding parties' responsibilities on follow-up investigations.
22. Interlocal agreements should outline what in the agreement will be subject to arbitration and what is not. For example, arbitration cannot require an agency to cross -deputize.
23. Provisions should be included which acknowledge that prosecutors will be responsible for producing in court accurate and adequate documentation that a tribal officer has properly exercised authority according to RCW 10.92. Therefore an ILA should provide by what means prosecutors will access the required information from tribal authorities.
24. There should be agreement as to whether a tribal police officer will be permitted to file directly to court or whether he or she must file with the prosecutor.
25. ILAs should acknowledge local court rules regarding filing deadlines and require compliance with those deadlines. Other references to applicable court rules should be included as necessary.
26. May include notation that an agency may suspend or revoke the authority of any of its officers to exercise commissions granted by other agencies. It should provide the procedure and timeline for communication regarding any suspension or revocation and whether it may be done orally, in writing or both.
27. It should be specified how and within what timelines the parties will notify each other and the county and tribal prosecutor's offices regarding any officer decertification.
28. The agreement should specify the geographic boundaries the agreement governs.
29. A process for amending any agreement should be defined.

SAMPLE INTERLOCAL AGREEMENT

This document is intended as a sample interlocal agreement that local jurisdictions and tribes may consider as a basis for an interlocal agreement for the purposes of RCW 10.92. It is intended only to serve as a practical guideline for any agreement. It is not intended to imply that agencies are required to adhere to the provisions of the sample in whole or in part. ILAs should be tailored to meet the needs of the negotiating parties after consultation with appropriate authorities and legal counsel.

_____ County Sheriff
or
City of _____
and
the _____ Nation or Tribe

This agreement is entered into under:

The Interlocal Cooperation Act (RCW 39.34);
The Tribal Police Officers Act (RCW 10.93.02); and
The constitution of the _____ Nation / Tribe,

pursuant to Chapter 224, Laws of 2008, Tribal Police Officers (RCW 10.92);
between:

_____ County
or
City of _____
and
the _____ Nation / Tribe,

in order to provide mutual aid as provided herein.

WHEREAS, law enforcement agencies have the responsibility to protect lives, protect property, to keep the peace; and

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

WHEREAS, it is necessary and desirable that a cooperative agreement is executed for the purpose of effectuating efficient law enforcement within the boundaries of the _____ Nation / Tribe; and

WHEREAS, it is not intended that the traditional law enforcement responsibilities of the signatory agencies be altered, but rather that they be empowered to act in appropriate situations; and

WHEREAS, it is intended that tribal police officers who (1) have successfully completed the requirements of RCW 43.101.157; (2) are employed by a tribal authority that has provided sufficient proof of insurance to the Office of Financial Management for the State of Washington,

and (3) are in all other respects qualifies to act as a peace officer under RCW 10.92, Chapter 224 Laws of 2008, shall be eligible to act as a general authority Washington peace officer as provided under the law and this agreement;
and

WHEREAS, this understanding shall not impair the authority of any officer who has acted pursuant to a special commission separately granted by the Sheriff or Chief of Police;

NOW, THEREFORE,

Parties agree to the following:

1. ADMINISTRATIVE CONSIDERATIONS: Parties shall follow the word and spirit of the empowering legislation, Chapter 224, Laws of 2008, codified in RCW 10.92

2. PEACE OFFICER AUTHORITY: A tribal officer who is authorized hereunder shall be recognized and authorized to act as a general authority Washington peace officer pursuant to RCW 10.92. All of the activity of that officer shall be in accord with the laws of the State of Washington and the United States of America.

Likewise, non-tribal police officers may be specially commissioned to exercise law enforcement authority within the boundaries of the Tribe / Nation. Nothing in this agreement shall affect the current authority of non-tribal police officers to exercise proper authority to enforce state laws within the boundaries of the Tribe/Nation.

Any agency may suspend or revoke the authority of any of its officers to exercise the special commission herein granted by other agencies. That suspension or revocation shall be immediately communicated to all parties and shall be confirmed in writing on the next business day.

3. DECERTIFICATION OF PEACE OFFICER AUTHORITY: Parties agree to notify all signatories and the county and tribal prosecutor's offices by the next business day, in writing, should their officer become decertified.

4 BRADY NOTIFICATION:

The parties agree to abide by the requirements of the "Model Policy for Law Enforcement Agencies Regarding *Brady* Evidence and Law Enforcement Witnesses who are Employees/Officers," adopted by the Washington Association of Sheriffs and Police Chiefs on November 19, 2009. In accordance with the WASPC model policy, parties agree to notify the county and tribal prosecutor's offices by the next business day, in writing, in the event that any officer of a signatory is the subject of a final determination by the Chief Law Enforcement Executive of a substantiated or sustained finding related to an officer's dishonesty or untruthfulness, regardless of whether or not discipline was given. Parties further agree to disclose as *Brady* material any information regarding the determination. Parties shall also notify the county and tribal prosecutor's offices of any criminal conviction history of an officer pursuant to Washington CRr 4.7 (1)(iv), and shall provide notice by the next business day, in writing, in the event that any officer of a signatory becomes subject to a criminal conviction after the signing of this agreement.

5. TRIBAL AUTHORITY: This agreement shall not expand the authority or jurisdiction of any city, county, state, federal or tribal court or other government authority.

6. GEOGRAPHIC AUTHORITY: The authority granted herein shall be coextensive with the exterior boundaries of the _____ Nation / Tribe, except that a tribal officer commissioned hereunder is authorized to act as provided by RCW 10.93.070.

7. NO AGENCY OR EMPLOYEE STATUS: The authority granted herein shall not create an agency or employee status between the tribal officer and any State or local government unless the State or local government shall have separately created a special commission for any tribal police officer. Special commissions are strictly at the discretion of the commissioning Sheriff or Police Chief.

8. SOVEREIGNTY RETAINED: Except as articulated in provision #28 of this agreement, nothing in this agreement shall affect the existing status and sovereignty of those sovereign tribal governments whose traditional lands and territories lie within the borders of the State of Washington.

9. STATE AND LOCAL ENFORCEMENT: Nothing in this agreement limits, impairs or otherwise affects the existing authority of state or local law enforcement officers to enforce state law within the exterior boundaries of an Indian reservation or to enter Indian country in fresh pursuit, as defined in RCW 10. 93.070.

10. RATIFICATION, DURATION, AMENDMENTS, RENEWAL OF AGREEMENT, WITHDRAWAL and ARBITRATION: This agreement is in effect for ____ years from the date of ratification by the last party to the agreement to ratify. The agreement remains in effect regardless of leadership changes within the organizations of signing parties. This Agreement is not deemed to be in force unless ratified by the appropriate legislative bodies of each party. Each party should be familiar with the ratification process of their respective governing bodies, and shall inform the other party whether and when this Agreement has been ratified.

If either party's legislative body fails to ratify the agreement within ____ days/months/years, the following steps shall be taken:

It is recognized that special circumstances arise from time-to-time. Therefore, amendments to the agreement can be accomplished at any time on consent and signature of all parties involved. Approved and signed amendments shall be attached to the original document.

An amendment in the form of a new signature page is required when leadership / signatory changes occur. It is the responsibility of the party who experiences the change to accomplish and distribute a new signature page as described in AGREEMENT DISTRIBUTION below within X days of the change. The amendment shall be attached to the original document.

Parties are strongly encouraged to meet _____ days prior to the expiration of the agreement so that renewal is seamless. In the event that a new agreement is not reached between parties, arbitration shall be engaged as set forth as follows:

Withdrawal for cause from an existing agreement may be accomplished with a X day notice by a signatory party. During that ____ day period between notice and actual withdrawal, parties are strongly encouraged to meet to settle any differences. If differences are not resolved after X days, the parties agree to submit to mandatory, last best offer arbitration.

If the parties cannot reach agreement on subsequent Agreements, the parties shall submit to arbitration as follows:

Note: The standard in the RCW if there is failure to reach an ILA within a year after the tribe submitting the necessary information to OFM, is binding, last best offer arbitration under RCW 7.04A as provided in RCW 10.92.020 (10)(a).

New agreements will comply with AGREEMENT DISTRIBUTION below.

11. AGREEMENT DISTRIBUTION: Parties agree that current and signed copies of this agreement and copies of any signed amendments to this agreement will be retained by each party. Furthermore, each party will send copies of the most current agreement and amendments to the Office of Financial Management for the State of Washington and to the Washington Criminal Justice Training Commission as soon as possible after the signing of a new agreement or amendments.

12. FIELD OPERATIONS: Parties should create a separate document providing for field operation protocols. It may also include operational considerations such as protocols regarding 911 and fire operations.

13. CERTIFICATION

A tribal agency shall notify any other party to this agreement that a tribal officer has been certified pursuant to RCW 10.92 within ____ days of certification by providing written notice to _____

The parties agree to provide the Criminal Justice Training Commission the following documentation for the fulfillment of the certification and revocation process: Note: See RCW 43.101 for CJTC general requirements for officer certification.

RCW 10.92 does not establish a sheriff as the commissioning authority, but the parties agree that a sheriff may commission tribal officers. In the event that a sheriff does commission a tribal officer, the tribe party to this agreement agrees to waive sovereign immunity and to comply with the requirements for insurance pursuant to RCW 10.92.

Nothing in this Agreement requires a party to cross-deputize an officer. Nor shall such matters be subject to arbitration.

A party may suspend or revoke the authority of any officer to exercise commissions granted by other agencies. A party shall notify the other party within 24 hours, in writing, of any suspension or revocation.

Upon the decertification of any officer, the parties shall notify each other and the county and tribal prosecuting attorney in writing within 24 hours.

14. TRAINING: Parties shall jointly participate in training of cross-commissioned of personnel. A record of this training will be documented and retained in personnel files of both agencies according to current agency policy record retention schedules. Topics may include, but not be limited to:

- This agreement;
- Cultural education;
- Public Law 280 and jurisdictional issues;

Agency policy and procedure;
Prosecution requirements;
Court document flow;
Court process;
Fish and wildlife enforcement;
Tribal gaming; and
Fourth amendment/Privacy issues including the Indian Civil Rights Act and
Washington State's Constitution Art. I, sec. 7.

On-going training on these and other subjects is strongly encouraged.

15. RIGHT OF FIRST REFUSAL and RESPONSIBILITY: Parties agree that when life or property is in jeopardy, the closest officer(s) will respond. It will be the initial responding officer's responsibility to first protect life and property, then to establish the agency of jurisdiction. The agency of jurisdiction will be consulted, as safety allows, to determine who will conduct further law enforcement involvement.

Operations requiring a joint operation of agencies will be directed by the agency of jurisdiction unless otherwise agreed upon.

The agency of jurisdiction has the ultimate responsibility and cannot refuse to respond in a timely manner.

16. INVESTIGATIONS, WARRANTS and ARREST: Any investigation, warrant or arrest shall be in accordance with applicable state or federal law.

17. REPORTING: All personnel will submit required reports (electronic and / or paper) to the agency of jurisdiction within twenty-four (24) hours of any official action taken or incident responded to. This includes tribal, county, city or state required documents such as, but not limited to:

Notice of Infractions;
Criminal Citations;
Incident Reports;
Follow-up reports; and
All other reports required by the agency of jurisdiction.

18. EVIDENCE and PROPERTY RECEIPTING, SAFEGUARDING and RETENTION:

When officers retain evidence and / or property for referral of a case to the jurisdiction's Prosecuting Attorney for the consideration of filing charges, the officer shall properly receipt all evidence and / or property and provide a complete inventory sheet.

All evidence and / or property so receipted shall be safeguarded and maintained in a secure environment that may be accessed for viewing. A list of all persons with access to the secure environment shall be kept. A log of the removal and return of any evidence or property shall be kept and shall include the personnel and time.

No evidence or property shall be released except upon written directive of the Office of the Prosecuting Attorney, court order, by the Sheriff, Tribe Chief of Police, or the City Chief of

Police or his or her designee. Parties agree to retain the property in accordance with any period of retention established by the Prosecuting Attorney.

Policies regarding unclaimed property shall conform to RCW 63.32 and RCW 63.40.

19. REFERRAL TO PROSECUTING AUTHORITY: Pursuant to this agreement, a tribal police officer is permitted to file directly to the court of jurisdiction/must file with the prosecuting attorney. Whenever any matter is referred to a jurisdiction's Prosecuting Attorney for the consideration of filing criminal charges, parties agree to provide necessary paperwork within the timelines required by the jurisdiction's Prosecuting Attorney and in compliance with all applicable court rules. Those timelines on the date of this agreement are as follows:

Because prosecutors are responsible for producing in court accurate and adequate documentation that a tribal officer has properly exercised authority according to RCW 10.92, prosecutors will be able to access the required information from tribal authorities by the following process:

Note: This item could include for example, which entity is the repository of the documentation (roster of tribal officers authorized under RCW 10.92; proof of officers' certification by CJTC; applicable insurance policies) and how a prosecutor will be permitted access.

20. FOLLOW-UP INVESTIGATION: Parties shall conduct whatever follow-up investigation is needed and requested in a timely manner. The lead agency will be determined by _____. The following process and procedures will be used to coordinate a joint investigation:

21. WARRANT SERVICE: Parties shall assist one another, when requested, in the execution of search warrants and arrest warrants properly issued by the jurisdiction whose law is applicable.

22. SUBPOENA and DISCOVERY: All rules of discovery in a criminal case shall apply and personnel will be subject to subpoena or other court process.

23. PRE-TRIAL INTERVIEWS and MOTIONS: Personnel shall be available at reasonable times and upon reasonable notice for any pre-trial interviews depositions or motions.

24. JAILS: Parties may, if desired, enter into a separate "Local Agreement on Jail Matters." Any agreement shall be attached to this agreement. Subjects to be addressed may include, but not limited to:

- Booking location/fees;
- Intake standards;
- Reports/documentation;
- Prisoner transportation/fees and
- Party responsibility for costs associated with offender incarceration and care.

The agreement shall provide the process for resolving any disputes on the above matters.

25. PROSECUTION and COURTS: Those cited or arrested and tried will be adjudicated through the appropriate court of jurisdiction.

Parties to this agreement may enter into a separate “Local Agreement on Prosecution Costs and Court Costs.” Any separate agreement shall be attachment to this agreement. Subjects to be addressed may include, but not limited to:

- Which party pays clerk of the court costs;
- Which party pays for prosecution of cases; and
- Which party pays for court costs.

26. RESOLVING CITIZEN COMPLAINTS: Parties agree to each maintain a process that will accommodate citizen or other agency complaints regarding their personnel. All complaints will be investigated and a determination of whether the allegations are sustained or not sustained shall be made. Disposition of formal complaints and investigations for which a formal report is taken shall be made known to complainant. All reports generated from complaints on personnel whether Founded, Insufficient Evidence, Unfounded, etc. will be maintained by the investigating agency according to State of Washington records retention requirements.

27. EXTRAORDINARY COSTS: Parties to this agreement may enter into a separate “Local Agreement on Extraordinary Costs.” Any agreement shall be attached to this agreement. Subjects to be addressed may include, but not limited to:

- Extraordinary personnel overtime;
- SWAT resources;
- Helicopter;
- Office space;

28. GOVERNING LAW, VENUE and LIMITED CONSENT TO SUIT: This agreement shall be governed by the laws of the State of Washington, as to interpretation and performance. Any action hereunder may be brought in the Superior Court of Washington for _____ County.

The Tribe expressly grants a limited consent to suit only upon claims arising from its failure to continuously insure as required herein.

29. SEVERABILITY: It is understood and agreed to by the parties that if any part of this agreement is found to be invalid the validity of the remaining provisions shall not be affected and the rights and obligations of the parties shall be construed as if the agreement did not contain the invalidated provision. If it any provision herein is in conflict with any applicable statute, said provision shall be deemed inoperative, null and void, insofar as it may be in conflict therein.

30. INTEGRATION: This agreement, and any signed amendments, contains terms and conditions agreed upon by the parties. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this agreement.

31. NOTICE: Any notice required or permitted to be given under this agreement to a party shall be deemed sufficient if given in writing and sent by certified mail to the address stated below for each party, or to any other address to which the party may inform all other parties in writing with specific reference to this agreement.

_____ shall provide copies of the Agreement and any amendment to the Office of Financial Management and the Criminal Justice Training Commission within X days after the Agreement has been ratified by each party's legislative body.

IN WITNESS WHEREOF, the parties hereto have hereunder set their hands to the date first above written.

Dated this _____ day of _____, 20--.

_____, County Sheriff

name

or

City of _____

name

_____, Tribe / Nation

name

Approved as to form:

_____, County / City Prosecutor

_____, Tribe / Nation Prosecutor