

## CLARK COUNTY STAFF REPORT

**DEPARTMENT:** Sheriff's Office and Prosecuting Attorney's Office

**DATE:** August 19, 2020 (Council Time)

**REQUESTED ACTION:** Approval to Enter into Interlocal Agreement with Cowlitz Indian Tribe for Washington State to extend General Peace Officer Authority to Tribal Law Enforcement. Formal hearing not required.

\_\_\_\_ Consent    ☒ Hearing    \_\_\_\_ County Manager

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### BACKGROUND

Pursuant to the Tribal Police Officers Act, Chapter 10.92 RCW, a recognized federal Indian Tribe in the State of Washington may apply for its tribal law enforcement officers to act as general authority Washington peace officers. Under this Act, tribal police officers shall be recognized and authorized to act as general authority Washington peace officers beyond the exterior boundaries of the tribal reservation provided the tribe follows several statutory requirements. One of those requirements is for the tribal government and local government law enforcement agency that will have shared jurisdiction under RCW 10.92 to enter into interlocal agreements created pursuant to Chapter 39.34 RCW.

The Cowlitz Indian Tribe is a federal recognized Indian Tribe with a reservation located in Clark County. The Tribe has established the Cowlitz Indian Tribal Public Safety Department ("CITPSD") and is seeking authority under the Tribal Police Officers Act for its tribal police officers to exercise the powers of law enforcement of a general authority Washington peace officers. Therefore, as required under RCW 10.92.020, the Cowlitz Indian Tribe and the Clark County Sheriff's Office have negotiated the terms of an interlocal agreement to address issues with respect to shared jurisdiction. The Cowlitz Indian Tribe has officially authorized execution of the interlocal agreement.

Key provisions of the interlocal agreement are as follows:

- The Sheriff is not required nor compelled to deputize or commission a tribal law enforcement officer.
- Upon approval by the State Office of Financial Management, any CITPSD law enforcement meeting the requirements of Chapter 10.92 RCW shall be recognized and authorized to act as a general authority Washington peace officer.
- The agreement does not impact the current authority of Clark County law enforcement to enforce state laws against non-Indians within the exterior boundaries of the Cowlitz Indian Reservation.
- CITPSD law enforcement officers will have authority to enforce traffic or criminal laws of the state throughout the territorial bounds of the state under the enumerated circumstances of RCW 10.93.070. These requirements include (1) consent of the local sheriff or chief of police for the primary local jurisdiction; (2) in response to an emergency; (3) in response to a requires for assistance pursuant to a mutual law enforcement assistance agreement; (4) for transporting a prisoner; (5) when executing a warrant; or (6) when the officer is in fresh pursuit.

Once the interlocal agreement is signed, officers with the CITPSD will be authorized to act as general authority Washington peace officers provided they meet the other requirements of RCW 10.92.020, including proof of training requirements with the Washington State Criminal Justice Training Commission and sufficient public liability and property damage insurance as required by the State of Washington.

The interlocal agreement shall remain in effect for five (5) years from the date of execution and will automatically renew for one (1) year terms, unless terminated by either party. Any party may separate terminate the agreement with sixty (60) days' written notice.

### **COUNCIL POLICY IMPLICATIONS**

The interlocal agreement has no significant county policy implications. However, as a result of tribal officers obtaining general authority powers, there may be a reduction in service calls and criminal investigation matters for the Clark County Sheriff law enforcement deputies as it concerns activity on the Cowlitz Indian Tribe reservation.

### **ADMINISTRATIVE POLICY IMPLICATIONS**

CITPSD will report to the Sheriff's Office any citations, notices of infraction, or incident reports made in their capacity as a general authority peace officers under the agreement. The agreement also provides for operating protocols between the Sheriff's Office and CITPSD. The agreement further provides that the CITPSD will cooperate with the Clark County Prosecuting Attorney's Office regarding referral for prosecution matters.

### **COMMUNITY OUTREACH**

As a result of this agreement, the Clark County Sheriff's Office will enjoy a relationship with the Cowlitz Indian Tribe reservation similar to the other cities within the jurisdiction of Clark County. The CITPSD will participate on the Law Enforcement Council (LEC) and build cooperation with other criminal justice agencies effectuating efficient law enforcement within Clark County. CITPSD will be empowered to act in appropriate situations when life or property is in jeopardy as 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.

### **BUDGET IMPLICATIONS**

YES	NO	
X		Action falls within existing budget capacity.
X		Action falls within existing budget capacity but requires a change of purpose within existing appropriation
	X	Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

### **BUDGET DETAILS – Not applicable**

Local Fund Dollar Amount	
Grant Fund Dollar Amount	
Account	
Company Name	

**DISTRIBUTION:**

**Council staff will post all staff reports to The Web. <https://www.clark.wa.gov/council-meetings>**

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*s/Emily A. Sheldrick*

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Emily A. Sheldrick  
Title Chief Civil Deputy

Primary Staff Contact: Emily A. Sheldrick Ext 4956

Operational Staff Contact: Undersheriff John Chapman Ext 2341

**APPROVED: \_\_\_\_\_**  
**CLARK COUNTY, WASHINGTON**  
**CLARK COUNTY COUNCIL**

DATE: \_\_\_\_\_

SR# \_\_\_\_\_

**APPROVED: \_\_\_\_\_**  
**Kathleen Otto, Interim County Manager**

DATE: \_\_\_\_\_

**AGREEMENT FOR GENERAL AUTHORITY PEACE OFFICER AUTHORIZATION  
BETWEEN THE CLARK COUNTY SHERIFF'S OFFICE AND THE COWLITZ  
INDIAN TRIBE**

This Agreement for General Authority Peace Officer Authorization between the Clark County Sheriff's Office and the Cowlitz Indian Tribe ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, between the Clark County, a political sub-division of the State of Washington, and the Cowlitz Indian Tribe ("Tribe"), a federally-recognized Indian Tribe (separately referred to as "Party" and collectively referred to as the "Parties").

**1. RECITALS.**

1.1 This Agreement is entered into under the Interlocal Cooperation Act, Chapter 39.34 RCW, and the Tribal Police Officers Act, Chapter 10.92 RCW, and the Constitution and Bylaws of the Cowlitz Indian Tribe ("Tribe") in order to provide law enforcement services as provided herein.

1.2 For purposes of this Agreement "Indian" means any individual who is a member of the Cowlitz Indian Tribe, any individual who is a member of any other federally-recognized tribe, and any individual who is an Indian, defined in 25 U.S.C. §1301(4).

1.3 The Tribe is a federally recognized Indian Tribe with a Reservation ("Reservation") located on the land held in trust by the United States Department of Interior, Bureau of Indian Affairs for the benefit of the Tribe within the geographic boundaries of Clark County.

1.4 Law enforcement agencies, such as the Clark County Sheriff's Office ("Sheriff's Office") and the Cowlitz Indian Tribal Public Safety Department ("CITPSD") have the responsibility to protect lives and property and to keep the peace.

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

1.6 The Cowlitz Indian Tribe has not and will not confer concurrent jurisdiction on the Cowlitz Indian Reservation to the State of Washington or its political sub-divisions.

1.7 The Cowlitz Indian Tribe and Clark County, Washington entered into an Agreement for Services between Clark County, Washington, and the Cowlitz Indian Tribe ("Agreement for Services") on June 12, 2019, for the purposes of providing services, including law enforcement services, on the Cowlitz Indian Reservation and confirming compensation by the Tribe to the County for said services.

1.8 The Tribal Police Officers Act, Chapter 10.92 RCW, provides a means to grant tribal police officers authority to act as general authority Washington peace officers and to

act beyond the exterior boundaries of the Cowlitz Indian Reservation as permitted under RCW 10.93.070.

1.9 It is necessary and desirable that a cooperative agreement be executed for the purpose of effectuating efficient law enforcement within Clark County, WA and the exterior boundaries of the Cowlitz Indian Reservation.

1.10 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.

1.11 It is intended that Tribal law enforcement officers who (1) have successfully completed the requirements of RCW 43.101.157; (2) are employed by a Cowlitz Indian 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 qualified to act as a peace officer under the Tribal Police Officers Act (Chapter 10.92 RCW), are eligible to act as a general authority Washington peace officer.

1.12 Nothing in this Agreement shall be construed to cede any jurisdiction of any Party to this Agreement, to modify the legal requirements for arrest or search and seizure, to otherwise modify the legal rights of any person not a party this Agreement, to accomplish any act in violation of Tribal, federal, or state law, or to subject the parties to any liability to which they would not be subject by law.

NOW THEREFORE, the Sheriff and the Tribe enter into this Agreement for the purposes of authorizing law enforcement officers employed by the Cowlitz Indian Tribe to act as general authority Washington peace officers as set forth in the Tribal Police Officers Act, Chapter 10.92 RCW, and as specifically set forth below.

## **2. TERM – EFFECTIVE DATE.**

2.1 This Agreement shall be effective upon the execution of this Agreement by the Sheriff and the Tribe.

2.2 This Agreement shall remain in effect for five (5) years from the date of execution and will be deemed by the parties to automatically renew for one (1) year terms, unless a Party terminates the Agreement earlier as set forth in Section 8. This Agreement remains in effect regardless of leadership changes within Clark County, Washington or the Clark County Sheriff's Office.

2.3 This Agreement may be terminated only upon mutual written agreement of the Parties, or by the process set forth in Section 8 below.

### 3. AUTHORITIES.

3.1 Immunities. Nothing in this Agreement shall affect or diminish the existing status and sovereignty of the Cowlitz Indian Tribe. All immunities from liability and exemptions under state, federal, or tribal laws ordinances, codes, and regulations which law enforcement officers have in their own jurisdiction shall be effective in the jurisdiction in which they are giving assistance, unless prohibited by law.

3.2 Special Commissions. Nothing in this Agreement requires or compels the Clark County Sheriff ("Sheriff") to deputize or commission a Tribal law enforcement officer. Further, nothing in this Agreement impairs or affects the authority of the Sheriff to issue special commissions. This Agreement shall not impair or affect the authority of any CITPSD law enforcement officer who acts pursuant to a special commission separately granted by any Sheriff, Bureau of Indian Affairs (BIA), U.S. Marshall Service, or any other federal law enforcement agency.

3.3 State Recognition of Peace Officer. Upon approval by the State Office of Financial Management ("OFM"), any CITPSD law enforcement officer meeting the requirements set forth in the Tribal Police Officers Act, Chapter 10.92 RCW, shall be recognized and authorized to act as a general authority Washington peace officer. The approval by OFM is attached hereto as Exhibit A and incorporated by reference. The Tribe shall advise the Sheriff if OFM revokes or otherwise denies CITPSD as a general authority Washington peace officer agency.

3.4 Peace Officer Authority. A CITPSD law enforcement officer's activity shall be in accordance with the laws of the State of Washington and the United States of America when acting in the capacity as a general authority Washington peace officer pursuant to this Agreement. Nothing in this Agreement shall affect the current authority of Clark County law enforcement officers to enforce state laws against non-Indians within the exterior boundaries of the Cowlitz Indian Reservation pursuant to the Agreement for Services, RCW 10.92.020 or RCW 10.93.120.

3.5 Parties' Authority. This Agreement shall not expand the authority or jurisdiction of the State of Washington or its political sub-divisions or the Cowlitz Tribal Court.

3.6 Geographic Authority. The authority granted herein shall be coextensive with the exterior boundaries of the Cowlitz Indian Reservation, except that the Clark County Sheriff's Office gives consent for CITPSD law enforcement officers who are commissioned or granted authority under RCW 10.92.020 and this Agreement to act as provided by RCW 10.93.070. In executing this Agreement, the Parties agree that this Agreement shall constitute prior written consent by the Sheriff pursuant to RCW 10.93.070(1) .

3.7 Responsibility. The 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 will be directed by the agency of jurisdiction unless otherwise agreed upon.

#### **4. PEACE OFFICER CERTIFICATIONS.**

4.1 The CITPSD shall notify the Sheriff in writing within ten (10) business days of a CITPSD law enforcement officer being certified as a Tribal Police Officer by the Washington State Criminal Justice Training Commission.

4.2 The CITPSD shall notify the Sheriff and the Clark County Prosecuting Attorney's Office by the next business day, in writing, if a CITPSD law enforcement officer has been decertified as a Tribal Police Officer by the Washington State Criminal Justice Training Commission.

#### **5. AGENCY COORDINATION.**

5.1 No Agency or Employee Status. The personnel of the Tribe acting under this Agreement shall be considered employees of the Tribe for all purposes, including but not limited to: wages, benefits, performance, immunities, and discipline. This Agreement, and the authority granted herein, shall not create an agency or employee status between the Tribe, its officers, agents, consultants, advisors or employees and the State of Washington or its political sub-divisions, including the Clark County Sheriff's Office. Similarly, this Agreement shall not create an agency or employee status between the State of Washington or its political sub-divisions, including the Clark County Sheriff's Office and the Tribe.

5.2 Training. When appropriate, Parties may jointly participate in law enforcement personnel trainings. Topics may include, but are not limited to: this Agreement, cultural education, legal updates, agency policy and procedure, prosecutorial requirements, and court processes.

5.3 Agency Procedure. The Sheriff will provide the CITPSD with the Sheriff's applicable operating protocols. The Parties may jointly develop protocols when necessary to facilitate a better working relationship under this Agreement.

5.4 Citizen Complaints. Parties agree to each maintain a process that will accommodate citizen or other agency complaints regarding their personnel.

5.5 Brady Notification. CITPSD will immediately notify and provide the Chief Deputy of the Clark County Prosecuting Attorney's Office (CCPAO) of *Brady* information pursuant to CCPAO protocol. CITPSD will immediately notify the CCPAO Chief Deputy if any CITPSD officer is suspended or separated from employment.

#### **6. OPERATIONAL PROTOCOLS.**

6.1 Control Over Personnel. All personnel of the Sheriff shall at all times remain under the control of, and subject to the direction of, the Sheriff. All CITPSD personnel shall

remain under the employment and control of the Cowlitz Indian Tribe and subject to the direction of the Director of the CITPSD.

6.2 Investigations/Arrest/Warrants. Any investigation, warrant, or arrest made by CITPSD personnel under state law authority pursuant to this Agreement must be made in accordance with applicable state or federal law. Arrests made, or citations issued, that are not in compliance with Chapter 10.92 RCW are not enforceable.

6.3 Citations. Any notice of infraction or citation issued by a CITPSD law enforcement officer while acting in the capacity of a general authority Washington peace officer pursuant to the authority granted in this Agreement, must be to a Washington state court. This shall not affect the existing procedures and authority for issuing a notice of infraction or citation when made pursuant to federal or Tribal authority.

6.4 Jail Bookings. This Agreement does not alter the existing agreement for CITPSD law enforcement officers booking Indians into the Clark County Jail pursuant to the Agreement for Services. If a CITPSD law enforcement officer is exercising arrest authority over a non-Indian under this Agreement, the CITPSD law enforcement officer will be responsible for transporting the individual arrested to the Clark County Jail. All jail bookings will be in accordance with facility policies.

6.5 Reporting. When enforcing state law as a general authority Washington peace officer under this Agreement, CITPSD law enforcement officers must submit a copy of any citation, notice of infraction, or incident report made for the purposes of enforcing state law to the Sheriff within three (3) days.

6.6 Referral to Prosecuting Authority. For any matter which is will be referred to CCPA for prosecution in a Clark County court, CITPSD law enforcement officers shall submit relevant paperwork to the CCPAO for charging. Whenever any matter is referred to the CCPAO, a CITPSD law enforcement officer must provide necessary paperwork within the timelines required by the CCPAO and applicable court rules.

6.7 Prosecution. For matters in which CITPSD law enforcement officers enforce state law under this Agreement, CITPSD law enforcement officers will be available at reasonable times and upon reasonable notice for pre-trial interviews, depositions, motions, or hearings as requested by CCPAO.

## **7. DISPUTE RESOLUTION.**

7.1 In an effort to streamline the resolution of any disputes under this Agreement, the County and the Tribe agree to the following:

7.1.1 The Tribe and the Sheriff shall make their best efforts to resolve disputes that occur under this Agreement by good faith negotiations whenever possible.



7.1.2 Disputes between the Tribe and the County shall first be subjected to a process of meeting and conferring in good faith in order to foster the spirit of cooperation and efficiency in the administration of the terms, provisions, and conditions of this Agreement as follows:

7.1.2.1 Either Party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth, with specificity, the issues to be resolved.

7.1.2.2 The Parties shall meet and confer in a good faith attempt to resolve the dispute through negotiation not later than ten (10) business days after receipt of the notice, unless both Parties agree in writing to an extension of time.

7.1.2.3 If the Parties are unable to resolve the dispute amongst themselves within twenty (20) business days, the party shall submit a written request to engage in mediation to be conducted in Clark County, Washington, with a mutually acceptable mediator. If the Parties cannot reach agreement on the selection of the mediator within fifteen (15) business days of the date the written mediation request letter was received by the other Party or Parties, the mediation will be administered by JAMS, Seattle, Washington Office using JAMS mediator. All Parties will pay their respective costs and attorneys' fees.

## **8. TERMINATION.**

8.1 Any Party may terminate this Agreement, with or without cause, upon sixty (60) days prior written notice, signed by a Party that is either personally delivered or mailed via certified mail, return receipt requested to the other Party. Notice shall be deemed effective when received. During that 60-day period between notice and actual withdrawal, parties are strongly encouraged to meet to settle any differences.

8.2 Authority of a Cowlitz Indian Tribe law enforcement officer as a general peace office shall remain in full force and effect until the effective termination date of this Agreement. Termination of this Agreement by any Party shall not affect authority exercised prior to delivery of the notice of termination.

## **9. MISCELLANEOUS PROVISIONS.**

9.1 Amendments. This Agreement may be amended only by written instrument duly signed and executed by the Tribe, the Sheriff and the County.

9.2 Waiver. Waiver by either Party or any of its officers, agents, consultants, advisors or employees, or the failure of either Party or its officers, agents, consultants, advisors or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement will not be deemed to be a waiver of such

obligation or responsibility, or subsequent breach of same, or of any terms, covenants or conditions of this Agreement, unless such waiver is expressly set forth in writing in a document signed and executed by the appropriate authority of the Sheriff or of the Tribe and then only to the limited degree set forth in such writing.

9.3 Severability. Except as otherwise provided in this paragraph, the invalidity of any provision or portion of a provision of this Agreement as determined by a court of competent jurisdiction shall not affect the validity of any other provisions of this Agreement or the remaining portions of the applicable provisions.

9.4 Entire Agreement. This constitutes the entire agreement between the Parties. No other written or oral communications are of force and effect regarding the subject matter of this Agreement.

9.5 Filing. The Clerk of the Council will comply with the filing or publication requirements of RCW 39.34.040.

9.6 Notice. Any notice to be given under this Agreement shall be in writing and delivered by first class mail with pre-paid postage and addressed as follows:

For the Tribe:

Cowlitz Indian Tribal Public Safety Department  
Attn: Director of Public Safety  
31501 NW 31<sup>st</sup> Ave.  
Ridgefield, WA 98642

With a copy to: Cowlitz Tribal Legal Department  
P.O. Box 2547  
Longview, WA 98632

For the Sheriff:

Clark County Sheriff's Office  
Attn: Clark County Sheriff  
P.O. Box 410  
Vancouver, WA 98666

For Clark County:

Clerk of the Council  
PO Box 5000  
Vancouver, WA 98666-5000

With a copy to: Chief Civil Deputy  
Clark County Prosecuting Attorney's Office  
PO Box 5000  
Vancouver, WA 98666-5000

*Signatures follow on next page.*

In witness whereof, the Parties have executed this Agreement as of the day and year set forth above.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

CLARK COUNTY

By: \_\_\_\_\_  
Kathleen Otto, County Manager

CLARK COUNTY SHERIFF'S OFFICE

By: \_\_\_\_\_  
Chuck E. Atkins, Sheriff

Approved as to form only:

By: \_\_\_\_\_  
Emily A. Sheldrick  
Chief Civil Deputy

COWLITZ INDIAN TRIBE

By: \_\_\_\_\_  
William Iyall, Tribal Chairman

Approved as to form only:

By: \_\_\_\_\_  
Philip Harju  
General Counsel



# Cowlitz Indian Tribe

Tribal Council  
Resolution No. 20- 41

**Short Title: Authorization to Approve an Agreement for a General Peace Officer  
Authorization Between Clark County, Washington and the Cowlitz Indian Tribe, and  
Approve a Limited Waiver of Sovereign Immunity.**

**WHEREAS**, the Cowlitz Indian Tribe is Acknowledged as a Sovereign Indian Nation by the United States Government, and

**WHEREAS**, the Cowlitz Indian Tribal Council is the governing body of the Cowlitz Indian Tribe as authorized by the Tribe's Constitution and By-laws, and

**WHEREAS**, the Cowlitz Indian Tribe has negotiated an Agreement for General Peace Officer Authorization between Clark County, Washington and the Cowlitz Indian Tribe pursuant to RCW 10.92, and

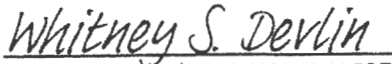
**WHEREAS**, the Agreement must be signed by the Tribal Chairman and does require a limited waiver of sovereign immunity to complete the Agreement, and

**NOW THEREFORE BE IT RESOLVED**, by the Tribal Council of the Cowlitz Indian Tribe, that the Tribal Chairman is authorized to sign the attached Agreement, and that the limited waiver of sovereign immunity in the Agreement is hereby approved.

**---CERTIFIED---**

The foregoing resolution was adopted by the Tribal Council at a duly called meeting on August 1, 2020, by a vote of 12 for, 4 against and 5 abstain.

  
\_\_\_\_\_  
Steve Kutz, Tribal Council Chair

  
\_\_\_\_\_  
Whitney S. Devlin (Aug 4, 2020 10:44 PDT)  
Whitney Mosback, Tribal Council Secretary