

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this “Memorandum”) is made as of February 26, 2013, by and between the CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION, a federally-recognized Indian tribe (the “CTUIR”), and the PORT OF KENNEWICK, a municipal corporation organized under the laws of the State of Washington (the “Port”). The CTUIR and the Port may be referred to individually as a “Party” and collectively as the “Parties”.

RECITALS

A. The CTUIR is a sovereign government and federally-recognized Indian tribe whose members are descendents of peoples who inhabited and used the lands on the Columbia Plateau. The CTUIR is governed by its Board of the Trustees (the “Board”) pursuant to the authority of Article VI, Section 1 of the Constitution and Bylaws of the Confederated Tribes, adopted on November 4, 1949 and approved on December 7, 1949, as amended. The Board has approved this Memorandum and authorized its Chairman to execute and deliver this Memorandum on the CTUIR’s behalf.

B. The Port is a municipal corporation of the State of Washington (the “State”) with boundaries that encompass an approximately 485 square-mile area around the City of Kennewick, Washington. The Port is governed by its Port Commission (the “Commission”) pursuant to the authority granted by Title 53 RCW and other laws of the State. The Commission has approved this Memorandum and authorized the Commission’s President to execute and deliver this Memorandum on the Port’s behalf.

C. A large majority of the land within the Port boundaries are aboriginal lands of the CTUIR as recognized in Article I of the CTUIR Treaty of 1855 with the United States. By entering this Memorandum, the Port and the CTUIR agree to work together to avoid any adverse impacts that the Port’s facilities and operations may have on the CTUIR’s treaty rights.

D. The CTUIR and the Port have enjoyed a strong working relationship over the years, which relationship reflects a mutual respect of each Party’s governmental duties of preserving, protecting and promoting the cultural and economic interests of its constituents. The CTUIR and the Port desire to continue their working relationship and, respectful of each other’s legitimate values and goals, wish to set forth in this Memorandum the general framework for fostering continued coordination and consultation between the Parties.

AGREEMENTS AND UNDERSTANDINGS

1. To provide a forum at which the governing bodies of the CTUIR and the Port can discuss matters of mutual interest to (and matters of concern between) the Parties, the Board and the Commission will meet in person at least once per year and more often as mutually agreed by the Parties. Each such meeting is referred to as a "Collaboration" in this Memorandum. The Chairman of the Board, on behalf of the CTUIR, and the Port's President, on behalf of the Port, will work together to prepare an agenda for each Collaboration, which agenda will be provided (to the greatest extent possible) to the members of the Board and the Commission at least three weeks before the date scheduled for the Collaboration. Collaborations will occur at such places as the Parties may determine; *provided*, the place at which a Collaboration occurs must be open and available to the general public to satisfy the requirements of open public meetings law applicable to the Commission. The first of the Collaborations will occur on March ____, 2013.

2. By March 1, 2013, the Chairman of the Board (or his/her designee) and the Port's President (or his/her designee) will meet and work collaboratively to develop a list of potential joint undertakings between the CTUIR and the Port for the Board and the Commission to consider at the initial Collaboration. It is the intent of the Parties that the Board and the Commission would agree to prioritize potential undertakings during such Collaboration and direct staff of the CTUIR and the Port to work together to develop one or more such undertakings. The Parties expect that their respective employees, as well as the Board and the Commission, will work over time through an iterative process to identify potential joint undertakings, to prioritize those undertakings and to implement the joint undertakings determined by the Board and the Commission to be of the highest priority. Accordingly, the Chairman of the Board (or his/her designee) and the Port's President (or his/her designee) will meet and work collectively in advance of each Collaboration to develop a list of potential undertakings to be considered during each Collaboration (which may include potential undertakings that had been included in previous lists submitted to the Board and the Commission for consideration).

3. Without limiting the scope of discussions that may occur during Collaborations, it is the understanding of the Parties that topics for consideration at Collaboration might involve:

- a) Each Party's proposed and ongoing capital projects within or near the Port boundaries (including how such projects may affect the CTUIR's trust resources, exercise of treaty rights, cultural heritage and traditional life ways and uses); and
- b) Each Party's economic development initiatives and opportunities within or near the Port boundaries.

4. To continue fostering open communication from the Port to the CTUIR, the Port agrees to do the following:

- a) Provide the CTUIR with a copy of the Port's comprehensive plan and all updates to such plan;
- b) Identify Port officials and employees who are authorized to communicate with the CTUIR on the Port's behalf, which points of contact are identified in Exhibit B to this Memorandum;
- c) Provide the CTUIR with a reasonable opportunity to review and comment on proposed plans for Port projects that involve matters identified to the Port as being interests of the CTUIR;
- d) Provide the CTUIR with respect to any anticipated capital project of the Port (i) a description of the project's purpose, geographic location, size, anticipated duration of construction work, and anticipated impacts, as appropriate; (ii) a list of any site-specific cultural resource inventories/surveys for the project area; (iii) the Port's anticipated actions to comply with applicable cultural resource laws;
- e) Provide the CTUIR with respect to any anticipated capital project of the Port that is expected to involve critical habitat or areas of cultural significance: (i) topographic map at appropriate scale; and (ii) aerial photographs, where available;
- f) Evaluate with the CTUIR the extent to which data and databases developed by, or available to, the Port with respect to Port capital projects that are expected to involve critical habitat or areas of cultural significance;
- g) In connection with any Port capital project, identify (i) any potential adverse impacts such project may have on the CTUIR's exercise of treaty rights, CTUIR cultural resources and CTUIR's sacred sites (but only to the extent such treaty rights, cultural resources and sacred sites are known by the Port) and (ii) the Port's plans to avoid or mitigate such adverse impacts;
- h) Incorporate the CTUIR's comments regarding the Port's plans to undertake capital projects, to the fullest extent practicable, as such comments related to the protection or mitigation of adverse impacts to CTUIR's treaty or statutory rights; and

- i) Notify the CTUIR within thirty (30) days of approving any plans for new Port capital projects that require a Section 106 (36 CFR 800) review and clearance under the National Historical Preservation Act (“NHPA”), which notice must (i) describe the proposed project, (ii) identify the project location, (iii) identify the names of Port personnel who the CTUIR may contact regarding same, and (iv) the proposed date for adopting such plans.

5. To continue fostering open communication from the CTUIR to the Port, the CTUIR agrees to do the following:

- a) Annually furnish the Port with a list of the types of Port activities for which it wishes to receive information and the level of plans in which it is most interested;
- b) Identify CTUIR officials and employees who are authorized to communicate with the Port on the CTUIR’s behalf, which points of contact are identified in Exhibit A to this Memorandum;
- c) Distribute PORT proposal notifications to the appropriate CTUIR staff that will coordinate Tribal review;
- d) Provide the Port with a copy of the CTUIR’s Comprehensive Plan (2010) and all updates to such plan;
- e) Assist the Port in resolving conflicts or potential adverse effects identified during the CTUIR’s review of the Port’s proposal notices;
- f) Pursuant to the NHPA notification procedures described in Paragraph 4 of this Memorandum, the CTUIR will provide written review comments (including recommendations) to the Port within thirty (30) days after CTUIR receives any notification from the Port (or within the timeframe specifically agreed upon by the Parties to complete the review).

6. To foster better a understanding of each Party by the other Party, the Parties will consider:

- a) Having the CTUIR conduct one or more training sessions for Port officials and employees regarding tribal government operations and natural and cultural resource protection issues and procedures;

- b) Coordinating Port and CTUIR cross-training for interpretive programs within the Port and the CTUIR; and
- c) The use of CTUIR members and/or staff as cultural resources area field assistance, as opportunities arise, pursuant to contracts at rates similar to those charged by the CTUIR for similar work.

7. Direct contacts between the Port and the CTUIR are in no way limited by this Memorandum. Such contacts are essential to promote more effective communication, coordination and consultation.

8. Nothing in this Memorandum is intended to abrogate or modify any rights or obligations either Party may have under applicable laws. This Memorandum in no way amends, alters or modified the CTUIR's treaty rights or jurisdiction or regulatory authority of the Port or the CTUIR.

9. This Memorandum is not intended to provide the CTUIR or the Board with oversight powers regarding Port activities, nor the Port or the Commission with oversight powers regarding CTUIR activities.

10. Unless required pursuant to the terms of another agreement between the Parties, neither Party will be liable for any costs incurred by the other Party pursuant to this Memorandum, including the costs of attending meetings or preparing materials.

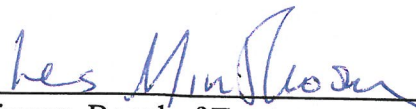
11. The Parties understand that any records or materials submitted to the Port pursuant to this Memorandum may become public records under State law (see chapter 42.56 RCW). Upon request, public records must be disclosed by the Port unless a statute exempts such disclosure. The CTUIR shall have no obligation under this Memorandum to provide confidential and sensitive information or documents regarding Treaty rights, cultural resources or economic development initiatives that the Port may be required to release under State law.

12. In the event of a dispute between the CTUIR and the Port under this Memorandum, the Parties agree to make good faith attempts to resolve the dispute. This Memorandum may be terminated by either Party at any time upon providing the other Party of written notice of such termination.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, CTUIR and the Port have caused this Memorandum to be executed in their respective names all by their duly authorized officers, and have caused this Memorandum to be dated as of the date set forth on page 1 hereof.

CONFEDERATED TRIBES OF THE
UMATILLA INDIAN RESERVATION, a
federally-recognized Indian tribe



Chairman, Board of Trustees

PORT OF KENNEWICK, a municipal
corporation organized under the laws of the
State of Washington



President, Port Commission

EXHIBIT A TO MEMORANDUM OF UNDERSTANDING

The CTUIR points of contact for specific issues are set forth below:

1. Tribal policy and government matters:

Les Minthorn, Chairman, Board of Trustees
Phone: 541-429-7381
Email: LesMinthorn@ctuir.org

2. Scheduling meetings between the Parties and general inquiries under the Memorandum:

Dave Tovey, Executive Director
Phone: 541-429-7632
Email: DaveTovey@ctuir.org

Debra Croswell, Deputy E.D.
Phone: 541-429-7391
Email: DebraCroswell@ctuir.org

3. Port facilities, operations or proposals that affect CTUIR fishing rights and interests:

Eric Quaempts, Director Natural Resources Department
Phone: 541-429-7229
Email: EricQuaempts@ctuir.org

Alternate:

Gary James, Manger Fisheries Program
Phone: 541-429-7285
Email: GaryJames@ctuir.org

4. Port facilities, operations or proposals that affect CTUIR cultural resources:

Teara Farrow Ferman, Manager Cultural Resources Program
Phone: 541-429-7230
Email: TearaFarrowFerman@ctuir.org

5. Economic development opportunities or projects:

Bill Tovey, Director Department Economic and Community Development
Phone: 541-429-7480
Email: BillTovey@ctuir.org

5. Energy needs or development:

Bruce Zimmerman, Department of Economic and Community Development

Phone: 541-429-7484

Email: BruceZimmerman@ctuir.org

6. Hanford Nuclear Reservation matters:

Stuart Harris, Director, Department of Science and Engineering

Phone: 541-429-7437

Email: StuartHarris@ctuir.org

EXHIBIT B TO MEMORANDUM OF UNDERSTANDING

The Port's points of contact for specific issues are set forth below:

1. Policy and government matters:

Skip Novakovich, President, Port Commission
Phone: 509-366-7858
Email: skip@portofkennewick.org

2. Scheduling meetings between the Parties and general inquiries under the Memorandum:

Tim Arntzen, Executive Director
Phone: 509-585-1144
Email: ta@portofkennewick.org

Tana Bader Inghima, Director of
Governmental Relations
Phone: 509-586-8140
Email: tana@portofkennewick.org

3. Port facilities, operations or proposals that affect CTUIR fishing rights and interests:

Larry Peterson, Director Planning and Development
Phone: 509-586-1188
Email: lpeterson@portofkennewick.org

4. Port facilities, operations or proposals that affect CTUIR cultural resources:

Tana Bader Inghima, Director of Governmental Relations
Phone: 509-586-8140
Email: tana@portofkennewick.org

5. Economic development opportunities or projects;

Tim Arntzen, Executive Director
Phone: 509-585-1144
Email: ta@portofkennewick.org

6. Energy needs or development:

Tim Arntzen, Executive Director
Phone: 509-585-1144
Email: ta@portofkennewick.org