

**MEMORANDUM OF AGREEMENT**

**between**

**THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION**

**and**

**THE CITY OF UMATILLA, OREGON**

**for**

**COORDINATION AND CONSULTATION ON CULTURAL RESOURCES AND  
OTHER ISSUES OF MUTUAL INTEREST**

ARTICLE I. PREAMBLE

WHEREAS, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) is a sovereign governmental entity representing Native American culture having an interest in the preservation and protection of its Treaty rights and cultural heritage both within the boundaries of the Umatilla Indian Reservation and within the CTUIR's lands ceded by the Treaty of 1855 and aboriginal use areas; and

WHEREAS, the City of Umatilla (City) is an incorporated, home rule charter City under the laws of the State of Oregon; and

WHEREAS, the City recognizes that the CTUIR considers its cultural heritage and customary use locations and the natural resources as invaluable and critical to the preservation of its treaty rights, cultural heritage, and pursuit of traditional life ways for present and future generations; and

WHEREAS, the City is required by Oregon law to enact and administer a comprehensive plan and associated land use development regulations, providing for the development of property within its corporate limits and Urban Growth Area; and

WHEREAS, the City may enter into intergovernmental agreements pursuant to ORS § 190.010; and

WHEREAS, respectful of each other's legitimate values and goals, the CTUIR and the City agree to establish and maintain a relationship of mutual respect to achieve positive, mutually understood, and beneficial solutions to common situations.

NOW, THEREFORE, this MOA is made between the parties, the CTUIR represented by the Board of Trustees, and the City represented by the City Council. The parties agree to set forth in the MOA a framework for fostering collaboration and consultation relating to cultural resource management and agree to the terms set forth below.

## ARTICLE II. SCOPE OF AGREEMENT

1. Consultation
  - a. The Mayor or someone designated from the City Council and the City Administrator of the City of Umatilla shall be the responsible officials for the purpose of consulting with the CTUIR regarding the coordination of the City's development with the CTUIR's interest in the preservation of its cultural resources and other issues of mutual interest.
  - b. The Chair of the Board of Trustees or someone designated by the Chair of the Board of Trustees shall be the responsible Tribal government official for the purpose of consulting with the City for policy matters regarding the coordination of cultural resources and other issues of mutual interest.
  - c. The City shall designate the City Administrator as the key contact for carrying out administrative matters under this MOA.
  - d. The CTUIR shall designate the Executive Director as the key contact for carrying out administrative matters under this MOA.
2. The City hereby recognizes the unique legal status of the CTUIR as a sovereign nation as recognized by the United States in the Treaty of June 9, 1855.
3. Consultation includes the direct participation of the parties in all phases of an undertaking which has the potential to affect important resources protected by treaty rights and applicable statutes.
4. The City shall notify the CTUIR within 30 days of any plans for new development projects which require a Section 106 (36 CFR 800) review and clearance as required by the National Historic Preservation Act.
5. In providing any notification pursuant to Article II.4. above, the City shall provide the CTUIR with a description of the proposed project, survey, inventory, review or study, a description of the location of same, the names of City personnel whom the CTUIR may contact regarding same, and any proposed dates planned for same.

6. Pursuant to the notification procedures identified in Articles II.4. and 5 above, the CTUIR shall provide written review comments including recommendations to the City within 30 days from the date of receipt of any notification, or within the time frame specifically agreed upon by the parties to complete the review.
7. The CTUIR shall assist the City in resolving conflicts or potential impacts identified during the notification and review process, time being of the essence.
8. The City and the CTUIR agree to pursue a continuing dialogue on areas of mutual interest. If deemed appropriate by both parties, specific agreements relative to one or more of these areas shall be considered.
  - a. The training of City officials and personnel on cultural resources protection issues and procedures.
  - b. The coordination of City and CTUIR cross-training for interpretive programs within the City and the Umatilla Indian Reservation.
  - c. Consideration by the City for the use of CTUIR members as cultural resources or other resources area field assistants as employment, training, and education opportunities arise.
  - d. The identification of cultural resources and other inventory studies that would be appropriate for setting aside for Tribal involvement.
  - e. The discussion of ventures which may benefit the economic interests of the City and the CTUIR.
  - f. The discussion of activities that may impact the Treaty reserved natural resources of the CTUIR.

### ARTICLE III. TERMS AND CONDITIONS

1. Direct contacts between the City and the CTUIR are in no way limited by the MOA. Such contacts are essential to promote more effective communication and coordination.
2. Nothing in this MOA limits or waives the jurisdiction, regulatory authority or any rights of either party.
3. This agreement will become effective on the date of the latest signature as evidenced below.

4. Amendments, supplements or revisions to this Memorandum of Agreement may be proposed by either party to the agreement and shall become effective upon formal approval of the other party.
5. Representatives of the City and the CTUIR will meet annually (or as otherwise arranged) to discuss the terms of this document and other matters as necessary.

#### ARTICLE IV. NOTIFICATION

In order to implement the above agreement, the following steps of notification will be followed.

1. As a means of improving access to information on development throughout the City of Umatilla by private and government property owners, the City will include the CTUIR in the distribution of State Environmental Policy Act (SEPA), land use permits, and any other notification regarding land developments.
2. The City will provide the CTUIR with advance written notification by certified mail of any non-emergency development or construction (not including repairs or maintenance) on municipally owned property which involves sub-surface disturbances within 440 yards (1/4 mile) of the mean high water levels of the Columbia River/John Day Reservoir and the Umatilla River. In addition, the City will also provide the same advance written notification on any municipal project that includes any direct federal funding or permitting, which would include the National Historic Preservation Act.
3. For municipal property development projects perceived by the CTUIR to affect cultural resources, the following procedure will be followed:
  - a. Within 30 calendar days of receipt of the certified mail notification described in Paragraph 2, the CTUIR will advise the City by return certified mail of concerns in the project. The letter(s) to the City will document the existence (or reasonable expectation) of significant cultural resources at the proposed development site. Failure to send a response after notification would be interpreted by the City as no concerns by the CTUIR.
  - b. Having been so notified, the City will initiate the convening of the "Project Work Group" of CTUIR and municipal representatives to address identified concerns. Depending on the interest by the CTUIR, the Working Group will consist of the City of Umatilla Mayor (or designee from the City Council), and the Chair of the CTUIR Board of Trustees (or a designee from the Board). In addition, the

City and the CTUIR may assign staff to assist the Project Working Group.

- c. Both parties will endeavor to conduct the first meeting of the Project Work Group as soon as practicable and complete a preliminary assessment of cultural resource issues within 30 calendar days of the initial meeting. The group will develop recommendations, both substantive and procedural, for addressing issues of mutual concern and will bring such recommendations forward for consideration by the Umatilla City Council and the CTUIR Board of Trustees within 60 calendar days of the initial meeting.

The City and the CTUIR will attempt to work in harmony to identify and resolve issues. Should any party or assigned participant encounter difficulties in so doing, the Working Group will be so advised and afforded an opportunity to seek a remedy. In the unfortunate event that remedies are not successful, any party or participant may with-draw from the process without prejudice.

4. Any notice to the CTUIR required by this Memorandum of Agreement shall be directed to the Chair of the Board of Trustees, and the Chair of the Cultural Resources Commission, Confederated Tribes of the Umatilla Indian Reservation, P.O. Box 638, Pendleton, Oregon, 97801. Correspondence with the City of Umatilla shall be directed to the City Administrator, City of Umatilla, P.O. Box 130, Umatilla, Oregon, 97882.

#### ARTICLE V. MISCELLANEOUS

1. Discovery of Human Remains.
  - a. If ancestral human remains or burials are discovered in situ during the course of development or construction, the City will halt all ground-disturbing activity in the immediate vicinity and notify the Oregon State Police and the CTUIR pursuant to ORS § 97.745(4).
2. Fishing Access.
  - a. The City of Umatilla is responsible to open access to tribal fishermen at usual and accustomed fishing sites along the Columbia and Umatilla rivers if current access will be significantly disturbed by new development or construction.
3. Preference for Indian contractors.
  - a. The City hereby agrees to invite the CTUIR to develop a proposal on any cultural resources survey, protection, or mitigation work

required under applicable law or otherwise deemed appropriate on municipally owned lands or municipal projects covered by this Memorandum of Agreement. When proposals from the CTUIR are considered, preference will be given to Indian contractors under the terms to be developed by the CTUIR and the City.

4. The City agrees to pursue a separate programmatic agreement, pursuant to the National Historic Preservation Act, with the CTUIR to ensure the protection of significant cultural resources and compliance with applicable state and federal cultural resource protection laws in any lands where ground disturbing activities may occur for the development, construction, operation and maintenance of the City's sewage treatment plant including any later expansions. The City and the CTUIR agree to use their best efforts to finalize any such programmatic agreement within one year of the signing of this MOA.

#### SIGNATURES

\_\_\_\_\_/S/\_\_\_\_\_  
George Fenton  
Council President  
City of Umatilla, Oregon

\_\_\_\_\_/5/11/99\_\_\_\_\_  
Date

\_\_\_\_\_/S/\_\_\_\_\_  
Antone Minthorn  
Chair, Board of Trustees  
CTUIR

\_\_\_\_\_/5/10/99\_\_\_\_\_