RESOLUTION NO. 154-15

A RESOLUTION of the City of Richland authorizing the execution of a Memorandum of Agreement with the Confederated Tribes of the Umatilla Indian Reservation for promotion and protection of shared interests.

WHEREAS, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), a federally recognized Indian Tribe, is a sovereign governmental entity with an interest in the preservation, protection, and perpetuation of its cultural heritage and other rights under federal and state law, including Treaty rights on lands ceded by the Treaty of 1855 with the Walla Walla, Cayuse, and Umatilla tribes (hereinafter “Treaty”), or otherwise within the CTUIR aboriginal use area; and

WHEREAS, the City of Richland is a First Class City incorporated under the laws of the State of Washington with all the powers granted to cities of the first class by the Constitution and general laws of the State and all powers implied thereby, located within the lands ceded by the Treaty of 1855 or otherwise within the CTUIR aboriginal use area; and

WHEREAS, the Parties entered into a Memorandum of Understanding for the Coordination of Tribal Involvement in the City of Richland’s Land Use Planning Process in 1994 (“1994 MOU”), and the Parties now desire to enter into a new Memorandum of Agreement to replace the 1994 MOU; and

WHEREAS, the Parties share a mutual interest in educating the public regarding local culture, history, and the environment; and

WHEREAS, the Parties share a mutual interest in the protection of cultural and natural resources consistent with CTUIR’s recognized Treaty Rights and the City’s jurisdiction over land within the geographical boundaries of the City of Richland’s Growth Management Area; and

WHEREAS, the Parties also share a mutual interest in encouraging economic activity that enables the Parties to better achieve their mutual and individual interests; and

WHEREAS, the Parties deem it to be in their mutual best interest to collaborate in the development of specific projects, activities, and procedures to achieve shared interests including economic development, natural and cultural resource protection and treaty related activities; and

WHEREAS, nothing in this MOU affects the legal rights of the Parties, nor shall it confer any jurisdiction on the City of Richland over the CTUIR or CTUIR over the City of Richland.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Richland, authorizes the Mayor and the City Manager to sign and execute a Memorandum of Agreement.
Agreement with the Confederated Tribes of the Umatilla Indian Reservation for promotion and protection of shared interests.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

ADOPTED by the City Council of the City of Richland at a regular meeting on the 1st day of September, 2015.

DAVID W. ROSE
Mayor

ATTEST:

MARCIA HOPKINS
City Clerk

APPROVED AS TO FORM:

HEATHER KINTZLEY
City Attorney

Adopted 9/1/15
Resolution No. 154-15
MEMORANDUM OF UNDERSTANDING
FOR COOPERATION BETWEEN
THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION
AND
THE CITY OF RICHLAND

This Memorandum of Understanding (hereinafter “MOU”) is made by and between the Confederated Tribes of the Umatilla Indian Reservation, a federally recognized Indian Tribe organized pursuant to its Constitution and Bylaws and its Treaty of 1855 (hereinafter “CTUIR”), and the City of Richland, a Washington municipal corporation and City of the First Class, (hereinafter “City”). Collectively, City and CTUIR may be referred to throughout this MOU as the “Parties.”

This MOU represents good faith voluntary commitments that are being made by the Parties in the spirit of cooperation and accommodation. The Parties are motivated by their belief that these commitments will mutually benefit the citizens of the Umatilla Indian Reservation and the City of Richland.

I. Recitals

WHEREAS, the Confederated Tribes of the Umatilla Indian Reservation, a federally recognized Indian Tribe, is a sovereign governmental entity with an interest in the preservation, protection, and perpetuation of its cultural heritage and other rights under federal and state law, including Treaty rights on lands ceded by the Treaty of 1855 with the Walla Walla, Cayuse, and Umatilla tribes (hereinafter “Treaty”), or otherwise within the CTUIR aboriginal use area; and

WHEREAS, the City of Richland is a First Class City incorporated under the laws of the State of Washington with all the powers granted to cities of the first class by the Constitution and general laws of the State and all powers implied thereby, located within the lands ceded by the Treaty of 1855 or otherwise within the CTUIR aboriginal use area; and

WHEREAS, the Parties entered into a Memorandum of Understanding for the Coordination of Tribal Involvement in the City of Richland’s Land Use Planning Process in 1994 (“1994 MOU”), and the Parties now desire to enter into a new MOU to replace that document; and

WHEREAS, the Parties share a mutual interest in educating the public regarding local culture, history, and the environment; and

WHEREAS, the Parties share a mutual interest in the protection of cultural and natural
resources consistent with CTUIR’s recognized Treaty Rights and the City’s jurisdiction over land within the geographical boundaries of the City of Richland’s Growth Management Area, and;

WHEREAS, the Parties also share a mutual interest in encouraging economic activity that enables the Parties to better achieve their mutual and individual interests; and

WHEREAS, the Parties deem it to be in their mutual best interest to collaborate in the development of specific projects, activities, and procedures to achieve shared interests including economic development, natural and cultural resource protection and treaty related activities; and

WHEREAS, nothing in this MOU affects the legal rights of the Parties, nor shall it confer any jurisdiction on the City of Richland over the CTUIR or CTUIR over the City of Richland.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties declare their respective objectives as follows:

II. Terms of Understanding

A. Government-to-Government Relationship

1. The Parties desire to establish a government-to-government relationship for the purpose of discussing a range of shared interests, including, but not limited to, productive use of environmental resources, economic development, protection of cultural and natural resources, and the protection, management and exercise of Treaty Rights within the City of Richland and its urban growth boundary. The CTUIR, represented by its Board of Trustees, and the City of Richland, represented by its City Council, will meet annually during the month of August to review the status of projects and procedures developed to implement the Parties’ shared interests. The Parties agree to alternate the hosting of this event, with the CTUIR to host in odd years and the City to host in even years.

2. In addition to the above annual meeting, the Parties agree to meet administratively, as deemed appropriate by the Executive Director of the CTUIR and the City Manager of the City of Richland, for the purpose of developing projects, activities, and procedures that will implement the vision of collaboration. For purposes of this MOU, an “administrative meeting” means a meeting between the management or staff from both Parties, exclusive of the governing boards or political appointees of either party.
B. Cultural & Archaeological Protections and Education

1. Under the 1994 MOU, a procedural manual to guide actions when encountering human remains was developed (hereinafter “Procedural Manual”). The Parties will work together to update the Procedural Manual to bring it current with relevant regulation, technology and information. The Parties will further ensure that the Procedural Manual does not conflict with applicable federal or state law, including RCW 68.50 related to Human Remains.

2. The Parties agree to cooperate, as necessary, when pursuing state and federal funding opportunities for the purpose of protection, preservation and perpetuation of cultural and natural resources, and for the development of cultural and archaeological educational programs related thereto.

C. Environmental Protections and Productive Use

1. The Parties recognize that each maintains interest in the land development process, and that each possesses the ability to influence the land development process. With this MOU, the Parties agree to cooperate, to the extent feasible, to encourage economic development opportunities and pursue projects for the protection of natural and cultural resources within the geographical boundaries of the City which are compatible with the CTUIR’s Treaty Rights.

2. The City will provide notice to the CTUIR of State Environmental Policy Act (SEPA) applications by including the CTUIR on the City’s permit notification distribution list. Further, should the CTUIR choose to make comments, the City will take into consideration CTUIR’s comments, including but not limited to comments related to the perceived impacts that an action might have on the CTUIR’s traditional hunting, fishing, and gathering grounds, cultural resources and ancestral remains.

3. The Parties agree to cooperate to identify, establish, and preserve access to traditional hunting, gathering and fishing grounds in accordance with the Treaty, as necessary and on a case by case basis.

4. The Parties agree to identify and pursue federal, state, and/or private funding opportunities for environmental protection, cultural protection, environmental educational programs, and cultural education programs, as feasible.
D. Voluntary Information Sharing

1. The City is committed to complying with all requirements of state and federal law with regard to notification obligations. To the extent that the following notifications are required by state or federal law, the City will continue to comply with the law as written or hereinafter amended. To the extent that the notice requirements are voluntary, the City, pursuant to this MOU, will provide the following notifications:

a. Include the CTUIR in distribution of State Environmental Policy Act (SEPA) and Washington Shoreline Substantial Development Permit notifications.

b. Provide the CTUIR with advance written notification of any non-emergency development or construction on municipally-owned property which involves subsurface disturbance to a depth of greater than 6 inches (below sod level) when such development or construction occurs within 0 to 1,320 linear feet of the mean high water levels of either the Columbia or Yakima Rivers.

   i. Unless D.1.c applies, notifications are not necessary within 250 to 1,320 linear feet of the mean high water levels for: colocation of utilities in existing utility trenches; maintenance within existing irrigation trenches; excavation to access existing utility vaults; maintenance or replacement of existing roadway, curb, gutter, sidewalk and paved trails; replacement of existing landscaping within existing location within developed parks and right-of-way; stump grinding; or when notification was provided of the project within the prior five years.

   ii. An expedited 14-day review of operational activities will occur for planting of new trees, installing concrete pads less than 14-feet in diameter, and installing signs requiring excavation of 5½ cubic feet or less.

   iii. If items suspected to be cultural resources are observed, cease activities occurring within 100 feet of the discovery in order to protect the integrity of such resources and notify the CTUIR Cultural Resources Protection Program and Washington Department of Archaeology and Historic Preservation (DAHP). Reasonable steps shall be taken to secure the area. No cultural resources will be further disturbed or transported from its original location, unless determined necessary, in consultation with the CTUIR and DAHP.
c. Provide advance written notification on any municipal project that includes direct federal funding, federal ownership, or when permitting would otherwise require compliance with the National Historic Preservation Act.

2. The CTUIR will voluntarily provide the City with the following information:

a. Map of published traditional places and names with cultural relevance. This list is not exclusive of all traditional places.

b. Educational resources describing traditional hunting and fishing practices.

E. Notice and Mitigation Recommendations

1. For proposed City projects within 1,320 lineal feet of the mean high water levels of either the Columbia or Yakima rivers, the following procedure will be followed:

a. Within 30 calendar days of receipt of notification, the CTUIR will advise the City in writing of all relevant concerns regarding the project, and include recommendations for efforts to identify the scope of potential impacts to cultural, natural or other Treaty resources and mitigation where it is clear that such impacts will result from the project. The CTUIR’s failure to respond after receipt of notification shall not constitute a waiver of CTUIR’s opportunity to provide input. The City may move forward with the project after 30 days have expired and no comments were received. Comments after the 30-day period may be considered if doing so would not unreasonably delay project implementation or if otherwise required by applicable state or federal law.

b. Upon receipt of written concerns from CTUIR and the corresponding mitigation measures, the City may elect to begin the project concurrent with implementing one of the CTUIR’s recommended mitigation measures. Should the City determine that any of the recommended mitigation measures are unfeasible, the Parties agree to meet administratively to identify possible revisions to the project and/or additional mitigation options that will address the items of concern identified by the CTUIR while striving to minimize mitigation expenses.

c. Should a meeting become necessary, the Parties will meet as soon as practicable to complete a preliminary assessment of known resources and to develop recommendations, both substantive and procedural, for addressing issues identified by the CTUIR.
2. Any notice to the CTUIR required by this Memorandum of Understanding shall be directed to the Executive Director, Confederated Tribes of the Umatilla Indian Reservation, 46411 Timine Way, Pendleton, OR 97801. Correspondence with the City of Richland shall be directed to the City Manager, City of Richland, P.O. Box 190, Richland, WA 99352.

F. Preference for Tribal Consultants

1. The City appreciates the value of knowledgeable consultants who possess true subject matter expertise. Therefore, when possible, the City will give preference to consultants who possess 1) Tribal affiliation and 2) knowledge of the Columbia Plateau when evaluating proposals from consultants to perform cultural and natural resource surveys, and subsurface testing, protection, or mitigation work as required under applicable law, or as otherwise deemed appropriate for projects identified under Section (D)(1)(b) of this MOU.

2. The City shall at all times comply with all laws prohibiting discrimination in the hiring process, and nothing in this Section shall be deemed to authorize or require the City to engage in any practice that violates state or federal discrimination laws.

G. Economic Development Activities and Projects

Understandings and Obligations of the Parties. The Parties hereby agree to undertake the following measures to achieve their common objectives of attracting and developing projects and activities when appropriate:

1. The Parties will review and coordinate on projects and activities that the Parties might have some interest in developing jointly.

2. Projects and activities may include development of property, including planning, land acquisitions, land transfers, and facilities development and construction, and/or development of services and infrastructure necessary to serve economic development properties the Parties have interest in.

H. Conflict Resolution

1. The Parties shall attempt in good faith to promptly resolve any dispute by discussion between their respective executives who have the authority to settle the controversy, and who are at a higher level of management than the persons with direct responsibility for administration of this MOU. Any party may give the other party
written notice of any dispute not resolved in the normal course of business. Within 15 days after delivery of the notice of dispute, the receiving party shall submit to the other a written response. The notice and the response shall each include, with reasonable particularity: (a) a statement of each party’s position and a summary of arguments supporting that position; and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within 30 days after delivery of the responding party’s written response to the notice of dispute, the executives of both Parties shall meet at a mutually acceptable time and place.

2. In the event that the Parties are unable to come to an understanding and resolve the dispute using the above resolution process, either party may cancel this memorandum upon giving 30 days’ written notice to the other party.

[Signature Page to Follow]
IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding on the 3rd day of September, 2015.

CITY OF RICHLAND

Cynthia D. Reents, ICMA-CM
City Manager

Approved as to Form:

Heather Kintzley
City Attorney

CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

Gary Burke,
Board of Trustees Chairman

Approved as to Form:

Naomi Stacy
Legal Counsel
CERTIFICATE

The undersigned, Gary Burke and N. Kathryn Brigham, hereby certify that they are the Chairman and Secretary, respectively, of the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation, and at a regular meeting of said Board of Trustees at the Board Chambers of the Nixyāawii Governance Center, Mission, Oregon, on the 31st day of August, 2015, a quorum of said Board was present and the following Resolution was regularly moved, seconded, and adopted by a vote of 8 for, 0 against, and 0 abstaining.

RESOLUTION

WHEREAS, the Board of Trustees is the governing body of the Confederated Tribes of the Umatilla Indian Reservation (Confederated Tribes) by 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; AND

WHEREAS, pursuant to Article VI, Section 1(a) of the Constitution and Bylaws, the powers of the Board of Trustees include the authority “to represent the Tribes and to negotiate with Federal, State and local governments”; AND

WHEREAS, pursuant to Article VI, Section 1(e) of the Constitution and Bylaws, the powers of the Board of Trustees include the authority “to exercise any rights and powers heretofore vested in the Confederated Tribes, but not expressly referred to in this Constitution, or any powers that may in the future be delegated by an agency of local, state or Federal government”; AND

WHEREAS, the City of Richland, a Washington municipal corporation, wishes to enter into a Memorandum of Understanding (MOU) with the Confederated Tribes for the purpose of good faith voluntary commitments in the spirit of cooperation and accommodation that will mutually benefit the citizens of the Umatilla Indian Reservation and the City of Richland; AND

WHEREAS, the Confederated Tribes entered into a MOU for the coordination of tribal involvement in the City of Richland’s Land Use Planning Process in 1994 and the City of Richland and Confederated Tribes desire to enter into a new MOU to replace that document; AND

WHEREAS, the Confederated Tribes and the City of Richland share a mutual interest in educating the public, protecting cultural and natural resources consistent with the Confederated Tribes reserved treaty rights, and encouraging economic activity and collaboration in the development of specific projects, activities, and procedures to achieve these shared interests; AND
WHEREAS, the MOU establishes terms of understanding for a government-to-government relationship and notification processes; AND

WHEREAS, on August 18, 2015 the Economic and Community Development Committee and on August 25, 2015 the Cultural Resources Committee reviewed and recommended the approval of the MOU to the Board of Trustees;

WHEREAS, a Board of Trustees held a work session on August 28, 2015 at which it reviewed the Memorandum of Understanding; NOW, THEREFORE, BE IT

RESOLVED, that the Board of Trustees approves the “Memorandum of Understanding for Cooperation Between the Confederated Tribes of the Umatilla Indian Reservation and the City of Richland,” attached as Exhibit 1; AND BE IT FINALLY

RESOLVED, that the Board of Trustees authorizes the Chair to sign all necessary documents to enter into this agreement;

AND, that said Resolution has not been modified amended or repealed and is still in full force and effect.

DATED this 31st day of August, 2015.

[Signature]
Gary Burke, Chairman
Board of Trustees

ATTEST:

[Signature]
N. Kathryn Brigham, Secretary
Board of Trustees

Exhibit 1: Memorandum of Understanding for Cooperation Between the Confederated Tribes of the Umatilla Indian Reservation and the City of Richland

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