

**INTERLOCAL AGREEMENT FOR PROVISION OF HISTORIC AND ARCHEOLOGICAL STUDY
SERVICES
BETWEEN PORT OF BENTON, WASHINGTON AND THE CONFEDERATED TRIBES OF THE
UMATILLA INDIAN RESERVATION**

This Interlocal Agreement is made and entered into by and between the Confederated Tribes of the Umatilla Indian Reservation (hereinafter "Tribes"), a federally recognized Indian Tribe, and the Port of Benton (hereinafter "Port"), a political subdivision of the State of Washington, pursuant to RCW 39.34 on this 31st day of March, 2017. The Port and Tribes are collectively referred to as "Parties".

1.0 Purpose.

- 1.1 The purpose of this agreement is to establish an interlocal agreement pursuant to RCW 39.34 between the Parties for the provision of historic and archeological study services to the Port by the Tribes' Cultural Resources Protection Program.

2.0 Work.

- 2.1 Each time the Port desires the services of the Tribes it shall first submit a request for work to the Tribes at the address indicated herein for review and approval by the Tribes. The request for work shall contain an accurate description of the project, maps and any other information of relevance to the project.
- 2.2 Upon review and approval of the request for work, the Tribes shall submit a statement indicating the scope of work to be performed and an accompanying budget. These documents shall indicate the work to be performed including all anticipated time, materials, and equipment necessary to carry out the project along with the terms of reimbursement including all estimated administrative costs and overhead expenses.

3.0 Reimbursement.

- 3.1 The Port shall reimburse the Tribes for all work performed by the Tribes under this Agreement in accordance with the budget approved for each project.
- 3.2 The Tribes shall submit billings to the Port, for work performed within a reasonable time after performance of the work, or as otherwise indicated in an approved budget for each project. The Port shall reimburse the Tribes within thirty (30) days of receipt of each billing from the Tribes.

3.0 Term.

- 3.1** This Agreement shall be in effect from the date of its execution and shall terminate on the 31st day of March, 2020.
- 3.2** This Agreement may be terminated by either party within ten (10) days written notice of its intent to terminate. Such termination shall not relieve the Port of its obligation to reimburse the Tribes for work performed prior to the effective date of termination.

4.0 Ownership/Confidentiality.

- 4.1** The Port shall own all reports provided it pursuant to this Agreement. All information contained within any such report that pertains to information concerning the location of archaeological sites or objects shall be kept confidential pursuant to the terms in section 4.2 and 4.3 of this Agreement. All other intellectual property, including but not limited to work product, shall be the property of the Tribes.
- 4.2** Some information and technology of the Tribes is confidential, proprietary, or otherwise a trade secret, including but not limited to information concerning the location of archaeological sites or objects and oral histories of Tribal members. Any information may be withheld by the Tribes if, in their sole discretion, they believe it may be subject to public disclosure under Washington's Public Disclosure Act (PDA) or otherwise, notwithstanding the consequences of withholding the information. Furthermore, the Port shall withhold from public disclosure any and all information obtained from the Tribes that is subject to an exclusion under Washington's PDA. Specifically, all oral histories, stories, and archeological information that is not obtained as a direct result of the investigation being conducted, shall be considered trade secrets of the Tribes as that term is defined in RCW 19.108.010 and the Port shall assert that as a basis for exemption in any request for information pursuant to *PAWS v. Univeristy of Washington*, 125 Wn.2d 243, and WAC 44-14-06002(7). In addition, the Port shall withhold from public disclosure all records, maps or other information identifying the location of any and all archaeological sites including information related to the study being conducted pursuant to RCW 42.56.300.
- 4.3** Each document or portion of document which the Tribe considers to be confidential information, proprietary or trade secret as defined in this

Agreement shall be conspicuously marked by the Tribe as "Confidential Information – Do Not Disclose" prior to delivery to the Port.

4.4 In the event the Port receives a request for disclosure of any information described in Section 4.2, or the Port is subject to legal process for the disclosure of the information, the Port shall provide written notice to the Tribes of the request or process in a timely manner to allow the Tribes an opportunity to respond, appear or intervene in any such process. The Tribes agree to join with the Port in opposing the disclosure of the information described in Section 4.2. In the event a court of competent jurisdiction determines the Port must disclose the requested information, then the Port may disclose the information without violating this Agreement, subject to any rights of appeal which the Tribes may elect to exercise.

4.5 In the event of any order or directive requiring the Port to disclose this protected information, the Tribes may terminate this Agreement immediately without notice and pursue any remedy provided by law.

5.0 No Third Party Beneficiaries.

5.1 The Port and the Tribes are the only parties to this Agreement and are the only parties entitled to enforce the terms of this Agreement. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

6.0 No Joint Venture.

6.1 Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture (or other association of any kind or agent or principal relationship) between the Parties. No party has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Agreement.

7.0 Merger Clause; Amendment; Waiver

7.1 The Agreement constitutes the entire agreement between the Parties on the subject matter thereof. There are no understandings, agreements, or representations, oral or written, not specified therein regarding the Agreement.

7.2 No waiver, consent, or amendment of terms of the Agreement shall bind either party unless in writing and signed by both parties, and all necessary approvals have been obtained. Waivers and consents shall be effective only in the specific instance and for the specific purpose given.

7.3 The failure of the Tribes to enforce any provision of the Agreement shall not constitute a waiver by the Tribes of that or any other provision.

8.0 Force Majeure.

8.1 Neither the Port nor the Tribes shall be held responsible for delay or default caused by fire, riot, acts of God, war, or any other cause which is beyond the Party's reasonable control. Either Party may terminate the Agreement upon written notice after reasonably determining that such delay or default will likely prevent successful performance of the Agreement.

9.0 Notice.

9.1 Tribes Contacts. Written correspondence addressed to the Tribes shall be sent to Confederated Tribes of the Umatilla Indian Reservation, 46411 Timine Way, Pendleton, OR 97801.

9.1.1 Technical contact. The CTUIR Program Manager of the Cultural Resources Protection Program, or his/her designee, shall serve as the CTUIR's Technical contact. He or she shall be the primary contact for matters such as project management, scope of work, task coordination/supervision, and so forth.

9.1.2 Administrative Contact. The CRPP Assistant Program Manager, Department of Natural Resources, or his/her designee, shall serve as the CTUIR's Administrative contact. He or she shall be the primary contact for matters such as contract compliance, financial requests, and modifications to the contract, contract termination, and so forth.

9.2 Port Contact. Port of Benton Executive Director or his/her designee shall serve as the primary contact with the Port for all matters associated with this project. Written correspondence shall be sent to:

Port of Benton
3250 Port of Benton Blvd.
Richland, WA 99354
(509) 375-3060

10.0 Dispute Resolution.

10.1 Upon mutual agreement between the Parties, any disputed matter may be submitted to mediation or arbitration. The arbitration may be either binding or non-binding. Nothing in this subsection shall be deemed a waiver of sovereign immunity by the Tribes in any form. Subsection 11 of this Agreement shall be the sole provision governing the waiver of sovereign immunity by the Tribes.

11.0 Limited Waiver of Sovereign Immunity.

11.1 Provided that all of the following conditions are met, the Tribes grant to the Port a limited waiver of its sovereign immunity to be sued under an explicit provision of this Interlocal Agreement:

11.1.1 The claim is made by Port, and not by any other party, whether an individual or an entity of any kind. The right to sue shall not be transferable.

11.1.2 The claim alleges a breach by the Tribes of one or more specific duties owed to the Port that is expressly assumed by the Tribes under the terms of this Agreement. No suit shall be had for any other reason.

11.1.3 The claim seeks either:

11.1.3.1 specific performance by the Tribes to bring the Tribes into compliance with the obligations or duties expressly assumed by the Tribes in the Agreement, provided the cost of performance does not exceed the amount originally anticipated in the scope of work or accompanying budget; or

11.1.3.2 payment of a monetary judgment arising from a breach of an explicit duty owed by the Tribes to the Port under the terms of this Agreement, which shall not exceed the amount originally anticipated in the scope of work or accompanying budget. No other monetary compensation shall be permitted.

11.2 Nothing in this section shall affect the rights under section 4.2 herein

12.0 Liability and Immunity of the Port.

12.1 The Port herein agrees to be sued under this explicit provision of this Interlocal Agreement if, and only if the claim is made by Tribe, and not by any other party, whether an individual or an entity of any kind and the claim alleges a breach by the Port of one or more specific duties owed to the Tribe that is expressly assumed by the Port under the terms of this Agreement. The right to sue shall not be transferable. The Port shall not be liable to the Tribes for any other act or omission resulting from or connected with this Agreement.

12.2 Any suit by the Tribes can only be for specific performance by the Port to bring the Port into compliance with the obligations or duties expressly assumed by the Port in this Agreement. Any and all cost of performance or payment to the Tribe shall not exceed the amount originally agreed to in writing by the parties and/or the accompanying budget. No other monetary compensation shall be permitted.

12.3 Nothing in this section shall affect the rights under section 4.2 herein

13.0 Tribes' Employees.

13.1 The Port shall have no control over the manner, method or details of performance or the selection, direction or dismissal of the Tribes' employees, subcontractors or agents. The Tribes shall make all proper income tax and social security deductions and payments and file all returns and forms required in connection therewith, and assume full responsibility for injuries occurring to its employees, subcontractors and agents while in the course of their employment, contractual relationship or agency.

IN WITNESS WHEREOF, the parties hereto have executed this **AGREEMENT** as of the latest day and year written below.

Dated this 6 day of July, 2017.

PORT OF BENTON.



SCOTT D. KELLER
Executive Director

Dated this 21st day of June, 2017.

Debra L. Croswell
Name: Debra L. Croswell
Title: Interim Executive Director
Confederated Tribes of the Umatilla Indian Reservation