



Agenda
City Council Workshop Meeting
Tuesday, April 25, 2023
Richland City Hall ~ Council Chambers
625 Swift Boulevard

City Council Workshop - 6:00 p.m.

Agenda Items:

1. Traffic Impact Fee Update
 - Pete Rogalsky, Public Works Director
2. Richland Police Station
 - Joe Schiessl, Deputy City Manager
 - Brigit Clary, Chief of Police
3. Confederated Tribes of the Umatilla Indian Reservation Memorandum of Agreement for Land Reconveyance
 - Joe Schiessl, Deputy City Manager
4. Preparation of City Property at 24 Lawless Drive for Disposition
 - Kerwin Jensen, Development Services Director

Adjournment

This meeting will be broadcast live on [CityView Channel 192](#) on the City's website and on the [City's YouTube Channel](#).

Richland City Hall is ADA accessible. Requests for sign interpreters, audio equipment, and/or other special services must be received 48 hours prior to the meeting by calling the City Clerk's Office at 509-942-7389.



COUNCIL WORKSHOP COVERSHEET

Council Date: 4/25/2023

Department: Public Works

Core Focus Area 2 - Manage & Maintain Infrastructure & Facilities

Subject:

Traffic Impact Fee Update

Summary:

Chapter 12.03 of the Richland Municipal Code describes the City's Traffic Impact Fee Program (the "Program"). The Program provides an effective, fair allocation of costs for street system improvements needed to support new development.

From time to time, the Program requires updating to reflect updates to transportation planning, changes in project costs, and changes in development progress and forecasts. In the past two years there have been several significant changes calling for an update to the Program.

With the help of a consultant, staff has completed analysis in support of recommended changes and conducted public outreach, and is now ready to present the package of updates to Richland City Council. This workshop discussion will provide Council with the background to consider the proposed Program updates in advance of receiving an ordinance for consideration at a future Council business meeting.

Attachments:

- I. Transportation Impact Fee Program Update Presentation



Transportation Impact Fee Program Update

City Council
April 28, 2023

Meeting Purpose

- Update the City Council on the current state and accomplishments of the City's Traffic Impact Fee Program
- Explain the City staff's proposal to update fees for all four zones in the program
- Update the City Council on staff's outreach
- Address Questions or Concerns from the Council

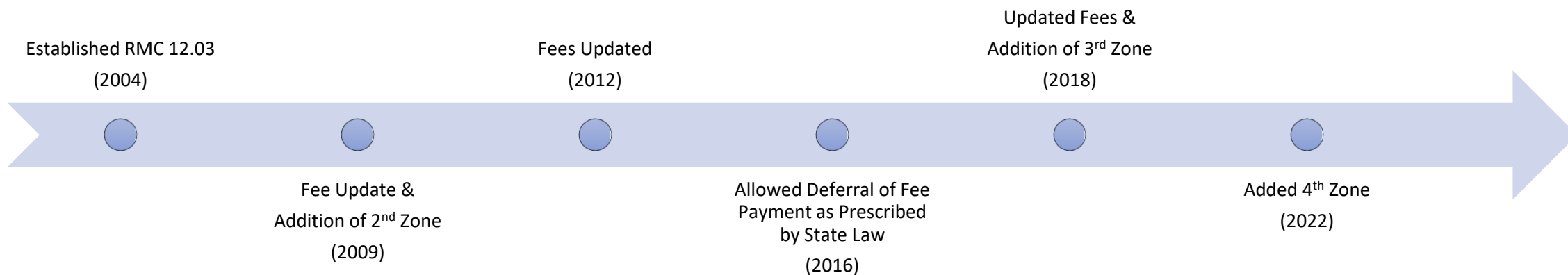
Program Objectives – RMC 12.03.010

- Achieve a transportation system meeting the level of service adopted in the City's Comprehensive Land Use Plan
 - Congestion measure – Level of Service "D"
- Administer a fair assignment of system costs attributable to new development



RMC 12.03 History

- Established in 2004
 - One Zone – Keene Valley East of Queensgate
- 2009 Fee update and addition of second zone
- 2012 Updated fees
- 2016 Allowed deferral of fee payment as prescribed by State law
- 2018 Updated fees and added third zone
- 2022 Added fourth zone



RMC 12.03 – Program Features

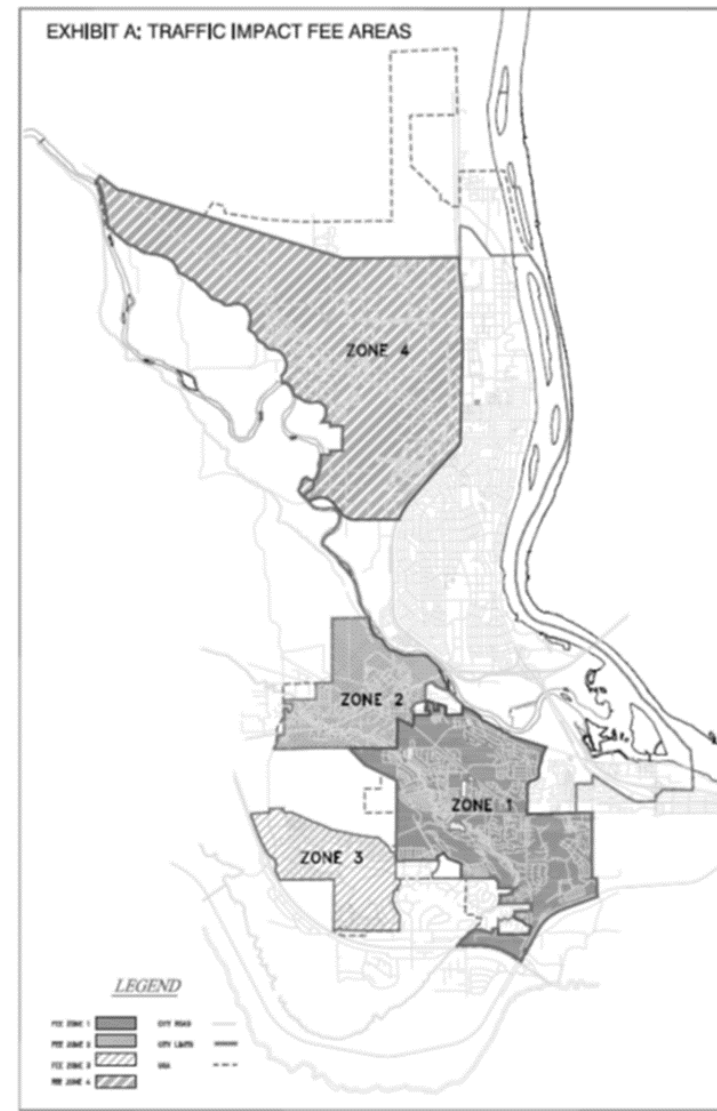
- Simplifies project permitting
- Spreads funding burden to all contributing parties on the same terms
- Provides reimbursement funding for developers who construct significant improvements with broad benefits
- Provides funding source to match other City funds and third-party grants to accomplish significant projects
- Structured in four zones for efficiency and accountability
- Shields the City from burden of correcting ineffective mitigation assignment process through SEPA

Program Accomplishments - Spending

- Eight active latecomer agreements reimbursing developers
- Two retired latecomer agreements
- Zero overhead, administrative charges
- City use of funds
 - Keene Road Widening / Keene Road / Westcliffe Traffic Signal
 - Keene Road / Elementary Street Traffic Signal
 - Bellerive Extension
 - Queensgate Corridor Study, Queensgate Roundabouts and Street Improvements
 - Center Parkway – Leslie to Steptoe
 - Duportail / Queensgate and Duportail / Keene Intersection Improvements

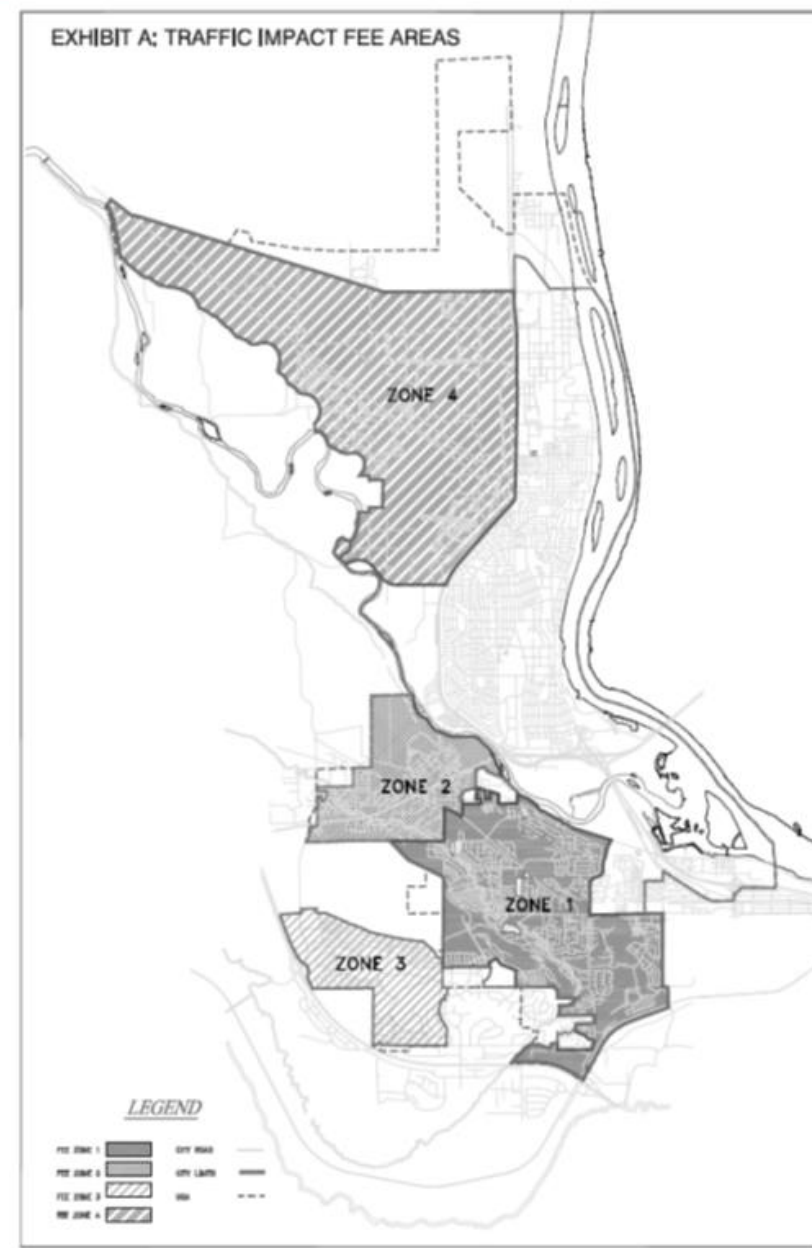
Zone Characteristics

- Zones 1 & 2
 - Large No. of discrete property owners / developers
 - High risk of incomplete impact mitigation without program
- Zones 3 & 4
 - Simple ownership (NorAm, City)
 - Lower risk of incomplete impact mitigation
 - Large mitigation package presents challenge to owner



Driving Issues for Update

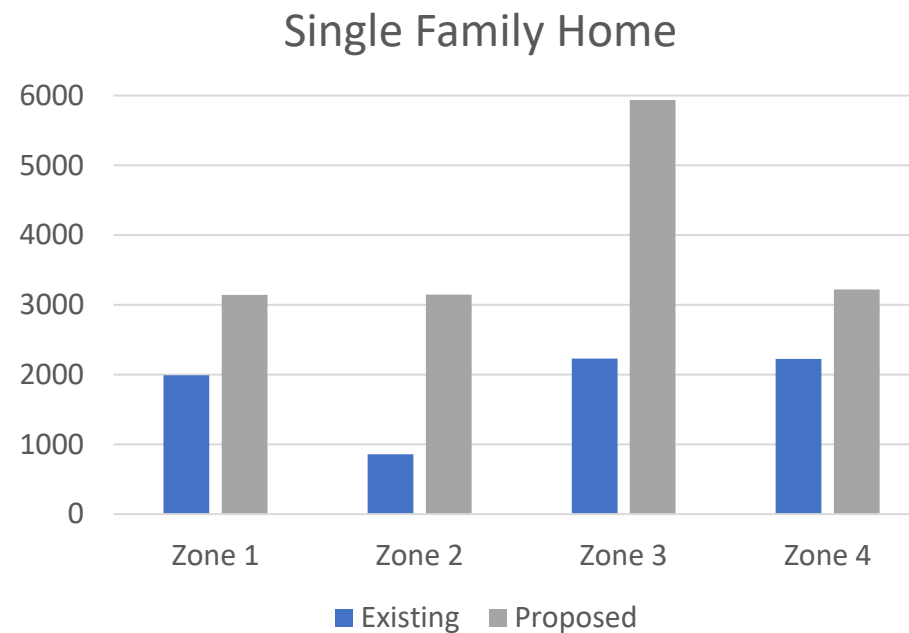
- Badger Mountain South traffic impact analysis mitigations – mostly Zone 3
 - West Richland, Benton County Obligations
- DNR Property Planning – mostly Zone 2
- Completed improvements
- Added projects
- Construction cost escalation factored into fee



Proposed Changes to Fees – Option 1

Fee for single family home

- **Zone 1:** \$3,142.05 (*existing \$1,991.25*)
- **Zone 2:** \$3,145.77 (*existing \$854.81*)
- **Zone 3:** \$5,936.18 (*existing \$2,229.09*)
- **Zone 4:** \$3,218.86 (*existing \$2,222.43*)

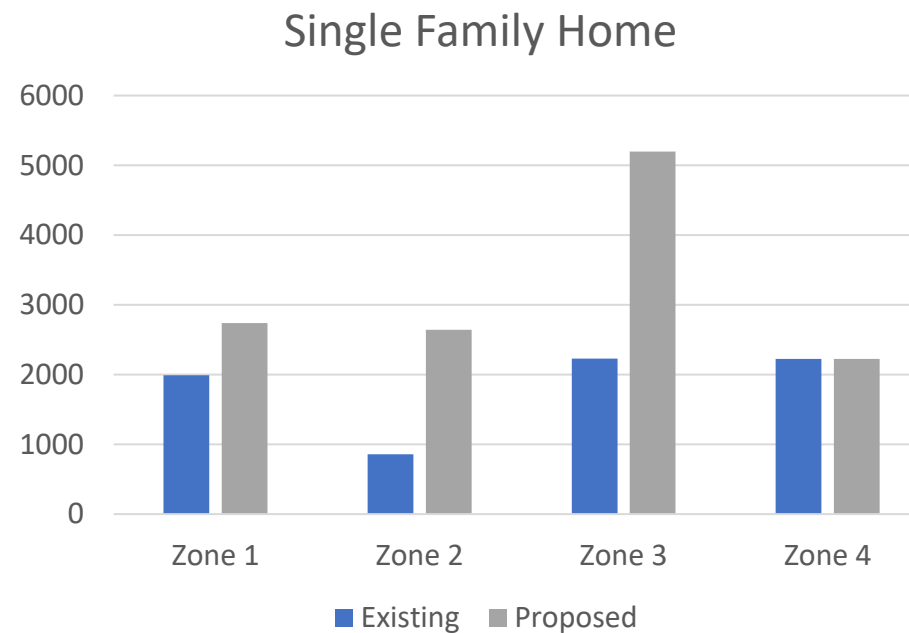


Proposed Changes to Fees – Option 2

Fee for single family home

- **Zone 1:** \$2,738.24 (*existing \$1,991.25*)
- **Zone 2:** \$2,641.19 (*existing \$854.81*)
- **Zone 3:** \$5,196.11 (*existing \$2,229.09*)
- **Zone 4:** \$2,222.43 (*existing \$2,222.43*)

* *no escalation to year of project delivery*



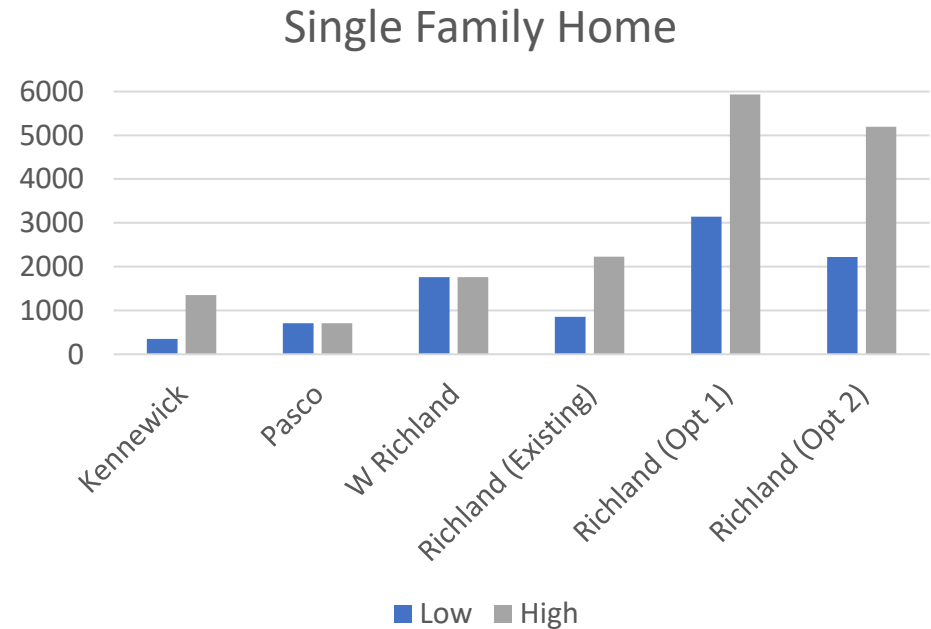
Outreach

- February 7 Tri-Cities Homebuilder's Association
 - Attended by homebuilders, developer engineers, realtors
 - Feedback
 - Concern with large increases
 - Support for zoned system – accountability
 - Support for environmental process streamlining
 - Concern with impact to affordable housing
 - Concern with perceived bias in favor of land developers
- NorAm contact



Fee Comparison – Tri-Cities

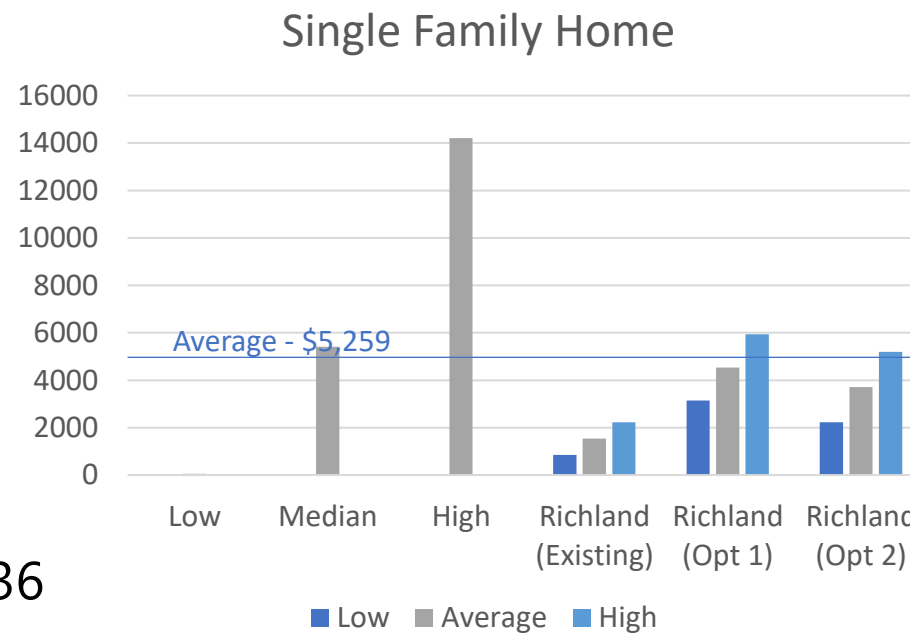
- Kennewick - \$346 - \$1,346
- Pasco - \$709
- West Richland - \$1,762
- Richland (*existing*) - \$855 - \$2,229
- Richland (*proposed – option 1*) - \$3,142 - \$5,936
- Richland (*proposed – option 2*) - \$2,222 - \$5,196





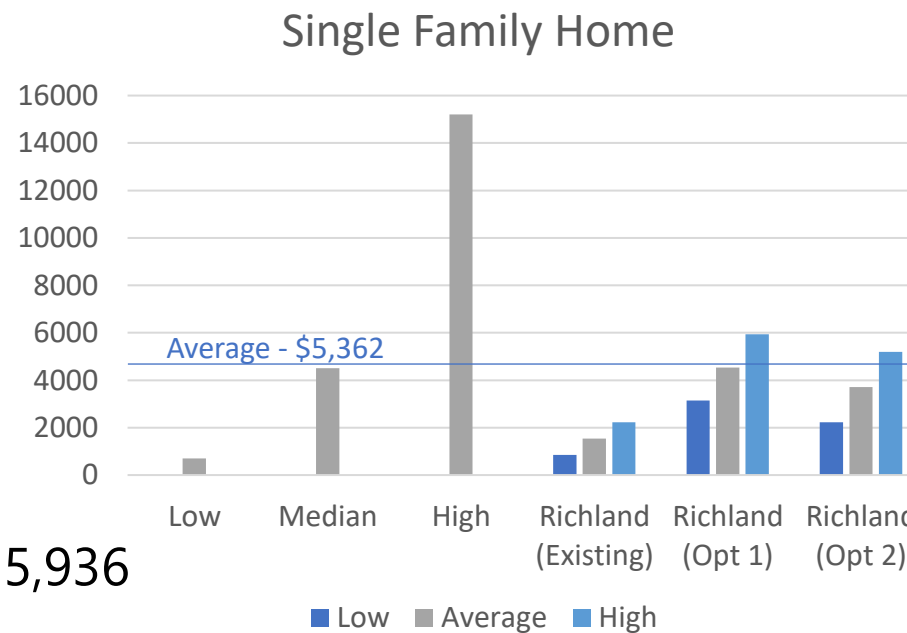
Fee Comparison – Population 40 – 90k

- 15 Cities
- High - \$14,204
- Low - \$ 0
- Average - \$5,259
- Median - \$5,407
- Richland (*existing*) - \$855 - \$2,229
- Richland (*proposed – option 1*) - \$3,142 - \$5,936
- Richland (*proposed – option 2*) - \$2,222 - \$5,196



Fee Comparison – Washington State

- 78 Cities & 5 Counties
- High - \$15,210
- Low - \$709
- Average - \$5,362
- Median - \$4,500
- Richland (*existing*) - \$855 - \$2,229
- Richland (*proposed – option 1*) - \$3,142 - \$5,936
- Richland (*proposed – option 2*) - \$2,222 - \$5,196





Path Forward

- Council consideration of Ordinance
 - May 16 & June 6
- Fee Collection – proposed effective date - September 1



COUNCIL WORKSHOP COVERSHEET

Council Date: 4/25/2023

Department: Deputy City Manager

Core Focus Area 2 - Manage & Maintain Infrastructure & Facilities

Subject:

Richland Police Station

Summary:

Council and staff have had several high-level discussions regarding a potential project to replace the Richland Police Station to meet operational needs. Tonight's discussion is intended to focus on the financial aspect of the potential project.

Attachments:



COUNCIL WORKSHOP COVERSHEET

Council Date: 4/25/2023

Department: Deputy City Manager

Core Focus Area 5 - Maximize Community Amenities

Subject:

Confederated Tribes of the Umatilla Indian Reservation Memorandum of Agreement for Land Reconveyance

Summary:

The City of Richland has formally cooperated with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) since 1994 when the parties entered into a memorandum of understanding (MOU) regarding land use permitting. The original 1994 MOU was replaced in 2015 with a new MOU via Richland Resolution No. 154-15 and CTUIR Resolution No. 15-055. The 2015 MOU covers a number of subject areas and defines a formal government-to-government relationship between the City of Richland and CTUIR. The 2015 MOU works well for each party and the relationship between the parties is strong.

A new Memorandum of Agreement (MOA) has been purposed to supplement the existing 2015 MOU. The purpose of the proposed MOA is to establish a common understanding between CTUIR and various local Tri-Cities agencies, including the cities of Richland, Kennewick, Pasco, and Benton and Franklin Counties, regarding a shoreline reconveyance effort. The Tri-Cities Industrial Council (TRIDEC) is leading the shoreline reconveyance effort and has worked over the last year to facilitate a technical staff team represented by each agency. The team's work is represented in the proposed MOA.

The draft MOA is limited to lands impacted by reconveyance. The City has requested three (3) properties in the draft reconveyance proposal: the property containing the REACH Museum in Columbia Park West to our corporate boundary with the City of Kennewick south of Columbia Park Drive; a narrow strip of land connecting Carrier Road to Columbia Point South; and existing unnecessary federal flowage easements.

The terms of the MOA are not unfamiliar to the City. Similar terms were utilized in another recent reconveyance effort. When Richland and Port of Benton acquired 1,341 acres from the Department of Energy for industrial development, certain expectations for land management, consultation, and environmental review were recorded as deed restrictions. These obligations are necessary from CTUIR's perspective to maintain an equivalent level of protection as is currently provided by federal law and treaty rights.

CTUIR recommends that each local government enter into the proposed MOA as part of the reconveyance effort prior to federal legislation being introduced. On April 8, 2023, CTUIR and City officials met to discuss the proposed MOA. There was general consensus that the City should keep the existing 2015 MOU unchanged and adopt the draft MOA as a separate agreement. Another option is to combine the 2015 MOU and the draft MOA into a single agreement. Staff supports the recommendation of CTUIR to adopt the MOA as a separate instrument. There will be limited opportunities for conflict between the 2015 MOU, the 1340-acre deed restrictions, and the reconveyance MOA. The most restrictive language will prevail in case of conflict.

Deputy City Manager Schiessl is a member of the TRIDEC technical team and participated in the MOA negotiations between the parties.

Attachments:

1. 2015 CTUIR MOU
2. Proposed CTUIR MOA for Land Reconveyance
3. Exhibit I to Draft Land Reconveyance MOA - Napúutkwit Ground Disturbing Protocols

**MEMORANDUM OF UNDERSTANDING
FOR COOPERATION BETWEEN
THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION
AND
THE CITY OF RICHLAND**

CONTRACT NO. 204-15

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 Timíne 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]

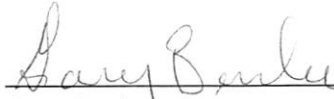
IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding on the 3rd day of September, 2015.

CITY OF RICHLAND



Cynthia D. Reents, ICMA-CM
City Manager

**CONFEDERATED TRIBES OF THE
UMATILLA INDIAN RESERVATION**



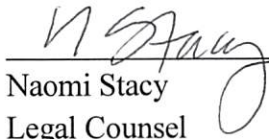
Gary Burke,
Board of Trustees Chairman

Approved as to Form:



Heather Kintzley
City Attorney

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 Nixyáawii 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.


Gary Burke, Chairman
Board of Trustees

A T T E S T:

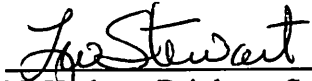

N. Kathryn Brigham, Secretary
Board of Trustees

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

<u>Name</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Leave</u>
Gary Burke, BOT Chairman				
Leo Stewart, BOT Vice Chairman	X			
Aaron Hines, BOT Treasurer	X			
Kat Brigham, BOT Secretary	X			
Justin Quaempts, BOT Member	X			
Bob Shippentower, BOT Member	X			
Armand Minthorn, BOT Member	X			
Woodrow Star, BOT Member	X			
Alan Crawford, General Council Chairman	X			

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 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

**MEMORANDUM OF AGREEMENT
BETWEEN THE
CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION
AND XXXX
REGARDING COLUMBIA RIVER SHORELINE RECONVEYANCE LEGISLATION**

WHEREAS, Benton County, the City of Kennewick, the City of Pasco, the City of Richland, Franklin County, and the Port of Pasco, Washington (the “local municipalities”) have an interest in having certain lands conveyed to them from the U.S. Army Corps of Engineers through a legislative action known as Columbia River Shoreline Reconveyance; and

WHEREAS, Tri-City Development Council (TRIDEC), an organization that works to improve the economic health of the Tri-Cities area by promoting economic diversification, job creation and retention, and advocates and leads the Tri-Cities community on issues of economic importance, had worked to develop draft federal legislation to support the local municipalities’ land conveyance requests and has lead consultation efforts between the local municipalities and the Confederated Tribes of the Umatilla Indian Reservation; and

WHEREAS, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) is a federally recognized Indian Tribe that consists of a confederation of the Cayuse, Umatilla and Walla Walla Tribes.

WHEREAS, the Tri-Cities area is within the original homeland of the Walla Walla peoples. These lands were ceded to the United States government in the Walla Walla Council Treaty of 1855, 12 Stat. 945. Pursuant to Article 1 of the Treaty, the CTUIR reserved perpetual off-reservation rights to fish at usual and accustomed stations, and to hunt, gather, and pasture livestock on unclaimed lands, as well as all activities related thereto, such as camping. The United States government has a trust responsibility to the CTUIR and accompanying fiduciary responsibilities to ensure that tribal resources are managed to protect and uphold CTUIR interests. The trust responsibility is a legally enforceable fiduciary obligation on the part of the United States to protect tribal treaty reserved rights, lands, assets, and resources, as well as a duty to comply with the mandates of federal law related thereto; and

WHEREAS, the CTUIR, TRIDEC and the local municipalities have held several meetings together in 2019, 2020, 2021, and 2022 to discuss and address each other’s concerns and issues and this MOA along with legislative language for the Columbia River Shoreline Reconveyance addresses those concerns; and

WHEREAS, when lands are transferred out of federal ownership and control, the trust responsibilities and fiduciary obligations of the United States are lost with respect to future non-federal management of those lands. The CTUIR has expressed their concerns about the transfer of lands out of federal ownership because their ability to exercise some of their reserved treaty rights may be limited, and the federal trust responsibility also has limited applicability; and

WHEREAS, the CTUIR has an inherent responsibility to protect and manage their treaty reserved rights and cultural and natural resources under the Treaty of 1855 for the future of the tribes and tribal members; and

WHEREAS, the CTUIR, acting through its Board of Trustees, has agreed to enter into this Memorandum of Agreement (MOA) pursuant to the authority of Article VI, Section 2 of the Constitution and Bylaws of the Confederated Tribes of the Umatilla Indian Reservation, adopted on November 4, 1949 and approved December 7, 1949, as amended; and

WHEREAS, the XXX has agreed to enter into this MOA and is a municipal government incorporated under the laws of the State of Washington with the powers granted by the Constitution and general law of the State, and which has requested lands for conveyance that are located within lands ceded by the CTUIR in its Treaty of 1855 and within the CTUIR aboriginal use area; and

WHEREAS, by entering into this MOA, the CTUIR and XXX, collectively known as the Parties, agree to collaborate to avoid adverse impacts that the XXX's land conveyance may have on the CTUIR's treaty rights, natural and cultural resources; and

WHEREAS, the CTUIR and XXX will work to build a strong partnership, which will reflect 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 XXX desire to work together, being respectful of each other's values and goals, and do so by setting forth commitments in this MOA that provide a framework for fostering continued coordination and consultation between the Parties; and

WHEREAS, the Parties deem it to be in their mutual best interest to collaborate and consult in the development of specific projects, activities, and procedures to achieve shared interests in lands conveyed to them from the Columbia River Shoreline Reconveyance legislation; and

WHEREAS, this MOA represents commitments that are being made by the Parties in partnership to perpetuate CTUIR reserved treaty rights, cultural heritage, land management, and promote economic development and public recreation. The Parties believe that by working in partnership, mutual benefit will be experienced by both the CTUIR and XXX.

WHEREAS, nothing in the MOA affects the legal rights of the Parties, except as expressly agreed to herein, nor shall it confer any jurisdiction on XXX over the CTUIR or the CTUIR over XXX with the exception of the exercise and access of CTUIR reserved treaty rights.

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

STIPULATIONS

I. Government-to-Government Relationship

- A. The Parties will establish a government-to-government relationship for the purpose of discussing a range of shared interests, including, but not limited to, protection and exercise

of treaty reserved rights, protection and management of cultural and natural resources, tribal access for fishing and gathering sites, tribal history and interpretation, and economic development including tourism, recreational, and community development within the XXX and its urban growth boundary.

The CTUIR, represented by its Board of Trustees, and the XXX, represented by its XXX Council, will meet annually 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 even years and XXX to host in odd years.

- B. In addition to the above annual meeting, the Parties agree to meet administratively, as approved through their respective management structures, for the purpose of carrying out the intent of this MOA and otherwise developing projects, activities, and procedures that will implement collaboration. For purposes of the MOA, an "administrative meeting" means a meeting between management staff or other staff as deemed appropriate for the subject matter from both Parties, exclusive of the governing boards or political appointees of either party.

II. Protection and Exercise of CTUIR Reserved Treaty Rights

- A. The Parties agree to address ongoing protection and exercise of treaty reserved rights and cultural resources through consultation meetings and follow Exhibit 1 of this MOA (Napiutkwit Ground Disturbing Protocols). Meetings will be held bi-annually, and as needed, to provide updates, share information, and receive input on the conveyed land(s), with a particular focus on any land modifications or land use changes being considered and any potential actions that could impact treaty reserved rights and/or cultural resources.
- B. XXX agrees, in developing management decisions regarding transferred lands, to take into account the ability of the CTUIR to access such lands for the purpose of exercising its treaty-reserved rights, and to pursue mutually agreeable solutions to maintain and provide tribal access where feasible.

III. Protection and Management of Cultural and Natural Resources

- A. The CTUIR and XXX will set forth conditions for ongoing consultation regarding cultural resources on the lands conveyed to XXX and follow Exhibit 1 of this MOA. Lands conveyed will be managed in a manner consistent with current and future land use designations, with applicable federal, state and local laws and with the conditions of a cultural resources clearance process that follows a process similar to the National Historic Preservation Act (NHPA) Section 106.
- B. XXX commits that for any action taken that may trigger a State Environmental Policy Act (SEPA) review on lands conveyed, XXX will consult with the CTUIR early and before initiating a SEPA application, and include an analysis of any potential impacts to treaty rights and cultural and natural resources.
 - i. XXX will provide notice to the CTUIR of SEPA applications by including the CTUIR on the XXX's permit notification distribution list. Further,

should the CTUIR choose to make comments, XXX will take into consideration the 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 and natural resources and ancestral remains.

- C. Develop a long-term strategy and management plan to protect and preserve cultural and natural resources for lands conveyed to XXX.
 - i. The Parties will develop a strategy and management plan within one year of land being conveyed to XXX. Shoreline lands will have a management approach that takes into consideration recreation, all cultural and natural resources – fish, wildlife, native plants and medicines, archaeological sites, historic properties of religious and cultural significance – an must comply with state laws and CTUIR treaty reserved rights. The plan should also include access locations to treaty fishing and gathering areas.
 - ii. The Parties will work together to obtain funding for restoration and habitat enhancement projects.

IV. Tribal History and Interpretation

- A. The CTUIR will work with XXX to create a stronger presence of CTUIR history in the Tri-Cities area through collaboration on interpretation projects, public education and outreach events and activities.
- B. The Parties will work together to obtain funding for these projects and activities.

V. Economic Development including Tourism, Recreational and Community Development

- A. The Parties recognize that each maintains interest in the land development process, and that each possess the ability to influence the land development process. With this MOA, the Parties agree to cooperate, to the extent feasible, to encourage economic development opportunities and pursue projects for recreation and for the protection and enhancement of natural and cultural resources which are compatible with the CTUIR's treaty reserved rights.
- B. The Parties will review and coordinate on projects and activities that the Parties have interest in potentially developing jointly.
- C. Such 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 service economic development and recreation properties the Parties have interest in.

VI. Conflict Resolution

- A. 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 MOA. 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 (a) a statement of each party's position and a summary of facts 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.

- B. In the event the Parties are unable to mutually resolve the dispute using the above resolution process, either party may cancel this memorandum upon 30 days written notice to the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Agreement on the ____ day of _____, 2022.

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

FOR: XXX

N. KATHRYN BRIGHAM, Chair
Board of Trustees

XXX

EXHIBIT 1

NAPIÚTKWIT GROUND DISTURBING PROTOCOLS

The *Napiútkwit* Ground Disturbing Protocols will be overseen by the *Napiútkwit* Committee and shall consist of representatives from the Confederated Tribes of the Umatilla Indian Reservation's Cultural Resources Protection Program. The *Napiútkwit* Committee will meet once a month with a designated representative from TRIDEC and **XX**, the Shoreline Reconveyance local municipality land recipient, as land are proposed to be developed, improved, or otherwise involve ground disturbance work. The purpose of the meeting will be to discuss ground disturbing activities and coordinate how to best comply with the cultural resource protection procedures below as agreed up on in the Shoreline Reconveyance Memorandum of Agreement (MOA). It is noted the land has been transferred with the intent of development, recreation and conservation. It is not the intent of the *Napiútkwit* Committee to hold up development projects. The only interest of the *Napiútkwit* Committee is to ensure the protection of cultural resources through identification, evaluation and/or relocation.

The land owners are responsible for funding compliance with the protocol.

1. Project Location Planning. Prior to the selection of potential locations the **XX** (Shoreline Reconveyance local government land recipient) shall consider the likelihood of the project impacting burial sites and cultural resources that may be within or adjacent to the proposed project's area of potential effect. Methods to be involved in making this assessment may include but not be limited to literature reviews, oral history reviews, archaeological survey and/or testing, and remote sensing as recommended and agreed upon by the *Napiútkwit* Committee.
2. Selected Project Location. Once a preferred project location (area of potential effect) has been chosen, the *Napiútkwit* Committee shall agree upon the appropriate level of cultural resource investigation to be conducted. Methods to be involved in this assessment may include but not be limited to literature reviews, archaeological survey and/or testing, monitoring, and/or remote sensing investigation.
 - a. Any cultural resources work required must comply with applicable professional standards. All contractors shall comply with the Secretary of Interior professional qualification standards at 36 CFR 61.
 - b. The associated cultural resource report must be sent to the CTUIR and the Washington Department of Archaeology and Historic Preservation (DAHP) for review. The CTUIR shall review and either concur or not concur with the findings of the report within 30 days.
 - c. Clearance shall be granted by the DAHP if one of the following conditions is satisfied:
 - i. The action has no potential to cause an effect to cultural resources;
or
 - ii. The action has no effect to cultural resources; or
 - iii. The action will have no adverse effect to cultural resources; or

- iv. The action will have an adverse effect to cultural resources, then one of the following actions will be taken:
 - a. Avoid the impact to cultural resources;
 - b. Minimize the effects of the project to the cultural resource; or
 - c. Mitigate through the development of a data recovery plan, as approved by the CRRC to include relocation of the cultural material to resolve those effects.
- 3. 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. Reasonable steps shall be taken to secure the area. No cultural resources will be further disturbed or transported from its original location, unless approved by the CTUIR & DAHP.

Contact the CTUIR to determine the next steps. These may include, but shall not be limited to, documentation, avoidance, excavation, determining site eligibility, or no additional work needed. Activities in the area of the find may resume only after receipt of written approval from the DAHP.
- 4. Exempted Notifications. If a project does not include direct federal funding, federal ownership, or when permitting would otherwise require compliance with the National Historic Preservation Act or within a documented cultural resources site, the following notifications are not necessary when subsurface disturbance is at a depth greater than six (6) inches, below sod level, and when development or construction occurs within [0 or 250] to 1,320 linear feet of the mean high water levels of the Columbia River for:
 - a. Colocation of utilities in existing utility trenches;
 - b. Maintenance within existing irrigation trenches and canals;
 - c. Excavation to access existing utility vaults;
 - d. Maintenance or replacement of existing roadway, curb, gutter prism, sidewalk and paved trails with no disturbance of native soil;
 - e. Replacement of existing landscaping within existing location within developed parks and right-of-way;
 - f. Stump grinding; or
 - g. Notification of the exact same project was provided to the CTUIR within the prior five years.
- 5. Inadvertent Discoveries. Follow the inadvertent discovery field protocol below.
- 6. These projects will be subject to archaeological consultant fees based on clearance work required.
- 7. For projects meeting the definition of a federal undertaking as defined by 36 CFR 800.16, the National Historic Preservation Act Section 106 process will be followed.

Commented [TFF1]: City of Kennewick MOU is 0 and City of Richland MOU is 250

**Napiútkwit* means legacy, inheritance, and things that are: taught, cherished, heirloom, teachings, guidance.

INADVERTENT DISCOVERY FIELD PROTOCOLS

[To be inserted]



COUNCIL WORKSHOP COVERSHEET

Council Date: 4/25/2023

Department: Development Services

Core Focus Area 3 - Increase Economic Vitality

Subject:

Preparation of City Property at 24 Lawless Drive for Disposition

Summary:

The City owns a six-acre property at 24 Lawless Drive that is surplus to the City's needs. The property does not currently have a comprehensive planning or zoning designation. The City has retained a consultant to complete a traffic analysis and file a comprehensive plan amendment application on behalf of the City for this year's docket. Tonight's discussion is to evaluate a proposed designation for the property prior to initiating the comprehensive plan and zoning processes.

Attachments:

I. Vicinity Map



FRED MEYER

24 LAWLESS DRIVE
APPROX. 6 ACRES

McDONALD'S

