

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into as of the date shown below by and between the COWLITZ INDIAN TRIBE, a federally recognized Indian tribe ("Tribe"), and the RIDGEFIELD SCHOOL DISTRICT NO. 122 ("School District"), a political subdivision of the State of Washington (collectively, the "Parties").

### 1.0 INTRODUCTION

- 1.1 The Tribe is a federally recognized Indian tribe which is in the process of applying to have land taken into trust by the United States Department of the Interior, which land is within Clark County, Washington, and is within the School District's geographic service area ("Clark County Site").
- 1.2 The Tribe presently is evaluating a long-term economic development plan which would include planning for the ultimate development of all tribal properties, including the Clark County Site.
- 1.3 As a recognized Indian tribe, the Tribe has sovereign immunity and is not subject to state and local laws and regulations. Nonetheless, the Tribe has demonstrated its commitment to an open government-to-government relationship with Clark County by voluntarily entering into a Memorandum of Understanding, executed March 2, 2004, with the County (the "Tribe/County MOU").
- 1.4 The Tribe/County MOU, particularly provisions 11.1 and 12.1, includes specific commitments made by the Tribe in consideration of the public services provided by the School District.
- 1.5 The Tribe and the School District wish to further delineate the Tribe's commitment to mitigate impacts to the District from any residential development on land within the School District's geographic service area.
- 1.6 The Parties intend for this MOU to supplement and be consistent with the Tribe/County MOU.

### 2.0 FORMAT OF MOU

This MOU contains the various understandings between the Parties as set forth below.

### 3.0 SCHOOL IMPACT FEES

In the event the Tribe constructs single family or multi-family residential housing on land within the School District's geographic service area, the Tribe shall pay school impact fees to the County consistent with those fees set forth in the Clark County School Impact Fee Ordinance, chapter 40-6 of the Clark County Unified Development Code, which is attached to this MOU as Exhibit A. Any expenditure by the School District of school impact fees received pursuant to this MOU shall be consistent with chapter 40-6 of the Clark County Unified Development Code.

### 4.0 LIMITED WAIVER OF TRIBAL SOVEREIGN IMMUNITY

The Tribe will waive its sovereign immunity in favor of the School District to address disputes which arise out of this MOU. The Tribe's governing body shall execute a formal Resolution of Limited Waiver of Sovereign Immunity substantially identical to the Resolution attached to this MOU as Exhibit B.

### 5.0 DISPUTE RESOLUTION

- 5.1 **Meet and Confer Process.** In the event that any party ("Initiating Party") believes that the other has committed a possible violation of this MOU or desires to reopen negotiations of any provision

hereof, it may request in writing that the Parties meet and confer in good faith for the purpose of attempting to reach a mutually satisfactory resolution of the problem or issue within fifteen (15) days of the date of service of said request.

**5.2 Notice of Disagreement.** If the Initiating Party is not satisfied with the result of the meet and confer process, it may provide written notice to the other identifying and describing the unresolved issue or any alleged violation of this MOU ("Notice of Disagreement"), with particularity, if available, and setting forth the action required to remedy the disagreement.

**5.3 Response to Notice of Disagreement.** Within fifteen (15) business days of service of a Notice of Disagreement, the recipient shall provide a written response either denying or admitting the allegation(s) set forth in the Notice of Disagreement, and, if the truth of the allegations are admitted, setting forth in detail the steps it has taken and/or will take to cure the violations. Failure to serve a timely response shall entitle the complaining party to proceed directly to Judicial Review as provided in Section 6 below.

## **6.0 JUDICIAL REVIEW**

**6.1** The Parties consent to judicial review of any dispute which cannot be resolved through the Dispute Resolution provisions of Section 5. Any judicial enforcement of this agreement shall be litigated in Clark County Superior Court.

**6.2** Service of process in any such judicial proceeding is waived in favor of delivery of court documents by Certified Mail – Return Receipt Requested to the following:

### **FOR THE TRIBE:**

Tribal Chairman  
Cowlitz Indian Tribe  
1055 – 9<sup>th</sup> Avenue – Suite A  
Longview, Washington 98632  
Telephone: (360) 577-8140  
Facsimile: (360) 577-7432

### **FOR THE SCHOOL DISTRICT:**

Superintendent  
Ridgefield School District No. 122  
2724 South Hillhurst Road  
Ridgefield, Washington 98642  
Telephone: (360) 887-0200  
Facsimile: (360) 887-0213

### With a copy to:

Dennis J. Whittlesey, Esquire  
JACKSON KELLY PLLC  
2401 Pennsylvania Avenue, NW  
Suite 400  
Washington, D.C. 20037  
Telephone: (202) 973-0200  
Facsimile: (202) 973-0272

## **7.0 EFFECTIVE DATE OF THIS MEMORANDUM OF UNDERSTANDING**

This MOU is effective as of the date of execution by both parties.

## **8.0 MISCELLANEOUS**

**8.1 Amendment or Modification.** This MOU may be modified or amended only by a written instrument executed by the Tribe and the School District, pursuant to the same authorizations used to execute this MOU in its original form.

- 8.2 **Entire Agreement.** This MOU is the entire agreement between the Parties and supersedes all prior written and oral agreements, if any, with respect to the subject matter hereof.
- 8.3 **State Jurisdiction Over Tribe.** Nothing in this MOU shall be construed as constituting tribal consent to state and/or local jurisdiction beyond the specific provisions hereof.
- 8.4 **Governing Law.** This MOU shall be construed pursuant to the applicable federal laws and the laws of the State of Washington.
- 8.5 **Mutual Good Faith.** Throughout the term of this MOU, the Parties agree to exercise good faith and to observe the covenants contained herein.

**9.0 REVIEW BY THE DEPARTMENT OF THE INTERIOR.**

The Parties shall submit this MOU to the United States Department of the Interior for either (a) approval pursuant to 25 U.S.C. § 81, or (b) a written response that this Agreement does not require approval under 25 U.S.C. §81.

DATED this 25 day of May, 2004.

**COWLITZ INDIAN TRIBE**

John Barnett  
John Barnett, Tribal Chairman

ATTEST: Nancy Colborne  
Tribal Secretary

**RIDGEFIELD SCHOOL DISTRICT NO. 122**

Wendi Morris  
Wendi Morris  
Chair, Board of Directors

ATTEST: Mary M. Hayes  
Secretary, Board of Directors

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