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214 East Fourth Street • La Center, WA 98629

September 26, 2008

The Honorable Bill Iyall, Chairman
Cowlitz Indian Tribe
P.O. Box 2547
Longview, WA 98632

Dear Chairman Iyall:

Thank you for the revised proposed Memorandum Of Understanding ("MOU") between the Cowlitz Tribe and the City of LaCenter that you sent on July 14, 2008. I have discussed the proposal and the various issues related to the Tribe's proposed casino project with the City Council. This letter sets forth LaCenter's response to the Tribe's most recent proposed MOU, including identifying its shortcomings.

The City remains very concerned about the impact the Tribal casino and destination resort will have on LaCenter's four non-tribal cardrooms and the gambling tax revenue stream derived there from, which help support the City's general fund. We have every expectation that, if built, the large multi-use gaming resort that your Tribe proposes will outcompete the four non-tribal cardrooms and reduce their business to the point where, in short order, they will be forced to close. Indeed, the Final Environmental Impact Statement also predicts that will occur.

The economic impact analysis that the City commissioned in June 2006 predicted a 66% reduction in cardroom business and thus in gambling tax revenues. The FEIS now confirms that figure is an appropriate one to expect. In our view, if these cardrooms experience a 66% reduction in business, they will not remain viable and will quickly close, resulting in a 100% loss of gambling tax revenue to the City. That event will eliminate the majority of the City's tax base and four of the City's five largest sewer utility customers. In short, it will result in devastating economic consequences for the City's sanitary sewer utility the remaining sewer rate payers, the City and its citizens.

It is for that reason that the City Council continues to oppose siting of the Tribal Casino project outlined in the FEIS at the LaCenter location. With this in mind, the City Council seeks to ensure, to the extent possible, that if such a project is built here the City will be able to maintain a healthy revenue base for as long as the Tribal casino is in operation, and an economically healthy sewer utility capable of serving the City and urban expansion areas at the I-5 junction. We also anticipate additional impacts from the Tribal casino that will undoubtedly affect operation of the City's public systems and facilities, most notably traffic, transportation, schools, police, and life/safety services. Thus, the basis of any discussions would need to be the identification and quantification, to the extent possible, of the public facilities, services and functions that



the casino will likely impact and the long-term mitigation necessary to address those impacts.

Any MOU between the City and the Tribe would have to address all of these issues in a satisfactory manner if there is to be any hope of establishing a long-term cooperative relationship between the City and the Tribe. While it is the City Council's hope that the Tribal casino does not become a reality at the City's I-5 junction, if the Cowlitz Tribe receives federal approval, the Council wants to ensure that it has in place adequate and legally binding mitigation that ensures a stable future for the City. With these objectives in mind, we provide the following specific comments on the Tribe's most recent MOU proposal:

Recitals: While not a binding part of the Agreement, the recitals explain the framework within which the Agreement will be interpreted, applied and enforced. As proposed, the last recital limits the MOU to impacts on and mitigation for "capital facilities projects" of the City. Instead, the scope of mitigation, and any funding it might provide, should to toward "municipal facilities, systems, infrastructure, services and related capital projects of the City that may be directly or indirectly impacted by the Facility's operation, including sewer extension and improvements and certain transportation improvements."

Paragraph 1 (Purpose): The purpose statement should be modified to make clear that the mitigation provided under the Agreement is designed only to mitigate some and not all of the impacts of the Tribal casino on the City.

Paragraph 2 (UGA Extension): The City's UGA expansion application was for land up to and beyond I-5, and this section is modified to acknowledge that fact.

Paragraph 3 (Trust Land Boundary): The City wants the Tribe to commit to limit its Trust Land to just the current proposal, and this section is modified to do that.

Paragraph 4 (City Sewer Service Feasibility Study): This paragraph states that the City and the Tribe "will work together" to prepare a feasibility study for the extension of City sewer service to the Tribe's project, and that the City and the Tribe "will use their best efforts to enter into an agreement" for the City to provide sewer service to the Tribe. Under such an agreement, the Tribe would have to pay its proportionate share of the cost of extending sewer facilities, upgrading the City's wastewater treatment plant, and operating the sewer system.

The paragraph should be modified to make clear that that the Tribe pays the entire cost of the feasibility study for the extension of City sewer service to the Tribe's project. Any subsequent agreement regarding sewer service should specify that the Tribe assumes responsibility for payment of the entire up-front cost of the sewer extension from the Wastewater Treatment Facility to the Tribe's property, and for the cost of constructing the capacity upgrade to the treatment plant necessary to serve the Tribe's development.

This is essentially what the Tribe committed to do in the cost-sharing agreement that the Tribe previously proposed to the City. It is understood that the anticipated wastewater treatment plan upgrade would also provide treatment capacity sufficient to serve additional commercial development on non-tribal land at the I-5 junction, assuming the City is successful in defending Clark County's decision to expand the City's Urban Growth Area. In that case, the Tribe would be eligible for reimbursement of some of these up-front costs from other non-tribal users in proportion to anticipated use through a latecomers' agreement.

Paragraph 5 (City Impact Mitigation Fund): This paragraph establishes the Tribe's primary financial commitment for mitigation to the City. As proposed, the Tribe would only make-up short-falls in annual gambling tax revenues below \$3 million, with several significant exceptions, and then only for a period of 10 years. The \$3 million figure was current in 2005 when the Tribe first investigated the issue. The City's annual gambling tax revenues, however, have continued to increase, and that needs to be taken into account.

The paragraph should be modified to increase the base amount from \$3 million to something larger than the City's current annual gambling tax revenue stream (approximately \$3.5 million in 2008) to take into account the fact that, absent a Tribal Casino, the City's revenue from the private cardrooms would continue to grow. The duration of the payments should be increased from 10 years to ensure they continue for the life of any Tribal casino, since the impact of the casino on City services, facilities and the local cardrooms will exist as long as the Tribal casino operates. The exceptions or reductions to the payment stream should be limited to: (a) changes in state, county or city law affecting the private cardrooms and (b) City initiated reductions in the gambling tax rate. In particular, the City does not want the revenue stream to be reduced when a cardroom goes out of business due to the competitive effects of the Tribal casino.

With regard to how the mitigation fund is expended, the fund cannot be "earmarked" for sewer extension to serve the Cowlitz property. The Tribe's obligation to pay for sewer improvements (line extensions and plant expansion) necessary to serve its project is an independent obligation separate from the impact mitigation addressed in this paragraph. The City should have final and unfettered discretion to determine how to spend the money. The Tribe must, in any event, pay its fair share of sewer infrastructure costs, apart from any fiscal impact mitigation.

Paragraph 6 (Funding for Transportation Improvements): This states the Tribe's commitment to fund improvements at the I-5 interchange and the NW 319th Street interchange. The specific improvements, as well as the extent of the Tribe's funding for them, will be determined under another "MOU on transportation issues" and "agreements developed with WSDOT."

This paragraph should be revised to provide more specificity about traffic improvements, assurances that those improvements will actually be constructed, and to identify the Tribe's responsibility for specific traffic impact mitigation projects that will

ensure adequate mitigation of traffic impacts on LaCenter Road. The geographic scope of the improvements should be much broader than just the I-5 junction and include improvements near to and possibly within the City limits necessitated as a direct or indirect result of the Tribal casino. The best and most complete list of transportation infrastructure and system improvements was stated in the Agency Draft Environmental Impact Statement issued in October 2005 for this project. See attached Table 5-1 from the Agency DEIS (October 2005). Accordingly, this provision should incorporate by reference that list of transportation system improvements. The most critical to the City, as a municipal corporation, are those within the City limits and its current and hoped-for Urban Growth Area.

Paragraph 7 (Schools): The Tribe should try to mitigate all impacts to the school district, not just some of them, and this section is modified to do that.

Paragraph 8 (LaCenter Historical Society): This states that the Tribe will collaborate with the Historical Society on development of a museum. Paragraph 8 also contains unrelated provisions regarding termination/amendment and assignment of the overall agreement. The MOU should be revised to provide separate numbered paragraphs requiring (1) written consent by the other party to any assignment; and (2) mutual written agreement for any amendment or termination.

Paragraph 9 (Law Enforcement Service): This acknowledges the Tribe's previous commitment to have the Clark County Sheriff provide law enforcement services. The Tribe agrees to "work toward" collaboration between the Sheriff's Office and the City's Police Department for the provision of these services on and near the Tribe's land.

As a practical matter, the LaCenter Police Department is the closest law enforcement agency to the Tribal property. Thus, the City police will likely be the first responder(s) on the scene in the event of a call for off-reservation law enforcement. Accordingly, this paragraph should be revised to provide a commitment by the Tribe to compensate the City for any police/emergency services the City provides to the Tribe's facility. In addition, the section needs to provide for the Tribe to contract with the City for police services in the event the Tribe is no longer obligated to obtain those services from the Clark County Sheriff.

Paragraph 10 (Indemnification): While this is a standard provision that requires each side to indemnify the other for any claims brought against it, it is not appropriate in this agreement, at least not as written. The paragraph should be revised to state simply that each party is responsible for its own negligence and willful misconduct.

Paragraph 13 (Venue and Governing Law): This paragraph specifies state or federal court as the venue for resolving disputes that arise under the Agreement. This is our preferred and exclusive method for dispute resolution. The only change on that issue is to specifically name U.S. District Court for the Western District of Washington, since there are no federal courts in Clark County. We also need to modify what is in the

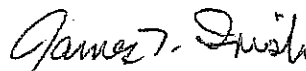
Tribe's version Paragraph 17 to be consistent with this paragraph and to eliminate arbitration as a required remedy.

Paragraph 17 (Limited Waiver of Sovereign Immunity and Arbitration): This requires the parties to go to binding arbitration to settle all disputes or claims under the MOU (except for certain disputes requiring declaratory or injunctive relief). It also provides the Tribe's limited waiver of its sovereign immunity from litigation to compel arbitration or to enforce an arbitration award. Before a question can be submitted to binding arbitration, the parties must "meet and confer." Unlike the original offer, this paragraph also provides the Tribe's limited waiver of sovereign immunity, instead of a promise to provide the waiver at some point in the future.

The paragraph should be revised to eliminate arbitration as a remedy, and instead specify litigation in state or federal court as the sole remedy for resolving disputes, unless the parties mutually agree to another method.

Please accept these comments in the cooperative spirit in which they are offered. I would like to extend my personal invitation for you to visit me, my city and the City Council. I will call you in the near future to introduce myself and to see if we can arrange to meet.

Sincerely,



James T. Irish, Mayor of LaCenter

Enclosures