

# **DRAFT**

## **MEMORANDUM OF UNDERSTANDING Between the Cowlitz Indian Tribe and the City of La Center, Washington**

This Memorandum of Understanding (the "Agreement") is entered into by and between the City of La Center, Washington ("City"), a municipal corporation organized in the State of Washington, and the Cowlitz Indian Tribe, a federally recognized Indian tribe (the "Tribe"), to provide for mitigation of certain impacts to the City related to the establishment of a resort and casino facility ("Facility") to be developed and managed by Salishan-Mohegan, LLC and owned by the Tribe.

### **RECITALS**

WHEREAS, the City is a Washington municipal corporation;

WHEREAS, the Tribe is a federally recognized Indian tribe which is in the process of applying to have land near the City, in Clark County Washington, taken into trust by the United States Department of the Interior for the benefit of the Tribe, (the "Trust Land");

WHEREAS, as a recognized Indian tribe, the Tribe has sovereign immunity and is not subject to state and local laws and regulations, including taxation, zoning, and land use restrictions, but has voluntarily entered into a Memorandum of Understanding with Clark County, Washington dated March 2, 2004, as supplemented (the "MOU"), a copy of which is attached hereto as Exhibit A;

WHEREAS, the Tribe intends to develop and build the Facility on the Trust Land;

WHEREAS, it is the desire of the City to extend its urban growth boundary to the easternmost boundary of the Trust Land;

WHEREAS, it is the desire of City and the Tribe to enter into an agreement under which the Tribe would maintain the eastern boundary of the Trust Land at the Interstate I-5/La Center junction;

WHEREAS, it is the desire of the City and the Tribe to prepare a feasibility study regarding the extension of the City's sewer service to the Trust Land for the Tribe's operation of the Facility;

# DRAFT

WHEREAS, the City and the Tribe both recognize that it will be to their mutual benefit to develop a strong government-to-government relationship and to provide for mitigation by the Tribe of certain impacts to the City related to development and operation of the Facility on the Trust Land, through Tribal participation in funding of certain capital facilities projects of the City, including sewer extension and improvements and certain transportation improvements near the Interstate I-5/La Center junction.

## AGREEMENT

NOW, THEREFORE, the signatories to this Agreement agree as follows:

### 1. Purpose.

The Tribe and the City agree that the purpose of this Agreement is to mitigate certain impacts to the City as a result of the Tribe's development and operation of the Facility on the Trust Land.

### 2. Extension of Urban Growth Boundary.

The City desires to extend, and the Tribe will support the City's application to extend, the City's urban growth boundary to be contiguous with the eastern boundary of the Trust Land.

### 3. Boundary of Tribe Trust Land.

The Tribe agrees that it will not extend its Trust Land east of Interstate I-5 and will not add additional Trust Land within the La Center urban growth boundary.

### 4. City Sewer Service Feasibility Study.

The City and the Tribe will work together to prepare a feasibility study for the City's extension of its sewer service to the Trust Land to serve the Facility. The feasibility study shall include but not be limited to technical feasibility costs, permit availability, and timing. The parties will use their best efforts to enter into an agreement pursuant to which the City will provide sewer service to the Tribe and the Tribe will pay its proportionate share of the cost of extending sewer facilities to the Tribe property, upgrading the City's sewage treatment facility to accommodate the sewer needs of the Tribe, and the operational cost of providing sewer.

### 5. Sewer and Capital Facilities Projects/Impact Mitigation Fund.

a. The City in consultation with the Tribe will identify capital facilities projects they deem necessary for the mitigation of impacts to the City caused by operation of the Facility on the Trust Land. The City will have final say as to the mitigation projects funds will be spent on. Except as provided in Section 5(b), the annual amount due from the Tribe and payable to the City following commencement of operation of the Facility for mitigating impacts to City facilities and public services shall be equal to 3 million dollars minus the annual amount of gambling tax revenue payable to the City from non-tribal card rooms inside the City. Such payments shall continue for a period of 10 years from the date the Tribe's Facility begins

# DRAFT

operation. Payments from the Tribe to the City under this section shall be calculated on an annual basis, due and payable in quarterly (every 3 months) payments beginning 90 days after the first year of Facility operation. Should the City reduce the gambling tax rate on non-tribal card rooms, the 3 million dollar amount shall be reduced in the proportion the percentage of gambling tax revenue bears to the 10% tax charged at the time of the execution of the Agreement. Payments from the Tribe to the City shall first be applied to the capital cost of extending sewer to the Tribe property and second shall be applied to capital projects identified pursuant to this Section 4.

b. The City and the Tribe agree that future actions by state and/or local governments can have a negative impact on the City's gambling tax revenues. In the event that: a) the laws of the states of Washington or Oregon, or the laws or ordinances of Clark County, any County contiguous to Clark County, or any city within such counties are amended after the effective date of this Agreement to authorize additional gaming or to restrict gaming in the City; or b) one or more of the card rooms in the City ceases or suspends operations, the Tribe's mitigation under 5(a) above shall be reduced in an amount agreed to by the parties to reflect the impact of such action.

## **6. Funding for Transportation Improvements.**

The Tribe agrees to provide funding for certain improvements at the Interstate I-5 interchange and N.W. 319th Street interchange for the purpose of mitigating negative impacts caused by the Tribe's development and operation of the Facility on the Trust Land. The amount of the funds shall be determined in accordance with the Tribes compliance with the MOU on transportation issues as well as agreements developed with WSDOT. These transportation improvements will improve the La Center Road/Interstate I-5 access.

## **7. School District Mitigation Agreement.**

The Tribe will make a good faith effort to enter into an agreement with the La Center School District that will mitigate certain impacts upon the School District as a result of the Tribe's operation of its Facility so long as the School District is willing to enter into an agreement.

## **8. Collaboration with La Center Historical Society.**

The Tribe will collaborate with the La Center Historical Society on the development of an historical museum within the City.

This Agreement may be terminated or amended, and either party may withdraw, only upon the written mutual agreement of the Tribe and the City. No obligations or rights under this Agreement may be assigned to another party without the written consent of both parties to this Agreement.

**DRAFT**

**9. Law Enforcement Service.**

The memorandum of understanding between the Tribe and Clark County provides for the Tribe to engage the Clark County Sheriff's office to provide law enforcement services. The Tribe will work towards including in the Agreement collaboration between the Clark County Sheriff and the La Center Police Department.

**10. Indemnification.**

Each party shall defend, indemnify, and hold harmless the other party and its directors, officers, employees, agents, representatives, successors, and permitted assigns from and against all liabilities, claims damages, losses and expenses, including reasonable attorney fees directly related thereto to the extent caused by any negligence, willful misconduct, or other fault, act, or omission (i) in each case related to the performance or nonperformance of this Agreement and (ii) attributable to the indemnifying party or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, provided that (except with respect to third party claims) neither party shall be liable to the other for incidental or consequential damages.

**11. No Third-Party Beneficiary.**

This Agreement and all rights under this Agreement are intended for the sole benefit of the parties executing this Agreement and, to the extent expressly provided, the other indemnified parties identified in the preceding section, and shall not imply or create any rights on the part of, or obligation to, any other person except as, and then only to the extent, expressly provided elsewhere in this Agreement.

**12. Notices.**

Any notice to be given under this Agreement shall be given in writing and delivered in person or shall be sent via certified mail with a return receipt requested in a securely sealed envelope, recognized overnight courier service, or facsimile transmission (receipt confirmation required), and shall be effective when received at the address specified below. Each party, by like notice in writing, may designate, from time to time, another address to which notices may be given to it pursuant to the Agreement:

Tribe:

Tribal Chair  
Cowlitz Indian Tribe  
1055 9th Avenue, Suite A  
P.O. Box 2547  
Longview, WA 98632  
FAX: (360) 577-7432

City:

**DRAFT**

Mayor and City Council  
214 East 4th Street  
La Center, WA 98629  
FAX: (360) 263-5700

**13. Venue and Governing Law.**

The validity, interpretation, and enforcement of this Agreement are governed by the laws of the State of Washington (without reference to the principles of conflict of laws thereof). Exclusive jurisdiction and venue with respect to any dispute or controversy among the parties arising under or in connection with this Agreement will be in the state and federal courts located in Clark County, Washington, and the parties waive all claims that such a forum is inconvenient or that a more convenient forum can be found.

**14. Entire Agreement.**

This Agreement constitutes the entire agreement and understanding between the parties hereto relating to the subject matter hereof and supersedes any prior agreements and understandings relating to such subject matter. This Agreement may be executed in several counterparts, or by different parties in separate counterparts, each of which counterpart is an original, but all of which constitute one instrument. The Tribe shall propose that this agreement be referenced in the Tribe's contract to be entered into with the State of Washington.

**15. Attorney Fees.**

If either party seeks enforcement of any covenant, indemnity, or other term or provision of this Agreement through litigation, arbitration, or otherwise, the party that prevails in such enforcement proceeding shall be entitled to recover such reasonable costs and attorney fees as is determined by the arbitrator or court (including any appellate court) at trial or on appeal or review.

**16. Delay Not Waiver.**

Any delay, waiver, or omission by a party to exercise any right or power arising from any breach or default by the other in any of the terms, provisions, or covenants of this Agreement shall not be construed to be a waiver of any subsequent or continuing breach or default of the same or other terms, provisions, or covenants on the part of the other.

**17. Limited Waiver of Sovereign Immunity and Arbitration.**

The Tribe expressly and irrevocably waives its sovereign immunity (and any defense based thereon) from suit by the City for the purpose of permitting or compelling arbitration as provided in this section and consents to the jurisdiction of and to be sued in the United States District Court for the Western District of Washington, the United States Courts of Appeals, and the United States Supreme Court for the purpose of compelling arbitration or enforcing any

