

# INTERGOVERNMENTAL AGREEMENT

## Tribute to the 'Five Cayuse Men'

This Intergovernmental Agreement is made and entered into this 15th day of May, 2024, and is between the City of Oregon City (City), an Oregon municipal corporation organized under Oregon law, and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), a federally-recognized Indian tribe, for the construction of a Tribute to the 'Five Cayuse Men' (Tribute).

### RECITALS

WHEREAS, in 1847, a measles epidemic engulfed the Cayuse people. It was reported that in one Cayuse village, there was no one left to bury the dead. The same year, more than 4,000 overland immigrants bound for the Willamette Valley continued incursions through the Blue Mountain homeland of the Cayuse. Originally intended to serve the Cayuse people, the nearby Whitman's mission on the Walla Walla River had become an aid station to Oregon Trail immigrants. Rumors spread in the indigenous population that the missionaries and their guests planned to take Cayuse lands and that the Cayuse would be poisoned by the Whitmans; and

WHEREAS, nine Cayuse died from measles in the 24 hours leading up to the November 29, 1847 assault by a small group of Cayuse men on missionaries Marcus and Narcissa Whitman and 11 other men. They acted offensively to stop the disease among their people; to cease the immigration; and to end further deaths from Marcus Whitman's ineffective healing efforts on Natives; and

WHEREAS, in 1847, a volunteer Oregon militia was formed to hunt the Cayuse perpetrators and a Peace Commission was conducted. After years of indiscriminate slaying of Native people in Oregon, five Cayuse men volunteered to testify in 1850 about the killings. Instead, they were taken into custody by the U.S. Cavalry and taken to Oregon City, the newly established Territorial capital. Chained and imprisoned, they were charged with the murder of Marcus Whitman. They pleaded not guilty. Despite questions of jurisdiction, lack of evidence or eyewitness accounts, and laudable efforts by their defense attorney, they were found guilty. The judge denied motions for a new trial and the right to appeal and sentenced all five to be hanged. They were hanged and buried in unmarked grave(s) on June 3. The location of their grave(s) is unknown; and

WHEREAS, the Tribute to these 'Five Cayuse Men' seeks to honor the men who were unjustly taken into custody, charged, and hanged in Oregon City territory in 1850. The Tribute will be located in the existing public park adjacent to the McLoughlin Promenade, a site suggested by the City and agreed upon by the CTUIR. This site's proximity to the places where the five Cayuse men were detained, 'tried' and hanged is of great importance to the CTUIR; and

WHEREAS, the Tribute will be comprised of three (1, 2, 3) main elements and one (4) future phase element:

1. A large, locally sourced monument stone presenting a brass plaque with a tribal remembrance prayer provided by CTUIR; and
2. Interpretive panel(s) describing the historical background of the event and the names of the five Cayuse victims; and

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3. A small ADA Accessible path and gathering area; and
4. (Future Phase) Seating and gathering areas arranged to accommodate reflection and ceremony; and

WHEREAS, the CTUIR will prioritize use of local, natural materials, as well as respect for existing natural landscape features. Each of the four elements listed above will be accessible from the promenade according to ADA standards. The CTUIR will work with the City to ensure that the installation meets the City's design guidelines and enhances the existing public space.

NOW, THEREFORE, for and in consideration of the foregoing and the mutual covenants and agreements herein contained, the parties agree as follows:

## AGREEMENT

### 1. TERM OF THE AGREEMENT

The initial term of this agreement shall commence on May 15, 2024 and will remain in effect while the Tribute to the Five Cayuse Men physically remains, unless either party gives written notice, as listed in Section 4 below.

Time is of the essence for both the City and the CTUIR in the performance of their obligations under this agreement.

### 2. PROVISION OF SERVICES

#### 2.1. Services Provided by the CTUIR

- 2.1.1. The CTUIR will provide direction on the location and design of the Tribute.
- 2.1.2. The CTUIR will provide all text and imagery for signage, inscriptions, and plaques at the Tribute.
- 2.1.3. The final design of the Tribute shall be agreed upon by both the CTUIR and the City.
- 2.1.4. The CTUIR will provide direction to the City for how to address gifts or offerings left at the Tribute.
- 2.1.5. The CTUIR may conduct ceremonies at the Tribute with coordination from the City.
- 2.1.6. The CTUIR will work with the City to plan and carry out a groundbreaking and/or completion ceremony for the Tribute.
- 2.1.7. The CTUIR text for signage will include language reflecting gratitude to the City for its role in making the Tribute possible.
- 2.1.8. The CTUIR will bear its own costs related to conducting ceremonies at the Tribute with coordination from the City.

#### 2.2. Services Provided by the City

- 2.2.1. The City will provide a location for the Tribute on the McLoughlin Promenade near 2<sup>nd</sup> Street.

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- 2.2.2. The City will provide a preliminary design of the Tribute for CTUIR approval. The preliminary design shall be based on direction from the CTUIR.
- 2.2.3. Once the preliminary design is approved by the CTUIR, the City will present the draft Tribute to the City Commission for initial approval.
- 2.2.4. Once initial authorization is provided by the City Commission, the City will send notice of the Tribute to adjacent property owners, the McLoughlin Neighborhood Association, Citizen Involvement Committee, the Confederated Tribe of the Grand Ronde, and any other person or agency who requests notice.
- 2.2.5. City will present the draft Tribute to the Parks and Recreation Advisory Committee for a recommendation and to the City Commission to seek authorization to submit for permits.
- 2.2.6. City will advance construction documents and submit for all land use permits, including but not limited to Historic Review Board and Site Plan and Design Review.
- 2.2.7. The final design of the Tribute shall be agreed upon by both the City and the CTUIR.
- 2.2.8. The City will provide the materials and construction services for the creation of the Tribute. The City will follow the City Codes relating to Oregon Procurement rules as outlined in ORS 279.
- 2.2.9. The City will retain ownership and provide full insurance coverage, and regular maintenance of the Tribute.
- 2.2.10. The City shall follow guidance of the CTUIR related to gifts or offerings left at the Tribute.
- 2.2.11. The City will work with the CTUIR to carry out a groundbreaking and/or completion ceremony for the Tribute.

### 3. PROJECT MANAGERS

The Project Managers and primary contacts designated to carry out the purposes of this agreement are the Director at Tamástslíkt Cultural Institute of the CTUIR and the Public Works Director of the City, or their designees. Either party may change its Project Manager by providing written notice of the change to the other party consistent with Section 16 below.

### 4. FUNDING

The City agrees to provide funding of \$150,000 toward construction of the Tribute. Phase I of the Tribute is anticipated to cost \$125,000 the balance of which (\$25,000) will remain committed for Phase II, whenever that occurs. The CTUIR and the City may provide additional funding as needed, including but not limited to services, grants, or philanthropic funding from *third parties*.

### 5. INTERAGENCY COMMUNICATIONS

The CTUIR and the City agree to meet periodically and may establish a joint staff working group to implement the terms of this agreement. Additionally, the City and the CTUIR agree to share information which may assist the parties in accomplishing the tasks set out in this agreement. The CTUIR and the City may agree upon additional procedures, protocols and understandings in order to carry out the terms of this agreement and enhance communication between the two entities by written, signed amendments to this agreement.

### 6. STANDARD OF CARE

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Services performed under this agreement shall be performed in compliance with applicable law and in a manner consistent with the Standard of Care the City employs for providing services to City customers. Either party has a right to audit the records of the other at reasonable times and upon reasonable notice. Each party shall carry out its money handling obligations and responsibilities under this contract in a manner consistent with generally accepted practices for units of local government in Oregon.

#### 7. INDEMNITY/HOLD HARMLESS

To the extent permitted by the Constitution and laws of the State of Oregon applicable to units of local government and subject to their monetary limits of ORS 30.260 to 30.300, each party agrees to indemnify and hold harmless the other, the other's elected officials, officers, employees, agents and representatives from and against all claims, demands, penalties and causes of action of any kind or character relating to this agreement, including the cost of defense thereof, including attorney fees arising in favor of any person on account of personal injury, death, or damage to property and arising out of or resulting from the negligence of the indemnitor, the indemnitor's employees, agents, contractors or representatives.

#### 8. TERMINATION

This agreement may be terminated for convenience by either party upon thirty (30) days written notice prior to completion of the Tribute. This agreement may also be terminated by either party at any time upon the other party's default for failure to perform or comply with a material term of this agreement and its failure to cure or diligently commence cure of the breach within thirty (30) business days of the receipt of written notice of breach. If this agreement is terminated, either for convenience or for breach, the City shall transfer all design and construction information to the CTUIR within 30 days of being notified of the appropriate data file format. The City and the CTUIR will each pay half of the City's actual costs to transfer the design and construction information to CTUIR upon termination. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

#### 9. FINAL AGREEMENT/BINDING EFFECT

This document contains all of the terms and conditions of the parties' agreement and supersedes all previous and contemporaneous agreements or understandings, whether oral or written. Any waiver or modification of the terms of this agreement must be in writing. This agreement shall be construed so that the singular shall include the plural and the plural shall include the singular. This agreement shall be binding upon the parties, their successors and assigns.

#### 10. SEVERABILITY/SURVIVAL

If any of the provisions contained in this agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired. Any provisions concerning the limitation of liability or indemnity shall survive the termination of this agreement for any cause.

#### 11. RELATIONSHIP OF PARTIES

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Each of the parties hereto is deemed an independent contractor for purposes of this Agreement. No representative, agent, employee, or contractor of one party shall be deemed to be an employee, agent, or contractor of any other party for any purpose. Nothing herein is intended, nor may it be construed, to create among the parties any relationship of principal and agent, partnership, joint venture, or any similar relationship, and each party hereby disclaims any such relationship.

## 12. INTERPRETATION OF AGREEMENT

All provisions of this agreement have been negotiated at arm's length. This agreement shall not be construed for or against either party by reason of the authorship or alleged authorship of any provision.

## 13. CONTRACTS

The City may use contractors where the City determines it convenient, feasible and efficient to do so. The City has sole authority to select its contractors and to manage its contracts but shall consult with the CTUIR prior to the selection of any contractors.

## 14. APPROVAL REQUIRED

This Agreement and all amendments to the written terms of this Agreement shall only be effective if approved by both the CTUIR Board of Trustees and the City Commissioners. Amendments related to costs of goods purchased or for services may be approved by the City's City Manager if the cost is within the authority allowed by applicable purchasing rules and/or ordinances of the approving party.

## 15. DISPUTE RESOLUTION

The Parties hereby agree that resolution of any and all disputes arising out of the terms of this Agreement or interpretation thereof shall follow a prescribed process beginning with negotiation and subsequently moving to mediation provided the dispute remains unresolved. If a dispute arises between the parties regarding this Agreement, the parties shall follow the dispute resolution provisions below.

15.1. Written Notice. A written notice regarding the dispute (Dispute Notice) shall be sent to the other party. The notice shall describe the dispute in sufficient detail to enable the other party to meaningfully respond.

15.2. Negotiations. Within thirty (30) days following receipt of the Dispute Notice, the parties to the dispute ("Disputing Parties") shall assign a representative to participate in good faith negotiations for a period not to exceed sixty (60) days after appointment of the representatives.

15.3. If after the sixty (60) day period of negotiation (or a period not to exceed ninety (90) days following the receipt date of the Dispute Notice), the dispute(s) cannot be resolved, the Disputing Parties agree to submit the matter to non-binding mediation. The Disputing Parties shall attempt to agree on a mediator in a period not to exceed one hundred twenty (120) days following the receipt date of the Dispute Notice and proceed accordingly.

15.4. If mediation is unsuccessful in resolving the dispute, the Disputing Parties may pursue any other remedies available at law.

15.5. Nothing in this subsection shall be deemed a waiver of the sovereign immunity of the CTUIR in any form.

16. NOTICES

Any notices required by this agreement must be in writing and sent to the representatives listed below:

CTUIR: Bobbie Conner  
Director, Tamástslíkt Cultural Institute  
47106 Wildhorse Boulevard  
Pendleton, OR 97801  
Tel: 541-429-7709

City: John Lewis  
Public Works Director  
13895 Fir Street  
Oregon City, OR 97045  
Tel: 503-496-1545

IN WITNESS WHEREOF, the parties have, pursuant to official action of their respective governing bodies, duly authorizing the same, caused their respective officers to execute this instrument on their behalf.

WHEREAS, all the aforementioned is hereby agreed upon by the City and the CTUIR and executed by the duly authorized signatures below:

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CONFEDERATED TRIBES OF THE UMATILLA  
INDIAN RESERVATION

CITY OF OREGON CITY

\_\_\_\_\_  
Gary I Burke  
Executive Director

\_\_\_\_\_  
Denyse C. McGriff  
Oregon City Mayor

ATTESTED:

ATTESTED:

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