

MEMORANDUM OF UNDERSTANDING

Between

STATE OF OREGON DEPARTMENT OF TRANSPORTATION

And

THE CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF OREGON

The following is a Memorandum of Understanding (MOU) between the State of Oregon, Department of Transportation (State), and the Confederated Tribes of the Grand Ronde Community of Oregon (CTGR), Tribal Employment Rights Office (CTGR TERO). The below items have been discussed and agreed upon by the parties:

(1) Purpose

The purpose of this MOU is to establish procedures to be followed by both parties to aid in ensuring that the provisions of the Tribal Employment Rights Ordinance (Ordinance) adopted by Grand Ronde on November 6, 2013 and the "Indian Preference" provisions of the Federal-Aid Highway Program shall be complied with by any Contractor engaged in Federal Aid highway construction on property that is located within the reservation boundaries of the Grand Ronde Indian Reservation (see Exhibit A for map showing reservation boundaries) or any contractor involved in specified Federal Aid highway projects located near the reservation boundary, which is defined as an area "off reservation" extending approximately 60 miles outside the reservation boundary (see Exhibit A). For purposes of this document, "Contractor" refers to any firm engaged in specified Federal-Aid Highway Program construction projects under contract with the Oregon Department of Transportation (ODOT)

(2) Authorities

The State acknowledges the inherent sovereign authority of the Tribes to promulgate and enforce the Ordinance within the boundaries of the Grand Ronde Indian Reservation. The State further acknowledges the provisions in the Surface Transportation Assistance Act (as reauthorized in 1987), the of the Intermodal Surface Transportation Efficiency Act of 1991, and the Moving Ahead for Progress in the 21st Century Act of 2012, regarding Indian Preference employment goals for Indians on or near the reservation on Federal-Aid and Direct Federal Highway projects located on or near Indian reservations.

(3) Compliance Fees

Both Parties agree to use the federal fiscal year funding cycle as a guide for planning and implementation of Compliance fees for on and off reservation TERO fees. The State acknowledges the inherent sovereign authority of CTGR to assess and collect the Compliance fees set forth in the Ordinance for projects considered by both parties to be on the Grand Ronde Indian Reservation.

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The on-reservation fee assessed on ODOT projects shall be consistent with the established fee for all TERO projects within the Reservation boundary as set by the Ordinance (presently 2.5%).

It is also agreed that the U.S. DOT Notice N4720.7 states, "In off Reservation situations" TERO may bill projects at an agreed upon rate for services. It shall be agreed by both parties that this rate shall be as follows:

Contract Value Off Reservation, within MOU TERO Boundary*	Fee % Allowed
First \$500,000	1.00%
Next \$500,000	0.75%
Next \$1,000,000 (\$1 mil to \$2 mil)	0.50%
Remaining contract value (\$2,000,000 to full contract value)	.025%

*The MOU TERO Boundary is depicted in Exhibit A.

The proceeds are to be used by the TERO to fund job referral, conduct screening, career counseling, liaison representation, training, and apprenticeship. A quarterly report summarizing these fee supported activities shall be provided to ODOT within 30 days after the completion of each quarter of CTGR's fiscal year. Reporting schemes to track MOU continuing and current performance shall be developed and instituted as agreed upon by both parties. The parties agree to consult within 30 days of any failure to deliver the report in a timely manner.

All ODOT federal-aid projects that have project work scope executed within the reservation boundary are subject to the on-reservation fee as established within the Ordinance. For projects that contain work both on and off reservation, a fee calculation shall be made such that the on-reservation portion is subject to the on-reservation fee percentage and the off-reservation portion is subject to the off-reservation fee percentage.

(4) Eligible Employees

All Indians (defined as a tribal member of a federally recognized tribe) are eligible for Indian Preference without regard to tribal affiliation or place of enrollment. However, TERO recruiting efforts shall be targeted toward those living on or near the Grand Ronde Indian Reservation. Employers with collective bargaining agreements with a union are responsible for informing such unions of Indian preference.

(5) Duration of Memorandum

This Memorandum shall take effect upon signing by all parties and shall remain in full force and effect until otherwise terminated or amended. Amendments may be made at any time by a written mutual agreement signed and dated by authorized representatives of the parties. A party seeking to terminate this memorandum shall serve upon the other party written notice of such desire not later than 30 days prior to any proposed termination. This memorandum of understanding shall expire January 1, 2019, subject to good faith negotiations to extend the agreement for additional 5 year periods.

(6) Procedures for Implementation

A. Federal Aid Projects on the Reservation — The ODOT agrees to provide TERO with a list of planned highway projects from the State Transportation Improvement Program (STIP) which are potentially subject to this Memorandum. Such list shall distinguish between those projects located on the reservation and those located near the reservation, which are Federal-Aid projects located within the State of Oregon and within the TERO MOU boundary as defined in Exhibit A.

ODOT project personnel shall conduct an annual meeting to provide TERO with information regarding planned projects that shall be on the reservation. These meetings shall be held in or around March of each year. Information shall include current estimates of project schedule and duration, estimated bid letting date, size, and scope. The purpose of the annual meeting is to assist TERO in assessing workforce needs and developing appropriate Indian preference goals for each project.

B. Projects Near the Reservation — Federal-Aid projects located outside the reservation but within the TERO MOU boundary, as indicated on Exhibit A, may be subject to Indian Preference employment goals. The list of planned highway projects on the STIP shall be provided no later than 30 days from the approval by the OTC. ODOT and TERO shall meet annually in March of each year to mutually decide which federal aid projects "near" the reservation shall be subject to the Indian Preference in Employment Special Provisions. ODOT will apply the Indian preference to those specified agreed upon projects. Whenever projects subject to Ordinance are scheduled for bid letting, the agreed upon special provisions are to be included in each bid package.

C. Mandatory TERO Workshop — CTGR TERO agrees to conduct mandatory pre-bid quarterly TERO/MOU workshops, and shall issue certificates of completion to those contractors who sign in, attend, and participate. Contractors must have a certificate in order to be eligible to bid on ODOT Contracts which require compliance with these TERO/MOU requirements. The certificate shall be good for 3 years.

CTGR TERO will initiate TERO contractor certification requirements in the following manner:

1. During the first year of this MOU, calendar year 2014, CTGR will recognize current (non-expired) TERO contractor certification issued by the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) to fulfill this provision;
2. For contractors that are not certified with CTUIR, and are seeking certification, CTGR TERO will advertise and conduct TERO certification training workshops quarterly beginning March 2014 and for each subsequent quarter;
3. During 2014 participation in CTGR TERO contractor certification workshops will be free of charge; a fee shall apply to participants in TERO contractor certification workshops beginning January 1, 2015.

4. On January 1, 2015, CTGR TERO will no longer accept CTUIR contractor certification to fulfill the conditions of this provision; thereafter, contractors seeking CTGR TERO contractor certification shall attend a scheduled quarterly CTGR TERO contractor certification workshop.

D. Numerical Goal Setting — TERO shall analyze each project to establish an accomplishable Indian Preference hiring goal. The established goal shall be based on an assessment of workforce availability and worker skill needs for a given project. Performance in meeting the TERO goal shall be reviewed at each annual meeting by both parties to assess the accuracy of the goal setting process. TERO also agrees to meet with each Contractor awarded a highway project contract subject to the Indian Preference as determined above, prior to the pre-construction conference to develop a numerical goal for each job craft which shall be used on the project. Each Contractor awarded a highway project contract with an Indian Preference goal shall be responsible for informing all of their subcontractors of these MOU requirements.

E. Pre - Construction Conference — Pre-construction conferences for projects that are subject to this Memorandum shall be held on or at a location near the Grand Ronde Indian Reservation. At the pre-construction conference TERO and ODOT shall be available to provide a detailed explanation of, and answer questions about, the provisions of the TERO Ordinance, if applicable, and Indian Preference goals. The pre-construction conference shall be the forum for finalizing all compliance agreements and requirements between TERO and the Contractor and Subcontractor(s) and answering any questions on Indian Preference and applicable special contract provisions.

(7) Provisions to be Included in State Contracts

The TERO Ordinance, the provisions of this MOU and the compliance requirements shall all be incorporated by the State in its contract provisions when any State contract is subject to this MOU by its terms.

(8) State Liaison

The Oregon Department of Transportation, Office of Civil Rights, shall work with TERO during the administration of any contract subject to this Memorandum.

(9) Supplants Prior Memorandums

The Oregon Transportation Commission on February 13, 2002, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day- to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the Commission.

On September 6, 2002, the Director of the Oregon Department of Transportation approved Sub delegation Order No, 2, in which the Director delegates authority to the Executive Deputy Director for Highways, Executive Deputy Director for Central Service, Deputy Director for OTIA, and the Chief of Staff to approve and execute agreements over \$75,000 when the work is related to a project

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included in the Statewide Transportation Improvement Program, other system plans approved by the Commission such as the Traffic Safety Performance Plan, or in a line item in the approved biennial budget.

(10) Effect of Changes in Law and Policy

In the event that there is a change in federal law, regulation or guidance, or that the FHWA changes its interpretations of these laws and regulations, such a change will automatically apply to the MOU from the date of the adoption or publication.

THE CONFEDERATED TRIBES OF THE
GRAND RONDE COMMUNITY OF OREGON

STATE OF OREGON
DEPARTMENT OF TRANSPORTAION

By Reynold L. Leno Date 1-9-14
Reynold L. Leno
Tribal Council Chairman

By Dale K. Horman Date 1/17/14
Dale K. Horman
Chief of Staff

By Toby McClary Date 01/09/14
Toby McClary
Tribal Council Secretary

APPROVED AS TO LEGAL SUFFICIENCY:

APPROVED AS TO LEGAL SUFFICIENCY:

By Rob Greene Date: 1/9/2014
Rob Greene
Tribal Attorney

By Karen E. Clevering Date: 1/17/14
Karen E. Clevering
Assistant Attorney General

**AMENDMENT #1 TO
MEMORANDUM OF UNDERSTANDING**

The State of Oregon, Department of Transportation (State) and the Confederated Tribes of the Grand Ronde Community of Oregon (CTGR) agreed upon a Memorandum of Understanding (MOU), dated January 17, 2014.

The purpose of the MOU was to establish procedures to be followed by both parties to aid in ensuring that the provisions of the Tribal Employment Rights Ordinance, adopted by the CTGR on November 6, 2013, and the "Indian Preference" provisions of the Federal-Aid Highway Program shall be complied with by any Contractor engaged in Federal Aid highway construction on property that is located within the reservation boundaries of the Grand Ronde Indian Reservation or any contractor involved in specified Federal Aid highway projects located near the reservation boundary, which is defined as an area "off reservation" extending approximately 60 miles outside of the reservation boundary.

The parties agree to the following amendment of the section "**(3) Compliance Fees**" in the MOU. Except as expressly amended below, all other sections of the MOU remain the same. New language is indicated by being in **bold and underlined** and deleted language is indicated by [brackets]:

Contract Value Off Reservation, within MOU TERO Boundary*	Fee % Allowed
First \$500,000	1.00%
Next \$500,000	0.75%
Next \$1,000,000 (\$1 mil to \$2 mil)	0.50%
Remaining contract value (\$2,000,000 to full contract value)	<u>0.25%</u> [.025%]

THE CONFEDERATED TRIBES OF THE
GRAND RONDE COMMUNITY OF OREGON

By  Date 3-7-14
Reynold L. Leno
Tribal Council Chairman

By  Date 3/10/14
Toby McClary
Tribal Council Secretary

STATE OF OREGON
DEPARTMENT OF TRANSPORTATION

By  Date 3/6/14
Dale K. Hormann
Chief of Staff