



CULTURAL SERVICES CONSULTING AGREEMENT

This cultural services consulting agreement is dated as of June 12, 2013, and is between the Confederated Tribes of the Umatilla Indian Reservation, a federally recognized Indian tribe acting through its Cultural Resources Protection Program (the "CONSULTANT"), and Port of Benton (the "COMPANY").

1. Agreement

1.1 Scope of Work. The CONSULTANT agrees to perform the services ("Services") detailed in Schedule A.

1.2 Payment. The COMPANY agrees to pay the CONSULTANT:

[] A flat fee of \$_____. Provided, however, that any work requested by COMPANY that is not contained in Schedule A, or additional costs incurred due to a delay caused by COMPANY, shall be reimbursed on a time and materials basis beyond the amount written above.

[X] In accordance with the terms in Schedule B. Payment for Services shall not exceed \$9,000.00. Provided, however, that any work requested by COMPANY that is not contained in Schedule A, or additional costs incurred due to a delay caused by COMPANY, shall be reimbursed on a time and materials basis regardless of the "not to exceed" amount written above.

1.3 Term. This agreement commences on the date written above and terminates on December 31, 2013 unless otherwise terminated earlier.

1.4 Designated Contact. The representative for the COMPANY is Marv Kinney. The representative for the CONSULTANT is Carey L. Miller.

2. Independent Contractor.

2.1 Independent Contractor. The CONSULTANT agrees to employ, at its own expense, all personnel reasonably necessary to perform the Services. These personnel are not employees of the COMPANY. The CONSULTANT shall ensure that all personnel engaged in performing Services are fully qualified to undertake the work in accordance with applicable tribal, state, or federal laws. The CONSULTANT is an independent contractor. The CONSULTANT is not an agent or employee of the COMPANY. The CONSULTANT and the COMPANY are not engaged in a joint venture or partnership. Neither party can represent or bind the other.

2.2 Subcontractors. In addition to personnel employed directly by CONSULTANT, CONSULTANT has the right to engage such subcontractors as it may deem necessary to perform the Services.

3. Representations, Warranties, and Duties

3.1 Professional Work. The CONSULTANT shall perform Services in a professional, thorough, and skillful manner consistent with their profession's standards in the Pacific Northwest region.

3.2 Compliance with Laws. The CONSULTANT shall comply with all applicable tribal, state, local, and federal laws.

3.3 Safety. The CONSULTANT shall perform all work in a safe manner.

3.4 Information Necessary for Timely Performance. To permit CONSULTANT to render the Services, COMPANY shall, at its expense and in a timely manner:

3.4.1 Provide information concerning the Services as CONSULTANT may require from time to time to enable CONSULTANT to complete the Services;

3.4.2 Promptly inform CONSULTANT of any pending or confirmed changes in the Services;

3.4.3 Promptly review all documents and materials submitted to COMPANY by CONSULTANT for COMPANY's comment to avoid unreasonable delays in the progress of the Services; and

3.4.4 Promptly notify CONSULTANT of any fault or defect in the Services provided.

3.5 No Other Warranties. CONSULTANT provides no warranty, representation, or certification whether expressed or implied other than those specifically stated in section 3 of this Agreement.

4. MUTUAL INDEMNIFICATION

4.1 INDEMNIFICATION. EACH PARTY SHALL DEFEND, HOLD HARMLESS, AND INDEMNIFY THE OTHER PARTY AND THEIR OFFICERS, EMPLOYEES, AND AGENTS (THE "INDEMNIFIED PARTY") AGAINST ALL LOSSES, LIABILITIES, CLAIMS, DAMAGES, COSTS OR EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (COLLECTIVELY, "CLAIM") THAT ARE BROUGHT AGAINST THE INDEMNIFIED PARTY ARISING OUT OF OR RELATED TO (1) ANY PERSONAL INJURY, DEATH OR PROPERTY DAMAGE CAUSED BY ANY ACT, OMISSION, ERROR, FAULT, MISTAKE OR NEGLIGENCE OF THE INDEMNIFYING PARTY OR ITS EMPLOYEES, AGENTS, OR SUBCONTRACTORS RELATED TO THIS AGREEMENT, (2) ANY ACT OR OMISSION BY THE INDEMNIFYING PARTY THAT CONSTITUTES A NON-TRIVIAL (FROM THE PERSPECTIVE OF A REASONABLE PERSON IN THE POSITION OF THE INDEMNIFIED PARTY) BREACH OF THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, ANY MISREPRESENTATION OR BREACH OF WARRANTY, OR (3) THE INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET OR OTHER

PROPRIETARY RIGHT ARISING FROM DELIVERY, USE, OR PERFORMANCE OF THE SERVICES. THIS DUTY INCLUDES COSTS INCURRED BY THE INDEMNIFIED PARTY IN ASSUMING THEIR OWN DEFENSE. THE CONSULTANT'S OBLIGATION UNDER THIS SECTION SHALL NOT EXTEND TO ANY CLAIM PRIMARILY CAUSED BY (1) THE NEGLIGENT OR INTENTIONAL MISCONDUCT OF AN INDEMNIFIED PARTY, OR (2) THE COMPANY'S MODIFICATION OF GOODS OR SERVICES WITHOUT THE CONSULTANT'S APPROVAL AND IN A MANNER INCONSISTENT WITH THE PURPOSE AND PROPER USE OF THOSE GOODS OR SERVICES.

4.2 WRITTEN AUTHORIZATION. ANY LEGAL COUNSEL PURPORTING TO REPRESENT THE INTERESTS OF AN INDEMNIFIED PARTY SHALL FIRST OBTAIN WRITTEN AUTHORIZATION FROM THE INDEMNIFIED PARTY. THE INDEMNIFIED PARTY MAY ASSUME THEIR OWN DEFENSE AT ANY TIME WHEN IT DETERMINES IN ITS SOLE DISCRETION THAT (1) PROPOSED COUNSEL IS PROHIBITED FROM THE PARTICULAR REPRESENTATION CONTEMPLATED; (2) COUNSEL'S REPRESENTATION IS INADEQUATE; (3) IMPORTANT PARTY INTERESTS ARE AT STAKE; OR (4) IT IS IN THE BEST INTEREST OF THE INDEMNIFIED PARTY.

5. Document Ownership

5.1 Ownership. The COMPANY shall own all reports provided it pursuant to this agreement. All information contained within any such report that pertains to information concerning the location of archaeological sites or objects shall be kept confidential as a trade secret of CONSULTANT ("Confidential Information"). All other intellectual property, including but not limited to work product, shall be the property of the CONSULTANT.

5.2 Authority to Publish. CONSULTANT has unrestricted authority to publish, disclose, distribute, and otherwise use, in whole or part, any reports, data, plans, or any other material prepared by CONSULTANT.

5.3 Trade Secret. Some information and technology of the CONSULTANT is confidential, proprietary, or otherwise a trade secret, including but not limited to reports produced under this agreement, information concerning the location of archaeological sites or objects, other cultural resources, oral histories of CONSULTANT'S members, and compilations of information not generally known or reasonably ascertainable to the public.

5.4 CONSULTANT'S Withholding of Information. Any information may be withheld by the CONSULTANT if, in their sole discretion, they believe it may be subject to public disclosure under the public disclosure act(s) of COMPANY, if any, notwithstanding the consequences of withholding the information.

5.5 COMPANY'S Non-disclosure of Information. If applicable, the COMPANY shall withhold from public disclosure any and all information obtained from the CONSULTANT that is subject to an exclusion under the COMPANY'S state or federal public disclosure act(s). Specifically, all oral histories, stories, archeological or cultural resource information pertaining to specific sites or objects, and any other information that is not generally known or ascertainable, shall be considered trade secrets of the Tribes as that term is defined in the Uniform Trade Secrets Act, and the COMPANY shall assert that as a basis for exemption in any request for information. In addition, the COMPANY shall withhold from public disclosure all records, maps or other information

identifying the location of any and all archaeological sites including information related to the study being conducted.

5.6 Disclosure to Employees. COMPANY shall restrict access to the Confidential Information provided to it only to employees of the COMPANY who clearly need such access in order to obtain any and all necessary permits and authorizations from any state or federal governmental entity for the operation of the project provided the employee has been instructed to comply with the terms of this agreement.

5.7 Discovery. If COMPANY receives a discovery request to disclose Confidential Information, COMPANY shall immediately notify CONSULTANT. In the event of a discovery request COMPANY shall work with CONSULTANT to prevent disclosure, whether by agreement with third parties or by seeking a court protective order, on the ground that the Confidential Information is a trade secret of CONSULTANT and contains sensitive cultural resource information.

6. Insurance

6.1 Generally. CONSULTANT shall maintain the following insurance:

- (a) Commercial General Liability Insurance in the amount of one million dollars each occurrence and two million dollars aggregate.
- (b) Commercial Automobile Liability Insurance in an amount equal to one million dollars for all vehicles used in performance of the Services.
- (c) Worker's Compensation Insurance as required by applicable law.

7. Termination

7.1 For Convenience. Either party may terminate this agreement by giving to the other party 10 days' prior written notice. The notice shall specify the effective date of termination. Termination will not alter payment terms or give rise to any equitable claim for reimbursement.

7.2 Breach of Agreement. Either party may immediately terminate this agreement by written notice following a material breach by the other party.

8. General Terms

8.1 Choice of Law. The laws of the State in which the Services are being performed shall govern this agreement.

8.2 Severability. Any provision of this agreement held to be unenforceable will not affect the enforceability of any other provision.

8.3 Terminology. The words "include," "includes," and "including" are to be read as if they were followed by the phrase "without limitation to". The word "or" is not exclusive. Headings are provided for convenience and do not affect meaning. Any reference to a time of day is to the time in Pendleton, Oregon.

8.4 Notices. Notices must be in writing. Delivery occurs when the other party receives notice through certified mail

or a reputable overnight courier. Representative addresses are as follows:

The CONSULTANT:

CTUIR
Cultural Resources Protection Program
46411 Timline Way
Pendleton, Oregon 97801
Attention: Carey L. Miller
Telephone: (541) 276-3447
Facsimile: (541) 429-7203

The COMPANY:

Port of Benton
3100 George Washington Way
Richland, WA 99352
Attention: Marv Kinney
Telephone: (509)375-3060
Facsimile: (509) 375-5287

8.5 Entire Agreement. This agreement supersedes all prior or contemporaneous oral or written agreements between the parties.

8.6 Amendments. No change, amendment or modification of this agreement is valid unless it is in writing and executed by the parties.

8.7 Assignment. This agreement is not assignable by the CONSULTANT and binds any successor.

8.8 Survival. The requirements of Sections 3, 4 and 5 survive termination of this agreement.

8.9 No General Waiver. The waiver or failure to enforce, insist upon, or comply with any term in this agreement does not constitute a general waiver or relinquishment of that term.


8.10 No Construction Against Drafter. Each party has participated in negotiating and drafting this agreement. If any ambiguity or question of intent or interpretation arises, this agreement is to be construed as if the parties had drafted it jointly, as opposed to being construed against a party because it was responsible for drafting one or more provisions of this agreement.


8.11 Sovereign Rights. Nothing in this Agreement constitutes a waiver of CONSULTANT'S rights as a sovereign.

This agreement is signed as of the date stated in the introductory clause and may be executed in counterparts or by facsimile.

**CONFEDERATED TRIBES OF THE
UMATILLA INDIAN RESERVATION,
CULTURAL RESOURCE PROTECTION
PROGRAM (CONSULTANT)**

PORT OF BENTON

By: 
J. David Tovey, Jr., Executive Director

By: 
Scott Keller, Jr., Executive Director

**Attachments:
Schedule A, Scope of Work
Schedule B, Project Budget**

SCHEDULE A: Scope of Work

1. Background.

- 1.1 The Port of Benton is proposing to construct broadband infrastructure in the Tri-Cities Research District. The undertaking will place fiber and conduit into existing utility easements throughout the District, located in the northern portion of Richland.
- 1.2 The Cultural Resources Protection Program of the Confederated Tribes of the Umatilla Indian Reservation provides professional cultural resource consulting services. This agreement specifically pertains to cultural resource monitoring services being provided by CONSULTANT.

2. Scope.

- 2.1 CONSULTANT will monitor ground disturbing activities to reduce impacts to archaeological resources.

3. Requirements.

- 3.1 CONSULTANT will observe ground-disturbing activities associated with the installation of broadband infrastructure in the Tri-Cities Research District.
- 3.2 CONSULTANT will document any archaeological resources observed during monitoring.
- 3.3 Upon completion of ground-disturbing activities, CONSULTANT will prepare a report of findings to submit to the Port of Benton and the Washington State Department of Archaeology and Historic Preservation.

Schedule B: Project Budget

DAILY MONITORING BUDGET

I. PERSONNEL

A. Salaries and Wages

<i>Personnel</i>	<i>Rate</i>	<i>Hours</i>	<i>TOTAL</i>
Archaeologist	\$ 26.50	1.5	39.75
Field Director	\$ 26.00	11	286.00
SUBTOTAL			325.75

B. Benefits

Fringe Benefits @ 39%			127.04
SUBTOTAL			452.79

II. NON-PERSONNEL

	<i>miles</i>	<i>price per mile</i>	
Vehicle Mileage	190	0.565	107.35
Communications			3.00
Equipment Fee			18.00
SUBTOTAL			128.35

SUBTOTAL PERSONNEL AND NON-PERSONNEL 581.14

III. INDIRECT COST

Indirect Rate @ 44%			255.70
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ESTIMATED DAILY COSTS 836.85

This rate is based on the monitor working an 8-hour day and traveling back and forth to the site. If the monitor works more or less the costs will change. This budget is valid until December 31, 2013.

Schedule B: Project Budget

DAILY MONITORING BUDGET with PER DIEM

I. PERSONNEL

A. Salaries and Wages

<i>Personnel</i>	<i>Rate</i>	<i>Hours</i>	<i>TOTAL</i>
Archaeologist	\$ 26.50	1.5	39.75
Field Director	\$ 26.00	8.5	221.00
SUBTOTAL			260.75

B. Benefits

Fringe Benefits @ 39%			101.69
SUBTOTAL			362.44

II. NON-PERSONNEL

	<i>miles</i>	<i>price per mile</i>	
Vehicle Mileage	70	0.565	39.55
Communications			3.00
Per Diem (4 quarters @ \$34.75/quarter)			139.00
Equipment Fee			18.00
SUBTOTAL			199.55

SUBTOTAL PERSONNEL AND NON-PERSONNEL **561.99**

III. INDIRECT COST

Indirect Rate @ 44%			247.28
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ESTIMATED TOTAL COSTS **809.27**

Please note that the rate is based on the schedule outlined in the September 14, 2009 email. If the contractor works more or less, the cost will change. This budget is valid until December 31, 2013.

II. PAYMENT PROCEDURES.

- A. CONSULTANT shall submit invoices for reimbursement of work performed on a monthly basis to: Diahann Howard.
- B. Invoices must conspicuously indicate they are for: Port of Benton Tri-Cities Research District Broadband
- C. Final invoices should be submitted by March 31, 2014
- D. The COMPANY will reimburse the CONSULTANT for invoices within thirty-five (35) days of receipt.