

MEMORANDUM OF UNDERSTANDING

State of Oregon, Department of Transportation, and the Confederated Tribes of the Umatilla Indian Reservation

MEMORANDUM OF UNDERSTANDING

Between

STATE OF OREGON DEPARTMENT OF TRANSPORTATION

And

THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

The following is a Memorandum of Understanding (MOU) between the State of Oregon, Department of Transportation (State), and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), Tribal Employment Rights Office (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 Office (TERO) Code 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 Umatilla Indian reservation (see Exhibit A for map showing reservation boundaries) or any contractor involved in a Federal Aid highway project located within the MOU TERO boundary, which is defined as an area "off reservation" extending approximately 60 miles outside the reservation boundary (see Exhibit A), except that portion north of the reservation not within State jurisdiction. For purposes of this document, "Contractor" refers to any firm engaged in highway construction work under contract with the Oregon Department of Transportation. This Memorandum amends and replaces a prior Memorandum of Understanding between the parties which took effect July 1, 2010.

(2)

Authority

The State acknowledges the inherent sovereign authority of the Tribes to promulgate and enforce the TERO Code within the boundaries of the Confederated Tribes of the Umatilla Indian Reservation. The State further acknowledges the provisions in the 1987 reauthorization of the Surface Transportation Assistance Act and those of the Intermodal Surface Transportation Efficiency Act of 1991 regarding Indian Preference employment goals on Federal-Aid and Direct Federal Highway projects located on or near Indian reservations.

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(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 CTUIR to assess and collect the Compliance fees set forth in the TERO Code for projects considered by both parties to be on the Umatilla Indian Reservation. 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 CTUIR Board of Trustees within the TERO Code (presently 2.5%).

It is also agreed the U.S. DOT Notice N4720.7 states, "In off Reservation situations" TERO may bill projects at an agreed upon rate for services and 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 \$2mil)	0.50%
Remaining Contract Value (\$2,000,000-to full contract value)	0.25%

*MOU TERO Boundary defined in Exhibit A

The proceeds are to be used by the TERO to develop and maintain a Tribal Skills Bank, 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 CTUIR'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 TERO Code. 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 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 Umatilla Indian Reservation.

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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 December 31, 2015, subject to good faith negotiations to extend the agreement for additional 5 year periods.

(6)

Procedures for Implementation

A. State Transportation Improvement Program (STIP) - The ODOT agrees to provide TERO with a list of planned highway projects from the 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.

The TERO shall decide which project "near" the reservation shall be subject to the Indian Preference in Employment Special Provisions and shall notify ODOT fifteen weeks prior to the scheduled bid opening of any project of such determination. If TERO does not so notify ODOT within that time, there shall be no Indian Preference in Employment for that project.

ODOT project personnel shall conduct an annual meeting to provide CTUIR TERO with information regarding planned projects that shall be on the reservation and within the TERO MOU boundary. 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 develop 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 shall be provided no later than 30 days from the approval by the OTC. Whenever projects subject to TERO are scheduled for bid letting, the agreed upon special provisions are to be included in each bid package.

C. MANDATORY TERO WORKSHOP - The Tribal Employment Rights Office of the Confederated Tribes of the Umatilla Indian Reservation agrees to conduct mandatory prebid 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

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to be eligible to bid on ODOT Contracts which require compliance with these TERO/MOU requirements. The certificate shall be good for 3 years.

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 on 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 the highway project contract 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 the highway project contract 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 Umatilla 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 Code, 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 Code, 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

This memorandum supplants and replaces any and all pre-existing memorandums and amendments by the parties concerning matters of a similar nature.

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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 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.

Pursuant to Umatilla Tribal Board of Trustees Resolution No. 96-67 dated July 31, 1996, the TERO Program Manager is authorized to approve and execute this Memorandum of Understanding.

CONFEDERATED TRIBES OF THE
UMATILLA, INDIAN RESERVATION, by and
through its Tribal Employment Rights Office

By _____ Date: _____
Robin Bitrick, TERO Program Manager

APPROVED AS TO LEGAL SUFFICIENCY:

By _____ Date: _____
M. Brent Leonhard, CTUIR Deputy Attorney
General

STATE OF OREGON
DEPARTMENT OF TRANSPORTATION

By _____ Date: _____
Paul Mather, Deputy Director for Highways

By _____ Date: _____
Catherine Nelson, Technical Services
Manager, Chief Engineer

APPROVED AS TO LEGAL SUFFICIENCY

By _____ Date: _____
Dale Hormann, Senior Assistant Attorney
General

Exhibit A

