

**MEMORANDUM OF UNDERSTANDING
TO RESOLVE THE APPEAL BEFORE THE
INTERIOR BOARD OF INDIAN APPEALS**

This Memorandum of Understanding ("MOU") is entered into this 22nd day of November 2016 ("Effective Date"), by and between the Kalispel Tribe of Indians, a federally recognized Indian Tribe ("Tribe") and the City of Airway Heights, a non-charter code city of the State of Washington ("City"), jointly referred to as "Parties."

BACKGROUND

A. The Tribe owns a 40-acre parcel upon which it operates the Northern Quest Casino ("Casino Property") as well as an approximately 250-acre parcel of real property which is adjacent to the Casino Property that has been taken into trust by the United States for the Tribe ("Development Property").

B. Upon request of the Tribe, the Northwest Regional Director of the Bureau of Indian Affairs, United States Department of the Interior on May 17, 2016, made a decision to acquire in trust for the Kalispel Tribe, 69.03 acres of off reservation property located in the City of Airway Heights (the "New Tribal Property").

C. The Casino Property, the Development Property and the New Tribal Property are within the City of Airway Heights.

D. On the Casino Property, the Tribe has developed the Northern Quest Casino plus a Hotel, meeting rooms, restaurants, and various guest services.

E. The Development Property has been partially developed with commercial retail and residential uses operated by the Tribe that provides goods, services and housing to the public.

F. On June 15, 2016, the City of Airway Heights, Washington, filed with the United States Department of the Interior, Office of Hearings and Appeals, Indian Board of Indian Appeals ("IBIA") a Notice of Appeal and Statement of Reasons relating to the decision changing the title status of the New Tribal Property. See IBIA Docket Nos. 16-086, 16-091, and 16-092.

G. In an effort to provide services and mitigate the impacts from use and development of the Casino Property and Development Property, the City and the Tribe have entered into the following agreements:

1. Memorandum of Understanding dated August 20, 1996, whereby the Tribe has paid the City the amount of \$374,250.00 per year to mitigate the impact on services provided by the City, "including, but not limited to, impacts upon streets, signalization, law enforcement, emergency services, public utilities and other related municipal services." MOU page 1-2;

2. Action by the Kalispel Impact Mitigation Committee: Agreement Regarding Distribution of Impact Mitigation Fund, dated April 26, 2011, wherein the

parties agreed that 2% of a Net Win, as defined in Section II(V) of the Tribal-State Compact for Class III Gaming between the Kalispel Tribe of Indians and the State of Washington, as impact mitigation funds was agreed to be disbursed as follows: "50% of the impact mitigation fund to the Tribe, 40% to the City, and 10% to the County"; and

3. Intergovernmental Agreement dated April 26, 2006, whereby the Tribe, to mitigate the impacts from the development of 250 acres of real property, makes an annual payment to the City, which as of 2016 is \$250,000 with annual increases for the purpose of the City providing the above property "with the same services...to properties of similar density, use and location, except for sewer and water services described in paragraph 2 including, but not limited to, police, fire, emergency, court, operations and maintenance for public street services and any public safety related actions referenced therein." See Agreement page 3.

H. The Parties believe that it would serve their best interests to meet, confer and reach agreement on a fee for services and public infrastructure that is based upon the demand, availability, and other factors agreed by the Parties as opposed to the flat fee described above.

NOW, THEREFORE, the Parties agree as follows:

1. Consideration. In consideration for the City dismissing its appeal filed with the United States Department of the Interior, Indian Board of Indian Appeals under Docket Nos. IBIA 16-086, 16-091, and 16-092, the Parties agree to exercise best efforts and good faith by meeting and conferring to reach agreement on the payment of a fee by the Kalispel Tribe to the City of Airway Heights for City Governmental Services including off-site impacts to the Public Infrastructure that are reasonably related to the Tribe's development, use, occupancy, maintenance, enjoyment and preservation of the Casino Property, Development Property and New Tribal Property (collectively, the "Tribal Property").

"Best efforts" means the efforts that a reasonable person desirous of achieving a result would use in similar circumstances to ensure that such result is achieved as expeditiously as possible; provided, however, that an obligation to use best efforts under this agreement does not require the person subject to that obligation to take actions that would result in a materially adverse change in the benefits to such person (or entity) of this or under any existing agreement.

"City Governmental Services" for purposes of this MOU shall be defined by the Parties.

"Good faith" means giving due consideration to the matter, applying reasonable and necessary resources to evaluate the matter and providing a prompt and reasoned response to accomplish the matter within the scope of authority or recognized best practice.

"Public Infrastructure" means: (a) City streets as defined by City Ordinance; (b) facilities, equipment and improvements identified in City Capital Facility (or Improvement) Plans; (c) Park property and facilities; and (d) other facilities or real property.

2. Superseding Agreement. To further the best interests of the Parties and provide a form of measurement for both impacts, demand, and availability, as well as the cost, level of service, suitable public infrastructure and other City benefits such as park property and facilities, the

Parties agree to exercise best efforts and good faith to enter into a fee arrangement to mitigate the impacts from use, development, and occupancy of the Tribal Properties upon the City of Airway Heights' services and public infrastructure. For the purpose of accomplishing the above, the Parties shall:

2.1. Identify the provided and necessary City Governmental Services including Public Infrastructure development, repair and maintenance. Include: measurement of demand and related cost.

2.2. Calculate a fee for providing City Governmental Services and Public Infrastructure based upon generally acceptable demand (LOS) and public safety considerations. Determine methodology for assessing actual cost (or base fee) and adjust annually for true cost.

2.3. Form a joint board to periodically review subsections 2.1, 2.2 and related matters; consider joint initiatives for community enhancement (i.e. rec center development and other community initiatives); review and comment on mutually beneficial infrastructure and capital facility improvements; seek grants and funding opportunities and work on matters of joint interest.

3. Schedule and Process. The Parties, through their designated representatives, shall within thirty (30) days of the Effective Date, confer and agree upon a schedule that establishes meeting dates between the Parties, dates for exchange of preliminary information and the anticipated date for final action by the respective governing bodies.

The following is the process to develop an agreement for the matters herein:

3.1. The City will identify the City Governmental Services and the development, improvement, maintenance and repair of Public Infrastructure reasonably related to use by persons occupying or visiting the Tribal Property. Included shall be an identification of related capital facility or improvement plans that identify the facilities, equipment and infrastructure reasonably necessary to serve the Kalispel Property. For infrastructure, the Parties may look to the City's Capital Facility Plan, generally accepted maintenance and repair standards, or other reasonably accepted sources.

3.2. The Tribe shall make available either estimates or actual information concerning the present and future use and occupancy of the Tribal Property by persons who are either invitees to facilities open to the public or available through contractual or membership agreements, and persons who occupy, for residential or other purposes, structures and buildings on the Kalispel Property.

3.3. The City shall provide an estimated cost of the City Governmental Services and Public Infrastructure based upon a generally accepted level of service as reflected in the City Comprehensive Plan or other standard, in order to assess the related costs.

3.4. The Parties shall meet and confer to reach agreement on the fee for City Governmental Services and Public Infrastructure.

The Parties recognize that the above is a general outline of the process whereby a fee for services can be identified based upon demand. The Parties shall modify the process as appropriate.

4. No Binding Outcome. The Parties acknowledge and agree that this MOU expresses the intent of the Parties to meet and confer in an attempt to reach agreement. This MOU does not require that a particular outcome or agreement be achieved.

5. Dispute Resolution.

5.1. Notice of Dispute. If either party has a dispute under this agreement, it shall provide written notice as follows:

To the Tribe: Kalispel Tribe of Indians
 Attn: Tribal Administrator
 Post Office Box 39
 Usk, Washington 99180

To the City: City of Airway Heights
 Attn: City Manager
 1208 S. Lundstrom Avenue
 Airway Heights, Washington 99001 0969

The notice shall provide a brief description of the dispute.

5.2. Meet and Confer. The Parties shall within five (5) days of receipt of the Notice of Dispute, meet and confer for the purpose of resolving the same. The meet and confer shall be attended by a representative of each governing body plus other appropriate staff as deemed necessary.

5.3. Mediation. If the Parties are unable to resolve the dispute within 20 business days, the parties shall engage a mutually agreed mediator to assist the parties in resolving the dispute. The mediator shall have experience and background relating to tribal and municipal governance with regard to the presented issues. The mediator's fees and costs shall be equally shared by the Parties are involved in the dispute.

6. Term. This MOU shall continue in full force and effect until terminated by the mutual consent of the Parties.

7. Governing Law. This MOU shall be governed by the laws of the State of Washington. To the extent state law does not address the relevant issues, the laws of the Kalispel Tribe and the United States, as applicable, shall apply.

8. Community Relations. The Tribe and the City agree to consult with each other in good faith prior to the distribution of any press release or prior to any public announcement and/or public statement with respect to the substance of this agreement. The Tribe and the City further agree to consider any suggested changes to any press release or public announcement and/or statement proposed by any other party.

9. Binding Agreement. This MOU, including all recitals herein, shall be binding upon the parties hereto, but shall not modify, supersede or revoke the agreements listed in "Background, Sections G 1-3" unless otherwise mutually agreed in writing.

This Agreement is in full force and effect as of the Effective Date set forth above.

KALISPEL TRIBE OF INDIANS

CITY OF AIRWAY HEIGHTS

By: Glen Nenema
Name: Glen Nenema
Title: Chairman

By: Albert Tripp
Albert Tripp, City Manager

ATTEST:

ATTEST:

By: Darren Holmes
Name: Darren Holmes
Title: Tribal Council Secretary Officer;
Tribal Administrator

By: Amy Gravelle
Amy Gravelle, City Clerk

APPROVED AS TO FORM ONLY:

By: [Signature]
Stanley M. Schwartz, City Attorney

