

MEMORANDUM OF UNDERSTANDING

Between

**THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION
OF OREGON**

And

USDA FOREST SERVICE: PACIFIC NORTHWEST REGION

BUREAU OF LAND MANAGEMENT: OREGON STATE OFFICE

**For the Purpose of Providing a Framework for Planning and Implementing
Forest and Rangeland Restoration and Fuels Reduction Projects**

WHEREAS, over the past decade Tribal forests on the Warm Springs Indian Reservation (the “Reservation”) in Oregon and the adjoining U.S. Forest Service (“USFS”) and Bureau of Land Management (“BLM”) administered lands have been subjected to repeated uncharacteristic high intensity wildfires, many of which originated on federally managed lands.

WHEREAS, decades of successful fire suppression efforts have created forest conditions that are in many cases not conducive to the long term health of native plants and animals, and there is now widespread public recognition and acceptance that an active management regime is necessary to protect Oregon’s forest ecosystems – regardless of ownership, over the long term – including the reduction of hazardous forest fuels in coordination with the completion of other restoration activities.

WHEREAS, because federal agencies have more acres requiring treatment than they can treat using available appropriations provided by Congress, forest fuel treatment and restoration projects over the long term will benefit from a market solution, such as woody biomass energy generation projects, to help the federal agencies meet their goal of increasing the number of acres treated per year.

WHEREAS, woody biomass includes all vegetative materials grown in forest, woodland or rangeland environments that are the by-products of management, restoration or hazardous fuel reduction treatments; and woody biomass utilization is the harvest, sale, trade or use of biomass to produce a product or energy.

WHEREAS, the Confederated Tribes of the Warm Springs Reservation of Oregon (“CTWS”) is a sovereign government whose interests include protecting and preserving tribal treaty, trust and reserved rights and interests within Tribal usual and accustomed areas on lands ceded to the United States and in aboriginal use areas, include protecting the Reservation and its members from hazardous forest fires and conditions, and promoting business enterprises to support the welfare and economic self-sufficiency of its members.

WHEREAS, CTWS owns business enterprises, including Warm Spring Forest Products Industries (“WSFPI”) and Warm Springs Power Enterprises (“WSPE”); is currently generating power at the WSFPI mill site burning residual mill material and biomass from forest fuels treatment projects on the Reservation; is currently a co-licensee of power production activities for the Pelton Round-Butte Hydroelectric project; is currently manufacturing lumber; and is actively involved (with the Bureau of Indian Affairs) in the management of tribal forest lands, thus demonstrating all the skills necessary to implement this Memorandum of Understanding (“MOU”).

WHEREAS, CTWS has developed plans for expanding its existing biomass generation capacity at the WSFPI mill site to a net generating capacity of 15.5 megawatts (the “Biomass Facility”) and has identified that approximately 150,000 bone dry tons of biomass will be necessary to fuel such a facility on an annual basis, that 80,000 bone dry tons of that annual biomass material be sourced from vegetation management treatments on an estimated 8,000 acres of surrounding federal lands, and that the remaining 70,000 bone dry tons of biomass material may be sourced from a combination of on-Reservation and other off-Reservation sources.

WHEREAS, the USFS and BLM recognize that CTWS will have to invest significant resources to enable expansion of its Biomass Facility at the WSFPI mill site, recognize that CTWS and/or a subsidiary of CTWS such as WSFPI or other entity formed for the Biomass Facility expansion and/or operation will need to seek satisfactory financing to fund such investment, and recognize the intent to fulfill the participation objectives in this MOU.

WHEREAS, in the Central Oregon region, Federal land management agencies treat an average of 60,000 acres each year by mowing underburning, piling, and thinning of dense and overcrowded stands, have identified a goal to increase the number of acres treated per year, have identified a need to reduce fuels on approximately one million acres over the next 10 years (100,000 acres per year), and have identified potential opportunities for biomass utilization, in particular, on 170,000 acres over the next five years.

WHEREAS, of the 60,000 acres treated in Central Oregon, the USFS and BLM have, since 2001, treated an average of 29,200 acres each year on federal lands that are adjacent to and/or in close proximity to the Reservation (within a 75 mile radius of the WSFPI mill site in Warm Springs), which includes 18,200 acres of fuels treatment and 11,000 acres of timber harvest and thinning. Both agencies expect these treatments to continue into the future and have a goal of increasing the number of acres treated per year in areas adjacent to and/or in close proximity to the Reservation.

WHEREAS, CTWS, USFS and BLM are signatories to the Central Oregon Partnership for Wildfire Risk Reduction (“COPWRR”), Coordinated Resource Offering Protocol (“CROP”) statement of collaboration; the program is intended to develop a regional offering protocol in Central Oregon, taking into consideration ecosystem, fuel treatment and community needs, that will achieve the necessary predictability, stability, and levelization of woody biomass supply to enable businesses to invest in technologies and product development such as biomass energy generation; and the 75 mile radius around

the WSFPI mill site has been identified as a CROP working circle and demonstration project for the purpose of applying such offering protocols to identify a stabilized supply of woody biomass materials that can be offered for utilization.

WHEREAS, CTWS, whose professional management of its own extensive forests have earned it Forest Stewardship Council certification as a green forest manager and which further has the specialized knowledge and expertise to ensure the appropriate restoration of tribally significant resources has the necessary credibility to be entrusted with long-term forest fuel reduction/forest health remediation efforts on both public and private lands.

WHEREAS, as distinct from general public trust responsibilities, the United States Government has a unique legal relationship with American Indian tribes as set forth in the Constitution of the United States, treaties, statutes, executive orders, and court decisions. The policy of the United States Government is to protect treaty-based fishing, hunting, gathering, and similar rights of access and resource use on federal lands.

WHEREAS, CTWS, the USFS and BLM have developed a strong working relationship as evidenced by the Memorandum of Understanding (April 25, 2003) (the “April 23, 2003 MOU as updated”) stating the mutual benefits and interests of government-to-government consultation and collaboration on resource management plans, proposals, actions and policies and setting forth a framework for governmental relations, coordination and collaboration efforts between the agencies.

WHEREAS, the USFS, BLM and CTWS (the “Parties”) desire to develop a framework for a long-term resource management program on federal lands managed by USFS and BLM to achieve identified management objectives related to hazardous fuel treatment needs and forest ecosystem, watershed, wildlife, fish and tribal asset protection and restoration needs.

I. Purpose and Objectives.

A. Purpose. The purpose of this MOU is to develop a framework for a long-term resource management program on federal lands managed by the USFS and BLM between the signatory governments to achieve certain management objectives intended to address the following identified needs:

1. Hazardous fuel treatment needs. Millions of acres of forestlands in the western United States contain a high accumulation of flammable fuels compared to fuel conditions prior to the 20th century. The fuel build-up can be attributed to numerous factors including past land management practices and decades of successful fire suppression. In recent years federal land management agencies have focused their efforts on reducing fuels as a result of the large and destructive wildfires that have occurred throughout the West. These wildfires have put many values at risk including homes, sensitive or protected fish and wildlife habitat, cultural and tribally-significant resources, critical infrastructure, firefighter health and public safety, soil productivity, aesthetics, clean air, and other important components of forest ecosystems. Over the past decade

Tribal forests, adjoining national forests and BLM-managed lands have been subjected to repeated large wildfires, many of which originated on federally managed forests or rangeland.

As noted above, federal land management agencies have identified a need to reduce fuels on approximately one million acres over the next 10 years (100,000 acres per year) as well as a goal to increase the number of acres treated each year with fuels reduction and forest restoration activities. Presently, agencies treat an average of 60,000 acres each year by mowing, underburning, piling and thinning of dense and overcrowded stands. The cost for many of these vegetation treatments can be expensive. While much of the woody biomass byproducts of these activities could be used as biomass fuel, the current market for biomass material in Central Oregon is limited primarily by a lack of nearby facilities that can utilize the material. Creation of a market for typically unmerchantable/under utilized material generated from vegetation treatment activities will provide agencies with opportunities to remove woody biomass that has traditionally been piled and burned and may provide opportunities for using retained receipts for service-oriented work on federal lands.

2. Forest ecosystem, watershed, wildlife, fish and tribal asset restoration needs. In fire-adapted ecosystems such as those adjacent to the Reservation, wildfires play an integral part to the health of such ecosystems. However, uncharacteristic large scale high intensity fire events—which, for the reasons noted above, threaten to occur in these ecosystems—present a significant threat to forest ecosystems, watersheds and fish and wildlife habitat as well as to tribal cultural and treaty, trust and reserved resources. For example, the cultural and subsistence foods on which tribal members rely, such as huckleberries, salmon or deer, may be destroyed or altered, and ecological conditions that support cultural foods and medicines may be changed for short or long periods of time. Cultural archeological sites may also become exposed by removal of vegetation or damaged due to fire suppression activities. Current management regimes have created conditions that pose other threats to these resources. For example, in forestlands, road systems can contribute to water quality problems, degradation of fish habitat, introduction of noxious species, and degradation of big game habitat and cultural foods. The forest ecosystem, watershed, wildlife, fish and cultural food and other treaty, trust and reserved asset restoration needs subject to fire threats and other resource management-related conditions are varied, depending on the particular threat and the resource involved. In general, however, these restoration needs will be identified as they relate to high priority resources, including, but not limited to, water quality and quantity, salmon, steelhead, resident trout, whitefish, lamprey, deer, bighorn sheep, elk, eagles, huckleberries, choke cherries, roots, red cedar, camas, celery, and bear grass.

3. Geographic Scope. The scope of this MOU is intended to address the treatment and restoration needs on federal forest and range lands that include but are not limited to the Mt. Hood National Forest, the Willamette National Forest, the Deschutes National Forest, the Ochoco National Forest, the Crooked River Grasslands and the Prineville District BLM lands.

B. Objectives. The tribal and federal governments intend to work together to achieve the following management objectives, stated broadly:

1. Improve and protect:
 - a. the vitality of forest and range ecosystems and the resiliency of such ecosystems to threats from fire, disease, and invasive and noxious species, including improving soil productivity and the use of prescribed fire or vegetation removal to promote healthy forest and range stands;
 - b. water resources, including watershed health and productivity, water quantity and water quality;
 - c. habitat for wildlife and fisheries;
 - d. tribal treaty, trust and reserved resources, including tribal cultural and subsistence foods and materials and the landscape that supports such resources;
 - e. air quality, including minimizing air quality impacts by removing excess biomass before the introduction of fire; and
 - f. the commercial value of forest biomass for producing electric energy and other beneficial uses.
2. Reduce:
 - a. hazardous forest fuels on federal lands;
 - b. fire hazards to tribal lands, other tribal treaty, trust and reserved resources, at-risk rural communities, and municipal water supplies; and
 - c. prevalence of noxious and exotic weeds and reestablish native species.
3. Facilitate:
 - a. the re-introduction of fire in fire-dependant ecosystems by removing unnatural accumulations of fuel prior to re-introducing fire;
 - b. a market-based solution for hazardous fuel reduction and biomass removal on federal, private and tribal lands;
 - c. generation of renewable and sustainable energy;

- d. economic opportunities in an economically depressed area;
- e. the systematic gathering of information to improve forest and range management;
- f. the continued economic vitality of the existing forest products industry infrastructure, including emphasizing the best and highest market in implementation of this MOU; and
- g. implementation of sustainable forestry practices and restoration forestry principles on a landscape level scale.

II. Guiding Authorities and Agreements.

A. For CTWS: The following authorities authorize CTWS to execute this MOU: the Treaty with the Tribes of Middle Oregon (12 Stat. 963), Article 5, Section 1(a), (f), and (l) of the Tribal Constitution, and Tribal Council Resolution 10,556 (October 24, 2005).

B. For USFS and BLM. The following authorities authorize the USFS and BLM to enter into this MOU: For the USFS--Multiple-Use and Sustained Yield Act of 1960, 74 Stat. 215, and for the BLM--The Federal Land Policy and Management Act, 43 USC 1701-1748.

C. For the USFS, BLM and CTWS: Implementation of this MOU shall be guided by the following authorities including, but not limited to, the April 23, 2003 MOU, as updated, the Memorandum of Agreement between the Department of Energy, the Department of Interior and the U.S. Department of Agriculture, dated January 21, 2005, the January 20, 2005 (as updated) Central Oregon Partnerships for Wildfire Risk Reduction (COPWRR), OR Solutions CROP Initiative Declaration of Cooperation, the Healthy Forests Restoration Act of 2003 (Public Law 108-148), the Tribal Forest Protection Act of 2004 (Public Law 108-278), the Stewardship End Result contracting authority (16 USC § 2104 Note), and the Energy Policy Act of 2005.

III. Party Commitments.

A. For the USFS and BLM:

1. The USFS and BLM commit to offering woody biomass for utilization as a component of all applicable contracts or agreements offered under this MOU. Such contracts and agreements would contain an optional provision that would allow the contractor to remove woody biomass for utilization. *Removal may require payment of a minimum appraised value or payment for services if such removal is required by the government.* This option would be contained in any type of contract or agreement the federal agencies utilize for vegetation management projects which are expected to generate woody biomass, unless such biomass was reserved for ecological reasons. The USFS and BLM also agree to utilize the full variety of contracting methods

available under current statutes and authorities. These include competitive stewardship contracts, traditional service and timber contracts, and sole source agreements with the CTWS under the Tribal Forest Protection Act. As provided and consistent with this MOU and to the extent permitted by and consistent with all applicable laws and land use plans, the USFS and BLM agree to offer 8,000 acres per year for forest restoration and fuels reduction projects within the geographic scope of this MOU which will yield approximately 80,000 Bone Dry Tons of biomass per year.

2. The annual 8,000 acre figure identified above fits comfortably within the federal land management agencies' assessment of hazardous fuel treatment current practices, needs, and goals. As noted above, of the 60,000 acres treated in the Central Oregon region, the USFS and BLM have, since 2001, treated an average of 29,200 acres each year on federal lands adjacent to and/or in close proximity to the Reservation. Both agencies expect these treatments to continue into the future with the goal of increasing the number of acres treated per year in areas adjacent to and/or in close proximity to the Reservation and in the wider Central Oregon region.

3. It is the intent of the USFS and BLM to require that merchantable saw log volume other than incidental volumes associated with forest fuels treatment projects, restoration projects, and sole-sourced projects under the Tribal Forest Protection Act be merchandised and sold into the highest and best markets (the market in which the purchaser is the person or entity that can pay the most for the material and can otherwise maximize the use and/or benefit of the material).

B. For CTWS: CTWS agrees to offer to provide, as appropriate—at its cost (including reasonable indirect costs)—its assistance and expertise in implementation of this MOU, including but not limited to:

1. planning assistance, including gathering and compilation of resource and geotechnical data, contributing tribal expertise in resource and forestry management, coordinating stakeholder participation in the context of CROP collaboration efforts;

2. monitoring assistance, including gathering and compilation of resource and geotechnical data and coordinating stakeholder participation in the context of CROP collaboration efforts;

3. project implementation, including contributing tribal expertise in tribal treaty, trust and reserved resources and tribal expertise in sustainable and restoration forestry practices;

4. administration assistance, including development of annual reports, NEPA compliance and contract and agreement implementation.

Depending on the execution of this MOU, the availability of acceptable financing, sufficient quantity of other biomass fuel sources and an adequate power sales market, CTWS further commits to expanding its existing biomass generation capacity at the Warm Springs mill site up to a net generation capacity of 15.5 megawatts.

C. For CTWS, USFS and BLM:

1. The annual 8,000 acre figure in Section III.A.1 above recognizes the intent of the agencies and CTWS to facilitate the purpose and objectives of this MOU to maximize the capability to address hazardous forest fuel treatment needs and forest ecosystem, watershed, wildlife, fish and tribal asset restoration needs. Building and maintaining a healthy market for biomass material is one critical element to maximizing this capability. CTWS, USFS, and BLM will rely on the planning efforts through the Coordinated Resource Offering Protocol (“CROP”) initiative to help maintain a leveled supply for such markets and to help identify other flexible responses for maintaining such markets. USFS, BLM and CTWS further recognize that circumstances beyond the control of the agencies and CTWS, such as delays due to litigation, broad-reaching court decisions, and congressional appropriations and funding, may impact the timing, scope and method of implementing the MOU and may require flexible responses to achieve the intent of this MOU on an ongoing basis. In addition to the flexibility that the CROP initiative may provide, USFS, BLM and CTWS intend to examine and implement other solutions that will fulfill commitments necessary to achieve the intent of this MOU.

2. CTWS, USFS and BLM recognize that the purpose of the biomass utilization component under this MOU is to create a financially viable use and market for woody biomass material. The Parties recognize that, currently, the cost of biomass removal exceeds the market value, if any, for such material and that the mutual success of developing an economically viable market for such material will depend on a reliable long term supply, reliable markets, and mutual financial feasibility for removing and utilizing the material. In building this market, the parties will use a fair and transparent process for assigning value to woody biomass material.

IV. Working Relationships. Working relationships under this MOU shall be consistent with the April 25, 2003 MOU, as updated, between the Parties. The April 25, 2003 MOU states the mutual benefits and interests of government-to-government consultation and collaboration on resource management plans, proposals, actions and policies and sets forth a framework for governmental relations, coordination and collaboration efforts between the Parties. Within the context of the working relationships set forth in the April 25, 2003 MOU, this MOU is intended to focus on the mutual interests that the USFS, BLM and CTWS have in forest and range restoration and fuels reduction projects, including biomass utilization, and is intended to provide the framework for planning and implementing such mutually beneficial projects.

V. Identification and Implementation of Projects under this MOU. Identification and implementation of projects under this MOU shall be through an adaptive resource management model as described below. The projects developed under this MOU will be an example of and will implement the COPWRR CROP initiative. Accordingly, implementation of this MOU will significantly rely on protocols and collaborative planning and monitoring efforts of the CROP initiative.

A. Adaptive Resource Management: An adaptive resource management concept recognizes the ability to adjust or modify management activities to respond to the

needs of the resource. Forestry, fish and wildlife, and other natural and cultural resources are not static, but are part of dynamic ecosystems that are subject to ever changing conditions both internally and from external pressures. In the circumstance where land managers plan a long-term program for resource management, to ensure the most beneficial and effective results, it is necessary to have a flexible planning process that can direct activities to meet pressing and priority resource needs, based on conditions *at that time*. The purpose of adaptive resource management is to facilitate making, revising and amending management decisions throughout the term of the program at scheduled times to review resource conditions and new scientific information that has been developed. In addition, there are circumstances where managers would consider new information or changed resource conditions before such scheduled reviews. That is not to say that adaptive resource management is a reactive tool—short term response to imminent threats or emergencies. Its intended focus is to protect, strengthen, and enhance natural and cultural resources and improve their resilience to detrimental influences or impacts. In addition, setting and adjusting priorities for resource management are enhanced by reaching a consensus of diverse perspectives that are based on solid scientific information and local knowledge. Adaptive resource management embodies the principles of:

1. Stakeholder involvement;
2. Collaborative planning;
3. Proactive (not reactive) planning throughout term of the management program;
4. Priority management based on resource needs, human health considerations, and available funding;
5. Information-based decision-making utilizing best-available scientific data;
6. Coordinated management focusing on ecosystem health;
7. Consistent scientific monitoring;
8. Focus on outcomes; and
9. Moving ecosystem health in an upward trend and maintaining current healthy ecosystems for the long term as sustainable assets for future generations.

B. Stakeholder Involvement. Stakeholder involvement in the adaptive resource management process is through multi-stakeholder collaborative planning efforts. The focus for such multi-stakeholder collaborative planning efforts shall be through ongoing collaborative work of the COPWRR CROP initiative. The COPWRR CROP collaborative efforts have been focused on including stakeholders whose interests align with place-based (Central Oregon) and issue-based (wildfire risk reduction) issues. It is the intent of this MOU to continue with and build on the COPWRR CROP collaboration

and ensure that all interested stakeholders in projects developed under this MOU can be included in collaborative planning efforts. For example, stakeholders for projects developed under this MOU have been identified as generally falling within four categories, but are not limited to such categories: (1) federal, state and local governments/agencies and community organizations within or proximate to a project area; (2) environmental organizations with special interest and expertise in forest and ecosystem management in the geographic scope of project; (3) industry, including lumber mills and forest contractors that operate within or proximate to the program area; and (4) organizations with a focus on sustainable economic development and job creation. It is anticipated that collaborative planning shall focus on two major categories: (1) project planning and (2) environmental monitoring. These collaborative efforts will be organized around an information-based planning model and will assist in the development of phased implementation, project identification, development of project protocols, and development of environmental monitoring protocols, implementation and reporting.

C. Collaborative Planning. Stakeholder collaboration efforts shall be primarily coordinated through the ongoing collaboration efforts of the COPWRR CROP initiative. CROP initiative collaboration efforts encourage achieving a consensus. It is the intent of the Parties that recommendations made to the USFS and BLM by collaboration planning stakeholders could be adopted as the decision by the USFS and BLM. To be most helpful to the USFS and BLM for decisions under this MOU, recommendations from collaborative planning efforts should be based on the good faith participation of the stakeholders to reach a consensus, on the best information available (as described in Section V.E) and must take into consideration the MOU's Purpose and Objectives (Section I) and relevant Management Considerations (defined in Section V.D). Recommendations from the collaborative planning efforts shall not abrogate or limit the approval authority of USFS or BLM as relevant to their management responsibilities and requirements to comply with federal law or to the terms of this MOU. Stakeholder participation shall be open to all appropriate stakeholders and may vary depending on the projects being contemplated and the zone of interests each project impacts. For stakeholder involvement in projects developed under this MOU, it is anticipated that CTWS, USFS and BLM will plan annual meetings with participating stakeholders, produce annual reports with stakeholder input, and consult with interested stakeholders respecting project planning and environmental monitoring:

1. Project Planning. The Parties expect that stakeholders participating in project planning collaborative efforts will assist by providing recommendations regarding the development of phased implementation, project identification and development of project protocols. Participating stakeholders will define their own participation in such planning efforts, but it is expected that the Parties will desire and request consultation for the following:

- a. Development of MOU implementation phased plans and schedule;
- b. Development of project plans and protocols;

- c. Identification of project implementation agreements/contracts; and
- d. Development of annual reports related to MOU and project implementation.

2. Environmental Monitoring Collaborative Planning. The Parties expect that stakeholders participating in environmental monitoring collaborative planning will assist in the development of environmental monitoring protocols, implementation and reporting. Participating stakeholders will define their own participation in such planning efforts, but it is expected that the Parties will desire and request consultation for the following:

- a. Preparation of annual reports related to monitoring;
- b. Preparation of project-specific monitoring reports;
- c. Preparation of project-level monitoring plans and protocols; and
- d. Implementation of the monitoring plans.

D. Management Considerations. Management considerations for USFS or BLM offerings developed under this MOU are derived from the Purpose and Objectives (Section I) of this MOU and include, but are not limited to, the following:

- 1. Impact on tribal culturally significant species;
- 2. Impact on tribal trust and reserved resources;
- 3. Impact on high-priority resources;
- 4. Impact on high-priority environmental values, including but not limited to air quality, watershed conditions, water quality and water quantity;
- 5. Economic feasibility – project costs;
- 6. Available funding and financing;
- 7. Impact on identified Wildland Urban Interface areas;
- 8. Impact on high fire risk areas and communities;
- 9. Likelihood of multiple benefits;
- 10. Consistency with Warm Springs Integrated Resources Management Plan;

11. Consistency with First Foods Program protocols as relevant;
12. Consistency with Tribal Restoration Plan;
13. Consistency with local Community Fire Plans as relevant;
14. Consistency with relevant federal resource management plan; and
15. Consistency with restoration forestry principles.

E. Information-Based Decision-Making. Information-based decision-making means that the USFS and BLM will strive to assess the best scientific and other credible information available as relevant to the Management Considerations and other considerations used by the USFS and BLM in making their decisions under this MOU. To assist the USFS and BLM in their decision-making, recommendations from the collaborative planning efforts should be primarily based on solid scientific and credible information.

F. Coordinated Management. Coordinated management means that project planning, implementation and monitoring will be based on coordination and timely communication by the federal agencies, CTWS and stakeholders. Its objective is to coordinate management activities across political and social boundaries and focus management on proactive activities for ecosystem health.

G. Proactive (Not Reactive) Planning. Proactive planning focuses on management activities that will reduce fire hazards, enhance long-term ecosystem health and restore cultural resources (e.g., First Foods). It is intended to focus on priorities that will restore fire-adapted systems and will protect, strengthen, and enhance natural and cultural resources and improve their resilience to detrimental influences or impacts.

H. Consistent Scientific Monitoring. Consistent scientific monitoring includes short term monitoring responsibilities such as implementation monitoring and long-term monitoring issues such as soils and water quality. It includes ensuring that consistent and compatible data is collected to the extent possible within and across phased projects plans. The goal of consistent monitoring over time is to determine if a specific or desired outcome was obtained or achieved and to obtain a picture of ecosystem health parameters. Monitoring efforts will be primarily coordinated through the COPWRR CROP initiative. Such monitoring will focus on (1) monitoring economic performance of the CROP initiative; and (2) monitoring environmental performance of the projects implemented.

I. Phased Implementation.

1. Phased Projects Plans. This MOU will be implemented through projects completed in phases in conjunction with federal, CTWS and CROP resource planning efforts. Phased projects plans will be developed through a collaborative planning process described above. While individual projects including monitoring efforts may be identified and entered into under this MOU, it is anticipated that individual

projects and monitoring efforts will be planned and grouped in distinct phases to facilitate coordinated longer-term management. It is anticipated that a typical phased projects plan will cover multiple years, from 3 to 7 years. However phased projects plans may be longer or shorter as appropriate to planning objectives. While it is anticipated that phases will be consecutively implemented, phases may be planned for consecutive, overlapping or concurrent implementation.

2. Phased Projects Plan/Vehicles. Phased projects plans will be implemented through a variety of contracting and agreement vehicles, including but not limited to, the vehicles authorized under the Healthy Forests Restoration Act, Stewardship End-Result contracting authority, Tribal Forest Protection Act, traditional service or timber contract authorities, and cooperative agreements. Phased projects plans will be awarded on an open-competitive basis, on a best-value (stewardship) basis, or on a sole-sourced basis to CTWS, depending on the specific circumstances and authority used. Where CTWS administers a phased projects plan, unless specifically provided otherwise, CTWS may use a variety of tools for implementation, including subcontracts with tribal and non-tribal entities as consistent with tribal and federal law. CTWS also intends to merchandise and sell merchantable saw log volumes other than incidental volumes associated with forest fuels treatment and restoration to the highest and best markets as most appropriate for the circumstances of the project and in the best interests of CTWS.

3. Collaborative Planning General Administration. As noted above, project planning and monitoring efforts shall be conducted through a collaborative planning process, described above. This process will be primarily implemented and administered through the COPWRR CROP initiative. However, within the context of the CROP initiative, CTWS shall take the lead to ensure that collaborative efforts are initiated with interested stakeholders at desired consultation points.

VI. Freedom of Information Act (FOIA). Any information furnished to the USFS or BLM under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552).

VII. Modification. Modifications within the scope of the instrument shall be made by mutual consent of the Parties, by the issuance of a written modification, signed and dated by all of the Parties, prior to any changes being performed.

VIII. Participation In Similar Activities. This instrument in no way restricts the USFS, BLM or CTWS from participating in similar activities with other public or private agencies, organizations, and individuals.

IX. Commencement/Expiration Date. This instrument is executed as of the date of last signature and is effective through January 31, 2026 at which time it will expire unless extended and, during its entire term, will be reviewed as frequently as annually and no less frequently than every five years. While it is the intention of all Parties hereto that this MOU will remain in effect until terminated, the inclusion of this clause is required by

regulations of the U.S. Department of Agriculture and it will ensure the review of the entire agreement at least every five years.

X. Termination. Any of the Parties may terminate the instrument in whole, or in part, before the date of expiration, upon providing reasonable written notice at least one year before the termination will be effective.

XI. Principal Contacts. The principal contacts for this instrument are:

USFS Principal Contact

USDA Forest Service
Forest Supervisor
Deschutes National Forest
Bend, OR 97702
(541) 383-5562

BLM Principal Contact

USDI Bureau of Land Management
District Manager
Prineville District
3050 NE Third Street
Prineville, OR 97754
(541) 416-6700

CTWS Principal Contact

General Manager, Natural Resources Division
Confederated Tribes of the Warm Springs
Reservation of Oregon
Mr. Robert Brunoe
P.O. Box C
Warm Springs, OR 97761
(541) 553-3548

XII. Non-Fund Obligating Document. This instrument is neither a fiscal nor a funds obligation document. Any endeavor to transfer anything of value involving reimbursement or contribution of funds between the Parties executing this instrument will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the Parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

This Memorandum of Understanding Dated: January 25, 2006

Signature Page

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The Confederated Tribes of the Warm
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