

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is executed by the County of Yakima and the Confederated Tribes and Bands of the Yakama Nation this ____ day of _____, 2013.

RECITALS

The Confederated Tribes and Bands of the Yakama Nation is a federally recognized Indian Tribe whose reservation was established by the 1855 Treaty With The Yakama, 12 Stat. 951 (1859). Yakima County is a political subdivision of the State of Washington with boundaries established by RCW 36.04.390. Portions of the Yakama Nation and the Yakama Indian Reservation are geographically located within Yakima County.

Pursuant to Public Law 280, the State of Washington has assumed criminal jurisdiction over Indians in Indian Country (herein defined in accordance with 18 U.S.C. § 1151 and related federal and state law), provided that such assumption of jurisdiction does not apply to Indians when on their tribal lands or allotted lands within an established Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States except for, among other specified subjects, operation of motor vehicles upon the public streets, alleys, roads and highways. RCW 37.12.010.

In light of this statutory scheme, Yakima County has law enforcement responsibilities on the Yakama Reservation involving both members of the Yakama Nation and non-members.

Yakima County and the Yakama Nation have a unique opportunity to work together to ensure the safety and security of their residents and visitors to the Yakama Indian Reservation.

Yakima County has need to serve arrest warrants issued by Washington State courts on members of the Yakama Nation and other federally recognized Indian Tribes who may be found on Yakama Nation trust lands.

Yakima County and the Yakama Nation have engaged in discussions as how to best effectuate the Yakima County Sheriff's responsibilities to serve such warrants.

Yakima County and the Yakama Nation have come to a mutual understanding regarding the procedures by which the Yakima County Sheriff will serve arrest warrants on members of the Yakama Nation and other members of federally-recognized Indian Tribes who are on trust lands within the boundaries

of the Yakama Reservation, without waiving any claims of jurisdiction or sovereignty.

Now therefore the parties express and state their mutual understanding on the following subjects.

1. DEFINITIONS. As used in this memorandum:

- (a) "Deputy sheriff" means a law enforcement officer employed by Yakima County, who has a current commission as a deputy granted by the Yakima County Sheriff.
- (b) "Fee lands" means lands within the exterior boundaries of the Yakama Indian Reservation that are not held in trust by the United States or subject to a restriction against alienation imposed by the United States.
- (c) "Reservation" means the Yakama Indian Reservation and all territory within the exterior boundaries thereof, including, without limitation, all roads, rights of way, easements and waterways within such exterior boundaries.
- (d) "Sheriff" means the Sheriff of Yakima County.
- (e) "Tribal member" means an enrolled member of the Yakama Nation
- (f) "Trust lands" means tribal or allotted lands within the exterior boundaries of the Yakama Indian Reservation held in trust by the United States or subject to a restriction against alienation imposed by the United States.
- (g) "Yakama Nation police officer" or "Tribal officer" means a law enforcement officer employed and commissioned by the Yakama Nation.

2. RETENTION OF LEGAL RIGHTS, JURISDICTION. *Nothing in this memorandum shall be construed to cede any jurisdiction of either party, to modify the legal requirements for arrest or search and seizure, to modify the legal rights of either party or of any person not a party to this memorandum, to accomplish any act violative of state or federal law, or to subject the parties to any liability to which they would not otherwise be subject to by law.*

3. **EXECUTION OF WARRANTS OF ARREST.** When a Yakima County deputy sheriff knowingly enters Trust lands for the purpose of serving a state court arrest warrant on an enrolled member of the Yakama Nation or another federally-recognized Indian Tribe:

- (a) The deputy sheriff will, except in the event of exigent circumstances, first contact the Yakama Nation police dispatch. Should the Yakama Nation police elect to cooperate in the execution of the arrest warrant, the deputy sheriff shall not frustrate such cooperation by any dispatched Yakama Nation police officer.
- (b) Following service of the warrant, the deputy sheriff may, in the company of any dispatched Yakama Nation police officer should the Yakama Nation police elect to cooperate, take custody of the defendant for booking into the Yakama Nation jail pending extradition.
- (c) The extradition process by and between Yakima County and the Yakama Nation shall be conducted pursuant to this memorandum, as follows:

Copies of any warrants may be presented to a Yakama Nation Tribal Court Judge. The judge will promptly hold a hearing to determine only whether the warrant is facially valid per state law and whether the person in custody and before the Court is the same person charged on the face of the warrant; provided, however, that any person may waive such hearing by executing a waiver of extradition hearing and he or she will be promptly turned over to the custody of the appropriate Yakima County official. After a hearing as provided above, if the judge is satisfied that the warrant is facially valid per state law and the person is the same person named in the warrant, the judge shall issue an order to that effect.

The Yakama Nation Prosecuting Attorney shall keep the Yakima County Sheriff and Prosecuting Attorney apprised of any proceedings conducted pursuant to the foregoing process. The person in custody shall not otherwise be released from custody except that he or she may be released:

- (i) upon bail as stated in the warrant;
- (ii) upon a finding by the Yakama Nation Tribal Court Judge that he or she is not the person named in the warrant;

- (iii) upon a finding by the Yakama Nation Tribal Court Judge that the warrant is facially invalid; or
- (iv) upon the issuance of a writ of habeas corpus from a state or federal court.

The Yakima County Sheriff, or a duly authorized designee, will take custody of the person immediately upon either his or her waiver of extradition or the issuance of an order as provided for above, and thereupon remove the person from the Reservation.

- (d) At all times hereunder, the burden is on any person claiming to be an enrolled member of the Yakama Nation or another federally recognized Indian Tribe to provide proof of such membership.
- (e) The parties recognize that the extradition process by and between Yakima County and the Yakama Nation that is set forth in Paragraph 3(c) is a negotiated variance from the Yakama Nation's *Uniform Criminal Extradition Act, codified at Title V of the Revised Yakama Code, as most recently amended in 2012*. In other words, the extradition process set forth in that Paragraph 3(c) shall govern the parties' extradition of an enrolled member of the Yakama Nation or another federally-recognized Indian Tribe, from Trust lands, in lieu of the extradition process set forth in that Title V.

4. **NO CAUSE OF ACTION; TERMINATION:** This memorandum expressly does not create any right, benefit, or other legally enforceable responsibility, substantive or procedural, enforceable at law or equity by either party against the other party. Nothing in this memorandum is intended to create a cause of action by either party against the other. As such, the terms of this memorandum are terminable at any time without cause, upon written notice.
5. **NO CROSS-COMMISSIONING:** This memorandum does not seek, nor does it authorize, any cross-commissioning of officers. Assistance is appreciated when addressing criminal matters within and outside the parties' jurisdictional areas, and both parties acknowledge that providing assistance to each other is mutually beneficial as well as beneficial to residents and visitors to the area.
6. **INTEGRATION:** This written document contains the entire statement of understandings between the parties as to this subject matter.

7. NO SOVEREIGNTY WAIVER. Nothing contained within this memorandum is intended to waive alter, or otherwise diminish the rights, privileges, remedies, authority, or services guaranteed by the Treaty With The Yakama, either expressed or implied.

Dated this ____ day of _____, 2013.

For Yakima County

For Yakama Nation

By: _____

Kenneth Irwin, its
SHERIFF

Harry Smiskin, Chairman
Yakama Tribal Council

By: _____

James P. Hagarty, its
PROSECUTING ATTORNEY



Michael D. Leita, Chairman

Kevin J. Bouchey, Commissioner

Tiera L. Girard

Attest: Tiera L. Girard
Clerk of the Board

BOCC294-2013
June 18, 2013

J. Rand Elliott, Commissioner
Constituting the Board of County Commissioners for
Yakima County, Washington

Approved as to form:

Terry D. Austin, Chief Civil
Deputy Prosecuting Attorney



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

RESOLUTION

T-100-13

WHEREAS, the Yakama Nation is a federally recognized Nation pursuant to the Treaty of 1855 (12 Stat. 951), and

WHEREAS, the Yakama Tribal Council is the governing body of the Confederated Tribes and Bands of the Yakama Nation of the Yakama Reservation, by the authority delegated by Resolution T-38-56, and

WHEREAS, since April 2012 the Yakama Nation has engaged in negotiations with the United States and the U.S. Department of Justice regarding the resolution of the lawsuit captioned *Confederated Tribes and Bands of the Yakama Nation v. Eric H. Holder, Jr., et al.*, regarding the United States' and its "Second Hand Smoke Task Force" affiliates' illegal entry onto Yakama Reservation trust lands on February 16, 2011; and

WHEREAS, on June 19, 2012, and October 11, 2012, United States officials from as far as Washington, DC, travelled to the Yakama Reservation to meet and consult face-to-face with the Yakama Tribal Council regarding federal-Tribal law enforcement protocols concerning Yakama Reservation entry, and a document entitled Recitals of Joint Law Enforcement Goals Agreement; and

WHEREAS, the Recitals of Joint Law Enforcement Goals Agreement have been the subject of several revisions by federal and Yakama attorneys and multiple drafts; and

WHEREAS, the United States agrees that any officer, employee or agent of the Federal Bureau of Investigation (FBI) "will communicate with tribal police at the earliest prudent and practicable opportunity about enforcement operations undertaken in Yakama Indian Country," and

WHEREAS, as a matter of Tribal legislative intent, the Yakama Nation declares that the Recitals of Joint Law Enforcement Goals Agreement does not pertain to any state, county or city officer, employee or agent who operates as part of a federal task force, yet does not possess permanent federal statutory law enforcement authority; in other words, any such state or local actors do not constitute "federally deputized officers who possess authority to engage in federal law enforcement activities" according to the Recitals agreement and otherwise as matter of Yakama law; as such, all such state and local actors must still comply with all other Yakama laws concerning entry upon the lands, territories, waters, or airspace of the Yakama Nation, including Article II of the Treaty of 1855, and

WHEREAS, the Recitals of Joint Law Enforcement Goals Agreement is believed to be the only agreement ever entered into between the U.S. Department of Justice and an Indian Tribe regarding federal-Tribal law enforcement protocols; and the Recitals agreement is consistent with the letter and spirit of the federal Tribal Law and Order Act of 2010, as well as with the Yakama Nation's ongoing efforts to obtain retrocession from any and all state authority under Public Law 280, and



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WHEREAS, on January 14, 2013, Yakama County officials met and consulted face-to-face with members of the Yakama Tribal Council regarding Tribal-county law enforcement protocols concerning Yakama Reservation entry and extradition of Yakamas and other Indians from Yakama Indian Country, and that meeting and subsequent negotiations have resulted in a Memorandum of Understanding (MOU) between the County of Yakima, Washington and the Yakama Nation, and

WHEREAS, consistent with Article II of the Treaty of 1855, Yakima County agrees in that MOU that: "The deputy sheriff will, except in the event of exigent circumstances, first contact the Yakama Nation police dispatch . . . [and] shall not frustrate such cooperation by any dispatched Yakama Nation police officer"; "Following service of the warrant, the deputy sheriff may . . . take custody of the defendant for booking into the Yakama Nation jail pending extradition"; and a Yakama Nation Tribal Court judge will promptly convene and conduct an appropriate extradition hearing; all before any Yakama or other Indian is removed from the Yakama Reservation, and

WHEREAS, the Yakama Nation-Yakima County MOU is also consistent with the letter and spirit of the federal Tribal Law and Order Act of 2010, as well as with the Yakama Nation's ongoing efforts to obtain retrocession from any and all state authority under Public Law 280, and

WHEREAS, since December 2012, the Yakama Nation has also negotiated a Settlement Agreement with the County of Marshall and City of Tupelo, Mississippi, the County of Roanoke, City of Martinsville and the Town of Vinton, Virginia, and the County of Benton, Washington (collectively the "Second Hand Smoke Task Force Affiliates"), and

WHEREAS, consistent with Article II of the Treaty of 1855, the Second Hand Smoke Task Force Affiliates each agree that they shall not enter upon Yakama Indian Country without compliance with the Yakama Treaty of 1855 and shall make all reasonable efforts to seek and obtain advance permission should they wish to enter upon Yakama Indian Country.

NOW, THEREFORE, BE IT RESOLVED, by the Yakama Tribal Council meeting in regular session at the Governmental Headquarters of the Confederated Tribes and Bands of the Yakama Nation, with a quorum being present, the Yakama Nation hereby agrees to enter into the accompanying (1) Yakama Nation-FBI Recitals of Joint Law Enforcement Goals Agreement, (2) Yakama Nation-Yakima County Memorandum of Understanding, and (3) Settlement Agreement with the Second Hand Smoke Task Force Affiliates, or any substantially similar version of any of those three agreements, and authorizes the Chairman to execute the same on the Yakama Nation's behalf, and

BE IT FURTHER RESOLVED, that this Amended Resolution restates and replaces that version of the Resolution unanimously passed by the Yakama Tribal Council, by a vote of 12 for, 0 against and 0 abstentions, on December 4, 2012.



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BE IT FURTHER RESOLVED, that the Yakama Tribal Council directs Galanda Broadman PLLC to write, negotiate and file federal court settlement order language and take all other steps necessary to settle and dismiss the *Holder* lawsuit.

BE IT FURTHER RESOLVED, that the Yakama Nation does not waive, alter, or otherwise diminish its Sovereign Immunity, whether expressed or implied, by virtue of this Yakama Tribal Council Resolution, the Yakama Nation-FBI Recitals of Joint Law Enforcement Goals Agreement, Yakama Nation-Yakima County Memorandum of Understanding or Settlement Agreement with the Second Hand Smoke Task Force Affiliates, any federal court settlement order language, or any action which may arise directly or indirectly from the same; nor does the Yakama Nation waive, alter, or otherwise diminish its rights, privileges, remedies or services guaranteed by the Treaty of 1855.

DONE AND DATED on this 4th day of June, 2013, by the Yakama Tribal Council by a vote of 10 for, 0 against, 1 abstentions.

ATTEST:


Harry Smiskin, Chairman
Yakama Tribal Council


Athena Sanchey-Yallup, Secretary
Yakama Tribal Council