Government-to-Government Agreement in Principle
For Developing a Formal Memorandum of Agreement

Between the State of Washington and
The Confederated Tribes of the Colville Reservation

For the Lake Roosevelt Component of the
Columbia River Initiative

This Agreement-in-Principle (Agreement) outlines opportunities for government-to-government partnership between the Confederated Tribes of the Colville Reservation (Colville Tribes) and the State of Washington (State) with respect to the State's Columbia River Initiative (CRI). The State and the Colville Tribes are the parties to this Agreement. Upon further discussions and mutual acceptance by the parties, these opportunities, or mutually acceptable alternatives, will be further defined in specificity and incorporated into CRI budget and policy documents, and separate intergovernmental agreements as needed or appropriate.

Pending favorable action by the 2005 Washington Legislature, the parties will work to develop formal agreements, consistent with the Agreement-in-Principle, for approval by the parties by September 2005.

1. BACKGROUND AND RECITALS

The parties recognize that the following facts, interests and issues underlie this Agreement:

A. Through the CRI, the State proposes to increase the water supply in the mainstem Columbia River by adding and releasing water during certain critical months (April through August) to improve streamflows for outmigrating juvenile anadromous fish and to provide water for new consumptive uses. Water secured by the State for the CRI would be transferred to and held in the state trust water rights program. The CRI is intended to be implemented over a 20-year period; among other things it will require State legislative approval of a budget and of a

policy bill, and State agency promulgation of new regulations. The State intends to develop the water supply for full long-term implementation of the CRI through increased efficiencies in use of existing supplies, acquisition of water rights from willing sellers, changes to existing storage (including proposed agreements to utilize Canadian storage), and new storage.

B. The State also desires an initial CRI water supply in the form of a new drawdown from Lake Roosevelt during the April through August period, under water service contracts with the U.S. Bureau of Reclamation, which operates Lake Roosevelt (the reservoir impounded by Grand Coulee Dam). This initial water supply, referred to as the Lake Roosevelt Component of the CRI, would be in the range of 82,500 acre feet (AF) in all years to not more than 132,500 AF in one of every 26 years on average (i.e., drought years). Such new drawdown would result in lowering of Lake Roosevelt levels from 1.0 foot to 1.65 feet (corresponding to the 82,500 AF and 132,500 AF volumes referred to above) below levels under existing operations. Under this proposal, reservoir levels would return to normal levels under existing operations by September 30. Through the CRI, the State proposes to develop a long-term water supply to replace the initial supply from Lake Roosevelt in an effort to keep the drawdown from becoming permanent.

C. The State desires the Colville Tribes' support for the Lake Roosevelt Component of the CRI, and this Agreement-in-Principle is intended to set forth the manner in which the Colville Tribes may provide such support.

D. The Colville Tribes has critical and fundamental sovereign and proprietary interests in the upper mainstem Columbia River, as well as in Lake Roosevelt and in any activities that affect its operations. The southern and eastern boundary of the Colville Reservation is "in the middle of the channel of the Columbia River," and the western boundary is "in the Okanogan River." Agreement of May 9, 1891 and Act of July 1, 1892, 27 Stat. 62. Based on various federal executive orders,

agreements, legislation, and legal opinions (including the Executive Order of July 2, 1872 that established the Colville Reservation, the Agreement of May 9, 1891, the Act of July 1, 1892, and the Interior Department Solicitor's Opinion of June 3, 1974), the Colville Tribes has had a long-standing understanding of its ownership of the beds of the Columbia and Okanogan Rivers within these Reservation boundaries. In general, the Tribes is a major landowner along the upper Columbia, including within current Reservation boundaries, and also acts as a primary manager and regulatory entity for lands and waters within Reservation boundaries. The Colville Tribes holds fishing rights in the Columbia and Okanogan Rivers all the way to the Canadian border. The Colville Tribes has established significant water rights within the Reservation for consumptive and instream fisheries purposes, and asserts claims for analogous rights in the Colville Reservation boundary waters.

E. The impoundment of Lake Roosevelt by Grand Coulee Dam has had significant, long-term impacts on the culture, resources, and economy of the Colville Tribes, while the benefits of this water development have primarily accrued to others. Any drawdown of Lake Roosevelt is a matter of serious concern for the Colville Tribes. The Tribes can only support the Lake Roosevelt Component of the CRI if the impacts are fully considered and mitigated and the State agrees to additional considerations relative to the Tribes' interests in the impacts of the CRI.

2. THRESHOLD ISSUES -- FUNDAMENTAL COMMITMENTS

The following fundamental commitments are an essential basis for this Agreement:

A. Additional Drawdowns

For the duration of the CRI, the State will not seek further drawdowns from Lake Roosevelt for use in meeting stream flow requirements or out-of-stream water supply needs along the mainstem of the Columbia River. The State will assist in

developing a way to ensure that total pool drawdowns do not exceed the combined effect of the new CRI drawdown plus the drawdowns conducted under the existing Biological Opinion for the federal hydropower system. To that end, the parties will work to define these drawdowns in terms of specific reservoir levels and specific operational practices that will be conducted to meet these levels. The means by which this assurance is made is subject to further discussion and agreement, but the State intends that this assurance is intended to cap the effects of the CRI on the Colville Tribes as outlined in this Agreement and is to be durable and binding on the State. In addition, the State will make every reasonable effort to secure Lake Roosevelt operations modifications that minimize the impacts of the CRI drawdown, and to secure a long-term water supply from one or more sources to replace the CRI drawdown of Lake Roosevelt.

B. **Drawdown Impacts**

The parties agree that the impacts of CRI drawdowns to Lake Roosevelt, including cumulative impacts with other BIOP drawdowns, will be evaluated through the implementation of this agreement, and must be directly mitigated as indicated by the evaluations. The Colville Tribes provides no advance concurrence that any mitigation for proposed drawdowns is adequate. Mitigation for impacts of the drawdown will be memorialized in legally binding and enforceable documents.

C. **Power Revenue**

The State will agree to replace any power revenue lost to the Colville Tribes from dam operations due to the CRI. The manner of determining and compensating for the CRI's impact on power revenue must be mutually acceptable.

D. **Recreation Enterprise Revenue**

The State will agree to replace any recreation enterprise revenue lost to the Colville Tribes from dam operations due to the CRI. The manner of determining

and compensating for the CRI's impact on recreation enterprise revenue must be mutually acceptable.

E. **Cultural Resources**

The parties will develop a mutually agreeable method to offset or mitigate the impacts to cultural and archaeological resources resulting from the CRI, which are anticipated to be primarily additional exposure of cultural and archaeological materials during the new drawdowns.

F. **Resident Fisheries**

The parties will develop a mutually agreeable method to evaluate and offset or mitigate the impacts to resident fisheries in Lake Roosevelt resulting from the CRI.

G. **Ferry Access**

The parties will develop a mutually agreeable method to evaluate, and avoid or mitigate as needed, the impacts to access to the Inchelium Ferry resulting from the CRI.

H. The Colville Tribes retains the right to withdraw or withhold its support for the Lake Roosevelt Component of the CRI if any of its conditions are substantially changed, including the CRI budget, the CRI policy bill, or the Government-to-Government Partnership Package described below, or if the Colville Tribes and the State are unable to agree to terms for a Memorandum of Agreement (MOA) consistent with the provisions of this Agreement-in-Principle. This agreement is intended to facilitate cooperation between the parties to advance the actions described in this agreement and is not intended to and does not create a legally binding contract or any right or benefit, substantive or procedural, enforceable at law or in equity by any party against another party.

I. The State recognizes the interests and role of the Colville Tribes in the management of Lake Roosevelt, and the value of government-to-government

collaboration in natural resource management programs. Accordingly, the State is firmly committed to securing the support of the Colville Tribes for the CRI.

J. The terms of any long-term Memorandum of Agreement to implement this Agreement-in-Principle shall be for the duration of the CRI.

3. GOVERNMENT-TO-GOVERNMENT PARTNERSHIP PACKAGE

A. Water Resources Planning and Evaluation

The State will agree to fund tribal water resources planning and evaluation and to fund and work with the Colville Tribes to identify and scope potential water storage sites on the Colville Reservation. The CRI budget package will include this funding for the Colville Tribes and State to cooperatively and jointly conduct the necessary storage investigations. The State will also agree to work with the Colville Tribes to explore possible joint development and funding of any identified potential water storage site.

B. Economic Development

The State will agree to establish a Colville Reservation economic development capital fund that may be used by the Tribes for land acquisition or consolidation, water infrastructure projects, and other economic goals of the Colville Tribes. The fund may also be used to reduce the electric utility rates, or to pay a portion thereof, for Colville tribal members on the Colville Reservation, and to establish scholarships or reduced tuition programs for Colville tribal members at all Washington colleges and universities, except that it may not be used for general distribution to individual tribal members. The funding would be made available for eligible uses on a yearly basis, and would be ongoing for the duration of the CRI or until the State secures replacement water for the Lake Roosevelt drawdown. The amount of the economic development capital fund is described in

paragraph 4 of this agreement. The final budget amount and language establishing eligible uses of the fund would be subject to further negotiation.

C. **Fisheries Enhancement**

The State will agree to establish a Colville Reservation fisheries enhancement capital fund to enhance fisheries in Lake Roosevelt and/or in the Okanogan River. Eligible uses of the fund may include hatcheries, acclimation ponds, gauging stations, development of fishing sites, and other projects related to fisheries enhancement needs. The parties will develop a simple means for distributing the funds, with the primary decisions on projects and funding to be made by the Tribes, subject to eligible uses of the funds and subject to consultation and coordination with the Washington Department of Fish and Wildlife. The funding would be made available on a yearly basis, and would be ongoing for the duration of the CRI or until the State secures replacement water for the Lake Roosevelt drawdown. The amount of the fisheries enhancement capital fund is described in paragraph 4 of this agreement. The final budget amount and language establishing eligible uses of the fund would be subject to further negotiation.

D. **Fisheries Management**

The State will work with the Colville Tribes, the United States, British Columbia, and Canada to improve Okanogan River habitat and flow conditions. The State will also work with the Colville Tribes to negotiate anadromous fisheries harvest and management plans to meet the needs of the Colville Tribes.

E. **Tribal Water Resources**

Pending further progress in the Colville Tribes' irrigation and water storage assessment planning, the parties will establish a joint task force to explore alternatives and develop recommendations for standards and principles to be applied to the measurement and quantification of tribal reserved water rights, for

consideration by future administrations in the context of formal negotiations, water rights decisions, legislation and/or judicial actions, as appropriate.

F. **Similkameen Source Control**

The State will agree to actively pursue reduction in sediment (arsenic) contamination in the Similkameen River coming from British Columbia; in this regard the parties will pursue State funding for an environmental site assessment of contaminated tribal lands or allotments in the Similkameen River/Palmer Lake area, with the goal of a study to be conducted by Ecology's environmental investigations unit and a health risk assessment to be performed by the Colville Tribes' under contract from the State.

G. **Other Colville Tribes-State Agreements**

The State and the Colville Tribes each respects the sovereignty of the other and recognizes that sovereignty provides each party the paramount authority for that party to exist and to govern. Under the Centennial Accord the parties are committed to seeking to translate the government-to-government relationship into more-efficient, improved and beneficial services to Indian and non-Indian people alike. In keeping with this overarching goal, the State commits to work in good faith on natural resources management intergovernmental agreements with the Colville Tribes. The purpose of this effort is to promote comity and efficiency between tribal and state regulatory systems. The State will support the review, update, and appropriate revisions of existing inter-governmental agreements, including the agreement pertaining to the management and regulation of fish and wildlife within the Colville Reservation and its boundary waters, to improve cooperative regulation with respect to fishing and hunting licensing of non-tribal members within the Colville Reservation. The State will support similar review, update, and appropriate revision of other natural resources agreements applicable

within the Reservation, including those to which the Department of Ecology is a party.

H. The State and Colville Tribes will develop a process for State review and support for trust land acquisitions by the Colville Tribes outside Reservation boundaries but within ceded or traditional areas of the constituent bands of the Colville Tribes within the State of Washington. Criteria for identification of such areas should be mutually acceptable, but should be based on prior decisions of the Indian Claims Commission or judicial decision.

I. **Ongoing CRI Government-to-Government Consultation -- Federal Relationships**

In addition to the existing relationship between the Colville Tribes and the U.S. Bureau of Reclamation (BOR), implementing the CRI may entail agreements between and/or among the State and the Colville Tribes, the State and BOR, or the State, the Tribes and BOR. In order to facilitate the communication and the spirit of government-to-government cooperation, the State and the Colville Tribes will agree to establish a CRI oversight committee for the purpose of providing ongoing consultation and coordination during the implementation of the CRI, and to jointly invite BOR (and the U.S. Army Corps of Engineers and/or Bonneville Power Administration if appropriate) to participate in that Committee. Through this oversight committee, or through other means, the State and the Colville Tribes will work to resolve operational concerns relative to Lake Roosevelt with the goal of minimizing impacts of new drawdowns for the CRI, and will pursue a long-term supply of water from other sources to replace the CRI drawdown of Lake Roosevelt.

J. **Water from Canada**

The State and Colville Tribes will agree to pursue a way for the Colville Tribes to be a direct participant in negotiations with Canada regarding the use of additional

storage from Canada as a long-term source of water supply for the CRI. The parties will ask the U.S. entity to include the Tribes as a full member of the U.S. team working on developing a U.S. proposal for additional water from Canada.

K. **Federal Legislation**

The Colville Tribes and the State will agree to provide mutual support for any necessary Congressional authorization of funding or operational provisions of this agreement.

4. FUNDING

A. **State Funding**

Through the CRI, the State will provide funding to implement this agreement as described below. State funding will depend on successful negotiation of a formal Memorandum of Agreement between the State and the Colville Tribes, and will be subject to funding decisions to be made by the Washington Legislature. Separate state funding will be provided for each of the following provisions of the agreement:

1. **Drawdown Impacts.** Funding will be provided for the evaluation and mitigation of drawdown impacts described in paragraphs 2B through 2G of this agreement.
2. **Water Resources Planning and Evaluation.** Funding will be provided for the tribal water resources planning and evaluation and water storage program described in paragraph 3A of this agreement. Funding for the tribal planning and evaluation component shall be in the amount of $200,000.00 per year adjusted to inflation, and shall be available on a yearly basis for the duration of the CRI or until the State secures replacement water for the Lake Roosevelt drawdown.

3. **Economic Development.** Funding will be provided to create the economic development capital fund described in paragraph 3B of this agreement. Subject to further negotiation, the amount of this fund would be between $2.0 million and $3.0 million per year, and would be adjusted over time based on an inflation index. The funding would be made available to the Tribes on a yearly basis, and would be ongoing for the duration of the CRI or until the State secures replacement water for the Lake Roosevelt drawdown.
4. **Fisheries Enhancement.** Funding will be provided to create the fisheries enhancement capital fund described in paragraph 3C of this agreement. Subject to further negotiation, the amount of this fund will be at least $0.5 million per year, and would be adjusted over time based on an inflation index. The funding would be made available on a yearly basis, and would be ongoing for the duration of the CRI or until the State secures replacement water for the Lake Roosevelt drawdown.
5. **Similkameen Source Control.** Funding will be provided to conduct the environmental and human health risk assessments of contamination in the Similkameen River as described in paragraph 3F of this agreement.

B. **Federal Funding**

The State and Colville Tribes will seek federal legislation for federal funding to match the State funds provided in the economic development capital fund described in paragraph 3B of this agreement.

5. SCHEDULE

Upon execution of this agreement, the parties will convene and develop a schedule for conducting and completing negotiations of a formal Memorandum of Agreement for approval by the governing bodies of the parties by September 2005.

6. SIGNATORIES

Gary Locke
Governor, State of Washington

Joseph A. Pakootas
Chairman, Colville Business Council

Jan 4, 2005
Date

1-04-05
Date

Jeff Koenings, Director
Washington Department of Fish and Wildlife

Jan 4, 2005
Date