



King County

Metropolitan King County Council
Budget and Fiscal Management Committee

Agenda Item No.:	<u>4</u>	Date:	<u>February 7, 2012</u>
Proposed No.:	<u>2012-0035</u>	Prepared By:	<u>John Resha</u>

STAFF REPORT

SUBJECT:

Proposed Ordinance 2012-0035 would authorize the Executive to sign an Interlocal Agreement (ILA) with the Muckleshoot Indian Tribe (Tribe) for the transfer of roads to the Tribe.

BACKGROUND:

The Road Services Division (RSD) faces a significant backlog of roadway facilities requiring maintenance and preservation assistance due to a long standing disconnect between available resources and volume of work. This disconnect led to the adoption of the Strategic Plan for Road Services (SPRS), which requires a prioritization of work, as well as prioritizing partnerships to meet community needs.

Portions of 172nd Avenue SE, SE 392nd Street, and 164th Avenue SE exist on tribal lands but are currently owned and maintained by King County. These facilities provide direct access to the Tribe's administrative complex and its Health and Wellness Center.

Based on the priorities of SPRS, RSD is unlikely to invest significant resources in maintenance or invest in enhancing the facilities to meet growing tribal needs. At the same time, however, federal resources are available exclusively to Native American tribes through the Federal Highway Administration's Indian Reservation Roads programs for preservation and enhancement of these types of facilities owned by a tribe.

ANALYSIS:

Proposed Ordinance 2012-0035 would transfer the facilities, already on tribal lands, to the Tribe in a manner consistent with park and road transfers associated with annexations, and as provided for in RCW 39.33, the Intergovernmental Property Transfer Act.

The ILA, Attachment A to Proposed Ordinance 2012-0035 contains specific language (Section 1.2) that requires maintenance of the facilities for road purposes in perpetuity with general public access for all, including both members and non-members of the Tribe.

RSD estimates that it will save \$16,000 per year in maintenance expenditures. These savings would be directly reinvested in other existing maintenance needs.

Both the Prosecuting Attorney's Office and Council's legal counsel have reviewed the agreement. A minor technical issue clarifying future Council requirements was identified and agreed to by all parties.

Of additional note, the Tribe needs to submit their application for federal funds immediately to meet federal requirements for grant eligibility. In order to accomplish this goal and provide adequate review and deliberation time for Council, a declaration of emergency would be necessary.

AMENDMENT

Staff has prepared a striking amendment, S1, which declares an emergency in order to make the ILA effective immediately and assist the Tribe in applying for and receiving federal funds to preserve and enhance the roadway facilities. Additionally, S1 attaches a revised agreement addressing minor technical issues agreed to by both parties.

REASONABLENESS:

Action on Proposed Ordinance 2012-0035 as amended by the striking amendment S1 and Title Amendment would be a reasonable business decision.

ATTACHMENTS:

1. Proposed Ordinance 2012-0035
2. Transmittal Letter dated January 4, 2012
3. Map of proposed roadways to be transferred
4. Amendment S1 with revised Attachment A
5. Amendment T1

INVITED:

Paulette Norman, Director, Road Services Division



KING COUNTY
Signature Report

Attachment 1
1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

February 6, 2012

Ordinance

Proposed No. 2012-0035.1

Sponsors Phillips, Ferguson and Hague

1 AN ORDINANCE authorizing the King County executive
2 to execute an interlocal agreement with the Muckleshoot
3 Indian Tribe for the transfer of King County roads located
4 on the Muckleshoot Indian Reservation.

5 **STATEMENT OF FACTS:**

6 1. The Interlocal Cooperation Act, chapter 39.34 RCW, authorizes the
7 county to enter into agreements with other units of government, including
8 Indian tribes, to jointly exercise their existing powers and authority.

9 2. The Muckleshoot Indian Tribe ("the tribe") is a federally recognized
10 Indian tribe occupying the Muckleshoot Indian Reservation ("the
11 reservation") located in King and Pierce counties.

12 3. King County owns portions of 164th Avenue Southeast, Southeast
13 172nd Avenue and 392nd Street Southeast on one side of the centerline of
14 these roads on the Reservation in unincorporated King County.

15 4. The Bureau of Indian Affairs ("the bureau") also owns portions of
16 164th Avenue Southeast, Southeast 172nd Avenue and 392nd Street
17 Southeast on the other side of the centerline of these roads on the
18 reservation.

19 5. The above-referenced portions of 164th Avenue Southeast, Southeast
20 172nd Avenue and 392nd Street Southeast are currently part of the King
21 County road system and the bureau's Indian Reservation Roads Program.

22 6. The tribe desires to improve and maintain these portions of 164th
23 Avenue Southeast, Southeast 172nd Avenue and 392nd Street Southeast in
24 order to better service the Muckleshoot Tribal Administrative Complex
25 and Health and Wellness Center.

26 7. In order to facilitate the tribe's desire to improve and maintain these
27 roads, the county agrees that it would be advantageous for the ownership
28 of the road segments to be consolidated in the bureau and the tribe.

29 8. The Intergovernmental Property Transfer Act, chapter 39.33 RCW,
30 allows the county to transfer real property on such terms and conditions as
31 may be mutually agreed on by the county and the tribe.

32 9. It is in the public's interest to transfer the portions of 164th Avenue
33 Southeast, Southeast 172nd Avenue and 392nd Street Southeast, as
34 described in Attachment A to this ordinance, to the tribe.

35 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

36 SECTION 1. The King County executive is hereby authorized to execute an
37 interlocal agreement, substantially in the form of Attachment A to this ordinance, with

38 the Muckleshoot Indian Tribe for the transfer of county roads located on the Muckleshoot
39 Indian Reservation.
40

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Gossett, Chair

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this ____ day of _____, _____.

Dow Constantine, County Executive

Attachments: A. Interlocal Agreement Between King County and the Muckleshoot Indian Tribe

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**INTERLOCAL AGREEMENT BETWEEN KING COUNTY AND THE
MUCKLESHOOT INDIAN TRIBE RELATING TO TRANSFER OF COUNTY ROADS
LOCATED ON THE MUCKLESHOOT INDIAN RESERVATION**

THIS AGREEMENT is made and entered into by and between the parties (“Parties”) to this Agreement, which are King County, a political subdivision of the State of Washington (“County”) and the Muckleshoot Indian Tribe (“the Tribe”), a federally recognized Indian Tribe.

WHEREAS, the Interlocal Cooperation Act, RCW 39.34, authorizes the County to enter into agreements with other units of government, including Indian tribes to jointly exercise their existing powers and authority; and

WHEREAS, the Tribe is a federally recognized Indian tribe occupying the Muckleshoot Indian Reservation (“Reservation”) located in King and Pierce Counties; and

WHEREAS, the County owns portions of S.E. 172nd Avenue and 392nd Street S.E. on one side of the centerline of these roads on the Reservation in unincorporated King County; and

WHEREAS, the Bureau of Indian Affairs (“Bureau”) also owns portions of S.E. 172nd Avenue and 392nd Street S.E. on the other side of the centerline of these roads on the Reservation; and

WHEREAS, the above-referenced portions of S.E. 172nd Avenue and 392nd Street S.E. are currently part of the King County road system and the Bureau's Indian Reservation Road Program; and

WHEREAS, the Tribe desires to improve and maintain these portions of S.E. 172nd Avenue and 392nd Street S.E. in order to better serve the Muckleshoot Tribal Administrative Complex and Health and Wellness Center; and

WHEREAS, the Tribe also desires to own and maintain 164th Avenue SE, which is contiguous to SE 392nd Street; and

WHEREAS, in order to facilitate the Tribe’s desire to improve and maintain these roads, the Parties agree that it would be advantageous for the ownership of the road segments to be consolidated in the Bureau of Indian Affairs and the Tribe; and

WHEREAS, the Intergovernmental Property Transfer Act, RCW 39.33, as recently amended, allows the County to transfer real property or property rights to the Tribe, on such terms and conditions as may be mutually agreed upon by the proper authorities of the County and the Tribe; and

WHEREAS, the County wishes to convey its property interests in 164th Avenue S.E., S.E. 172nd Avenue and 392nd Street S.E. to the Tribe and the Tribe desires to acquire such interests; and

WHEREAS, relief from the burden of carrying out future road maintenance on 164th Avenue S.E., S.E. 172nd Avenue and 392nd Street S.E. by the County amounts to valuable consideration supporting the transfer to the Tribe; and

WHEREAS, as provided herein and as part of the Indian Reservation Road Program, the portions of these roads transferred to the Tribe will remain open and available for public use as provided by federal law; and

WHEREAS, the County finds it is in the public interest to transfer its interest in portions of 164th Avenue S.E., S.E. 172nd Avenue and 392nd Street S.E. to the Tribe so that the Tribe can operate and maintain the full width of said roads for continued public use as part of the Bureau of Indian Affairs Reservation Road Program.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Tribe and the County agree as follows:

1. Conveyance of Title

1.1. Within thirty (30) days of execution of this Agreement, the County shall convey by quitclaim deed the properties described in Exhibit A and Exhibit B ("the Properties") attached hereto and incorporated herein by reference, to the Tribe, subject to all rights, conditions, covenants, obligations, limitations and reservations of record for said properties. The Tribe agrees to abide by and enforce all rights, conditions, covenants, obligations, limitations and reservations for the Properties. The Tribe covenants that the Property shall continue to be used and maintained in perpetuity for road-related purposes, unless otherwise agreed by the County. If the County consents to the sale of the properties described in Exhibit A and/or Exhibit B and said properties are sold for non-road purposes, the Tribe shall pay the County the appraised value of the property at the time the property is sold, as determined by an MAI appraiser selected by mutual agreement by the County and the Tribe; or if the properties described in Exhibit A and/or Exhibit B are traded for non-road related properties, the Tribe shall pay the County the appraised value of the property at the time of the trade, as determined by an MAI appraiser selected by mutual agreement by the County and the Tribe.

1.2 All deeds shall also contain the following specific covenants pertaining to use, which covenants shall run with the land for the benefit of the County. The County and the Tribe agree that the County shall have standing to enforce these covenants, which shall be set forth as follows:

"The Tribe covenants that the Properties shall continue to be operated and maintained in perpetuity for public road purposes open and available to both members and nonmembers as provided in 25 C.F.R. §170.120."

1.3 The Tribe at its option may convey title to the Properties to the United States in trust for the Muckleshoot Indian Tribe, provided that, such conveyance shall not relieve the Tribe of any obligation under this Agreement or the deed.

2. Condition of Premises and Responsibility for Operations, Maintenance, Repairs, and Improvements

2.1 The Tribe has inspected and knows the condition of the Properties and agrees to accept the Properties in an AS IS condition, and to assume full and complete responsibility for all operations, maintenance, repairs, and improvements of the Property.

2.2 The County does not make and specifically disclaims any warranties, express or implied, including any warranty of merchantability or fitness for a particular purpose, with respect to the Properties, and no official, employee, representative or agent of the County is authorized otherwise.

2.3 The Tribe acknowledges and agrees that except as indicated in paragraph 3.2, the County shall have no liability for, and that the Tribe shall release and have no recourse against the County for, any defect or deficiency of any kind whatsoever in the Property without regard to whether such defect or deficiency was known or discoverable by the Tribe or the County.

2.4 The Tribe acknowledges and agrees that the Tribe shall be responsible for all day-to-day management, operation, and maintenance of the Properties, and to respond to public inquiries regarding the same;

2.5 The Tribe acknowledges and agrees that any failure to comply with this section 2 shall constitute a material breach of this Agreement.

3. Environmental Liability

3.1 "Hazardous Materials" as used herein shall mean any hazardous, dangerous or toxic wastes, materials, or substances as defined in state or federal statutes or regulations as currently adopted or hereafter amended.

3.2 Nothing in this Agreement shall be deemed to waive any statutory claim for contribution that the Tribe might have against the County under federal or state environmental statutes and that arises from hazardous materials deposited or released on the Properties by the County during the County's period of ownership. The Tribe may not, however, assert such a claim to the extent that the Tribe creates the need for or exacerbates the cost of remediation upon which a statutory claim for contribution is based as a result of the Tribe performing

maintenance and/or construction activities on the Properties, changing the configuration of the Properties, or changing the use of the Properties.

3.3 If the Tribe discovers the presence of hazardous materials at levels that could give rise to a statutory claim for contribution against the County, it shall immediately notify the County in writing. Such notice shall in no event be provided more than 30 days after discovery. The Parties shall make their best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement prior to undertaking any remediation.

3.4 In no event shall the County be responsible for any costs of remediation that exceed the minimum necessary to satisfy the state or federal agency with jurisdiction over the remediation.

4. Indemnification and Hold Harmless

4.1 King County shall indemnify and hold harmless the Tribe and its elected officials, officers, agents or employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, (i) which are caused by or result from a negligent action or omission of the County, its officers, agents and employees in performing its obligations pursuant to this Agreement, and/or (ii) arising from those occurrences related to the Property that occurred prior to the effective date of conveyance of the Property to the Tribe, except to the extent that indemnifying or holding the Tribe harmless would be limited by Section 3 of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against the Tribe or the Tribe and the County, the County shall defend the same at its sole cost and expense and, if final judgment be rendered the Tribe and its elected officials, officers, agents and employees or jointly the Tribe and the County and their respective elected officials, officers, agents and employees, the County shall satisfy the same.

4.2 In executing this Agreement, the County does not assume liability or responsibility for or in any way release the Tribe from any liability or responsibility which arises in whole or in part from the existence or effect of Tribe laws, rules or regulations, and which would not otherwise arise in the absence of the Tribe's laws, rules, or regulations. The Tribe shall indemnify, defend, and hold harmless the County from any cause, claim, suit, or action arising out of this agreement or the deed that is based on the Tribe's law, rules, or regulations, and which would not arise in the absence of such laws, rules, or regulations.

4.3 The Tribe shall indemnify and hold harmless the County and its elected officials, officers, agents and employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, (i) which are caused by or result from a negligent act or omission of the Tribe, its officers,

agents and employees in performing obligations pursuant to this Agreement, and/or (ii) arising from those occurrences related to the Properties that occur on or after the effective date of conveyance of the Properties to the Tribe, except to the extent that indemnifying or holding the County harmless would be limited by Section 3 of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against the County or the County and the Tribe, the Tribe shall defend the same at its sole cost and expense and, if final judgment be rendered against the County and its officers, agents and employees or jointly against the County and the Tribe and their respective officers, agents and employees, the Tribe shall satisfy the same.

- 4.4 Each party to this Agreement shall immediately notify the other of any and all claims, actions, losses or damages that arise or are brought against that party relating to or pertaining to the Properties.
- 4.5 Each party agrees that its obligations under this Section 4 extend to any claim, demand, and/or cause of action brought by or on behalf of any employees, or agents. For this purpose, each party, by mutual negotiation, hereby waives, with respect to the other party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify the other party.

5. Audits and Inspections

- 5.1 Until December 31, 2020, the records of the Parties related to any matters covered by this Intergovernmental Agreement and not otherwise privileged shall be subject to inspection, review, and/or audit by any other party at the requesting party's sole expense. Such records shall be made available for inspection during regular business hours within a reasonable time of the request. The Parties acknowledge and agrees that in order to fulfill their obligations under this paragraph, they must preserve all of their records pertaining to the Properties until such date. King County shall fulfill its obligation to preserve such records consistent with RCW 40.14.070 and state regulations promulgated thereunder.

6. Limited Waiver of Sovereign Immunity; Dispute Resolution; Reversion of Title

- 6.1 The Tribe expressly agrees to waive its sovereign immunity for the limited purpose of lawsuits or other legal proceeding brought by the County to enforce the terms of this Agreement or the Deed transferring the Properties in accordance with this Agreement in the courts of the State of Washington or United States.
- 6.2 The Tribe acknowledges and agrees that the County shall have standing to sue the Tribe in Washington State superior court to enforce specific performance of this Agreement, to enforce specific performance of the terms of the Deed transferring the Properties, or

for such other legal or equitable remedy as the County deems appropriate in its sole discretion. The County may at any time seek injunctive relief or specific performance in King County Superior Court if the County reasonably believes that the Tribe has breached any covenant contained in the Deed or in this Agreement. Except as provided in this Section 6.2, the County may not seek from any court any provisional remedy pending the fulfillment of all dispute resolution requirements set forth in Sections 6.3 through 6.4.

- 6.3 It is intended that any disputes between the Parties concerning this Agreement or interpretation of the Deed to the Properties should be resolved by the Parties through direct, oral discussion and, if such is not possible, then through the dispute resolution framework established in Section 6.4 below. All stated time frames for resolving disputes may be lengthened by mutual consent.

No violation of a covenant, duty or obligation shall be considered a material breach of such covenant, duty or obligation unless and until (1) the complaining party delivers to the other party, by certified mail, return receipt requested or by another means of certifiable delivery, a written notice which identifies the alleged violation of a covenant and demands that the other party cure such violation within ten (10) business days of receiving the written notice, and (2) the other party fails to timely cure the violation. During the same ten (10) business days following certified receipt of the notice of violation, the Parties will have one or more government to government discussions, including at least one face to face meeting, to discuss and resolve the alleged breach. Prior to the first face to face meeting, the responding party shall provide the other party with a written response. If a party fails to timely cure following receipt of the notice of violation and the parties do not otherwise resolve their dispute, cessation of that activity after the time allotted for cure has passed shall not be deemed a cure of the alleged breach, except by express waiver of the complaining party. Either party may initiate dispute resolution pursuant to Section 6.4 below to contest the notice of violation and allegation of breach, the failure to cure or the sufficiency of the cure, as the case may be.

- 6.4 If direct discussions pursuant to Section 6.3 above are unsuccessful in resolving the dispute, any party may make a written demand for mediation before a single mediator in Seattle, Washington or at another place as the parties may agree in writing. If the parties cannot agree on the selection of a mediator within ten (10) business days of the date the written demand letter was received, then the mediation will be administered by J.A.M.S., Seattle, Washington Office, or its successor, using a mediator selected by J.A.M.S. from its roster. Any mediator selected must have at least five (5) years' legal experience in real estate law and, to the extent possible, a fundamental knowledge of Indian law.
- 6.5 If the dispute remains unresolved after fulfillment of the dispute resolution requirements set forth in Sections 6.3 and 6.4, either party may initiate an action in the courts of the

State of Washington or United States to enforce the terms of this Agreement and the Deeds, as provided herein.

7. Waiver and Amendments

Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition shall be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

8. Entire Agreement and Modifications

This Agreement and its Exhibits sets forth the entire agreement between the parties with respect to the subject matter hereof. It may be supplemented by addenda or amendments, which have been agreed upon by both parties in writing. Copies of such addenda and amendments shall be attached hereto and by this reference made part of this contract as though fully set forth herein.

9. Duration and Authority

This Agreement shall be effective upon signature and authorization by both parties. The terms, covenants, representations and warranties contained herein shall not merge in the deed of conveyance, but shall survive the conveyance and shall continue in force unless both parties mutually consent in writing to termination. The undersigned have the necessary authority to bind the parties to all terms of this Agreement and the Agreement has been approved by each party’s legislative body as required under applicable laws.

10. Notice

12.1 Any notice provided for herein shall be sent to the respective parties at:

King County:

Paulette Norman, Director
Road Services Division
King County Department of Transportation
KSC-TR-0313
201 S. Jackson Street
Seattle, WA 98104-3856

Tribe:

Chairperson
Muckleshoot Tribal Council
39015 – 172nd Ave. SE
Auburn, WA 98092-9763

11. Interlocal Cooperation Act

11.1 The County and the Tribe enter into this Agreement pursuant to the Washington State Interlocal Cooperation Act, RCW 39.34. As a home rule charter county and political subdivision of the State of Washington, the County has the inherent authority to acquire, hold and dispose of real property, all of which it does pursuant to King County Code Chapter 4.56, RCW 36.34 and 39.33. As a sovereign nation and an Indian Tribe federally recognized pursuant to 25 U.S.C. §§ 479a and 479a-1(a), the Tribe has the inherent authority to enter into this Agreement.

11.2 The purpose of this Agreement is to transfer the Property from the County to the Tribe, retaining certain rights in the County and subjecting the Tribe’s ownership interest to certain terms and conditions to ensure continued maintenance, public use and access to the Property.

11.3 This Agreement does not create a separate joint board or other legal or administrative entity.

11.4 The parties shall hold and dispose of property as set forth in this Agreement.

11.5 The parties are each responsible for their own finances in connection with this Agreement, and nothing in this Agreement shall be deemed or construed otherwise.

11.6 The duration of this Agreement shall be perpetual, unless terminated by the Parties through an amendment to this Agreement or a separate agreement, either of which must be: (a) approved by motion of the King County Council and the Muckleshoot Tribal Council or their successors in interest; and (b) executed with equal formality as this Agreement.

11.7 This Agreement will be recorded by the County or otherwise be made public by it in conformance with the Interlocal Cooperation Act.

IN WITNESS WHEREOF, the parties have executed this Agreement.

King County

Muckleshoot Indian Tribe

King County Executive

Tribal Chairperson

Date

Date

Approved as to Form:
King County
Senior Deputy Prosecuting Attorney

Approved as to Form:
Attorney for the Muckleshoot Tribe

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this ____ day of _____, 2011, personally appeared before me _____ to me known to be the _____ of the Muckleshoot Indian Tribe, and acknowledged this instrument to be the free and voluntary act and deed of the Muckleshoot Indian Tribe for uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written

Notary Public in and for the State of Washington
Residing at _____

My appointment expires _____

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this ____ day of _____, 2011, personally appeared before me _____ to me known to be the _____ of King County, and acknowledged this instrument to be the free and voluntary act and deed of King County for uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written

Notary Public in and for the State of Washington
Residing at _____

My appointment expires _____

EXHIBIT A
Legal Description for S.E. 172nd Avenue

Those portions of Section 1, Township 20 North, Range 5 East, Willamette Meridian, King County, Washington, being described as follows:

That portion of the 172nd Avenue SE right-of-way, lying northerly of the SE 392nd Street right-of-way, also known as J.T. Ray Road – County Road No. 1632, and located in said Section 1.

EXHIBIT B
Legal Description for 392nd Street S.E. and 164th Avenue S.E.

Those portions of Section 1, Township 20 North, Range 5 East, Willamette Meridian, King County, Washington, being described as follows:

Those portions of the SE 392nd Street right-of-way, also known as J.T. Ray Road – County Road No. 1632, and the 164th Avenue SE right-of-way, located in said Section 1.

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January 4, 2012

The Honorable Larry Gossett
Chair, King County Council
Room 1200
C O U R T H O U S E

Dear Councilmember Gossett:

Enclosed is an ordinance authorizing the King County Executive to enter into an interlocal agreement with the Muckleshoot Indian Tribe for the purpose of transferring unincorporated King County roads located on the Muckleshoot Indian Reservation to the Muckleshoot Indian Tribe.

These roads are currently part of the King County road system and the Bureau of Indian Affairs' Indian Reservation Roads Program. The Tribe has identified these roads for use as access to the Muckleshoot Tribal Administrative Complex and Health and Wellness Center. Additionally, the Tribe is interested in improving and maintaining these roads so that traffic to the Health and Wellness Center can be accommodated. Transferring these roads is consistent with the King County Strategic Plan strategy to encourage a growing and diverse King County economy. Specifically, the transfer of these roads will assist in supporting community infrastructure and collaborative land-use planning that is responsive to the needs of residents, businesses, and services.

The Intergovernmental Property Transfer Act (Revised Code of Washington 39.33) allows the County to transfer these roads. The total length of roadway being transferred is a little more than a mile. The Muckleshoot Indian Tribe will assume the responsibility of maintaining the transferred roads. This cost is approximately \$16,000 annually. However, there are no revenues or expenditures directly associated with this interlocal agreement, as the cost savings will be applied to maintaining other King County roads. By transferring the roads, the cost of maintaining and improving the roads will be paid by the jurisdiction benefitting from them. It is in the public's interest to transfer the roads for these purposes.

The Honorable Larry Gossett

January 4, 2012

Page 2

I recommend the King County Council approve this ordinance.

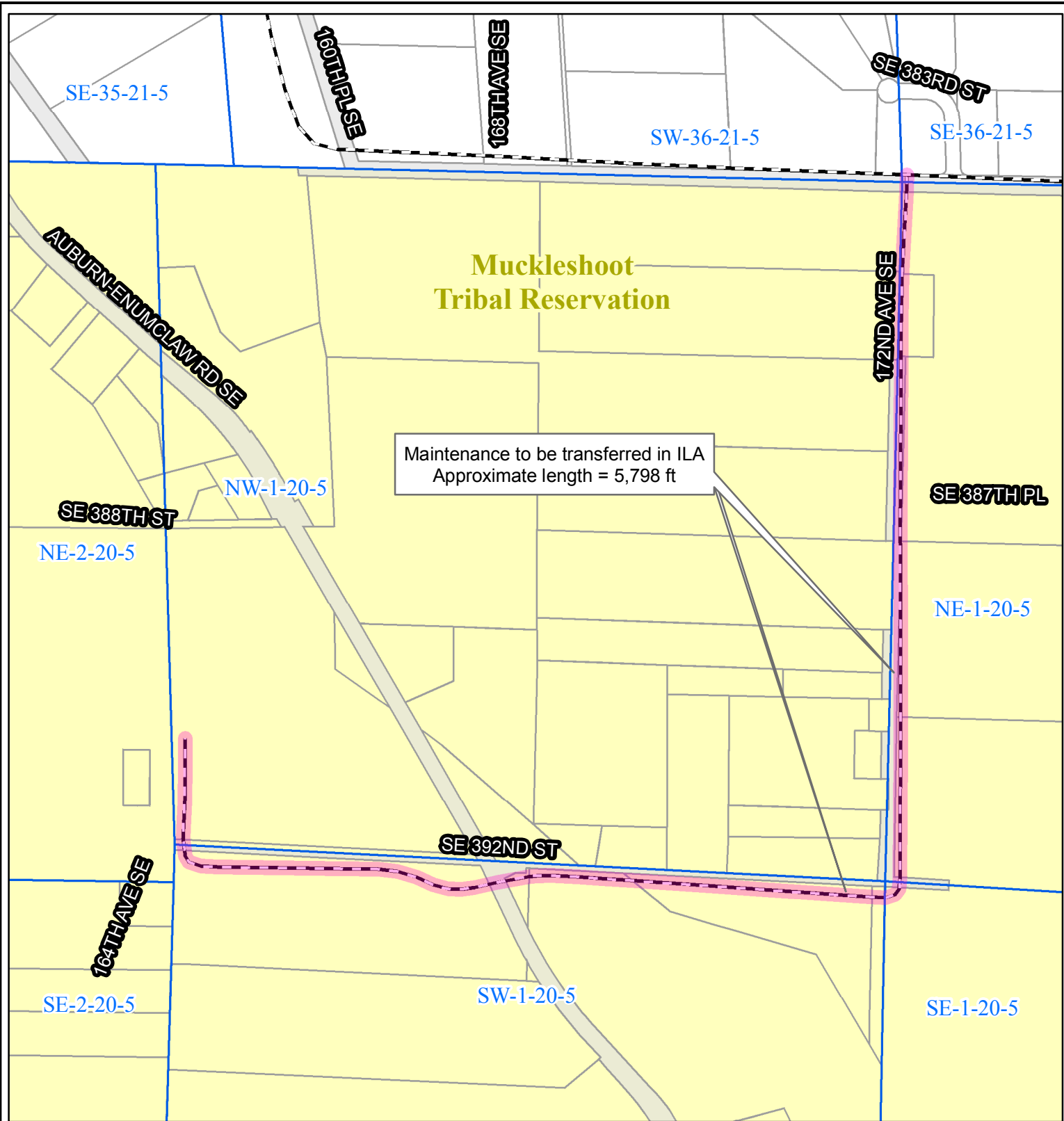
If you have any questions regarding this ordinance, please contact Paulette Norman, P.E., Director of the Road Services Division, at 206-296-6590.

Sincerely,

Dow Constantine
King County Executive

Enclosures

cc: King County Councilmembers
 ATTN: Cindy Domingo, Acting Chief of Staff
 Mark Melroy, Senior Principal Legislative Analyst, BFM Committee
 Anne Noris, Clerk of the Council
Dwight Dively, Director, Office of Performance, Strategy and Budget
Carrie Cihak, Chief Advisor Policy and Strategic Initiatives, King County Executive
Office
Harold S. Taniguchi, Director, Department of Transportation (DOT)
Paulette Norman, P.E., Division Director, Road Services Division (RSD), DOT



Muckleshoot ILA

For Informational Use Only

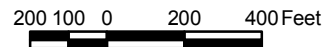
ILA for Maintenance

Section 1, Township 20N, Range 5E

- Muckleshoot Reservation
- Maintenance to be transferred to Muckleshoot in ILA
- Current KC Maintained ROW



The information included on this map has been compiled by King County staff from a variety of sources and is subject to change without notice. King County makes no representations or warranties, express or implied, as to accuracy, completeness, timeliness, or rights to the use of such information. This document is not intended for use as a survey product. King County shall not be liable for any general, special, indirect, incidental, or consequential damages including, but not limited to, lost revenues or lost profits resulting from the use or misuse of the information contained on this map. Any sale of this map or information on this map is prohibited except by written permission of King County.



November 16, 2011

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S1

1/31/12

[jr]

Sponsor: _____

Proposed No.: 2012-0035

1 **STRIKING AMENDMENT TO PROPOSED ORDINANCE 2012-0035, VERSION**

2 **1**

3 On page 1, beginning on line 5, strike everything through page 2, line 39, and insert:

4 "BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

5 **SECTION 1. Findings:**

6 A. The Interlocal Cooperation Act, chapter 39.34 RCW, authorizes the
7 county to enter into agreements with other units of government, including Indian
8 tribes, to jointly exercise their existing powers and authority.

9 B. The Muckleshoot Indian Tribe ("the tribe") is a federally recognized
10 Indian tribe occupying the Muckleshoot Indian Reservation ("the reservation")
11 located in King and Pierce counties.

12 C. King County owns portions of 164th Avenue Southeast, Southeast
13 172nd Avenue and 392nd Street Southeast on one side of the centerline of these
14 roads on the reservation in unincorporated King County.

15 D. The Bureau of Indian Affairs ("the bureau") also owns portions of
16 164th Avenue Southeast, Southeast 172nd Avenue and 392nd Street Southeast on
17 the other side of the centerline of these roads on the reservation.

18 E. The portions of 164th Avenue Southeast, Southeast 172nd Avenue and
19 392nd Street Southeast referenced in subsections C. and D. of this section are
20 currently part of the King County road system and the bureau's Indian
21 Reservation Roads Program.

22 F. The tribe desires to improve and maintain those portions of 164th
23 Avenue Southeast, Southeast 172nd Avenue and 392nd Street Southeast in order
24 to better service the Muckleshoot Tribal Administrative Complex and Health and
25 Wellness Center.

26 G. In order to facilitate the tribe's desire to improve and maintain these
27 roads, the King County agrees that it would be advantageous for the ownership of
28 the road segments to be consolidated in the bureau and the tribe.

29 H. The Intergovernmental Property Transfer Act, chapter 39.33 RCW,
30 allows the county to transfer real property on such terms and conditions as may be
31 mutually agreed on by the county and the tribe.

32 I. The tribe must apply for a Federal Highway Administration, Indian
33 Reservation Roads High Priority Non-Emergency Grant for Road Improvements
34 before March 1, 2012, to receive funding from the Federal Government in order
35 to carry out the improvement of 164th Avenue Southeast, Southeast 172nd
36 Avenue and 392nd Street Southeast.

37 J. In order to be eligible to apply for the grant, the tribe must have title to
38 the right-of-way for those three roads, which, due to this federal time constraint,
39 requires the immediate action of transferring ownership of the roads. Enactment

40 of this ordinance as an emergency ordinance is necessary to provide immediate
41 authority for the executive to execute the interlocal agreement for transfer.

42 K. It is in the public's interest to transfer the portions of 164th Avenue
43 Southeast, Southeast 172nd Avenue and 392nd Street Southeast, as described in
44 Attachment A to this ordinance, to the tribe.

45 SECTION 2. The King County executive is hereby authorized to execute
46 an interlocal agreement, substantially in the form of Attachment A to this
47 ordinance, with the Muckleshoot Indian Tribe for the transfer of county roads
48 located on the Muckleshoot Indian Reservation.

49 SECTION 3. The county council finds as a fact and declares that an
50 emergency exists and that this ordinance is necessary for the immediate
51 preservation of public peace, health or safety or for the support of county of
52 county government and its existing public institutions."

53 Delete Attachment A, Interlocal Agreement Between King County and the Muckleshoot
54 Indian Tribe Relating to Transfer of County Roads Located on the Muckleshoot Indian
55 Reservation and insert Attachment A, Interlocal Agreement Between King County and the
56 Muckleshoot Indian Tribe Relating to Transfer of County Roads Located on the
57 Muckleshoot Indian Reservation dated January 31, 2012

58

59 **EFFECT: Identifies the conditions for and declares an emergency. The amendment**
60 **also attaches an updated version of the Interlocal Agreement.**

**INTERLOCAL AGREEMENT BETWEEN KING COUNTY AND THE
MUCKLESHOOT INDIAN TRIBE RELATING TO TRANSFER OF COUNTY ROADS
LOCATED ON THE MUCKLESHOOT INDIAN RESERVATION**

THIS AGREEMENT is made and entered into by and between the parties (“Parties”) to this Agreement, which are King County, a political subdivision of the State of Washington (“County”) and the Muckleshoot Indian Tribe (“the Tribe”), a federally recognized Indian Tribe.

WHEREAS, the Interlocal Cooperation Act, RCW 39.34, authorizes the County to enter into agreements with other units of government, including Indian tribes to jointly exercise their existing powers and authority; and

WHEREAS, the Tribe is a federally recognized Indian tribe occupying the Muckleshoot Indian Reservation (“Reservation”) located in King and Pierce Counties; and

WHEREAS, the County owns portions of S.E. 172nd Avenue and 392nd Street S.E. on one side of the centerline of these roads on the Reservation in unincorporated King County; and

WHEREAS, the Bureau of Indian Affairs (“Bureau”) also owns portions of S.E. 172nd Avenue and 392nd Street S.E. on the other side of the centerline of these roads on the Reservation; and

WHEREAS, the above-referenced portions of S.E. 172nd Avenue and 392nd Street S.E. are currently part of the King County road system and the Bureau's Indian Reservation Road Program; and

WHEREAS, the Tribe desires to improve and maintain these portions of S.E. 172nd Avenue and 392nd Street S.E. in order to better serve the Muckleshoot Tribal Administrative Complex and Health and Wellness Center; and

WHEREAS, the Tribe also desires to own and maintain 164th Avenue SE, which is contiguous to SE 392nd Street; and

WHEREAS, in order to facilitate the Tribe’s desire to improve and maintain these roads, the Parties agree that it would be advantageous for the ownership of the road segments to be consolidated in the Bureau of Indian Affairs and the Tribe; and

WHEREAS, the Intergovernmental Property Transfer Act, RCW 39.33, as recently amended, allows the County to transfer real property or property rights to the Tribe, on such terms and conditions as may be mutually agreed upon by the proper authorities of the County and the Tribe; and

WHEREAS, the County wishes to convey its property interests in 164th Avenue S.E., S.E. 172nd Avenue and 392nd Street S.E. to the Tribe and the Tribe desires to acquire such interests; and

WHEREAS, relief from the burden of carrying out future road maintenance on 164th Avenue S.E., S.E. 172nd Avenue and 392nd Street S.E. by the County amounts to valuable consideration supporting the transfer to the Tribe; and

WHEREAS, as provided herein and as part of the Indian Reservation Road Program, the portions of these roads transferred to the Tribe will remain open and available for public use as provided by federal law; and

WHEREAS, the County finds it is in the public interest to transfer its interest in portions of 164th Avenue S.E., S.E. 172nd Avenue and 392nd Street S.E to the Tribe so that the Tribe can operate and maintain the full width of said roads for continued public use as part of the Bureau of Indian Affairs Reservation Road Program.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Tribe and the County agree as follows:

1. Conveyance of Title

1.1. Within thirty (30) days of execution of this Agreement, the County shall convey by quitclaim deed the properties described in Exhibit A and Exhibit B ("the Properties") attached hereto and incorporated herein by reference, to the Tribe, subject to all rights, conditions, covenants, obligations, limitations and reservations of record for said properties. The Tribe agrees to abide by and enforce all rights, conditions, covenants, obligations, limitations and reservations for the Properties. The Tribe covenants that the Property shall continue to be used and maintained in perpetuity for road-related purposes, unless otherwise agreed by the County. If the County consents to the sale of the properties described in Exhibit A and/or Exhibit B and said properties are sold for non-road purposes, the Tribe shall pay the County the appraised value of the property at the time the property is sold, as determined by an MAI appraiser selected by mutual agreement by the County and the Tribe; or if the properties described in Exhibit A and/or Exhibit B are traded for non-road related properties, the Tribe shall pay the County the appraised value of the property at the time of the trade, as determined by an MAI appraiser selected by mutual agreement by the County and the Tribe.

1.2 All deeds shall also contain the following specific covenants pertaining to use, which covenants shall run with the land for the benefit of the County. The County and the Tribe agree that the County shall have standing to enforce these covenants, which shall be set forth as follows:

"The Tribe covenants that the Properties shall continue to be operated and maintained in perpetuity for public road purposes open and available to both members and nonmembers as provided in 25 C.F.R. §170.120."

1.3 The Tribe at its option may convey title to the Properties to the United States in trust for the Muckleshoot Indian Tribe, provided that, such conveyance shall not relieve the Tribe of any obligation under this Agreement or the deed.

2. Condition of Premises and Responsibility for Operations, Maintenance, Repairs, and Improvements

2.1 The Tribe has inspected and knows the condition of the Properties and agrees to accept the Properties in an AS IS condition, and to assume full and complete responsibility for all operations, maintenance, repairs, and improvements of the Property.

2.2 The County does not make and specifically disclaims any warranties, express or implied, including any warranty of merchantability or fitness for a particular purpose, with respect to the Properties, and no official, employee, representative or agent of the County is authorized otherwise.

2.3 The Tribe acknowledges and agrees that except as indicated in paragraph 3.2, the County shall have no liability for, and that the Tribe shall release and have no recourse against the County for, any defect or deficiency of any kind whatsoever in the Property without regard to whether such defect or deficiency was known or discoverable by the Tribe or the County.

2.4 The Tribe acknowledges and agrees that the Tribe shall be responsible for all day-to-day management, operation, and maintenance of the Properties, and to respond to public inquiries regarding the same;

2.5 The Tribe acknowledges and agrees that any failure to comply with this section 2 shall constitute a material breach of this Agreement.

3. Environmental Liability

3.1 "Hazardous Materials" as used herein shall mean any hazardous, dangerous or toxic wastes, materials, or substances as defined in state or federal statutes or regulations as currently adopted or hereafter amended.

3.2 Nothing in this Agreement shall be deemed to waive any statutory claim for contribution that the Tribe might have against the County under federal or state environmental statutes and that arises from hazardous materials deposited or released on the Properties by the County during the County's period of ownership. The Tribe may not, however, assert such a claim to the extent that the Tribe creates the need for or exacerbates the cost of remediation upon which a statutory claim for contribution is based as a result of the Tribe performing maintenance and/or construction activities on the Properties, changing the configuration of the Properties, or changing the use of the Properties.

3.3 If the Tribe discovers the presence of hazardous materials at levels that could give rise to a statutory claim for contribution against the County, it shall immediately notify the County in writing. Such notice shall in no event be provided more than 30 days after discovery. The Parties shall make their best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement prior to undertaking any remediation.

3.4 In no event shall the County be responsible for any costs of remediation that exceed the minimum necessary to satisfy the state or federal agency with jurisdiction over the remediation.

4. Indemnification and Hold Harmless

4.1 King County shall indemnify and hold harmless the Tribe and its elected officials, officers, agents or employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, (i) which are caused by or result from a negligent action or omission of the County, its officers, agents and employees in performing its obligations pursuant to this Agreement, and/or (ii) arising from those occurrences related to the Property that occurred prior to the effective date of conveyance of the Property to the Tribe, except to the extent that indemnifying or holding the Tribe harmless would be limited by Section 3 of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against the Tribe or the Tribe and the County, the County shall defend the same at its sole cost and expense and, if final judgment be rendered the Tribe and its elected officials, officers, agents and employees or jointly the Tribe and the County and their respective elected officials, officers, agents and employees, the County shall satisfy the same.

4.2 In executing this Agreement, the County does not assume liability or responsibility for or in any way release the Tribe from any liability or responsibility which arises in whole or in part from the existence or effect of Tribe laws, rules or regulations, and which would not otherwise arise in the absence of the Tribe's laws, rules, or regulations. The Tribe shall indemnify, defend, and hold harmless the County from any cause, claim, suit, or action arising out of this agreement or the deed that is based on the Tribe's law, rules, or regulations, and which would not arise in the absence of such laws, rules, or regulations.

4.3 The Tribe shall indemnify and hold harmless the County and its elected officials, officers, agents and employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, (i) which are caused by or result from a negligent act or omission of the Tribe, its officers, agents and employees in performing obligations pursuant to this Agreement, and/or (ii) arising from those occurrences related to the Properties that occur on or after the effective date of conveyance of the Properties to the Tribe, except to the extent that indemnifying or holding the County harmless would be limited by Section 3 of this

Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against the County or the County and the Tribe, the Tribe shall defend the same at its sole cost and expense and, if final judgment be rendered against the County and its officers, agents and employees or jointly against the County and the Tribe and their respective officers, agents and employees, the Tribe shall satisfy the same.

- 4.4 Each party to this Agreement shall immediately notify the other of any and all claims, actions, losses or damages that arise or are brought against that party relating to or pertaining to the Properties.
- 4.5 Each party agrees that its obligations under this Section 4 extend to any claim, demand, and/or cause of action brought by or on behalf of any employees, or agents. For this purpose, each party, by mutual negotiation, hereby waives, with respect to the other party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify the other party.

5. Audits and Inspections

- 5.1 Until December 31, 2020, the records of the Parties related to any matters covered by this Intergovernmental Agreement and not otherwise privileged shall be subject to inspection, review, and/or audit by any other party at the requesting party's sole expense. Such records shall be made available for inspection during regular business hours within a reasonable time of the request. The Parties acknowledge and agrees that in order to fulfill their obligations under this paragraph, they must preserve all of their records pertaining to the Properties until such date. King County shall fulfill its obligation to preserve such records consistent with RCW 40.14.070 and state regulations promulgated thereunder.

6. Limited Waiver of Sovereign Immunity; Dispute Resolution; Reversion of Title

- 6.1 The Tribe expressly agrees to waive its sovereign immunity for the limited purpose of lawsuits or other legal proceeding brought by the County to enforce the terms of this Agreement or the Deed transferring the Properties in accordance with this Agreement in the courts of the State of Washington or United States.
- 6.2 The Tribe acknowledges and agrees that the County shall have standing to sue the Tribe in Washington State superior court to enforce specific performance of this Agreement, to enforce specific performance of the terms of the Deed transferring the Properties, or for such other legal or equitable remedy as the County deems appropriate in its sole discretion. The County may at any time seek injunctive relief or specific performance in King County Superior Court if the County reasonably believes that the Tribe has breached any covenant contained in the Deed or in this Agreement. Except as provided in this Section 6.2, the County may not seek from any court any provisional remedy

pending the fulfillment of all dispute resolution requirements set forth in Sections 6.3 through 6.4.

- 6.3 It is intended that any disputes between the Parties concerning this Agreement or interpretation of the Deed to the Properties should be resolved by the Parties through direct, oral discussion and, if such is not possible, then through the dispute resolution framework established in Section 6.4 below. All stated time frames for resolving disputes may be lengthened by mutual consent.

No violation of a covenant, duty or obligation shall be considered a material breach of such covenant, duty or obligation unless and until (1) the complaining party delivers to the other party, by certified mail, return receipt requested or by another means of certifiable delivery, a written notice which identifies the alleged violation of a covenant and demands that the other party cure such violation within ten (10) business days of receiving the written notice, and (2) the other party fails to timely cure the violation. During the same ten (10) business days following certified receipt of the notice of violation, the Parties will have one or more government to government discussions, including at least one face to face meeting, to discuss and resolve the alleged breach. Prior to the first face to face meeting, the responding party shall provide the other party with a written response. If a party fails to timely cure following receipt of the notice of violation and the parties do not otherwise resolve their dispute, cessation of that activity after the time allotted for cure has passed shall not be deemed a cure of the alleged breach, except by express waiver of the complaining party. Either party may initiate dispute resolution pursuant to Section 6.4 below to contest the notice of violation and allegation of breach, the failure to cure or the sufficiency of the cure, as the case may be.

- 6.4 If direct discussions pursuant to Section 6.3 above are unsuccessful in resolving the dispute, any party may make a written demand for mediation before a single mediator in Seattle, Washington or at another place as the parties may agree in writing. If the parties cannot agree on the selection of a mediator within ten (10) business days of the date the written demand letter was received, then the mediation will be administered by J.A.M.S., Seattle, Washington Office, or its successor, using a mediator selected by J.A.M.S. from its roster. Any mediator selected must have at least five (5) years' legal experience in real estate law and, to the extent possible, a fundamental knowledge of Indian law.

- 6.5 If the dispute remains unresolved after fulfillment of the dispute resolution requirements set forth in Sections 6.3 and 6.4, either party may initiate an action in the courts of the State of Washington or United States to enforce the terms of this Agreement and the Deeds, as provided herein.

7. Waiver and Amendments

Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition shall be waived, modified or deleted

except by an instrument, in writing, signed by the parties hereto and approved by the King County Council and the Muckleshoot Tribal Council or their successors in interest.

8. Entire Agreement and Modifications

This Agreement and its Exhibits sets forth the entire agreement between the parties with respect to the subject matter hereof. It may be supplemented by addenda or amendments, which have been agreed upon by both parties in writing, signed by the parties hereto and approved by the King County Council and the Muckleshoot Tribal Council or their successors in interest. Copies of such addenda and amendments shall be attached hereto and by this reference made part of this contract as though fully set forth herein.

9. Duration and Authority

This Agreement shall be effective upon signature and authorization by both parties. The terms, covenants, representations and warranties contained herein shall not merge in the deed of conveyance, but shall survive the conveyance and shall continue in force unless both parties mutually consent in writing to termination. The undersigned have the necessary authority to bind the parties to all terms of this Agreement and the Agreement has been approved by each party's legislative body as required under applicable laws.

10. Notice

Any notice provided for herein shall be sent to the respective parties at:

King County:

Tribe:

Paulette Norman, Director
Road Services Division
King County Department of Transportation
KSC-TR-0313
201 S. Jackson Street
Seattle, WA 98104-3856

Chairperson
Muckleshoot Tribal Council
39015 – 172nd Ave. SE
Auburn, WA 98092-9763

11. Interlocal Cooperation Act

11.1 The County and the Tribe enter into this Agreement pursuant to the Washington State Interlocal Cooperation Act, RCW 39.34. As a home rule charter county and political subdivision of the State of Washington, the County has the inherent authority to acquire, hold and dispose of real property, all of which it does pursuant to King County Code Chapter 4.56, RCW 36.34 and

39.33. As a sovereign nation and an Indian Tribe federally recognized pursuant to 25 U.S.C. §§ 479a and 479a-1(a), the Tribe has the inherent authority to enter into this Agreement.

11.2 The purpose of this Agreement is to transfer the Property from the County to the Tribe, retaining certain rights in the County and subjecting the Tribe's ownership interest to certain terms and conditions to ensure continued maintenance, public use and access to the Property.

11.3 This Agreement does not create a separate joint board or other legal or administrative entity.

11.4 The parties shall hold and dispose of property as set forth in this Agreement.

11.5 The parties are each responsible for their own finances in connection with this Agreement, and nothing in this Agreement shall be deemed or construed otherwise.

11.6 The duration of this Agreement shall be perpetual, unless terminated by the Parties through an amendment to this Agreement or a separate agreement, either of which must be: (a) approved by the King County Council and the Muckleshoot Tribal Council or their successors in interest; and (b) executed with equal formality as this Agreement.

11.7 This Agreement will be recorded by the County or otherwise be made public by it in conformance with the Interlocal Cooperation Act.

IN WITNESS WHEREOF, the parties have executed this Agreement.

King County

Muckleshoot Indian Tribe

King County Executive

Tribal Chairperson

Date

Date

Approved as to Form:
King County
Senior Deputy Prosecuting Attorney

Approved as to Form:
Attorney for the Muckleshoot Tribe

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this ____ day of _____, 2011, personally appeared before me _____ to me known to be the _____ of the Muckleshoot Indian Tribe, and acknowledged this instrument to be the free and voluntary act and deed of the Muckleshoot Indian Tribe for uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written

Notary Public in and for the State of Washington
Residing at _____

My appointment expires _____

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this ____ day of _____, 2011, personally appeared before me _____ to me known to be the _____ of King County, and acknowledged this instrument to be the free and voluntary act and deed of King County for uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written

Notary Public in and for the State of Washington
Residing at _____

My appointment expires _____

EXHIBIT A
Legal Description for S.E. 172nd Avenue

Those portions of Section 1, Township 20 North, Range 5 East, Willamette Meridian, King County, Washington, being described as follows:

That portion of the 172nd Avenue SE right-of-way, lying northerly of the SE 392nd Street right-of-way, also known as J.T. Ray Road – County Road No. 1632, and located in said Section 1.

EXHIBIT B
Legal Description for 392nd Street S.E. and 164th Avenue S.E.

Those portions of Section 1, Township 20 North, Range 5 East, Willamette Meridian, King County, Washington, being described as follows:

Those portions of the SE 392nd Street right-of-way, also known as J.T. Ray Road – County Road No. 1632, and the 164th Avenue SE right-of-way, located in said Section 1.

T1

1/31/12

Sponsor: _____

Proposed No.: 2012-0035

1 **TITLE AMENDMENT TO PROPOSED ORDINANCE 2012-0035, VERSION 1**

2 On page 1, line 4, after "Muckleshoot Indian Reservation" insert "; and declaring an
3 emergency"

4

5 **EFFECT: Amends the title to reflect Amendment S1**