

**INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND THE
TULALIP TRIBES OF WASHINGTON RELATING TO TRANSFER OF 64TH STREET
NW LOCATED ON THE TULALIP INDIAN RESERVATION**

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

WHEREAS, the Interlocal Cooperation Act, chapter 39.34 RCW, 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 Tribes is a federally recognized Indian tribe occupying the Tulalip Indian Reservation (“Reservation”) located in Snohomish County; and

WHEREAS, on January 15, 1931, the United States Department of the Interior granted a right-of-way for a public highway over 64th Street NW to Snohomish County under the Act of March 3, 1901 (31 Stat. L. 1058-1084), 25 U.S.C. § 311; and

WHEREAS, the County identifies 64th Street NW as county road log #60680, which connects Marine Drive to Totem Beach Road and Mission Beach Road; and

WHEREAS, the County has maintained 64th Street NW as part of the county road network; and

WHEREAS, in 1986 the United States Department of the Interior granted a right-of-way easement for a public road over 64th Street NW to the Bureau of Indian Affairs (BIA) Roads Branch under the Act of February 5, 1948 (62 Stat. 17), 25 U.S.C. §§ 323-328, and Part 169, Title 25, Code of Federal Regulations; and

WHEREAS, the 1986 right-of-way granted to the BIA Roads Branch is for “a right of way easement for right privilege, permit and easement to construct and maintain easement for public road forever”; and

WHEREAS, the Tribes desire to improve and maintain 64th Street NW as a public road as part of the Tulalip Tribes’ Tribal Transportation Program (TTP); and

WHEREAS, to facilitate the Tribes’ desire to improve and maintain this road, the Parties agree that it would be advantageous for the interests to be consolidated in the BIA and the Tribes; and

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

WHEREAS, the County wishes to convey its property interests in 64th Street NW to the Tribes and the Tribes desires to acquire such interests; and

WHEREAS, relief from future costs associated with maintaining 64th Street NW by the County amounts to valuable consideration supporting the transfer to the Tribes; and

WHEREAS, as provided herein and as part of the TTP, the road transferred to the Tribes 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 64th Street NW to the Tribes so that the Tribes can operate and maintain the road for continued public use as part of the TTP.

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 Tribes and the County agree as follows:

1. Conveyance of Interest

1.1. Within thirty (30) days of execution of this Agreement, the County shall convey by quitclaim deed the County's interest in the properties described in Exhibits A and B of this Agreement ("the Property") to the Tribes, subject to all rights, conditions, covenants, obligations, limitations, and reservations of record for said properties. The Tribes agrees to abide by and enforce all rights, conditions, covenants, obligations, limitations, and reservations for the Property. The Tribes covenants that the Property shall continue to be used and maintained in perpetuity for road-related purposes, unless otherwise agreed by the County.

1.2 The deed shall contain a specific covenant pertaining to use, which covenant shall run with the land for the benefit of the public. The County and the Tribes agree that the County shall have standing to enforce the covenant, which shall be set forth as follows:

"The Tulalip Tribes covenants that the property described in this deed 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. §170.114."

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

2.1 The Tribes has inspected and knows the condition of the Property and agrees to accept the Property 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 Property, and no official, employee, representative or agent of the County is authorized to warrant otherwise.

- 2.3 The Tribes acknowledges and agrees that except as indicated in paragraph 3.2, the County shall have no liability for, and that the Tribes 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 Tribes or the County.
- 2.4 The Tribes acknowledges and agrees that the Tribes shall be responsible for all day-to-day management, operation, and maintenance of the Property, and to respond to public inquiries regarding the same.
- 2.5 The Tribes acknowledges and agrees that any failure to comply with this section 2 shall constitute a material breach of this Agreement.
- 2.6 The County shall update the county road log inventory asset management database (GIS-Mo) to reflect deletion of 64th Street NW (county road log #60680) from the County road log inventory.

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 Tribes might have against the County under federal or state environmental statutes and that arises from hazardous materials deposited or released on the Property by the County during the County's period of ownership. The Tribes may not, however, assert such a claim to the extent that the Tribes creates the need for or exacerbates the cost of remediation upon which a statutory claim for contribution is based as a result of the Tribes performing maintenance and/or construction activities on the Property, changing the configuration of the Property, or changing the use of the Property.
- 3.3 If the Tribes 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 Snohomish County shall indemnify and hold harmless the Tribes 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 County's interest in the Property to the Tribes, except to the extent that indemnifying or holding the Tribes harmless would be limited by Section 3 of this Agreement. In the event any suit based upon such a claim, action, loss or damage is brought against the Tribes or the Tribes and the County, the County shall defend the same at its sole cost and expense and, if final judgment be rendered against the Tribes and its elected officials, officers, agents and employees or jointly against the Tribes 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 Tribes from any liability or responsibility which arises in whole or in part from the existence or effect of Tribes' laws, rules or regulations, and which would not otherwise arise in the absence of the Tribes' laws, rules, or regulations. The Tribes 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 Tribes' law, rules, or regulations, and which would not arise in the absence of such laws, rules, or regulations.
- 4.3 The Tribes 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 Tribes, its officers, agents and employees in performing obligations pursuant to this Agreement, and/or (ii) arising from those occurrences related to the Property that occur on or after the effective date of conveyance of the County's interest in the Property to the Tribes, 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 Tribes, the Tribes 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 Tribes and their respective officers, agents and employees, the Tribes 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 Property.
- 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, 2030, 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 agree that to fulfill their obligations under this paragraph, they must preserve all of their records pertaining to the Property until such date. The 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 Tribes 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 County's interest in the Property in accordance with this Agreement in the courts of the State of Washington or United States.
- 6.2 The Tribes acknowledges and agrees that the County shall have standing to sue the Tribes in Washington State superior court or the United States District Court for the Western District of Washington to enforce specific performance of this Agreement, to enforce specific performance of the terms of the Deed transferring the County's interest in the Property, 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 Snohomish County Superior Court if the County reasonably believes that the Tribes 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. 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 Deed, 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 Snohomish County Council and the Tulalip Tribes Board of Directors or their successors in interest.

8. Entire Agreement and Modifications

This Agreement, Exhibit A, and Exhibit B set 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 Snohomish County Council and the Tulalip Tribes Board of Directors 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:

<p>Snohomish County:</p> <p>Kelly Snyder, Director Snohomish County Department of Public Works 3000 Rockefeller Ave M/S 607 Everett, WA 98201-4046 kelly.snyder@snoco.org</p> <p>Doug McCormick, Deputy Director/County Engineer Snohomish County Department of Public Works 3000 Rockefeller Ave M/S 607 Everett, WA 98201-4046 dmccormick@snoco.org</p>	<p>Tribes:</p> <p>Teri Gobin, Chairwoman Tulalip Tribes of Washington 6406 Marine Dr. Tulalip WA 98271 trgobin@tulaliptribes-nsn.gov</p> <p>Samuel Davis, Chief Operating Officer Tulalip Tribes of Washington 6406 Marine Dr. Tulalip WA 98271 sdavis@tulaliptribes-nsn.gov</p>
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11. Interlocal Cooperation Act

11.1 The County and the Tribes enter into this Agreement pursuant to the Washington State Interlocal Cooperation Act, chapter 39.34 RCW, and the Washington State Intergovernmental Disposition of Property Act, chapter 39.33 RCW. The Tribes, as a sovereign nation and a federally recognized Indian Tribe pursuant to 25 U.S.C. §§ 5130 and 5131 the Tribes 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 Tribes, subjecting the Tribes' 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.

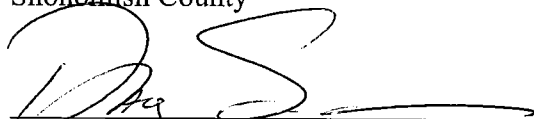
11.5 The Parties are each responsible for their own finances in connection with this Agreement, and nothing in this Agreement shall be deemed or construed otherwise.

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 Snohomish County Council and the Tulalip Tribes Board of Directors 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.

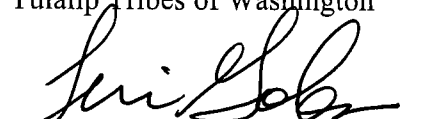
IN WITNESS WHEREOF, the parties have executed this Agreement.

Snohomish County



Snohomish County Executive

Tulalip Tribes of Washington



Board of Directors Chair

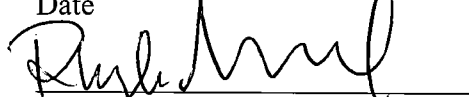
May 6, 2024
Date

Christina
Richmond

Digitally signed by
Christina Richmond
Date: 2024.02.20 15:22:42
-08'00'

Approved as to Form:
Snohomish County
Deputy Prosecuting Attorney

03/01/24
Date



Approved as to Form:
Attorney for the Tulalip Tribes

64th Street NW Interlocal Agreement
Survey 5141, Project Code(ROTPA-33)
12/28/2023

EXHIBIT 'A'

Legal Description:

That portion of 64th Street NW lying in the southwest quarter of Section 26, Township 30 north, Range 4 east, Willamette Meridian, situate in the county of Snohomish, State of Washington, described as follows:

All that portion of Survey Number 1227 (on file in the Office of the Snohomish County Engineer) that is specifically described in the November 10, 1930, Board of County Commissioners of Snohomish County "Resolution Approving Location of Marysville-Tulalip Road," as recorded in document 123-155 of the U.S. Department of the Interior Bureau of Indian Affairs Land Titles and Records Office as "a branch from said road extending North 89° 36' 50" West along the North line of the South one-half of the Southwest quarter of Section 26, Township 30 North, Range 4 East W.M. for 1999.6 ft."

Containing an area of 580,148 square feet, more or less.



EXHIBIT 'B'

64TH STREET NW INTERLOCAL AGREEMENT
SN 5141



SECTION 26, T. 30 N, R. 4 E., W.M.

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