

After Recording Return to:  
City of Airway Heights  
Community Planning and Development Department  
1208 S. Lundstrom Street  
Airway Heights, Washington 99001



**Document Title:** Spokane Tribe Annexation

**Reference Number of Related Documents:** None

**Grantor:** Spokane Tribe of Indians, Bureau of Indian Affairs

**Grantee:** City of Airway Heights

**Legal Description:**

That portion of the S ½ of the SE ¼ of Sec. 22, T.25N., R.41E., W.M., lying north of US-2 (Sunset Highway) and east of Fairview Heights Addition, except public right-of-way, situate in Spokane County, Washington.

**Assessor's Tax Parcel ID Number:** Tax Parcel No. 15224.9022 & Tax Parcel No. 15224.9013 (BIA Tract No. 102-T1368)

The County Auditor will rely on the information provided on this form. The Staff will not read the document to verify the accuracy and completeness of the indexing information provided herein.

**Sign below only if your document is Non-Standard.**

I am requesting an emergency non-standard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some parts of the text of the original document. Fee for non-standard processing is \$50.

  
\_\_\_\_\_  
Signature of Requesting Party

**CITY OF AIRWAY HEIGHTS  
SPOKANE COUNTY, WASHINGTON**

**ORDINANCE NO. C-770**

**AN ORDINANCE OF THE CITY OF AIRWAY HEIGHTS, WASHINGTON,  
PROVIDING FOR ANNEXATION OF CERTAIN PROPERTY HELD IN TRUST BY  
THE UNITED STATES FOR THE SPOKANE TRIBE OF INDIANS,  
ESTABLISHING THE OFFICIAL DATE OF ANNEXATION, AND PROVIDING FOR  
OTHER MATTERS RELATED THERETO**

**WHEREAS**, RCW 35A.14.310 authorizes an annexation of Federal Lands by ordinance through agreement with the United States;

**WHEREAS**, on April 10, 2007, the City of Airway Heights, Spokane County, and the Spokane Tribe of Indians entered into an Intergovernmental Agreement (10-0716, Spokane County Designation) stating that at a future date, the City of Airway Heights would agree to annex the approximately 145 acres (parcels #15224.9022 and #15224.9013), of Tribal Trust land bordering the City to the west of Craig Rd. and north of SR-2 hereinafter referred to as the "Property";

**WHEREAS**, on March 2, 2011, the Northwest Regional Director of the Bureau of Indian Affairs signed the "Federal Agreement Annexation of Spokane Tribal Track No. 102-T1368 by the City of Airway Heights" ("Federal Agreement"), pursuant to Section 6.1.2 of the Intergovernmental Agreement;

**WHEREAS**, the Federal Agreement acknowledges that the annexation is subject to the Intergovernmental Agreement to include the Tribe paying for the extension of municipal sewer and water services to the Property and to conduct a traffic impact analysis and thereafter make street and intersection improvements as necessary to sustain the predevelopment levels of service;

**WHEREAS**, on July 5, 2011, the Mayor of the City provided notice to Spokane County of the City's Intent to annex the Property;

**WHEREAS**, the County has not lodged an objection with regard to the Annexation;

**WHEREAS**, the City Council adopted Resolution 2011-028 at its regularly scheduled Council meeting on August 1, 2011, declaring its intent to annex the Property, according to the Intergovernmental Agreement and the Federal Agreement;

**WHEREAS**, pursuant to RCW 43.21C.222 annexation by a city is exempt from compliance with the State Environmental Policy Act; however, the adoption of zoning regulations are subject to compliance with SEPA;

**WHEREAS**, the City Comprehensive Plan in Chapter 4 entitled "Land Use" has identified potential annexation areas of the City to include the area subject to this Ordinance;

**WHEREAS**, the City Council has conducted public hearings in order to receive information and take testimony on the proposed annexation with the City Council determining it is in the best interest of the City to annex the Property; and

**WHEREAS**, the City Council desires to annex the Property.

**NOW, THEREFORE**, the City Council of the City of Airway Heights, Washington, do ordain as follows:

**Section 1.**     Approval of Annexation. The annexation of the Property, as described on the attached Exhibit "A", is hereby approved and accepted by the City Council of the City of Airway Heights in accord with the Intergovernmental Agreement approved by the Airway Heights City Council, Spokane Tribe of Indians and Spokane County along with the Federal Agreement approved by the United States of America, acting through the Secretary of the Interior or designee pursuant to RCW 35A.14.310.

**Section 2.**     Effect of Annexation. From and after the Effective Date and to the extent authorized by law and as agreed in the Intergovernmental Agreement and Federal Agreement, the Property and all persons thereon, except for Spokane Tribe Members, are subject to the jurisdiction of the City of Airway Heights with all laws, ordinances, rules and regulations of the City of being in full force and effect as now enacted or hereinafter amended. The Property and persons shall receive all available City services in the same manner as other City property pursuant to the Intergovernmental Agreement.

**Section 3.**     Land Use. The Property shall be developed and used in accord with the Spokane Tribe Master Plan as amended, a copy of which shall be maintained in the City of Airway Heights Department of Community Development.

The zoning for the Property shall be Tribal, as noted on the attached zoning map, Exhibit "B", which shall also be the zoning recorded on the official Zoning Map of the City. The City Manager, or designee, is hereby authorized to modify the City of Airway Heights Zoning Map to reflect the action taken by the City Council pursuant to this Ordinance. All other maps of the City shall be modified to reflect the expansion of the City corporate limits as set forth herein.

**Section 4.**     Duty of City Clerk. The City Clerk is directed to provide: (1) the Spokane County Auditor a certified copy of this ordinance, a map of the Property, related legal description and request that the above be maintained on file in the office of the Auditor; and (2) a certified copy of this Ordinance to the Spokane County Board of County Commissioners, pursuant to RCW 35A.14.140.

**Section 5.** Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

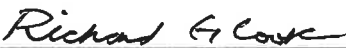
**Section 6.** Effective Date. This Ordinance shall be in full force and effect on five (5) days after publication of this Ordinance or a summary thereof in the official newspaper of the City as provided by law but in no event before April 30, 2012.

INTRODUCED the 2<sup>nd</sup> day of April, 2012.

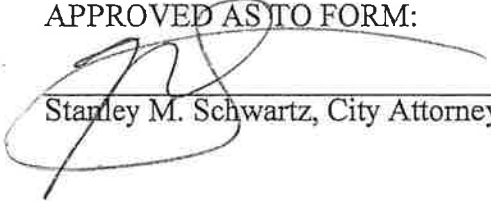
PASSED by the City Council this 16<sup>th</sup> day of April, 2012.

  
Patrick D. Rushing, Mayor

ATTEST:

  
Richard G. Cook, City Clerk

APPROVED AS TO FORM:

  
Stanley M. Schwartz, City Attorney

Ordinance C-770

Date of Publication: April 19, 2012

EXHIBIT "A"

LEGAL DESCRIPTION

**EXHIBIT A**  
**CITY OF AIRWAY HEIGHTS – WEST CRAIG ANNEXATION AREA**  
**LEGAL DESCRIPTION**

A parcel of land located in Section 22, Township 25 North, Range 41 East, W.M., in Spokane County, Washington, being more particularly described as follows:

Commencing at the SE corner of Section 22, T25N, R41E, W.M., thence northerly along the East line of said section, a distance of 50 feet, more or less, to the SE corner of Spokane County Parcel No. 15224.9024, said point also being a point on the north right-of-way (ROW) line of State Highway 2;

Thence westerly along the North ROW line of State Highway 2, a distance of 805 feet, more or less, to the SW corner of Spokane County Parcel No. 15224.9023 as recorded in the Spokane County Auditor's Office, said corner being the POINT OF BEGINNING;

Thence westerly along the south property line of Parcel No. 15224.9022, a distance of 490 feet, more or less, to the SE corner of Spokane County Parcel No. 15224.9013 as recorded in the Spokane County Auditor's Office said parcel, said point also being on the North ROW line of State Highway 2;

Thence westerly along the North ROW line of State Highway 2, a distance of 1,320 feet, more or less, to the SW corner of Parcel No. 15224.9013;

Thence northerly along the west property line of Parcel No. 15224.9013 as recorded in the Spokane County Auditor's Office, a distance of 1,242 feet, more or less, to the NW corner of said parcel, said point also being the SW corner of Parcel No. 15224.9022;

Thence northerly along the west property line of Parcel No. 15224.9022 a distance of 1,317 feet, more or less, to the NW corner of said parcel;

Thence easterly along the North property line of Parcel No. 15224.9022, a distance of 2,620 feet, more or less, to the NE corner of said parcel, also being a point on the west ROW line of Craig Road;

Thence easterly a distance of 55 feet, more or less, to the SW corner of Parcel No. 15222.0084, also being a point on the east ROW line of Craig Road;

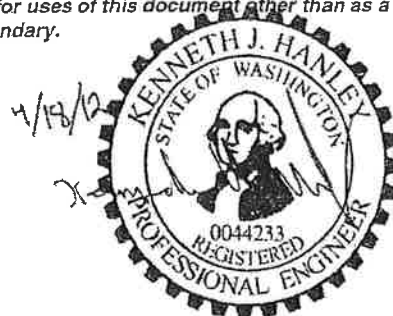
Thence southerly along the east ROW line of Craig Road a distance of 2,149 feet, more or less, to a point on the east ROW line of Craig Road;

Thence westerly a distance of 55 feet, more or less, to the SE corner of Parcel No. 15224.9022, said point also being the NE corner of Parcel No. 15224.9024, said point also being a point on the west ROW line of Craig Road;

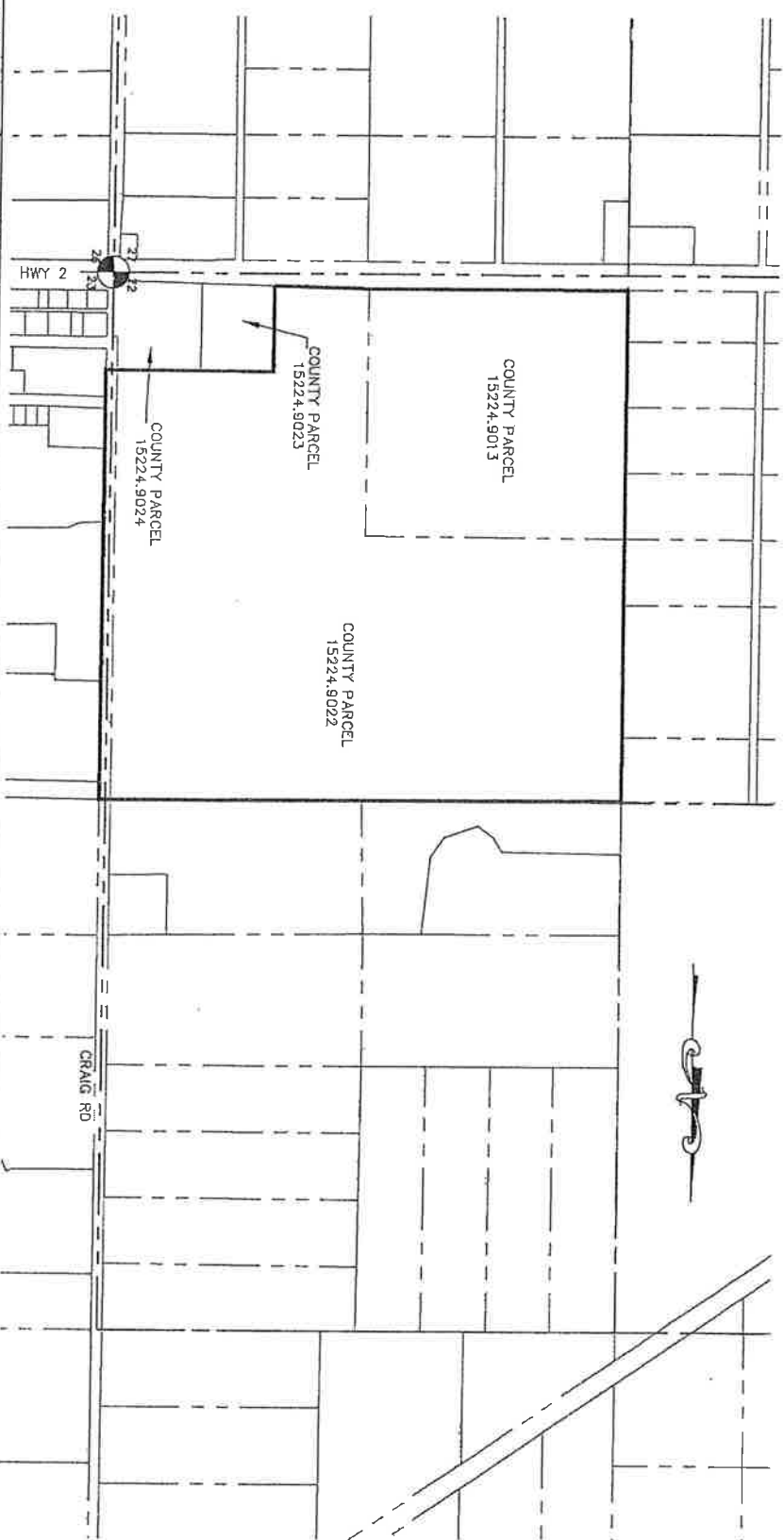
Thence westerly along the south property line of Parcel No. 15224.9022 a distance of 800 feet, more or less, to the SE corner of said parcel, said point also being the NW corner of Parcel No. 15224.9023;

Thence southerly along the west property line of Parcel No. 15224.9023 a distance of 400 feet, more or less, to the SW corner of said parcel and, to the POINT OF BEGINNING.

*This legal description is intended to describe the general boundary of the annexation area and was developed from County Assessor information and is not a result of an actual survey. The meets and bounds are not mathematically accurate and should not be used for property transactions. The Engineer assumes no liability for uses of this document other than as a general description of the annexation area boundary.*



SECTION 22, T25N, R41E, W.M.  
SPOKANE COUNTY



DESIGNED BY: KMH  
DATE: 4/18/12  
DRAWN BY: KMH  
SCALE: N.T.S.  
CHECKED BY: DDP  
DWG NAME: 2012ANNEX  
PROJECT NO.:

BAR IS ONE INCH ON  
ORIGINAL DRAWING.  
IF NOT ONE INCH ON  
THIS SHEET, ADJUST  
SCALES ACCORDINGLY.

**CENTURY WEST**  
ENGINEERING CORPORATION  
1925 N. HUNTER  
Spokane, WA 99212  
509-838-3810 phone • 509-624-0355 fax

EXHIBIT 'A' ANNEXATION AREA  
CITY OF AIRWAY HEIGHTS

FIGURE NO.:

1

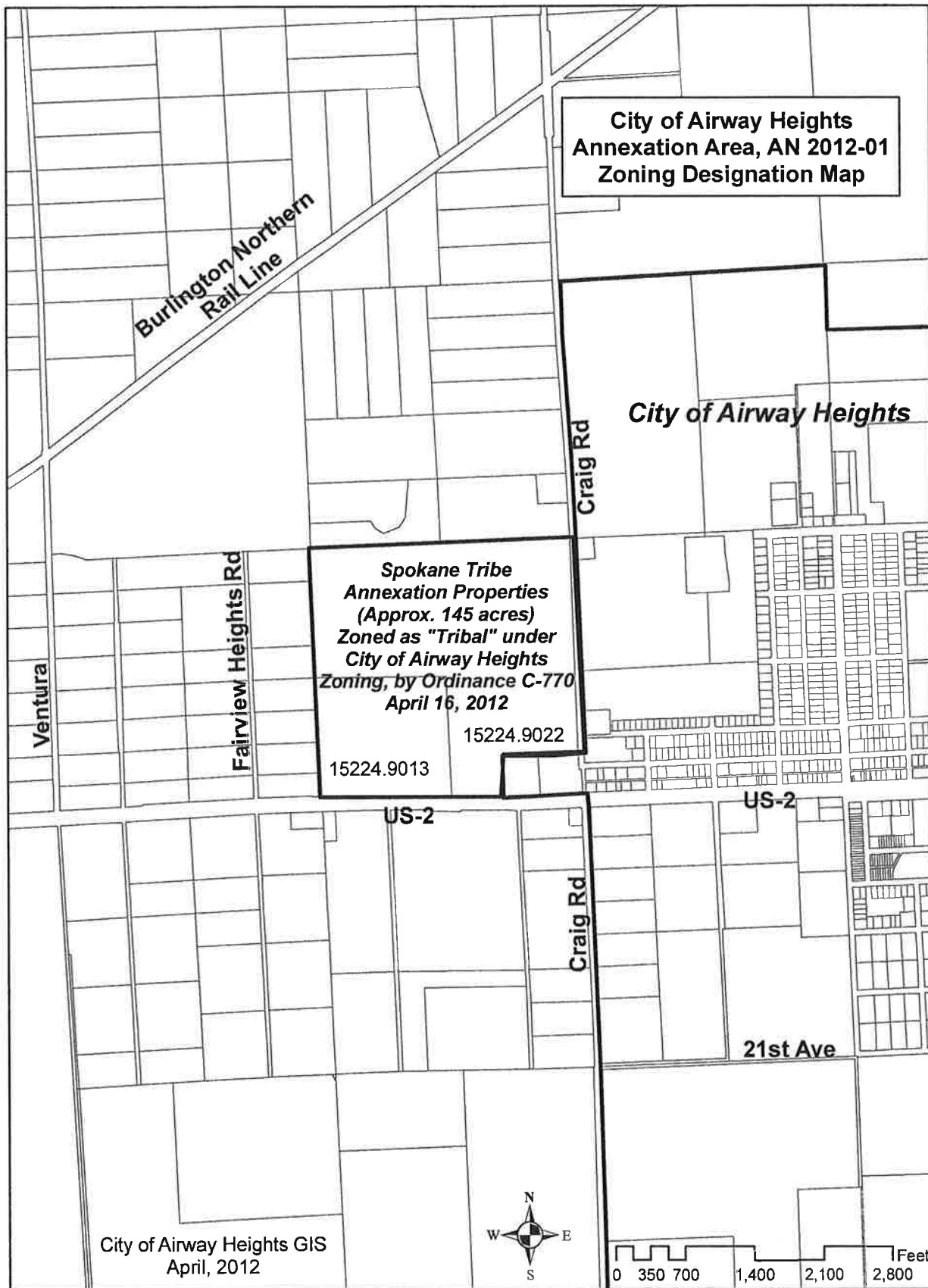
EXHIBIT "B"

PROPOSED ZONING MAP

The official Zoning Map is the document used by the City of Airway Heights to show the specific zoning designations of properties within Airway Heights' jurisdictional boundaries. The attached map is a true and correct representation of a detail of the official City of Airway Heights Zoning Map, specifying the zoning designations of tax parcel numbers 15224.9013 and 15224.9022. The complete, official City of Airway Heights Zoning Map is available at the City of Airway Heights Planning Department and is on file with the City of Airway Heights City Clerk.

**ATTEST:**

  
City Clerk, Richard G. Cook



**City of Airway Heights  
Annexation Area, AN 2012-01  
Zoning Designation Map**

**Burlington Northern  
Rail Line**

**City of Airway Heights**

**Spokane Tribe  
Annexation Properties  
(Approx. 145 acres)  
Zoned as "Tribal" under  
City of Airway Heights  
Zoning, by Ordinance C-770  
April 16, 2012**

15224.9013

15224.9022

**Ventura**

**Fairview Heights Rd**

**Craig Rd**

**US-2**

**US-2**

**Craig Rd**

**21st Ave**

City of Airway Heights GIS  
April, 2012



0 350 700 1,400 2,100 2,800 Feet

EXHIBIT "C"

BIA APPROVAL LETTER



IN REPLY REFER TO:

## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Northwest Regional Office  
911 N.E. 11th Avenue  
Portland, Oregon 97232-4169



MAR 3 - 2011

Scott Wheat, Esq.  
Crowell Law Offices  
10 North Post, Suite 445  
Spokane, Washington 99201

Dear Mr. Wheat:

This letter is to transmit the original of the enclosed Federal Agreement to Annexation of Spokane Tribal Tract No. 102-T1368 by the City of Airway Heights signed by the Northwest Regional Director of the Bureau of Indian Affairs on March 2, 2011. The Agreement has been reviewed and approved by Ms. Colleen Kelly, Attorney for the Office of the Regional Solicitor, Pacific Northwest Regional Office.

If you have any questions on this matter, please do not hesitate to contact me at (503) 231-6787.

Sincerely,

Realty Officer

Enclosure

## FEDERAL AGREEMENT

To

### ANNEXATION OF TRACT NO. 102-T1368 BY CITY OF AIRWAY HEIGHTS

WHEREAS, the United States of America holds Tribal Tract No. 102-T1368 (hereafter, "Tract") in trust for the Spokane Tribe (hereafter, "Tribe"); and

WHEREAS, the Tract is contiguous to the current City of Airway Heights (hereafter "City") limits; and

WHEREAS, the Spokane Tribe intends significant development of the Tract; and

WHEREAS, the Tribe has requested that the Northwest Regional Director agree, on behalf of the United States, to an annexation by the City of the Tract; and

WHEREAS, the Tribe, City and Spokane County (hereafter, "County") have entered into an Intergovernmental Agreement (including Amendment No. 1) (hereafter, "Agreement") (copy attached as Exhibit A) that provides for the extension of municipal services to the Tract in exchange for compensation to the City and County, and incorporates the parties' agreement to work cooperatively to facilitate annexation of the Tract by the City;

NOW, THEREFORE, the BIA agrees to annexation by the City of the Tract, subject to the following:

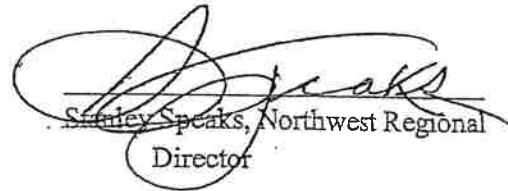
1. Such annexation shall not result in subjecting the Tract to the City's regulatory control, and thus City zoning, building and general regulatory rules are inapplicable.
2. Notwithstanding the inapplicability of the City's regulatory control, the Tribe has bound itself to the terms and conditions in the Agreement. The said terms and conditions of the Agreement in no way bind the BIA.
3. The Agreement also provides for the extension of municipal sewer and water services to the Tract at the Tribe's sole cost and expense and the Tribe has agreed that each user on the Tract shall be connected individually in conformity with the City Code and shall pay the normal capital connection charges and monthly service fees. This agreement by the BIA to annexation in no way binds the BIA to such payments and charges.
4. Pursuant to paragraph 3 of the Agreement the Tribe agrees to obtain a traffic impact analysis for any development it proposes on the Tract and to make street and intersection improvements as needed to maintain traffic levels of service at their pre-development levels. Pursuant to paragraph 4 of the Agreement the Tribe also agrees to prepare a master plan for the property that is consistent with the County's Airport Overlay Zone and any similar

applicable City regulations. The BIA is in no way bound by these terms and conditions of paragraphs 3 and 4 of the Agreement.

5. BIA's agreement to the annexation does not alter the ownership interest of the United States and does not affect the current jurisdictional framework.

IN WITNESS WHEREOF, the Northwest Regional Director has executed this Agreement the 02 day of March, 2011..

BUREAU OF INDIAN AFFAIRS

  
Stanley Speaks, Northwest Regional  
Director

Attachment – Exhibit A

**Exhibit "A"**  
**INTERGOVERNMENTAL AGREEMENT**

This Intergovernmental Agreement ("Agreement") is entered into as of April 10, 2007 by and between the SPOKANE TRIBE OF INDIANS, a federally recognized Indian Tribe (the "Tribe"), the CITY OF AIRWAY HEIGHTS, a non-charter code city of the State of Washington ("City"), and SPOKANE COUNTY, a county of the State of Washington ("County") (the "Parties").

**1. Purpose.**

- 1.1** The Tribe owns approximately 145 acres of real property ("Property"), fully described in Exhibit A affixed hereto, adjacent to the City that is suitable for development beyond its present use for the benefit of the Tribe and the surrounding community.
- 1.2** The parties desire to provide for the annexation of the Property to the City.
- 1.3** As a recognized Indian tribe, with the Property held in trust for the Tribe by the United States, the Tribe has sovereign immunity and is not subject to state and local laws and regulations, including but not limited to taxation, zoning, and land use restrictions.
- 1.4** Nevertheless, the Parties have demonstrated their commitment to an open intergovernmental relationship by entering into this Agreement that sets forth the understanding of the Parties.
- 1.5** The Parties acknowledge that it is to their mutual benefit to utilize the status and unique opportunities of each as separate governments to cooperate and, where possible, to partner in the development of the Tribe's Property in such a manner as best serves the interests of the Parties and the interests of the public health and safety of the City and County and their residents, as well as the Tribe.
- 1.6** Accordingly, the parties enter into this Intergovernmental Agreement to extend certain services to the Tribe in exchange for agreed-upon compensation.

**2.0 Utilities.**

**2.1 Guaranteed Hook Up to Sewer and Water Services.**

- 2.1.1** City public water and sewer services shall serve the Property through the City's municipal utilities with connection(s) to be provided to the Property as mutually agreed.
- 2.1.2** The City guarantees the Tribe hook up to City water and sewer lines for so long as capacity exists.
- 2.1.3** The City shall notify the Tribe as soon as it becomes apparent to the City that capacity may not be sufficient to provide sewer and water services to the Property, and shall cooperate with the Tribe to take action to increase capacity.
- 2.1.4** The Tribe shall have the option to pre-pay for utilities in order to reserve capacity for development of the Property.
- 2.1.5** The Tribe, at its sole cost and expense, agrees to extend the City's sanitary sewer and water systems to the Property including paying for all surveys, engineering, applicable permitting, and applicable environmental analysis necessary for the design and construction of the water and sanitary sewer system.

- 2.1.6** The design and construction of the sewer and water system for the Property shall be in reasonable conformity with Chapters 13.06 and 13.04, respectively, of the Airway Heights Municipal Code and the City Public Works Standards.
- 2.1.7** The Tribe and City shall use all reasonable efforts to cooperate to increase water and sewer capacity so that the Property can be serviced.
- 2.1.8** The Tribe and City shall consider latecomer agreements, to the extent equitable.
- 2.2** Sanitary Sewer.
- 2.2.1** Each user on the Property (building or dwelling unit) shall be connected individually, which connection shall be in reasonable conformity with Chapter 13.06 of the Airway Heights Municipal Code and the most current adopted version of the City's Public Works Standards manual.
- 2.2.2** Upon connection to the City sanitary sewer, the users shall pay, before occupancy, the current sewer capital connection charge as established by City Council Resolution and Ordinance.
- 2.2.3** Similar to other City ratepayers, the users shall pay the City a monthly service fee for sewer service based upon rates adopted annually by the City Council.
- 2.3** Water Service.
- 2.3.1** Each user on the Property (building or dwelling unit) shall be connected individually, which use shall be in reasonable conformity with Chapter 13.04 of the Airway Heights Municipal Code and the most current adopted version of the City's Public Works Standards manual.
- 2.3.2** Upon connection to the City water system, the users shall pay, before occupancy, the current water capital connection charge as established by City Council Resolution and Ordinance.
- 2.3.3** Similar to other City ratepayers, the users shall pay the City a monthly service fee for water service based upon rates adopted annually by the City Council.
- 2.3.4** The City has acquired and is aggressively pursuing the development of water rights for the City's water utility in a manner consistent with the City Water Facility Plans. Such Facility Plans shall include the Property to the extent requested by the Tribe.
- 2.4** Stormwater. The Tribe shall construct stormwater facilities on the Property in reasonable conformity with the standards set forth in the Airway Heights Public Works Standards.
- 2.5** Quality of Service. The City shall provide the quality of sewer and water services commensurate with services provided to properties of similar density and use in the City.
- 2.6** Sewer and Water Capacity. The City shall provide water quantity and sewer capacity commensurate with services provided to properties of similar density and use in the City.

### **3.0 Traffic Impacts.**

#### **3.1 Traffic Impact Analysis.**

- 3.1.1** The Tribe shall obtain a traffic impact analysis ("TIA") prepared by a licensed professional engineer, in reasonable conformity with the requirements for traffic studies set forth in the Spokane County Standards for Road and Sewer Construction, Technical Reference "A," or City of Airway Heights, as reasonably agreed by the parties.
- 3.1.2** The TIA shall identify traffic impacts on City and County roads and propose mitigation of the direct impacts resulting from any development commencing subsequent to the date this Agreement is fully executed.
- 3.1.3** Upon completion of the TIA, the Tribe shall deliver a copy of the TIA to the City and County and shall allow the City and County a 20-day comment period.
- 3.1.4** Upon review of the TIA, the City and County may submit comments and request for the Tribe to consider in preparing traffic mitigation plans.

#### **3.2 Street Improvements.**

- 3.2.1** Commensurate with development of the Property, the Tribe shall make street and intersection improvements as identified in the TIA to provide for the safe and efficient vehicle and pedestrian movements and maintain traffic levels of service (LOS) at their pre-development levels, unless otherwise agreed by the City or County respectively and be in reasonable conformity with applicable City or County standards.
- 3.2.2** The parties shall consider latecomer Agreements, to the extent equitable.

### **4.0 Master Plan.**

- 4.1** The Tribe shall prepare a Master Plan for the Property that shall set forth the proposed uses on the Property.
- 4.2** Upon completion of the Master Plan, the Tribe shall provide a copy of the Master Plan to the City and shall allow the City a 30-day comment period.
- 4.3** Following receipt of the Master Plan, the City may submit comments and requests for the Tribe to consider in the development of the Property.

### **5.0 Fees for Services and Impacts.**

- 5.0.1 Purpose of Payment.** In exchange for the Annual Payment described below, the City shall provide the Property with the same services that it provides to properties of similar density, use, and location, except for sewer and water services described in paragraph 2, including, but not limited to, police, fire, emergency, court, operations and maintenance for public streets services, and any public safety related actions referenced herein. The County shall continue to provide the Property with the same general county services it provides to Properties of similar density, use, and location.

- 5.0.2** This Annual Payment and any traffic impact mitigation provided in Paragraph 3 are intended to compensate the City and County for any direct or indirect impacts caused to the City and County by development of the Property.

**5.0.3** The City and County shall meet and confer in order to determine a fair and equitable portion of the Annual Payment that should be received by each party.

**5.1** Annual Payment.

**5.1.1** The Tribe shall pay the City and the County an aggregate total payment of \$14,500 on or before the date upon which the City receives the Agreement by the United States to Annexation of the Property (hereinafter "the effective date").

**5.1.2** On or before the effective date of each subsequent year for the following 14 years, the aggregate joint payment shall be increased by \$14,500, per year.

**5.1.3** The annual \$14,500 payment increases shall end at Year 15.

**5.1.4** Beginning in year 11, and each year thereafter, the aggregate joint payment shall be increased by 3%. A payment schedule is attached hereto as Exhibit B.

**5.1.5** The Parties agree to meet at Year 25 to reconsider the annual payment amounts and to adjust such amounts, as necessary, to reasonably approximate actual impacts to the City and the County. If within six months of initiating negotiation of such adjustment the parties do not agree to an adjustment, either party may initiate binding arbitration as provided by this Agreement. The arbitrators shall make an award that adjusts such annual payment amount as necessary, to reasonably approximate actual impacts to the City and the County, including, if the arbitrators so determine, annual adjustments based on reasonable estimates of annual increases in costs of such impacts. Each 25 year anniversary thereafter, the Parties shall meet and reconsider the annual payment amounts and to adjust such amounts, as necessary, to reasonably approximate actual impacts to the City and the County, and in the event the parties fail to agree to such adjustment within six months of such anniversary, either party may submit the matter to binding arbitration as provided above.

**5.1.6** The Parties acknowledge and intend that Binding Arbitration is the final, exclusive remedy for resolution of any dispute.

**6.0** Annexation.

**6.1** Agreed-Upon Steps to Facilitate Annexation.

**6.1.1** The parties agree to work cooperatively consistent with applicable laws to facilitate annexation of the Property to the City, including the commencement of annexation proceedings pursuant to state law, Chapter 35A.14 RCW.

**6.1.2** Following acceptance of this Agreement by the Spokane Tribe and following the City's receipt of the Agreement by the United States to Annexation of the Property, the City shall place before the City Council an ordinance providing for the annexation of the Property ("Annexation Ordinance").

**6.1.3** The ordinance shall acknowledge that the Parties have entered into this "Intergovernmental Agreement" which is a legal binding obligation upon the Spokane Tribe of Indians, the City of Airway Heights and Spokane County.

- 6.1.4** Prior to the Annexation Ordinance being effective, the City shall provide written notice of the proposed annexation to the Spokane County Board of County Commissioners.
- 6.1.5** The notice shall be provided thirty days prior to final adoption of the Annexation Ordinance. The City shall not adopt the Annexation Ordinance, and the Annexation Ordinance shall not occur if within twenty-five days of receipt of the notice, the Board of County Commissioners adopts a resolution opposing the annexation and makes a finding that such annexation will have an adverse fiscal impact on the County or Road District.
- 6.1.6** Through approval of this Agreement, the County acknowledges that the proposed annexation will not have an adverse fiscal impact on the County or Road District provided the terms of this Agreement remain in full force and effect.
- 6.2** City's Agreement to Provide Limited Services to the Property Prior to Annexation.
- 6.2.1** This Agreement and the Consent of the United States to Annexation of the Property constitute a "legally binding commitment to eventual annexation" under the City's General Public Works Considerations, pursuant to Section 1.135.
- 6.2.2** Upon the execution of this Agreement and receipt of the Consent of the United States to Annexation of the Property, the City agrees to provide limited sewer and water service to the Property pursuant to section 2.
- 6.2.3** For purposes of this paragraph "limited sewer and water service" means authorizing the extension of City sewer and water infrastructure to the Property, in such sizes as capacity reasonably determined by the Parties to serve no more than ten acres of land within the Property.
- 6.2.4** In no event, shall the City be required to provide any water or sewer services beyond that necessary to serve ten acres of land or any other development on the Property, until such time as the Property is annexed to the City of Airway Heights.
- 6.2.5** Further, until the Property is annexed to the City, no general municipal services will be provided by the City. Following annexation and the incorporation of the Property into the City of Airway Heights, the Property shall be entitled to receive all City services as set forth in this Agreement.
- 6.2.6** Subsequent to receipt by the City of Consent by the United States to Annexation of the Property, the County shall, with the exception of water and sewer services, provide essential governmental services to the property, including, but not limited to but not limited to, police, fire, emergency, court, operations and maintenance for public streets services, and any public safety related actions referenced herein.

## **7. Renegotiation**

- 7.1** If annexation of the property does not occur within 2 years of the receipt by the City of Consent by the United States to Annexation of the Property, the parties shall meet to renegotiate the terms of this Agreement.
- 7.2** If this Agreement is renegotiated pursuant to this section, such renegotiations shall be guided by the commonly-shared understandings of the parties set forth in Section 1 herein.

## **8.0 Impact Mitigation Fund from Tribal-State Gaming Compact.**

- 8.1** Upon development of a gaming facility/casino pursuant to 25 U.S.C. 2719(b)(1)(A), payments by the Tribe to the City pursuant to the Memorandum of Agreement between the City and the Tribe regarding services and impacts of Tribal Gaming on Indian Lands located adjacent to or within the City ("MOA" herein) shall supplant the annual payment set forth in Section 5.2., provided such payment exceeds the Annual Payment.
- 8.2** The City and the County acknowledge that Class III gaming on the Property potentially will provide numerous employment opportunities and other economic benefits to the City, the County, and the region as a whole.
- 8.3** The City and County agree to negotiate in good faith with the Tribe to determine appropriate mitigation for any adverse impacts arising from gaming activities on the Property.
- 8.4** The City and County further agree to negotiate in good faith with the Tribe to provide additional services to the Property as a result of gaming activities in exchange for Impact Mitigation Funds allocated according to the form and methodology set forth in the Compact existing by and between the Spokane Tribe and the State of Washington and as set forth in the Memorandum of Agreement between the Parties.

## **9.0 Enforcement.**

### **9.1 Notice of dispute.**

- 9.1.1** If any party has a dispute under this Agreement, it shall provide written notice as follows.

To the Tribe:                      Spokane Tribe of Indians  
Attn: Executive Director  
P.O. Box 100  
Wellpinit, WA 99040

To the City:                        City of Airway Heights  
Attn: City Manager  
1208 S. Lundstrom Avenue  
Airway Heights, WA 99001-9000

To the County:                      Spokane County  
                                             Attn: Chairman of the Board  
                                             1116 W. Broadway Avenue  
                                             Spokane, WA 99260

**9.1.2** The notice shall provide a brief description of the dispute.

**9.2 Mediation.**

**9.2.1** If the Parties are unable to resolve the dispute amongst them within 20 business days, the parties shall engage in mediation and shall use the rules of the CPR Institute for Dispute Resolution.

**9.2.1** The parties shall agree on a mediator of acceptable experience and background.

**9.2.3** The Parties involved in the mediation shall share the mediator's fees and costs equally.

**9.3 Arbitration.**

**9.3.1** If the Parties cannot resolve their dispute through mediation, the exclusive remedy is binding, non-administered, arbitration and the Parties shall agree on an arbitrator of acceptable experience and background.

**9.3.2** Arbitration shall be governed by the rules of the CPR Institute for Dispute Resolution.

**9.3.3** The Parties involved in the arbitration shall share the arbitrator's fees and costs equally.

**9.3.4** The arbitrator's decision shall be final and binding on the parties involved in the arbitration.

**9.4 Limited Waiver of Immunity.**

**9.4.1** The Parties hereby waive their respective immunities solely for the limited purpose of enforcing the Parties' agreement to arbitrate and the final decision of the arbitrator.

**9.4.2** The arbitrator's award may be enforced in a court of competent jurisdiction in the following order of preference: (1) United States District Court for the Eastern District of Washington in Spokane; (2) Spokane County Superior Court; and (3) Spokane Tribal Court.

**10.0 Governing Law.**

**10.1** The laws of the State of Washington shall govern interpretation of this Agreement.

**10.2** To the extent state law does not address the relevant issues, the laws of the Spokane Tribe and the United States shall apply.

**11.0 Agreement to Become Effective Upon Receipt by the City of Agreement by the United States to Annexation**

**11.1** This Agreement, including annual payments by the Tribe pursuant to section 5, shall not become effective until the date the City receives a written Agreement from the United States agreeing to Annexation of the Property.

**11.2** It is anticipated that Spokane County will be a party to and will execute this Agreement, however, regardless of Spokane County's acceptance of this agreement, it is agreed that this Agreement shall be binding on the City of Airway Heights and

the Tribe following approval by their respective governing bodies. In the event Spokane County does not execute this Agreement, the parties shall interpret this Agreement by deleting references to Spokane County.

#### 12.0 Community Relations.

- 12.1** The Tribe, the City, and the County agree to consult with each other in good faith before the distribution of any press release.
- 12.2** The Tribe, the City, and the County further agree to consider any suggested changes to any press release.
- 12.3** The Tribe, the City, and the County agree to acknowledge, in conjunction with such press release, the statements contained in the Purpose to this Agreement.

#### 13.0 Tribal Council Resolution

- 13.1** Attached to this Agreement is a resolution of the Spokane Tribal Council approving this Agreement and amendments thereof executed by representatives of the Tribe.
- 13.2** Notwithstanding any other provision of this Agreement, this Agreement shall not be effective until the Tribe has provided such a resolution to the City.

#### CITY OF AIRWAY HEIGHTS:

By Charles Freeman  
Charles Freeman  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk/Treasurer

APPROVED AS TO FORM:

By Stanley M. Schold, City Attorney

#### BOARD OF COUNTY COMMISSIONERS OF SPOKANE COUNTY, WASHINGTON

By [Signature]  
Chair

By [Signature]  
Vice-Chair

By [Signature] "NAY"  
Commissioner



ATTEST:

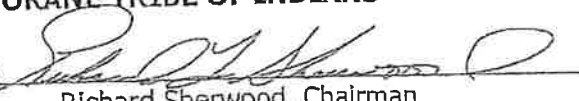
By [Signature]  
Daniela Erickson  
Clerk of the Board

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Civil Prosecuting Attorney

**SPOKANE TRIBE OF INDIANS**

By



Richard Sherwood, Chairman  
Spokane Tribal Business Council

APPROVED AS TO FORM:

\_\_\_\_\_  
Scott Wheat, Deputy Legal Counsel  
Office of the Spokane Tribal Attorney

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

The SE ¼ of Section 22, Township 25 North, Range 41 East, W.M., in Spokane County Washington EXCEPT that portion conveyed to the State of Washington by deed dated June 19, 1929 recorded under Recording No. 997235 and dated July 25, 1942 under Recording No. 557182A; ALSO EXCEPT that portion conveyed to Spokane County for Craig Road by deed recorded June 7, 1906 under recording No. 146192; ALSO EXCEPT the East 830 feet of the South 497.5 feet of the SE ¼ of said Section 22, containing 145.00 acres, more or less.

Assessor's Property Tax Parcel Account Numbers: 15224.9013 & 15224.9022

**EXHIBIT B**

| <b>Date</b>                                                                                                      | <b>Annual Payment</b> |
|------------------------------------------------------------------------------------------------------------------|-----------------------|
| Effective Date                                                                                                   | \$14,500              |
| Year 2                                                                                                           | \$29,000              |
| Year 3                                                                                                           | \$43,500              |
| Year 4                                                                                                           | \$58,000              |
| Year 5                                                                                                           | \$72,500              |
| Year 6                                                                                                           | \$87,000              |
| Year 7                                                                                                           | \$101,500             |
| Year 8                                                                                                           | \$116,000             |
| Year 9                                                                                                           | \$130,500             |
| Year 10                                                                                                          | \$145,000             |
| Year 11                                                                                                          | \$163,850             |
| Year 12                                                                                                          | \$183,266             |
| Year 13                                                                                                          | \$203,264             |
| Year 14                                                                                                          | \$223,862             |
| Year 15                                                                                                          | \$245,078             |
| Thereafter, annually, no further \$14,500<br>Increase, but 3% increase annually based on<br>prior year's payment |                       |

RESOLUTION  
Spokane Tribal Resolution 2007-275

**AUTHORIZING THE CHAIRMAN TO SIGN THE INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE SPOKANE TRIBE OF INDIANS, THE CITY OF AIRWAY HEIGHTS AND  
SPOKANE COUNTY**

WHEREAS, the Spokane Tribal Business Council is the duly constituted governing body of the Spokane Tribe of Indians by authority of the Constitution of the Spokane Tribe; and

WHEREAS, under the Constitution of the Spokane Tribe, the Spokane Tribal Business Council is charged with the duty of protecting the general welfare of the Spokane Tribe and all Reservation residents; and

WHEREAS, under the Constitution of the Spokane Tribe, the Spokane Tribal Business Council is charged with administering the affairs and assets of the Spokane Tribe including Tribal lands and is charged with the duty of negotiating with and representing the Spokane Tribe before federal, state and local governments and their departments and agencies; and

WHEREAS, the United States holds certain lands, in trust for the Spokane Tribe, designated by the Spokane County Auditor as Parcel Numbers 152224.9013 and 15224.9012 (the "West Plains Property"); and

WHEREAS, the West Plains Property is located off, and non-contiguous to, the Spokane Indian Reservation; and

WHEREAS, the Spokane Tribal Business Council finds that development of the West Plains Property would provide substantial employment opportunities for Spokane Tribal Members and would produce revenue for the Spokane Tribe to provide essential governmental services, including future economic development; and

WHEREAS, development of the West Plains Property requires the provision of water, sewerage, fire protection, law enforcement, and other services; and

WHEREAS, the West Plains Property shares a common border with the western boundary of the City of Airway Heights ("CAWH"); and

WHEREAS, the West Plains Property is located within the CAWH's Urban Growth Area ("UGA"), as that term is defined in Revised Code of Washington 36.70A.110; and

WHEREAS, under Washington law, because the West Plains Property is located within the CAWH's UGA, the CAWH is presumptively the appropriate political subdivision of the State of Washington to provide water, sewerage, fire protection, and other services to the West Plains Property; and

WHEREAS, under Washington law, the CAWH may annex the West Plains Property pursuant to an agreement by the United States and the Spokane Tribe; and

WHEREAS, the Spokane Tribal Business Council enacted Resolution 2006-525, which authorized the Chairman to signature an Intergovernmental Agreement between the Spokane Tribe of Indians and the

CAWH and Spokane County and Chairman did signature such Intergovernmental Agreement (the "August 2006 IGA"); and

WHEREAS, the County failed to enter into the August 2006 IGA, rendering the document void; and

WHEREAS, the Spokane Tribal Business Council further determines that the failure of Spokane County to enter into an Intergovernmental Agreement should not preclude the Spokane Tribe and the CAWH from entering into an Intergovernmental Agreement; and

WHEREAS, the Spokane Tribal Business Council has reviewed the proposed Intergovernmental Agreement between the Spokane Tribe and the CAWH, dated April 10, 2007 ("IGA"), and determines that the IGA, if executed, would promote the sovereign interests of the Spokane Tribe while providing equitable compensation to the CAWH and Spokane County for provision of water, sewerage, fire protection, law enforcement, and other services; and

WHEREAS, the Spokane Tribal Business Council finds that annexation of the West Plains Property by the CAWH, under the terms set forth in the IGA, would protect and promote the general welfare of the Spokane Tribe, all Reservation residents, the citizens of the CAWH and the citizens of Spokane County; and

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Spokane Tribal Business Council Chairman, or his designee, is hereby authorized the sign the IGA on behalf of the Spokane Tribe of Indians.

#### Certification

The foregoing was duly enacted by the Spokane Tribal Business Council on the 10<sup>th</sup> day of April, 2007, by the vote of 4 for 0 against and 0 abstain under authority contained in Article VIII of the Constitution of the Spokane Indians ratified by the Spokane Tribe on November 22, 1980.



Chairman  
Spokane Tribal Business Council

|    | Yes | No | Abstain | Absent |
|----|-----|----|---------|--------|
| RS | x   |    |         |        |
| WS | x   |    |         |        |
| GN | x   |    |         |        |
| CW | x   |    |         |        |
| RG |     |    |         | x      |

RESOLUTION  
Spokane Tribal Resolution 2010-402

**AMENDMENT NO. 1 TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE SPOKANE TRIBE OF INDIANS AND THE CITY OF AIRWAY HEIGHTS AND SPOKANE COUNTY**

**WHEREAS**, the Spokane Tribal Council is the duly constituted governing body of the Spokane Tribe by authority of the Constitution of the Spokane Tribe; and

**WHEREAS**, under the Constitution of the Tribe, the Spokane Tribal Council is charged with the duty of protecting the health, security and general welfare of the Spokane Tribe and all reservation residents; and

**WHEREAS**, the Tribal Council approved the Intergovernmental Agreement between the Spokane Tribe of Indians, the City of Airway Heights and Spokane County (IGA) in anticipation that Spokane County would also become a signatory to the Agreements and on April 10, 2007 the Chairman of the Tribal Council signed the IGA on behalf of the Spokane Tribe; and

**WHEREAS**, on August 17, 2010 the Board of County Commissioners approved and signed the Intergovernmental Agreement on the County's behalf and also signed proposed Amendment Number One to the Agreement, which was also approved and signed the City of Airway Heights on August 16, 2010; and

~~**WHEREAS**, the Tribe Council has considered proposed Amendment Number One to the Agreement and approves of its terms; and~~

**NOW, THEREFORE, BE IT HEREBY RESOLVED** by the Spokane Tribal Business Council meeting in Special Session this 26<sup>th</sup> day of August, 2010, that the Tribal Council does hereby approve and authorize signature authority to the Tribal Council Chairman or his designated representative on the Amendment No. 1 to the Intergovernmental Agreement between the Spokane Tribe of Indians, the City of Airway Heights and Spokane County.

**Certification**

The foregoing was duly enacted by the Spokane Tribal Business Council on the 26<sup>th</sup> day of August, 2010, by the vote of 4 for 0 against and 0 abstain under authority contained in Article VIII of the Constitution of the Spokane Indians ratified by the Spokane Tribe on November 22, 1980.

  
Chairman  
Spokane Tribal Business Council

|    | Yes | No | Abstain | Absent |
|----|-----|----|---------|--------|
| GA | x   |    |         |        |
| MS | x   |    |         |        |
| RP |     |    |         | x      |
| RA | x   |    |         |        |
| DW | x   |    |         |        |

6.2.6 Subsequent to receipt by the City of Consent by the United States to Annexation of the Property, and prior to annexation of the Property, the County shall, with the exception of water and sewer services as addressed in this Agreement, provide the services it provides to other properties in the unincorporated area of Spokane County. ~~essential governmental services to the Property, including, but not limited to, police, fire, emergency, court, operations and maintenance of public streets services, and any public safety related actions referenced herein.~~

BE IT FURTHER AGREED by the Parties hereto, that but for those changes set forth herein, all other terms, conditions and provisions of that agreement entered into between the Parties entitled "Intergovernmental Agreement" shall remain in full force and effect without any change or modification whatsoever.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the day and year opposite their respective signature block.

DATED: Aug 26, 2010

SPOKANE TRIBE OF INDIANS

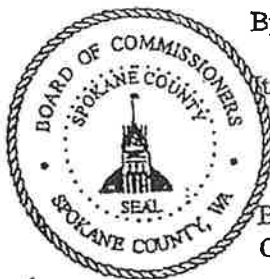
By: Gregg Abrahamson

Its: Chairman Spokane Tribe of Indians  
(Title)

DATED: 08/17/2010

CITY OF AIRWAY HEIGHTS

By: Phil Bennett  
Its: Deputy City Manager  
(Title)



BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE, COUNTY, WASHINGTON

DATED: 8/17/2010

Mark Richard  
MARK RICHARD, Chair

Bonnie Mager  
BONNIE MAGER, Vice Chair

ATTEST:

Daniela Erickson  
Daniela Erickson  
Clerk of the Board

Todd Mielke "NAV"  
TODD MIELKE, Commissioner

## AMENDMENT NO. 1 TO INTERGOVERNMENTAL AGREEMENT

**THIS AMENDMENT NO. 1 TO INTERGOVERNMENTAL AGREEMENT** made and entered into by and among SPOKANE TRIBE OF INDIANS, a federally recognized Indian Tribe (the "Tribe"), the CITY OF AIRWAY HEIGHTS, a non-charter code city of the State of Washington ("City"), and SPOKANE COUNTY, a county of the State of Washington ("County") (the "Parties").

### RECITALS:

**WHEREAS**, The Tribe owns approximately 145 acres of real property ("Property") adjacent to the City that is suitable for development beyond its present use for the benefit of the Tribe and the surrounding community.

**WHEREAS**, The Parties desire to provide for the annexation of the Property to the City.

**WHEREAS**, The Parties executed an agreement entitled "Intergovernmental Agreement" wherein they set forth certain terms and conditions with regard to their respective obligations to annex and/or develop the Property in the best interests of the public.

**WHEREAS**, The Parties desire to modify that agreement entitled "Intergovernmental Agreement" to address certain provisions therein.

---

**NOW THEREFORE** for and in consideration of the mutual promises set forth hereinafter, the Parties hereto do mutually agree that the agreement entered into among the Parties entitled "Intergovernmental Agreement" be and is hereby modified as follows:

(Underlined language added, lined out language deleted.)

- 4.1 The Tribe shall prepare a Master Plan for the Property that shall set forth the proposed uses on the Property. The Master Plan shall comply with the County's Airport Overlay Zone (chapter 14.702) and any similar applicable City regulation. In the event of an inconsistency between the County's and City's regulations, the more restrictive shall control.
  
- 5.0.1 Purpose of Payment. In exchange for the Annual Payment described below, the City shall provide the Property with the same services that it provides to properties of similar density, use, and location, except for sewer and water services described in paragraph 2, including, but not limited to, police, fire, emergency, court, operations and maintenance for public streets services, and any public safety related actions referenced herein. In exchange for its share of the Annual Payment described below, the County shall, when the City receives a written Agreement from the United States agreeing to Annexation of the Property, continue to provide the Property with the same general county regional services it provides provided to the Property Properties of similar density, use and location prior to the Annexation.

CAWH and Spokane County and Chairman did sign such Intergovernmental Agreement (the "August 2006 IGA"); and

WHEREAS, the County failed to enter into the August 2006 IGA, rendering the document void; and

WHEREAS, the Spokane Tribal Business Council further determines that the failure of Spokane County to enter into an Intergovernmental Agreement should not preclude the Spokane Tribe and the CAWH from entering into an Intergovernmental Agreement; and

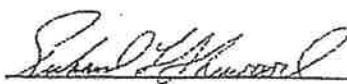
WHEREAS, the Spokane Tribal Business Council has reviewed the proposed Intergovernmental Agreement between the Spokane Tribe and the CAWH, dated April 10, 2007 ("IGA"), and determines that the IGA, if executed, would promote the sovereign interests of the Spokane Tribe while providing equitable compensation to the CAWH and Spokane County for provision of water, sewerage, fire protection, law enforcement, and other services; and

WHEREAS, the Spokane Tribal Business Council finds that annexation of the West Plains Property by the CAWH, under the terms set forth in the IGA, would protect and promote the general welfare of the Spokane Tribe; all Reservation residents, the citizens of the CAWH and the citizens of Spokane County; and

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Spokane Tribal Business Council Chairman, or his designee, is hereby authorized to sign the IGA on behalf of the Spokane Tribe of Indians.

#### Certification

The foregoing was duly enacted by the Spokane Tribal Business Council on the 10<sup>th</sup> day of April, 2007, by the vote of 4 for 0 against and 0 abstain under authority contained in Article VIII of the Constitution of the Spokane Indians ratified by the Spokane Tribe on November 22, 1980.



Chairman  
Spokane Tribal Business Council

|    | Yes | No | Abstain | Absent |
|----|-----|----|---------|--------|
| RS | x   |    |         |        |
| WS | x   |    |         |        |
| GN | x   |    |         |        |
| CW | x   |    |         |        |
| RG |     |    |         | x      |

RESOLUTION  
Spokane Tribal Resolution 2007-275

**AUTHORIZING THE CHAIRMAN TO SIGN THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE SPOKANE TRIBE OF INDIANS, THE CITY OF AIRWAY HEIGHTS AND SPOKANE COUNTY**

WHEREAS, the Spokane Tribal Business Council is the duly constituted governing body of the Spokane Tribe of Indians by authority of the Constitution of the Spokane Tribe; and

WHEREAS, under the Constitution of the Spokane Tribe, the Spokane Tribal Business Council is charged with the duty of protecting the general welfare of the Spokane Tribe and all Reservation residents; and

WHEREAS, under the Constitution of the Spokane Tribe, the Spokane Tribal Business Council is charged with administering the affairs and assets of the Spokane Tribe including Tribal lands and is charged with the duty of negotiating with and representing the Spokane Tribe before federal, state and local governments and their departments and agencies; and

WHEREAS, the United States holds certain lands, in trust for the Spokane Tribe, designated by the Spokane County Auditor as Parcel Numbers 152224.9013 and 15224.9012 (the "West Plains Property"); and

---

WHEREAS, the West Plains Property is located off, and non-contiguous to, the Spokane Indian Reservation; and

WHEREAS, the Spokane Tribal Business Council finds that development of the West Plains Property would provide substantial employment opportunities for Spokane Tribal Members and would produce revenue for the Spokane Tribe to provide essential governmental services, including future economic development; and

WHEREAS, development of the West Plains Property requires the provision of water, sewerage, fire protection, law enforcement, and other services; and

WHEREAS, the West Plains Property shares a common border with the western boundary of the City of Airway Heights ("CAWH"); and

WHEREAS, the West Plains Property is located within the CAWH's Urban Growth Area ("UGA"), as that term is defined in Revised Code of Washington 36.70A.110; and

WHEREAS, under Washington law, because the West Plains Property is located within the CAWH's UGA, the CAWH is presumptively the appropriate political subdivision of the State of Washington to provide water, sewerage, fire protection, and other services to the West Plains Property; and

WHEREAS, under Washington law, the CAWH may annex the West Plains Property pursuant to an agreement by the United States and the Spokane Tribe; and

WHEREAS, the Spokane Tribal Business Council enacted Resolution 2006-525, which authorized the Chairman to signature an Intergovernmental Agreement between the Spokane Tribe of Indians and the

**EXHIBIT B**

| <b>Date</b>                                                                                                | <b>Annual Payment</b> |
|------------------------------------------------------------------------------------------------------------|-----------------------|
| Effective Date                                                                                             | \$14,500              |
| Year 2                                                                                                     | \$29,000              |
| Year 3                                                                                                     | \$43,500              |
| Year 4                                                                                                     | \$58,000              |
| Year 5                                                                                                     | \$72,500              |
| Year 6                                                                                                     | \$87,000              |
| Year 7                                                                                                     | \$101,500             |
| Year 8                                                                                                     | \$116,000             |
| Year 9                                                                                                     | \$130,500             |
| Year 10                                                                                                    | \$145,000             |
| Year 11                                                                                                    | \$163,850             |
| Year 12                                                                                                    | \$183,266             |
| Year 13                                                                                                    | \$203,264             |
| Year 14                                                                                                    | \$223,862             |
| Year 15                                                                                                    | \$245,078             |
| Thereafter, annually, no further \$14,500 Increase, but 3% increase annually based on prior year's payment |                       |