NO. _____

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

| | | |
|---|---|---|
| IN OPPOSITION TO THE SPOKANE TRIBE OF INDIANS' PROPOSED OFF-RESERVATION CASINO PROJECT, REFERRED TO AS THE WEST PLAINS MIXED-USE DEVELOPMENT ON INDIAN LANDS LOCATED ADJACENT TO OR WITHIN THE CITY OF AIRWAY HEIGHTS | ) ) ) ) ) ) ) | **R E S O L U T I O N** |

**WHEREAS**, pursuant to the provisions of RCW 36.32.120(6), the Board of County Commissioners of Spokane County, Washington ("COUNTY") has the care of county property and management of County funds and business; and

**WHEREAS,** the Spokane Tribe of Indians ("TRIBE") has an approximately 157,376-acre reservation, making it one of the largest tribal reservations in the Northwestern United States, which includes two currently operating gaming facilities as well as extensive mining and timber holdings. The reservation is located approximately 50 miles northwest of the City of Spokane in Wellpinit, Stevens County, Washington; and

**WHEREAS,** on June 8, 2003, the United States acquired an approximately 145-acre parcel of land ("PROPERTY"), then located immediately west of the city limits of the City of Airway Heights ("CITY") in the unincorporated West Plains area of the COUNTY in trust for the benefit of the TRIBE for the purpose of generating economic opportunity for the tribe; and

**WHEREAS,** under 25 U.S.C. §2719(a) of the Indian Gaming Regulatory Act ("IGRA"), the TRIBE is prohibited from operating class III casino gaming on the PROPERTY, unless specifically authorized pursuant to 25 U.S.C. §2719(b)(1)(A), which requires "the Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination"; and

**WHEREAS,** on April 10, 2007, the CITY AND TRIBE entered into an agreement not supported by the COUNTY, entitled "INTERGOVERNMENTAL AGREEMENT," to authorize the annexation of the PROPERTY by the CITY, a prerequisite under Washington State law for the provision of certain services by the CITY to the PROPERTY, (RCW 36.70A.130), and to establish, among other things, that the CITY will provide certain utilities to the TRIBE and the PROPERTY, including but not limited to Sewer and Water Services pursuant to Section 2.0 of the INTERGOVERNMENTAL AGREEMENT; and

**WHEREAS,** Section 4.0 of the INTERGOVERNMENTAL AGREEMENT, entitled "Master Plan," provides:

**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; and

**WHEREAS,** Section 5.0 of the INTERGOVERNMENTAL AGREEMENT, entitled "Fees for Services and Impacts," provides, in part:

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.

* * * * ; and

**WHEREAS,** on April 10, 2007, the CITY and the TRIBE entered into a second agreement, not involving the COUNTY, entitled "MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF AIRWAY HEIGHTS AND THE SPOKANE TRIBE OF INDIANS REGARDING SERVICES AND IMPACTS OF TRIBAL GAMING ON INDIAN LANDS LOCATED ADJACENT TO OR WITHIN THE CITY OF AIRWAY HEIGHTS" ("MOA"), committing the CITY to support the TRIBE's application to the United States of the Interior pursuant to 25 U.S.C. § 2719(b)(1)(A) to authorize gaming on the PROPERTY, and pursuant to which the TRIBE and the CITY reduced to writing various provisions, including Subparagraph 3.3 which provided as follows:

3.0 IMPACT ON INTERGOVERNMENTAL AGREEMENT

3.1 Contemporaneous with the execution of this MOA, the parties have entered into an Intergovernmental Agreement ("IGA") regarding services to the Trust Property.

3.2 It is the intent of the parties that the terms and conditions of the IGA remain in full force and effect, with the one exception that the amounts to be paid by the Tribe pursuant to the IGA shall be supplanted by the payments made under this MOA, so long as such payments exceed the annual payment set forth in Section 5 of the IGA.

3.3 In the event payments under this MOA supplant payments under the IGA, the City shall be responsible for payments to the County pursuant to an agreement between the City and the County; and

**WHEREAS,** on August 19, 2009, the Bureau of Indian Affairs ("BIA") published a notice of intent ("scoping notice") to prepare an environmental impact statement ("EIS") in the Federal Register, entitled "Environmental Impact Statement for the Spokane Tribe's 2719(b)(1)(A) Application and for the Proposed West Plains Mixed-Use Development Project, Spokane County, WA," wherein BIA described the TRIBE's proposed uses of the PROPERTY as follows:

> The BIA as Lead Agency, in cooperation with the Tribe, intends to prepare an EIS for a proposed mixed-use development and corresponding master plan for a 145-acre parcel of trust land adjacent to the City of Airway Heights, Spokane County, Washington. The project site may include, but is not limited to, a variety of proposed land uses such as a casino resort and hotel, commercial retail uses, offices,

> medical facilities, recreational, cultural, and entertainment facilities, and related parking. The purpose of the proposed action is to improve the economy of the Tribe and help their members attain economic self-sufficiency. This notice also announces a public scoping meeting to identify potential issues and content for inclusion in the EIS.
>
> The EIS will assess the environmental consequences of BIA approval of a proposed master plan for the development of a mixed-use development—which may include a casino resort and hotel, commercial retail uses, offices, medical facilities, recreational, cultural, and entertainment facilities, and related parking—on an approximate 145-acre parcel of trust land adjacent to the western city limits of Airway Heights, Spokane County, Washington….
>
> The "Intergovernmental Agreement between the Spokane Tribe of Indians and the City of Airway Heights" and the "Memorandum of Agreement Between the City of Airway Heights and the Spokane Tribe of Indians Regarding Services and Impacts of Tribal Gaming on Indian Lands Located Adjacent to the City of Airway Heights (April 10, 2007)" provide details concerning shared responsibilities related to law enforcement and security services, public health and safety, road maintenance and repair, and other matters between the Tribe and the City…; and

**WHEREAS,** on the basis of the scoping notice, the COUNTY initially understood that the TRIBE intended to develop the PROPERTY as a mixed use facility. Verbal discussions indicated primary functions of the project would include retail facilities, and facilities supporting the needs of the TRIBE (medical, educational and other social support facilities). Any references to gaming activities were presented as still being contemplated and subordinate to the other activities; and

**WHEREAS**, pursuant Section 4.0 of the INTERGOVERNMENTAL AGREEMENT, the TRIBE agreed to provide the CITY, but not the COUNTY, detailed plans regarding the TRIBE's development of the PROPERTY. As such, the COUNTY was not fully apprised as to the scope of the gaming development the TRIBE was planning on the PROPERTY; and

**WHEREAS,** on August 17, 2010, the COUNTY under Resolution No.10-0716, executed the INTERGOVERNMENTAL AGREEMENT with the CITY and TRIBE as well as an Amendment to the INTERGOVERNMENTAL AGREEMENT, wherein the TRIBE agreed to prepare a Master Plan that would comply with the stricter of the COUNTY's Airport Overlay Zone (chapter 14.702) and any similar applicable CITY regulation in the TRIBE's Master Plan. The COUNTY agreed, in exchange for its share of the Annual Payment described in Section 5.1, to provide the PROPERTY after annexation with the same regional services it provided prior to the annexation, with the exception of water and sewer services; and

**WHEREAS**, that same day, on a split two to one vote, with Commissioner Todd Mielke voting "No", the COUNTY under Resolution No. 10-0716 and the CITY executed a document entitled "INTERLOCAL AGREEMENT BETWEEN THE CITY OF AIRWAY HEIGHTS AND SPOKANE COUNTY CONCERNING MEMORANDUM OF AGREEMENT BETWEEN THE

CITY OF AIRWAY HEIGHTS AND THE SPOKANE TRIBE OF INDIANS REGARDING SERVICES AND IMPACTS OF TRIBAL GAMING ON INDIAN LANDS LOCATED ADJACENT TO OR WITHIN THE CITY OF AIRWAY HEIGHTS" ("INTERLOCAL AGREEMENT") the purpose of which was "to reduce to writing the PARTIES understand [sic] as to the amounts of money which the City of Airway Heights shall be responsible for paying Spokane County as provided for in subparagraph 3.3," as set forth above in the seventh WHEREAS clause; and

**WHEREAS**, the CITY also agreed in the INTERLOCAL AGREEMENT to pay the COUNTY twenty (20) percent of each quarterly payment made by the Spokane Tribe of Indians as set forth in the MOA between the CITY and the TRIBE on the condition that:

> **SECTION NO. 3:**
>
> As additional consideration for the execution of this Agreement, the COUNTY agrees to remain "neutral" in conjunction with the Spokane Tribe of Indians' (1) application to the United States Department of the Interior pursuant to 25 U.S.C. § 2719(b)(1)(A) seeking a determination that gaming activities on the Trust Property (i) is in the best interests of the Tribe and (ii) is not detrimental to the surround [sic] community, and (2) the Spokane Tribe of Indians' seeking concurrence of the Governor in that determination. For the purpose of the Agreement the terminology "neutral" shall mean not submitting any written communication to any official of the United States Department of the Interior, the Office of the Governor or any other entities taking a position in support or in opposition to gaming activities on the Trust Property; and

**WHEREAS**, on January 17, 2012, Commissioner Al French, a newly-elected member of the Spokane County Board of Commissioners, requested a formal Attorney General Opinion regarding the legality of the "neutrality" provision contained in Section No. 3 the INTERLOCAL AGREEMENT in order to provide comments to the BIA regarding the COUNTY's opposition to the development on the PROPERTY and the COUNTY's concerns regarding the adverse impacts of the project on the surrounding community; and

**WHEREAS**, on March 2, 2012, the BIA published in the Federal Register a notice of availability of the Draft Environmental Impact Statement for the Proposed Spokane Tribe of Indians West Plains Casino and Mixed Use Project, City of Airway Heights, Spokane County, Washington, purporting to evaluate the impacts of the development of a 986,366-square foot casino-resort facility with a 98,442-square foot gaming floor, over 4,750 open parking spaces and a parking structure with 1,500 spaces, 155,145 square feet of site retail, a 300-room hotel, a 41,633-square foot commercial building, tribal cultural center, and police/fire station within the project site, a development project different in scope and nature than the COUNTY's prior understanding; and

**WHEREAS**, on March 15, 2012, Commissioner Al French requested a 45-day extension on the 45-day comment period BIA established for the Draft EIS and was granted a 30-day

extension, citing his request for a formal Attorney General Opinion regarding the legality of the "neutrality" provision in Section No. 3.0 in the INTERLOCAL AGREEMENT, and the public hearing process related to a United States Department of Defense grant to the COUNTY to prepare a Joint Land Use Study ("JLUS") in collaboration with the City of Spokane, the CITY, the City of Medical Lake and Fairchild Air Force Base to limit encroaching land uses and development densities that are incompatible with the current and future military mission of Fairchild Air Force Base; and

**WHEREAS**, on March 15, 2012, the Spokane City Planning Commission issued its Findings, Conclusions, and Recommendations regarding JLUS Implementation, in IN THE MATTER OF AMENDING THE SPOKANE COUNTY ZONING CODE RELATED TO A NEW CHAPTER FOR A FAIRCHILD AIR FORCE BASE OVERLAY THAT INCLUDES ACCIDENT POTENTIAL ZONES, ALLOWED USES IN ACCIDENT POTENTIAL ZONES, HEIGHT RESTRICTIONS, NOISE IMPACT AREAS/NOISE REDUCTION, AND MILITARY INFLUENCE AREAS TO IMPLEMENT RECOMMENDATIONS OF THE 2010 JLUS STUDY FOR FAIRCHILD AIR FORCE BASE, in which the Plan Commission, after reviewing all public testimony, recommended amendments and additions to the Unified Development Code, Official Zoning Map and the City of Spokane Comprehensive Plan consistent with the goals and policies of the City's Comprehensive Plan, the Countywide Planning Policies for the COUNTY, the comprehensive plans of neighboring jurisdictions, State Regulations, the Growth Management Act, and Federal Regulations, the Spokane City Plan Commission's recommendation to amend the Comprehensive Plan, Unified Development Code and Official Zoning Map; and

**WHEREAS**, on May 1 2012, the Board of County Commissioners of Spokane County adopted Findings of Fact and Decision regarding a new chapter of the Spokane County Zoning Code for the Fairchild Air Force Base Overlay Zone which had the effect of implementing the recommendations and strategies of the Joint Land Use Study ("JLUS") for Fairchild Air Force Base ("FAFB"). JLUS was undertaken to protect FAFB from encroachments by incompatible land uses and to protect Fairchild's present and future missions. The new chapter provides new overlay zones, which include accident potential zones, height restrictions, noise impact areas, military influence areas, and other provisions to implement recommendation of the JLUS Study, which the City of Spokane also adopted; and

**WHEREAS**, on May 16, 2012, Commissioner Al French sent another letter to BIA stating that the Board of Commissioners is engaging to discuss the County's options to participate in the public process surrounding the TRIBE's request pursuant to 25 U.S.C. § 2719(b)(1)(A) to develop a high density casino on the PROPERTY to ensure that the 476,000 residents of the COUNTY have "the proper voice and role in what could be the most meaningful decision confronting the future character and economy of our community" and the COUNTY Division of Engineering and Roads filed comments objecting to the inadequacy of the Draft EIS to properly address certain transportation impacts and the lack of mitigation; and

**WHEREAS,** on August 15, 2012, the COUNTY requested an extension of only 30 days on the 21-day comment period BIA established to allow cooperating agencies to review and

comment on the Preliminary Final EIS for the purpose of allowing the CITY sufficient opportunity to respond to the COUNTY's request that the CITY voluntarily eliminate the neutrality provision in the INTERLOCAL AGREEMENT to enable the COUNTY to comment on the EIS and the detrimental impacts of the casino on the surrounding community without legal risk, which BIA refused; and

**WHEREAS,** on August 20, 2012, Commissioner Al French attended a meeting of the CITY Council. At that meeting, Commissioner Al French requested that the CITY Council eliminate the above referenced SECTION NO. 3 from the INTERLOCAL AGREEMENT. The CITY Council unanimously refused to agree with his request, unless the financial mitigation was eliminated from the INTERLOCAL AGREEMENT; and

**WHEREAS**, on January 8, 2013, the COUNTY was prepared to adopt a resolution initiating litigation against the CITY with respect to SECTION NO. 3 of the INTERLOCAL AGREEMENT challenging its legality as being contrary to public policy as well as inconsistent with the two part determination test under 25 U.S.C. § 2719(b)(1)(A). The two part determination requires consultation; with the COUNTY. On being advised of the litigation, the CITY Mayor and CITY Manager requested a two week delay within which they would work with the CITY Council to try to eliminate SECTION NO. 3 from the INTERLOCAL AGREEMENT; and

**WHEREAS**, on January 9, 2013, Commissioner Al French sent a letter to BIA indicating the intent of the COUNTY to eliminate the neutrality provision contained in the INTERLOCAL AGREEMENT; and

**WHEREAS,** early January 22, 2013, it became apparent that the CITY would not release the COUNTY from SECTION NO. 3 unless the COUNTY also forfeited all financial mitigation in the INTERLOCAL AGREEMENT. At approximately one o'clock p.m., the COUNTY's legal counsel advised the CITY's legal counsel that the COUNTY would be willing to terminate the entire INTERLOCAL AGREEMENT if no other option was possible in light of COUNTY's desire to comment on the project; and

**WHEREAS,** on January 22, 2013**,** subsequent to the communication by the COUNTY's legal counsel, the CITY unanimously voted to allow their CITY Manager to execute all documents necessary to terminate the INTERLOCAL AGREEMENT in its entirety with the COUNTY; and

**WHEREAS,** on January 25, 2013, under Resolution No. 13-0085, the COUNTY, by and through the Board of County Commissioners of Spokane County, Washington, pursuant to the provisions RCW 36.32.120(6), executed the document entitled "TERMINATION OF INTERLOCAL AGREEMENT BETWEEN THE CITY OF AIRWAY HEIGHTS AND SPOKANE COUNTY CONCERNING MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF AIRWAY HEIGHTS AND THE SPOKANE TRIBE OF INDIANS REGARDING SERVICES AND IMPACTS OF TRIBAL GAMING ON INDIAN LANDS LOCATED ADJACENT TO OR WITHIN THE CITY OF AIRWAY HEIGHTS" thereby terminating the INTERLOCAL AGREEMENT with the CITY; and

**WHEREAS**, the TRIBE's proposed development on the PROPERTY will have significant adverse impacts on the surrounding community, including degrading air and water resources, increasing traffic, increasing costs associated with all criminal justice services (prosecution, public defense, incarceration, and preadjudication and post adjudication up to one year), all juvenile criminal justice programs, the Municipal, District and Superior Courts, problem gambling and drunk driving issues, and will also shift retail tax revenue away from the COUNTY and special purpose districts which otherwise would be available to pay for key regional COUNTY services; and

**WHEREAS,** the Washington State Legislature recognized the importance of military installations to Washington's economic health, that it is a priority of the State to protect the land surrounding military installations from incompatible development, and that priority is expressed by RCW 36.70A.530 mandating that Comprehensive Plans and development regulations shall not allow incompatible development in the vicinity of military installations. Furthermore, the Washington State Governor's Office has acknowledge military operations as a priority by forming a coalition entitled the Military Alliance comprised of stakeholders charged with protecting the interests and operations of military bases throughout Washington State; and

**WHEREAS,** the Fairchild Air Force Base, which is located one-eighth of a mile from the PROPERTY, is critical to the economic health of the COUNTY and the region surrounding Fairchild Air Force Base is expected to experience economic and population growth in the future and, as development moves closer to the base, a coordinated effort is needed to ensure that the growth which occurs in the surrounding area allows the installation to maintain its essential role in the nation's defense while concurrently remaining a vital member of the local community and a major contributor to the local economy; and

**WHEREAS**, the COUNTY must protect the long-term viability of Fairchild Air Force Base and assure flight safety in the vicinity of the Base while protecting the public's health and safety and encourage the protection of Fairchild Air Force Base from land uses and/or activities that could adversely impact present and/or future base operations and is led to the inexorable conclusion that activities that may jeopardize the viability of Fairchild Air Force Base, either immediately or in the future, as a strategic staging platform, supporting the rapid worldwide global mobility mission with access to a number of aerial refueling routes while minimizing transit fuel consumption; and

**WHEREAS**, the COUNTY has determined that the development proposed by the TRIBE for the PROPERTY is inconsistent with the Comprehensive Plan Policies and Zoning Regulations adopted by the COUNTY under RCW 36.70A.530 to protect Fairchild Air Force Base; and

**WHEREAS**, the COUNTY has determined that the concentration of development and projected density of patrons visiting the Project, located underneath the direct training path for the air tanker, provides the potential for a disaster, the scope of which is greater than the COUNTY's ability to act in response to; and;

**WHEREAS**, the COUNTY's only agreement with the TRIBE addresses the limited issue of the annexation of the PROPERTY by the CITY and that the TRIBE has not sought to negotiate or enter into an intergovernmental agreement with the COUNTY to address or mitigate any impacts associated with its proposed development, as described in the Draft EIS of March 2, 2012.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** by the Board of County Commissioners of Spokane County, Washington, pursuant to the provisions RCW 36.32.120(6), that Spokane County, Washington **OPPOSES** the off-reservation casino development proposed by the Spokane Tribe of Indians and states that under of 25 U.S.C. § 2719(b)(1)(A), it would be highly detrimental to the surrounding community, both for its general environmental, socioeconomic, and quality of life impacts and for the potential safety risks of concentrating high-intensity, 24-hour commercial development in an recognized flight pattern for FAFB training missions, height restrictions, noise impact area, and military influence area.

**PASSED AND ADOPTED** this _____ day of _____, 2013.

BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

_____
SHELLY O'QUINN, Chair

ATTEST:

_____
AL FRENCH, Vice-Chair

_____
Daniela Erickson
Clerk of the Board

_____
TODD MIELKE, Commissioner