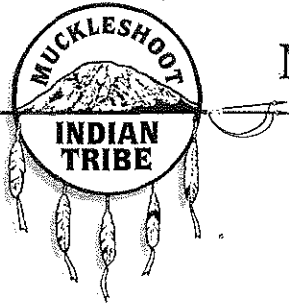


# MUCKLESHOOT TRIBAL COUNCIL

39015 172nd Avenue S.E. • Auburn, Washington 98092-9763  
(253) 939-3311 • Fax (253) 931-8570



RESOLUTION NO. 17-211

## TO PROVIDE FOR THE EXTENSION OF THE STATE -TRIBAL COMPACT RELATING TO THE MUCKLESHOOT TRIBAL SCHOOL AND TO PROVIDE FOR A FIVE YEAR TERM

WHEREAS, the Muckleshoot Indian Tribal Council is the duly constituted governing body for the Muckleshoot Indian Reservation by the authority of, and is herein acting solely pursuant to, its constitution and by-laws approved May 13, 1936, by the Secretary of the Interior, and as amended June 28, 1977, and not pursuant to its Indian Reorganization Act Corporate Charter ratified October, 31, 1936; and

WHEREAS, in 2014 the Muckleshoot Tribe and the Washington State Superintendent of Public Education entered into a joint Tribal-State Compact intended to provide state funding to the Tribal School under the authority of RCW 28A.715; and

WHEREAS, the term of the 2014 Compact was three years ending September 3, 2017; and,

WHEREAS, the Muckleshoot Tribe and Superintendent wish to renew the current Compact for an additional five year term ending September 3, 2022; and,

WHEREAS, in agreeing to renew and continue the current compact for an additional five year term the parties have agreed upon certain modifications which are incorporated into the attached State-Tribal Compact where said State-Tribal Compact is attached to this Resolution and made a part hereof as if setout fully herein; and,

WHEREAS, the Tribal Council has determined it is in the best interest of the Tribe that the attached State-Tribal Compact be approved.

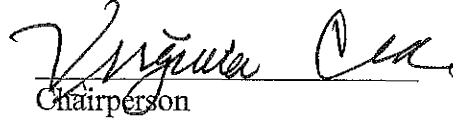
NOW THEREFORE BE IT RESOLVED, the attached State-Tribal Compact with a term ending September 3, 2022 is approved, and the Chair of the Tribal Council or the Vice Chair in the absence of the Chair, is authorized to sign the attached State-Tribal Compact.



CERTIFICATION

As Secretary of the Muckleshoot Indian Tribal Council, I hereby certify that the above resolution was adopted at a Regular meeting of the Tribal Council on the 8<sup>th</sup> day of September, 2017, held on the Muckleshoot Indian Reservation, Auburn, WA, at which a quorum was present by a vote of 4 for, 0 against, and 0 abstentions.

  
Secretary

  
Chairperson



**STATE OF WASHINGTON AND  
MUCKLESHOOT INDIAN TRIBE  
EDUCATION COMPACT**

**INTRODUCTION**

THIS COMPACT is entered into pursuant to chapter 28A.715 RCW, State-Tribal Education Compact Authority, and RCW 39.34, the Interlocal Cooperation Act.

**PARTIES**

THIS STATE-TRIBAL EDUCATION COMPACT is made and entered into by and between the WASHINGTON STATE SUPERINTENDENT OF PUBLIC INSTRUCTION (“Superintendent”), on behalf of the STATE OF WASHINGTON, a sovereign state of the United States, with all rights and powers thereto pertaining, and the MUCKLESHOOT INDIAN TRIBE (the “Tribe”), a federally recognized Indian Tribe, party to the Point Elliot and Medicine Creek Treaties, possessed of all sovereign powers and rights thereto pertaining.

**RECITALS**

WHEREAS, the Muckleshoot Indian Tribe, acting through the Muckleshoot Tribal Council, is an independent federally recognized Tribal sovereign nation;

WHEREAS, the Muckleshoot Tribal Council has established the Muckleshoot Tribal School (the “School”) as a dependent educational instrumentality of the Tribe operating under the laws of the Muckleshoot Tribe to provide the best educational opportunities for Indian children within the Tribal Community;

WHEREAS, Native American and Alaska Native students are often concentrated on and near Indian Reservations in the State of Washington and, as a result, many Tribes, such as the Muckleshoot Tribe, have developed tribal schools to meet the needs of these students where such needs are not met in the public school context;

WHEREAS, the parties recognize that the teaching of Native American language, culture, and history is important to Native Americans and is critical to the educational attainment and achievement of such children;

WHEREAS, it is the intention of the parties that the State should support education programs offered in tribal schools to assist tribal schools in providing comprehensive, culturally competent teaching and learning that can help Native American students meet and achieve their full potential;

WHEREAS, the Washington State Legislature, through chapter 28A.715 RCW, authorized the Superintendent to enter into state-tribal education compacts with the governing bodies of Indian tribes located in Washington;

WHEREAS, the purpose of these state-tribal education compacts is to support K-12 schools operated by eligible Indian tribes or tribal schools. Schools that are the subject of a state-tribal education compact will receive state and/or federal education funding for enrolled students, including general apportionment, special education, categorical, and other non-basic education monies;

WHEREAS, the Tribe wishes to enter into a Compact with the State of Washington through the Washington State Office of Superintendent of Public Instruction (“OSPI”) in order to facilitate the provision of high quality education to members of the Muckleshoot Tribe, members of the Tribal Community, and other eligible children;

WHEREAS, the Superintendent: (1) recognizes the State’s partnering with Tribes that have tribal schools will benefit Native American Students and will assist the State in meeting the State’s paramount duty to make ample provision for the education of all children in the State; and (2) as a result, the State desires to enter into a Compact with the Muckleshoot Tribe to assist the Tribe in providing high quality education of Native American students consistent with the intent and policy directions set out by the Tribe which will also meet state educational requirements;

WHEREAS on April 11, 2014, the Muckleshoot Tribal Council adopted a resolution to approve submission of a state-tribal school compact application;

WHEREAS, on April 14, 2014, the Superintendent received the resolution and an application to establish a State-Tribal Education Compact School referred to as Muckleshoot Tribal School;

WHEREAS, on July 8, 2014, the Superintendent convened a government-to-government meeting with the Muckleshoot Indian Tribe for the purpose of considering the resolution and application and initiating negotiations; and

WHEREAS, the State and Tribe have entered into government to government discussion with the goal of renewing and extending the State-Tribal Compact entered into in 2014, to continue for the term set out herein; and,

WHEREAS, this Compact reaffirms the State of Washington’s and the Muckleshoot Indian Tribe’s important commitment to government-to-government relationships that has been

recognized by proclamation, and in the Centennial Accord and the Millennium Agreement. The Compact builds upon the efforts highlighted by OSPI in its *2012 Centennial Accord Agency Highlights*, including *The Since Time Immemorial (STI): Tribal Sovereignty in Washington State Curriculum Project* that embeds the history surrounding sovereignty and intergovernmental responsibilities into the State's classrooms; OSPI's regular meetings with the superintendents of tribal schools and the federal Bureau of Indian Education representatives at the regional and national level on issues relating to student academic achievement, accessing of funding for tribal schools, and connecting tribal schools to OSPI's K-20 network; and the recent establishment, in statute, of the Office of Native Education within OSPI.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and other consideration recited in this Compact, the Superintendent and the Muckleshoot Indian Tribe do enter into this Compact as provided for herein.

## I. TITLE

This document shall be cited as "The State of Washington - Muckleshoot Indian Tribe Education Compact."

## II. TERM OF COMPACT

This Compact will have an initial term of three years, to commence on September 3, 2014, unless terminated sooner as provided in Section VI (Nonrenewal and Termination). The Compact will be renewed for an additional five-year term to commence on September 3, 2017. Upon expiration of any renewal term, the parties will review the Compact in five-year increments, subject to the nonrenewal and termination provisions of the Compact.

## III. SCHOOL'S ROLES AND RESPONSIBILITIES

### A. Educational Program

**1. Content Standards.** The Muckleshoot Indian Tribe agrees that the School will conduct an educational program that satisfies the requirements of RCW 28A.150.200 through 28A.150.240 and RCW 28A.230.010 through 28A.230.195. Standards that must be met by the School include, but are not limited to, the following:

- (a) Basic education, as defined in RCW 28A.150.200, .210 and .220;
- (b) Instruction in the essential academic learning requirements and associated standards;
- (c) Participation in, and performance on, statewide student assessments as provided for under federal and state law, including, but not limited to, chapter 28A.655 RCW, as amended by ESB 2224 (2017);
- (d) Performance improvement goals, as provided for in chapter 28A.655.100, and associated requirements;

- (e) Accountability measures;
- (f) State graduation requirements;
- (g) Academic standards applicable to Washington State public schools;
- (h) Other tribal, state, and federal accountability requirements imposed by applicable statute, regulation, rule, policy or this Compact.

**2. Curriculum.** The Muckleshoot Indian Tribe agrees to the following:

(a) The School will implement the educational program and curriculum consistent with the program and curriculum presented in the Final Approved Application. "Final Approved Application" means the application submitted by the Tribe pursuant to WAC 392-800-825 through -835, together with any subsequent modifications to the application requested by the Superintendent and agreed to by the Tribe.

(b) The School may revise and amend the educational program and curriculum presented in the Final Approved Application at its discretion and without requiring approval from the Superintendent or amendment to this Compact; provided, that such revisions or amendments do not (i) materially change the School's mission or its student performance standards or targets as contained in the Final Approved Application, or (ii) violate any term of this Compact.

(c) The Muckleshoot Indian Tribe will notify the Superintendent of any material changes or amendments to the educational program or curriculum as presented in the Final Approved Application.

**3. Graduation Requirements for High Schools.** The Muckleshoot Indian Tribe agrees that the School's curriculum will meet or exceed all applicable graduation requirements as established by the State Board of Education. The Tribe further agrees that it will comply with the provisions in chapter 180-51 WAC (High school graduation standards) that apply to school districts.

**4. Staff Qualifications.**

(a) The Muckleshoot Indian Tribe agrees that instructional staff employed at the School will be certificated consistent with the standards described in RCW 28A.410.010 and Title 181 WAC; provided, that the Muckleshoot Indian Tribe may hire non-certificated instructional staff of unusual competence and in exceptional cases as specific in RCW 28A.150.203(7). The parties recognize that, in implementing a culturally relevant program at the School, non-certificated Tribal members of unusual competence may teach students so long as a certificated person exercises general supervision.

(b) The Muckleshoot Indian Tribe agrees that it will comply with employee record checks requirements in RCW 28A.400.320 when employing School employees. The Tribe further agrees



that it will comply with the mandatory termination and notification provisions of RCW 28A.400.320, 28A.400.330, 28A.405.470, and 28A.405.475.

(c) If the Muckleshoot Indian Tribe or School administrator(s) has reason to believe that an employee with a certificate or permit authorized under chapter 28A.410 RCW or chapter 28A.405 RCW has engaged in unprofessional conduct (chapter 181-87 WAC) or lacks good moral character (chapter 181-86 WAC), the School agrees to submit a complaint to the Puget Sound Educational Service District (“ESD”) stating the basis for the belief and requesting the ESD to submit the complaint to OSPI’s Office of Professional Practices (“OPP”). The School will simultaneously send a copy of the School’s complaint to OPP. Certificated and licensed staff employed by the School are subject to Title 28A RCW, as well as any applicable state or federal laws.

**5. Staff Training.** The Muckleshoot Indian Tribe agrees that the School will provide employees and staff with training required by applicable state and/or federal law.

**6. Student Assessment.** The School will participate in all testing programs required by OSPI and the State Board of Education. The School will comply with all assessment protocols and requirements established by OSPI and the State Board of Education, maintain test security, and administer the tests consistent with all tribal, state, and federal requirements. The School shall follow OSPI’s test administration and security requirements. If the Tribe identifies overlapping, conflicting, or duplicative requirements with tribal or federal requirements related to student assessments, the Tribe and the State will consult in order to address or eliminate such duplication or redundancy.

**7. English Language Learners.**

(a) The Muckleshoot Indian Tribe agrees that the School will at all times comply with all state and federal law applicable to the education of English language learners including, but not limited to, the Elementary and Secondary Education Act of 1965 (20 U.S.C. § 6301 et seq.) (the “ESEA”), Title VI of the Civil Rights Act of 1964, the Equal Educational Opportunities Act of 1974, to the extent such laws are applicable to the Tribe, and associated state laws or rules. The School will provide resources and support to English language learners to enable them to acquire sufficient English language proficiency to participate in the mainstream English language instructional program. The School will employ and train teachers to provide appropriate services to English language learners. The School will work to assure compliance with any and all requirements of state and federal law regarding services to English language learners.

(b) The Muckleshoot Indian Tribe agrees that the School will provide transitional bilingual instruction in accordance with chapter 392-160 WAC (Special Service program—Transitional Bilingual) and as presented in its Final Approved Application.

**8. Students with Disabilities.** The Muckleshoot Indian Tribe agrees that the School will provide services and accommodations to students with disabilities as set forth in the Final Approved Application and in accordance with any relevant and applicable policies thereafter

adopted, as well as with all applicable provisions of the Individuals with Disabilities Education Act (20 U.S.C. § 1401 et seq.), the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) (the “ADA”), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and all regulations promulgated pursuant to such federal laws, to the extent such laws are applicable to the Tribe, and associated state laws or rules. This includes providing services to attending students with disabilities in accordance with the individualized education program (“IEP”) recommended by a student’s IEP team. The School will also comply with all federal rules, policies, procedures and directives regarding the education of students with disabilities, including 34 C.F.R. Part 300, and procedural safeguards set forth in federal statutes and regulations, and, to the extent state funds are provided, with chapter 28A.155 RCW.

**9. Supplemental Programs.** The Muckleshoot Indian Tribe agrees that the School will provide supplemental programs to students as presented in its Final Approved Application. The Tribe agrees that it will comply with all state and federal legal requirements in providing such programs, including, but not limited to, Title I of the ESEA and chapter 392-162 WAC (Special Service program—Learning Assistance) and chapter 392-164 WAC (Special service program—Chapter 1 Migrant of the Education Consolidation and Improvement Act of 1981). Provided, in determining whether state or federal guidance or regulations apply with respect to any program, state-funded programs shall comply with all applicable state regulations and federally funded programs shall comply with applicable federal regulations.

**10. Highly Capable Students.** The Muckleshoot Indian Tribe agrees that the school will administer programs for the education of K-12 students who are highly capable in accordance with chapter 392-170 WAC (Special Service program—Highly Capable Students). Provided, in determining whether state or federal guidance or regulations apply with respect to any program, state-funded programs shall comply with all applicable state regulations and federally funded programs shall comply with applicable federal regulations.

**11. Student Conduct and Discipline.** The Muckleshoot Indian Tribe agrees that the School will comply with the School’s discipline policy contained in the Final Approved Application, as well with all applicable state and federal laws relating to student discipline. The Tribe further agrees that it will notify the Superintendent of any material changes or amendments to the Final Approved Application’s discipline plan.

## **B. School Operations**

**1. Compliance with State and Federal Law.** The parties recognize that it is not the intention of this Compact to create a public school district; nor is the intention to generally subject the School to Washington State statutes and rules applicable to school districts and school district boards of directors except as expressly provided in this Compact. Rather, this Compact is established under special legislative direction and the authority of chapter 28A.715 RCW. The parties have concluded that the provision of an appropriate education to members of the Muckleshoot Tribe is enhanced through the development of this Compact. The Muckleshoot

Indian Tribe agrees to comply with applicable state and federal laws as set forth in this Compact, including, but not limited to, the Individuals with Disabilities Education Improvement Act (20 U.S.C. Sec. 1401 et seq.); the Federal Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g), the Elementary and Secondary Education Act (20 U.S.C. Sec. 6301 et seq.), and the McKinney-Vento Act (42 U.S.C. 11432 et seq.):

## **2. Student Data and Enrollment Reporting.**

(a) The Muckleshoot Indian Tribe agrees to report School enrollment to OSPI in the same manner and using the same definitions of enrolled students and annual average full-time equivalent enrollment as is required of Washington public school districts.

(b) The Muckleshoot Indian Tribe agrees to meet all CEDARS reporting requirements as outlined in OSPI's annual CEDARS data manual.

## **3. Evaluation and Effectiveness Review.**

(a) The Muckleshoot Indian Tribe agrees that, pursuant to WAC 392-800-855, it will annually evaluate the impact of this Compact on the academic success of the students enrolled in the School.

(b) The Muckleshoot Indian Tribe agrees to collect and report to the Superintendent academic growth data and high school graduation data by August 1 of each year during which this Compact is in effect.

**4. Nonsectarian Status.** The Muckleshoot Indian Tribe agrees that the School will not engage in any sectarian practices in its educational program, admissions policies, employment practices, and all other operations. The School will not be to any extent under the control or direction of any religious denomination.

**5. Non-discrimination.** The Muckleshoot Indian Tribe agrees that the School will comply with all applicable federal and state non-discrimination laws, regulations and policies which are otherwise applicable to Washington public schools, including, chapters 28A.640 and 28A.642 RCW. Accordingly, no person shall, on the ground of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal by a person with a disability, be unlawfully excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any activity performed by the School or its agents. Provided, nothing herein is intended to limit any exemption under federal or state law pertaining to employment practices under which a preferential treatment is given to any individual because he or she is an Indian living on or near a reservation. Provided further, nothing herein is intended to limit any exemption under federal or state law pertaining to student enrollment practices under which a preferential treatment is given to any individual because he or she is a Tribal member or sibling of an already enrolled student.

## **6. Recordkeeping and Auditing.**

(a) The School will comply with all tribal, federal, state, and OSPI recordkeeping requirements including those pertaining to students, governance, and finance.

(b) The Muckleshoot Indian Tribe agrees to maintain all books, records, documents, data and other evidence relating to this Compact, including School administrative and student records. The Tribe will retain such records for a period of six years following the expiration, nonrenewal, or termination of the Compact. These records must be subject at all reasonable times to inspection, review or audit by OSPI personnel duly authorized by the Superintendent, the Office of the State Auditor, and federal and state officials so authorized by statute, regulation or agreement. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved. The parties will take reasonable steps to reduce or minimize costs imposed by an audit and undue interference with School operations.

**7. Right of Inspection.** The Muckleshoot Indian Tribe agrees to provide right of access to the School to the Superintendent or any of its officers at all reasonable times during School administration operating hours in order to monitor and evaluate compliance under this Compact on behalf of the Superintendent. All inspections and evaluations will be performed in such a manner that will not unduly interfere with the operations of the Tribe or School.

**8. Student Welfare and Safety.** The Muckleshoot Indian Tribe agrees that the School will comply with all applicable federal, tribal, state, health and safety laws. The Tribe further agrees that (a) it will comply with the safety plan presented in its Final Approved Application, and (b) it will notify the Superintendent of any material changes or amendments to the Final Approved Application's discipline plan.

**9. Transportation.** The Muckleshoot Indian Tribe agrees that the School will be responsible for providing student transportation in accordance with tribal, state, and federal law, including, but not limited to, chapter 392-141 WAC (Transportation—State allocation for operations), chapter 392-142 WAC (Transportation—Replacement and depreciation allocation), chapter 392-143 WAC (Transportation—Specifications for school buses), chapter 392-144 WAC (School bus driver qualifications), and chapter 392-145 WAC (Transportation—Operation rules). The Tribe further agrees that (a) it will comply with the transportation plan presented in its Final Approved Application, and (b) it will notify the Superintendent of any material changes or amendments to the Final Approved Application's transportation plan.

**10. School Calendar.** The Muckleshoot Indian Tribe agrees that the School will annually adopt a School calendar with an instructional program that meets the compulsory school attendance requirements of state law, financial guidelines, and state rules, including, but not limited to, RCW 28A.150.220, RCW 28A.225.010, chapter 180-16 WAC (State support of public schools), and chapter 392-410 WAC (Courses of study and equivalencies). The Tribe further

agrees that it will notify the Superintendent of any changes or amendments to the School's calendar as presented in the Final Approved Application.

#### **11. Admission and Enrollment.**

(a) The Muckleshoot Indian Tribe will not charge students tuition except to the same extent as school districts may be permitted to do so under applicable state law, including with respect to out-of-state and adult students pursuant to chapter 28A.225 RCW; provided, that the Tribe may charge students fees for participation in optional extracurricular events and activities if such fees would be authorized under state law and rules in a public school district.

(b) The parties agree that the Muckleshoot Indian Tribe may limit admission to the School on the basis of age group, grade level, or School capacity. Provided, the School may revise and amend the educational program and curriculum presented in the Final Approved Application at its discretion in accordance with Section III.A.2 of this Compact.

#### **12. School Facilities.**

(a) The Muckleshoot Indian Tribe agrees that the School facilities will conform with provisions of the ADA and any other federal, state, or tribal requirements applicable to public school facility access.

(b) The School facilities will meet all applicable health, safety and fire code requirements and will be of sufficient size to safely house the School's anticipated enrollment.

**13. Accountability for School Performance.** The Memorandum of Understanding between the Office of the Superintendent of Public Instruction of the State of Washington and The U.S. Department of the Interior – Bureau of Indian Education shall govern. The Muckleshoot Indian Tribe agrees the School will compile and report assessment data as specified in the Memorandum of Understanding, and compliance with accountability measures will be determined by the Bureau of Indian Education.

#### **14. Ethics.**

(a) The Muckleshoot Indian Tribe agrees that no School administrator, or other School employee/representative authorized to enter contracts on behalf of the School, may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

(b) The Muckleshoot Indian Tribe agrees that no School administrator may use his or her position to secure special privileges or exemptions for himself, herself, or others.

(c) The Muckleshoot Indian Tribe agrees that no School administrator may give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the School or Tribe, for a matter connected with or related to their services as a Board member or School administrator unless otherwise provided for by law.

(d) The Muckleshoot Indian Tribe agrees that no School administrator may accept employment or engage in business or professional activity that the officer might reasonably expect would require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position.

(e) The Muckleshoot Indian Tribe agrees that no School administrator may disclose confidential information gained by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit.

(f) Terms in this provision will be defined in accordance with the definitions set out in RCW 42.52.010. The Advisory Opinions of the Executive Ethics Board shall provide non-binding guidance for the parties' interpretation of this provision.

(g) This provision does not apply to the following cases:

- (i) The letting of any employment contract for the driving of a school bus if the terms of such contract are commensurate with the pay plan; and
- (ii) The letting of any employment contract to the spouse of an officer of the School, the terms of the contract are commensurate with the pay plan.

## **C. School Finance**

**1. Legal and Accounting Compliance.** The Muckleshoot Indian Tribe agrees that with respect to funds received under this Compact, the School will comply with all applicable state financial and budget rules, and financial reporting requirements, including, without limitation, the following:

(a) The provisions of chapter 392-101 WAC (Superintendent of public instruction—Administrative practices and procedures), chapter 392-115 WAC (Finance—Audit resolution process), chapter 392-117 (Timely reporting), chapter 392-121 WAC (Finance—General apportionment), chapter 392-122 WAC (Finance—Categorical apportionment), chapter 392-123 WAC (Finance—School district budgeting), chapter 392-127 WAC (Finance—Certificated instructional staff ratio (46:1000) compliance), chapter 392-129 WAC (Finance—Emergency school closure), chapter 392-134 WAC (Finance—Apportionment for part-time public school attendance), chapter 392-138 (Finance—Associated student body moneys), and chapter 392-140 WAC (Finance—Special allocations), that apply to first class school districts;

(b) The Accounting Manual for School Districts; and

(c) The Administrative Budgeting and Financial Reporting Handbook.

(d) The Tribe and State have not agreed on the applicability and necessity of the provisions of chapter 392-121 WAC pertaining to the S-275 reporting process as defined in WAC 392-121-220. However, the State and Tribe commit to use their best efforts to seek to resolve issues surrounding the inclusion of the S-275 reporting process in this Compact by December 31, 2017.

## **2. Audits.**

(a) The Muckleshoot Indian Tribe recognizes that the School will be subject to financial examinations and audits as determined by the Washington State Auditor, including annual audits for legal and fiscal compliance. Within the scope of its responsibilities, the State Auditor's Office may conduct the following types of audits of funds provided to the School by the State under this Compact:

- (i) Financial statement;
- (ii) Legal and fiscal compliance;
- (iii) Federal single;
- (iv) Special investigation (includes fraud audit); and

(b) The Muckleshoot Indian Tribe acknowledges it may be financially responsible for all costs associated with the audit(s) set out in this section.

(c) The Muckleshoot Indian Tribe agrees to provide the Superintendent with a copy of any audits prepared under this provision.

**3. Non-Commingling.** The Muckleshoot Indian Tribe agrees that assets, funds, liabilities and financial records of the School will be kept separate from assets, funds, liabilities, and financial records of any other person, entity, or organization unless approved in writing by the Superintendent. Additionally, public funds and assets received by the School from the State under this Compact will be tracked and accounted for separately.

## **4. Assets.**

(a) The Muckleshoot Indian Tribe agrees that the School shall maintain a complete and current inventory of all school assets that (i) were purchased with funds received by the School under chapter 28A.715 RCW and this Compact, and (ii) cost more than \$5,000 (including sales tax and ancillary costs). The School further agrees that it will adopt a policy relating to accounting for small and attractive assets that cost \$500 or more. Assets include land, infrastructure, improvements to land, buildings, leasehold improvements, vehicles, furnishings, equipment, collections, and all other tangible and intangible assets that are used in school operations. Small and attractive assets include, but are not limited to Optical Devices, Binoculars, Telescopes, Infrared Viewers, Rangefinders, Cameras and Photographic Projection Equipment, Desktop

Computers (PCs), Laptops and Notebook Computers, Tablets and Smart Phones, Television Sets, DVD Players, Blu-ray Players, and Video Cameras (home type).

(b) The School shall update the inventory at least every two years and shall take reasonable precautions to safeguard assets acquired with funds received by the School under chapter 28A.715 RCW and this Compact.

(c) The Muckleshoot Indian Tribe agrees that if this Compact expires or is terminated or the School otherwise ceases to operate, School assets will be deemed to be public assets if at least 25 percent of the funds used to purchase the asset were funds received by the School under chapter 28A.715 RCW and this Compact. Public assets shall be disposed of consistent with applicable state and federal law. Any assets acquired wholly or with more than 75% tribal or other non-state funds must be disposed of consistent with applicable federal, and tribal law, provided that the School must maintain records demonstrating the percentage of public funds used to acquire assets. If the School's records fail to establish clearly whether an asset was acquired with the use of public funds, the assets will be deemed to be public assets.

**5. School funds.** The Muckleshoot Indian Tribe agrees that any moneys received by the School from state funds under this Compact that remain in the School's accounts at the end of any budget year must remain in the School's accounts for use by the School during subsequent budget years.

**6. Location and Access.** The Muckleshoot Indian Tribe agrees that the School will maintain books, records, documents, and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended under this Compact. These records will be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the Superintendent, the State Auditor, and federal officials so authorized by statute, rule, regulation, or contract. The financial records must be maintained at a permanent place designated by the School.

#### **IV. SUPERINTENDENT'S RIGHTS AND RESPONSIBILITIES**

##### **A. Funding**

**1. Apportionment.** The Superintendent will apportion funding for the School according to the schedule established under RCW 28A.510.250, including basic education apportionment and special education, categorical, and other non-basic education moneys.

**2. Allocations for Certificated Instructional Staff.** Allocations for certificated instructional staff will be based on the average staff mix ratio of the school, as calculated by the Superintendent, using the statewide salary allocation schedule and related documents, conditions, and limitations established by the Omnibus Appropriations Act.



**3. Allocations for Classified and Administrative Staff.** Allocations for classified staff and certificated administrative staff will be based on the salary allocations of the school district in which the School is located, subject to conditions and limitations established by the Omnibus Appropriations Act.

**4. Statewide salary allocation schedule.** Nothing in this provision requires the School to use the statewide salary allocation schedule when establishing compensation for individual School employees.

**B. Oversight and Enforcement**

**1. Consultation.** Two times each year, the Superintendent or his or her designee and the Muckleshoot Indian Tribe or its designee will engage in consultations relating to School operations, performance, and accountability.

**2. Oversight and Enforcement.** The Superintendent will manage, supervise, and enforce this Compact on behalf of the State. OSPI will monitor the School's performance under this Compact and hold the School accountable to the performance of its obligations as required by this Compact. Before taking corrective action, the Superintendent shall provide technical assistance to the extent requested by the School. The Superintendent may take the following actions when non-compliance issues arise: offer technical assistance, take corrective action, develop corrective action plans, withhold payments of state funds, or impose other sanctions pursuant to this Compact. Likewise, the Tribe shall monitor the State's compliance with this Compact.

**3. Inquiries and Investigations.** The Superintendent may conduct or require oversight activities consistent with chapter 28A.715 RCW, its implementing rules, and the terms of this Compact.

**4. Notification of Perceived Concerns.** The Superintendent agrees to notify the Muckleshoot Indian Tribe of any perceived concerns related to unsatisfactory performance or legal compliance under this Compact within reasonable timeframes considering the scope and severity of the concern. The Tribe will respond within a reasonable time, which in no event will be longer than 21 days. If the Tribe does not remedy the problem to bring the School into compliance with this Compact, and assuming a violation is found, the Superintendent may take further action under Section V or VI of this Compact.

**5. Other Legal Obligations.** Nothing in this Compact will be construed to alter or interfere with the Superintendent's obligations imposed under federal or state law, nor legal duties and obligations imposed on the Tribe by federal law.

## V. COMPLIANCE

### A. Compliance

The Muckleshoot Indian Tribe and Superintendent agree that each will remain subject to and comply with the terms of this Compact, chapter 28A.715 RCW, and any legislation enacted after the effective date of this Compact that governs the operation and management of schools that are the subject of a state-tribal education compact.

### B. Breach by the School

(a) The parties agree that the violation of any material provision of this Compact may, in the discretion of the Superintendent, be deemed a breach and be grounds for withholding payment of state funds, or nonrenewal or termination of the Compact under Section VI. In making this determination, the parties will consider the underlying facts and circumstances including, but not limited to, the severity of the violation as well as the frequency of violations.

(b) The School's failure to develop, execute, or complete a corrective action plan pursuant to Section IV.B of this Compact within the timeframe specified by the Superintendent will constitute a breach of the Compact.

## VI. NONRENEWAL AND TERMINATION

### A. Nonrenewal

**1. Notice.** In the event the Superintendent, in his or her discretion, determines that the Compact shall not be renewed, the Superintendent will notify the Muckleshoot Indian Tribe in writing of his or her intent to non-renew the Compact. The notification will invite the Tribe to participate in a government-to-government meeting for the purpose of discussing the Superintendent's intent to non-renew the Compact, the reasons for the notice not to renew, and whether issues that supported the notice can be resolved.

**2. Timing of notice.** The Superintendent must provide notice of intent to non-renew the Compact no later than April 15 of the year in which the Compact expires.

### B. Termination

**1. Termination for Convenience.** Either party may terminate this Compact effective as of June 30 of any year by providing the other party with written notice of its intent to terminate on or before May 1, of the then-current calendar year. When providing notification of his or her intent to terminate the Compact under this provision, the Superintendent will state with specific reasons why the Superintendent believes the Compact should be terminated.

**2. Termination for Cause.**

(a) The parties may terminate this Compact for cause if either party breaches this Compact or fails to cure a breach of the Compact's terms.

(b) The non-breaching party will notify the breaching party of the non-breaching party's intent to terminate the Compact for cause. The notification will be in writing and will state with specific reasons why the non-breaching party believes the Compact should be terminated, including:

- (i) The Compact term, condition, or assurance that the non-breaching party believes the breaching party has violated, or other ground for termination; and
- (ii) The evidence indicating that the Compact term, condition, or assurance has been violated.

(c) The notification will invite the breaching party to participate in a government-to-government meeting to occur within 14 days, for the purpose of discussing the alleged breach and, if appropriate, engage in dispute resolution in accordance with this section.

### **3. Mediation.**

(a) If the government-to-government meeting between the parties fails to resolve the dispute, any participating party may, within five (5) business days of completing the government-to-government meeting, make a written request for mediation to be conducted in Seattle, Washington or at another place as the parties may agree in writing. The parties shall attempt to reach agreement on the selection of the mediator within fifteen (15) business days of the date the written mediation request letter was received by the other party. If the parties cannot reach agreement on a mediator, the mediation will be administered by J.A.M.S., Seattle, Washington Office using a J.A.M.S. mediator and protocol, or another mutually agreeable dispute resolution service and protocol.

(b) In the event that the parties are unable to reach a mutually agreed upon resolution either through direct discussions or mediation, the non-breaching party may terminate the Compact for cause and/or seek relief as permitted under this Compact.

## **C. Effect of Nonrenewal or Termination**

**1. Winding Up.** Upon termination of this Compact for any reason, upon expiration of the Compact, and if the School ceases operations or otherwise dissolves, the Superintendent may supervise the winding up of the business and other affairs of the School; provided, however, that in doing so the Superintendent will not be responsible for and will not assume any liability incurred by the School under this Compact. The Muckleshoot Indian Tribe and School personnel will cooperate fully with the winding up of the affairs of the School. The School's obligations for following a termination protocol and winding up of the affairs of the school shall survive the term of this Compact.

**2. Disposition of Assets.** All assets, including tangible, intangible, and real property in use by the School but originally owned by the State, or assets purchased using up to 25 percent of

public funds allocated by OSPI, are the property of the State and shall be returned to the State upon nonrenewal or termination, in accordance with relevant law.

## VII. GENERAL

**1. Merger.** This Compact, the Final Approved Application, and all attachments, exhibits and amendments thereto, contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Compact shall be deemed to exist or to bind any of the parties hereto.

**2. Amendments.** No amendment to this Contract will be valid unless ratified in writing by the Superintendent and the Muckleshoot Indian Tribe and executed by authorized representatives of the parties, except as may be required by RCW 28A.715.020(3)(f) and state legislation or rules enacted after the effective date of this Compact.

**3. Governing Law and Enforceability.** This Compact shall be construed and interpreted in accordance with the laws of the state of Washington. For the limited purpose of this Compact, the Muckleshoot Indian Tribe consents to the jurisdiction of Washington State courts, and the venue of any action brought hereunder shall be in Thurston County.

**4. Severability.** If any provision of this Compact or any application of this Compact to the School is found contrary to law or invalid, such provision or application will have effect only to the extent permitted by law and the invalidity shall not affect the validity of the other terms or conditions of the Compact.

**5. Waiver.** The parties agree that no assent, express or implied, to any breach by either party of any one or more of the provisions of this Compact shall constitute a waiver of any other breach. No term or condition of this Compact shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

**6. No Employee or Agency Relationship.** Neither the Muckleshoot Indian Tribe, its employees, agents, nor contractors are employees or agents of the Superintendent. The Superintendent and his or her employees, agents, or contractors are not employees or agents of the Tribe or the School. None of the provisions of this Compact will be construed to create a relationship of agency, representation, joint venture, ownership, or control of employment between the parties other than that of independent parties compacting solely for the purpose of effectuating this Compact.

### **7. Limitation of Liability.**

(a) In no event will either party, or their agencies, officers, employees, or agents, be responsible or liable for the debts, acts or omissions of the other arising from this Compact.

(b) Neither the Muckleshoot Indian Tribe nor the Superintendent are creating, or intend to create, any rights in third parties which would result in any claims of any nature whatsoever

against the Tribe or the State as a result of this Compact. Neither the Tribe nor the State has waived immunity from third party suits or claims of any kind against them, and nothing contained in this Compact shall be construed to effect a waiver, in whole or in part, of said immunity.

**8. Non-Assignment.** Neither party to this Compact shall assign or attempt to assign any rights, benefits, or obligations accruing to the party under this Compact unless the other party agrees in writing to any such assignment.

**9. FERPA.** The parties recognize that they are both bound by the requirements of the Family Educational Rights and Privacy Act and its implementing regulations (20 U.S.C. § 1232g; 34 C.F.R. Part 99) (“FERPA”), and they will safeguard such information in accordance with the requirements of FERPA.

**10. Order of Precedence.** The items listed below are incorporated by reference herein. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

- (a) Applicable Federal and Washington State laws, regulations, and guidelines;
- (b) Terms and Conditions of the Compact;
- (c) The Final Approved Application (hereby incorporated into the Compact as **Appendix A**);
- (d) Any other provisions incorporated by reference or otherwise into the Compact.

**11. Collective Bargaining.** No state collective bargaining requirements shall apply to the Tribe or School under this Compact.

**12. Reservation of Rights.** Nothing in this Compact is intended to limit the Tribe or School’s ability to take any action in the operation of the School where such actions are consistent with the terms of this Compact.

**VIII. NOTICE**

Unless otherwise indicated by this Compact, all notices required or authorized to be served shall be served by certified mail or other expedited services which require a signature for receipt at the following address:

The Superintendent of Public Instruction  
Old Capitol Building  
P.O. Box 47200  
Olympia, WA 98504-7200

Assistant Tribal Operations  
Manager for Education  
39015 172<sup>nd</sup> Ave SE  
Auburn, WA 98092

IN WITNESS WHEREOF, the Washington State Superintendent of Public Instruction and Muckleshoot Indian Tribe have executed this Compact.

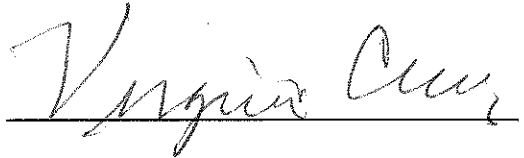
**THE STATE OF WASHINGTON**

**THE MUCKLESHOOT INDIAN TRIBE**

By: 

Chris Reykdal, State Superintendent  
of Public Instruction

Date: 9/16/17

By: 

Virginia Cross, Chairperson

Date: 9/8/17