RESOLUTION NO. 38536

A RESOLUTION relating to conservation and development; authorizing the execution of an interlocal agreement with Pierce County to implement a Transfer of Development Rights program within the City.

WHEREAS zoning and development regulations do not adequately provide permanent protections for agricultural lands, historic buildings, open space, or affordable housing, and

WHEREAS a Transfer of Development Rights ("TDR") program is a tool that exchanges permanent, recorded conservation easements over important lands and buildings in certain locations (known as “sending areas”) for increases in density in other locations (known as “receiving areas”), and under which the market sets the dollar value of such exchanges and counties and cities formally authorize the necessary transactions, and

WHEREAS TDR programs are strongly supported by the State’s Growth Management Act ("GMA"), recent supplemental legislation passed by the State, and federal grant funding for TDR programs, regional planning policies, the City’s Comprehensive Plan, and the City’s development regulations for Commercial Mixed-Use Centers and Downtown, and

WHEREAS the City’s participation in a regional TDR program would qualify the City to use tax increment financing for targeted infrastructure improvements, which was a key factor in the federal Environmental Protection Agency awarding the City a grant, in the amount of $109,000, to develop and implement a TDR program, and
WHEREAS the project to develop and implement a TDR program (“Project”) was first introduced to the City Council at its Study Session on July 19, 2011, and a progress report on the Project was provided to the Economic Development Committee (“EDC”) at its meeting on February 29, 2012, during which the EDC expressed particular concern about the viability of a TDR program in the current economy, and

WHEREAS, pursuant to EDC concerns, the Project included a market feasibility study, which study reached the following conclusions: (1) the City’s current zoning incentives to receive TDRs for Commercial Mixed-Use Centers and Downtown are of sufficient scale and scope to support a large-scale TDR program; (2) the zoning incentives can, with relatively minor adjustments, produce an effective TDR program; (3) focusing on the regional TDR program established by State statute will, over the medium- and long-term, allow the City to qualify for tax increment financing; and (4) the implementation of a TDR program can be best addressed over the short term by City Council actions that will facilitate demonstration projects, and

WHEREAS this resolution will authorize the execution of a requested interlocal agreement with Pierce County implementing a TDR program between the County and City, which will facilitate demonstration projects going forward, and

WHEREAS, on August 28, 2012, the proposed interlocal agreement was presented to the EDC, and received a "do-pass"; Now, Therefore,
BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

That the proper officers of the City are hereby authorized to execute an interlocal agreement with Pierce County substantially in the form attached hereto as Exhibit "A" and by this reference incorporated herein (this document shall also be on file in the office of the City Clerk) implementing a Transfer of Development Rights program between Pierce County and the City.

Adopted \textit{SEP 18 2012}

\begin{center}
\textit{\[Signature\]}
\end{center}

\begin{center}
\textit{Mayor}
\end{center}

Attest:

\begin{center}
\textit{\[Signature\]}
\end{center}

\begin{center}
\textit{City Clerk}
\end{center}

Approved as to form:

\begin{center}
\textit{\[Signature\]}
\end{center}

\begin{center}
\textit{Deputy City Attorney}
\end{center}
EXHIBIT “A”

AN AGREEMENT IMPLEMENTING
A TRANSFER OF DEVELOPMENT RIGHTS PROGRAM
BETWEEN
PIERCE COUNTY AND CITY OF TACOMA

THIS INTERLOCAL AGREEMENT is entered into this day by and between
PIERCE COUNTY, a political subdivision of the State of Washington (herein referred
to as "COUNTY") and City of Tacoma, a municipal corporation of the State of
Washington (herein referred to as "CITY").

RECITALS

1. WHEREAS, the Washington State Growth Management Act (GMA), Chapter
36.70A Revised Code of Washington (RCW), directs development to urban areas,
discourages inappropriate conversion of undeveloped rural land into sprawling,
low-density development, and encourages the conservation of productive forest lands
and productive agricultural lands and the protection of habitat lands; and

2. WHEREAS, the transfer of development rights (TDR) is one tool available to
Washington communities to encourage the preservation of productive agricultural and
forest lands and the protection of habitat lands while also promoting higher density,
infill development within incorporated cities, consistent with the GMA and as provided
in the Regional Transfer of Development Rights Program, Chapter 43.362 RCW; and

3. WHEREAS, the Washington State Legislature recognizes the importance of a
regional transfer of development rights program; and

4. WHEREAS, the GMA requires counties to adopt countywide planning policies in
cooperation with cities; and

5. WHEREAS, the Pierce County Countywide Planning Policies direct jurisdictions in
Pierce County to implement programs and regulations to protect and maintain the rural
character of rural, farm and forest lands, and to direct growth to cities and urban
centers; and

6. WHEREAS, the COUNTY has developed a TDR program which, subject to adoption
of an interlocal agreement, authorizes cities to receive development rights transferred
from unincorporated rural and resource lands; and

7. WHEREAS, the COUNTY has a TDR bank that acquires development rights from
high priority conservation lands for purchase within cities; and the TDR bank can play
an important role to facilitate the City-County TDR market and is an integral part of the success of the Joint Program.

8. WHEREAS, the rural and resource lands in Pierce County are recognized as containing important citywide, countywide and regional public benefits such as forestry, open space, wildlife habitat, agricultural resources, and salmon habitat; and

9. WHEREAS, the CITY has identified rural and resource lands in Pierce County as one of its preservation priorities; and

10. WHEREAS, the CITY’s development regulations identify certain areas within the Tacoma city limits to actively consider as potential receiving sites for development rights from Pierce County, as a means to achieve conservation and preservation of resource and rural lands and to direct growth to the CITY; and

11. WHEREAS, the CITY’S Downtown and Mixed-Use Centers call for density incentives for residential and commercial development, and seek to increase public amenities to improve the pedestrian, park and transit oriented development pattern in these areas; and

12. WHEREAS, the CITY and the COUNTY share an interest in creating an effective, cooperative development rights transfer system to achieve the goals of the GMA, the Pierce County Countywide Planning Policies, and the City of Tacoma and the Pierce County Comprehensive Plans; and

13. WHEREAS, the COUNTY and the CITY are authorized, pursuant to Article XI of the Washington State Constitution, Chapter 39.34 RCW and RCW 43.362.050 to enter into a governmental cooperation agreement to accomplish these shared goals;

NOW, THEREFORE, in consideration of the terms and conditions contained herein, it is mutually agreed by and between the COUNTY and CITY as follows:

SECTION I. PURPOSE.

Purpose of this Interlocal Agreement is to provide for the transfer of development rights from Pierce County to the City of Tacoma and to memorialize the agreement between the parties relating to a Joint Program (hereafter the “Joint Program”) for the transfer of development rights from the Pierce County TDR Bank to the City; or from privately owned unincorporated Pierce County rural and resource lands as identified on Exhibit A, attached hereto and made a part of this Agreement, into the City of Tacoma according to the provisions described below.

SECTION II. CITY OBLIGATIONS

A. The CITY has adopted Ordinance No. 28087 to implement its Transfer of Development Rights Program. The City’s TDR Program provides incentives to protect
selected sending site properties while authorizing additional residential density, commercial square footage, and other uses at selected receiving sites inside the city limits. The TDR implementation program is codified in Chapter 1.37 Tacoma Municipal Code.

B. The CITY has designated Downtown and certain Mixed-Use Centers as receiving areas within which transferable development rights credits may be used; depicted in Exhibit B.

C. The CITY has adopted a receiving area ratio or ratios for the transferable development rights or development rights credits to be received.

D. The CITY has identified the following County “Sending Sites” described below and depicted in Exhibit A, as priorities for the transfer of development rights to the CITY:
   Pierce County Farm Land: Farm land designated as Agricultural Resource Land (ARL) in unincorporated Pierce County.
   Pierce County Forest Land: Forest Land designated as Forest Land (FL) situated in unincorporated Pierce County.

E. The provisions of the CITY’S TDR ordinance are consistent with the intent and purposes of the Joint Program. The CITY shall continue to permit the use of development rights at receiving sites within the CITY limits during the term of this Agreement from priority sending sites identified in Exhibit A unless other mutually agreeable sending sites are approved by the CITY.

F. The CITY agrees that development rights can be transferred from the Pierce County TDR Bank to the CITY or from privately owned unincorporated Pierce County rural and resource lands. All transfers to the CITY shall come from rural and resource lands depicted on Exhibit A.

G. The CITY shall notify the COUNTY in writing when it has approved the use of development rights that were purchased from private parties in a specific project. Upon approved use of COUNTY development rights on a specific receiving site within the CITY, the CITY shall ensure that the receiving site owner relinquishes the certificates to the COUNTY in conformance with the Chapter 18G.10 Pierce County Code (PCC) prior to issuing final building permits on the receiving site.

H. The CITY agrees to work in good faith with the COUNTY, private developers, and other receiving site landowners for the success of this Agreement.

I. The COUNTY and CITY agree to work in good faith to pursue grant funding for a Landscape Conservation and Local Infrastructure Program feasibility study to understand the benefits of the program to fund infrastructure improvements and to support conservation of farm and forest lands.
SECTION III. COUNTY OBLIGATIONS
A. The COUNTY adopted policies, regulations, and administrative procedures under
Chapter 18G.10 PCC to implement the COUNTY Transfer and Purchase of
Development Rights Program, which promotes and facilitates the purchase and sale of
development rights. The COUNTY Program’s adopted policies and regulations are also
consistent with the Joint Program.

B. The COUNTY will utilize Title 18G PCC to identify, qualify and certify sending
sites for use by the CITY from sites represented in accordance with Exhibit A.

C. The COUNTY acknowledges the provisions of the CITY’S TDR implementation
Ordinance are consistent with the intent and purposes of the Joint Program and this
Interlocal Agreement.

SECTION IV. JOINT DEMONSTRATION PROJECT
The COUNTY agrees to work in good faith with the CITY, private developers, and
designated sending site landowners for the success of this Agreement.

SECTION V. DURATION
A. Duration. This Agreement shall become effective on the date it is last signed by all
parties and shall be reviewed once the CITY meets its conservation goals and has
accepted 369 TDR credits.

B. Extension. Pursuant to a mutual written agreement between the COUNTY Executive
and CITY Mayor, this Agreement may be extended for a mutually agreed upon period
from the effective date of the extension. To extend the Agreement, the CITY or the
COUNTY shall make a written request to the other not less than sixty (60) days prior to
the end of this Agreement. The request shall specify the proposed term of the extension.
The parties must agree to the extension in writing by the termination date or the
agreement will lapse.

SECTION VI. ADMINISTRATION OF THE AGREEMENT.
This Agreement shall be administered for the CITY by the City Manager or his/her
designee and for the COUNTY by the County Executive, or his/her designee.

SECTION VII. INDEMNIFICATION AND DEFENSE.
A. The County shall defend, indemnify, and save harmless the CITY, its officers,
employees, and agents from any and all costs, claims, judgments, or awards of damages,
resulting from the acts or omissions of the COUNTY, its officers, employees, or agents
associated with this Agreement. In executing this Agreement, the COUNTY does not
assume liability or responsibility for or in any way release the CITY from any liability
or responsibility which arises in whole or in part from the existence or effect of CITY
ordinances, rules, regulations, resolutions, customs, policies, or practices. If any cause,
claim, suit, action or administrative proceeding is commenced in which the
enforceability and/or validity of any such CITY ordinance, rule, regulation, resolution,
custom, policy or practice is at issue, the CITY shall defend the same at its sole
expense, and if judgment is entered or damages are awarded against the CITY, the
COUNTY, or both, the CITY shall satisfy the same, including all chargeable costs and
attorney's service charges.

B. The CITY shall defend, indemnify, and save harmless the COUNTY, its officers,
employees and agents from any and all costs, claims, judgments, or awards of damages,
resulting from the acts or omissions of the CITY, its officers, employees or agents
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its sole expense, and if judgment is entered or damages are awarded against the
COUNTY, the CITY, or both, the COUNTY shall satisfy the same, including all
chargeable costs and attorney's service charges.

SECTION VIII. ASSIGNMENT. Neither the COUNTY nor the CITY shall have the
right to transfer or assign, in whole or in part, any or all of its obligations and rights
hereunder without the prior written consent of the other party.

SECTION IX. INDEPENDENT CONTRACTOR. Both the CITY and the COUNTY
are, and shall at all times be deemed to be, an independent contractor. Nothing herein
contained shall be construed as creating the relationship of employer and employee, or
principal and agent, between the CITY and the COUNTY or any of the CITY and
COUNTY's agents or employees. The CITY and the COUNTY shall each retain all its
authority for rendition of services, standards of performance, control of personnel, and
other matters incident to the performance of services pursuant to this Agreement.

SECTION X. NO THIRD PARTIES. This Agreement is made and entered into for
the sole protection and benefit of the parties hereto. No other person or entity shall have
any right of action or interest in this Agreement based upon any provision set forth
herein.

SECTION XI. WAIVER. No waiver by either party of any term or condition of this
Agreement shall be deemed or construed to constitute a waiver of any other term or
condition or of any subsequent breach, whether of the same or a different provision of
this Agreement.
SECTION XII. ENTIRE AGREEMENT. This Agreement contains all of the Agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose. It is the complete expression of the terms hereof and any oral representation or understanding not incorporated herein is excluded.

SECTION XIII. AMENDMENT. Provisions within this Agreement may be amended with the mutual consent of the parties hereto. No additions to, or alteration of, the terms of this Agreement shall be valid unless made in writing, formally approved, and executed by duly authorized agents of both parties.

SECTION XIV. NOTICES. Any notice, approval or communication that either party is required to send under this Interlocal Agreement must be given in writing to the following addresses:

To City of Tacoma:

To Pierce County:

or to such other address as either party designates by written notice to the other.

SECTION XVI. SEVERABILITY. If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.
IN WITNESS WHEREOF, the parties have caused this Interlocal Agreement to be executed on this _____ day of __________, 20__.

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Approved as to Form:

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PIERCE COUNTY

DEPARTMENT DIRECTOR Date

DEP. PROSECUTING ATTORNEY Date (as to legal form only)

BUDGET AND FINANCE Date

COUNTY EXECUTIVE Date (if over $250,000)
1. DATE: August 28, 2012

2. SPONSORED BY: COUNCIL MEMBER(S) N/A

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<thead>
<tr>
<th>3a. REQUESTING</th>
<th>4a. CONTACT (for questions):</th>
<th>PHONE:</th>
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<tbody>
<tr>
<td>DEPARTMENT/DIVISION/PROGRAM Community &amp; Economic Development</td>
<td>Ian Munce</td>
<td>253-573-2478</td>
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<tr>
<td>Department/Comprehensive Planning</td>
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<th>3b. “DO PASS” FROM Economic Development Committee</th>
<th>4b. Person Presenting:</th>
<th>PHONE:</th>
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<tbody>
<tr>
<td>× Yes</td>
<td>Ian Munce</td>
<td>253-573-2478</td>
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<tr>
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<th>3c. DID THIS ITEM GO BEFORE THE PUBLIC UTILITY BOARD?</th>
<th>4c. ATTORNEY:</th>
<th>PHONE:</th>
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<tbody>
<tr>
<td>× Yes</td>
<td>Jeff Capell</td>
<td>253-591-5638</td>
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5. REQUESTED COUNCIL DATE: September 18, 2012

(If a specific council meeting date is required, explain why; i.e., grant application deadline, contract expiration date, required contract execution date, public notice or hearing required, etc.)

Compliance with Grant terms and conditions

6. SUMMARY AGENDA TITLE: (A concise sentence, as it will appear on the Council agenda.)

Implementing a Transfer of Development Rights Program by Interlocal Agreement between the City and Pierce County.

7. BACKGROUND INFORMATION/GENERAL DISCUSSION: (Why is this request necessary? Are there legal requirements? What are the viable alternatives? Who has been involved in the process?)

Zoning and development regulations simply do not provide permanent protections for agricultural lands, historic buildings, open space, and affordable housing. Transfers of Development rights (TDR) is a tool that exchanges permanent, recorded conservation easements over important lands and buildings in one location(s) (“sending areas”) for increases in density in another location(s) (“receiving areas”). Counties and cities authorize the transaction(s) but the market sets the dollar value(s) of the exchanges.

The State Growth Management Act and recent supplemental legislation strongly support the use of TDRs. This support is reflected in federal grant funding for TDR programs, regional planning policies, the City’s Comprehensive Plan policies, and the City’s Development Regulations for its Commercial Mixed-Use Centers and Downtown. More specifically, the City’s participation in a regional TDR program qualifies the City to use tax increment financing (TIF) for targeted infrastructure improvements.

It is within this context that the City was awarded a $109,000 grant from the federal Environmental Protection Agency to develop and implement a TDR program. This project was introduced to City Council at a July 19, 2011 Study Session and a progress report was given to the Economic Development Committee (EDC) on February 29, 2012. The EDC expressed particular concern about the economic viability of a TDR program in the current economy and the Study focused heavily on this topic.
The Study concludes that: the City’s current zoning incentives for Commercial Mixed-Use Centers and Downtown to receive TDRs are of sufficient scale and scope to support a large-scale TDR program; the zoning incentives can, with relatively minor adjustments, be adjusted to produce an effective TDR program; focusing on the regional TDR program established by State statute will over the medium and long term allow the City to qualify for Tax Increment Financing (TIF); and, TDR implementation can best be addressed over the short term by Council actions that will facilitate demonstration projects.

The proposed resolution would approve an Interlocal Agreement with Pierce County that will allow demonstration projects to move forward. This topic was on the agenda of the August 28, 2012, Economic Development Committee, and the Committee gave it a “do pass.”

8. **LIST ALL MATERIAL AVAILABLE AS BACKUP INFORMATION FOR THE REQUEST AND INDICATE WHERE FILED:**

<table>
<thead>
<tr>
<th>Source Documents/Backup Material</th>
<th>Location of Document</th>
</tr>
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<tbody>
<tr>
<td>Transfer of Development Rights Program</td>
<td><a href="http://www.cityoftacoma.org/planning">www.cityoftacoma.org/planning</a> (click on “Transfer of Development Rights)</td>
</tr>
<tr>
<td>Market Study for the City of Tacoma, August 17, 2012</td>
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9. **WHICH OF THE CITY’S STRATEGIC GOALS DOES THIS ITEM SUPPORT? (CHECK THE GOAL THAT BEST APPLIES)**

   A. □ A SAFE, CLEAN AND ATTRACTIVE COMMUNITY
   B. ☑ A DIVERSE, PRODUCTIVE AND SUSTAINABLE ECONOMY
   C. □ A HIGH-PERFORMING, OPEN AND ENGAGED GOVERNMENT

10. **SUSTAINABILITY: Does this request meet the City’s Sustainability Priorities? (check all that apply)**

    ☑ Environment: improve regional and local ecological well-being.
    ☑ Equity: promote meeting basic needs and equitable access to opportunities for all city residents.
    ☑ Culture: improve the cultural and quality of life for all citizens.
    ☑ Economy: contribute to economic development and serve as a responsible steward of public resources.

    Describe how this request supports the above sustainability priorities.

    A TDR program is a tool that is available to advance each of these priorities. It is proposed to be used in the City: to protect regional and local lands of ecological importance, to operate citywide, to protect historic buildings, and to provide public benefits in exchange for increased density.
11. **IF THIS CONTRACT IS FOR AN AMOUNT OF $200,000 OR LESS, EXPLAIN WHY IT NEEDS LEGISLATIVE APPROVAL:**

   N/A

12. **FINANCIAL IMPACT:**  
   - ☐ EXPENDITURE  
   - ☐ REVENUE

   - A. ☒ NO IMPACT (NO FISCAL NOTE)
   - B. ☐ YES, OVER $100,000, Fiscal Note Attached
   - C. ☐ YES, UNDER $100,000, (NO FISCAL NOTE)

   **Provide funding source information below:**

   **FUNDING SOURCE:** (Enter amount of funding from each source)

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<tr>
<th>Fund Number &amp; Name</th>
<th>State $</th>
<th>City $</th>
<th>Other $</th>
<th>Total Amount</th>
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   If an expenditure, is it budgeted?  
   - ☐ Yes  
   - ☐ No  
   Where? Cost Center:  
   Acct #:  

   [Image: cotclerk\forms\RequestResolutionOrdinance.doc]  
   [Office of the City Clerk (01/07/2011)]
TO: J.C. Broadnax, City Manager  
FROM: Ricardo Noguera, Director, Community & Economic Development Department  
SUBJECT: Implementing a Transfer of Development Rights Program within the City  
DATE: September 11, 2012

SUMMARY
The purpose of this memorandum is to seek approval from the City Council for a set of actions that will allow Transfer of Development Rights (TDR) transactions to occur within the City of Tacoma, a set of actions that received a "do pass" from the Economic Development Committee on August 28, 2012. This item is being brought forward at this time pursuant to a grant agreement with King County and the federal Environmental Protection Agency and a research study ("Study") that was conducted as a part of this grant agreement; this Study can be found at www.cityoftacoma.org/planning (and under Hot Topics, click on "Transfer of Development Rights (TDR)").

BACKGROUND
Zoning and development regulations simply do not provide permanent protections for agricultural lands, historic buildings, open space, and affordable housing. Transfers of Development Rights (TDR) is a tool that exchanges permanent, recorded conservation easements over important lands and buildings in one location(s) ("sending areas") for increases in density in another location(s) ("receiving areas"). Counties and cities authorize the transaction(s), but the market sets the dollar value(s) of the exchanges.

The State Growth Management Act and recent supplemental legislation strongly support the use of TDRs. This support is reflected in federal grant funding for TDR programs, regional planning policies, the City's Comprehensive Plan policies, and the City's Development Regulations for its Commercial Mixed-Use Centers and Downtown. More specifically, the City's participation in a regional TDR program qualifies the City to use tax increment financing (TIF) for targeted infrastructure improvements.

It is within this context that the City was awarded a $109,000 grant from the federal Environmental Protection Agency to develop and implement a TDR program. This project was introduced to City Council at a July 19, 2011, Study Session and a progress report was given to the Economic Development Committee (EDC) on February 29, 2012. The EDC expressed particular concern about the economic viability of a TDR program in the current economy and the Study focused heavily on this topic.

The Study concludes that the City's current zoning incentives for Commercial Mixed-Use Centers and Downtown to receive TDRs is of sufficient scale and scope to support a large-scale TDR program; the zoning incentives can, with relatively minor adjustments, be adjusted to produce an effective TDR program; focusing on the regional TDR program established by State statute will, over the medium and long term, allow the City to qualify for Tax Increment Financing (TIF); and TDR implementation can best be addressed over the short term by Council actions that will facilitate demonstration projects.

Under the staff recommendation the potential fiscal impacts can be analyzed on a case by case basis as each demonstration project is moved forward.
ACTION REQUEST
On September 18, the City Council will consider three pieces of legislation that will allow TDR transactions to occur within the City of Tacoma: (1) an ordinance putting the TDR Administrative Provisions in place, (2) a resolution allowing TDR transactions to occur between the City of Tacoma and King County and between the City of Tacoma and Snohomish County; and, (3) a resolution approving an Interlocal Agreement that would allow TDR transactions to occur between the City of Tacoma and Pierce County.
Resolution No. **38536**  
Adopted: **SEP 18 2012**  
Maker of Motion:  
Seconded:  

Voice Vote:

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<th>MEMBERS</th>
<th>AYES</th>
<th>NAYS</th>
<th>ABSTAIN</th>
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<tr>
<td>Mr. Boe</td>
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<td>Mr. Campbell</td>
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<td>Mayor Strickland</td>
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Roll Call Vote:

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