11-0714

INTERGOVERNMENTAL AGREEMENT
Between Spokane County and the City of Airway Heights Regarding Commute Trip Reduction Implementation

THIS AGREEMENT, made and entered into this 21st day of November 2011 by and between the City of Airway Heights, a municipal corporation of the State of Washington, having offices for the transaction of business at 1208 S. Lundstrom, Airway Heights, WA, 99001, hereinafter referred to as the "City" and Spokane County, a political subdivision of the State of Washington, having offices for the transaction of business at West 1026 Broadway Avenue, Spokane, Washington, 99260, hereinafter referred to as the "County," jointly hereinafter referred to as the "Parties."

WITNESSETH

WHEREAS, the Washington State Legislature has adopted legislation codified in RCW 70.94.521 through 551, the purpose of which is to improve air quality, improve transportation system efficiency and reduce the consumption of petroleum fuels through employer-based programs that encourage the use of alternatives to the single occupant vehicle for commute trips and reduce vehicle miles traveled (VMT); and

WHEREAS, RCW 70.94.527 requires counties containing urban growth areas and cities and towns with "major employers," that are located within urban growth areas with a state highway segment exceeding the threshold of one hundred person hours of delay or jurisdictions that are located in contiguous urban growth areas, or are within an urban growth area with a population greater than seventy thousand people that adopted an ordinance before the year 2000 or jurisdictions that are located in contiguous urban growth areas, or contain a major employment installation in an affected county to develop ordinances, plans and programs to reduce Vehicle Miles Traveled (VMT) and Single Occupant Vehicle (SOV) commute trips, and thereby reduce vehicle-related air pollution, traffic congestion and energy use, and

WHEREAS, the County and each affected city within Spokane County have adopted Commute Trip Reduction Ordinances and must implement a Commute Trip Reduction (CTR) Plan for all major employers; and

WHEREAS the WSDOT Public Transportation Division is responsible for administering funds on behalf of the state legislature and is desirous of making available to Spokane County certain funds and requiring Spokane County to enter into agreements through the Interlocal Cooperation Act or by Resolution or Ordinance as appropriate with other jurisdictions, local transit agencies, or regional transportation planning organizations to coordinate the development, implementation and administration of CTR Plans and Ordinances as described in RCW 70.94.521-551

WHEREAS, Spokane County has entered into an agreement with the Washington State Department of Transportation under Agreement No. GCA6900, hereinafter referred to as "WSDOT Agreement," pursuant to which Spokane County is eligible to receive a reimbursable

amount of funds which the County will distribute to itself and cities to implement and administer Commute Trip Reduction Plans and Ordinances; and

WHEREAS, Spokane County has allocated $11,010.03 to the City from the contract Agreement No. GCA6900 which the City is now desirous of making available to the County to perform those tasks which are the responsibility of the City.

NOW, THEREFORE, for and in consideration of the mutual promises set forth hereinafter, and as authorized under chapter RCW 70.94.527 (5), the parties hereto do mutually agree as follows:

Section 1: PURPOSE

The County has entered into a WSDOT Agreement with the Washington State Department of Transportation under which it will receive $367,001 for two years. This funding is to be allocated to the County and cities within Spokane County for their use in the implementation and administration of their Commute Trip Reduction Plans and Ordinances. The County, based upon an allocation formula established by the Washington State Department of Transportation, has determined that the City shall receive $11,010.03 from the WSDOT Agreement from which it shall perform certain tasks. The City agrees to its proportionate share of the monies made available to the County in the WSDOT Agreement and agrees to allow Spokane County to retain its proportionate share in consideration of the County performing those tasks as more particularly set forth in Attachment "A" attached hereto and incorporated herein by reference. In conjunction with allowing the County to retain its proportionate share of monies, the City will execute any and all necessary documents which may be required by the Washington State Department of Transportation.

It is understood by the parties hereto, that in order for the County to perform those tasks as set forth in Attachment "A" for the City, the City must perform certain tasks. Attached hereto as Attachment "B" and incorporated herein by reference, is a listing of tasks which the City agrees to perform in conjunction with the County performing those tasks set forth in Attachment "A."

Section 2: DURATION

The County agrees to provide those tasks set forth in Section 1 and complete performing such tasks on or before June 30, 2013.

Section 3: TERMINATION

The parties agree that this Agreement may be terminated by either party for material breach of any provision set forth herein, upon ninety (90) days advance written notice to the other party at the address set forth hereinabove. Provided, however, the parties agree that any notification of termination shall set forth the specific provision(s) for which such notification is being provided and additionally, advise that if such default is cured within such ninety (90) day time frame, said termination notification shall be of no force and effect.

In the event of termination, the County agrees to provide to the City all written documentation which it has completed to the date of termination under the terms of this Agreement. Additionally, the County agrees to return to the City that portion of the monies set forth in Section 1 hereinabove, which has not been expended by the county, prior to the date of termination, on the City's behalf in providing those tasks as set forth in Attachment "A."

Provided, further, the parties recognize that the Washington State Department of Transportation in Agreement No. GCA6900, has retained the right to unilaterally terminate all or a part of such contract if there is a reduction of funds from the funding source. Accordingly, in the event that the Washington State Department of Transportation terminates all or part of the WSDOT Agreement with Spokane County, and such action affects the allocation of funds by the County to the City herein, and/or modifies the tasks to be performed hereunder, the parties will immediately meet to renegotiate the provisions of this Agreement.

Section 4: DESIGNATION OF ADMINISTRATOR

The County hereby designated Ms. Aurora J. Crooks, the Spokane County Transportation Demand Management Manager, as its designee for the purpose of administering and coordinating the County's responsibilities under the terms of this Agreement.

Section 5: ACQUISITION/DISPOSITION OF PROPERTY

The parties hereto agree that any real or personal property acquired by the County with those monies made available to the County by the City under Section 1 hereinabove shall be and remain the sole property of the County upon acquisition and/or termination of this Agreement.

Section 6: COMPLIANCE WITH LAWS

The County agrees to observe all applicable federal, state and local laws, ordinances and regulations including, but no necessarily limited to, the Americans with Disabilities Act and chapter 49.60 RCW, to the extent that they may have any bearing on performing those tasks for the City as set forth in Section 1 hereinabove. Additionally, the County agrees to comply with all applicable funding audit requirements of the Washington State Department of Transportation in conjunction with performing those tasks for the City. The County agrees to make available to the City or its duly authorized representative during normal County business hours any and all records which it has kept in conjunction with providing those services for the City as set forth herein above.

Section 7: NOTICES

All notices or other communications given under this Agreement shall be considered given on the day such notices or other communications are received when sent by personal delivery; or the third day following the day on which the notice or communication has been mailed by certified mail delivery, receipt requested and postage prepaid addressed to the other Party at the address set forth

below, or at such other address as the Parties shall from time-to-time designate by notice in writing to the other Party:

CITY:	Mayor or designee City of Airway Heights 1208 S. Lundstrom Airway Heights, WA, 99001
COUNTY:	Board of County Commissioners Spokane County Courthouse 1116 West Broadway Avenue Spokane, Washington 99260

Section 8: HEADINGS

The section headings in this Agreement have been inserted solely for the purpose of convenience and ready reference. In no way do they purport to, and shall not be deemed to, define, limit or extend the scope or intent of the sections to which they appertain.

Section 9: MODIFICATION

No modification or amendment of this Agreement shall be valid until the same is reduced to writing and executed with the same formalities as this present Agreement.

Section 10: ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto. The City has read and understands all of this Agreement, and now states that no representation, promise or agreement not expressed in this Agreement has been made to induce the City to execute the same.

Section 11: LIABILITY

The County shall indemnify, defend and hold harmless the City, its officers and employees from all claims, demands, or suits in law or equity arising from the County's intentional or negligent acts or breach of its obligations under the Agreement. The County's duty to indemnify shall not apply to loss or liability caused by the intentional or negligent acts of the City, its officers and employees.

The City shall indemnify, defend and hold harmless the County, its officers and employees from all claims, demands, or suits in law or equity arising from the City's intentional or negligent acts or breach of its obligations under the Agreement. The City's duty to indemnify shall not apply to loss or liability caused by the intentional or negligent acts of the County, its officers and employees.

If the comparative negligence of the Parties and their officers and employees is a cause of such damage or injury, the liability, loss, cost, or expense shall be shared between the Parties in proportion to their relative degree of negligence and the right of indemnity shall apply to such proportion.

Where an officer or employee of a Party is acting under the direction and control of the other Party, the Party directing and controlling the officer or employee in the activity and/or omission giving rise to liability shall accept all liability for the other Party's officer or employee's negligence.

Each Party's duty to indemnify shall survive the termination or expiration of the Agreement.

Each Party waives, with respect to the other Party only, its immunity under RCW Title 51, Industrial Insurance. The Parties have specifically negotiated this provision.

Section 12: ANTI-KICKBACK

No officer or employee of the City, having the power or duty to perform an official act or action related to this Agreement shall have or acquire any interest in the Agreement, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in the Agreement.

Section 13: VENUE STIPULATION

This Agreement has been and shall be construed as having been made and delivered within the State of Washington. This Agreement shall be governed by the laws of the State of Washington both as to interpretation and performance. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement, or any of its provisions, shall be instituted only in courts of competent jurisdiction within Spokane County, Washington.

Section 14: COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same.

Section 15: SEVERABILITY

If any parts, terms or provisions of this Agreement are held by the courts to be illegal, the validity of the remaining portions or provisions shall not be affected and the rights and obligations of the Parties shall not be affected in regard to the remainder of the Agreement. If it should appear that any part, term or provision of this Agreement is in conflict with any statutory provision of the State of Washington, then the part, term or provision thereof that may be in

conflict shall be deemed inoperative and null and void insofar as it may be in conflict therewith and this Agreement shall be deemed to modify to conform to such statutory provision.

Section 16: RCW 39.34 REQUIRED CLAUSES

A. PURPOSE: See Section 1.

B. DURATION: See Section 2.

C. ORGANIZATION OF SEPARATE ENTITY AND ITS POWERS: No new or separate legal or administrative entity is created to administer the provisions of this Agreement.

D. RESPONSIBILITIES OF THE PARTIES: See Agreement provisions.

E. AGREEMENT TO BE FILED: The City shall file this Agreement with its City Clerk. The County shall file this Agreement with its County Auditor or place it on its web site or other electronically retrievable public source.

F. FINANCING: See Section 1.

G. TERMINATION: See Section 3.

H. PROPERTY UPON TERMINATION: See Section 5.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

Al French, Chair

Todd Mielke, Vice Chair

Mark Richard, Commissioner

CITY OF Airway Heights

By:

ATTEST:

Richard G Cook

Title: CLERK-TREASURER

ATTEST:

By Daniela Erickson

Daniela Erickson
Clerk of the Board

Exhibit I
Funding Allocation Methodology

RCW 70.94.544 authorizes the CTR Board to determine the allocation of program funds made available for the purpose of implementing CTR plans. The funding allocated for local implementation of CTR activities in July 1, 2011 through June 30, 2013 is based on the decision taken by the CTR Board at its May 20, 2011 meeting. At that meeting, the CTR board decided to allocate funding for the period between July 1, 2011 and June 30, 2013.

ATTACHMENT "A"

STATEMENT OF WORK

The County will:

1. Promote consistency within all affected local government jurisdictions within Spokane County, while serving the City's specific needs.

2. Maintain and administer the City's CTR Ordinances and Plan.

3. Employ a full-time Transportation Demand Management Manager to administer the County's and City's CTR Plans and Ordinances.

4. Take reasonable measures to identify and notify all affected employers within the City.

5. Assist each affected employer within the City in preparing a program and promoting the principles of Transportation Demand Management (TDM) with the employer's employees.

6. Maintain an appeals process consistent with RCW 70.94.537(2)(e) by which major employers, who as a result of special characteristics of their business or its locations would be unable to meet the requirements of a commute trip reduction plan, may obtain a waiver or modification of those requirements and criteria for determining eligibility for waiver or modification. Within 30 days from the date of approval, submit to WSDOT the name and employer identification code for any worksite that has been granted an exemption. Include information about the duration of all exemptions and information on the type of modification granted.

7. Submit to Washington State Department of Transportation periodic progress reports summarizing the overall CTR implementation costs incurred by the County and shall be reported in a format provided by WSDOT.

8. Provide WSDOT with a public hearing notice and copies of any proposed amendments to the CTR ordinance, plan, and/or administrative guidelines within the first week of the public review period and final copies of all actions within one (1) month of adoption.

9. Coordinate and administer baseline and measurement CTR employer surveys. Provide employer survey assistance, training and state-supplied survey forms.

10. Notify Washington State Department of Transportation prior to sending any surveys to University of Washington for processing. The notification must include the name of the worksite, employer identification code and type of survey for each survey being

submitted for processing. The notification shall be submitted as an electronic spreadsheet via electronic mail. The County agrees to wait for confirmation from WSDOT prior to sending or delivering the surveys for processing.

11. Provide WSDOT with updated lists of affected worksites and jurisdiction contacts on a periodic basis or as requested by WSDOT. These updates will be submitted electronically in a format specified by WSDOT.

12. Continue to monitor the programs of each of the affected employers in the City to determine compliance with the CTR Ordinance and Plan. Complete annual review of employer CTR programs including a determination as to whether the employer is acting in good faith to meet the goals established by the CTR Law.

13. Provide on-going support to all employer designated Employee Transportation Coordinators (ETCs) and assist ETCs in facilitating regular employer networking opportunities and obtaining information necessary to perform their duties including information materials that explain a range of measures and activities to encourage employee use of commute alternatives.

14. Market available services to affected employers to assist in accomplishing CTR goals.

15. Work collaboratively with and provide technical guidance and support to employers in developing successful CTR programs.

16. Conduct at least one Basic ETC Training Course per year, using WSDOT-provided ETC Handbook and other training materials reviewed and approved by WSDOT.

17. Provide employers with written information on basic requirements of the CTR ordinance and goals set forth in approved CTR plans.

18. Attend transportation or health/benefits fairs at affected employer worksites to encourage high-occupancy vehicle commuting and promote the employer's CTR program.

19. Design, construct and distribute worksite Commuting Options Boards. Provide professional materials such as brochures, flyers, posters, newsletters, clip art and other tools to assist employer implementation of worksite CTR programs.

20. Provide all affected employers with the WSDOT-approved "Program Description & Employer Annual Report" form. Ensure completed reports are submitted by affected employers to meet applicable deadlines.

21. Submit to Washington State Department of Transportation periodic invoices along with progress reports that accurately assess the progress made by County, on behalf of City, in implementing RCW 70.94.521-551.
Report contents include:

a. Detailed summary of CTR events and projects, including implementation assistance provided to affected employers within the City;
b. Actual total CTR expenditures used by the County for all state CTR funds expended by the County during the previous quarter for the purpose of CTR implementation using WSDOT pre-approved format;
c. Updated list of affected employers and worksites (electronic);
d. Total number of worksites by jurisdiction;
e. List of sites which have applied for exemptions or modifications;

22. Establish and maintain books, records, documents and other evidence and accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred solely for the performance of this Agreement. Establish and maintain a separate "CTR Account" within Spokane County along with supporting documentation such as payroll and time records, invoices, contracts, vouchers or products proving in proper detail the nature and propriety of the charges.

23. Participate in local implementation of statewide CTR public awareness and recognition programs developed by Washington State Department of Transportation.

24. Offer recommendations to the City for policies on parking and site design which will encourage the use of alternative transportation modes.

25. Encourage employers to develop site designs and improvements to office and industrial sites that promote the use of alternative transportation modes.

26. Assist Washington State Department of Transportation with CTR evaluation.

27. Serve as liaison between Washington State Department of Transportation and cities, towns, transit agencies and regional transportation planning organizations for the purpose of RCW 70.94.521-551.

28. Continue applying for funding opportunities to further encourage the use of commute alternatives.

ATTACHMENT "B"

STATEMENT OF WORK

The City will:

1. Provide Spokane County with copies of any proposed amendments to the CTR Plan and Ordinance.

2. Provide Spokane County with copies of any CTR-related amendments to parking ordinances prior to public review.

3. Develop, implement and maintain its own CTR Program as an affected employer or as otherwise specified in the CTR Board Guidelines or RCW 70.94.521-551.

4. Reimburse the County for the services provided by this Agreement in an amount equal to the City's share of the CTR funding as provided in RCW 70.94.544.