

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement (“Agreement”) is entered into as of April 26, 2006, by and between the KALISPEL TRIBE OF INDIANS, a federally recognized Indian tribe (the “Tribe”), the CITY OF AIRWAY HEIGHTS, a non-charter code city of the State of Washington (“City”), and SPOKANE COUNTY, a county of the State of Washington (“County”) (the “Parties”).

1. Introduction

1.1 The Tribe owns approximately 250 acres of real property (“Property”) within the City and County that is suitable for development beyond its present use for the benefit of the Tribe and the community, fully described in Exhibit A hereto.

1.2 As a recognized Indian tribe, with the Property held in trust for the Tribe by the United States, the Tribe has sovereign immunity and is not subject to state and local laws and regulations, including taxation, zoning, and land use restrictions. Nevertheless, the Parties have demonstrated their commitment to an open government to government relationship by entering into this Agreement which outlines the understanding of the Parties.

1.3 The benefit to the Tribe is the opportunity to enter into the Agreement providing certain services to the Tribe and cooperation from the City and County in the development of the Property.

1.4 The mutual benefit to the Parties is to utilize the status and unique opportunities of each as separate governments to cooperate and partner in such projects and undertakings over time as will serve the interests of the Parties and the interests of the public health and safety of the City and County and their residents, as well as the Tribe.

2. Utilities

2.1 Guaranteed Hook Up to Sewer and Water Services. The Property will be served by City public water and sewer through the City’s municipal utilities. The City guarantees hook up to the Tribe for so long as capacity exists. The City shall notify and cooperate with the Tribe as soon as it becomes apparent that capacity may not be sufficient to provide sewer and water services to the Property, to take action with the Tribe to increase capacity. Upon mutual agreement of the City, the Tribe has the option to pre-pay for utilities in order to reserve capacity for development of the Property. The Tribe, at its sole cost and expense, agrees to extend the City’s sanitary sewer and water systems to the Property including

paying for all required surveys, engineering, permitting, and environmental analysis necessary for the design and construction of the water and sanitary sewer system. The design and construction of the sewer and water system shall be in reasonable conformity with Chapters 13.06 and 13.04, respectively, of the Airway Heights Municipal Code and the City Public Works Standards. The Parties shall use all reasonable efforts to cooperate to increase capacity so that the Property can be serviced.

2.2 Sanitary Sewer.

Each user on the Property (building or dwelling unit) will be connected individually and shall be in reasonable conformity with Chapter 13.06 of the Airway Heights Municipal Code, along with the most current adopted version of the City's Public Works Standards manual.

Upon connection to the City sanitary sewer, the users shall pay, prior to occupancy, the current sewer capital connection charge as established by City Council Resolution and Ordinance. Similar to other City ratepayers, the users will pay the City a monthly service fee for sewer service based upon rates, annually, adopted by the City Council.

2.3 Water Service.

Each user on the Property (building or dwelling unit) will be connected individually and shall be in reasonable conformity with Chapter 13.04 of the Airway Heights Municipal Code, along with the most current adopted version of the City's Public Works Standards manual.

Upon connection to the City water system, the users shall pay, prior to occupancy, the current water capital connection charge as established by City Council Resolution and Ordinance. Similar to other City ratepayers, the users will pay the City a monthly service fee for water service based upon rates, annually, adopted by the City Council.

Additionally, the City has acquired and is aggressively pursuing the development of water rights for water utility in a manner consistent with the City Water Facility Plans. Such Facility Plans will include, to the extent requested by the Tribe, the Property.

2.4 Stormwater. The stormwater facilities shall be constructed and shall be in reasonable conformity with the standards set forth in the Airway Heights Public Standards.

2.5 Quality of Service. The City shall provide the quality of sewer and water services commensurate with services provided to properties of similar density and use in the City.

3. **Traffic Impacts**

3.1 Traffic Impact Analysis. The Tribe agrees it will obtain a traffic impact analysis ("TIA") prepared by a licensed professional engineer, in reasonable conformity with the requirements for traffic studies set forth in the Spokane County Standards for Road and Sewer Construction, Technical Reference "A." The TIA shall identify traffic impacts and propose mitigation of the direct impacts as a result of the project. The TIA shall be reviewed by the City and County. Comments from the City and County shall be reviewed and reasonably considered by the Tribe.

3.2 Street Improvements. Commensurate with development of the Property, the Tribe shall make street and intersection improvements identified in the TIA to provide for the safe and efficient vehicle and pedestrian movements and maintain traffic levels of service (LOS) at their pre-development levels, unless otherwise agreed by the City or County and be in reasonable conformity with City and County standards.

4. **Master Plan**

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

5. **Fees for Services and Impacts**

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

mitigation provided in Paragraph 3 are also intended to compensate the City and County for any direct or indirect impacts caused to the City and County by development of the Property and placement of the Property into trust.

5.2 Annual Payment. The Tribe shall pay the City and the County a joint total payment of \$25,000 on or before January 12, 2007. On or before January 12 of each subsequent year for the following fourteen (14) years, that joint payment shall be increased by \$25,000. The \$25,000 increase ends at Year 15. In addition, the payment shall be increased by three (3) percent beginning in Year 11 and each year thereafter. A payment schedule is attached hereto as Exhibit B.

6. **Sprague Avenue**

6.1 Condemnation. The City agrees that it will diligently and expeditiously take all actions necessary to condemn private property between the Tribe's reservation and Sprague Avenue for the purpose of re-routing Sprague Avenue to a new intersection with Hayford Road as mutually agreeable among the City, County, and the Tribe, or for purposes of an easement across Sprague Avenue, to the Tribe's reservation along its current route. Following consultation with the Tribe, review and receipt of reasonable and necessary traffic engineering information from the Tribe identifying the street improvement and property acquisition, a determination of fair market value, and tender of an offer to purchase the property, the City within sixty (60) days of the purchase offer being rejected will place on the City Council Agenda an ordinance commencing condemnation of the necessary property. The Tribe will pay all costs, including just compensation to condemnees, and reasonable attorney fees associated with these actions and related physical improvements.

7. **Dismissal of Appeal**

The City and County shall dismiss their respective appeals of the Regional Director's fee-to-trust decision before the Interior Board of Indian Appeals within five (5) business days of execution of this Agreement by the Parties and lapse of 30 days or ratification by the Tribe's General Council, whichever is shorter.

8. **Enforcement**

8.1 Notice of dispute. If either party has a dispute under this Agreement, it shall provide written notice as follows.

To the Tribe: Kalispel Tribe of Indians
Attn: Tribal Administrator
Post Office Box 39
Usk, Washington 99180

To City: City of Airway Heights
Attn: City Manager
1208 S. Lundstrom Avenue
Airway Heights, Washington 99001-0969

To County: Spokane County
Attn: Chief Executive Officer
1116 W. Broadway Avenue
Spokane, Washington 99260

The notice shall provide a brief description of the dispute.

8.2 Mediation. If the Parties are unable to resolve the dispute within 20 business days, the parties shall engage John Bickerman as a mediator to assist the parties in resolving the dispute. If Mr. Bickerman is no longer providing mediation services, the Parties shall agree on a new mediator of similar experience and background in the issues at hand. The mediator's fees and costs shall be equally shared by whichever Parties are involved in the dispute.

8.3 Arbitration. If the Parties cannot resolve their dispute through mediation, the exclusive remedy is binding (non-administered) arbitration and they shall engage Mr. Bickerman as an arbitrator and use the rules of The CPR Institute for Dispute Resolution. If Mr. Bickerman is no longer providing arbitration services, the Parties shall agree on a new arbitrator of similar experience and background in the issues at hand. The arbitrator's fees and costs shall be equally shared by whichever Parties are involved in the dispute. The arbitrator's decision shall be final and binding on the Parties.

8.4 Limited Waiver of Immunity. The Parties hereby waive their respective immunity solely for the limited purpose of enforcing the Parties' agreement to arbitrate and arbitrator's decision. The arbitrator's award may be enforced in a court of competent jurisdiction in the following order of preference: (1) United States District Court for the Eastern District of Washington in Spokane; (2) Spokane County Superior Court; and (3) Kalispel Tribal Court.

9. Governing Law

This Agreement shall be governed by the laws of the State of Washington. To the extent state law does not address the relevant issues, the laws of the Kalispel Tribe and the United States, as applicable, shall apply.

10. Community Relations

The Tribe, City, and County agree to consult with each other in good faith prior to the distribution of any press release or prior to any public announcement and/or public statement with respect to the substance of this Agreement. The Tribe, City, and County further agree to consider any suggested changes to any press release or public announcement and/or statement proposed by any other party. The Tribe, City, and County agree to acknowledge in conjunction with such press release or public announcement and/or statement the statements contained in the Introduction to this Agreement.

CITY OF AIRWAY HEIGHTS:

By Charles Freeman
Charles Freeman
City Manager

ATTEST:

Richard G. Cook
City Clerk/Treasurer

APPROVED AS TO FORM:

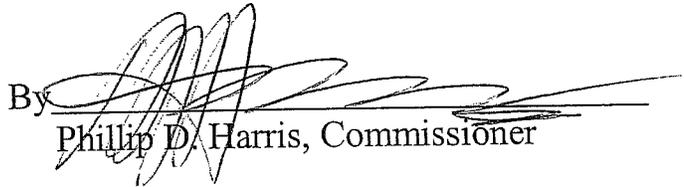
Stanley M. Schwartz
Stanley M. Schwartz, City Attorney

**BOARD OF COUNTY
COMMISSIONERS OF SPOKANE
COUNTY, WASHINGTON:**

By 
Todd Mielke, Chair



By 
Mark Richard, Vice-Chair

By 
Phillip D. Harris, Commissioner

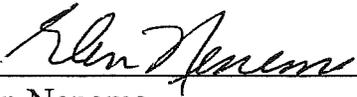
ATTEST:

By 
Daniela Erickson
Clerk of the Board

APPROVED AS TO FORM:


Deputy Civil Prosecuting Attorney

KALISPEL TRIBE OF INDIANS

By 
Glen Nenema
Tribal Chair

ATTEST:

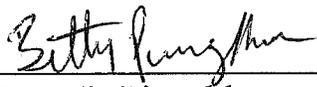

Betty Jo Piengkham
Secretary of the Tribal Business Committee

EXHIBIT A

PARCEL 1:

THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 25 NORTH, RANGE 41 EAST, W.M.;
EXCEPT THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SAID NORTHEAST QUARTER;
AND EXCEPT HAYFORD TRAILS ROAD;
SITUATE IN THE CITY OF AIRWAY HEIGHTS, COUNTY OF SPOKANE, STATE OF WASHINGTON.

PARCEL 2:

THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 25 NORTH, RANGE 41 EAST, W.M.;
EXCEPT THE SOUTHEAST QUARTER OF SAID SOUTHEAST QUARTER;
AND EXCEPT AIRWAY HEIGHTS CITY SHORT PLAT NO. 90-001 AS PER PLAT THEREOF RECORDED IN VOLUME
6 OF SHORT PLATS, PAGE 83;
AND EXCEPT THE SOUTH 30.00 FEET OF THE NORTH HALF OF SAID SOUTHEAST QUARTER;
AND EXCEPT THE NORTH 30.00 FEET OF THE SOUTHWEST QUARTER OF SAID SOUTHEAST QUARTER;
AND EXCEPT ANY PORTION THEREOF LYING WITHIN HAYFORD ROAD;
AND EXCEPT ANY PORTION THEREOF LYING WITHIN PRIMARY STATE HIGHWAY NO. 11;
AND EXCEPT THAT PORTION OF THE NORTHEAST QUARTER OF SAID SOUTHEAST QUARTER DESCRIBED AS
FOLLOWS:
BEGINNING AT THE NORTHEAST CORNER OF LOT A OF SAID AIRWAY HEIGHTS CITY SHORT PLAT NO. 90-
001; THENCE NORTH 00°11'20" WEST, ALONG A LINE 40.00 FEET DISTANT FROM AND PARALLEL WITH THE
EAST LINE OF SAID SOUTHEAST QUARTER, 100.00 FEET; THENCE SOUTH 89°32.16" WEST, ALONG A LINE
PARALLEL WITH THE SOUTH LINE OF SAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER, 580.81
FEET; THENCE SOUTH 00°11'20" EAST, ALONG A LINE PARALLEL WITH THE EAST LINE OF SAID SOUTHWEST
QUARTER, 375.00 FEET TO A POINT 30.00 FEET NORTHERLY FROM AND AT RIGHT ANGLES TO THE SOUTH
LINE OF SAID NORTHEAST QUARTER; THENCE NORTH 89°32'16" EAST, ALONG A LINE 30.00 FEET DISTANT
FROM AND PARALLEL WITH SAID SOUTH LINE, 105.60 FEET TO THE SOUTHWEST CORNER OF LOT A OF SAID
AIRWAY HEIGHTS CITY SHORT PLAT NO. 90-001; THENCE NORTH 00°11'20" WEST, ALONG THE WEST LINE
OF SAID LOT A, 275.00 FEET TO THE NORTHWEST CORNER OF SAID LOT A; THENCE NORTH 89°32'16" EAST,
ALONG THE NORTH LIEN FO SAID LOT A, 475.21 FEET TO THE POINT OF BEGINNING;
SITUATE IN THE COUNTY OF SPOKANE, STATE OF WASHINGTON.

EXHIBIT B

Date	Annual Payment
January 12, 2007	\$25,000
Year 2	\$50,000
Year 3	\$75,000
Year 4	\$100,000
Year 5	\$125,000
Year 6	\$150,000
Year 7	\$175,000
Year 8	\$200,000
Year 9	\$225,000
Year 10	\$250,000
Year 11	\$283,250
Year 12	\$309,000
Year 13	\$334,750
Year 14	\$360,500
Year 15	\$386,250
Thereafter, annually, no further \$25,000 Increase, but 3% increase annually based on prior year's payment	