

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement ("Agreement") is entered into as of April 10, 2007 by and between the SPOKANE 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. Purpose.

- 1.1** The Tribe owns approximately 145 acres of real property ("Property"), fully described in Exhibit A affixed hereto, adjacent to the City that is suitable for development beyond its present use for the benefit of the Tribe and the surrounding community.
- 1.2** The parties desire to provide for the annexation of the Property to the City.
- 1.3** 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 but not limited to taxation, zoning, and land use restrictions.
- 1.4** Nevertheless, the Parties have demonstrated their commitment to an open intergovernmental relationship by entering into this Agreement that sets forth the understanding of the Parties.
- 1.5** The Parties acknowledge that it is to their mutual benefit to utilize the status and unique opportunities of each as separate governments to cooperate and, where possible, to partner in the development of the Tribe's Property in such a manner as best serves 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.
- 1.6** Accordingly, the parties enter into this Intergovernmental Agreement to extend certain services to the Tribe in exchange for agreed-upon compensation.

2.0 Utilities.

2.1 Guaranteed Hook Up to Sewer and Water Services.

- 2.1.1** City public water and sewer services shall serve the Property through the City's municipal utilities with connection(s) to be provided to the Property as mutually agreed.
- 2.1.2** The City guarantees the Tribe hook up to City water and sewer lines for so long as capacity exists.
- 2.1.3** The City shall notify the Tribe as soon as it becomes apparent to the City that capacity may not be sufficient to provide sewer and water services to the Property, and shall cooperate with the Tribe to take action to increase capacity.
- 2.1.4** The Tribe shall have the option to pre-pay for utilities in order to reserve capacity for development of the Property.
- 2.1.5** 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 surveys, engineering, applicable permitting, and applicable environmental analysis necessary for the design and construction of the water and sanitary sewer system.

- 2.1.6** The design and construction of the sewer and water system for the Property 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.
- 2.1.7** The Tribe and City shall use all reasonable efforts to cooperate to increase water and sewer capacity so that the Property can be serviced.
- 2.1.8** The Tribe and City shall consider latecomer agreements, to the extent equitable.
- 2.2** Sanitary Sewer.
- 2.2.1** Each user on the Property (building or dwelling unit) shall be connected individually, which connection shall be in reasonable conformity with Chapter 13.06 of the Airway Heights Municipal Code and the most current adopted version of the City's Public Works Standards manual.
- 2.2.2** Upon connection to the City sanitary sewer, the users shall pay, before occupancy, the current sewer capital connection charge as established by City Council Resolution and Ordinance.
- 2.2.3** Similar to other City ratepayers, the users shall pay the City a monthly service fee for sewer service based upon rates adopted annually by the City Council.
- 2.3** Water Service.
- 2.3.1** Each user on the Property (building or dwelling unit) shall be connected individually, which use shall be in reasonable conformity with Chapter 13.04 of the Airway Heights Municipal Code and the most current adopted version of the City's Public Works Standards manual.
- 2.3.2** Upon connection to the City water system, the users shall pay, before occupancy, the current water capital connection charge as established by City Council Resolution and Ordinance.
- 2.3.3** Similar to other City ratepayers, the users shall pay the City a monthly service fee for water service based upon rates adopted annually by the City Council.
- 2.3.4** The City has acquired and is aggressively pursuing the development of water rights for the City's water utility in a manner consistent with the City Water Facility Plans. Such Facility Plans shall include the Property to the extent requested by the Tribe.
- 2.4** Stormwater. The Tribe shall construct stormwater facilities on the Property in reasonable conformity with the standards set forth in the Airway Heights Public Works 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.
- 2.6** Sewer and Water Capacity. The City shall provide water quantity and sewer capacity commensurate with services provided to properties of similar density and use in the City.

3.0 Traffic Impacts.

3.1 Traffic Impact Analysis.

- 3.1.1** The Tribe shall 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," or City of Airway Heights, as reasonably agreed by the parties.
- 3.1.2** The TIA shall identify traffic impacts on City and County roads and propose mitigation of the direct impacts resulting from any development commencing subsequent to the date this Agreement is fully executed.
- 3.1.3** Upon completion of the TIA, the Tribe shall deliver a copy of the TIA to the City and County and shall allow the City and County a 20-day comment period.
- 3.1.4** Upon review of the TIA, the City and County may submit comments and request for the Tribe to consider in preparing traffic mitigation plans.

3.2 Street Improvements.

- 3.2.1** Commensurate with development of the Property, the Tribe shall make street and intersection improvements as 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 respectively and be in reasonable conformity with applicable City or County standards.
- 3.2.2** The parties shall consider latecomer Agreements, to the extent equitable.

4.0 Master Plan.

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

5.0 Fees for Services and Impacts.

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

5.0.2 This Annual Payment and any traffic impact mitigation provided in Paragraph 3 are intended to compensate the City and County for any direct or indirect impacts caused to the City and County by development of the Property.

5.0.3 The City and County shall meet and confer in order to determine a fair and equitable portion of the Annual Payment that should be received by each party.

5.1 Annual Payment.

5.1.1 The Tribe shall pay the City and the County an aggregate total payment of \$14,500 on or before the date upon which the City receives the Agreement by the United States to Annexation of the Property (hereinafter "the effective date").

5.1.2 On or before the effective date of each subsequent year for the following 14 years, the aggregate joint payment shall be increased by \$14,500, per year.

5.1.3 The annual \$14,500 payment increases shall end at Year 15.

5.1.4 Beginning in year 11, and each year thereafter, the aggregate joint payment shall be increased by 3%. A payment schedule is attached hereto as Exhibit B.

5.1.5 The Parties agree to meet at Year 25 to reconsider the annual payment amounts and to adjust such amounts, as necessary, to reasonably approximate actual impacts to the City and the County. If within six months of initiating negotiation of such adjustment the parties do not agree to an adjustment, either party may initiate binding arbitration as provided by this Agreement. The arbitrators shall make an award that adjusts such annual payment amount as necessary, to reasonably approximate actual impacts to the City and the County, including, if the arbitrators so determine, annual adjustments based on reasonable estimates of annual increases in costs of such impacts. Each 25 year anniversary thereafter, the Parties shall meet and reconsider the annual payment amounts and to adjust such amounts, as necessary, to reasonably approximate actual impacts to the City and the County, and in the event the parties fail to agree to such adjustment within six months of such anniversary, either party may submit the matter to binding arbitration as provided above.

5.1.6 The Parties acknowledge and intend that Binding Arbitration is the final, exclusive remedy for resolution of any dispute.

6.0 Annexation.

6.1 Agreed-Upon Steps to Facilitate Annexation.

6.1.1 The parties agree to work cooperatively consistent with applicable laws to facilitate annexation of the Property to the City, including the commencement of annexation proceedings pursuant to state law, Chapter 35A.14 RCW.

6.1.2 Following acceptance of this Agreement by the Spokane Tribe and following the City's receipt of the Agreement by the United States to Annexation of the Property, the City shall place before the City Council an ordinance providing for the annexation of the Property ("Annexation Ordinance").

6.1.3 The ordinance shall acknowledge that the Parties have entered into this "Intergovernmental Agreement" which is a legal binding obligation upon the Spokane Tribe of Indians, the City of Airway Heights and Spokane County.

- 6.1.4** Prior to the Annexation Ordinance being effective, the City shall provide written notice of the proposed annexation to the Spokane County Board of County Commissioners.
- 6.1.5** The notice shall be provided thirty days prior to final adoption of the Annexation Ordinance. The City shall not adopt the Annexation Ordinance, and the Annexation Ordinance shall not occur if within twenty-five days of receipt of the notice, the Board of County Commissioners adopts a resolution opposing the annexation and makes a finding that such annexation will have an adverse fiscal impact on the County or Road District.
- 6.1.6** Through approval of this Agreement, the County acknowledges that the proposed annexation will not have an adverse fiscal impact on the County or Road District provided the terms of this Agreement remain in full force and effect.

6.2 City's Agreement to Provide Limited Services to the Property Prior to Annexation.

- 6.2.1** This Agreement and the Consent of the United States to Annexation of the Property constitute a "legally binding commitment to eventual annexation" under the City's General Public Works Considerations, pursuant to Section 1.135.
- 6.2.2** Upon the execution of this Agreement and receipt of the Consent of the United States to Annexation of the Property, the City agrees to provide limited sewer and water service to the Property pursuant to section 2.
- 6.2.3** For purposes of this paragraph "limited sewer and water service" means authorizing the extension of City sewer and water infrastructure to the Property, in such sizes as capacity reasonably determined by the Parties to serve no more than ten acres of land within the Property.
- 6.2.4** In no event, shall the City be required to provide any water or sewer services beyond that necessary to serve ten acres of land or any other development on the Property, until such time as the Property is annexed to the City of Airway Heights.
- 6.2.5** Further, until the Property is annexed to the City, no general municipal services will be provided by the City. Following annexation and the incorporation of the Property into the City of Airway Heights, the Property shall be entitled to receive all City services as set forth in this Agreement.
- 6.2.6** Subsequent to receipt by the City of Consent by the United States to Annexation of the Property, the County shall, with the exception of water and sewer services, provide essential governmental services to the property, including, but not limited to but not limited to, police, fire, emergency, court, operations and maintenance for public streets services, and any public safety related actions referenced herein.

7. Renegotiation

- 7.1** If annexation of the property does not occur within 2 years of the receipt by the City of Consent by the United States to Annexation of the Property, the parties shall meet to renegotiate the terms of this Agreement.
- 7.2** If this Agreement is renegotiated pursuant to this section, such renegotiations shall be guided by the commonly-shared understandings of the parties set forth in Section 1 herein.

8.0 Impact Mitigation Fund from Tribal-State Gaming Compact.

- 8.1** Upon development of a gaming facility/casino pursuant to 25 U.S.C. 2719(b)(1)(A), payments by the Tribe to the City pursuant to the Memorandum of Agreement between the City and the Tribe regarding services and impacts of Tribal Gaming on Indian Lands located adjacent to or within the City ("MOA" herein) shall supplant the annual payment set forth in Section 5.2., provided such payment exceeds the Annual Payment.
- 8.2** The City and the County acknowledge that Class III gaming on the Property potentially will provide numerous employment opportunities and other economic benefits to the City, the County, and the region as a whole.
- 8.3** The City and County agree to negotiate in good faith with the Tribe to determine appropriate mitigation for any adverse impacts arising from gaming activities on the Property.
- 8.4** The City and County further agree to negotiate in good faith with the Tribe to provide additional services to the Property as a result of gaming activities in exchange for Impact Mitigation Funds allocated according to the form and methodology set forth in the Compact existing by and between the Spokane Tribe and the State of Washington and as set forth in the Memorandum of Agreement between the Parties.

9.0 Enforcement.

9.1 Notice of dispute.

- 9.1.1** If any party has a dispute under this Agreement, it shall provide written notice as follows.

To the Tribe:	Spokane Tribe of Indians Attn: Executive Director P.O. Box 100 Wellpinit, WA 99040
To the City:	City of Airway Heights Attn: City Manager 1208 S. Lundstrom Avenue Airway Heights, WA 99001-9000

To the County: Spokane County
Attn: Chairman of the Board
1116 W. Broadway Avenue
Spokane, WA 99260

9.1.2 The notice shall provide a brief description of the dispute.

9.2 Mediation.

9.2.1 If the Parties are unable to resolve the dispute amongst them within 20 business days, the parties shall engage in mediation and shall use the rules of the CPR Institute for Dispute Resolution.

9.2.1 The parties shall agree on a mediator of acceptable experience and background.

9.2.3 The Parties involved in the mediation shall share the mediator's fees and costs equally.

9.3 Arbitration.

9.3.1 If the Parties cannot resolve their dispute through mediation, the exclusive remedy is binding, non-administered, arbitration and the Parties shall agree on an arbitrator of acceptable experience and background.

9.3.2 Arbitration shall be governed by the rules of the CPR Institute for Dispute Resolution.

9.3.3 The Parties involved in the arbitration shall share the arbitrator's fees and costs equally.

9.3.4 The arbitrator's decision shall be final and binding on the parties involved in the arbitration.

9.4 Limited Waiver of Immunity.

9.4.1 The Parties hereby waive their respective immunities solely for the limited purpose of enforcing the Parties' agreement to arbitrate and the final decision of the arbitrator.

9.4.2 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) Spokane Tribal Court.

10.0 **Governing Law.**

10.1 The laws of the State of Washington shall govern interpretation of this Agreement.

10.2 To the extent state law does not address the relevant issues, the laws of the Spokane Tribe and the United States shall apply.

11.0 **Agreement to Become Effective Upon Receipt by the City of Agreement by the United States to Annexation**

11.1 This Agreement, including annual payments by the Tribe pursuant to section 5, shall not become effective until the date the City receives a written Agreement from the United States agreeing to Annexation of the Property.

11.2 It is anticipated that Spokane County will be a party to and will execute this Agreement, however, regardless of Spokane County's acceptance of this agreement, it is agreed that this Agreement shall be binding on the City of Airway Heights and

the Tribe following approval by their respective governing bodies. In the event Spokane County does not execute this Agreement, the parties shall interpret this Agreement by deleting references to Spokane County.

12.0 Community Relations.

- 12.1** The Tribe, the City, and the County agree to consult with each other in good faith before the distribution of any press release.
- 12.2** The Tribe, the City, and the County further agree to consider any suggested changes to any press release.
- 12.3** The Tribe, the City, and the County agree to acknowledge, in conjunction with such press release, the statements contained in the Purpose to this Agreement.

13.0 Tribal Council Resolution

- 13.1 Attached to this Agreement is a resolution of the Spokane Tribal Council approving this Agreement and amendments thereof executed by representatives of the Tribe.
- 13.2 Notwithstanding any other provision of this Agreement, this Agreement shall not be effective until the Tribe has provided such a resolution to the City.

CITY OF AIRWAY HEIGHTS:

By Charles Freeman
Charles Freeman
City Manager

ATTEST:

City Clerk/Treasurer

APPROVED AS TO FORM:

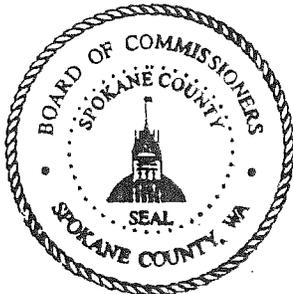
Stanley M. Schqd, ity Attorney

**BOARD OF COUNTY COMMISSISONERS
OF SPOKANE COUNTY, WASHINGTON**

By [Signature]
Chair

By [Signature]
Vice-Chair

By [Signature] "NAY"
Commissioner



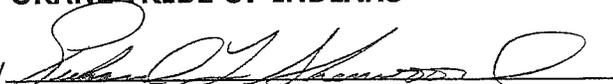
ATTEST:

By Daniela Erickson
Daniela Erickson
Clerk of the Board

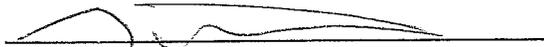
APPROVED AS TO FORM:

Deputy Civil Prosecuting Attorney

SPOKANE TRIBE OF INDIANS

By 
Richard Sherwood, Chairman
Spokane Tribal Business Council

APPROVED AS TO FORM:



Scott Wheat, Deputy Legal Counsel
Office of the Spokane Tribal Attorney

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

The SE ¼ of Section 22, Township 25 North, Range 41 East, W.M., in Spokane County Washington EXCEPT that portion conveyed to the State of Washington by deed dated June 19, 1929 recorded under Recording No. 997235 and dated July 25, 1942 under Recording No. 557182A; ALSO EXCEPT that portion conveyed to Spokane County for Craig Road by deed recorded June 7, 1906 under recording No. 146192; ALSO EXCEPT the East 830 feet of the South 497.5 feet of the SE ¼ of said Section 22, containing 145.00 acres, more or less.

Assessor's Property Tax Parcel Account Numbers: 15224.9013 & 15224.9022

EXHIBIT B

Date	Annual Payment
Effective Date	\$14,500
Year 2	\$29,000
Year 3	\$43,500
Year 4	\$58,000
Year 5	\$72,500
Year 6	\$87,000
Year 7	\$101,500
Year 8	\$116,000
Year 9	\$130,500
Year 10	\$145,000
Year 11	\$163,850
Year 12	\$183,266
Year 13	\$203,264
Year 14	\$223,862
Year 15	\$245,078
Thereafter, annually, no further \$14,500 Increase, but 3% increase annually based on prior year's payment	

RESOLUTION
Spokane Tribal Resolution 2007-275

AUTHORIZING THE CHAIRMAN TO SIGN THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE SPOKANE TRIBE OF INDIANS, THE CITY OF AIRWAY HEIGHTS AND SPOKANE COUNTY

WHEREAS, the Spokane Tribal Business Council is the duly constituted governing body of the Spokane Tribe of Indians by authority of the Constitution of the Spokane Tribe; and

WHEREAS, under the Constitution of the Spokane Tribe, the Spokane Tribal Business Council is charged with the duty of protecting the general welfare of the Spokane Tribe and all Reservation residents; and

WHEREAS, under the Constitution of the Spokane Tribe, the Spokane Tribal Business Council is charged with administering the affairs and assets of the Spokane Tribe including Tribal lands and is charged with the duty of negotiating with and representing the Spokane Tribe before federal, state and local governments and their departments and agencies; and

WHEREAS, the United States holds certain lands, in trust for the Spokane Tribe, designated by the Spokane County Auditor as Parcel Numbers 152224.9013 and 15224.9012 (the "West Plains Property"); and

WHEREAS, the West Plains Property is located off, and non-contiguous to, the Spokane Indian Reservation; and

WHEREAS, the Spokane Tribal Business Council finds that development of the West Plains Property would provide substantial employment opportunities for Spokane Tribal Members and would produce revenue for the Spokane Tribe to provide essential governmental services, including future economic development; and

WHEREAS, development of the West Plains Property requires the provision of water, sewerage, fire protection, law enforcement, and other services; and

WHEREAS, the West Plains Property shares a common border with the western boundary of the City of Airway Heights ("CAWH"); and

WHEREAS, the West Plains Property is located within the CAWH's Urban Growth Area ("UGA"), as that term is defined in Revised Code of Washington 36.70A.110; and

WHEREAS, under Washington law, because the West Plains Property is located within the CAWH's UGA, the CAWH is presumptively the appropriate political subdivision of the State of Washington to provide water, sewerage, fire protection, and other services to the West Plains Property; and

WHEREAS, under Washington law, the CAWH may annex the West Plains Property pursuant to an agreement by the United States and the Spokane Tribe; and

WHEREAS, the Spokane Tribal Business Council enacted Resolution 2006-525, which authorized the Chairman to signature an Intergovernmental Agreement between the Spokane Tribe of Indians and the

CAWH and Spokane County and Chairman did signature such Intergovernmental Agreement (the "August 2006 IGA"); and

WHEREAS, the County failed to enter into the August 2006 IGA, rendering the document void; and

WHEREAS, the Spokane Tribal Business Council further determines that the failure of Spokane County to enter into an Intergovernmental Agreement should not preclude the Spokane Tribe and the CAWH from entering into an Intergovernmental Agreement; and

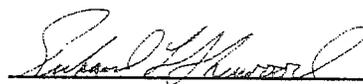
WHEREAS, the Spokane Tribal Business Council has reviewed the proposed Intergovernmental Agreement between the Spokane Tribe and the CAWH, dated April 10, 2007 ("IGA"), and determines that the IGA, if executed, would promote the sovereign interests of the Spokane Tribe while providing equitable compensation to the CAWH and Spokane County for provision of water, sewerage, fire protection, law enforcement, and other services; and

WHEREAS, the Spokane Tribal Business Council finds that annexation of the West Plains Property by the CAWH, under the terms set forth in the IGA, would protect and promote the general welfare of the Spokane Tribe, all Reservation residents, the citizens of the CAWH and the citizens of Spokane County; and

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Spokane Tribal Business Council Chairman, or his designee, is hereby authorized the sign the IGA on behalf of the Spokane Tribe of Indians.

Certification

The foregoing was duly enacted by the Spokane Tribal Business Council on the 10th day of April, 2007, by the vote of 4 for 0 against and 0 abstain under authority contained in Article VIII of the Constitution of the Spokane Indians ratified by the Spokane Tribe on November 22, 1980.



**Chairman
Spokane Tribal Business Council**

	Yes	No	Abstain	Absent
RS	x			
WS	x			
GN	x			
CW	x			
RG				x



1208 S. Lundstrom
Airway Heights, WA 99001

May 8, 2007

Ms. Daniela Erickson
Clerk of the Board
Office of Spokane County Commissioners
West 1116 Broadway Ave.
Spokane, WA 99260-0100

RE: Intergovernmental Agreement

Dear Ms. Erickson:

Enclosed is a copy of the Intergovernmental Agreement between the Spokane Tribe of Indians, the City of Airway Heights, and Spokane County. This has been signed by the Spokane Tribe and the City of Airway Heights. This Agreement is for processing by your office and approval by the Spokane County Commissioners. I have signed originals for the County's signature when they are processed for approval.

Sincerely,

Richard G. Cook
Richard G. Cook
Clerk-Treasurer

Enclosure

May 7, 2007

RE: Intergovernmental Agreements with Spokane Tribe

We got back the signed Memorandum of Agreement from the Spokane Tribe and 3 originals of the Intergovernmental Agreement between the Spokane Tribe, the City of Airway Heights, and Spokane County.

Do you want me to send the 3 original Intergovernmental Agreements to Spokane County Clerk's office for them to process for the Commissioners approval and signature, or are these going to be discussed with the County before they are sent to them?

Attached are the 3 originals.

Do you want a copy of the Memorandum of Agreement?

Dick