

RESOLUTION NO. **21 - 0683**

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN INTERLOCAL )  
AGREEMENT BETWEEN WHITMAN COUNTY AND )  
SPOKANE COUNTY TO BE ABLE TO PROVIDE )  
LABOR, EQUIPMENT, MATERIALS, SERVICES OR )  
OTHER GOODS TO THE OTHER COUNTY )

**RESOLUTION**

**WHEREAS**, pursuant to the provisions of RCW 36.32.120(6), the Board of County Commissioners of Spokane County, Washington, ('the Board') has the care of county property and the management of county funds and business; and

**WHEREAS**, pursuant to Chapter 35.77 RCW, Chapter 36.80 RCW, Chapter 36.82 RCW, Chapter 39.34 RCW, Chapter 47.24 RCW, and Chapter 52.14.100 RCW, Whitman County and Spokane County may enter into a cooperative Interlocal Agreement wherein both Counties provide labor, equipment, materials, services, or other goods to the other County; and

**WHEREAS**, the County, pursuant to RCW 35.77.020, by resolution of the Board must approve the cooperative agreement between the Counties prior to the Counties commencing services; and

**WHEREAS**, the Spokane County Engineer recommends the approval of this Interlocal Agreement (attached as Attachment A, and incorporated herein by reference) as it is in the best interest of the public; and

**WHEREAS**, the Board feels that the best interests of the public will be served by entering into said agreement.

**NOW, THEREFORE BE IT RESOLVED** by the Board that the Interlocal Agreement between the Whitman County and Spokane County to provide labor, equipment, materials, services, or other goods to the other County as outlined in Attachment A, within the Counties limits by the Counties' Public Works Department is approved.

**BE IT FURTHER RESOLVED** by the Board that the Interlocal Agreement between the Counties may be executed by the Chair, or a majority of the Board, at other than an open meeting.

**PASSED AND ADOPTED** this 5th day of October 2021.

BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON



ATTEST:

*GINNA VASQUEZ*  
Ginna Vasquez, Clerk of the Board

*JOSH KERNS*  
JOSH KERNS, CHAIR

*MARY L. KUNEY*  
MARY L. KUNEY, VICE-CHAIR

*AL FRENCH*  
AL FRENCH, COMMISSIONER

**INTERLOCAL COOPERATION AGREEMENT BETWEEN  
WHITMAN COUNTY AND SPOKANE COUNTY**

THIS INTERLOCAL COOPERATION AGREEMENT ("Agreement") is made and entered into by and between, Spokane County and Whitman County, both political subdivisions of the State of Washington and jointly referred to as "the Parties".

**I. RECITALS**

Whitman County is a political subdivision of the State of Washington; and constitutes a public agency as defined in RCW 39.34.020(1).

Spokane County is a political subdivision of the State of Washington; and constitutes a public agency as defined in RCW 39.34.020(1).

The Parties find it mutually beneficial to enter into this Agreement.

THEREFORE, it is mutually agreed that:

**II. PURPOSE**

The purpose of this Agreement is for Spokane or Whitman County to be able to provide labor, equipment, materials, services, or other goods to the other County, provided:

- A. No obligation in this Agreement shall limit Spokane County in fulfilling its responsibilities otherwise defined by law; and,
- B. No obligation in this Agreement shall limit Whitman County in fulfilling its responsibilities otherwise defined by law; and,
- C. No new separate legal or administrative entity is created to administer the provisions of this Agreement; and,
- D. This Agreement is intended for the benefit of the parties and is not intended to create any third party beneficiaries.

**III. SERVICES AND CONTRACT MANAGEMENT**

Either County may provide labor, equipment and materials (including contract, as requested by the other county, necessary for the completion of specific mutually agreed-to specific tasks. The scope of the services for individual work tasks shall be documented through a work order or written authorization from the requesting county to the supplying county. Agreement on the scope of services and compensation can only be established or modified in writing by mutual consent of the Parties.

The Parties hereby appoint the following individuals, or their designees, as their representatives for the purpose of managing the provisions of the Agreement:

**WHITMAN COUNTY:**

Mark Storey or Brandon Kruger  
Department of Public Works  
P.O. Box 430, Colfax, WA 99111 ph. 509-397-4622

**SPOKANE COUNTY:**

County Engineer or Maintenance Manager  
Department of Public Works  
1026 W. Broadway Ave., Spokane, WA 99260-0170 ph. 509-477-3600

#### **IV. COMPENSATION**

The County receiving goods and service agrees to compensate the County supplying the goods and services, as requested by the supplying County. Reimbursement for such work will not be made until the services are accepted by the receiving County. The services shall be billed on the following basis:

##### **Staff:**

The actual cost of Staff Labor and Fringe Benefits, and an optional rate for overhead thereon based on the rate approved by each county's Board of County Commissioners for interagency or interdepartmental work, clearly identified in the scope of work.

##### **Equipment/Vehicles:**

Equipment rates are based on the rate approved by the Public Works Director and presented to the Board of County Commissioners for interagency or interdepartmental work. The rate for light vehicles (cars and pickups) shall be equal to or less than the rate approved by the Board of County Commissioners for interagency or interdepartmental vehicle charges.

##### **Materials/Supplies**

The actual cost of materials and supplies used in the project. Costs must be supported by invoice copy and an optional mark-up thereon or by a mutually agreed upon "fair market" value. Any markup shall be based on the rate approved by the Public Works Director for interagency or interdepartmental work.

All costs must be itemized by date, employee, hours worked, vendor, material, amount and overhead, if any. Supporting documentation of expenses or overhead and mark-up rate calculations shall be supplied to the receiving County upon request. No labor may be sub-let without prior approval of both Whitman and Spokane Counties.

The receiving County will make payment to the supplying County within 45 days of receipt of bill for requested services, provided the bill and supporting documentation clearly identify the services performed and costs incurred, and that the services as requested have been accomplished.

#### **V. ADMINISTRATION, AUDIT AND INSPECTION**

This Agreement will be mutually administered by both Whitman County and Spokane County. Both Counties will maintain records pursuant to this Agreement in accordance with generally accepted accounting principles and practices consistently applied. Each Counties records shall be available for inspection and audit by the other County and by the State Auditor's Office.

#### **VI. INDEPENDENT CONTRACTOR AND NONASSIGNMENT**

The services provided under this Agreement are considered by both parties to be those of an independent contractor. Employees of both Whitman and Spokane Counties are and will remain employees of their respective County. Neither County shall subcontract, assign or delegate any of the rights, duties or obligations covered by this Agreement to any other party without prior express written consent by the other County.

#### **VII. INDEMNIFICATION**

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

WHITMAN COUNTY shall indemnify, defend and hold harmless SPOKANE COUNTY, its officers and employees from all claims, demands, or suits in law or equity arising from WHITMAN COUNTY'S intentional or negligent acts or breach of its obligations under the Agreement.

WHITMAN COUNTY'S duty to indemnify shall not apply to loss or liability caused by the intentional or negligent acts of the SPOKANE 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 and only as necessary to make this indemnity provision enforceable with respect to claims relating to the death or injury of WHITMAN COUNTY and/or SPOKANE COUNTY employees acting within the scope of this Agreement.

Spokane County certifies that it is a member of the Washington Counties Risk Pool (the "Pool"), as provided by RCW 48.62.031, and that it is covered by the Pool's Joint Self-Insurance Liability Memorandum of Coverage Document (MLC). Claims submitted under Chapter 4.96 RCW (Actions Against Political Subdivisions, Municipal and Quasi-Municipal Corporations) against the Spokane County, its employees, officers, volunteers, and agents and/or actions in connection with, or incidental to, the performance of this agreement or an addendum, for which the Spokane County and/or its employees, officers, volunteers, and agents are found to be liable, will be paid by the Pool and/or Spokane County.

The Pool's liability coverage limits of \$10,000,000, per occurrence, exceed limits required by this Agreement or an addendum and commercial excess liability insurance covers all operations and applies over the Pool self-insurance primary policy. The Pool's self-insurance MLC will respond to the same extent as if an insurance policy had been purchased naming the Whitman County as named insured.

## VIII. INSURANCE

Both PARTIES shall maintain liability coverage and/or commercial insurance that affords coverage for matters contained in this Agreement.

The commercial insurance policy or policies and/or liability coverage document will not be canceled, materially changed or altered without at least thirty (30) days prior notice to the PARTY with whom the agreement is executed.

The liability policy and or coverage documents shall provide and the certificate of insurance and/or liability coverage documents shall reflect that the coverage afforded applies separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability and reflect that the insurance and/or liability coverage afforded therein shall be primary coverage and not contributory insurance to that provided by the other party.

Failure of either party to fully comply with the insurance and/or liability coverage requirements set forth herein, during the term of the Agreement, shall be considered a material breach of contract and cause for immediate termination of the Agreement. Providing liability coverage in the amounts listed shall not be construed to relieve either party from liability in excess of such amounts.

**REQUIRED COVERAGE:** The insurance shall provide the minimum coverage as set forth below:

1. **GENERAL LIABILITY INSURANCE:** Each PARTY shall have Commercial General Liability with limits of \$5,000,000.00 per occurrence, which includes general aggregate, products, completed operation, personal injury and fire damage.

ADDITIONAL INSURED ENDORSEMENT: When utilizing commercial general liability insurance, an additional insured endorsement must be procured stating the PARTY COUNTY, it's officers, agents and employees, and any other entity specifically required by the provisions of this Agreement will be specifically named additional insured(s) for all coverage provided by this policy of insurance and shall be fully and completely protected by this policy from all claims.

2. PROOF OF AUTOMOBILE INSURANCE: The PARTIES shall carry, for the duration of this Agreement, comprehensive automobile liability coverage of \$5,000,000.00 for any vehicle used in conjunction with the provision of services under the terms of this Agreement. Said policy shall provide that it shall not be canceled, materially changed, or renewed without Thirty (30) days written notice prior thereto.

3. WORKERS COMPENSATION: The PARTIES shall carry Worker's Compensation Industrial Injury Insurance coverage, effective in Washington State. Proof of insurance shall be by providing the PARTY'S State Industrial Account Identification Number.

Public entity insurance and/or liability coverage requirements may be satisfied with proof of membership and liability coverage through its membership in a Risk Pool authorized under RCW 48.62.031 for Claims submitted under Chapter 4.96 RCW ("Actions against political subdivisions, municipal and quasi-municipal corporations") against the Public Entity, its employees, officers, volunteers and agents and/or actions in connection with or incidental to the performance of this Agreement which a Public Entity and/or its employees, officers, volunteers and agents are found to be liable for will be paid by the Pool and/or Public Entity.

#### **IX. AMENDMENT AND WAIVER**

Whitman and Spokane Counties may mutually agree to amend this Agreement. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Counties. Any waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence or omission and shall not constitute a waiver as to any other term or condition or past or future act, occurrence or omission.

#### **X. CHOICE OF LAW AND VENUE**

This Agreement will be governed by the laws of the State of Washington, both as to the interpretation and performance. Any action at law, suit in equity or other judicial proceeding for the enforcement of this Agreement may be instituted only in a court of competent jurisdiction in the State of Washington.

#### **XI. INTEGRATION CLAUSE**

This instrument embodies the whole Agreement of the parties. There are no promises, terms, conditions or obligations other than those contained in this Agreement. This Agreement supersedes all previous communications, representations or agreements, either oral or written, between parties.

#### **XII. TERM AND TERMINATION**

This Agreement shall remain in full force and effect indefinitely unless otherwise modified or terminated as provided herein. The term of this Agreement shall commence December 1, 2020.

Either party may terminate this Agreement by giving the other party at least thirty (30) days advance written notice. If this Agreement is so terminated, the parties shall be liable only for performance in accordance with the terms of this Agreement up until the effective date of termination.

#### **XIII. PROPERTY AND EQUIPMENT**

Upon termination or non-renewal of this Agreement, all property purchased by either County in furtherance of this Agreement shall remain the property of that County. Any property loaned or borrowed through the course of this agreement shall be returned to its owner upon termination or non-renewal of this Agreement.

**XIV. DISPUTES**

In the event that a dispute arises under this Agreement, it will be resolved in the following manner: Both Whitman and Spokane Counties will each individually appoint one member to a Dispute Board, and those two members will jointly appoint a third member. The Dispute Board will evaluate the dispute and make a determination of disposition of the dispute. The decision of the Dispute Board will be considered final and may not be appealed.

**XV. SEVERABILITY**

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives of the Agreement as determined mutually by both Whitman and Spokane County.

**XVI. EFFECTIVE DATE**

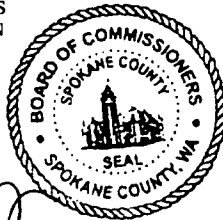
This Agreement shall take effect as soon as it has been adopted by both parties as signed below.

**XVII. CONTACTS**

- Whitman County: W. Mark Storey, Public Works Director
- Brandon Kruger, Maintenance Operations Manager
- Evon Jones, Financial Manager
- Spokane County: Chad Coles, County Engineer
- Matt Zarecor, Assistant County Engineer
- Andy Schenk, Maintenance and Operations Manager

ADOPTED this 21<sup>st</sup> day of October, 2020.

BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON



ATTEST:

Janina Vogner  
Clerk of the Board

Mary Koney  
Commissioner  
Chad Coles  
Commissioner

Approved as to form:

[Signature]

ADOPTED this 22<sup>nd</sup> day of October, 2020

BOARD OF COUNTY COMMISSIONERS  
OF WHITMAN COUNTY, WASHINGTON

*Arthur D. Swannick*

Chair

*Michael Stang*

Commissioner

*Tom Hardy*

Commissioner

ATTEST:

\_\_\_\_\_  
Maribeth Becker, CMC  
Clerk of the Board

Approved as to form:

*J. T. [Signature]*