

RESOLUTION NO. **23 - 0357**

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN)
INTERLOCAL AGREEMENT BETWEEN)
PEND OREILLE COUNTY AND SPOKANE)
COUNTY TO SHARE SURVEYING AND)
INSPECTION RESOURCES)

RESOLUTION

WHEREAS, pursuant to the Constitution and laws of the State of Washington, Spokane County, Washington is a class A county duly organized and existing; and

WHEREAS, pursuant to RCW 36.01.030, the powers of Spokane County can only be exercised through the Board of County Commissioners of Spokane County, Washington ("Board" or "Board of County Commissioners"); and

WHEREAS, pursuant to RCW 36.32.120(6), the Board has the care of County property and the management of County funds and business; and

WHEREAS, pursuant to chapter 39.34 RCW, any two or more public agencies may enter into a contract providing for joint or cooperative action, including the joint utilization of architectural or engineering services; and

WHEREAS, Pend Oreille County desires to contract with Spokane County for joint and cooperative use of equipment, labor, and materials for surveying and inspection operations; and

WHEREAS, the Spokane County Engineer has advised that such a contract would be advantageous for surveying and inspection operations in Spokane County; and

WHEREAS, the Board agrees with the Spokane County Engineer's recommendation.

NOW THEREFORE BE IT RESOLVED by the Board of County Commissioners of Spokane County, Washington that the Interlocal Cooperative Agreement Between Pend Oreille County and Spokane County, attached hereto as Attachment A, is approved.

BE IT FURTHER RESOLVED by the Board that said agreement may be executed by the chair of the Board, or a majority of the Board, at other than an open meeting.

PASSED AND ADOPTED this 30th day of May, 2023.

BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

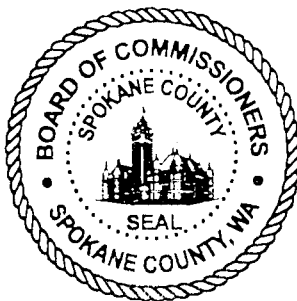

MARY L. KUNEY, CHAIR


JOSH KERNS, VICE-CHAIR



AL FRENCH, COMMISSIONER


AMBER WALDREF, COMMISSIONER


CHRIS JORDAN, COMMISSIONER



ATTEST:


Ginna Vasquez, Clerk of the Board

Return Address:

Craig Jackson
 Pend Oreille County-Public Works Director
 PO Box 5040/625 W. 4th St
 Newport, WA 99156

The information contained in this boxed section is for recording purposes only pursuant to RCW 36.18 and RCW 65.04, and is not to be relied upon for any other purpose, and shall not affect the intent of the warranty contained in the document itself.

Document Title: Interlocal Cooperative Agreement
Grantor(s): Pend Oreille County, WA
Grantee(s): Spokane County, WA
Legal Description: N/A
Assessor's Tax Parcel ID: N/A

Filed with the Auditor or listed by subject on each party's web site pursuant to RCW 39.34.040

INTERLOCAL COOPERATIVE AGREEMENT BETWEEN PEND OREILLE COUNTY AND SPOKANE COUNTY

RE: Equipment, Labor and Materials

THIS AGREEMENT is made on the date of last execution below in duplicate original by and between Pend Oreille County and Spokane County, Washington, for its Public Works Department.

WHEREAS, the parties are political subdivisions of the State of Washington; and

WHEREAS, the parties have the authority to construct, maintain and repair their county roads within their respective jurisdictions and from time-to-time require the use of expensive, specialized equipment, assistance, or technical knowledge; and

WHEREAS, the parties enter into this Agreement under the authority of RCW Chapter 39.34; and

WHEREAS, each party's Board of County Commissioners has authorized the execution of this Agreement by action taken at a regular meeting; and

WHEREAS, the parties find this Agreement to be mutually advantageous for use in surveying and inspection operations.

NOW, THEREFORE, in consideration of the premises and promises, terms and conditions set forth below, it is hereby agreed as follows:

ARTICLE 1 PURPOSE

1.01 Purpose

The purpose of this Agreement is to set forth the terms and conditions under which the Counties will provide equipment, labor, specialized or technical training, and materials to each other on a reimbursable basis, and when available, for survey and inspection operations. The County supplying equipment, labor, specialized or technical training, and materials is designated as the "Provider." The County requesting and/or using the equipment, labor, specialized or technical training, and materials is designated as the "User."

ARTICLE 2 EQUIPMENT, LABOR, SPECIALIZED OR TECHNICAL TRAINING, AND MATERIALS TO BE FURNISHED

2.01 Equipment Furnished.

Each County agrees to furnish equipment as may be requested by the other County, so long as such equipment is owned by the Provider and available for use, on the following terms and conditions:

A. Request for Rental.

The User shall provide reasonable notice to the Provider requesting equipment, including the proposed dates when the equipment shall be picked up and returned. Each request for equipment shall be in a writing submitted by the User's Administrator to the Provider's Administrator. Each request shall specify the requested equipment, labor and/or material, the location of the work, and other information relevant to the request. Upon receipt of a request, the Provider shall respond within five (5) business days. In cases of emergency or unforeseen circumstance necessitating prompt action, the request and approval may be done orally, but must be confirmed in writing within 72 hours after the oral request and approval.

B. Transportation of Equipment.

The User shall be responsible for all transportation of the equipment and shall pick up and return the equipment to the location where such equipment is stored by the Provider.

C. Equipment Care, Maintenance, and Security.

The User shall be responsible for the proper care, maintenance and security of the equipment until the equipment is returned to the Provider.

D. Equipment Operators.

The User shall permit the survey, drone, and or other inspection equipment to be used only by properly trained and supervised operators. The Provider may require, in its sole discretion, that only Provider's personnel operate certain equipment. In doing so, Provider shall be deemed an independent contractor and Provider's employees shall not be deemed employees of the User. The Provider's operator shall perform under the general direction and control of the User but shall retain full control of the manner and means of using the equipment.

E. Pre-rental Inspection.

The Parties shall jointly inspect furnished equipment at the time of the rental and shall note in writing of any defect or problem. It is the responsibility of the User to raise any objections to equipment condition at the time of the joint pre-rental inspection. The User's Administrator, or his or her designee, shall promptly provide the Provider with a written receipt for equipment received for rental, including any defects or problems identified during the joint pre-rental inspection. Email shall be considered a written receipt.

F. Equipment Furnished "As Is".

The User accepts all furnished equipment AS IS and waives any and all claims against the Provider resulting from the condition of the equipment; except if such equipment is provided with an operator and the physical and/or mechanical damages result from the operator's acts or omissions.

G. Equipment Use.

The User shall operate or use any equipment provided pursuant to this Agreement for purposes in conformance with the manufacturers design and intended use, and the specific uses or purpose of the equipment as intended by the Provider, unless otherwise agreed in writing by the Administrators. Nothing in this Agreement constitutes a waiver of the Users obligation for safe and legal equipment operation pursuant to regulatory and industry standards and best practices.

H. Post-rental Inspection.

Upon the User returning equipment, the User and Provider shall jointly inspect, identify, and document any change in the condition of the equipment which exceeds normal wear and tear. Disputed equipment damage or problems should be documented. The Provider's Administrator, or his or her designee, shall promptly provide the User with a written receipt for returned equipment. Email shall be considered a written receipt.

I. Equipment Damage.

The User shall be responsible for all physical and mechanical damages and losses to the equipment during use, storage and transportation of the Provider's equipment, unless such equipment is provided with an operator and the physical and/or mechanical damages result from the operator's acts or omissions.

J. Equipment Return.

The User shall return the equipment on or before the proposed return date, unless the Provider agrees to extend use of the equipment: provided, that in the event an emergency shall arise requiring use of the equipment by the Provider, the User shall return the equipment as directed by the Provider.

2.02 Labor

Labor shall be provided, as available, upon the request of the User. User shall be responsible for arranging any necessary transportation of personnel, and associated cost. User shall be responsible for all costs of the labor as described in section 5.02 below. User shall coordinate and supervise the work to be performed ensure the safety of all personnel working at a site and provide a rest area with water and restroom for crews.

Any Provider employees designated to provide the services called for by this agreement remain the employees of the Provider, subject to its discipline, personnel policies, and performance standards.

2.03 Specialized or Technical Knowledge

The parties agree that equipment operation is enhanced when an operator experienced with a particular make or model of equipment can share specialized or technical knowledge they have acquired with an operator new to the equipment. This is not intended as a general training in equipment operation, but an opportunity to bridge the gap between general principles and the particularities or quirks of a specific item. In comparable circumstances, and at the sole discretion of the Provider, each County agrees to provide basic training in the use of equipment provided to the User, upon the User's request. The date and time of any training will be mutually agreed upon by both parties.

Any specialized or technical training provided under is supplemental to general training in equipment operation. Provider does not warrant that this specialized or technical training is complete, or that it should be relied on as best practice or industry standard. It is the sole responsibility of the User to properly train personnel in safety practices, regulatory standards, or any other information necessary to the work.

Provider shall not be liable for any harm to User resulting from information provided or omitted in this specialized or technical training. User shall indemnify Provider against any and all claims arising from specialized or technical training of personnel.

All costs arising from the training shall be reimbursed by the User pursuant to Article 5 herein. Reimbursable training expenses shall be agreed to by the parties prior to the training and may include, but not limited to travel expenses, lodging, meals, per diem, transportation and/or fuel. It is the responsibility of the User to provide any equipment, tools, or materials that the Provider may reasonably request to aid in the training. With prior approval by both parties, costs associated with equipment, tools, or materials incurred by the Provider for the training shall be reimbursed by the User.

ARTICLE 3 ADMINISTRATION

3.01 Administrators.

The Counties shall each designate one Administrator responsible for the administration of this Agreement. The contact information for each Administrator is as follows:

County Engineer
Spokane County Public Works
1026 W. Broadway Ave.
Spokane, WA 99260-0170
(509) 447-3600

County Engineer
Pend Oreille County Public Works
625 W 4th St.
Newport, WA 99156
(509) 447-4513

The Administrators shall have full powers to act on behalf of his or her respective party for the purposes authorized in this Agreement.

ARTICLE 4 DURATION AND TERMINATION OF AGREEMENT

4.01 Duration.

This Agreement shall be effective only upon execution by the parties; and (1) filing with the County Auditor, or (2) list by subject on a public agency's website or other electronically retrievable public source pursuant to RCW 39.34.040. This Agreement shall continue for a term of two (2) years or terminated as set forth in Article 4.02. This agreement may be renewed or extended by written approval by both parties.

4.02 Termination.

This Agreement may be terminated by either party by providing thirty (30) days prior written notice of termination to the other party.

ARTICLE 5 REIMBURSEMENT TO PROVIDER

5.01 Equipment.

The User shall reimburse the Provider for furnished equipment based on the Provider's published equipment rental rate. When applicable the fuel tanks of furnished equipment shall be full when furnished and shall be full when returned by the User. If the equipment fuel tanks are not full when the equipment is returned, the User shall pay for fuel usage based upon the Provider's then current fuel price per gallon.

5.02 Labor.

The User shall reimburse the Provider for the actual cost of all labor of personnel provided to the User. The actual cost of labor shall include the then current hourly rate of the employee providing services, plus all FICA, Medicare, PERS, workmen's compensation, unemployment, group health insurance premiums and all other employee benefits and employer taxes.

5.03 Administrative Services Fee.

In addition to equipment rental rates, labor reimbursement and fuel charges, the User shall pay the Provider an amount equal to ten percent (10%) or current WSDOT approved indirect rate of such charges as reimbursement of direct and indirect administrative, accounting and clerical services.

5.04 Payment to County.

The Provider shall provide the User with a certified statement of all equipment rental, labor, fuel charges and administrative services fees within ten (10) days after return of equipment. The User shall pay the amount due to the Provider within thirty (30) days.

ARTICLE 6 INDEMNITY

6.01 Claims.

Each party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to the fullest extent required by law. It is further provided that no liability shall attach to the County by reason of entering into this contract except as expressly provided herein.

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 PEND OREILLE COUNTY and/or SPOKANE COUNTY employees acting within the scope of this Agreement.

ARTICLE 7 INSURANCE

Both PARTIES certify that they are members 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 (M.L.C). Claims submitted under Chapter 4.96 RCW (Actions Against Political Subdivisions, Municipal and Quasi-Municipal Corporations) against 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 Spokane County and/or its employees, officers, volunteers, and agents are found to be liable, will be paid by the Pool and/or member County.

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 Pend Oreille 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 Pend Oreille County and/or its employees, officers, volunteers and agents are found to be liable for will be paid by the Pool and/or Pend Oreille County.

Both parties shall also 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.

ARTICLE 8 PERFORMANCE OF AGREEMENT

8.01 Compliance with All Laws.

Each party shall comply with all federal, state and local laws, rules, regulations and ordinances applicable to the performance of this Agreement, including without limitation all those pertaining to wages and hours, confidentiality, disabilities and discrimination.

8.02 Maintenance and Audit of Records.

Each party shall maintain books, records, documents and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review and audit by either party or its designee, and the Washington State Auditor's Office. Each party shall retain all such books, records, documents and other materials for six (6) years following the termination of this Agreement.

8.03 On-Site Inspections.

Either party or its designee may evaluate the performance of this Agreement through on-site inspection to determine whether performance is in compliance with the standards set forth in this Agreement, and in compliance with federal, state and local laws, rules, regulations and ordinances.

8.04 Improper Influence.

Each party agrees, warrants and represents that it did not and will not employ, retain or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining or extending this Agreement. Each party agrees, warrants and represents that no gratuity whatsoever has been or will offered or conferred with a view towards obtaining, maintaining or extending this Agreement.

8.05 Conflict of Interest.

The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

8.06 Nature of Cooperative Entity

This Agreement facilitates the cooperation of the parties as independent contractors and shall not create a separate legal or administrative entity.

**ARTICLE 9
DISPUTES**

9.01 Time.

Time is of the essence of this Agreement.

9.02 Waiver Limited.

A waiver of any term or condition of this Agreement must be in writing and signed by the party. Any express or implied 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 future act, occurrence or omission.

9.03 Dispute Resolution.

In the event a dispute arises under this Agreement, the Administrators shall promptly meet in person to negotiate resolution of the dispute. An attempt at such dispute resolution shall be a prerequisite to the filing of any litigation concerning the dispute. Refusal or failure of one County to participate in dispute resolution shall constitute a waiver of this requirement.

9.04 Attorney's Fees.

If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, each party shall pay its own attorney's fees and other costs incurred in that action, arbitration or proceeding.

9.05 Governing Law and Venue.

This Agreement shall be governed exclusively by the laws of the State of Washington. Venue shall be in a court of competent jurisdiction for Pend Oreille County, State of Washington.

**ARTICLE 10
GENERAL PROVISIONS**

10.01 Assignment.

Neither party may assign its rights or delegate its duties under this Agreement, whether by assignment, further, subcontract or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.

10.02 Modification.

This Agreement may not be amended, supplemented or otherwise modified unless expressly set forth in a written agreement signed by the parties and adopted by resolution of each party's legislative authority.

10.03 Invalid Provisions.

The invalidity or unenforceability of any particular term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision and this Agreement shall be construed in all respects as if such invalid or unenforceable term or provision was omitted.

10.04 Entire Agreement.

This Agreement constitutes the entire agreement between the parties. There are no understandings or agreements between the parties other than those set forth in this Agreement. No other statement, representation or promise has been made to induce either party to enter into this Agreement.

10.05 Filing and State Approval.

Pursuant to RCW 39.34.040, this Agreement shall be filed with the County Auditor of each party, or listed by subject on each party's web site prior to its entry into force.

Adopted this 25 day of April 2023.


BOARD OF COUNTY COMMISSIONERS
PEND OREILLE COUNTY, WASHINGTON


BRIAN SMILEY, Chair

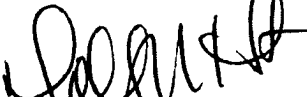

ROBERT ROSENCRANTZ, Vice-Chair


JOHN GENTLE, Commissioner

ATTEST: CRYSTAL ZIESKE


Clerk of the Board

APPROVED AS TO FORM:


DOLLY HUNT, PROSECUTING ATTORNEY

Dated:
Washington.

Agreed this 30th day of May

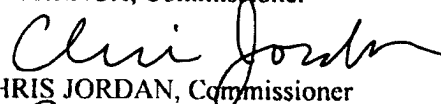
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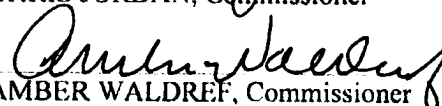
SPOKANE COUNTY, WASHINGTON
BOARD OF COUNTY COMMISSIONERS

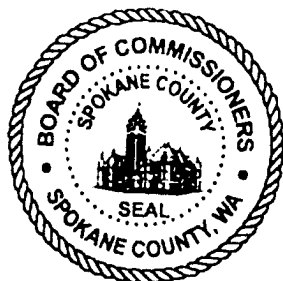

MARY KUNENY, Chair


JOSH KERNS, Vice Chair


AL FRENCH, Commissioner


CHRIS JORDAN, Commissioner


AMBER WALDREF, Commissioner



ATTEST: GINNA VASQUEZ


Clerk of the Board

APPROVED AS TO FORM:


Deputy PROSECUTING ATTORNEY

Dated: 5/31/2023