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CLERK'S OFFICE
SPOKANE, WA

AGENDA SHEET FOR COUNCIL MEETING OF: OCTOBER 20, 2008

Submitting Dept.
Hearing Examiner

Contact Person/Phone No.
Greg Smith - 6010

Council Sponsor
Joe Shogan

ADMINISTRATIVE SESSION

- Contract
- Report
- Claims

LEGISLATIVE SESSION

- Emergency Ord
- Resolution
- Final Reading Ord
- First Reading Ord
- Special Consideration
- Hearing

CITY PRIORITY

- Communications
- Economic Development
- Growth Management
- Human Services
- Neighborhoods
- Public Safety
- Quality Service Delivery
- Racial Equity/Cultural Diversity
- Rebuild/Maintain Infrastructure

CLERK'S FILE
RENEWS
CROSS REF
ENG
BID
REQUISITION

OPR 2008-0936

OPR 2006 0605

STANDING COMMITTEES

(Date of Notification)

- Finance
- Neighborhoods
- Planning/Community & Econ Dev

- Public Safety
- Public Works

Neighborhood/Commission/Committee Notified:
Action Taken:

AGENDA

WORDING:

(If contract, include the term.)

Interlocal Cooperation Agreement between Spokane County and the City of Spokane for Hearing Examiner services for a period of four months commencing on September 5, 2008, and run through December 31, 2008. The agreement will be renewed on January 1, 2009 to run until December 31, 2009.

BACKGROUND:

(Attach additional sheet if necessary)

There are instances in which the hearing examiners for the City of Spokane and for Spokane County are unable to hear certain applications and must seek the services of a pro-tem hearing examiner. This Interlocal Agreement provides a mechanism whereby the County and the City can respectively use the services of the other party's hearing examiner as a hearing examiner pro-tem on an in-kind basis, or agree to pay for such services at a rate of \$128.00 per hour or at a negotiated rate. This interlocal relationship has been in effect since 1996.

RECOMMENDATION: Approve Contract

Fiscal Impact:	<input type="checkbox"/> N/A	Budget	<input type="checkbox"/> N/A
<input type="checkbox"/> Expenditure: \$	Dependent upon	#	
<input type="checkbox"/> Revenue: \$	services rendered	#	
• Budget Neutral			

ATTACHMENTS: Include in Packets:
Interlocal Agreement two originals

SIGNATURES:

Greg Smith

Legal

Division Director

For the Mayor

Finance

Council President

DISTRIBUTION:

City Hearing Examiner – Greg Smith
Spokane County Hearing Examiner Mike Dempsey, 1026 W. Broadway, 3rd Floor, 99260
Daniela Erickson, Clerk of the Board, Spokane County Commissioners, 1116 W. Broadway
State Auditor

COUNCIL ACTION:

APPROVED BY
SPOKANE CITY COUNCIL:

October 20, 2008

CITY CLERK

Return to: Office of the City Clerk
808 West Spokane Falls Blvd.
Spokane, Washington 99201

City Clerk's No. DPR 2008-0936

8 0860

**INTERLOCAL COOPERATION AGREEMENT BETWEEN
SPOKANE COUNTY AND THE CITY OF SPOKANE
FOR HEARING EXAMINER SERVICES**

This agreement is between SPOKANE COUNTY, a political subdivision of the State of Washington, as "County," and the CITY OF SPOKANE, a Washington municipal corporation, as "City;" jointly referred to hereinafter as the "parties."

RECITALS

WHEREAS, pursuant to RCW 39.34.080, the County and the City may contract with each other to perform any governmental service which each may legally perform; and

WHEREAS, the County has a full-time Hearing Examiner to conduct quasi-judicial hearings on land use matters involving County government, and the City has a full-time Hearing Examiner to conduct administrative or quasi-judicial hearings on land use matters and other regulatory matters involving City government; and

WHEREAS, the City and County wish to make use of the other party's Hearing Examiner to hear designated administrative or quasi-judicial matters when the requesting party's Hearing Examiner is absent, has a conflict of interest, or is unable to timely process matters; and

WHEREAS, the City and County have each adopted ordinances that authorize their respective legislative bodies to appoint a Hearing Examiner pro-tem to perform the duties of the Hearing Examiner when such Hearing Examiner is absent, has a conflict of interest or other reason; and

WHEREAS, Michael C. Dempsey is a County employee and currently serves as the Spokane County Hearing Examiner; Greg Smith is a City employee and currently serves as the City of Spokane Hearing Examiner; and both Hearing Examiners are duly admitted members of the Washington State Bar Association and are knowledgeable on land use and other local government matters;

In consideration of the above recitals and the terms specified below, County and City hereby agree as follows:

1. PURPOSE. This agreement is to provide a mechanism whereby the County and the City can respectively use the services of the other party's Hearing Examiner pro-tem to conduct administrative and quasi-judicial hearings, as directed respectively by the Board of County Commissioners of Spokane County and the Spokane City Council.
2. PAYMENT. The County and the City may exchange Hearing Examiner services on an in-kind basis, or agree to pay for such services at the rate of ONE HUNDRED TWENTY EIGHT AND NO/100 DOLLARS (\$128.00) per hour, or such other rate or sum as the parties may negotiate. The party offering services under this agreement shall submit an invoice for reimbursement to the party requesting services after such services have been rendered. Each Hearing Examiner shall keep a log of the number of hours worked and nature of the work performed for each hearing item, regardless of whether services are being reimbursed on an in-kind or hourly basis. The parties understand and acknowledge that their respective Hearing Examiners shall not be considered as an employee of the other party when performing services pursuant to this agreement.

Payment shall be made payable to Spokane County and remitted to the Hearing Examiner, Third Floor, County Public Works Building, 1026 West Broadway, Spokane, Washington, 99260-0245. Payment shall be made payable to the City of Spokane and remitted to the Office of the Hearing Examiner, Sixth Floor, City Hall, 808 West Spokane Falls Boulevard, Spokane, Washington, 99201.

3. AGREEMENT NOT EXCLUSIVE. The County's Hearing Examiner is hereby appointed as a Hearing Examiner pro-tem for the City of Spokane and the City's Hearing Examiner is hereby appointed as a Hearing Examiner pro-tem for Spokane County. This agreement is not exclusive and each party may designate other Hearing Examiner pro-tems to hear similar matters as authorized by local ordinance or resolution.

4. DURATION. This agreement shall begin September 5, 2008, and run through December 31, 2008, unless terminated sooner. The parties acknowledge that the availability of their respective Hearing Examiners is contingent upon the amount of work and the number of hearings which must be held by a party's Hearing Examiner. Neither party guarantees that its respective Hearing Examiner will be available at all times requested by the other party.

5. DECISIONS. Each Hearing Examiner pro-tem shall comply with the requirements of federal, state and local law, relating to the matter being considered by the examiner, including the ordinances and resolutions of the party requesting services under this agreement. If there is no applicable time period under statute or local ordinance or resolution for issuance of the Hearing Examiner's decision, the examiner shall exercise his best efforts to render a written decision with findings and conclusions within thirty (30) calendar days of concluding the hearing. If the Hearing Examiner's written decision is appealed, the Hearing Examiner shall review and certify the record from the hearing to the appropriate body after preparation of the record by the requesting party.

6. ADMINISTRATIVE SUPPORT. The offering party shall supply its own necessary administrative support services for the requesting party's hearing. The requesting party shall supply the hearing room, recording equipment, notifications, and copies of applicable regulations, policies, and reports. The offering party shall prepare and certify a transcript and/or copy of the record of any proceedings conducted by its Hearing Examiner, if required for an appeal; subject to reimbursement for the costs of preparing such documents from the appealing party as provided by law or ordinance. The offering party may consent to having the requesting party prepare such documents, subject to reimbursement from the appealing party for the costs involved.

7. AGREEMENT ADMINISTRATION. No new or separate legal entity or administrative entity is formed by this agreement. No property will be acquired, held or disposed of.

8. INDEMNIFICATION.

A. 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.

B. 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.

- C. If the comparative negligence of the parties and their officers and employees is a cause of such damage or injury, the liability, loss, costs, 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.
- D. 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.
- E. Each Party's duty to indemnify shall survive the termination or expiration of the agreement.
- F. 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.

9. TERMINATION. Either party may terminate this agreement upon five (5) days written notice to the other party. If the agreement is terminated, each party shall reimburse the other for any services performed pursuant to this agreement which have not at the time of termination been paid for and which the parties have previously agreed is compensable work.

10. VENUE. This agreement has and shall be construed as having been made and delivered in the State of Washington and the laws of the State of Washington shall be applicable to its construction and enforcement. Any action at law, suit in equity or judicial proceedings for the enforcement of this agreement or any provision hereto shall be instituted only in the courts of competent jurisdiction within Spokane County, Washington.

11. PROPERTY AND EQUIPMENT. The ownership of all property and equipment provided by either Party in each meeting its obligations under the terms of this agreement shall remain with the original owner unless specifically and mutually agreed by the PARTIES to the contrary.

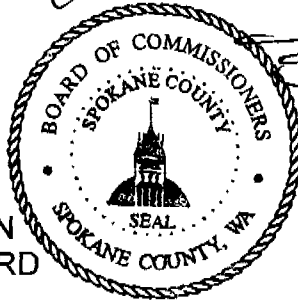
12. LEGAL ADVICE. The requesting party shall be responsible for providing legal advice to the offering party in conjunction with his performing Hearing Examiner Services under the terms of this agreement.

13. ALL WRITING AS CONTAINED HEREIN. This agreement contains all of 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 the parties hereto, or posted on each of the parties' websites.

14. RECORDING. The City will file this agreement with its City Clerk. The County shall file its agreement with its County Auditor or place the agreement on its WEB site.

IN WITNESS WHEREOF, the parties hereby execute the above agreement:

ADOPTED by the Board of County Commissioners of Spokane County, Washington this 23rd day of Sept., 2008.



Bonnie Mager
BONNIE MAGER, CHAIR

ATTEST:
DANIELLA ERICKSON
CLERK OF THE BOARD

Todd Mielke
TODD MIELKE, VICE CHAIR

BY: Daniela Erickson
Daniela Erickson 8 0860

Mark Richard
MARK RICHARD, COMMISSIONER

Dated this 22nd day of October, 2008

CITY OF SPOKANE

By: Tom Danek, Jr.
Title: Thomas E. Danek, Jr.
City Administrator
City of Spokane

Attest: Seri Hilde
City Clerk



Approved as to form:
By: B. B. Burns
Assistant City Attorney