RESOLUTION NO. 09-064

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF SPOKANE COUNTY, WASHINGTON, APPROVING AN INTERLOCAL COOPERATION AGREEMENT BETWEEN THE CITY OF SPOKANE VALLEY, WASHINGTON, AND SPOKANE COUNTY REGARDING REGIONAL WASTEWATER MANAGEMENT; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO

SPOKANE COUNTY, WASHINGTON

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SPOKANE COUNTY, WASHINGTON, as follows:

WHEREAS, Spokane County, Washington (the “County”), is a class A county duly organized and existing under and by virtue of the Constitution and laws of the state of Washington (the “State”);

WHEREAS, the County provides wastewater collection, handling, treatment, and disposal within the unincorporated areas of the County, the City of Millwood, certain properties in the City of Liberty Lake, certain properties in the City of Spokane, and the City of Spokane Valley (the “City”) (all areas together, the “Region”);

WHEREAS, the Region is faced with serious wastewater collection, management, treatment, and disposal issues, including an increasing volume of wastewater that will exceed the capacity of the existing wastewater system in less than five years;

WHEREAS, the City and County are vitally concerned about the increasing volume of wastewater and desire to construct, maintain and operate a new wastewater reclamation facility to properly treat, dispose and beneficially reuse the increasing volume of wastewater;

WHEREAS, the City and County have worked together since the City’s incorporation to develop and construct wastewater collection, treatment and disposal facilities;

WHEREAS, as a result of the City and County’s efforts, the County has entered into an agreement with CH2M HILL Constructors, Inc., to design, construct and operate the Spokane County Regional Wastewater Reclamation Facility (the “Facility”) for wastewater treatment and production of reclaimed water which will serve all persons within the Region;

WHEREAS, the County will sell a significant amount of sewer revenue bonds to finance the design and construction of the Facility;

WHEREAS, the City and County have been advised that entering into an Interlocal Cooperation Agreement (the “Interlocal Agreement”) evidencing the City’s support of the financing, design, construction and operation of the Facility will result in lower interest rates on the sewer revenue bonds than if such Interlocal Agreement was not entered into;
WHEREAS, the County is authorized by chapter 39.34 RCW to enter into agreements with the City for cooperative action, such as planning, construction, owning, financing, managing and operating wastewater facilities; and

WHEREAS, the Board of County Commissioners of the County (the "Board") hereby finds it in the best interests of the County and its residents to enter into the Interlocal Agreement with the City;

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED AND ORDERED as follows:

Section 1. Approval of Agreement

The Agreement is hereby approved. The Chair of the Board is hereby authorized to execute the Agreement on behalf of the County.

Section 2. Effective Date

This Resolution shall take effect immediately upon its adoption.

ADOPTED by the Board of County Commissioners of Spokane County, Washington, at a regular meeting thereof held on July 21, 2009.

SPOKANE COUNTY, WASHINGTON

Todd Mielke, Chair

Mark Richard, Vice Chair

Bonnie Mager, Commissioner

ATTEST:

Daniela Erickson, Clerk of the Board of County Commissioners

(SEAL)
CERTIFICATION

I, Daniela Erickson, Clerk of the Board of County Commissioners of Spokane County, Washington, hereby certify that the foregoing resolution is a full, true, and correct copy of a resolution duly passed and adopted at a regular meeting of such Board duly held at the Commissioners Assembly Room on July 21, 2009, of which meeting all members of such Board had due notice, and at which a majority thereof were present; and that at such meeting such resolution was adopted by the following vote:

AYES, and in favor thereof, Commissioners: Mager, Richard, Mielke

NAYS, Commissioners:

ABSENT, Commissioners:

ABSTAIN, Commissioners:

I further certify that I have carefully compared the same with the original resolution on file and of record in my office; that such resolution is a full, true, and correct copy of the original resolution adopted at such meeting; and that such resolution has not been amended, modified or rescinded since the date of its adoption, and is now in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the official seal of Spokane County on July 21, 2009.

SPOKANE COUNTY, WASHINGTON

Daniela Erickson, Clerk of the Board of County Commissioners
INTERLOCAL COOPERATION AGREEMENT
BETWEEN
THE CITY OF SPOKANE VALLEY, WASHINGTON,
AND
SPOKANE COUNTY, WASHINGTON,
REGarding
REGIONAL WASTEWATER MANAGEMENT

THIS AGREEMENT is entered into on this 21st day of July, 2009, by and between the City of Spokane Valley and Spokane County.

RECITALS

WHEREAS, Spokane County, a class A county duly organized and existing under and by virtue of the laws of the state of Washington (the “County”) provides wastewater collection, handling, treatment, and disposal within the unincorporated areas of the County, the City of Millwood, certain properties in the City of Liberty Lake, certain properties in the City of Spokane, and the City of Spokane Valley (the “City”) (all areas together, the “Region”);

WHEREAS, the Region is faced with serious wastewater collection, management, treatment, and disposal issues, including an increasing volume of wastewater that will exceed the capacity of the existing wastewater system in less than five years;

WHEREAS, the City and County are vitally concerned about the increasing volume of wastewater and desire to construct, maintain and operate a new water reclamation facility to properly treat and dispose the increasing volume of wastewater;

WHEREAS, the City and County have worked together since the City’s incorporation to develop and construct wastewater collection, treatment and disposal facilities;

WHEREAS, as a result of the City and County’s efforts, the County has entered into an agreement with CH2M HILL Constructors, Inc., to design, construct and operate the Spokane County Regional Water Reclamation Facility (the “Facility”) for wastewater treatment and production of reclaimed water which will serve all persons within the Region;

WHEREAS, the County will sell a significant amount of wastewater revenue bonds to finance the design and construction of the Facility;

WHEREAS, the City and County have been advised that this Agreement evidencing the City’s support of the financing, design, construction and operation of the Facility will result in lower interest rates on the wastewater revenue bonds than if such Agreement was not entered into;

WHEREAS, the City desires to support the financing, design, construction, and operation of the Facility in order to meet the wastewater needs within the boundaries of the City;
WHEREAS, it is the intent of this Agreement to evidence the City’s support for the Facility and the financing of the Costs of the Facility;

WHEREAS, the City and the County are authorized by chapter 39.34 RCW to enter into agreements with each other for cooperative action, such as planning, construction, owning, financing, managing and operating wastewater facilities;

WHEREAS, the aforementioned recitals are found to be true and correct findings of fact; and

WHEREAS, the City and County hereby find and determine that this Agreement is mutually fair and advantageous to the City and County;

NOW, THEREFORE, between the parties hereto, the City and County, IT IS HEREBY AGREED AS FOLLOWS:

ARTICLE I
DEFINITIONS

As used in this Agreement, the following words, unless the context otherwise dictates, have the following meanings:

Agreement means this Interlocal Cooperation Agreement between the City and the County and pertains solely to those matters contained herein.

Annual Budget means the System budget for a fiscal year, as adopted or amended by the County.

Charges means the fees, rates, and charges charged to the Users and collected by the County with respect to the System, as the same are hereinafter determined or later modified.

City means the City of Spokane Valley, Washington, a code city of the state of Washington.

Costs of Maintenance and Operation means the County’s expenses for operation, maintenance, repairs and ordinary renewals and replacements necessary for the operation of the System and includes, without limitation, administrative expenses, insurance premiums, legal and engineering expenses, consulting and technical expenses, payments to pension, retirement, health and hospitalization funds, annual charges payable by the County pursuant to any licenses, permits, orders or other authorizations from any agency or regulatory body having lawful jurisdiction, any taxes (excluding discretionary taxes imposed on the System by the County), governmental charges and other expenses required to be paid by the County to the extent properly and directly attributable to the operation of the System and costs of transfers or exchanges of the County Bonds. Costs of Maintenance and Operation do not include debt service payments or any provision for depreciation, amortization or similar charges, or any costs or expenses for new construction or reconstruction other than the costs of restoring any part of the System to be paid from Charges or any deposits into the County Wastewater Fund.
Costs of the Facility means, with respect to any part of the Facility, the costs, expenses and liabilities paid or incurred or to be paid or incurred in connection with the planning, engineering, designing, acquiring, constructing, installing, operating, maintaining, financing or disposing of such part of the Facility, including all costs incurred in connecting the Facility to any interceptor pipelines, and the obtaining of all governmental approvals, certificates, permits and licenses with respect thereto, including, without limitation, the costs relating to any eminent domain or condemnation expenses incurred in connection with the Facility by the County, and debt service on any evidence of indebtedness of the County issued to finance any of the foregoing.

Costs of the System means, with respect to any part of the System, the costs, expenses and liabilities paid or incurred or to be paid or incurred in connection with the planning, engineering, designing, acquiring, constructing, installing, operating, maintaining, financing, or disposal of such part of the System, and the obtaining of all governmental approvals, certificates, permits, and licenses with respect thereto, including without limitation, the costs relating to any eminent domain or condemnation expenses incurred in connection with the System by the County, and debt service on any evidence of indebtedness of the County issued to finance any of the foregoing.

County means Spokane County, Washington, a class A county of the state of Washington.

County Bonds means the “Spokane County Wastewater Revenue Bonds, Series 2009,” or such other designation as the County decides at the time of issuance, to be issued to finance all or a portion of the Costs of the Facility. County Bonds shall also include additional bonds issued to pay the costs of completing the Facility and related water reuse/reclamation projects in the principal amount not to exceed $60,000,000. All County Bonds shall mature no later than 2031.

Facility means the Spokane County Regional Wastewater Reclamation Facility comprised of all property, real or personal, tangible or intangible, that is now owned or hereafter acquired by the County and is used or useful by the County: (i) in connection with the transport of untreated wastewater generated within the Region from the interceptor sewers to the treatment plant, (ii) in connection with the treatment of the wastewater and generation of reclaimed water, and (iii) in connection with disposal, and reuse of reclaimed water.

Region means the boundaries of the unincorporated area of the County together with the boundaries of the City, the City of Millwood, certain properties in the City of Spokane, and certain properties in the City of Liberty Lake, that rely on the System for wastewater service.

System means the Facility and all sewage collection system, pumping stations, force mains, interceptors, wastewater system properties, real and personal, tangible and intangible, now existing, or hereafter acquired or constructed by the County, and which are used in connection with the Facility for the purposes of wastewater collection, transport, treatment, disposal, and reuse. For purposes of this Agreement, System does not include the wastewater improvements located in the Northern portion of the County nor the County’s share of its capacity in the Riverside Park Reclamation Facility.

Users mean all persons, entities, or municipalities within the Region connected to the
wastewater system utilizing the System for collection, handling, treatment, disposal, and reuse of wastewater.

ARTICLE II
COOPERATIVE PROJECT

Section 2.1. Purpose of this Agreement.

The purpose of this Agreement is to set forth certain agreements between the City and the County relating to the use of the System for the collection, management, transport, handling, treatment, disposal and reuse of wastewater within the Region.

Section 2.2. Cooperative Nature of the System.

The City and County hereby recognize the regional nature of the challenges related to wastewater management, and the necessity of a regional solution. To achieve a beneficial regional solution to both the City and County, the City and County hereby declare their combined support of the planning, financing, construction, managing and operation of the System, all as more particularly described below.

Section 2.3. Ownership of System.

The System shall be owned and managed by the County.

Section 2.4. Financing.

The County shall issue the County Bonds to finance the Facility. The City and the County hereby agree and declare that sufficient revenues must be generated through the Charges to properly pay the Costs of Maintenance and Operation and to pay the principal and interest on the County Bonds. Notwithstanding anything in this Agreement to the contrary, the City shall not be responsible for paying principal of or interest on the County Bonds at any time.

Section 2.5. Charges.

(a) A necessary element of achieving a regional wastewater solution is funding the cost of construction of the Facility. Pursuant to this Agreement, the County, through the use of the System, will provide wastewater collection, handling, treatment, disposal and reuse services and collect Charges within the Region. In recognition of the foregoing, the City hereby agrees that the City will not create any competing wastewater utility or competing system for the purposes of providing wastewater services to Users within the City so long as the County Bonds are outstanding; provided, nothing herein shall prevent the City from providing alternative service to a New User (hereinafter defined) pursuant to Section 3.2(d) or terminating this Agreement pursuant to Section 3.2(e).

(b) This Agreement will not prevent the City and/or County from imposing such fees, utility taxes and overhead charges on the Users to the extent authorized by law.
Section 2.6. Charges and Budgets.

(a) The County shall prepare an Annual Budget for the System, taking into consideration comments from the Policy Advisory Board (hereinafter defined), at the same time the County prepares its general budget.

(b) The Annual Budget for the System shall establish operating revenues, expenses, and reserves that are sufficient to meet the covenants in the resolution authorizing the County Bonds.

(c) Charges for wastewater service shall be uniform for the same class of service, provided that additional fees, taxes, or overhead charges may be imposed by the City within the City's borders or by the County within the unincorporated area of the County to the extent authorized by law.

Section 2.7. Management.

(a) The County shall operate the System and shall be responsible for making all operational and policy decisions. The County shall be responsible for all contract and non-contract employees of the System. The County may contract for any third-party to operate the System.

(b) The City and County shall form a five-member Policy Advisory Board (the "Policy Advisory Board"), comprised of two City elected representatives, two County Commissioners and one member selected by the four appointed members. The term of each appointment shall be for four years or at such time as any such elected official ceases to be an elected official. The Policy Advisory Board shall review and make a recommendation on the Annual Budget and proposed Charges, giving due consideration to all covenants in the resolution authorizing the County Bonds; provided, however, that such recommendation shall at all times comply with the provisions of the resolution authorizing the County Bonds. The purpose and function of the Policy Advisory Board shall be to create a forum for discussion between the City and the County concerning the System and to create a body to which information concerning the System can be provided. The City and the County shall each appoint their representatives, who shall serve without additional compensation. The fifth member of the Policy Advisory Board shall also serve without compensation. The Policy Advisory Board shall have no independent decision-making authority. The County shall provide a statement of System income and expenses (Combined Annual Financial Report) to the Policy Advisory Board at the end of each fiscal year or on such other periodic basis agreed upon by the City and the County.

The Policy Advisory Board shall meet at least once each calendar year to review the draft annual budget for the System, or on such other periodic basis agreed upon by the members to review policy matters pertaining to the System. Additionally, the Policy Advisory Board shall meet to review any proposal to change Charges applied to the Users of the System. The County shall cause an operational status report for the System to be made at such meeting of the Policy Advisory Board.
The failure of the Policy Advisory Board to meet as provided in this section shall not invalidate this Agreement.

**ARTICLE III**

**MISCELLANEOUS**

**Section 3.1. Amendment of this Agreement.**

Amendment of this Agreement may be made only by written agreement of the City and the County.

**Section 3.2. Duration and Termination of this Agreement.**

(a) The System is a regional system for the collection, transport, treatment, management and disposal and reuse of wastewater and is to be operated pursuant to this Agreement. Neither the City nor the County may use the System to the exclusion of the other, except as otherwise provided in this Agreement.

(b) This Agreement shall be in effect until the County Bonds have been paid in full or defeased, whether by early redemption, refunding of the County Bonds or otherwise, and in no event shall the term of this Agreement be longer than the term of the County Bonds or January 1, 2031, whichever occurs first.

(c) Except as otherwise provided herein, this Agreement may be terminated early only by mutual agreement of the City and the County.

(d) In the event a new User located within the boundaries of the City desires to connect to the System after the date of this Agreement and the System cannot provide wastewater collection, disposal and treatment services to such new User, or in the event an existing User located within the boundaries of the City desires to expand its operations, thereby increasing its usage, and the System cannot provide wastewater collection, disposal and treatment services to such expanded User (such impacted Users in each case referred to as a “New User”) within a period of 6 months, the City may seek to provide wastewater collection, disposal and treatment services to the New User by whatever means the City desires; provided, nothing in this section shall invalidate this Agreement nor the rights and obligations of the parties hereunder with respect to the Users, imposition and collection of Charges and the County Bonds.

(e) Notwithstanding the foregoing, in the event the County fails to serve the existing Users within the City, and such failure cannot be cured within 180 calendar days, the City may terminate this Agreement.

**Section 3.3. Regionalization of Wastewater Management.**

Nothing in this Agreement shall preclude the City and/or County from participating in efforts to form a regional wastewater utility, provided that if a regional wastewater utility is formed all outstanding County Bonds shall be assumed, defeased or paid by such regional wastewater utility.
Section 3.4 Organization of Separate Entity and its Powers.

No new or separate legal entity is created to administer the provisions of this Agreement. However a Policy Advisory Board is formed having certain responsibilities as set forth in Section 2.7 above.

Section 3.5 Property Upon Termination.

Upon termination of this Agreement, the System shall be owned and managed by the County.

Section 3.6 Dispute Resolution.

Any dispute between the City and County regarding this Agreement which cannot be resolved between the City and County shall be subject to non binding mediation. Such dispute shall first be reduced to writing and considered by the City Manager and County Chief Executive Officer. If the City and County Chief Executive Officer cannot resolve the dispute it will be submitted to a mediation panel.

The City and the County shall have the right to designate one person each to act as a mediator. The two selected mediators shall then jointly select a third mediator. The decision of the mediation panel shall not be binding on the parties; provided, however, such mediation shall be a condition precedent to any additional legal action.

The costs of the mediation panel shall be equally split between the parties.

Section 3.7 No Abrogation.

Nothing in this Agreement is intended to limit or abrogate the parties’ existing rights or obligations under existing law.

Section 3.8 Waiver.

No officer, employee, agent or otherwise of the City or the County has the power, right, or authority to waive any of the conditions or provisions of this Agreement. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement or at law shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law. Failure of the City or the County to enforce at any time any of the provisions of this Agreement, shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this Agreement or any part hereof, or the right of the City and/or the County to hereafter enforce each and every such provision.
Section 3.9. Headings.

The section headings in this Agreement have been inserted solely for the purpose of convenience and ready reference. In no way do they purport to, and shall not be deemed to, limit or extend the scope or intent of the sections to which they appertain.

Section 3.10. All Writings 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 any of the parties hereto. The parties have read and understand all of the provisions of this Agreement, and now state that no representation, promise, or agreement not expressed in this Agreement has been made to induce the parties to execute the same.

Section 3.11. Filing of this Agreement.

The County shall file this Agreement with the County Clerk, County Auditor and Secretary of State, with a copy of such filings to the City Clerk.

Section 3.12. Severability.

In the event any provision of this Agreement shall be declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not, in any way, be affected or impaired thereby.

Section 3.13. Effective Date.

This Agreement shall become effective immediately after it is duly adopted by the City Council and the Board of County Commissioners of the County.

[Remainder of this page intentionally left blank.]
IN WITNESS each of the parties has executed this Agreement by their duly authorized officials.

DATED as of this 21st day of July, 2009.

SPOKANE COUNTY, WASHINGTON

Todd Mielke, Chair
Mark Richard, Vice-Chair
Bonnie Mager, Commissioner

ATTEST:
Daniela Erickson, Clerk of the Board of County Commissioners
(SEAL)

Marshall R. Farnell, Chief Executive Officer

APPROVED AS TO FORM:
Jim Emacio, Chief Civil Deputy Prosecuting Attorney

DATED as of this 21st day of July, 2009.

CITY OF SPOKANE VALLEY
Spokane County, Washington

David R. Mercier, City Manager

ATTEST:
Chris Bainbridge, City Clerk

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