

THE CITY OF SPOKANE



ADVANCE COUNCIL AGENDA

MEETING OF MONDAY, NOVEMBER 3, 2014

MISSION STATEMENT

TO DELIVER EFFICIENT AND EFFECTIVE SERVICES
THAT FACILITATE ECONOMIC OPPORTUNITY
AND ENHANCE QUALITY OF LIFE.

MAYOR DAVID A. CONDON

COUNCIL PRESIDENT BEN STUCKART

COUNCIL MEMBER MICHAEL A. ALLEN

COUNCIL MEMBER CANDACE MUMM

COUNCIL MEMBER KAREN STRATTON

COUNCIL MEMBER MIKE FAGAN

COUNCIL MEMBER JON SNYDER

COUNCIL MEMBER AMBER WALDREF

CITY COUNCIL CHAMBERS
CITY HALL

808 W. SPOKANE FALLS BLVD.
SPOKANE, WA 99201

CITY COUNCIL BRIEFING SESSION

Council will adopt the Administrative Session Consent Agenda after they have had appropriate discussion. Items may be moved to the 6:00 p.m. Legislative Session for formal consideration by the Council at the request of any Council Member.

SPOKANE CITY COUNCIL BRIEFING SESSIONS (BEGINNING AT 3:30 P.M. EACH MONDAY) AND LEGISLATIVE SESSIONS (BEGINNING AT 6:00 P.M. EACH MONDAY) ARE BROADCAST LIVE ON CITY CABLE CHANNEL FIVE AND STREAMED LIVE ON THE CHANNEL FIVE WEBSITE. THE SESSIONS ARE REPLAYED ON CHANNEL FIVE ON WEDNESDAYS AT 6:00 P.M. AND FRIDAYS AT 10:00 A.M.

The Briefing Session is open to the public, but will be a workshop meeting. Discussion will be limited to Council Members and appropriate Staff and Counsel. There will be an opportunity for the expression of public views on any issue not relating to the Current or Advance Agendas during the Open Forum at the beginning and the conclusion of the Legislative Agenda.

ADDRESSING THE COUNCIL

- No one may speak without first being recognized for that purpose by the Chair. Except for named parties to an adjudicative hearing, a person may be required to sign a sign-up sheet as a condition of recognition.
- Each person speaking at the public microphone shall print his or her name and address on the sheet provided at the podium and verbally identify him/herself by name, address and, if appropriate, representative capacity.
- If you are submitting letters or documents to the Council Members, please provide a minimum of ten copies via the City Clerk. The City Clerk is responsible for officially filing and distributing your submittal.
- In order that evidence and expressions of opinion be included in the record and that decorum befitting a deliberative process be maintained, modes of expression such as demonstration, banners, applause and the like will not be permitted.
- A speaker asserting a statement of fact may be asked to document and identify the source of the factual datum being asserted.

SPEAKING TIME LIMITS: Unless deemed otherwise by the Chair, each person addressing the Council shall be limited to a three-minute speaking time.

CITY COUNCIL AGENDA: The City Council Advance and Current Agendas may be obtained prior to Council Meetings from the Office of the City Clerk during regular business hours (8 a.m. - 5 p.m.). The Agenda may also be accessed on the City website at www.spokanecity.org. Agenda items are available for public review in the Office of the City Clerk during regular business hours.

AMERICANS WITH DISABILITIES ACT (ADA) INFORMATION: The City of Spokane is committed to providing equal access to its facilities, programs and services for persons with disabilities. The Spokane City Council Chamber in the lower level of Spokane City Hall, 808 W. Spokane Falls Blvd., is wheelchair accessible and also is equipped with an infrared assistive listening system for persons with hearing loss. Headsets may be checked out (upon presentation of picture I.D.) at the City Cable 5 Production Booth located on the First Floor of the Municipal Building, directly above the Chase Gallery or through the meeting organizer. Individuals requesting reasonable accommodations or further information may call, write, or email Christine Cavanaugh at (509) 625-6383, 808 W. Spokane Falls Blvd, Spokane, WA, 99201; or ccavanaugh@spokanecity.org. Persons who are deaf or hard of hearing may contact Ms. Cavanaugh at (509) 625-7083 through the Washington Relay Service at 7-1-1. Please contact us forty-eight (48) hours before the meeting date.

If you have questions, please call the Agenda Hotline at 625-6350.

BRIEFING SESSION

(3:30 p.m.)

(Council Chambers Lower Level of City Hall)
(No Public Testimony Taken)

Council Reports

Staff Reports

Committee Reports

Advance Agenda Review

Current Agenda Review

ADMINISTRATIVE SESSION

Roll Call of Council

CONSENT AGENDA

REPORTS, CONTRACTS AND CLAIMS

RECOMMENDATION

- | | | |
|--|----------------|---------------|
| 1. Increase Value Blanket Order with Datec, Inc. (Seattle, WA) for laptops and docking stations utilizing WA State Contract T11-MST-548—increase of \$70,000 (from \$230,000 to \$300,000). Tim Schwering | Approve | OPR 2014-0485 |
| 2. Value Blanket Orders with:
Ken Gimple | Approve
All | |
| a. Northstar Chemical (Tualatin, OR) for the annual supply of Hydrochloric Acid to be purchased on an as needed basis—Estimated annual expenditure \$31,088.20 (incl. tax). | | OPR 2014-0722 |
| b. BHS Specialty Chemical Products (Nampa, ID) for the annual supply of Sodium Hydroxide 50% Membrane (Caustic Soda) to be purchased on an as needed basis—Estimated annual expenditure \$26,966.29 (incl. tax). | | OPR 2014-0723 |
| c. BHS Specialty Chemical Products (Nampa, ID) for the annual supply of Activated Carbon to be purchased on an as needed basis—Estimated annual expenditure \$53,807.67 (incl. tax). | | OPR 2014-0724 |

- | | | |
|--|----------------|---------------|
| d. Eljay Oil (Spokane, WA) for the purchase of Ultra Low Sulfur #2 Dyed Diesel and supporting equipment to be purchased on an as needed basis—Estimated annual expenditure \$75,000 (incl. tax). | | OPR 2014-0725 |
| 3. Contract with Avista Corporation (Spokane, WA) for the sale of electricity from the Spokane Waste to Energy Facility from November 17, 2014, to December 31, 2017—Estimated annual revenue \$6,000,000. Ken Gimple | Approve | OPR 2014-0726 |
| 4. Interlocal Agreements with for disposal of solid waste at the Waste to Energy Facility from November 17, 2014, to November 16, 2021, with:
Ken Gimple | Approve
All | |
| a. City of Medical Lake, WA—\$1,700,000 revenue over 7 years. | | OPR 2014-0727 |
| b. City of Airway Heights, WA—\$2,600,000 revenue over 7 years. | | OPR 2014-0728 |
| 5. Contract with Knight Construction and Supply, Inc. (Deer Park, WA) for emergency and scheduled millwright maintenance work at the Waste to Energy Facility from November 17, 2014, to April 17, 2016—\$1,650,000. Ken Gimple | Approve | OPR 2014-0730 |
| 6. Contract Amendment/Extension with Regional Disposal Company, Inc. for transporting and disposal of ash and bypass waste from the Waste to Energy Plant from November 17, 2014, through November 16, 2021—\$3,439,700. Ken Gimple | Approve | OPR 1991-0473 |
| 7. Contract with AssetPoint (Greenville, SC) for TabWare Maintenance Management System and support for use at the Waste to Energy Facility from November 17, 2014, to November 16, 2019—\$108,500 for the first year. Ken Gimple | Approve | OPR 2014-0732 |
| 8. Amendment No. 4 to Cable Educational Access Agreement with Friends of KSPS, one of the designated operators of Spokane's education access channels, providing a grant (from PEG Fees) for capital expenditures for calendar year 2014—Up to \$88,000. John Delay | Approve | OPR 2007-0767 |

9. Contract with Western States Construction, Inc. (Valley Ford, WA) for construction/remodel of a new Hillyard Police Precinct located at 5124 N. Market Street—not to exceed \$324,304.70 including tax and a 10% reserve. (Relates to Emergency Budget Ordinance C35173) **Mike Werner** Approve OPR 2014-0731
10. Report of the Mayor of pending: Approve & Authorize Payments CPR 2014-0002
- a. Claims and payments of previously approved obligations, including those of Parks and Library, through _____, 2014, total \$_____, with Parks and Library claims approved by their respective boards. Warrants excluding Parks and Library total \$_____.
- b. Payroll claims of previously approved obligations through _____: _____.
- CPR 2014-0003

EXECUTIVE SESSION

(Closed Session of Council)

(Executive Session may be held or reconvened during the 6:00 p.m. Legislative Session)

CITY COUNCIL SESSION

(May be held or reconvened following the 3:30 p.m. Administrative Session)

(Council Briefing Center)

This session may be held for the purpose of City Council meeting with Mayoral nominees to Boards and/or Commissions. The session is open to the public.

LEGISLATIVE SESSION

(6:00 P.M.)

(Council Reconvenes in Council Chamber)

WORDS OF INSPIRATION

PLEDGE OF ALLEGIANCE

ROLL CALL OF COUNCIL

ANNOUNCEMENTS

(Announcements regarding Changes to the City Council Agenda)

BOARDS AND COMMISSIONS APPOINTMENTS

(Includes Announcements of Boards and Commissions Vacancies)

CITY ADMINISTRATION REPORT

COUNCIL COMMITTEE REPORTS

(Committee Reports for Finance, Neighborhoods, Public Safety, Public Works, and Planning/Community and Economic Development Committees and other Boards and Commissions)

OPEN FORUM

This is an opportunity for citizens to discuss items of interest not relating to the Current or Advance Agendas nor relating to political campaigns/items on upcoming election ballots. This Forum shall be for a period of time not to exceed thirty minutes. After all the matters on the Agenda have been acted on, unless it is 10:00 p.m. or later, the open forum shall continue for a period of time not to exceed thirty minutes. Each speaker will be limited to three minutes, unless otherwise deemed by the Chair. If you wish to speak at the forum, please sign up on the sign-up sheet located in the Chase Gallery.

LEGISLATIVE AGENDA

EMERGENCY BUDGET ORDINANCE

(Require Five Affirmative, Recorded Roll Call Votes)

Ordinance No. C35173 amending Ordinance No. C35062 passed the City Council November 25, 2013, and entitled, "An Ordinance adopting the Annual Budget of the City of Spokane for 2014, making appropriations to the various funds, departments and programs of the City of Spokane government for the fiscal year ending December 31, 2014, and providing it shall take effect immediately upon passage," and declaring an emergency and appropriating funds in:

Asset Management Fund

FROM: Unappropriated Reserves, \$375,000;

TO: Other Improvements, same amount.

(This action establishes a budget for capital improvements to the Hillyard Police Precinct.) (Relates to Consent Agenda Item No. 9) **Mike Werner**

NO EMERGENCY ORDINANCES

RESOLUTIONS & FINAL READING ORDINANCES

(Require Four Affirmative, Recorded Roll Call Votes)

- RES 2014-0104 Setting hearing before the City Council for December 8, 2014, for the vacation of an un-named portion of right-of-way, 60 ft. by 447.97 ft., approximately 650 ft. north of 8018 W. Sunset Highway, requested by Rodney Black and John McCormack. **Eldon Brown**
- RES 2014-0105 Declaring Hitachi Zosen INOVA U.S.A, LLC (HZI) (Norcross, GA), who
OPR 2014-0729 currently owns the fabricating casting molds and drawings used to manufacture the spare parts for use in the City's Waste to Energy Facility, as sole source and authorizing contract from November 17, 2014, to November 16, 2019—estimated cost for the first year of \$157,500 (excluding taxes, if applicable). **Ken Gimple**
- ORD C35148 Relating to the Code of Ethics; adopting a new Chapter 1.04A to Title 1 of the Spokane Municipal Code and repealing Title 1.04 of Title 1 of the Spokane Municipal Code. (Deferred from September 14, 2014, Agenda) **Nancy Isserlis**
- ORD C35153 Relating to gambling taxes; amending SMC Section 8.04.020. (Deferred from September 29, 2014, Agenda) **Council Member Snyder**

FIRST READING ORDINANCES

(No Public Testimony Will Be Taken)

- ORD C35174 Relating to financial audit findings; adopting a new Chapter 7.18 to Title 7 of the Spokane Municipal Code. **Council President Stuckart**
- ORD C35175 (To be considered under Hearings Item H1.b.)

NO SPECIAL CONSIDERATIONS

HEARINGS

- | | | | |
|-----|--|-----------------------------------|------------|
| H1. | a. Hearing on vacation of alley between Rowan Avenue and Nebraska Avenue from Julia Street to Myrtle Street in Section 34 T26N, R43E, W.M., Spokane, Washington. | Approve
Subj. to
Conditions | |
| | b. First Reading Ordinance C35175 vacating the alley between Rowan Avenue and Nebraska Avenue from Julia Street to Myrtle Street in | Further
Action
Deferred | ORD C35175 |

Section 34, T26N, R43E, W.M., Spokane,
Washington, as requested by Kelly M. Beechinor.

Eldon Brown

H2. Continuation of Hearing on 2015 Proposed Budget.
(Continued from October 27, 2014)

Tim Dunivant

Hold Hrg. &
Cont. to
11/10/2014

FIN 2014-0001

**Motion to Approve Advance Agenda for November 3, 2014
(per Council Rule 2.1.2)**

OPEN FORUM (CONTINUED)

This is an opportunity for citizens to discuss items of interest not relating to the Current or Advance Agendas nor relating to political campaigns/items on upcoming election ballots. This Forum shall be for a period of time not to exceed thirty minutes. After all the matters on the Agenda have been acted on, unless it is 10:00 p.m. or later, the open forum shall continue for a period of time not to exceed thirty minutes. Each speaker will be limited to three minutes, unless otherwise deemed by the Chair. If you wish to speak at the forum, please sign up on the sign-up sheet located in the Chase Gallery.

ADJOURNMENT

The November 3, 2014, Regular Legislative Session of the City Council is adjourned to November 10, 2014.

NOTES

**Agenda Sheet for City Council Meeting of:**

11/03/2014

Date Rec'd	10/22/2014
Clerk's File #	OPR 2014-0485
Renews #	
Cross Ref #	
Project #	
Bid #	
Requisition #	VB300532

Submitting Dept	POLICE
Contact Name/Phone	TIM SCHWERING 625-4109
Contact E-Mail	TSCHWERING@SPOKANEPOLICE.ORG
Agenda Item Type	Purchase w/o Contract
Agenda Item Name	0680-LAPTOP AND DOCKING STATIONS VB INCREASE

Agenda Wording

Approval to increase VB300532 with Datec, Inc. (Seattle, WA) for laptops and docking stations by \$70,000.00 from \$230,000.00 to \$300,000.00. The value blanket utilizes WA state contract T11-MST-548.

Summary (Background)

Panasonic CF-31 Toughbook laptops and vehicle cradles are needed as a purchase to equip patrol cars. Funds will be used to replace patrol laptops for SPD. This replacement is on a 5 year replacement plan through SRECS-IT. Cost with increase is estimated to be \$300,000.00 (including tax).

<u>Fiscal Impact</u>		<u>Budget Account</u>	
Expense	\$ 40,700.00	#	5901-79115-94000-56409-99999
Expense	\$ 29,300.00	#	VARIOUS
Select	\$	#	
Select	\$	#	
<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	STRAUB, FRANK	<u>Study Session</u>	10/20/2014
<u>Division Director</u>	STRAUB, FRANK	<u>Other</u>	
<u>Finance</u>	LESESNE, MICHELE	<u>Distribution List</u>	
<u>Legal</u>	WHALEY, HUNT	achirowamangu	
<u>For the Mayor</u>	SANDERS, THERESA	kclaar	
<u>Additional Approvals</u>		ewade	
<u>Purchasing</u>	WAHL, CONNIE	slynds	
		cwahl	
		cseidl	

**Briefing Paper
City of Spokane
Spokane Police Department
Laptop Value Blanket
Public Safety Committee-October 20, 2014**

Subject

To increase value blanket with Datec for Laptops and Docking Cradles for Patrol Cars from \$230,000.00 to \$300,000.00. The value blanket utilizes WA state contract T11-MST-548.

Background

Patrol utilizes laptops every day in their patrol cars, so replacements of these laptops are needed on a 5 year rotation. These orders have been falling short in the previous years of what is actually needed and so the value blanket this year will help to close that gap.

Impact

- Funds will be used to replace patrol laptops for SPD as current ones become non-functional.
- Funds will be used to purchase sub-compact mobile data computers to be used by Traffic Patrol officers as well as docking stations for these computers to be multi-functional in patrol vehicles as well.
- These technology improvements will ensure SPD officers are able to complete essential job functions in the field more effectively and efficiently.
-

Action

Council Approval to increase VB300532 from \$230,000.00 to \$300,000.00.

Funding

General Fund

PARTICIPATING ADDENDUM
[hereinafter "Addendum"]
For
WSCA/NASPO PC Contracts 2009-2014
COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES
MASTER PRICE AGREEMENT NUMBER B27172

Between
Panasonic Solutions Company
[hereinafter "Contractor"]
and
The State of Washington Department of Information Services
[hereinafter "Participating State" or "DIS"]

DIS Contract #T11-MST-548

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1. Scope

This Addendum covers the WSCA/NASPO PC Contracts 2009-2014 (Computer Equipment, Peripherals and Related Services) lead by the State of Minnesota for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts.

Through execution of this Addendum, DIS adopts the Master Price Agreement Number B27172 as a Master Contract for the State of Washington.

The Request for Proposals (RFP) that resulted in the award of the Master Price Agreement and this Agreement was posted on the web site of the Minnesota Department of Administration, with a notice and link posted on the Washington State TechMall under "Current Procurement Notices" and was advertised in the Seattle Daily Journal of Commerce on September 30, 2008 and on October 1, 2008. Protest procedures and contract terms were included in the RFP.

2. Participation

Use of specific WSCA/NASPO cooperative contract by state agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

This Agreement may be used by any Washington State agency with properly delegated authority to purchase Products and Services that are the subject of this Agreement, and by any local government or political subdivision (including public schools, colleges, and universities) of the State of Washington or by eligible non-profit organizations with the authority to purchase such Products and Services who have a properly executed Customer Service Agreement with DIS.

This Agreement is not for personal use.

3. Changes



PARTICIPATING ADDENDUM
[hereinafter "Addendum"]
For
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COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES
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3.1 "LIMITATIONS AND EXCLUSIONS"

LIMITATIONS AND EXCLUSIONS

The Current Scope is: **BAND 2 – Workstations**
 BAND 5- PDAs

1. Exclusion: Multifunction network print/fax/scan devices that print more than fifty pages per minute (50 ppm) (under Band 3 - Printers of the RFP) shall be expressly excluded from sale by Contractor for purchase under this Addendum by State Agencies.

2. Exclusion: All "Personal Services," as defined in the Revised Code of Washington RCW 39.29.006(7), shall be expressly excluded from sale by Contractor for purchase under this Addendum by State Agencies.

3. Exclusion: "Personal Services" include professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement. This exclusion does not apply to such Services as warranty, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, service desk, helpdesk, and any other directly related technical support services required for the effective operation of a Product offered or supplied.

4. Exclusion: Disaster recovery planning and support services and pre-implementation planning and design services shall be expressly excluded from sale by Contractor for purchase under this Addendum by State Agencies.

3.2 DEFINITIONS:

a. Delete the definition of "**Services**" entirely. Replace it with the following:



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"Services" shall mean those Services and activities provided by Vendor to accomplish routine, continuing, and necessary functions as set forth in this Contract or a Statement of Work. All Personal Services as defined in the RCW are expressly excluded from sale by Contractor for purchase under this Agreement.

- b. Delete the definition of **"State Procurement Official"** entirely. Replace it with the following:
- "State Procurement Official"** means the Director of the Washington State Department of Information Services.
- c. Delete the definition of **"Travel"** no travel expenses shall be reimbursed under this Agreement.
- d. Add the following definition for **"Confidential Information"**
- "Confidential Information"** shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either RCW 42.56 or other state or federal statutes. Confidential Information includes, but is not limited to certain: names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data.
- e. Add the following definition for **"Proprietary Information"**
- "Proprietary Information"** shall mean information owned by Contractor to which Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.



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- f. Add the following definition for "**State Agency**".

"State Agency" shall mean any Washington State officer or activity of the executive and judicial branches of Washington State government, including state agencies, departments, offices, division, boards, commissions, and education, correctional and other types of institutions.

- g. Delete the definition for "**Purchasing Entity**" entirely. Replace it with the following:

"Purchasing Entity" shall mean any entity, including state and local government entities, tribal governments and qualifying non-profits with an established business relationship with DIS through a Customer Service Agreement.

3.3 Article 6 Payment Provisions:

- a. Article 6.B "**Payment of Invoice**" is modified to add the following.

No advance payment shall be made for Services furnished by Contractor pursuant to this Contract, except maintenance on Washington State equipment that may be paid up to one year in advance.

- b. Article 6.C "**Payment of Taxes**", is modified to.

i. Purchasing Entities will pay sales and use taxes, if any, imposed on the Services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. Purchasing Entities that are an agency of Washington State government, are exempt from property tax.



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ii .Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

iii. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Contractor or Contractor's staff shall be Contractor's sole responsibility.

3.4 Article 12 "**Patent, Copyright, Trademark and Trade Secret Indemnification**" is modified as follows:

a. Delete the text of subparagraph A.2:

"Allow the Contractor to control the defense or settlement of the claim; and"

b. Replace subparagraph A.2: with the following:

"Use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations; and"

3.5 Article 20 "**Records and Audits**" is deleted in its entirety and replaced with the following:

Contractor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Agreement, including but not limited to Minority and Women's Business Enterprise participation, protection and use of Purchaser's Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Agreement. Vendor shall retain all such records for six (6) years after the expiration or termination of this Agreement. Records involving matters in litigation related to this Agreement shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Agreement, whichever is later.



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All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the DIS Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors.

Contractor shall I advise its subcontractors this section's records retention and enforce & review these requirements.

3.6 in the last sentence in Article 31 "**Governing Law**" is deleted and replaced with the following:

Venue for any claim, dispute or action concerning an order placed against this Agreement or the effect of a Participating Addendum shall be in the Superior Court for Thurston County, Washington.

3.7 **Article 34 "Data Practices"** is deleted in its entirety and replaced with the following:

A. Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Agreement or its performance may consist of information that is exempt from disclosure to the public or to other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes ("Confidential Information").

B. Contractor agrees

(i) to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Agreement,

(ii) to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Agreement, and



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(iii) not to release, divulge, publish, transfer, sell, disclose, or otherwise make the Confidential Information known to any other party without Purchasing Entities' express written consent or as provided by law.

C. Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by the Specific Purchasing Entity. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

D. Immediately upon expiration or termination of this Contract, Contractor shall, at the Purchasing Entity's option: (i) certify that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchasing Entity; or (iii) take whatever other steps the Purchasing Entity requires of Contractor to protect its Confidential Information.

E. Violation of this section by the Contractor or its Subcontractors may result in (i) termination of this Contract (ii) a demand for return of all Confidential Information and (iii) a demand for monetary damages, or penalties.

F. Vendor acknowledges that DIS and the Purchasing Entities are subject to chapter 42.56 RCW and that this Contract shall be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be Confidential Information, Proprietary Information or a Trade Secret must be clearly identified as such by the Contractor. To the extent consistent with chapter 42.56 RCW, DIS or the Purchasing Entities, as applicable, shall maintain the confidentiality of all such information marked Proprietary Information.

If a public disclosure request is made to view Information designated by the Contractor as Confidential, Proprietary or a Trade Secret, DIS or the Purchasing Entities, as applicable will notify Contractor of the request and of the specific date that such records containing such information will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure.

If Contractor fails to obtain the court order enjoining disclosure, DIS or the Purchasing Entities, as applicable will release the requested information on the date specified.



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3.8 Article 35 "**Organizational Conflicts of Interest**" is modified to add the following language after item B:

C. DIS may terminate this Agreement by written notice to Contractor if DIS determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, DIS shall be entitled to pursue the same remedies against Contractor as it could pursue in the event Contractor breaches this Contract

3.9 Article 43 "**Notification**" is modified by inserting the following after the address block containing the contact information for MMD ("To MMD"):

TO DIS

Department of Information Services
Attn: Master Contract Administrator
1110 Jefferson Street SE, P.O. Box 42445, Olympia WA 98504
Email: MCAdmin@dis.wa.gov

3.10 Article 44.B "**Participating Entity Reports and Fees**" is modified by adding the following language after item 3:

4. Contractor agrees to provide monthly report to the Participating State contact listed below for the State of Washington. The monthly report shall include the gross Washington sales for the month just ended, excluding sales tax, subtotaled by Purchasing Entity name within Washington and shall include the Contractor's customer number for each Purchasing Entity. The report shall be accompanied with a check payable to the Department of Information Services for an amount equal to one and one-half percent (1.5%) of the gross Washington sales, excluding sales tax for the month. The monthly report and fee shall be submitted by the last business day of the month following the month in which the Contractor invoices the Purchasing Entity. Monthly reports are required, even if no activity occurred



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[hereinafter "Addendum"]
For
WSCA/NASPO PC Contracts 2009-2014
COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES
MASTER PRICE AGREEMENT NUMBER B27172

Between
Panasonic Solutions Company
[hereinafter "Contractor"]
and
The State of Washington Department of Information Services
[hereinafter "Participating State" or "DIS"]

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3.11 Article 46 "**Audits**" is modified by adding the following language after item C :

D. As a part of its Participating State function, DIS will from time to time perform audits of Purchasing Entity invoices to ensure that the invoices and the Product/Services listed and the prices changes for the Prices/Services are accurate and in accordance with this Agreement. DIS will perform these audits by selecting Purchasing Entities from an Activity Report and asking Contractor to send the invoices for those Purchasing Entities for that report period. The DIS request will be in writing, and will list the Contractor's customers numbers for the Purchasing Entities. Such requests will not exceed twelve (12) per year. Contractor shall ensure that DIS receives the requested invoices within thirty (30) days of the Contractor's receipt of DIS' request. Contractor will also be responsible for any audit exceptions or disallowed costs.

E. DIS will also conduct periodic spot check audits of the Prices, Products and Services listed on the website that the Contractor maintains for the State of Washington Purchasing Entities. DIS will communicate any discrepancies to Contractor who agrees to correct any deficiencies within three (3) Business Days, or as otherwise agreed.

3.12 Article 52 "**Right to Publish**" is deleted in its entirety and replaced with the following language:

The award of this Agreement to Contractor is not in any way an endorsement of Contractor or Contractor's Services by DIS and shall not be so construed by Contractor in any advertising or other publicity materials.

Contractor agrees to submit to DIS or the Purchasing Entities as applicable all advertising, sales promotion, and other publicity materials relating to this Agreement and to Services furnished by Contractor in which:

- the name of DIS or the Purchasing Entities (as applicable) is mentioned, or
- language is used or Internet links provided from which the connection to DIS or the Purchasing Entities (as applicable) may be inferred or implied. The existence of such connection depends solely on the judgment of DIS or the Purchasing Entities.



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Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of DIS or the Purchasing Entities as applicable, prior to such use.

3.13 A new Article 58 "**Insurance**" is added as follows:

- a. Vendor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this section. Vendor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Vendor shall provide written notice of such to Purchaser within ten (10) Business Day of Vendor's receipt of such notice. Failure to buy and maintain the required insurance may, at Purchaser's sole option, result in this Contract's termination.
- b. The minimum acceptable limits shall be as indicated below for each of the following categories:
 - i. Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
 - ii. Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
- c. Vendor shall pay premiums on all insurance policies. Such insurance policies shall name Purchaser as an additional insured on all general liability, automobile liability, and umbrella policies. Such policies shall also reference this Contract number T11-MST-548 and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after notice of intended revocation thereof shall have been given to Purchaser by the insurer.



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- d. All insurance provided by Vendor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.
- e. Vendor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Vendor's liability or responsibility.
- f. Vendor shall furnish to Purchaser copies of certificates of all required insurance within thirty (30) calendar days of this Contract's Effective Date, and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at Purchaser's sole option, result in this Contract's termination.
- g. By requiring insurance herein, Purchaser does not represent that coverage and limits will be adequate to protect Vendor. Such coverage and limits shall not limit Vendor's liability under the indemnities and reimbursements granted to Purchaser in this Contract.

3.14 A new Article 59 "**Failure to Remit Reports/Fees**" is added as follows:

Failure to Remit Reports/Fees

- a. Failure of Contractor to remit the Master Contract Activity Report together with the Master Contract Administration Fee may be considered a failure to perform on the part of Contractor, which may result in DIS terminating this Master Contract with Contractor.
- b. Failure of any Purchasing Entity to pay the Master Contract Administration Fee may result in a Purchasing Entity forfeiting its right to purchase from this Master Contract. Contractor shall notify the DIS Contract Administrator when any Purchasing Entity fails to pay the Master Contract Administration Fee.
- c. The DIS Contract Administrator will notify Contractor of any Purchasing Entity who has forfeited its right to purchase under this Master Contract. After such notification, any sale by Contractor to a forfeiting Purchasing Entity may be



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considered failure to perform by Contractor.

d. If the performance issues are resolved, DIS, at its option, may reinstate a Contractor's participation or a Purchasing Entity's right to purchase.

4. Continuation of Participation from WSCA/NASPO PC Contracts 2004-2009:

To the extent permitted by the laws and rules of the state in which an individual participating entity is located, valid participating addenda for the WSCA/NASPO PC Contracts 2004-2009 are hereby extended to include participation in the WSCA/NASPO PC Contracts 2009-2014 under the same terms and conditions in the current participating addendum.

If re-execution of a participating addendum or amendment to an existing participating addendum is required by a participating entity, the authorization to participate in the WSCA/NASPO PC Contracts 2004-2009 is sufficient to permit participation in the WSCA/NASPO PC Contracts 2009-2014, unless specifically denied by the appropriate chief state procurements official.

5. Lease Agreements

No Leasing Is Authorized Under this Addendum.

6. Primary Contacts

The primary government contacts (or their named successors) for this Addendum are:

Lead State

Name	Bernadette Kopischke
Address	112 Admin Bldg, St Paul, MN 55155
Telephone	651. 201.2450
Fax	651. 297-3996
E-mail	<u>bernie.kopischke@state.mn.us</u>



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Contractor

Name Michelle Chapin
Address 21473 Glebe View Dr., Ashburn, VA 20148
Telephone 973-303-7787
E-mail michelle_chapin@us.panasonic.com

Participating State

Name Master Contract Administrator
Address 1110 Jefferson Street SE
P.O. Box 42445
Olympia WA 98504
Telephone 360.902.3551
Fax 360.586.1414
E-mail mcadmin@dis.wa.gov

7. Servicing Subcontractors:

Only those Panasonic Authorized Resellers and service providers listed on the Panasonic WSCA website are eligible to support the Master Price Agreement as approved by the Participating Entity. Panasonic Resellers will vary by State.

All orders are to be issued directly to: Panasonic Authorized Reseller

And all payments are to be issued to: Panasonic Authorized Reseller

8. Compliance with reporting requirements of the "American Recovery and Reinvestment Act of 2009" ("ARRA")

If or when contractor is notified by ordering entity that a specific purchase or purchases are being made with ARRA funds, contractor agrees to comply with the data element and reporting requirements as currently defined in Federal Register Vol 74 #61, Pages 14824-14829 (or subsequent changes or modifications to these requirements as published by the Federal OMB). Ordering entity is responsible for informing contractor as soon as the ordering entity is aware that ARRA funds are being used for a purchase or purchases. Contractor will provide the required report to the ordering entity with the invoice presented to the ordering entity for payment. The contractor, as it relates to



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purchases under this contract, is not a subcontractor or subgrantee, but simply a provider of goods and related services.

All purchase orders issued by purchasing entities within the jurisdiction of this Addendum must include the Participating State contract number: T11-MST-548 and the Master Price Agreement Number: B27172


This Addendum and the Master Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms. This Addendum applies only in the jurisdiction of the Participating State or Participating Entity which has executed this Addendum.

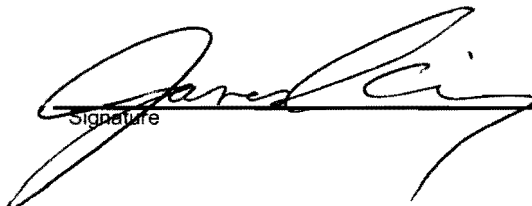
IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by Contractor below.

This Contract is effective this 24 day of June, 2011

Approved
State of Washington
Department of Information Services

Approved
Panasonic


Signature


Signature



PARTICIPATING ADDENDUM

[hereinafter "Addendum"]

For

**WSCA/NASPO PC Contracts 2009-2014
COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES
MASTER PRICE AGREEMENT NUMBER B27172**

Between

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and

The State of Washington Department of Information Services

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SCOTT SMITH

Print or Type Name

6/24/11

Date

James King

Print or Type Name

6/9/2011

Date

TAS PROGRAM COORDINATOR

Title

Vice President

Title



WESTERN STATES CONTRACTING ALLIANCE
MASTER PRICE AGREEMENT
for
COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES

Number B27172

This Agreement is made and entered into by Panasonic Computer Solutions Company, Unit of Panasonic Corporation of North America, 3 Panasonic Way, 2F-11, Secaucus, NJ 07094 ("Contractor") and the State of Minnesota, Department of Administration ("State") on behalf of the State of Minnesota, participating members of the National Association of State Procurement officials (NASPO), members of the Western States Contracting Alliance (WSCA) and other authorized Purchasing Entities.

RECITALS

WHEREAS, the State has the need to purchase and the Contractor desires to sell; and,

WHEREAS, the State has the authority to offer contracts to CPV members of the State of Minnesota and to other states.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

INTENT AND PURPOSE

The intent and purpose of this Agreement is to establish a contractual relationship with equipment manufacturers to provide, warrant, and offer maintenance services on **ALL** products proposed in their response to the RFP issued by the State of Minnesota. Delivery, support, warranty, and maintenance may be provided by the Contractor using subcontractors. The Contractor agrees to take legal responsibility for the warranty and maintenance of all products furnished under this Agreement. The Contractor is responsible for the timeliness and quality of all services provided by individual subcontractors. Subcontractor participation will be governed by individual Participating Entities, who have the sole discretion to determine if they will accept services from a subcontractor.

Individual Purchasing Entities may enter in to lease agreements for the products covered in this Master Price Agreement, if they have the legal authority to enter into these types of agreements without going through a competitive process, and if the Contractor submitted copies of its lease agreements with its response to the RFP. The lease agreements were not reviewed or evaluated as part of the RFP evaluation process. The agreements are located in Exhibit C, Value-Added Services.

The Agreement is **NOT** for the purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations for servers and storage (SANs, etc.) should not exceed \$300,000 each. Desktop per unit/configuration costs should not exceed \$100,000. Printers of all types and monitors per unit/configuration costs should not exceed \$50,000 each. It is the expressed intent of some of the Participating States to set this level at not to exceed \$25,000 each, or \$50,000. Contractors must be willing to comply with these restrictions by agreeing to supply products in those price ranges only. This **IS NOT** a restriction on how many units/configurations can be purchased, but on the value of each individual unit/configuration. Individual Participating States and Participating Entities may set specific limits in a participating addendum above these limits, with the prior approval of the WSCA Directors; or may set specific limits in a participating addendum below these limits.

Contractors may offer, but participating states and entities do not have to accept, limited professional services related **ONLY** to the equipment and configuration of the equipment purchased through the Agreement.

1. Definitions

“Announced Promotional Price” are prices offered nationally to specific categories of customers (Consumer, Business or government) for defined time periods under predefined terms and conditions.

“Consumables” those items that are required for the operation of the Equipment offered or supplied which are consumed over time with the purchaser’s use of the equipment are included – printer cartridges, batteries, projector bulbs, etc.
Consumables such as magnetic media, paper and generally available office supplies are excluded.

“Configuration” in most instances in this document means a total system configuration. This may include more than one model or part number (or SKU), or a combination of hardware, software, and configuring of the system to make the system work.

“Contract” means a binding agreement for the procurement of items of tangible personal property or services. Contract and Master Price Agreement are used interchangeably in this document.

“Contractor” means the successful Responder who enters into a binding Master Price Agreement. The Contractor is responsible for all sales, support, warranty, and maintenance services for the products included in this Agreement. The Contractor must manufacture or take direct, non-assignable, legal responsibility for the manufacture of the equipment and warranty thereof. For the purposes of this Contract, the term Contractor and Contract Vendor are synonymous.

“CPV Member” is any governmental unit having independent policy making and appropriating authority, that is a member of Minnesota’s Cooperative Purchasing Venture (CPV) program.

“CPV Program.” The Cooperative Purchasing Venture (CPV) program, as established by Minn. Stat. § 16C.03, subd. 10, authorizes the commissioner of

Administration to “enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with [governmental entities] ..., as described in section 471.59, subdivision 1.” Based on this authority, the commissioner of Administration, through the Materials Management Division (MMD), enters into a joint powers agreement that designates MMD as the authorized purchasing agent for the governmental entity. It is not legal for governmental entities that are not members of the CPV program to purchase from a State contract. Vendors are free to respond to other solicitations with the same prices they offer under a contract, but that is not considered use of the “State contract price.”

“Cumulative Volume Discount” means a contractual, cumulative, permanent volume discount based on dollars resulting from the cumulative purchases by all governmental purchasers for the duration of the Master Price Agreement.

“Documentation” refers to manuals, handbooks, and other publications listed in the PSS, or supplied with products listed in the PSS, or supplied in connection with services. Documentation may be provided on magnetic media or may be downloaded from the Contractor’s web site.

“E-Rate” is a program sponsored by the Federal Communications Commission whereby educational and other qualifying institutions may purchase authorized technology at reduced prices.

“Educational Discount Price” means the price offered in a nationally announced promotion, which is limited to educational customers only.

“Equipment” means workstations, desktop, laptop (includes Tablet PC’s), handheld (PDA) devices, projectors, servers, printers, monitors, computing hardware, including upgrade components such as memory, storage drives, and spare parts. AUDIO VISUAL PRODUCTS (digital cameras, televisions, whiteboards, etc.) are NOT included in this RFP or subsequent contracts. The exception to this definition is whiteboards, which can be sold as part of the Instructional Bundles, but not as a stand-alone item.

“FCC” means the Federal Communications Commission or successor federal agency. In the event of deregulation, this term applies to one or more state regulatory agencies or other governing bodies charged to perform the same, or similar, role.

“General Price Reduction Price” means the price offered to consumer, business or governmental purchasers at prices lower than PSS pricing. General price reduction prices will be reflected in the PSS as soon as practical.

“Lead State” means the State conducting this cooperative solicitation and centrally administering any resulting Master Price Agreement(s). For this Master Price Agreement, the Lead State is Minnesota.

“Mandatory” The terms “must” and “shall” identify a mandatory item or factor.

“Manufacturer” means a company that, as its primary business function, designs, assembles, owns the trademark/patent and markets computer equipment including workstations, desktop computers, laptop (includes Tablet PC’s) computers, handheld (PDA) devices, servers, printers, and storage

solutions/auxiliary storage devices. The manufacturer must provide direct un-infringed unlimited USA OEM warranties on the products. The manufacturer's name(s) shall appear on the computer equipment. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

"Master Price Agreement" means the contract that MMD will approve that contains the foundation terms and conditions for the acquisition of the Contractor's products and/or services by Purchasing Entities. The "Master Price Agreement" is a permissive price agreement. In order for a Purchase Entity to participate in a Master Price Agreement, the appropriate state procurement official or other designated procurement official must be a Participating State or Participating Entity.

"Materials Management Division" or "MMD" means the procurement official for the State of Minnesota or a designated representative.

"NASPO" means the National Association of State Procurement Officials

"Participating Addendum" or "Participating Addenda" means a bilateral agreement executed by the Contractor and a Participating State or political subdivision of a State that clarifies the operation of the price agreement for the State or political subdivision concerned, e.g. ordering procedures specific to a State or political subdivision and other specific language or other requirements. Terms and conditions contained in a Participating Addendum shall take precedence over the corresponding terms in the master price agreement. Additional terms and conditions, including but not limited to payment terms, may be added via the Participating Addendum. However, a Participating Addendum may not alter the scope of this Agreement or any other Participating Addendum. ***Unless otherwise specified, the Participating Addendum shall renew consecutively with the Master Price Agreement.*** One digitally formatted, executed copy of the Participating Addendum must be submitted to the WSCA/NASPO Contract Administrator PRIOR to any orders being processed.

"Participating State" or "Participating Entity" means a member of NASPO (Participating State) or a political subdivision of a NASPO member (Participating Entity) who has indicated its intent to participate by signing an Intent to Participate, where required, or another state or political subdivision of another state authorized by the WSCA Directors to be a party to the resulting Master Price Agreement.

"PDA" means a Personal Digital Assistant and refers to a wide variety of handheld and palm-size PCs, and electronic organizers. PDA's usually can store phone numbers, appointments, and to-do lists. PDA's can have a small keyboard, and/or have only a special pen that is used for input and output. The PDA can also have a wireless fax modem. Files can be created on a PDA which is later entered into a larger computer. NOTE: For this procurement, all Tablet PC's are NOT considered PDA's. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

"Peripherals" means any product that can be attached to, added within, or networked with personal computers or servers, including but not limited to

storage, printers (including multifunction network printers), scanners, monitors, keyboards, projectors, uninterruptible power supplies and accessories. Software, as defined in the RFP, is not considered a peripheral. Adaptive/Assistive technology devices are included as well as configurations for education.

Peripherals may be manufactured by a third party, however, Contractor shall not offer any peripherals manufactured by another contractor holding a Master Price Agreement without the prior approval of the WSCA/NASPO Contract Administrator. AUDIO VISUAL PRODUCTS (digital cameras, televisions, whiteboards, etc.) are NOT included in the contract. The exception to this definition is whiteboards, which can be sold as part of the Instructional Bundles, but not as a stand-alone item. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

“Permissive Price Agreement” means that placement of orders through the Price Agreement is discretionary with Purchasing Entities. They may satisfy their requirements through the Price Agreement without using statutory or regulatory procedures (e.g., invitations for bids) to solicit competitive bids or proposals. Purchasing Entities may, however, satisfy requirements without using the Price Agreement as long as applicable procurement statutes and rules are followed.

“Per Transaction Multiple Unit Discount” means a contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Purchasing Entity or multiple entities conducting a cooperative purchase.

“Political Subdivision” means local public governmental subdivisions of a state, as defined by that state’s statutes, including instrumentalities and institutions thereof. Political subdivisions include cities, counties, courts, public schools and institutions of higher education.

“Price Agreement/Master Price Agreement” means an indefinite quantity contract that requires the Contractor to furnish products or services to a Purchasing Entity that issues a valid Purchase Order.

“Procurement Manager” means the person or designee authorized by MMD to manage the relationships with WSCA, NASPO, and Participating States/Participating Entities.

“Product(s)” means personal computer equipment, peripherals, LAN hardware, pre-loaded Software, and Network Storage devices, but not unrelated services. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

“Products and Services Schedule Prices” or “PSS” refers to a complete list, grouped by major product and/or service categories, of the Products and services provided by the contractor that consists of an item number, item description and the Purchasing Entity's price for each Product or Service. All such Products and services shall be approved by the WSCA/NASPO Contract Administrator prior to being listed on a Contractor-supplied web site accessed via a URL. The Contractor(s) shall provide the warranty service and maintenance for all equipment listed on the PSS on a Master Price Agreement as well as a Takeback Program.

“Purchase Order” means an electronic or paper document issued by the Purchasing Entity that directs the Contractor to deliver Products or Services pursuant to a Price Agreement.

“Purchasing Entity” means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a contract for the purchase of goods described in this solicitation. Unless otherwise limited by statute, in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and authorized to purchase the goods and/or services described in this solicitation.

“Refurbished Products” are products that may have been powered on or used by another customer that have been fully retested, defective parts replaced, and repackaged to meet original factory specifications.

“Services” are broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Price Agreement. These types of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/helpdesk, and any other directly related technical support service required for the effective operation of a product offered or supplied. General consulting and all forms of application development and programming services are excluded.

“Servicing Subcontractor/Subcontractor/Reseller Agent” means a Contractor authorized and state-approved subcontractor who may provide local marketing support or other authorized services on behalf of the Contractor in accordance with the terms and conditions of the Contractor’s Master Price Agreement. A wholly owned subsidiary or other company providing warranty or other technical support services qualifies as a Servicing Subcontractor. Local business partners may qualify as Servicing Subcontractors. Servicing Subcontractors may not directly accept Purchase Orders or payments for Products or Services from Purchasing Entities, unless otherwise provided for in a Participating Addendum. Servicing Subcontractors shall be named individually or by class in the Participating Addendum. **The Contractor(s) actually holding the Master Price Agreement shall be responsible for Servicing Subcontractor’s providing products and services, as well as warranty service and maintenance for equipment the subcontractor has provided on a Master Price Agreement as well as the Takeback Program.**

“Standard Configurations” or **“Premium Savings Configurations”** means deeply discounted standard configurations that are available to Purchasing Entities using the Master Price Agreement only. Any entity, at any time, that commits to purchasing the standard configuration adopted by other Purchasing Entities shall receive the same price from the contract awardees. This specification includes a commitment to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals.

"State Procurement Official" means the director of the central purchasing authority of a state.

"Storage Solution/Auxiliary Storage" means the technology and equipment used for storage of large amounts of data or information. This includes technologies such as: Network Attached Storage (NAS) and Storage Area Networks (SAN). **The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.**

"Takeback Program" means the Contractor's process for accepting the return of the equipment or other products at the end of life—as determined by the State utilizing the Master Price Agreement.

"Trade In" refers to the exchange of used Equipment for new Equipment at a price reduced by the value of the used Equipment.

"Travel" means expenses incurred by authorized personnel directly related to the performance of a Service. All such expenses shall be documented in a firm quotation for the Purchasing Entity prior to the issuance and acceptance of a Purchase Order. Travel expenses will be reimbursed in accordance with the purchasing entities allowances, if any, as outlined in the PA.

"Universal Resource Locator" or "URL" means a standardized addressing scheme for accessing hypertext documents and other services using the WWW browser.

"WSCA" means the Western States Contracting Alliance, a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

"WSCA/NASPO Contract Administrator" means the person or designee authorized by MMD to manage all actions related to the Master Price Agreements on behalf of the State of Minnesota, the participating NASPO and WSCA members, and other authorized purchasers.

2. Scope of Work

The Contractor, or its approved subcontractor, shall deliver computing system Products and services to Purchasing Entities in accordance with the terms of this agreement. This Agreement is a "Master Price Agreement". Accordingly, the Contractor shall provide Products or Services only upon the issuance and acceptance by Contractor of valid "Purchase Orders". Purchase Orders may be issued to purchase the license for software or to purchase products listed on the Contractor's PSS. A Purchasing Entity may purchase any quantity of Product or Service listed in the Contractor's PSS at the prices in accordance the Paragraph 13, Price Guarantees. Subcontractor participation is governed by the individual Participating State procurement official.

The Contractor is required to provide and/or agree to take legal responsibility for the warranty and maintenance of all proposed equipment, including peripherals. Taking legal responsibility means the Contractor must provide warranty and maintenance call

numbers, accept, process and respond to those calls, and be legally liable for and pay for those warranty and maintenance (under warranty) activities. The Contractor shall offer a Takeback Program for all products covered by this Agreement.

3. Title Passage

The Contractor must pass unencumbered title to any and all products purchased under this Contract upon receipt of payment by the State. This obligation on the part of the Contractor to transfer all ownership rights does not apply to proprietary materials owned or licensed by the Contractor or its subsidiaries, subcontractors or licensors, or to unmodified commercial software that is available to the State on the open market. Ownership rights to such materials shall not be affected in any manner by this Agreement.

4. Permissive Price Agreement and Quantity Guarantee

This Agreement is not an exclusive agreement. Purchasing Entities may obtain computing system Products and services from other sources during the agreement term. The State of Minnesota, NASPO and WSCA make no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Products or Services will be procured.

5. Order of Precedence

Each Purchase Order that is accepted by the Contractor shall become a part of the Agreement as to the Products and services listed on the Purchase Order only; no additional terms or conditions will be added to this Agreement as the result of acceptance of a Purchase Order. The Contractor agrees to accept all valid Purchase Orders. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Executed Participating Addendum(s);
- B. Terms and conditions of this Agreement;
- C. Exhibits and amendments to this Agreement;
- D. The list of products and services contained in the purchase order;
- E. The request for proposals document; and
- F. Contractor's proposal including best and final offer.

6. Payment Provisions

All payments under this Agreement are subject to the following provisions:

A. Acceptance

A Purchasing Entity shall determine whether all Products and services delivered meet the Contractor's published specifications. No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. The Purchasing Entity will make every effort to notify the Contractor in a timely manner of non-acceptance of a product or service.

B. Payment of Invoice

Payments shall be submitted to the Contractor at the address shown on

the invoice, as long as the Contractor has exercised due diligence in notifying the State of Minnesota and/or the Purchasing Entity of any changes to that address. Minn. Stat. § 16A.124 requires payment within 30 days following receipt of an undisputed invoice, merchandise or service, whichever is later. The ordering entity is not required to pay the Contractor for any goods and/or services provided without a written purchase order or other approved ordering document from the appropriate purchasing entity. In addition, all goods and/or services provided must meet all terms, conditions, and specifications of the Contract and other ordering document and be accepted as satisfactory by the ordering entity before payment will be issued. Payments may be made via a Purchasing Entity's "Purchasing Card".

In the event an order is shipped incomplete (partial), the Purchasing Entity shall pay for each shipment as invoiced by the Contractor unless the Purchasing Entity has clearly specified "No Partial Shipments" on each Purchase Order.

C. Payment of Taxes

Payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's federal and state tax identification numbers. If a Purchasing Entity is not exempt from sales, gross receipts, or local option taxes for the transaction, the Contractor shall be reimbursed by the Purchasing Entity to the extent of any tax liability assessed.

The State of Minnesota State agencies are subject to paying Minnesota sales and use taxes. Taxes for State agencies will be paid directly to the Department of Revenue using Direct Pay Permit #1114.

D. Invoices

Invoices shall be submitted to the Purchasing Entity at the address shown on the Purchase Order. Invoices shall match the line items on the Purchase Order.

7. Agreement Term

Pursuant to Minnesota law, the term of this Agreement shall be effective upon the date of final execution by the State of Minnesota, through August 31, 2012. The Agreement may be mutually renewed for two (2) additional one-year terms, or one additional two-year term, unless terminated pursuant to the terms of this Agreement.

8. Termination

The following provisions are applicable in the event that the agreement is terminated.

A. Termination for Convenience

At any time, the State may terminate this agreement, in whole or in part, by giving the Contractor (30) days written notice; provided, however, neither the State nor a Purchasing Entity has the right to terminate a specific purchase order for convenience after it has been issued if the product is ultimately accepted. At any time, the Contractor may terminate this Agreement, in whole or in part, by giving the WSCA/NASPO Contract

Administrator sixty (60) days written notice. Such termination shall not relieve the Contractor of warranty or other Service obligations incurred under the terms of this Agreement. In the event of a cancellation, the Contractor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.

B. Termination for Cause

Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

C. A Purchasing Entity's Rights

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall retain its rights in all Products and services accepted prior to the effective termination date.

D. The Contractor's Rights

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall pay the Contractor all amounts due for Products and services ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.

9. Non-Appropriation

The terms of this Agreement and any purchase order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any purchase order or other document, a Purchasing Entity may terminate its obligations under this Agreement, if sufficient appropriations are not made by the governing entity at a level sufficient to allow for payment of the goods or services due for multiple year agreements, or if operations of the paying entity are being discontinued. The Purchasing Entity's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and binding.

A Purchasing Entity shall provide sixty (60) days notice, if possible, of its intent to terminate for reason cited above. Such termination shall relieve the Purchasing Entity, its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant Purchase Order.

10. Shipment and Risk of Loss

A. All deliveries shall be F.O.B. destination, prepaid and allowed, with all transportation and handling charges included in the price of the product and paid

by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations.

B. Whenever a Purchasing Entity does not accept Products and returns them to the Contractor, all related documentation furnished by the Contractor shall be returned also. Unless otherwise agreed upon by the Purchasing Entity, the Contractor is responsible for the pick-up of returned Products. The Contractor shall bear all risk of loss or damage with respect to returned Products except for loss or damage directly attributable to the negligence of the Purchasing Entity.

C. Unless otherwise arranged between the Purchasing Entity and Contractor, all basic configuration Products shall be shipped within 30 days after receipt of a purchase order, by a reliable and insured shipping company. All customer customized configuration products shall be shipped within 60 days after receipt of a purchase order, by a reliable and insured shipping company. The product will ship from the Panasonic noted and authorized reseller(s) to the customer.

11. Warranties

A. The Contractor agrees to warrant and assume responsibility for each Product that it licenses, or sells, to the Purchasing Entity under this Agreement. The Contractor agrees to take legal responsibility for the warranty and maintenance of all products furnished through this Agreement. Taking legal responsibility means the Contractor must provide warranty and maintenance call numbers, accept, process, and respond to those calls, and be legally liable for and pay for those warranty and maintenance (under warranty) activities. The Contractor acknowledges that the Uniform Commercial Code applies to this Agreement. In general, the Contractor warrants that:

1. The Product conforms to the specific technical information about the Contractor's products which is published in the Contractor's product manuals or data sheets.
2. The product will meet mandatory specifications provided in writing to the Contractor prior to reliance by the Participating Entity on the Contractor's skill or judgment when it advised the Purchasing Entity about the Product's ability to meet those mandatory specifications.
3. The express warranties set forth in this Agreement are in lieu of all other warranties, express, implied or statutory, including without limitation the implied warranties of merchantability and fitness for a particular purpose.
4. The Product has been properly designed and manufactured for its intended use.
5. The Product is free of significant defects in material and workmanship, or unusual problems about which the Purchasing Entity has not been warned.
6. The Product is in the legal possession of the Purchasing Entity, as defined in Article 10 Shipment and Risk of Loss, before any warranty period begins.

7. Exhibit A contains additional warranties in effect as of the date of this Agreement. The warranties will be limited in duration to the time period(s) provided in Exhibit A. The warranties will not apply to use of a Product other than as anticipated and intended by the Contractor, to a problem arising after changes or modifications to the Products or operating system by any party other than the Contractor (unless expressly authorized in writing by the Contractor), or the use of a Product in conjunction or combination with other products or software not authorized by the Contractor. The following is a list of the warranties attached as **Exhibit A**:

- a) Panasonic Gold/Premiere
- b) Panasonic Silver/Preferred
- c) Protection Plus Warranty

B. Contractor may modify the warranties described in Exhibit A from time to time with the prior approval of the WSCA/NASPO Contract Administrator.

C. Warranty documents for Products manufactured by a third party shall be delivered to the Purchasing Entity with the Products.

D. The basic warranty shall be three years, next business day, as stated in Appendix B of the RFP, for all products included in the Bands listed in Article 14 Products and Services Schedule. Panasonic average turnaround time on Toughbook repairs over the past (6) years has been 1.65 days. The 1.65 days does not include the one (1) day return option for overnight freight to the National Service Center (NSC) or the one (1) day for return option overnight freight back to the client. This figure does also not include the day the unit arrives at the NSC, as it may arrive on the early am shipment, or possibly not until later in the work day. Shipping charges for in-warranty repairs are paid for by Panasonic.

12. Patent, Copyright, Trademark and Trade Secret Indemnification

A. The Contractor shall defend, at its own expense, the State of Minnesota, Participating and Purchasing Entities and their agencies against any claim that any Product or Service provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against a Purchasing Entity based upon the Contractor's trade secret infringement relating to any Product or Service provided under this Agreement, the Contractor agrees to reimburse the Lead State for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Lead State or Participating or Purchasing Entity shall:

- 1. Give the Contractor prompt written notice of any claim;
- 2. Allow the Contractor to control the defense or settlement of the claim; and
- 3. Cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

- B. If any Products or Service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:
1. Provide a Purchasing Entity the right to continue using the Products or Services;
 2. Replace or modify the Products or Services so that it becomes non-infringing; or
 3. Accept the return of the Products or Service and refund an amount equal to the depreciated value of the returned Products or Service, less the unpaid portion of the purchase price and any other amounts, which are due to the contractor. The Contractor's obligation will be void as to any Products or Services modified by the Purchasing Entity to the extent such modification is the cause of the claim.
- C. The Contractor has no obligation for any claim of infringement arising from:
1. The Contractor's compliance with the Purchasing Entity's or by a third party on the Purchasing Entity's behalf designs, specifications, or instructions;
 2. The Contractor's use of technical information or technology provided by the Purchasing Entity;
 3. Product modifications by the Purchasing Entity or a third party;
 4. Product use prohibited by Specifications or related application notes; or
 5. Product use with products that are not the Contractor branded.

13. Price Guarantees

The Purchasing Entities shall pay the lower of the prices contained in the PSS or an Announced Promotion Price, Educational Discount Price, General Price Reduction price, Trade-In price, Standard Configuration price or Per Transaction Multiple Unit Discount. Only General Price Reduction price decreases will apply to all subsequent Purchase Orders accepted by Contractor after the date of the issuance of the General Price Reduction prices.

The initial base-line, Cumulative, and Per Transaction Multiple Unit Discounts shall be submitted by the Contractor in a format agreeable to both parties prior to signing the Agreement. Once a cumulative volume has been reached, the increased price discount will apply to all future orders, until the next level of cumulative volume is reached.

14. Product and Service Schedule

The Contractor agrees to maintain the PSS in accordance with the following provisions:

- A. The PSS prices for Products and services will conform to the guaranteed prices discount levels on file with WSCA/NASPO Contract Administrator

for the following Products:

Band 2 – Workstations

Band 5 - PDAs

- B. The Contractor may change the price of any Product or Service at any time, based upon documented baseline price changes, but the guaranteed price discount levels shall remain unchanged during the agreed period unless or until prior approval is obtained from the WSCA/NASPO Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirement will be grounds for further action to be taken against the Contractor.
- C. The Contractor may make model changes; add new Products, and Product upgrades or Services to the PSS in accordance with Item 15. Product Substitutions, below. The pricing for these changes shall incorporate, to the extent possible, comparable price discount levels approved by the WSCA/NASPO Contract Administrator for similar Products or Services.
- D. The Contractor agrees to delete obsolete and discontinued Products from the PSS on a timely basis.
- E. The Contractor shall maintain the PSS on a Contractor supplied Internet web site.

15. Product Substitutions

A. Substitution of units/configurations

MMD and the WSCA Directors acknowledge that individual units and configurations may stop being produced during the life of the resulting contracts. Substitution of different units and configurations will be permitted with the prior written approval of the WSCA/NASPO Contract Administrator. This substitution is at the sole discretion of the WSCA/NASPO Contract Administrator, subject only to review and approval of the WSCA/NASPO Contract Administrator.

B. Addition of units/configurations

MMD and the WSCA Directors acknowledge that with the evolution of technology, new, emerging units and configurations will develop. Addition of these new, emerging units may be permitted, with the prior approval of the WSCA/NASPO Contract Administrator and the WSCA Directors. The addition of new, emerging units and configurations is at the sole discretion of the WSCA/NASPO Contract Administrator, subject only to review and approval of the WSCA Directors.

16. Technical Support

The Contractor agrees to maintain a toll-free technical support telephone line. The line shall be accessible to Purchasing Entity personnel who wish to obtain competent technical assistance regarding the installation or operation of Products supplied by the Contractor during a product warranty period or during a

support agreement.

17. Takeback and Other Environmental Programs

The Contractor agrees to maintain for the term of this Agreement, and all renewals/extensions thereof, programs as described in the following paragraphs.

- A. Takeback/Recycling of CPUs, servers, monitors, flat panel displays, notebook computers, and printers. Costs are list on the web site. Panasonic will work with its partners to provide these services and also thus work with the appropriate entity.
- B. Environment: Compliance with the following standards: Energy Star, EPEAT (by level) and RoHS. Contractor will be pursue compliance with other standards as their requirements become mandatory in the US or European Mobile market.
- C. Product labeling of compliance with Items B & C above, as well as a identification of such information on the web site.

18. Product Delivery

Contractor agrees to deliver basic configuration Products to Purchasing Entities within 30 days after receipt of a valid Purchase Order, or in accordance with the schedule in the Purchasing Entity's Purchase Order. All customer customized configuration products shall be shipped within 60 days after receipt of a purchase order, or in accordance with the schedule in the Purchasing entity's purchase order. Product delivery will be made to the Purchasing Entity by an authorized Panasonic reseller(s).

19. Force Majeure

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.

20. Records and Audit

Per Minn. Stat. § 16C.05, Subd. 5, the books, records, documents, and accounting procedures and practices of the Contractor and its employees, agents, or subcontractors relevant to the Contract or transaction must be made available and subject to examination by the contracting agency or its agents, the Legislative Audit and/or the State Auditor for a minimum of six years after the end of the Contract or transaction.

Unless otherwise required by other than Minnesota Purchasing Entity governing law, such records relevant to other Purchasing Entity transactions shall be subject to examination by appropriate government authorities for a period of three years from the date of acceptance of the Purchase Order.

21. Independent Contractor

The Contractor and its agents and employees are independent contractors and

are not employees of the State of Minnesota or of any participating entity. The Contractor has no authorization, express or implied to bind the Lead State, NASPO, WSCA or any participating entity to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for the Lead State, NASPO, WSCA, or participating entity, except as expressly set forth herein. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the Lead State or Participating Entity as a result of this Agreement.

22. Use of Servicing Subcontractors

The Contractor may subcontract services and purchase order fulfillment and/or support in accordance with the following paragraphs. However, the Contractor shall remain solely responsible for the performance of this Agreement.

- A. Reseller Agent, Service Provider or Servicing Subcontractors shall be identified individually or by class in the applicable Participating Addendum, or as noted in the Participating Addendum on the Purchasing Entities extranet site. The ordering and payment process for Products or Services shall be defined in the Participating Addendum.

23. Payments to Subcontractors

In the event the Contractor hires subcontractors to perform all or some of the duties of this Contract, the Contractor understands that in accordance with Minn. Stat. § 16A.1245 the Contractor shall, within ten (10) days of the Contractor's receipt of payment from the State, pay all subcontractors and suppliers having an interest in the Contract their share of the payment for undisputed services provided by the subcontractors or suppliers. The Contractor is required to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid, undisputed balance of \$100 or more will be \$10. For an unpaid balance of less than \$100, the amount will be the actual penalty due. A subcontractor that takes civil action against the Contractor to collect interest penalties and prevails will be entitled to its costs and disbursements, including attorney's fees that were incurred in bringing the action. The Contractor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under this Contract. In the event the Contractor fails to make timely payments to a subcontractor, the State may, at its sole option and discretion, pay a subcontractor or supplier any amounts due from the Contractor and deduct said payment from any remaining amounts due the Contractor. Before any such payment is made to a subcontractor or supplier, the State shall provide the Contractor written notice that payment will be made directly to a subcontractor or supplier. If there are not remaining outstanding payments to the Contractor, the State shall have no obligation to pay or to see to the payment of money to a subcontractor except as may otherwise be required by law.

The Contractor shall ensure that the subcontractor transfers all intellectual or industrial property rights, including but not limited to any copyright it may have in the work performed under this Contract, consistent with the intellectual property

rights and ownership sections of this Contract. In the event the Contractor does not obtain the intellectual property rights of the subcontractor consistent with the transfer of rights under this Contract, the State may acquire such rights directly from the subcontractor. Any and all costs associated with such a direct transfer may be deducted from any amount due the Contractor.

24. Indemnification, Hold Harmless and Limitation of Liability

The Contractor shall indemnify, protect, save and hold harmless the Lead State, Participating Entities, and its representatives and employees, from any and all claims or causes of action, including all legal fees incurred by the State arising from the performance of the Contract by the Contractor or its agents, employees, or subcontractors. This clause shall not be construed to bar any legal remedies the Contractor may have with the State's or Participating Entities' failure to fulfill its obligations pursuant to the Contract.

The State agrees that the Contractor, its principals, members and employees shall not be liable to the State for any actions, damages, claims, liabilities, costs, expenses, or losses in any way arising out of or relating to the goods provided or services performed hereunder for an aggregate amount in excess of \$10,000,000 or the Contract amount, whichever is greater. This limitation of liability does not apply to damages for personal injury or death, or to Contractor's obligation to indemnify, defend and hold the State harmless against intellectual property infringement or copyright claims under paragraph 12 of this Agreement. This indemnification does not include liabilities caused by the State's gross negligence, or intentional wrong doing of the State. **IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

25. Amendments

Contract amendments shall be negotiated by the State with the Contractor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work. This Agreement shall be amended only by written instrument executed by the parties. An approved Contract amendment means one approved by the authorized signatories of the Contractor and the State as required by law.

26. Scope of Agreement

This Agreement incorporates all of the agreements of the parties concerning the subject matter of this Agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

27. Severability

If any provision of this Contract, including items incorporated by reference, is found to be illegal, unenforceable, or void, by a court of competent jurisdiction then both the State and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.



28. Enforcement of Agreement/Waivers

- A. No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Contract shall be waived except by the written consent of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the other party. Until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.
- B. Waiver of any breach of any provision of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.
- C. Neither party's failure to exercise any of its rights under this Contract will constitute or be deemed a waiver or forfeiture of those rights.

29. Web Site Maintenance

- A. The Contractor agrees to maintain and support an Internet website linked to the State's administration website for access to the PSS, service selection assistance, problem resolution assistance, billing concerns, configuration assistance, Product descriptions, Product specifications and other aids described in the RFP, and/or in accordance with instructions provided by the WSCA/NASPO Contract Administrator. The Contractor agrees that the approved PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirement will be grounds for further action to be taken against the Contractor.
- B. The Contractor agrees to maintain and support Participating State and Entity Internet websites for access to the specific Participating Entity PSS, as well as all other items listed in Item 29A, above. The website shall have the ability to hold quotes for 45 days, as well as the ability to change the quote.
- C. The Contractor may provide electronic commerce assistance for the electronic submission of Purchase Orders, purchase order tracking and reports.
- D. Once the website is approved, the Contractor may not make changes to the website without notifying the WSCA/NASPO Contract Administrator and receiving written approval of the changes.

30. Equal Opportunity Compliance

The Contractor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the state in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Contractor

agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by the contractor under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

The Contractor certifies that it will remain in compliance with Minn. Stat. § 363.073 during the life of the Contract.

31. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against this Agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's state. Venue for any claim, dispute or action concerning the construction and effect of the Agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against this Agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's state.

32. Change in Contractor Representatives

Contractor shall appoint a primary representative to work with the WSCA/NASPO Contract Administrator to maintain, support and market this Agreement. The Contractor shall notify the WSCA/NASPO Contract Administrator of changes in any Contractor key personnel, in writing, and in advance if possible. The State reserves the right to require a change in Contractor's then-current primary representative if the assigned representative is not, in the opinion of the State, adequately serving the needs of the Lead State and the Participating Entities.

33. Release

The Contractor, upon final payment of the amount due under this Agreement, releases the Lead State and Participating Entities, its officers and employees, from all contractual liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the Lead State or any Participating Entity to any obligation, unless the Contractor has express written authority to do so, and then only within the strict limits of the authority.

34. Data Practices

- A. The Contractor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 (and where applicable, if the state contracting party is part of the judicial branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State to the Contractor and all data provided to the State by the Contractor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained or disseminated by the Contractor in accordance with this Contract that is private, nonpublic, protected

nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13 (and where applicable, that is not accessible to the public under the Rules of Public Access to Records of the Judicial Branch).

- B. In the event the Contractor receives a request to release the data referred to in this article, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data by either the Contractor or the State.
- C. The Contractor agrees to indemnify, save, and hold the State of Minnesota, its agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act (and where applicable, the Rules of Public Access to Records of the Judicial Branch), including legal fees and disbursements paid or incurred to enforce this provision of the Contract. In the event that the Contractor subcontracts any or all of the work to be performed under the Contract, the Contractor shall retain responsibility under the terms of this paragraph for such work.

35. Organizational Conflicts of Interest

- A. The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are not relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:
 - a Contractor is unable or potentially unable to render impartial assistance or advice to the State;
 - the Contractor's objectivity in performing the work is or might be otherwise impaired; or
 - the Contractor has an unfair competitive advantage.
- B. The Contractor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Department of Administration's Materials Management Division that shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Contract. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to the WSCA/NASPO Contract Administrator, the State may terminate the Contract for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Contract," "Contractor," and "WSCA/NASPO Contract Administrator" modified appropriately to preserve the State's rights.

36. Replacement Parts

Unless otherwise restricted in a Participating Addendum or maintenance service agreement, replacement parts may be manufacturer-certified refurbished parts carrying USA OEM warranties.

37. FCC Certification

The Contractor agrees that Equipment supplied by the Contractor meets all applicable FCC Certifications. Improper, falsely claimed or expired FCC certifications are grounds for termination of this Agreement for cause.

38. Site Preparation

A Purchasing Entity shall prepare and maintain its site in accordance with written instructions furnished by the Contractor prior to the scheduled delivery date of any Products and shall bear the costs associated with the site preparation.

39. Assignment

The Contractor shall not sell, transfer, assign, or otherwise dispose of this Contract or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized agent. Such consent shall not be unreasonably withheld. The Contractor shall give written notice to the State's authorized agent of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of this Contract. Failure to do so may result in the Contractor being held in default. This consent requirement includes reassignment of this Contract due to a change in ownership, merger, or acquisition of the Contractor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contractor's right to assign this Contract to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contractor shall remain solely liable for all performance required and provided under the terms and conditions of this Contract.

40. WSCA/NASPO Contract Administrator

The State shall appoint a WSCA/NASPO Contract Administrator whose duties shall include but not be limited to the following:

- A. The WSCA/NASPO Contract Administrator may provide instructions concerning the contents of the Contractor's website.
- B. The WSCA/NASPO Contract Administrator will facilitate dispute resolution between the Contractor and Purchasing Entities. Unresolved disputes shall be presented to the State for resolution.
- C. The WSCA/NASPO Contract Administrator shall promote and support the use of this Agreement by NASPO members and other Participating Entities.
- D. The WSCA/NASPO Contract Administrator shall advise the State regarding the Contractor's performance under the terms and conditions of this Agreement.
- E. The WSCA/NASPO Contract Administrator shall receive and approve quarterly price agreement utilization reports and the administration fee

payments.

- F. The WSCA/NASPO Contract Administrator shall periodically verify the Product and Service prices in the PSS conform to the Contractor's volume price and other guarantees. The WSCA/NASPO Contract Administrator may require the Contractor to perform web site audits to accomplish this task.
- G. The WSCA/NASPO Contract Administrator shall conduct annual Contractor performance reviews.
- H. The WSCA/NASPO Contract Administrator shall maintain an Agreement administration website containing timely and accurate information.

41. Survival

The following rights and duties of the State and Contractor will survive the expiration or cancellation of the resulting Contract. These rights and duties include, but are not limited to Paragraph 12. Patent, Copyright, Trademark and Trade Secret Indemnification; Paragraph 20. Records and Audit; Paragraph 24. Indemnification, Hold Harmless, and Limitation of Liability; Paragraph 31, Governing Law; Paragraph 34. Data Practices; and Paragraph 52. Right to Publish.

42. Succession

This Agreement shall be entered into and be binding upon the successors and assigns of the parties.

43. Notification

- A. If one party is required to give notice to the other under the Contract, such notice shall be in writing and shall be effective upon receipt. Delivery may be by certified United States mail or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes. All notices shall be addressed as follows:

To MMD:

Department of Administration
Materials Management Division
Bernadette Kopischke, CPPB
Acquisitions Supervisor
50 Sherburne Avenue
112 State Administration Building
St. Paul, MN 55155
Fax: 651.297.3996
Email: bernie.kopischke@state.mn.us

To Contractor:

Panasonic Computer Solutions Company
3 Panasonic Way 2F-11
Secaucus, NJ 07094
Attention: James King, Vice President

with a copy to:

Panasonic Corporation of North America
One Panasonic Way 3B-6
Secaucus, NJ 07094
Attn: General Counsel
Fax: 201-348-7619

Panasonic Computer Solutions Company
Attn – Michelle Chapin, Director of Government Relations
21473 Glebe View Dr
Ashburn, VA 20148

44. Reporting and Fees

A. Administration Reporting and Fees

1. The Contractor agrees to provide monthly utilization reports to the WSCA/NASPO PC Contracts Reporting person and the WSCA/NASPO Contract Administrator by the 15th of the month following the end of the previous month. (Ex. Purchases during January are reported by the 15th of February; purchases made during February are reported by the 15th of March; etc.). The report shall be in the format developed by the Lead State and supplied to the Contractor.
2. The Contractor agrees to provide quarterly Administrative Fee check payable to WSCA/NASPO for an amount equal to one-twentieth of one percent (0.0005) of the net sales for the period. The form to be submitted with the check, as well as the mailing address, has been supplied to the Contractor. Payment shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Fee Due</u>
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

3. The Contractor agrees to include all Reseller Agent sales in the monthly utilization reports described above. In addition, the Contractor agrees to provide a supplemental Reseller Agent utilization report of the net sales for the period subtotaled by Purchasing Entity name, within Purchasing Entity state name by Reseller Agent Name.

4. The Contractor agrees to provide with the utilization report the environmental information shown in the report format provided; as well as a supplemental report of the number and type of units taken back in a format to be mutually agreed to.
5. The utilization reports shall be submitted to the WSCA/NASPO PC Contracts Reporting person and the WSCA/NASPO Contract Administrator via electronic mail in a Microsoft Excel spreadsheet format, or other methods such as direct access to Internet or other databases.
6. If requested by the WSCA/NASPO Contract Administrator, the Contractor agrees to provide supporting Purchase Order detail records on mutually agreed magnetic media in a mutually agreed format. Such request shall not exceed twelve per year.
7. The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the Contractor's primary representative, suspension of this Agreement or termination of this Agreement for cause.
8. The WSCA/NASPO Contract Administrator shall be allowed access to all reports from all Purchasing Entities.

B. Participating Entity Reports and Fees

1. Participating Entities may require an additional fee be paid directly to the State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in to the Participating Addendum that is made a part of this Agreement. The Contractor may adjust PSS pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of that State. All such agreements shall have no affect whatsoever on the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the State requesting the additional fee.
2. Purchasing Entities will be encouraged to use the reporting format developed by the lead State for their reporting needs. However, the Contractor agrees to provide additional reports to Purchasing Entities upon agreement by both parties as to the content and delivery methods of the report. Methods of delivery may include direct access to Internet or other databases.
3. Each State Purchasing Entity shall be allowed access to reports from all entities within that State.

45. Default and Remedies

- A. Any of the following shall constitute cause to declare this Agreement or any order under this Agreement in default:
1. Nonperformance of contractual requirements; or
 2. A material breach of any term or condition of this Agreement.

- B. A written notice of default, and an opportunity to cure, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire Agreement), a Participating Entity (in the case of a breach of the participating addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.
- C. If the default remains after the opportunity for cure, the non-defaulting party may:
 - 1. Exercise any remedy provided by law or equity;
 - 2. Terminate the Agreement, a Participating Addendum, or any portion thereof, including any Purchase Orders issued against the Agreement;
 - 3. Impose liquidated damages, as specified in a Participating Addendum;
 - 4. In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations.
 - 5. Charge the defaulting Contractor the full increase in cost and administrative handling to purchase the product or service from another Contractor.
- D. The MMD reserves the right, upon approval of the WSCA Directors, to develop and implement a step-by-step process to deal with Contractor failure to perform issues.

46. Audits

A. Website Pricing Audit

The Contractor agrees to assist the WSCA/NASPO Contract Administrator or designee with web site Product and pricing audits based on the requirements described in the Vendor Mandatory meeting presentation. Website prices will be audited by the 7th day of every new Contract quarter.

- 1. The product audit will closely monitor the products and services listed on the website to insure they comply with the approved products and services. The addition of products or services not approved by the WSCA/NASPO Contract Administrator will not be tolerated and may be considered a material breach of this Agreement.

B. Sales Audit

The Contractor further agrees to provide sales audit reports based on the formulas described in the Vendor Mandatory meeting presentation. These presentations were held the week of March 30-April 3, 2009.

- C. Upon request, the Contractor agrees to assist Participating Entities with invoice audits to ensure that the Contractor is complying with this Agreement in accordance with mutually agreed procedures set forth in the

Participating Addendum.

47. Extensions

If specifically authorized by provision in a Participating Addendum, Contractor may, at the sole discretion of Contractor and in compliance with the laws of the Participating State, offer Products and services to non-profit organizations, private schools, Native American governmental entities, government employees and students within the governmental jurisdiction of the entity completing the Participating Addendum with the understanding that the governmental entity has no liability whatsoever concerning payment for products or services.

48. Sovereign Immunity

The State does not waive its sovereign immunity by entering into this Contract and fully retains all immunities and defenses provided by law with regard to any action based on this Contract.

49. Ownership

- A. Ownership of Documents/Copyright.** Any reports, studies, photographs, negatives, databases, computer programs, or other documents, whether in tangible or electronic forms, prepared by the Contractor in the performance of its obligations under the Contract and paid for by the State shall be the exclusive property of the State and all such material shall be remitted to the State by the Contractor upon completion, termination or cancellation of the Contract. The Contractor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contractor's obligations under the Contract without the prior written consent of the State.
- B. Rights, Title and Interest.** All rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trade marks, and service marks in the said documents that the Contractor conceives or originates, either individually or jointly with others, which arise out of the performance of the Contract, will be the property of the State and are, by the Contract, assigned to the State along with ownership of any and all copyrights in the copyrightable material. The Contractor also agrees, upon the request of the State, to execute all papers and perform all other acts necessary to assist the State to obtain and register copyrights on such materials. Where applicable, works of authorship created by the Contractor for the State in performance of the Contract shall be considered "works for hire" as defined in the U.S. Copyright Act.

50. Prohibition Against Gratuities

- A.** The State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Contract if it is found by the State that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any employee, agent, or representative of the Contractor to any officer or employee of the State with a view toward securing this Contract, or securing favorable treatment with respect to the award or amendment of this Contract, or the making of any determinations with respect to the performance of this Contract.



- B. The Contractor certifies that no elected or appointed official or employee of the State has benefited or will benefit financially or materially from this Contract. This Contract may be terminated by the State if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned individuals from the Contractor, its agent, or its employees.

51. Antitrust

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

52. Right to Publish

- A. Any publicity given to the program, publications or services provided resulting from the Contract, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, or its employees individually or jointly with others, or any subcontractors or resellers shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Contract prior to its approval by the WSCA/NASPO Contract Administrator.
- B. The Contractor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Contract without the prior written consent of the WSCA/NASPO Contract Administrator. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

53. Performance While Dispute is Pending

Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under this Contract that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under this Contract, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

54. Hazardous Substances

To the extent that the goods to be supplied to the Purchasing Entity by the Contractor contain or may create hazardous substances, harmful physical agents as set forth in applicable State and federal laws and regulations, the Contractor must provide the Purchasing Entity, upon request, with Material Safety Data Sheets regarding those substances (including mercury).

55. Customer Satisfaction/Complaint Resolution

- A. The Contractor's process for resolving complaints concerning products, support, and billing problems is attached as **Exhibit B**.
- B. The Contractor will survey its customers in each Participating State

approximately two (2) months prior to the annual meeting with the Contract Administrator using, at a minimum, the survey questions provided by the State.

56. Value Added Services

The Contractor is expected to provide such services as installation, training, and software imaging upon request of the Purchasing Entity. Additional Value Added Services offered by the Contractor are attached as **Exhibit C**.

57. E-Rate Program

The Contractor's reseller(s) does not have a direct E-Rate number; however, the Contractor's reseller will provide their E-Rate number upon request of the Purchasing Entity.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date of execution by the State of Minnesota Commissioner of Administration, below.

1. PANASONIC COMPUTER SOLUTIONS COMPANY

The Contractor certifies that the appropriate person(s) have on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: *James King*
Title: *Vice President*
Date: *7/29/09*

By:

Title:

Date:

2. MATERIALS MANAGEMENT DIVISION

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: *Bernadette Kopischke*
Title: Acquisitions Supervisor

Date: *7/31/09*

3. COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: *Brenda Willard*
Date: *7/31/09*

EXHIBIT A – ADDITIONAL WARRANTIES

Exhibit A - Warranty & Extended Warranty information

The standard limited warranty covers Panasonic Toughbook notebooks for three years and includes a priority parts exchange program and repair service at no cost. It also provides lifetime access to a U.S.-based technical support hotline to handle any questions or problems that may arise.

- Limited Hardware Warranty—PCSC will repair in-warranty Toughbook notebooks at no cost.

- Telephone Support—A team of U.S.-based technical specialists is available for all Toughbook laptop users by calling 1-800-LAPTOP5.

- Website Support—Toughbook laptop customers have access to a download center for drivers, first-aid disks, BIOS updates, tools, utilities and manuals.

- Priority Exchange—When in need of a user-replaceable part for an in-warranty Toughbook computer, the part will be shipped within the United States at no cost.

- Repair and Shipping—When it is determined that a Toughbook laptop needs to be shipped to PCSC's National Service Center, PCSC will arrange for pickup and shipment, repair the unit and return it, all at no cost for an in-warranty Toughbook.

- Field Personnel—Panasonic field service managers are strategically located throughout the country to provide customers with additional support when required.

IN-WARRANTY REPORTING PROCESS

For in-warranty service on all Panasonic computers and accessories, you can call Panasonic's technical support hotline at 1-800-LAPTOP5 (1-800-527-8675), 24 hours a day, 365 days a year. A Panasonic hotline representative will help you determine if a hardware problem exists and whether or not the laptop needs to be shipped to the National Service Center. If it is determined that a problem exists and the laptop needs to be shipped to the National Service Center, the representative will request the following information:

- Name
- Address
- Unit model and serial number
- Date of failure
- Description of problem

The hotline representative will then provide you with a service authorization number, shipping company name and account number, and the address of the National Service Center. PCSC will pay for shipping to and from the National Service Center, and even send you a box for returning the unit that needs repair

On-Site Repair Services

Panasonic will provide repair services for Panasonic laptop computers and their related accessories at the Customer's site. This service is available in one-year term increments, up to five years. The in-warranty years of the Unit must be the same as the On-site Repair Service. The Customer must supply serial numbers for each Unit that is to be covered.

Response Time: The service technician will arrive on-site within eight business hours in all major metropolitan areas. Remote areas (more than 50 miles outside a major metropolitan area) may require slightly longer access times. A coverage map is available. A dispatch center is available 24 hours a day, 365 days a year. The on-site service of the equipment is available Monday through Friday, 8:00 am to 5:00 pm local time, excluding Federal holidays and those observed at the Customer location. Panasonic will not be held responsible for response time during extreme weather or other acts of God or war.

Services Provided: On-site repair service will be fulfilled by a qualified technician, with Panasonic manufactured parts or with Panasonic approved equivalents. The technician may or may not be a direct

employee of Panasonic. The technician may be a representative from a Panasonic Authorized Service Provider. The Customer must accommodate the arrival of the on-site technicians, access to the site, and access to the unit requiring repair. A warranty determination will be made by the on-site technician. In-warranty repairs will be performed at no charge at the time of service. Out-of-warranty repairs will be billed at the cost of labor, parts, shipping costs (if applicable), and applicable taxes.

Out-of-Warranty Repairs: Should a repair be deemed to be outside of Panasonic' Standard Warranty (printed copies available in separate documents), or other additional warranty coverage that has been previously purchased, the Customer will be responsible for the cost of the repairs. The Customer will be given an estimate on out-of warranty repairs for their approval prior to the repair.

General Terms for Extended Warranty, Extended Battery Warranty and Protection Plus

Panasonic Computer Solutions Company (referred to as "Panasonic") will provide the following warranties to the purchasers (referred to as "Customers") of Panasonic Toughbook computing devices (referred to as "Units"). Under the Panasonic Standard Toughbook Limited Warranty, Panasonic will repair hardware products sold by Panasonic with new or rebuilt parts, free of charge for 3 years on all laptops and for 1 year on selected models from the date of the original purchase. The owner's manual that comes standard with each Unit will provide the exact warranty term. This standard limited warranty only covers failures due to defects in materials or workmanship that occur during normal use. It does not cover damage which occurs in shipment or failures which are caused by products not supplied by Panasonic, or failures that result from alteration, accident, misuse, introduction of liquid or other foreign matter into the unit, abuse, neglect, installation, maladjustment of consumer controls, improper maintenance, modification or service by anyone other than the National Service Center or a Panasonic Authorized Service Provider, or damage that is attributable to acts of God. This warranty does not cover software or consumable items. All consumable items not purchased as part of the Toughbook PC original sale are covered for 1 year from the date of purchase. This warranty is provided solely to the original purchaser. A purchase receipt or other proof of the original date of purchase may be required before warranty service is rendered.

Extended Warranty

The Extended Warranty provides standard limited warranty coverage for all system components for an additional fourth and/or fifth year depending on which option the Customer purchases. This warranty does not cover are consumable items such as batteries, screen protectors, etc. Coverage exclusions include intentional misuse or abuse, virus-inflicted damage, data recovery from hard drive failure or cosmetic damage that does not affect that functionality of the system. A list of the Customer's serial numbers for the Toughbook models purchased and proof of purchase is required to entitle the Units for this warranty.

Extended Battery Warranty

The Extended Battery Warranty coverage provides for an additional two, three or four years of coverage depending on which option the Customer purchases. This allows for up to five years of coverage on the battery. If a battery is returned under this coverage because it maintains less than 50% of its charge capacity, a replacement battery will be sent at no charge to the Customer's user. A battery covered by this warranty is considered good if it maintains 50% of its charge capacity after the first year. Toughbook models covered under this warranty are eligible to receive up to one battery per year for the duration of the extended battery warranty period. A list of the Customer's serial numbers for the Toughbook models purchased and proof of purchase is required to entitle the Units for this warranty.

Protection Plus Warranty

The Protection Plus Warranty (or No Fault Warranty) increases the coverage for all system components during the standard limited warranty period or for the Extended Warranty period depending on which option the Customer purchases. The additional coverage includes damage that occurs as a result of accidental damage during normal use, exposure to environmental conditions, and other non-intentional conditions not covered by the standard limited warranty. This warranty does not coverage damage from intentional acts, fire, loss, theft, or normal wear (cosmetic damage) not affecting functionality. This warranty does not cover consumable items such as the battery, screen protectors, and printing of the keyboard. Panasonic may elect to repair or replace a damaged Unit, at our discretion, with a model of equal or greater value.

The maximum benefit for Protection Plus coverage is limited to one major failure per Unit per year for the LCD, keyboard, hard drive and system board. A replacement Unit will not be provided if the maximum

benefit has already been met for a Unit. If the maximum benefit has not been met and a unit needs to be replaced, a replacement Unit will be provided. The replacement Unit will not be covered by Protection Plus unless separately purchased for the replacement Unit.

A list of the Customer's serial numbers for the Toughbook models purchased and proof of purchase is required to entitle the Units for this warranty.

Ownership, Copyrights, and Indemnification

The Customer warrants and insures that the Customer has obtained and currently holds, legal right to use/install all requested software and/or third-party devices being integrated into the Unit. This includes appropriate number of licenses/rights to cover the number of Units being configured/loaded. The Customer acknowledges that unless otherwise expressed in writing, all costs associated with the acquisition of said rights are the sole responsibility of the Customer. The Customer will indemnify, defend, and hold harmless Panasonic against all copyright infringement claims and actions regarding third-party software/hardware loaded at the Customer's request.

Limitations and Exclusions

PANASONIC SHALL NOT BE LIABLE FOR LOSS OF DATA OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM THE USE OF THESE SERVICES, OR ARISING OUT OF ANY BREACH OF THIS WARRANTY. ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE LIMITED TO THE APPLICABLE WARRANTY PERIOD SET FORTH ABOVE. Some states do not allow the exclusion or limitation of incidental or consequential damages, or limitations on how long an implied warranty lasts, so the above limitations or exclusions may not apply to your project. This limited warranty gives you specific legal rights and you may also have other rights, which vary from state to state.

EXHIBIT B – COMPLAINT RESOLUTION.

Throughout the period of performance, Panasonic will ensure that all complaints are resolved effectively and as quickly as possible. As stated, Panasonic distributes products exclusively through our network of Authorized Resellers. The benefit of our approach to Participating States is that they have the opportunity to choose to work with one or more of our Authorized Resellers on the basis of additional support, incentives, and programs that each may offer independently.

Bottom line responsibility for complaint resolution lies with Panasonic as the Prime for this contract. However, each of our resellers selected for this proposal have proven their capability to independently resolve complaints and issues within the scope of their support for procurement operations. Through our distribution model, Participating States' representatives may choose to resolve complaints at the local level through their reseller of choice, or at their own discretion, choose to escalate such complaints directly to Panasonic for resolution.

To accommodate this process, Panasonic has designated a primary authority who has access to all decision makers and Panasonic resources for the resolution of complaints, this contact is identified as follows:

Michelle Chapin
Director Government Relations
21473 Glebe View Drive
Ashburn, VA 20148
973.303.7787
Michelle_Chapin@us.panasonic.com

Processes for complaint resolution utilized by our resellers will be reviewed, and approved or modified in accordance with State Participating Addendums as may be warranted. Panasonic will also implement a process to ensure complaint tracking and resolutions managed directly by our resellers (at Participating State Representatives option), are reviewed on a regular basis to identify any potential program management issues that can be resolved through more effective policy, procedure or training.

Complaints escalated to Panasonic, or complaints originally directed to Panasonic will be resolved according to the following activity timeline:

1. Complaints may be directed to Panasonic's designated contact (above), via telephonic or electronic means.
2. Complaints will be acknowledged upon receipt.
3. Complaints will be reviewed immediately and action taken to resolve each.
4. Panasonic's designated contact will provide the complaint originator with a complaint resolution status within 24 hours of receiving the complaint detailing action taken or pursued, and an estimated time for resolution.
5. Complaints that can be resolved immediately or within 24 hours will be, otherwise, our goal for complaint resolution is within 72 hours.

EXHIBIT C – VALUE-ADDED SERVICES

Value added services offered by Panasonic and our Authorized Resellers provide your Participating States with all of the resources and programs to ensure successful product acquisitions through the entire life-cycle of the product – from Acquisition to Recycling – specific value added programs are described as follows (Corresponding service data sheets are provided within Binder 3 of our submission):

Panasonic uses a **three-phase process** to provide managed deployment and project management services for its mobile customers. It provides bundled packages to handle the entire deployment, as well as ongoing support services (such as Panasonic Gold/Premiere & Silver/Preferred Service). Additionally, Panasonic also offers its customers the flexibility to tailor the packages to their specific needs, as well as the ability to purchase any individual service on an "à la carte" basis.

In addition, warranty service is performed on the Toughbook units, some of which will be "in warranty," and a smaller percentage which will fall under the "out-of-warranty" guidelines. The ongoing service & support is a critical stage to ensure user "uptime" and accurately track system performance and company assets.

Service Packages

To jump-start the deployment of your Toughbooks, let Panasonic reduce the time required to get your new equipment in the hands of your users. Toughbooks are configured to your exact specifications for general usage, or by job description. Our expert deployment team will ensure your deployment and ongoing implementation is completed on time and within budget by acting as the single point of accountability for the life of your project. Deployment services included in this package also help implement an online tracking system designed to provide administrators with timely and accurate data. Additionally, this package provides an asset tracking system that makes it easy to manage a large PC deployment. Panasonic's Asset Management Online Service (AMOS) also allows customers to track and report on all of their field-based assets.

Configuration Services – Phase 1

TOUGHBOOK

Panasonic National Service and Configuration Center manages custom integration as follows:

- ◆ Integrate all hardware, software, drivers, gold master disk image, and third-party devices into a single Toughbook unit
- ◆ 48-hour "burn-in"
- ◆ CMOS configuration
- ◆ Wireless testing and confirmation
- ◆ Custom, high-quality asset tag
- ◆ Key content capture (S/N, MN)
- ◆ Image setup and review
- ◆ Mass disk imaging (user)
- ◆ Unique disk imaging (superior)



Panasonic *it's as for life*

Panasonic Gold/Premiere Package –

The Panasonic Gold/Premiere Service package provides a bundle of services that include nearly all items shown in Phases 1, 2, and 3. The Gold/Premiere Service package is available for terms of service from (3) to (5) years.



Panasonic Silver/Preferred Package –

The Panasonic Silver/Preferred Service package provides a bundle of services that primarily focus on initial imaging and unit deployment while still providing for online service analysis during the length of the service in the field.

For more details on these packages or a uniquely designed program, please contact your local Panasonic sales representative.

In addition to the service bundles, Panasonic also offers services on an à la carte basis, tailored to the exact needs of our customers. Along with providing specific services that are part of the Gold or Silver service bundles, individual services are also available to complement existing customer internal infrastructures.



The following is a listing of individual **Panasonic Professional Services:**

Panasonic Computer Solutions Company (referred to as "Panasonic") will provide the following services to the purchasers (referred to as "Customers") of Panasonic Toughbook computing devices (referred to as "Units").

- Disk Image Management
- Asset Management
- Online Service Analysis
- Hot Spare Management
- Express Loaner Service
- On-Site Service
- Data Protection

Deployment Package Services:

Panasonic can provide to Customers as part of the Premiere/Gold deployment package selected services from the following list:

1. **Unit initial disk imaging and hardware configuration.** Hardware configuration refers to a standard group of basic configuration services which include, but are not limited to BIOS and switch settings, power-up/test, and burn-in of the disk image. The configuration and related settings are agreed to prior to starting the deployment and are contained on the PS Design Document, which must be approved by the Customer.
2. **Third-party software loads and hardware integration.** Panasonic will advise the Customer as to the preferred settings for all third-party tasks related to the configuration. Panasonic assumes no liability for the configuration as specified by the Customer. The Customer acknowledges that unless otherwise expressed in writing, all acquisition costs associated with any third-party software and hardware are the sole responsibility of the Customer.
3. **Wireless Service Activation.** Panasonic will activate the wireless carrier service for the Customer and test the activation prior to the shipping the Units to the Customer. Customer is responsible for all costs associated with the acquisition of hardware, software, and the selected carrier service contract.
4. **Asset tagging and serial number reporting.** Panasonic will perform these services for the

Customer. And, if the Customer purchases either the Silver or Gold deployment service package the serial numbers will also be loaded into the Online Service Analysis web-based tool for the Customer to track work performed by the National Service Center.

5. **Shipping coordination.** Panasonic will manage the preparation, packing, and shipping of Units to a single or multiple locations specified by the Customer. The Units and their destination will be tracked and Panasonic will forward this information to the Customer. Depending on the level of deployment service package selected, shipping costs to the specified number of destinations within the United States may be included.
6. All other deployment services are performed for additional charges.

Disk Image Management

Panasonic will load the Customer's Gold disk image onto a Panasonic server. These images will be used to initialize and load software onto the hard drives of new Units deployed with the Panasonic Silver and Gold Packages and/or in-warranty units repaired at the National Service Center. The Customer will designate which image is to be loaded on the Unit as part of the initial deployment service package or when the Unit is sent in for repair. In-warranty coverage does not include damage caused by viruses, outdated software, misuse or abuse of the unit, and corruption of the application or operating system. Elective updates to a partial or entire group of your organization's users are not covered in this service and will be charged on a project or time and materials basis. Images can be updated by the Customer on a quarterly basis. The total number of Customer images per deployment will be determined prior to the start of the service. Two images are allowed per Toughbook model. The number of images per Customer deployment will be based on the total number of Units purchased. All Customer images will be stored on a Panasonic Server.

Each image can be a maximum size of 10 Gigabytes. Additional image requirements/maintenance needed by the Customer can be provided for an additional charge.

Panasonic will advise the Customer of the preferred software drivers and operating systems for their requirements. Panasonic assumes no liability for the appropriateness, correctness, or usability of the applications chosen by the Customer.

Asset Management and Online Service Analysis

All repair and service information is extracted from the National Service Center's repair history and displayed in reports and charts for the Customer on Panasonic's web-based tracking and reporting system. Panasonic will make every reasonable effort to maintain data in an accurate and secure manner. Panasonic does not share any of the Customer's data, or information about the Customer, with third parties other than Panasonic Authorized Service Providers. Panasonic will provide a Customer's user access via individual IDs and passwords, which will be kept confidential. Customers have the ability to edit and modify their own data. Panasonic cannot be held liable for the accuracy or completeness of any Customer data accessed by their users. Panasonic will act, with the Customer's help, to correct any known inaccuracies. Due to the nature of how access is distributed, Panasonic will not be held liable for security violations on the Customer's end. Panasonic will act quickly to correct any security issue that becomes known. This service requires that the users have Microsoft's Internet Explorer version 5.0 or higher and access to the Internet. Panasonic does not supply either requirement for this service. Panasonic may change functionality over time, without notice.

Hot Swap Management and Express Loaner Service

Panasonic will provide inventory management, packaging and shipping to Customer locations within the United States at no charge, and logistical coordination services for the Customer's assets for the express purpose of replacing Units that are currently in use and are experiencing operating problems. The inventory managed on behalf of the Customer as part of either the Hot Swap Management or the Express Loaner Service shall require the Customer to purchase a minimum of 2% of the current installed Unit population to be designated as either the "Swap Pool" or the "Loaner Pool". The Customer will maintain ownership of these Units and has the sole responsibility for inventory levels. Panasonic will proactively work with the Customer to make sure they are informed of any shortages and/or Units not being returned from a Customer's user. Panasonic will not be held responsible for Units not returned by the Customer or the Customer's users to either the "Swap Pool" or the "Loaner Pool". Customer warrants and insures that they have obtained and currently hold legal right to use/install all requested third-party software and third-

party hardware being integrated into the Unit. The Customer acknowledges that unless otherwise expressed in writing, all acquisition costs associated with any third-party software and hardware are the sole responsibility of the Customer. Panasonic will repair incoming in-warranty damaged Units in accordance with the standard warranty procedure. The Customer may incur additional repair costs for a damaged Unit that is identified as out-of-warranty.

Panasonic Leasing Information

Individual Purchasing Entities may enter in to lease agreements for the products covered in this Master Price Agreement, if they have the legal authority to enter into these types of agreements without going through a competitive process. The lease agreements were not reviewed or evaluated as part of the RFP evaluation process.

Proposed Lease Agreements

Panasonic has not proposed a specific lease agreement with our submission. However, Panasonic, as well as our Authorized Resellers have lease programs in place for those Participating States that are interested in lease terms for their specific acquisitions. We would welcome the opportunity to work with those specific states and agencies to provide a customized lease program. On the designated area for the WSCA contract on Panasonic's website is a sample agreement of what a lease may look like. Additional information about leasing can be customized to fit the specific customer's unique needs.

Addendum to Master Price Agreement
Between
Panasonic Computer Solutions Company
And

State of Minnesota, Materials Management Division
Representing the Western States Contracting Alliance (WSCA) and
the National Association of State Procurement Officials (NASPO)
Lead State Contract #: B27172 Executed on: July 31, 2009

August 11, 2009

Page

1 of 1

This Master Price Agreement Addendum governs Panasonic Computer Solutions Company's - Unit of Panasonic Corporation of North America (hereinafter "CONTRACTOR") use of the NASPO/WSCA name and logo during the term of this Master Price Agreement and amendments to this Master Price Agreement. CONTRACTOR may use the name and logo only as set forth below. Any use not expressly permitted herein is prohibited, and such use constitutes a material breach of the Master Price Agreement with the Lead State and all Participating States.

1. CONTRACTOR may display the NASPO/WSCA name and logo on the face of the Master Price Agreement, including all electronic and hard copy versions.
2. CONTRACTOR and its subcontractors, resellers, and agents may display the NASPO/WSCA names and logos on a web site as a "click on" link to the Master Price Agreement. No other use of the logos or names is permitted on any web site, except as permitted in paragraphs 1 and 3.
3. With, and only with, prior written approval of the Lead State Contract Administrator, CONTRACTOR may advertise the Master Price Agreement in publications and promotional materials aimed at state and local government entities eligible to use the Master Price Agreement. The sole focus and intent of such advertisements must be to increase participation in the Master Price Agreement. The NASPO/WSCA names may be used and the logos displayed in the advertisement ONLY as it relates to the Master Price Agreement. The Lead State Contract Administrator's approval must encompass the content and appearance of the advertisement and the media in which the advertisement will appear.
4. CONTRACTOR may not make explicit or implicit representations concerning the opinion of NASPO/WSCA, the Lead State, or any Participating State regarding CONTRACTOR or its products or services. This restriction includes general use of the NASPO/WSCA names and logos NOT directly linked to or related to this Master Price Agreement.
5. CONTRACTOR must ensure that its sub-contractors, resellers, and agents adhere to the terms of this Addendum, and CONTRACTOR is responsible for any breach by these entities.
6. CONTRACTOR must immediately cease all use of the NASPO/WSCA names and logos if directed to do so in writing by the Lead State Contract Administrator, and CONTRACTOR must ensure that its sub-contractors, re-sellers, and agents immediately cease all use.
7. CONTRACTOR shall not make, or permit its subcontractors, resellers, or agents to make, any alterations to NASPO's or WSCA's names or logos (including characters, style and colors) and CONTRACTOR shall not use or permit the use of NASPO's or WSCA's names or logos in a manner or context that could adversely affect NASPO's/WSCA's integrity, goodwill, or reputation.
8. Upon termination or expiration of the Master Price Agreement, CONTRACTOR and its sub- contractors, re-sellers, and agents must cease all use of the NASPO/WSCA names and logos; except that, CONTRACTOR may use the NASPO/WSCA names for reference purposes in a description of its prior experience.

Acknowledged:

CONTRACTOR: Panasonic Computer Solutions
Company-Unit of Panasonic Corporation of North
America

The Contractor certifies that the appropriate person(s) have executed this agreement on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

Signature

Title

Date

LEAD STATE: MINNESOTA

In accordance with state statutes or rules.

Signature

Title

Date

James King
Vice President
8/10/09

Bernadette Kopschke
Acq. Supvr.
8/17/09



WSCA/NASPO Contract Administration

112 Administration Building

50 Sherburne Avenue

St. Paul, MN 55155

Fax: 651.297.3996

TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

**AMENDMENT NUMBER: ONE (1)
TO CONTRACT NUMBER: B27172**

THIS AMENDMENT is by and between the State of Minnesota, acting through its commissioner of Administration, and on behalf of the WSCA/NASPO ("Lead State") and Panasonic Computer Solutions Company, Unit of Panasonic Corporation of North America, 3 Panasonic Way, Secaucus, NJ 07094 (Contractor).

WHEREAS, the Lead State has a Contract with the Contractor identified as No. B27172, effective September 1, 2009, through August 31, 2012, to provide direct-from-manufacturer personal computer equipment, peripherals and related services; and

WHEREAS, Minn. Stat. § 16C.03, subd. 5, affords the commissioner of Administration, or delegate pursuant to Minn. Stat. § 16C.03, subd. 16, the authority to amend contracts; and

WHEREAS, the terms of the Contract specifically state that the Contractor shall provide the basic warranty, three years, next business day, as stated in Appendix B of the RFP, for all products included in the Bands listed in Article 14 Products and Services Schedule. (Bands 2. Workstations; and 5. PDA's).

NOW, THEREFORE, it is agreed by the parties to amend the Contract as follows:

1. The Contractor may offer one-year and/or two-year warranties for each Band of equipment provided under the Contract. The Contractor shall show these as options when configuring a system/obtaining a quote, as a reduction in the cost of the equipment.

Panasonic Solutions Company Toughbook Computer products come standard with a 3-year warranty. There is not an option for a one-year and two-year warranty on the Toughbook laptop products.

This Amendment is effective beginning on the date that the final required signatures are obtained, and shall remain in effect until August 31, 2012, or until the Contract is canceled, whichever occurs first.

Except as herein amended, the provisions of the original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

Intentionally Left Blank

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed intending to be bound thereby.

1. PANASONIC COMPUTER SOLUTIONS

The Contractor certifies that the appropriate person(s) have executed this document on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: [Signature]

Title: Vice President

Date: 9/24/10

By: _____

Title: _____

Date: _____

2. LEAD STATE

MATERIALS MANAGEMENT DIVISION

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Bernadette Kopischke

Title: Acquisitions Supervisor

Date: 9/23/10

3. LEAD STATE

COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: Brenda Willard

Date: 9/23/10



Washington State Department of
Enterprise Services

1500 Jefferson St SE, P.O. Box 41017 • Olympia, Washington
98501 • (360) 902-7400
<http://www.des.wa.gov>

**PARTICIPATING ADDENDUM
AMENDMENT**

**Participating Addendum
Number:**

T11-MST-548

Date Issued:

08/23/2012

Amendment Number:

01

Date Effective:

09/01/2012

This Amendment is by and between the State of Washington and Panasonic System Communications Company of North America, Division of Panasonic Corporation of North America. This Participating Addendum Amendment 01 is issued under the provisions of the Washington State Participating Addendum (PA) identified by number above.

Amendment

WHEREAS:

The Lead State has a Master Price Agreement (MPA) with and Panasonic System Communications Company of North America, Division of Panasonic Corporation of North America (Panasonic) identified as No. B27172, effective July 31, 2009; and

WHEREAS:

The MPA was amended by the Lead State to extend through August 31, 2014.

NOW, THEREFORE, it is agreed by the parties to amend the PA as follows:

1. The State of Washington hereby extends the PA through August 31, 2014.
2. Except as herein amended, the provisions of the MPA and subsequent amendments thereto, as supplemented, changed or modified by the PA, shall remain in full force and effect until the contract is either cancelled or expires, whichever occurs first.

Authorizing Signatures

This contract amendment, consisting of one (1) pages and zero attachment is executed by the persons signing below who warrant that they have the authority to execute this contract amendment.

For Contractor:


(Contractor Authorized Representative Signature) (Date)

For State:


(Procurement Coordinator Signature) (Date)

PRINT NAME: James King
Contractor: Panasonic System Communications
Company of North America, Division of
Panasonic Corporation of North America
Address: 3 Panasonic Way 2F-11
Secaucus, NJ 07094
Telephone No. (201) 348-7000
Email: Contracts@us.panasonic.com

Agency: Department of Enterprise Services
Address: 1500 Jefferson St SE.
Olympia, WA 98501
Telephone No. (360) 407-9425
Email: Dale.Colbert@des.wa.gov

DES Approval

**DES Authorizing
Manager:**

Christine Warnock

Date:

8/30/12

Signature:



Email:

Christine.warnock@des.wa.gov

Phone:

(360) 407-9398

**Agenda Sheet for City Council Meeting of:**

11/03/2014

<u>Date Rec'd</u>	10/22/2014
<u>Clerk's File #</u>	OPR 2014-0722
<u>Renews #</u>	
<u>Cross Ref #</u>	
<u>Project #</u>	
<u>Bid #</u>	BID #4059-14
<u>Requisition #</u>	VALUE BLANKET ORDER

<u>Submitting Dept</u>	SPOKANE REGIONAL SOLID WASTE SYSTEM
<u>Contact Name/Phone</u>	KEN GIMPEL 625-6532
<u>Contact E-Mail</u>	KGIMPEL@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Purchase w/o Contract
<u>Agenda Item Name</u>	4490 - WTEF PURCHASE OF HYDROCHLORIC ACID

Agenda Wording

Value Blanket Order with Northstar Chemical (Tualatin, OR) for the annual supply of Hydrochloric Acid to be purchased on an "as needed" basis - \$31,088.20 - estimated annual expenditure including sales tax

Summary (Background)

On 10/20/14 sealed bids were opened to provide the City of Spokane Waste to Energy Facility with an annual supply of Hydrochloric Acid. Three (3) responses were received with Northstar Chemical being the lowest responsive bidder. On November 17, 2014 the City will take over operations of the Waste to Energy Facility and Hydrochloric Acid is required for the operation of the facility.

<u>Fiscal Impact</u>		<u>Budget Account</u>	
Expense	\$ 31,088.20	#	various
Select	\$	#	
Select	\$	#	
Select	\$	#	
<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	GIMPEL, KEN	<u>Study Session</u>	
<u>Division Director</u>	ROMERO, RICK	<u>Other</u>	PWC 10/27/14
<u>Finance</u>	LESESNE, MICHELE	<u>Distribution List</u>	
<u>Legal</u>	WHALEY, HUNT	ttauscher@spokanecity.org	
<u>For the Mayor</u>	SANDERS, THERESA	tprince@spokanecity.org	
<u>Additional Approvals</u>		rrinderle@spokanecity.org	
<u>Purchasing</u>	PRINCE, THEA	Taxes & Licenses	

HYDROCHLORIC ACID
 BID 4059-14 OPEN: 10/6/14

	UNIVAR 8201 S 212 th St Kent, WA 98032	OXARC Inc. 4003 E Broadway Ave Spokane WA 99202 509-535-7794 dtolliver@oxarc.com Dave Tolliver	Northstar Chemical 14200 SW Tualatin-Sherwood Rd Tualatin OR 97140 503-625-3770 mwerger@northstarchemical.co m Matt Werger	Brenntag Pacific Inc. 10747 Patterson Pl. Santa Fe Springs CA 90670 562-903-9626 ltua@brenntag.com Laura Tua	JCI JONES CHEMICAL 1919 Marine View Drive Tacoma WA 98422
110,000 LBS MORE OR LESS OF HYDROCHLORIC ACID – 32% SOL CLASS 8 PGII DELIVERY FREQUENCY : APPROX EVERY 23 DAYS APPROX QTY PER DELIVERY: 7,300 LBS	NO BID	\$578.00/tn	\$520.00/tn	\$740.00/tn	NO BID NO BID
SUB TOTAL		\$31,790.00	\$28,600.00	\$40,700.00	
Freight or Deliver Charge					
Sales Tax – 8.7%		\$ 2,765.73	\$ 2,488.20	\$ 3,540.90	
TOTAL:		\$34,555.73	\$31,088.20	\$44,240.90	
Delivery		5-7 DAYS FRO	4 DAYS FRO	3-5 DAYS FRO	
Price per lb Material Component		.289 lb	.18 lb	.27 lb	
Price per lb Delivery Component			.08 lb	.10 lb	
Price per lb Material/Delivery combined			.26 lb	.37 lb	
Formula for price decrease/increase during the duration of the agreement		Pricing is determined by their vendor	Based on market conditions	Price letters from Brenntag suppliers shared with City	
EXCEPTIONS					
Minimum Delivery Requirement		2,600 lbs	n/a	12,000 lbs combined with Caustic	
What is cost impact if minimum delivery requirement could not be off loaded		Will reschedule	n/a	25% of sales price per lb returned	
Advance notification needed to schedule delivery		5-40 days ARO	96 hours	6 working days	
Emergency notification needed to schedule delivery		We have an on call service	24 hours	2 working days	
Where will material be shipped from		Spokane	Tacoma	Portland	
			** PRICING PROVIDED IS FOR A 1-YEAR AGREEMENT – PRICING IS GOOD WHETHER ORDERED TOGETHER WITH 50% CAUSTIC SODA OR NOT**	PRICING COMBINED WITH BID #4058-14 – SODIUM HYDROXIDE 50% CAUSTIC AND HCL DELIVERED MUST COLLECTIVELY EQUAL OR EXCEED 12,000 LBS	

BRIEFING PAPER
Public Works Committee
Spokane Regional Solid Waste System
October 27, 2014

Subject

Contract with Northstar Chemical for purchase of Hydrochloric Acid per request for bids #4059-14. Cost not to exceed \$31,088.20, tax included.

Background

On November 17, 2014, the City will take over operations of the waste to energy facility. New contracts for the chemicals and supplies for operations must be obtained prior to that date. Hydrochloric acid is required for the operation of the waste to energy facility.

Impact

Waste to energy facility will maintain effective operations.

Action

Recommend approval.

Funding

\$4,127 in 2014 waste to energy operations budget
\$26,961.20 in 2015 operations budget

**Agenda Sheet for City Council Meeting of:**

11/03/2014

Date Rec'd

10/22/2014

Clerk's File #

OPR 2014-0723

Renews #**Submitting Dept**SPOKANE REGIONAL SOLID WASTE
SYSTEM**Cross Ref #****Contact Name/Phone**

KEN GIMPEL 625-6532

Project #**Contact E-Mail**

KGIMPEL@SPOKANECITY.ORG

Bid #

BID #4058-14

Agenda Item Type

Purchase w/o Contract

Requisition #VALUE BLANKET
ORDER**Agenda Item Name**4490 - WTEF PURCHASE OF SODIUM HYDROXIDE 50% MEMBRANE (CAUSTIC
SODA)**Agenda Wording**

Value Blanket Order with BHS Specialty Chemical Products (Nampa, ID) for the annual supply of Sodium Hydroxide 50% Membrane (Caustic Soda) to be purchased on an "as needed" basis - \$26,966.29 - estimated annual expenditure including sales tax

Summary (Background)

On 10/20/14 sealed bids were opened to provide the City of Spokane Waste to Energy Facility with an annual supply of Sodium Hydroxide 50% Membrane (Caustic Soda). Four (4) responses were received with BHS Specialty Chemical Products being the lowest responsive bidder. On November 17, 2014 the City will take over operations of the Waste to Energy Facility and Sodium Hydroxide is required for the operation of the facility.

Fiscal Impact**Budget Account**

Expense \$ 26,966.29

various

Select \$

#

Select \$

#

Select \$

#

Approvals**Council Notifications****Dept Head**

GIMPEL, KEN

Study Session**Division Director**

ROMERO, RICK

Other

PWC - 10/27/14

Finance

LESESNE, MICHELE

Distribution List**Legal**

WHALEY, HUNT

ttauscher@spokanecity.org

For the Mayor

SANDERS, THERESA

tprince@spokanecity.org

Additional Approvals

rrinderle@spokanecity.org

Purchasing

PRINCE, THEA

taxes & licenses

SODIUM HYDROXIDE 50%
BID 4058-14 OPEN: 10/6/14

	UNIVAR 8201 S 212 th St Kent, WA 98032	OXARC Inc. 4003 E Broadway Ave Spokane WA 99202 509-535-7794 dtolliver@oxarc.com Dave Tolliver	BHS Specialty Chemical Products 1717 E Fargo Ave Nampa ID 83687 208-466-8437 steve@bhsmarketing.co m Steve Rudd	Northstar Chemical 14200 SW Tualatin-Sherwood Rd Tualatin OR 97140 503-625-3770 mwerger@northstarchemical.com Matt Werger	Brenntag Pacific Inc. 10747 Patterson Pl. Santa Fe Springs CA 90670 562-903-9626 ltua@brenntag.com Laura Tua	JCI JONES CHEMICAL
140,000 LBS MORE OR LESS OF SODIUM HYDROXIDE 50% LIQUID CAUSTIC SODA – MEMBRANE GRADE DELIVERY FREQUENCY : APPROX EVERY 27 DAYS APPROX QTY PER DELIVERY: 13,000 LBS	NO BID	\$480.00/tn	\$354.40/tn	\$510.00/tn	\$560.00/tn	NO BID
SUB TOTAL		\$33,600.00	\$24,808.00	\$35,700.00	\$39,200.00	
Freight or Deliver Charge						
Sales Tax – 8.7%		\$ 2,923.20	\$ 2,158.29	\$ 3,105.90	\$ 3,410.40	
TOTAL:		\$36,523.20	\$26,966.29	\$38,805.90	\$42,610.40	
Delivery		5-7 DAYS FRO	3 DAYS FRO	4 DAYS FRO	3-5 DAYS FRO	
Price per lb Material Component		.24 lb	.1452 lb	.1720 lb	.18 lb	
Price per lb Delivery Component			.032 lb	.0830 lb	.10 lb	
Price per lb Material/Delivery combined		.24 lb	.1772 lb	.25550 lb	.28 lb	
Formula for price decrease/increase during the duration of the agreement		Pricing is tied to our vendor	Price is firm for one year	Based on market conditions	HIS NIE Asian Spot Average	
EXCEPTIONS						
Minimum Delivery Requirement		6,355 lbs	13,000 wet lbs	n/a	12,000 lbs combined with HCL	
What is cost impact if minimum delivery requirement could not be off loaded		None	\$85/hr, 4 hour minimum charge	n/a	25% of sales price per lb returned	
Advance notification needed to schedule delivery		5-7 days ARO	3-5 days	96 hours	6 working days	
Emergency notification needed to schedule delivery		We have an on call service	24 hours	24 hours	2 working days	
Where will material be shipped from		Spokane	Spokane	Tacoma	Portland	

** PRICING PROVIDED IS FOR A

				1-YEAR AGREEMENT – PRICING IS GOOD WHETHER ORDERED TOGETHER WITH 50% CAUSTIC SODA OR NOT**	PRICING COMBINED WITH BID #4059-14 – HCL AND SODIUM HYDROXIDE 50% CAUSTIC DELIVERED MUST COLLECTIVELY EQUAL OR EXCEED 12,000 LBS	
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BRIEFING PAPER
Public Works Committee
Spokane Regional Solid Waste System
October 27, 2014

Subject

Contract with BHS Specialty Chemical Products for purchase of Sodium Hydroxide 50% Membrane (Caustic Soda) per request for bids #4058-14. Cost not to exceed \$26,966.29, tax included.

Background

On November 17, 2014, the City will take over operations of the waste to energy facility. New contracts for the chemicals and supplies for operations must be obtained prior to that date. Sodium hydroxide is required for the operation of the waste to energy facility.

Impact

Waste to energy facility will maintain effective operations.

Action

Recommend approval.

Funding

\$2,000.00 in 2014 waste to energy operations budget

\$24,966.29 in 2015 operations budget

**Agenda Sheet for City Council Meeting of:**

11/03/2014

Date Rec'd

10/22/2014

Clerk's File #

OPR 2014-0724

Renews #**Submitting Dept**SPOKANE REGIONAL SOLID WASTE
SYSTEM**Cross Ref #****Contact Name/Phone**

KEN GIMPEL 625-6532

Project #**Contact E-Mail**

KGIMPEL@SPOKANECITY.ORG

Bid #

BID #4061-14

Agenda Item Type

Purchase w/o Contract

Requisition #VALUE BLANKET
ORDER**Agenda Item Name**

4490 - WTEF PURCHASE OF ACTIVATED CARBON

Agenda Wording

Value Blanket Order with BHS Specialty Chemical Products (Nampa, ID) for the annual supply of Activated Carbon to be purchased on an "as needed" basis - \$53,807.67 - estimated annual expenditure including sales tax

Summary (Background)

On 10/20/14 sealed bids were opened to provide the City of Spokane Waste to Energy Facility with an annual supply of Activated Carbon. Four (4) responses was received with BHS Specialty Chemical Products being the second lowest responsive bidder. The lowest responsive bidder's carbon did not met specs so they were deemed nonresponsive. On November 17, 2014 the City will take over operations of the Waste to Energy Facility and Activated Carbon is required for the operation of the facility.

Fiscal Impact**Budget Account**

Expense \$ 53,807.67

various

Select \$

#

Select \$

#

Select \$

#

Approvals**Council Notifications****Dept Head**

GIMPEL, KEN

Study Session**Division Director**

ROMERO, RICK

Other

PWC - 10/27/14

Finance

LESESNE, MICHELE

Distribution List**Legal**

WHALEY, HUNT

ttauscher@spokanecity.org

For the Mayor

SANDERS, THERESA

tprince@spokanecity.org

Additional Approvals

rrinderle@spokanecity.org

Purchasing

PRINCE, THEA

taxes & licenses

ACTIVATED CARBON
BID 4061-14 OPEN: 10/13/14

	UNIVAR 8201 S 212 th St Kent, WA 98032	Carbon Activated Corp 250 E Manville St Compton CA 90220 (310) 885-5555 omithad@activatedcarbon.com Omitha Devendra	Michigan Renewable Carbon 513 4 th Street Gwinn MI 49841 (443) 838-1782 rbiasetti@biogenicreagents.com Rico Biasetti	Brenntag Pacific Inc. 10747 Patterson Pl. Santa Fe Springs CA 90670 562-903-9626 ltua@brenntag.com Laura Tua	JCI JONES CHEMICAL 1919 Marine View Drive Tacoma WA 98422	BHS Specialty Chemical Products 1717 E Fargo Ave Nampa ID 83687 (208) 466-8437 steve@bhsmarketing.com Steve Rudd
60 ea 900 lb Fluepac more or less	NO BID	\$873.00/bg	\$468.00/bg	\$1,089.00/bg	NO BID	\$823.30/bg
SUB TOTAL		\$52,380.00	\$28,080.00	\$65,340.00		\$49,410.00
Freight or Deliver Charge			\$ 8,602.80			
Sales Tax – 8.7%		\$ 3,194.64	\$ 3,191.40	\$ 5,684.58		\$ 4,298.67
TOTAL:		\$55,574.64	\$39,874.20	\$71,024.58		\$53,807.67
Delivery		5-7 DAYS FRO	10 DAYS FRO	5-7 DAYS FRO		10 DAYS FRO

BRIEFING PAPER
Public Works Committee
Solid Waste Disposal Department
October 27, 2014

Subject

Contract with BHS Specialty Chemical Products, for purchase of Activated Carbon per request for bids #4061-14. Cost \$53,807.67.

Background

On November 17, 2014, the City will take over operations of the waste to energy facility. New contracts for the chemicals and supplies for operations must be obtained prior to that date. Activated Carbon is required for the operation of the waste to energy facility.

Impact

Waste to energy facility will maintain effective operations.

Action

Recommend approval.

Funding

\$7160 will be funded from 2014 waste to energy operations funds

\$46,647.67 will be funded from 2015 waste to energy operations funds

**Agenda Sheet for City Council Meeting of:**

11/03/2014

Date Rec'd

10/22/2014

Clerk's File #

OPR 2014-0725

Renews #**Submitting Dept**SPOKANE REGIONAL SOLID WASTE
SYSTEM**Cross Ref #****Contact Name/Phone**

KEN GIMPEL 625-6532

Project #**Contact E-Mail**

KGIMPEL@SPOKANECITY.ORG

Bid #

BID #4065-14

Agenda Item Type

Purchase w/o Contract

Requisition #VALUE BLANKET
ORDER**Agenda Item Name**

4490 - WTEF VALUE BLANKET ORDER FOR ULTRA LOW SULFUR #2 DYED DIESEL

Agenda Wording

Value Blanket Order with Eljay Oil (Spokane, WA) for the purchase of Ultra Low Sulfur #2 Dyed Diesel and supporting equipment to be purchased on an "as needed" basis - \$75,000.00 estimated annual expenditure including sales tax

Summary (Background)

On 10/20/14 sealed bids were opened to provide the City of Spokane Waste to Energy Facility with an annual supply of Ultra Low Sulfur #2 Dyed Diesel and supporting equipment. One response was received with Eljay Oil being the lowest responsive bidder. On November 17, 2014 the City will take over operations of the Waste to Energy Facility and #2 Diesel is required for the operation of the facility.

Fiscal Impact**Budget Account**

Expense \$ 75,000.00

various

Select \$

#

Select \$

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Approvals**Council Notifications****Dept Head**

GIMPEL, KEN

Study Session**Division Director**

ROMERO, RICK

Other

PWC 10/27/14

Finance

LESESNE, MICHELE

Distribution List**Legal**

WHALEY, HUNT

ttauscher@spokanecity.org

For the Mayor

SANDERS, THERESA

tprince@spokanecity.org

Additional Approvals

rrinderle@spokanecity.org

Purchasing

PRINCE, THEA

taxes & licenses

BRIEFING PAPER
Public Works Committee
Spokane Regional Solid Waste System
October 27, 2014

Subject

Contract with Eljay Oil Co. Inc., for purchase of Ultra Low Sulfur #2 Dyed Diesel and Supporting Equipment per request for bids #4065-14. Cost not to exceed \$75,000.00

Background

On November 17, 2014, the City will take over operations of the waste to energy facility. New contracts for the supplies needed for operations must be obtained prior to that date. #2 Diesel is required for the operation of the waste to energy facility.

Impact

Waste to energy facility will maintain effective operations.

Action

Recommend approval.

Funding

\$15,000 will be funded from the 2014 waste to energy operations budget

\$60,000 will be funded from the 2015 waste to energy operations budget

**Agenda Sheet for City Council Meeting of:**

11/03/2014

Date Rec'd

10/22/2014

Clerk's File #

OPR 2014-0726

Renews #**Submitting Dept**SPOKANE REGIONAL SOLID WASTE
SYSTEM**Cross Ref #****Contact Name/Phone**

KEN GIMPEL 625-6532

Project #**Contact E-Mail**

KGIMPEL@SPOKANECITY.ORG

Bid #**Agenda Item Type**

Contract Item

Requisition #**Agenda Item Name**

4490 CONTRACT WITH AVISTA CORPORATION

Agenda Wording

Contract with Avista Corporation (Spokane, WA) for the sale of electricity from the Spokane Waste to Energy Facility, November 17, 2014 to December 31, 2017. Estimated annual revenue \$6,000,000.00

Summary (Background)

This contract with Avista Corporation for the sale of electricity from the Waste to Energy Facility specifies \$48.71 per Mwh for the higher demand months of July through February, and \$38.46 per Mwh for lower demand months of March through June, increasing by 1.5% annually. The sale of this electricity will offset a significant portion of the costs of operating the Facility.

Fiscal Impact**Budget Account**

Revenue \$ 6,000,000.00

4490-44110-37052-34330

Select \$

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Select \$

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Select \$

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Approvals**Council Notifications****Dept Head**

GIMPEL, KEN

Study Session**Division Director**

ROMERO, RICK

Other**Finance**

LESESNE, MICHELE

Distribution List**Legal**

WHALEY, HUNT

ttauscher@spokanecity.org

For the Mayor

SANDERS, THERESA

cmarchand@spokanecity.org

Additional Approvals**Purchasing**

**POWER PURCHASE AGREEMENT
BETWEEN
AVISTA CORPORATION
AND
CITY OF SPOKANE
(WASTE TO ENERGY PROJECT)**

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This Power Purchase Agreement (this “**Agreement**”) is entered into as of the ____ day of November 2014 (the “**Effective Date**”), by and between the CITY OF SPOKANE (the “**City**”), State of Washington, a Washington municipal corporation, and AVISTA CORPORATION (“**Avista**”) of Spokane, Washington, a corporation organized and existing under the laws of the State of Washington, hereinafter sometimes referred to collectively as the “**Parties**” and individually as a “**Party**.”

WITNESSETH:

WHEREAS, the City owns and operates a waste to energy electric generating project located on approximately thirty-seven (37) acres of real property leased from the Spokane International Airport Board, located at 2900 S. Geiger Boulevard, Spokane, Washington, 99224 in Spokane County, Washington, which project is known as the Waste to Energy Project and has a nameplate capacity of 26 megawatts (the “**Project**”); and

WHEREAS, the City and Avista have entered into a Large Generator Interconnection Agreement (the “**Interconnection Agreement**”) that provides for and governs the interconnection of the Project with Avista’s electric system; and

WHEREAS, the City desires to sell and Avista desires to purchase electric power from the Project for a delivery term beginning on November 17, 2014;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

1. DEFINITIONS; INTERPRETATION

(a) **Definitions.** In addition to words defined elsewhere in this Agreement as signified by initial capitalization, whenever used in this Agreement, exhibits, and attachments hereto, the terms below shall have the following meanings:

(i) “**Affiliate**” means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, “control” means the direct or indirect ownership of 50 percent or more of the outstanding capital stock or other equity interests having ordinary voting power.

(ii) “**Agreement**”: This power purchase agreement including all exhibits, attachments and modifications thereof.

(iii) “**Applicable Program**” means a domestic, international or foreign renewable portfolio standard or renewable energy standard, or renewable energy or emissions reduction program, scheme or organization, adopted by a Governmental Authority or otherwise, or other similar program with respect to which exists a market, registry or reporting for particular Environmental Attributes.

(iv) “**Bankrupt**” means, with respect to a Party or other entity, that such Party or other entity: (A) is dissolved (other than pursuant to a consolidation, amalgamation or

merger); (B) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (C) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (D) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up or liquidation, which proceeding or proceeding is not dismissed, stayed or vacated within thirty (30) days thereafter; (E) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; (F) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (G) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (H) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (A) to (G) inclusive; or (I) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

(v) **"Business Day"** means any day except a Saturday, Sunday or a Federal Reserve Bank holiday.

(vi) **"Defaulting Party"** shall have the meaning provided in Section 17(a) of this Agreement.

(vii) **"Delivered Net Output"**: shall have the meaning provided in Section 4(a) of this Agreement.

(viii) **"Delivery Term"** shall have the meaning provided in Section 3(b) of this Agreement.

(ix) **"Dispute Notice"** shall have the meaning provided in Section 12 of this Agreement.

(x) **"Effective Date"** shall have the meaning set forth in the first paragraph of this Agreement.

(xi) **"Environmental Attributes"**: means all certificates, credits, benefits, emissions reductions, environmental air quality credits and emissions reduction credits, offsets and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to the Project or the generation of energy by the Project, and the delivery of such energy to the electricity grid, and include any of the same arising out of any current or future legislation or regulation concerned with oxides of nitrogen, sulfur, or carbon, with particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change ("UNFCCC") or the Kyoto Protocol to the UNFCCC or crediting "early action" with a view to the UNFCCC, or laws or regulations involving or administered by the Clean Air

Markets Division of the Environmental Protection Agency or successor administrator (collectively with any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, the “CAMD”), but specifically excluding investment tax credits, production tax credits, and cash grants associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with ownership of the Project that are applicable to a state or federal income tax obligation, if any. Environmental Attributes also include the reporting rights or Renewable Energy Certificates (“RECs”) associated with these Environmental Attributes. RECS are accumulated on a MWh basis and one REC represents the Environmental Attributes associated with one MWh of energy. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) fuel-related subsidies or “tipping fees” that may be paid to the City to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iii) emission reduction credits that the City procures from a source other than the Project and that are encumbered or used by the Project for compliance with local, state, provincial or federal operating or air quality permits.

(xii) **“Event of Default”** shall have the meaning provided in Section 17(a) of this Agreement.

(xiii) **“Facility Service Power”**: means the electric energy generated and used by the Project during its operation to operate equipment that is auxiliary to primary generation equipment, including generator excitation, cooling or other operations related to the production of electric energy by the Project and to provide power to certain City owned loads for City consumption that are directly connected to the Project.

(xiv) **“FERC”**: The United States Department of Energy, Federal Energy Regulatory Commission, or any other successor agency with substantially similar jurisdiction over Avista Corporation.

(xv) **“Force Majeure”** shall have the meaning provided in Section 8(a) of this Agreement.

(xvi) **“Forced Outage”**: Any outage that either fully or partially curtails the electrical output of the Project caused by mechanical or electrical equipment failure, plant related structural failure, or unscheduled maintenance required to be performed to prevent equipment failure.

(xvii) **“Good Industry Practice”**: Any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Industry Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all

others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

(xviii) **“Governmental Authority”**: Any federal, state or local government, political subdivision thereof or other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or other entity with authority to bind a Party at law.

(xix) **“Governmental Rules”**: Any law, rule, regulation, ordinance, order, code, permit, interpretation, judgment, decree, directive, guideline, policy or similar form of decision of any Governmental Authority having the effect of law or regulation, *provided* that Governmental Rules shall not include any enactment or other action of the City undertaken for the purpose of abrogating, repudiating or unilaterally amending the Agreement, but this exception does not include any power of eminent domain that the City may lawfully exercise notwithstanding this Agreement.

(xx) **“Industrial Insurance Acts”** shall have the meaning provided in Section 10(b)(ii) of this Agreement.

(xxi) **“Interconnection Agreement”** shall have the meaning provided in the recitals of this Agreement.

(xxii) **“Loss”** shall have the meaning provided in Section 9(a) of this Agreement.

(xxiii) **“Major Maintenance”**: Maintenance work upon the Project that results in more than one generating unit not operating.

(xxiv) **“NERC”**: The North American Electric Reliability Corporation or its successor organization.

(xxv) **“Operating Year”**: The 12-month period from January 1 through December 31.

(xxvi) **“Pacific Prevailing Time”** or **“PPT”** means the prevailing time (*i.e.*, Standard Time or Daylight Savings Time) on any given day in the Pacific Time Zone.

(xxvii) **“Person”** means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority, or other form of entity.

(xxviii) **“Point of Delivery”**: The point at which the Project and Avista’s electric system are connected, as shown in Exhibit C.

(xxix) **“Power Meter”** shall have the meaning provided in Section 4(a) of this Agreement.

(xxx) **“Premises”**: The site upon which the Project is located.

(xxxi) **“Project”**: The electric generating facility, including all equipment and structures necessary to generate and supply electric power.

(xxxii) **“Qualifying Facility”** means a generating facility which meets the requirements for Qualifying Facility status under the Public Utility Regulatory Policies Act of 1978 and part 292 of FERC’s Regulations, 18 C.F.R. Part 292, and which has self-certified or been granted certification of its QF status.

(xxxiii) **“Representatives”** means, with respect to a Party, such Party’s directors, officers, partners, members, employees, consultants, agents, advisors, successors and assigns, in each case with respect to the transactions contemplated by this Agreement.

(xxxiv) **“Term”** shall have the meaning provided in Section 3(a) of this Agreement.

(xxxv) **“Termination Date”** means the date on which this Agreement terminates or expires.

(xxxvi) **“WECC”**: The Western Electricity Coordinating Council or its successor organization.

(xxxvii) **“WUTC”**: The Washington Utilities and Transportation Commission or any other successor agency with substantially similar jurisdiction over Avista.

(b) **Interpretation.** Unless the context otherwise requires:

(i) Words singular and plural in number will be deemed to include the other and pronouns having masculine or feminine gender will be deemed to include the other.

(ii) Subject to Section 1(b)(vii), any reference in this Agreement to any Person includes its successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities.

(iii) Any reference in this Agreement to any Section, Exhibit, Appendix or Annex means and refers to the Section contained in, or Exhibit, Appendix or Annex attached to, this Agreement.

(iv) Other grammatical forms of defined words or phrases have corresponding meanings.

(v) A reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form.

(vi) Unless otherwise expressly provided in this Agreement, a reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed.

(vii) A reference to a Party to this Agreement includes such Party's successors and permitted assigns.

(viii) Reference to any gender includes each other gender.

(ix) Unless otherwise expressly provided in this Agreement, a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as modified, amended, supplemented or restated from time to time.

(x) References in this Agreement to "or" will be deemed to be disjunctive but not necessarily exclusive (*i.e.*, unless the context dictates otherwise, "or" will be interpreted to mean "and/or" rather than "either/or").

(xi) If any payment, act, matter or thing hereunder would occur on a day that is not a Business Day, then such payment, act, matter or thing will, unless otherwise expressly provided for herein, occur on the next Business Day.

(xii) "Hereunder," "hereof," "hereto" and words of similar import will be deemed references to this Agreement as a whole and not to any particular article, section or other provision hereof.

(xiii) "Including" (and with correlative meaning "include") means including without limitation on the generality of any description preceding such term.

(xiv) Relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding," and "through" means "through and including."

(c) **Technical Meanings.** Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

2. **REPRESENTATIONS AND WARRANTIES; COVENANTS**

(a) **Representations and Warranties.**

(i) The City represents that it is the sole owner of the Project. The City warrants and represents that: (a) the City has investigated and determined that it has authority to and is capable of performing the obligations hereunder and has not relied upon the advice, experience or expertise of Avista in connection with the transactions contemplated by this Agreement; and (b) the Project is a Qualifying Facility. The City further represents that this Agreement constitutes a legal, valid and binding obligation of the City enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with

regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending, has been approved by the City Council, and that the City's signatory is authorized to execute the Agreement.

(ii) Avista represents that this Agreement constitutes a legal, valid and binding obligation of Avista enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending, and that Avista's signatory is authorized to execute the Agreement. Avista makes no warranties, expressed or implied, regarding any aspect of the City's design, specifications, equipment or facilities, including safety, durability, reliability, strength, capacity, adequacy or economic feasibility, and any review, acceptance or failure to review the City's design, specifications, equipment or Project shall not be an endorsement or a confirmation by Avista. Avista assumes no responsibility or obligation with regard to any NERC or WECC reliability standard applicable to the Project.

(b) Covenants.

(i) The City will comply with all applicable Governmental Rules and will obtain and comply with applicable licenses, permits and approvals in the design, construction, operation and maintenance of the Project; and the Project will, during the Term of this Agreement, remain a Qualifying Facility as that term is used in 18 C.F.R Part 292. The Project's failure to maintain Qualifying Facility status during the Term will be a material breach by the City of this Agreement. Avista reserves the right to review the Project's Qualifying Facility status and associated support and compliance documents at any time during the Term.

(ii) Avista will use commercially reasonable efforts to obtain approval of the WUTC (without adverse amendment or adverse condition) of this Agreement, including preparation and filing all documentation to effect all necessary notices, reports and other filings and furnishing all information as may be required by any Governmental Authority in connection with the foregoing, in each case as promptly as practicable. The City will use its commercially reasonable efforts to assist Avista, as requested by Avista from time to time, in connection with obtaining such WUTC approval. Each of Avista and the City shall have the right to review in advance and, to the extent practicable, consult with the other on, and shall consider in good faith the views of the other in connection with, any filing to be made with, or written materials to be submitted to, any Governmental Authority in connection with the process of obtaining WUTC approval of this Agreement. In exercising the foregoing rights, each of Avista and the City shall act reasonably and as promptly as practicable.

3. TERM OF AGREEMENT; DELIVERY TERM

(a) The term of this Agreement (the "**Term**") shall commence on the date of this Agreement and shall terminate at 2400 PPT on December 31, 2017, unless terminated earlier in accordance with the terms and conditions of this Agreement.

(b) The period during which the City will deliver Delivered Net Output to Avista under this Agreement (the “**Delivery Term**”) will commence at 00:00:01 PPT on November 17, 2014 and continue through hour ending 2400 PPT on December 31, 2017. The Delivery Term will terminate effective immediately upon termination of the Term for any reason.

(c) Avista shall have the right to terminate this Agreement within one hundred and twenty (120) days following any order of the WUTC that disapproves this Agreement or disallows recovery in Avista’s retail rates of costs arising from purchases of electric power pursuant to this Agreement. If the WUTC issues an order that approves this Agreement subject to conditions that adversely affect the financial benefit of the Agreement to either Avista or the City, and that is not in form and substance substantially the same as that requested by Avista in the applicable filing, then the adversely affected Party may terminate this Agreement by giving notice to the other Party within one hundred and twenty (120) days after the issuance of such order. Within thirty (30) days after receipt of an order from the WUTC setting forth a disapproval, disallowance or conditional approval of this Agreement, Avista shall notify the City of such order and the possible effects thereof.

(d) Effective as of the Termination Date, the Parties will no longer be bound by the terms and conditions of this Agreement, except (a) to the extent necessary to enforce any rights and obligations of the Parties, including payment obligations, arising under this Agreement prior to expiration or termination of this Agreement, and (b) that the obligations of the Parties under Sections 6(h), 9, 10, 13 and 23 will survive the expiration or termination for any reason of this Agreement; *provided* that such obligations with respect to indemnification will continue only with respect to claims for indemnification based upon events or circumstances occurring or arising on or before the Termination Date.

4. PURCHASE AND SALE OF DELIVERED NET OUTPUT

(a) The City shall sell and deliver, and Avista shall purchase and receive, at the Point of Delivery the total amount of electric power that is generated by the Project (less Facility Service Power), and delivered by the City to Avista at the Point of Delivery during the Delivery Term (the “**Delivered Net Output**”). A power meter located at the Point of Delivery (installed at the City’s expense) (the “**Power Meter**”) shall register the Delivered Net Output on an hourly basis. The City shall deliver to Avista, and Avista shall receive, at all times all the Delivered Net Output. Notwithstanding any other provision of this Agreement, the City has no obligation to generate or sell or deliver, and Avista has no right to purchase or receive, any specified minimum amount of Delivered Net Output at any time during the Term, and the City’s sole obligation with respect to the sale and delivery of any output of the Plant and any power supply whatsoever under this Agreement is sell to Avista all Delivered Net Output on the terms and subject to the conditions of this Agreement.

(b) The Power Meter shall record electric power that flows from and to the Project, and from and to Avista’s electric system. Avista and the City both shall have the right to read and receive readings from the Power Meter. Avista shall read the meter and record the readings at least once per month. The Delivered Net Output in any month shall be calculated based on information from such meter readings. Monthly meter readings may be adjusted by prorating metered amounts to the number of days in such month.

(c) The Parties may, but are not obligated to, agree in writing that additional amounts of electric power made available from the Project as a result of modifications or enhancements of the Project shall be purchased and sold pursuant to this Agreement. The City may indicate its agreement to the purchase and sale of such additional amounts of electric power by a written administrative approval, executed by a lawfully authorized city official. For the avoidance of doubt, the City may not sell any electric power from the Project to any third party during the Delivery Term.

5. OPERATION OF PROJECT

(a) The City shall operate and maintain the Project in accordance with applicable Governmental Rules and Good Industry Practice.

(b) Interconnection of the Project with Avista's electrical system shall be governed by the separate Interconnection Agreement between the Parties which, following execution of the Interconnection Agreement, will be attached hereto as Exhibit C for informational purposes only.

(c) Either Party may interrupt, suspend or curtail delivery, receipt or acceptance of delivery of electric power at the Point of Delivery, if either Party reasonably determines that the failure to do so:

(i) Is reasonably likely to endanger any Person or property, or either Party's facilities or customers, or any electric system with which Avista's system is interconnected;

(ii) Is reasonably likely to cause, or contribute to, an imminent significant disruption of utility service to either Party's customers;

(iii) Is reasonably likely to interfere with any construction, installation, inspection, testing, repair, replacement, improvement, alteration, modification, operation, use or maintenance of, or addition to either Party's facilities;

(iv) Is reasonably likely to cause, contribute to, or necessitate operation of any of Avista's hydro electric projects in violation of any license or other regulatory requirements; or

(v) Is contrary to Good Industry Practice.

(d) A Party shall promptly notify the other Party in accordance with Exhibit A of the reasons for any such disconnection, interruption, suspension or curtailment. Such Party shall use its best reasonable efforts to mitigate and limit the duration of any such disconnection, interruption, supervision or curtailment.

6. PAYMENTS

(a) Avista shall prepare and submit to the City monthly statements during the Term based upon Delivered Net Output delivered to Avista during the previous month. Payments

owed by Avista shall be paid no later than the twentieth (20th) day of the month following the end of the monthly billing period or five (5) Business Days after the receipt of the applicable monthly statement, whichever is later. If the due date falls on a non-Business Day, then the payment shall be due on the next Business Day.

(b) If the City is obligated to make any payment to Avista under the terms of this Agreement, Avista shall invoice the City for such payment. The price of electric power delivered to the Project at the Point of Delivery at any time during this Agreement shall be determined in accordance with Avista's then-applicable retail tariff in effect at the time such electric power is delivered as such tariff may be changed or replaced from time to time, or separately negotiated agreement for service. The applicable retail tariff in effect at the time of the execution of this Agreement is Avista's Rate Schedule 21 for the State of Washington.

(c) Either Party may, if such Party is obligated to make any payment or refund to the other Party, net and set off such payment or refund amount against any current or future payments due to the other Party under this Agreement. Avista shall prepare and present a single net bill reflecting the offset of sums owed between the Parties as a result of the sale and delivery of electric power during a month. The Party owing funds in accordance with the net bill shall pay the other Party no later than the twentieth (20th) day of the month following the end of the monthly billing period or five (5) Business Days after the receipt of a monthly statement, whichever is later. If the due date falls on a non-Business Day, then the payment shall be due on the next Business Day.

(d) Avista shall pay the City monthly for Delivered Net Output at the rates set forth in Exhibit B.

(e) If either Party is obligated to make any payment to the other Party under the terms of this Agreement for any reason other than the sale and delivery of electric power, the Party to which such payment is due shall bill the Party from which such payment is due. The Party from which such payment is due shall pay the other Party no later than the twentieth (20th) day of the month following the end of the applicable monthly billing period or five (5) Business Days after the receipt of the applicable monthly statement, whichever is later. If the due date falls on a non-Business Day, then the payment shall be due on the next Business Day. Overdue payments will accrue interest in accordance with Section 6(i) from the due date to the date of payment.

(f) All payments shall be made by ACH or wire transfer in accordance with further agreement of the Parties.

(g) A Party may in good faith dispute the correctness of any invoice (or any adjustment to any invoice) rendered under this Agreement, or adjust any invoice for any arithmetic or computational error, at any time within twelve (12) months following the date the invoice (or invoice adjustment) was rendered. In the event that either Party disputes any invoice or invoice adjustment, such Party will nonetheless be required to pay the full amount of the applicable invoice or invoice adjustment (except any portions thereof which are manifestly inaccurate or are not reasonably supported by documentation, payment of which amounts may be withheld subject to adjustment as hereinafter set forth) on the applicable payment due date, and to give notice of the objection to the other Party. Any dispute with respect to any invoice or

invoice adjustment will be in writing and will state the basis for the dispute or adjustment. Upon resolution of the dispute, any required payment will be made within two (2) Business Days of such resolution, together with interest accrued at the Interest Rate from the due date to the date paid. Any Party receiving an inadvertent overpayment will return such overpayment upon request or will deduct such overpayment from subsequent payments, in each case together with interest accrued at the Interest Rate from the date of such overpayment to the date repaid or deducted by the Party receiving such overpayment. Each Party hereby waives any and all rights that it may have to dispute any invoice or invoice adjustment unless such Party notifies the other Party in accordance with this Section 6(g) within twelve (12) months after the invoice is rendered or the applicable adjustment to the invoice is made.

(h) Each Party (and its Representatives) will have the right, at such Party's sole expense, during normal working hours and upon reasonable prior written notice to the other Party, to examine or make copies of the records and data of the other Party relating to this Agreement (including all records and data relating to or substantiating any charges paid by or to either Party and including metering records of the amount of the Delivered Net Output) to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and will bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; *provided, however*, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection will be deemed waived. This Section 6(h) will survive any termination of this Agreement for a period of one (1) year from the date of such termination for the purpose of such statement and payment objections.

(i) In addition to the remedies set forth in this Agreement, any amounts owing after the due date specified in this Agreement will be subject to interest in the amount of one percent (1%) per month, not to exceed the maximum rate allowed by the law, multiplied by the unpaid balance.

7. METERING

(a) Avista shall be responsible for any meter readings required by this Agreement.

(b) As of the Effective Date the City owns the Power Meter. The Power Meter shall be used to determine the billing hereunder, and the meter shall be located at the Point of Delivery as specified in Exhibit C. The City shall reimburse Avista's reasonable costs, if any, for any replacement of the Power Meter and any communications facilities necessary to deliver information from the Power Meter to Avista's system operations center. For any planned replacement of the Power Meter and related communications facilities by Avista for which the City bears cost responsibility pursuant to this Agreement, Avista shall, prior to commencing work on any such replacement, consult with the City regarding Avista's planning, design, operation, maintenance, repair and replacement of such Power Meter and communications facilities, including providing estimated costs, with the City. Avista shall use its best efforts to minimize such costs. If requested by the City, Avista shall provide copies of applicable test and

calibration records and calculations pertaining to the Power Meter. Avista shall permit a representative of the City to be present at all times the Power Meter is being tested.

(c) Notwithstanding the ownership of the Power Meter, Avista agrees to test the Power Meter in accordance with, and at such intervals as are consistent with, Avista's normal procedures, and in any event not less than once every two years. Avista shall conduct additional tests of the Power Meter if requested by the City, and the City shall reimburse Avista reasonable costs not to exceed \$1,000 per test, *provided* that the City may request an additional meter test at Avista's expense if the last meter test occurred more than twelve (12) months prior to the City's request. In addition, Avista shall not charge for any meter test requested by the City if such test shows that Avista's meter operates outside of accepted tolerances as determined by Avista in accordance with Good Industry Practice.

(d) Adjustments shall be made in meter readings and billings for errors in a meter reading billing discovered within twelve (12) months of the error. For purposes of adjusting meter readings and billings, in the event that it cannot be determined when the Power Meter commenced to malfunction, it shall be assumed that the Power Meter commenced to malfunction on a date which is the most recent of: (i) twelve (12) months prior to the date of discovery of the malfunction; or (ii) one half of the interval of time that elapsed between the date of the last meter test and the date of the discovery of the malfunction.

8. FORCE MAJEURE

(a) Neither Party shall be liable to the other Party for, or be considered to be in breach of or default under this Agreement, on account of any failure to perform or delay in performance that is attributable to any of the following events, which event or circumstance was not anticipated or reasonably foreseeable as of the Effective Date ("**Force Majeure**"):

(i) Any cause or condition that is beyond such Party's reasonable control and that is not the result of such Party's negligence and that, by the exercise of due diligence, the Party claiming Force Majeure is unable to overcome or avoid or cause to be avoided, including the following (*provided, however*, that the existence of the following factors will not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances that in the aggregate with such factors establish that a Force Majeure as defined in the foregoing clauses of this Section 8(a)(i) has occurred): fire, flood, earthquake, volcanic activity, wind, drought and other acts of the elements; court order and act of civil, military or Governmental Authority; strike, lockout and other labor dispute; riot, insurrection, sabotage or war; federal, state, or other governmental laws, orders, decrees, restraints, or regulations; Forced Outage; breakdown of or damage to facilities or equipment; or electrical disturbance originating in or transmitted through such Party's electric system or any electric system with which such Party's system is interconnected; or

(ii) Any action taken by such Party which is, in the reasonable good faith judgment of such Party, necessary or prudent to protect the operation, performance, integrity, reliability or stability of such Party's facilities or any electric system with which

such Party's electric system is interconnected, whether such actions occur automatically or manually.

(b) Nothing contained in this section shall require any Party to settle any strike, lockout or other labor dispute. In the event that any Force Majeure occurrence prevents performance by a Party under this Agreement, the non-performing Party shall provide the other Party written notice thereof within seven (7) days after the occurrence of the Force Majeure event. Such notice shall include the particulars of the occurrence, assurances that suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure and that the nonperforming Party is using its commercially reasonable best efforts to remedy its inability to perform. The non-performing Party shall resume performance of the obligations prevented by the Force Majeure occurrence with all reasonable dispatch. The performing Party shall not be required to perform or resume performance of its obligations to the non-performing Party corresponding to the obligations of the performing Party excused by the Force Majeure occurrence.

(c) Force Majeure does not include changes in the ownership, occupancy, or operation of the Project or Avista that occur because of normal business occurrences which include but are not limited to: changes in business economic cycles; recessions; bankruptcies; tax law changes; sales of businesses; closure of businesses; changes in production levels; and changes in system operations.

(d) Force Majeure does not excuse any Party from making payments of money due and payable under this Agreement.

(e) Notwithstanding anything herein, the City shall not claim Force Majeure as a result of any Governmental Rules adopted by the City.

(f) Force Majeure will not be based on (i) the loss of Avista's markets, or (ii) Avista's inability economically to use or resell any Delivered Net Output purchased hereunder; *provided, however*, that notwithstanding anything herein, Avista may claim Force Majeure in the event that Avista ceases (for any reason that is beyond Avista's reasonable control and that is not the result of Avista's negligence and that, by the exercise of due diligence, Avista is unable to overcome or avoid or cause to be avoided) providing electric power to a substantial portion of its retail electric load within the City of Spokane.

(g) The Party claiming Force Majeure shall use its commercially reasonable best efforts to mitigate and limit the duration of any Force Majeure event.

9. INDEMNITY

(a) The City shall indemnify, defend and hold harmless Avista and its Representatives from and against any and all losses, expenses, liabilities, claims or actions (hereafter "**Loss**") based upon or arising out of bodily injuries or damages to Persons, including death resulting therefrom, or physical damages to or losses of property caused by, arising out of or sustained in connection with (i) the construction, operation or maintenance of the Project, (ii) the City's negligence or intentional misconduct, or (iii) any breach of this Agreement by the City. Avista shall indemnify, defend and hold harmless the City and its Representatives from

and against and from any Loss caused by, arising out of or sustained in connection with (i) the construction, operation or maintenance of Avista's electrical system, (ii) Avista's negligence or intentional misconduct, or (iii) any breach of this Agreement by Avista. In the event that any such Loss is caused by the negligence of both the City and Avista, including their employees, agents, suppliers and subcontractors, the Loss shall be borne by each of the City and Avista in the proportion that its respective negligence bears to the total negligence causing the Loss. To the extent that a Loss is caused by, results from or arises out of or in connection with any matter that is addressed in the Interconnection Agreement, each Party's rights and obligations with respect to such Loss shall be subject to and governed exclusively by the terms and conditions of the Interconnection Agreement, including any and all limitations of liability, releases and waivers appearing in such agreement.

(b) THE CITY AND AVISTA REPRESENT AND WARRANT THAT THE TERMS AND CONDITIONS OF THE FOREGOING INDEMNITY PROVISIONS ARE THE SUBJECT OF MUTUAL NEGOTIATION BY THE PARTIES, AND ARE SPECIFICALLY AND EXPRESSLY AGREED TO IN CONSIDERATION OF THE MUTUAL BENEFITS DERIVED UNDER THE TERMS OF THE AGREEMENT.

10. LIMITATION OF LIABILITY

(a) **Limitation of Liability.** NOTWITHSTANDING ANYTHING CONTAINED TO THE CONTRARY IN THIS AGREEMENT, THE CITY AND AVISTA AGREE THAT THE RECOVERY BY EITHER PARTY OF ANY DAMAGES SUFFERED OR INCURRED BY IT AS A RESULT OF ANY BREACH BY THE OTHER PARTY OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE ACTUAL DAMAGES SUFFERED OR INCURRED BY THE NON-BREACHING PARTY OF ITS OBLIGATIONS HEREUNDER. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING ANY DAMAGES ON ACCOUNT OF LOST PROFITS OR OPPORTUNITIES OR BUSINESS INTERRUPTION AND THE LIKE), WHETHER BY STATUTE, IN TORT OR UNDER CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE; *PROVIDED, HOWEVER*, THAT THE FOREGOING WILL NOT IN ANY EVENT LIMIT THE LIABILITY OF EITHER PARTY TO THE OTHER UNDER SECTION 9 FOR OR WITH RESPECT TO THIRD-PARTY CLAIMS.

(b) Compliance with Express Negligence Rule; RCW 4.24.115 Acknowledgement and Waiver.

(i) To the fullest extent permitted by applicable law, all releases, disclaimers, limitations on liability, and indemnities in this Agreement, including those in this Section 10, shall apply even in the event of the sole, joint, or concurrent negligence, strict liability, or fault of the party whose liability is released, disclaimed, limited, or indemnified.

(ii) Notwithstanding the foregoing, with respect to any and all claims against an indemnified Party by any Representative of an indemnifying Party, the indemnification obligations of the indemnifying Party herein shall not be limited in any

way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the indemnifying Party under applicable law, including any workers compensation and industrial insurance acts, disability benefit acts, or other employee benefits acts (including the Washington State Industrial Insurance Act, RCW Title 51) (collectively, the “**Industrial Insurance Acts**”).

(iii) EACH OF THE PARTIES HEREBY SPECIFICALLY AND EXPRESSLY WAIVES ANY AND ALL IMMUNITY TO WHICH SUCH PARTY MAY BE ENTITLED UNDER THE INDUSTRIAL INSURANCE ACTS (INCLUDING SUCH PARTY’S IMMUNITY UNDER THE INDUSTRIAL INSURANCE ACT (RCW TITLE 51) AND ANY EQUIVALENT LAWS), TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING RCW 4.24.115, AND EXPRESSLY AGREES TO ASSUME POTENTIAL LIABILITY, EXPENSES AND DAMAGES (INCLUDING ATTORNEYS’ FEES AND COSTS) FOR ACTIONS BROUGHT AGAINST AN INDEMNIFIED PARTY BY THE INDEMNIFYING PARTY’S REPRESENTATIVES; *PROVIDED, HOWEVER*, THAT THE INDEMNIFYING PARTY’S WAIVER OF IMMUNITY BY THE PROVISIONS OF THIS SECTION 10 EXTENDS ONLY TO CLAIMS AGAINST THE INDEMNIFYING PARTY BY OR ON BEHALF OF THE INDEMNIFIED PARTY UNDER OR PURSUANT TO THIS AGREEMENT, AND DOES NOT INCLUDE ANY CLAIMS MADE BY THE INDEMNIFYING PARTY’S REPRESENTATIVES DIRECTLY AGAINST THE INDEMNIFYING PARTY. EACH PARTY ACKNOWLEDGES AND AGREES THAT THE FOREGOING WAIVER HAS BEEN SPECIFICALLY AND MUTUALLY NEGOTIATED BY THE PARTIES TO THIS AGREEMENT AND EACH PARTY HAS HAD THE OPPORTUNITY, AND HAS BEEN ENCOURAGED, TO CONSULT WITH INDEPENDENT COUNSEL REGARDING THIS WAIVER.

(iv) Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, the Parties agree that if the provisions of RCW 4.24.115 apply to any claim by an indemnified Party against an indemnifying Party under this Agreement, then, with respect to such claim, (A) in no event shall the indemnifying Party be obligated to indemnify the indemnified Party for damages arising out of bodily injury to Persons or damage to property resulting from the sole negligence of the indemnified Party or its Representatives, and (B) if indemnification is sought for damages arising out of bodily injury to Persons or damage to property resulting from the concurrent negligence of the indemnifying Party (or its Representatives) and the indemnified Party (or its Representatives), the indemnifying Party shall indemnify the indemnified Party for such damages only to the extent of the negligence of the indemnifying Party or its Representatives.

11. INSURANCE

(a) **Business Insurance.** Prior to operating the Project, the City, at his own cost, shall obtain and maintain the following insurance in force over the Term of this Agreement and shall provide certificates of all insurance policies. Avista’s acceptance of the certificate of insurance is not intended to, and will not reduce, limit, affect, or modify the primary obligations and liabilities of the City under the provisions of this Agreement. The City must provide notice

of cancellation or notice of change in policy terms at least thirty (30) days prior to any change or termination of the policies.

(b) **General Liability.** The City shall carry and maintain comprehensive general liability insurance in a form acceptable to Avista with coverage of not less than \$10,000,000 per occurrence, including coverage of bodily injury, property damage liability, and contractual liability specifically related to the indemnity provisions of this Agreement. The deductible will not exceed the City's financial ability to cover claims.

(c) **Property Insurance.** The City shall carry and maintain property insurance for the full replacement value of the Project in a form acceptable to Avista, a deductible not to exceed the City's financial ability.

(d) **Qualifying Insurance.** The insurance coverage required by this Section 11 must be obtained from an insurance carrier licensed to conduct business in the state of Washington, must be acceptable to Avista, such acceptance not to be unreasonably withheld, but in no event have, as of the date of placement of such coverage during each year during the Term, less than an A.M. Best Rating of A-, Class VIII. The policies required under this Agreement must include (i) provisions or endorsements naming Avista and its directors, officers and employees as additional insureds, (ii) Avista as a loss payee as applicable, (iii) a cross-liability and severability of interest clause, and (iv) provisions such that the policy is primary insurance with respect to the interests of Avista and that any other insurance maintained by Avista is excess and not contributory.

12. ENVIRONMENTAL ATTRIBUTES

If at any time during the Term either Party provides written notice to the other Party asserting, on the basis of any applicable federal or state law or any decision by any Governmental Authority of competent jurisdiction, that the Party providing such notice is the owner of any Environmental Attributes generated by or otherwise associated with the Project, and if the other Party, in its sole discretion, determines that such ownership does or would materially adversely affect such Party, such Party may, by delivering written notice of such determination to the other Party (a "**Dispute Notice**") within thirty (30) days after notice of such ownership claim, require that the Parties enter into good faith negotiations concerning the disposition of the Environmental Attributes generated by or associated with the Project. If the Parties are unable, within a period of thirty (30) days following delivery of any Dispute Notice, to reach a mutually acceptable agreement regarding such disposition and consideration, either Party will be entitled, at any time within thirty (30) days after expiration of such period, to deliver notice of termination of this Agreement to the other Party. This Agreement and the Term will terminate effective one hundred and eighty (180) days after delivery of any such termination notice, and neither Party will have any liability to the other Party for or as a result of such termination. Notwithstanding the foregoing, if a Party asserts that it is the owner of any Environmental Attributes under this Section 12, any failure of the other Party to deliver a Dispute Notice within thirty (30) days after notice of such ownership claim shall not constitute a waiver of such Party's right at any time subsequently to provide a Dispute Notice if such Party concludes, in its sole discretion, that such ownership does or would materially affect such Party; *provided, however*, that any such subsequent Dispute Notice shall be given prospective effect only and shall not be permitted to claim or dispute ownership of any Environmental Attributes

for any period prior to the date of such Dispute Notice. The delivery at any time of any such subsequent Dispute Notice shall give rise to the same negotiation obligations and termination rights as set forth above with respect to any Dispute Notice delivered within thirty (30) days after initial notice of any Environmental Attributes ownership claim.

13. ARBITRATION

Each Party shall strive to resolve any and all differences during the term of the Agreement. If a dispute cannot be resolved, either Party may submit the dispute to binding arbitration. The arbitration shall be conducted pursuant to the Uniform Arbitration Act, Title 7, Chapter 9 of the Washington code, as the same may have been or may be amended.

14. ASSIGNMENT

(a) **Required Consent.** Neither Party shall assign this Agreement or any of its rights, interests or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; *provided, however*, that a Party may, without the consent of the other Party, and by providing prior reasonable notice under the circumstances to the other Party, assign, transfer, pledge or otherwise dispose of its rights and interests under this Agreement to: (i) any Person in connection with an assignment of the Agreement for financing or refinancing purposes; (ii) any entity created to operate the Project; or (iii) any Affiliate of such Party, so long as the creditworthiness of such Affiliate is at least equal to that of the assigning Party.

(b) **Continuing Obligations.** Any assignments authorized as provided for in this Section 14 shall not operate to relieve the Party assigning this Agreement or any of its rights, interests or obligations hereunder of the responsibility of full compliance with the requirements of this Agreement unless: (i) the other Party consents, such consent not to be unreasonably withheld; and (ii) the assignee agrees in writing to be bound by all of the obligations and duties of the assigning party provided for in this Agreement.

(c) **Reimbursement of Costs.** Either Party shall, upon request from the other Party, execute and deliver such documents as may be reasonably necessary to accomplish any assignment, transfer, pledge or disposition of rights permitted under this Section 14, so long as the rights of the non-assigning Party are not altered, amended, diminished or otherwise impaired, and so long as the requesting Party reimburses the other Party for all reasonable costs incurred in connection with the review, execution or delivery of such documents.

(d) **Approval by the City of Assignments.** The City may approve assignments under this Section 14 by written consent of the Mayor.

(e) **Binding Agreement.** This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

15. NO UNSPECIFIED THIRD PARTY BENEFICIARIES

Except as specifically provided in Section 9, Section 10 or otherwise in this Agreement, there are no third party beneficiaries of this Agreement. Nothing contained in this Agreement is intended to confer any right or interest on anyone other than the Parties, and their respective successors, heirs and assigns permitted under Section 14.

16. NO TRANSFER RIGHTS

Nothing in this Agreement shall be construed as granting the City any right of access, or any other rights, to Avista's distribution or transmission systems.

17. DEFAULT

(a) An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(i) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after delivery of written notice;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respects when made or when deemed made or repeated;

(iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied in accordance with Section 17(b), below;

(iv) such Party becomes Bankrupt; or

(v) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonable satisfactory to the other Party.

(b) In the Event of Default, the following shall apply:

(i) The non-defaulting Party shall give written notice to the Defaulting Party of the Event of Default in accordance with this Agreement.

(ii) Except for an Event of Default that arises from failure to make money payments or from a Party becoming Bankrupt, if, after twenty (20) days following receipt of such notice, the Defaulting Party has not cured the Event of Default, the non-defaulting Party may, at its option, terminate this Agreement; *provided, however*, if the defaulting Party, within such twenty (20)-day period, commences and thereafter proceeds with all due diligence to cure such default, such twenty (20)-day period shall be extended

up to six (6) months after written notice to the defaulting Party, as may be necessary to cure the event of default with all due diligence. For an Event of Default that arises from the failure to make money payments, the non-defaulting Party may, at its option, terminate this Agreement if the Defaulting Party shall have failed to cure the failure to pay within three (3) Business Days following receipt of notice of such failure. For an Event of Default that arises from a Party becoming Bankrupt, the non-defaulting Party may, at its option, immediately terminate this Agreement upon notice to the Defaulting Party.

(iii) Upon the Event of Default and an expiration of any period to cure granted herein, the non-defaulting Party may, but has no obligation, to terminate this Agreement effective upon notice to the Defaulting Party and may exercise all other rights and remedies available to the non-defaulting Party under applicable law. On behalf of the City, such actions may be accomplished by the Mayor. Whether or not the non-defaulting Party elects to terminate this Agreement, it may, in addition to other remedies provided for herein, pursue such remedies as are available at law or in equity including suspension of its performance so long as the Event of Default is continuing and has not been cured.

(c) Any right or remedy afforded to either Party under any provision of this Agreement on account of the breach or default by the other Party is in addition to, and not in lieu of, all other rights or remedies afforded to such Party under any other provisions of this Agreement, by law or otherwise on account of the breach or default.

18. GOVERNMENTAL AUTHORITY

This Agreement is subject to all applicable Governmental Rules. All Governmental Rules now or hereafter in effect that are required to be incorporated in agreements of this character are by this reference incorporated in this Agreement.

19. SEVERAL OBLIGATIONS

Except where specifically stated in this Agreement to be otherwise, the duties, obligations and liabilities of the Parties are intended to be several not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Each Party shall be individually and severally liable for its own obligations under this Agreement. Further, neither Party shall have any rights, power or authority to enter into any agreement or undertaking for or on behalf of, to act as to be an agent or representative of, or to otherwise bind the other Party.

20. IMPLEMENTATION

Each Party shall take such action (including the execution, acknowledgement and delivery of documents) as may reasonably be requested by the other Party for the implementation or continuing performance of this Agreement.

21. NON-WAIVER

The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.

22. ENTIRE AGREEMENT AND AMENDMENT

This Agreement together with its exhibits constitutes the entire agreement of the Parties hereto and supersedes and replaces any prior agreements or understandings between said Parties, entered into for the same or similar purposes. No change, amendment or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by both Parties.

23. GOVERNING LAW AND VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington, without reference to conflict of laws provisions that would result in the application of the laws of any other jurisdiction. Any action at law or in equity to enforce the terms and conditions of this Agreement shall, unless subject to the exclusive jurisdiction of the WUTC, be brought in Spokane County, Washington.

24. COMPLIANCE WITH LAWS

Both Parties shall comply with all applicable laws and regulations of governmental agencies having jurisdiction over the Project and the operations of the Parties. The City shall obtain all required approvals or authorization from governmental agencies having jurisdiction over the sale of electric power from the Project.

25. FORWARD CONTRACT; FORWARD AGREEMENT

The Parties acknowledge and agree that this Agreement constitutes a "forward contract" and a "forward agreement" within the meaning of the United States Bankruptcy Code.

26. NOTICES

All notices, requests, statements or payments will be made in writing except where this Agreement expressly provides that notice may be made orally. Notices required to be in writing will be delivered by hand delivery, overnight delivery, or facsimile. Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. When notice is permitted to be provided orally, notice by telephone will be permitted and will be deemed to have been received at the time the call is received.

To Avista: Director, Power Supply
Avista Corporation
P.O. Box 3727
MSC-7
Spokane, Washington 99220-3727
Facsimile No.: (509) 495-4272

To the City: Chuck Conklin, Director
City of Spokane
Spokane Waste to Energy Project
808 W. Spokane Falls Blvd., 6th Floor
Spokane, WA 99201
Facsimile No.: (509) 625-6537

with a copy (which shall not constitute notice) to:

City Attorney
Office of the City Attorney
City of Spokane
808 W. Spokane Falls Blvd.
5th Floor, Municipal Bldg.
Spokane, Washington 99201-3326
Facsimile No.: (509) 625-6277

Changes in persons or addresses for submittal of written notices by a Party to this Agreement shall be made in writing to the other Party and delivered in accordance with this Section 26. Any oral notice required hereby, which affects the payments to be made hereunder shall be confirmed in writing as promptly as practicable after the oral notice is given. Exhibit A, herein, shall govern oral communications between the Parties.

27. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be an original but all of which, taken together, shall constitute only one legal instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than one counterpart.

28. EXHIBITS

This Power Purchase Agreement includes the following exhibits, which are attached and incorporated by reference herein:

Exhibit A	-	Communications
Exhibit B	-	Payment Schedule
Exhibit C	-	Interconnection Agreement

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the first date herein-above set forth:

CITY OF SPOKANE

AVISTA CORPORATION

By: _____

By: _____

(Type Name)

(Type Name)

Title: _____

Title: _____

Date: _____

Date: _____

Attest: _____
City Clerk

Approved as to form: _____
Assistant City Attorney

Exhibit A

Communications

**** This listing may need to be updated effective November 17, 2014**

A-1. Verbal Communications

All communications between the City and Avista referred to in the Agreement shall be done verbally by notifying the following parties:

(a) Pre-Schedule (5:30 am to approximately 1:30 pm on normal business days):

Avista	Pre-Scheduler (509) 495-4911 Alternate Phone Number (509) 495-4073
the City	Business Phone (509) 625-6524 Alternate Phone Number (509) 625-6523 688-4657

(b) Real-Time Schedule (available 24 hours per day):

Avista	Real-Time Scheduler (509) 495-8534
the City	Business Phone (509) 625-6524 Alternate Phone Number (509) 625-6523

(c) During normal business hours, all verbal communications relating to interruptions and outages:

Avista	System Operator (509) 495-4105 Alternate Phone Number (509) 495-4934
the City	Business Phone (509) 625-6524624-6575 Alternate Phone Number (509) 625-6523

(d) Outside of normal business hours (nights, weekends, and holidays), all verbal communications relating to interruptions and outages shall take place between the following personnel:

Avista	System Operator (509) 495-4105 Alternate Phone Number (509) 495-4934
the City	Business Phone (509) 625-6524 Alternate Phone Number (509) 625-6523

A-2. The City shall notify Avista's system operator, as soon as is practical, whenever the Project is or is expected to be brought on line, or taken off line.

A-3. Changes in persons or phone numbers for verbal communications by a Party to this Agreement may be made verbally to the other Party in accordance with this Exhibit but shall be confirmed in writing as an amended Exhibit A. A copy of said amended Exhibit A shall be mailed or delivered to the representatives of the Parties designated in Section 26.

Exhibit B

Power Purchase Payment Rates

For the period November 17, 2014 through December 31, 2017 Avista agrees to buy the Delivered Net Output from the City's Waste to Energy Project at the following monthly rates in dollars per megawatt-hour (\$/MWh):

Year	March – June (\$/MWh)	July – February (\$/MWh)
2014		\$48.71
2015	\$38.46	\$49.44
2016	\$39.03	\$50.18
2017	\$39.61	\$50.93

Exhibit C

Interconnection Agreement



Agenda Sheet for City Council Meeting of:
11/03/2014

Date Rec'd	10/22/2014
Clerk's File #	OPR 2014-0727
Renews #	
Cross Ref #	OPR 1989-0727
Project #	
Bid #	
Requisition #	

Submitting Dept	SPOKANE REGIONAL SOLID WASTE
Contact Name/Phone	KEN GIMPEL 625-6532
Contact E-Mail	KGIMPEL@SPOKANECITY.ORG
Agenda Item Type	Contract Item
Agenda Item Name	4490 INTERLOCAL AGREEMENT WITH MEDICAL LAKE

Agenda Wording

Interlocal Agreement with Medical Lake for disposal of solid waste at the Waste to Energy Facility November 17, 2014, to November 16, 2021. Revenue \$1,700,000.00 over 7 years.

Summary (Background)

This Interlocal Agreement formally terminates the 1989 Interlocal Agreement between the City and Medical Lake as of November 16, 2014, and establishes terms and conditions between the City and Medical Lake for disposal of all solid waste collected within Medical Lake, which is to be delivered to Spokane's Waste to Energy Facility. It also establishes terms and conditions for continued service to Medical Lake self haul customers who deliver solid waste, yard waste, recyclables, and household

Fiscal Impact		Budget Account
Revenue	\$ 1,700,000.00	# 4490-44110-37052-34363
Select	\$	#
Select	\$	#
Select	\$	#
Approvals		Council Notifications
<u>Dept Head</u>	GIMPEL, KEN	<u>Study Session</u>
<u>Division Director</u>	ROMERO, RICK	<u>Other</u>
<u>Finance</u>	LESESNE, MICHELE	<u>Distribution List</u>
<u>Legal</u>	SCHOEDEL, ELIZABETH	ttauscher@spokanecity.org
<u>For the Mayor</u>	SANDERS, THERESA	cmarchand@spokanecity.org
<u>Additional Approvals</u>		
<u>Purchasing</u>		



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

hazardous waste to the waste to energy facility. Medical Lake or its contracted solid waste collection provider will pay Spokane \$70.50 per ton for each ton of solid waste delivered to the waste to energy facility from Medical Lake, adjusted annually on January 1 per CPI. Residents of Medical Lake who choose to self haul waste to the waste to energy facility shall be charged the then current Spokane waste to energy gate fee directly at the waste to energy weigh station.

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List

City of Spokane No. OPR 2014- _____
City of MEDICAL LAKE No. _____

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF MEDICAL LAKE AND THE CITY OF SPOKANE
FOR DISPOSAL OF SOLID WASTE**

This WASTE DISPOSAL AGREEMENT (this "**Agreement**") is made and entered into as of this ____ day of _____, 2014 by and between the City of MEDICAL LAKE, a municipal corporation of the State of Washington ("**MEDICAL LAKE**") and the City of Spokane, a municipal corporation of the State of Washington ("**SPOKANE**"). MEDICAL LAKE and Spokane are each sometimes referred to herein as "**Party**" and collectively as "**Parties**."

RECITALS

A. WHEREAS, MEDICAL LAKE on August 28, 1989 entered into "An Interlocal Agreement between the City of Spokane, Spokane County and the City of MEDICAL LAKE" (City Clerk's OPR 89-727) (the "**Interlocal Agreement**") to control the management, handling, and disposal of solid waste within MEDICAL LAKE.

B. WHEREAS, The Interlocal Agreement was for a term of twenty five (25) years or for so long as bonds remained outstanding, which date is on or about November 16, 2014 (the "**Interlocal Agreement Expiration Date**").

C. WHEREAS, On November 17, 2014, subsequent to the Interlocal Agreement Expiration Date, SPOKANE will own and operate the Waste to Energy Facility located at 2900 South Geiger Blvd., Spokane, Washington, 99224, including the solid waste incinerator and the portion of the facility that serves the general public (the "**WTE**").

D. WHEREAS, MEDICAL LAKE, by and through an open meeting of the MEDICAL LAKE City Council held on October 7, 2014 has decided to enter into a new Interlocal Agreement with Spokane County for the management of solid waste, and has provided appropriate notice to Spokane County regarding the same.

E. WHEREAS, MEDICAL LAKE has identified the WTE as a disposal site capable of processing Municipal Waste from mixed residential, commercial, and industrial sources. The WTE is capable of processing Municipal Waste from mixed residential, commercial, and industrial sources.

NOW, THEREFORE, for and in consideration of the mutual promises set forth hereinafter and the recitals referenced above, the Parties do mutually agree as follows:

SECTION NO. 1: PURPOSE

The purposes of this Agreement are to:

- A. Formally terminate the 1989 Interlocal Agreement as of November 16, 2014. Effective November 17, 2014, this Agreement will replace all terms and conditions contained in the 1989 Agreement; and
- B. Establish the terms and conditions between MEDICAL LAKE and SPOKANE for the disposal of all solid waste collected within MEDICAL LAKE, which is to be delivered to SPOKANE's WTE after November 17, 2014; and
- C. Establish flow control requirements to be maintained by MEDICAL LAKE to ensure all solid waste collected within MEDICAL LAKE by the City or its contracted solid waste collection service provider be delivered to SPOKANE'S WTE for proper disposal; and
- D. Establish the terms and conditions for continued service to MEDICAL LAKE self haul customers who deliver solid waste, yard waste, recyclables and household hazardous waste to the WTE.

SECTION NO. 2: DEFINITIONS

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

- A. **MEDICAL LAKE**- means the City of MEDICAL LAKE, or any vendor contracted by MEDICAL LAKE for services related to the management of solid waste.
- B. **MEDICAL LAKE Disposal Rate** means the per ton disposal fee, as outlined in Section 5 of this Agreement, that MEDICAL LAKE or its contracted solid waste collection service provider on behalf of MEDICAL LAKE shall pay SPOKANE for each ton of solid waste delivered to the WTE by MEDICAL LAKE's owned and operated commercial vehicles or MEDICAL LAKE'S contracted solid waste collection service provider.
- C. **Dangerous Wastes** - means any discarded, useless, unwanted, or abandoned substances, including but not limited to certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment, because such wastes or constituents or combinations of such wastes:
 - 1) Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or

- 2) Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means.

D. **Extremely Hazardous Waste** —means any dangerous waste which:

- 1) Will persist in a hazardous form for several years or more at a disposal site and which in its persistent form:
 - a. Presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic make-up of human beings or wildlife, and
 - b. Is highly toxic to human beings or wildlife.
- 2) If disposed of at a disposal site in such quantities as would present an extreme hazard to human beings or the environment.

E. **Gate Fee** - means the per ton disposal fee outlined in SECTION NO. 5 of this Agreement. MEDICAL LAKE' residents who direct haul solid waste shall pay SPOKANE for each ton of solid waste delivered to the WTE as self haul waste, as defined in Section 5.

F. **Hazardous Waste** - means and includes all dangerous and extremely hazardous waste, including substances composed of both radioactive and hazardous components.

G. **Moderate-Risk Waste** – means:

- 1) any waste that exhibits any of the properties of hazardous waste, but is exempt from regulation under chapter 70.105 RCW solely because the waste is generated in quantities below the threshold for regulation; and
- 2) any household wastes which are generated from the disposal of substances identified by the department as hazardous household substances.

H. **Nonprocessable Waste** - means any solid waste that SPOKANE deems to be unacceptable at the WTE.

I. **Solid Waste or Wastes** - means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to; garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, contaminated soils and contaminated dredged material, and recyclable materials.

J. **Waste To Energy Facility, WTE, or Facility** - means that solid waste facility located at 2900 South Geiger Boulevard, Spokane, Washington 99224, including the solid waste incinerator and the portion of the facility that serves the general public for disposal of household hazardous waste, recyclables, solid waste, yard debris, and other waste products.

SECTION NO. 3: DURATION

- A. This Agreement shall be effective 12:00 A.M. on November 17, 2014 ("Commencement Date") and run through 11:59 P.M. on November 16, 2021, unless MEDICAL LAKE provides written notice of termination as provided under subparagraph C of this Agreement. Under no circumstances shall this Agreement be terminated prior to the end of three (3) years or before November 16, 2017.

Any notice of termination shall be provided in writing and not later than six (6) months prior to the effective date. Notwithstanding the above provisions, this Agreement may be extended in one (1) year increments for a total of three (3) additional years, or as otherwise agreed upon by the Parties (the "**Extension Term**").

- B. **Extension Terms.** At least ninety (90) days prior to expiration of the Initial Term or an Extension Term, a party may deliver written notice of intent to renew this Agreement. The Notice shall propose the period and terms of renewal. The party receiving the notice shall within ten (10) days of delivery respond by stating its intent to renew this Agreement. Thereafter, the Parties shall negotiate the Extension Term in good faith. No response by the party receiving the notice shall be deemed a refusal to extend this Agreement.
- C. **Termination.** This Agreement shall be in effect for seven (7) years. After two (2) years, MEDICAL LAKE shall have the option to provide to SPOKANE six (6) months prior written notice of its intent to terminate this Agreement. Should MEDICAL LAKE exercise this early termination option, it will be effective no earlier than the end of three (3) years (November 16, 2017, or any other later time prior to the seven (7) year term of the Agreement.

SECTION NO. 4: DISPOSAL SERVICES

- A. **Scope of Services.** MEDICAL LAKE, or residents of MEDICAL LAKE who choose to "self-haul" waste, shall deliver all Acceptable Waste, as defined in subparagraph B below, to the WTE. Once delivered to the WTE, SPOKANE shall be responsible for all costs associated with the disposal of the Acceptable Waste, including, but not limited to; incineration, ash disposal, by-pass of unburned materials, and all maintenance, operation, repairs and ordinary renewals and replacements necessary for the operation of the WTE. Once Municipal Waste enters the WTE, SPOKANE shall be responsible for determining its weight.
- B. **Acceptable Waste.** The following shall be acceptable waste at the WTE:
- 1) "**Municipal Waste**" including, but not limited to, Solid Waste from mixed residential, commercial, and industrial sources.
 - 2) "**Self Haul**" means solid waste delivered to the WTE by the public in privately owned and operated vehicles.

- 3) **"Solid Waste"** meaning all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, yard debris, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, contaminated soils and contaminated dredged material, and recyclable materials.

The above definitions shall be automatically amended to conform to all WTE permits and operating requirements established by state and federal authorities.

- C. **Guaranteed Capacity.** The guaranteed minimum available capacity for Acceptable Waste shall be two-hundred forty-eight thousand two hundred (248,200) tons per year.
- D. **Primary Services.** The WTE shall be maintained in good working order and repair so as to allow MEDICAL LAKE to dispose of its Municipal Waste without interruption or unreasonable delay. Municipal Waste may be delivered and shall be received at the WTE during all regular hours of operation unless otherwise agreed.

SECTION NO. 5: DISPOSAL RATE; BILLING

- A. **MEDICAL LAKE Disposal Rate.** MEDICAL LAKE or its contracted solid waste collection service provider will pay to SPOKANE seventy dollars and fifty cents (\$70.50) per ton for each ton of Municipal Waste delivered to the WTE from MEDICAL LAKE (the **"MEDICAL LAKE Disposal Rate"**). The MEDICAL LAKE Disposal Rate shall be inclusive of all costs, including applicable taxes. SPOKANE agrees not to exceed the authority granted under state or local law, including taxing authority.
- B. **"Self-Haul Rate"** in the event residents of MEDICAL LAKE choose to self-haul Acceptable Waste to the WTE, those residents shall be charged the then current SPOKANE WTE Gate Fee (the **"Self-Haul Disposal Rate"**). For purposes of this Section those residents who self-haul shall have the waste weighed upon entry into the WTE and shall, at that point, pay the WTE Gate Fee directly to the WTE at the WTE weigh station.
- C. **Rate Adjustment.**

On January 1st of each year following 2016, the CITY will adjust the MEDICAL LAKE Disposal Rate to reflect increases in the United States Department of Labor, Bureau of Labor Statistics, West-Size Class B/C, Consumer Price Index, all Items for All Urban Consumers (CPI-U) (the "Index"). The adjustment factor for computing annual rate adjustments shall be computed by dividing the Index number for October of the just-completed year by the Index number for October of the previous year. In the event the Index number stays the same or decreases, no rate adjustment will be made, and the next rate adjustment shall not occur until the Index number increases to a number exceeding the highest previous Index number, and shall be computed using the previous highest Index number.

Example Calculation of Annual Rate Adjustments:

	INDEX	ADJUST FACTOR	COUNTY DISPOSAL RATE
Base Yr.N	125		\$70.50
N+1	128.844	1.030752	\$72.67
N+2	133.315	1.034710	\$75.19
N+3*	132.474	No change	\$75.19
N+4**	133	No change	\$75.19
N+5	137.748	1.033252	\$77.69
N+6	140.054	1.016741	\$78.99
<p>* No change-Index decreased</p> <p>** No charge-Index did not exceed highest previous Index</p>			

- D. **Invoicing and Payment.** SPOKANE shall, through invoice, bill MEDICAL LAKE or its contracted solid waste collection service provider the MEDICAL LAKE Disposal Rate on or before the 20th day of the month for services rendered the previous month. The invoice shall contain the dates of disposal, weight of Solid Waste, disposal cost per ton, and such other information as necessary to support the invoiced amount due. MEDICAL LAKE or its contracted solid waste collection service provider will pay SPOKANE within thirty (30) calendar days of receiving the invoice.
- E. **Billing Questions and Disputes.** If MEDICAL LAKE has any questions, or desires further information, or has a dispute regarding the invoice, MEDICAL LAKE shall advise SPOKANE in writing within ten (10) business days of invoice receipt. Notwithstanding payment of an invoice as set forth in section 4.3, MEDICAL LAKE reserves the right, and SPOKANE acknowledges the right to dispute amounts paid without the necessity of making such payment "under protest." Any dispute between the Parties as to an invoice shall be resolved pursuant to Section 8.4 of this Agreement. Past due invoices shall accrue interest at the current local government investment pool rate - until paid.

SECTION NO. 6: AUDIT / RECORDS

MEDICAL LAKE shall maintain for a minimum of three (3) years following final payment all records related to its performance of the Agreement. MEDICAL LAKE shall provide access to authorized SPOKANE representatives at reasonable times and in a reasonable manner to inspect and copy any such record. In the event of conflict between this provision and related auditing provisions required under federal law applicable to the Agreement, the federal law shall prevail.

SPOKANE shall maintain for a minimum of three (3) years following final payment all records related to its performance of the Agreement. SPOKANE shall provide access to authorized MEDICAL LAKE representatives at reasonable times and in a reasonable manner to inspect and copy any such record. In the event of conflict between this provision and related auditing provisions required under federal law applicable to the Agreement, the federal law shall prevail.

SECTION NO. 7: LIABILITY

Each Party to this Agreement shall be responsible for damage to persons or property resulting from the negligence on the part of itself, its employees, its directors, its agents or its officers. The Parties shall each indemnify, defend and hold harmless the other Party, its officers and employees from all claims, demands, or suits in law or equity arising from the Party's intentional or negligent acts or breach of any obligations under this Agreement.

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's or employee's negligence.

Each Party's duty to indemnify shall survive the termination or expiration of this Agreement. Each Party waives, with respect to the other Party only, its immunity under Chapter 51 of the Revised Code of Washington ("RCW"), "Industrial Insurance." The Parties have specifically negotiated this provision. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

SECTION NO. 8: INSURANCE

During the term of this Agreement, SPOKANE and MEDICAL LAKE or its contracted solid waste collection service provider shall each maintain in force at its own expense, the following insurance coverage or self-insurance:

- A. Worker's Compensation Insurance in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers and Employer's Liability or Stop Gap Insurance in the amount of \$5,000,000;
- B. General Liability Insurance on an occurrence basis, with a combined single limit of not less than \$10,000,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this Agreement;
- C. Automobile Liability Insurance with a combined single limit, or the equivalent of not less than \$5,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles; and
- D. Professional Liability Insurance with a combined single limit of not less than \$5,000,000 each claim, incident or occurrence. This is to cover damages caused by the error, omission, or negligent acts related to the professional services to be provided under this Agreement, if any. This coverage must remain in effect for two (2) years after the Agreement is completed.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without providing thirty (30) days written notice from a Party or its insurer(s) to the other Party. Verification of insurance shall be provided upon request.

SECTION NO. 9: RELATIONSHIP OF THE PARTIES

The relationship between the Parties is that of independent contractors. Neither Party, nor its agents and employees, shall under any circumstances be deemed an agent or representative of the other Party and neither shall have authority to act for and/or bind the other in any way, or represent that it is in any way responsible for acts of the other Party. This Agreement does not establish a joint venture, agency, or partnership between the Parties.

SECTION NO. 10: MISCELLANEOUS

- A. **Assignment and Delegation.** This Agreement shall be binding upon the Parties, their successors and assigns. No Party may assign or delegate, in whole or in part, its interest in this Agreement without the prior written approval of the other Party, which shall not be unreasonably withheld.
- B. **Notices and Other Communications.** All notices, approvals, consents, and other communications required or permitted pursuant to this Agreement shall be in writing and shall be delivered by hand or sent by facsimile or prepaid courier or registered mail, to a Party at the address set forth below, or at such other address provided by such Party via written notice. Such communications shall become effective on the day when delivered by hand or the first (1st) business day following delivery by any other means.

If to MEDICAL LAKE:

City of MEDICAL LAKE
Attn: Mayor or Designee
P.O. Box 369
Medical Lake, WA 99022

If to the SPOKANE:

City of SPOKANE
Attn: Mayor or Designee
Seventh Floor, City Hall
808 West Spokane Falls Boulevard
Spokane, WA 99201

With Copy To:

City of Medical Lake
Attn: City Administrator
P.O. Box 369
Medical Lake, WA 99022

With Copy To:

City of Spokane
Attn: City Attorney
Fifth Floor, City Hall
808 West Spokane Falls Boulevard
Spokane, WA 99201

- C. **Governing Law; Venue.** This Agreement is entered into, and its interpretation and enforcement, shall be governed exclusively by its terms and by the laws of the State of Washington, United States of America, without giving effect to that body of laws pertaining to conflict of laws. Any action brought by either Party against the other Party for claims arising out of this Agreement shall only be brought in a court of competent jurisdiction in Spokane County, Washington.
- D. **Meet and Confer / Arbitration.** If either Party has a claim or dispute under this Agreement, notice of the same shall be sent to the other Party. The notice shall provide a brief description of the dispute.
- 1) **Meet and Confer.** Within five (5) business days of the notice, the Parties shall meet and confer to resolve the dispute. If the Parties are unable to resolve the dispute within ten (10) business days of the notice, either party may seek arbitration.
 - 2) **Arbitration.** Arbitration shall be conducted in accordance with the JAMS Arbitration Rules or by an Alternate Dispute Resolution Process that can be mutually agreed upon. The arbitrator's fees and costs shall be equally shared. The arbitrator's decision shall be final, binding on the Parties and enforceable pursuant to RCW Chapter 7.04A.
- E. **Attorneys' Fees.** If any suit or legal action is taken for the enforcement of any provision of this Agreement or as a result of any alleged breach thereof or for a declaration of any right or duty hereunder, the Party who substantially prevails in such suit or legal action shall be paid reasonable attorneys' fees from the Party who does not substantially prevail, and any judgment or decree rendered shall include an award thereof.
- F. **Entire Agreement.** This Agreement embodies the entire understanding among the Parties, is merged and fully integrated, and supersedes any and all prior negotiations, understandings, or agreements.

- G. **Third Parties.** Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.
- H. **Anti-kickback.** No officer or employee of MEDICAL LAKE, having the power or duty to perform an official act or action related to this Agreement, shall have, or acquire, any interest in this Agreement, or have solicited, accepted, or granted, a present or future gift, favor, service, or other thing of value from any person with an interest in this Agreement.
- I. **Severability.** If any provision of this Agreement is determined by any court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such provision will be enforced to the maximum extent possible given the intent of the Parties hereto. If such clause or provision cannot be so enforced, such provision shall be stricken from this Agreement and the remainder of this Agreement shall be enforced as if such invalid, illegal or unenforceable clause or provision had (to the extent not enforceable) never been contained in this Agreement.
- J. **Amendment; Waivers.** This Agreement shall not be amended, supplemented or modified except in writing executed by authorized representatives of the Parties, with the same formality of this Agreement. Waiver by a Party of any breach of any provision of this Agreement by the other Party shall not operate, or be construed, as a waiver of any subsequent or other breach and no Party's undertakings or agreements contained in this Agreement shall be deemed to have been waived unless such waiver is made by an instrument in writing signed by an authorized representative of that Party.
- K. **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and either Party may execute this Agreement by signing any such counterpart. Signed counterparts executed and delivered by electronic mail or facsimile transmission shall be binding on the Parties and have the same force and effect as an original signed counterpart.
- L. **Representations and Warranties.** Each Party represents and warrants that it has executed this Agreement freely, fully intending to be bound by the terms and provisions contained herein; that it has full power and authority to execute, deliver and perform this Agreement; that the person signing this Agreement on behalf of such Party has properly been authorized and empowered to enter into this Agreement by and on behalf of such Party; that prior to the date of this Agreement, all corporate action of such Party necessary for the execution, delivery and performance of this Agreement by such Party has been duly taken; and that this Agreement has been duly authorized and executed by such Party, is the legal, valid and binding obligation of such Party, and is enforceable against such Party in accordance with its terms.
- M. **Compliance with Laws.** The Parties shall observe all federal, state and local laws, ordinances and regulations; to the extent they may be applicable to the terms of this Agreement.

SECTION NO. 11: RCW 39.34 REQUIRED CLAUSES

- A. **Purpose:** See Section No. 1 above.
- B. **Duration:** See Section No. 3 above.
- C. **Organization of Separate Entity and Its Powers:** No new or separate legal or administrative entity is created to administer the provisions of this Agreement.
- D. **Responsibilities of the Parties:** See provisions above.
- E. **Agreement to be Filed:** SPOKANE shall file this Agreement with its City Clerk and place it on its web site or other electronically retrievable public source. MEDICAL LAKE shall file this Agreement with its City Clerk or place it on its web site or other electronically retrievable public source.
- F. **Financing:** Each party shall be responsible for the financing of its contractual obligations under its normal budgetary process.
- G. **Termination:** This Agreement can be terminated in accordance with Section 3.
- H. **Property Upon Termination:** Title to all property acquired by any party in the performance of this Agreement shall remain with the acquiring party upon termination of the Agreement.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the date first written above.

THE CITY OF MEDICAL LAKE:

John Higgins, Mayor

ATTEST:

Jennifer Hough, Clerk Finance Director

APPROVED AS TO FORM:

Cynthia McMullen, City Attorney

THE CITY OF SPOKANE:

David A. Condon, Mayor

ATTEST:

Terry Pfister, City Clerk

APPROVED AS TO FORM:

Assistant City Attorney



Agenda Sheet for City Council Meeting of:
11/03/2014

Date Rec'd	10/22/2014
Clerk's File #	OPR 2014-0728
Renews #	OPR 1989-0808

Submitting Dept	SPOKANE REGIONAL SOLID WASTE	Cross Ref #	
Contact Name/Phone	KEN GIMPEL 625-6532	Project #	
Contact E-Mail	KGIMPEL@SPOKANECITY.ORG	Bid #	
Agenda Item Type	Contract Item	Requisition #	
Agenda Item Name	4490 INTERLOCAL AGREEMENT WITH AIRWAY HEIGHTS		

Agenda Wording

Interlocal agreement with Airway Heights for disposal of solid waste at Spokane's Waste to Energy Facility November 17, 2014 to November 16, 2021. Revenue \$2,600,000.00 over 7 years.

Summary (Background)

This interlocal agreement establishes terms and conditions between the City and Airway Heights for disposal of all solid waste collected within Airway Heights at the Waste to Energy Facility. It also establishes terms and conditions for continued service to Airway Heights self haul customers who deliver solid waste, yard waste, recyclables and household hazardous waste to the waste to energy facility.

Fiscal Impact		Budget Account	
Revenue	\$ 2,600,000.00	#	4490-44110-37052-34363
Select	\$	#	
Select	\$	#	
Select	\$	#	
Approvals		Council Notifications	
<u>Dept Head</u>	GIMPEL, KEN	<u>Study Session</u>	
<u>Division Director</u>	ROMERO, RICK	<u>Other</u>	
<u>Finance</u>	LESESNE, MICHELE	<u>Distribution List</u>	
<u>Legal</u>	SCHOEDEL, ELIZABETH	ttauscher@spokanecity.org	
<u>For the Mayor</u>	SANDERS, THERESA	cmarchand@spokanecity.org	
<u>Additional Approvals</u>			
<u>Purchasing</u>			



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

Airway Heights or its contracted solid waste collection service will pay to Spokane \$70.50 per ton for each ton of solid waste delivered to the waste to energy from Airway Heights, adjusted annually on January 1 per CPI. Residents of Airway Heights who choose to self haul waste to the waste to energy facility shall be charged the then current Spokane waste to energy gate fee at the weigh station.

<u>Fiscal Impact</u>		<u>Budget Account</u>
Select	\$	#
Select	\$	#

Distribution List

City of Spokane No. OPR 2014- 0728
City of Airway Heights No. _____

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF AIRWAY HEIGHTS AND THE CITY OF SPOKANE
FOR DISPOSAL OF SOLID WASTE**

This WASTE DISPOSAL AGREEMENT (this "**Agreement**") is made and entered into as of this ____ day of _____, 2014 by and between the City of Airway Heights, a municipal corporation of the State of Washington ("**AIRWAY HEIGHTS**") and the City of Spokane, a municipal corporation of the State of Washington ("**SPOKANE**"). Airway Heights and Spokane are each sometimes referred to herein as "**Party**" and collectively as "**Parties**."

RECITALS

A. WHEREAS, AIRWAY HEIGHTS on October 10, 1989 entered into "An Interlocal Agreement between the City of Spokane, Spokane County and the City of Airway Heights" (City Clerk's OPR 1989-0808) (the "**Interlocal Agreement**") to control the management, handling, and disposal of solid waste within AIRWAY HEIGHTS.

B. WHEREAS, The Interlocal Agreement was for a term of twenty five (25) years or for so long as bonds remained outstanding, which date is on or about November 16, 2014 (the "**Interlocal Agreement Expiration Date**").

C. WHEREAS, On November 17, 2014, subsequent to the Interlocal Agreement Expiration Date, SPOKANE will own and operate the Waste to Energy Facility located at 2900 South Geiger Blvd., Spokane, Washington, 99224, including the solid waste incinerator and the portion of the facility that serves the general public (the "**WTE**").

D. WHEREAS, AIRWAY HEIGHTS, by and through an open meeting of the Airway Heights City Council held on _____ has decided to enter into a new Interlocal Agreement with Spokane County for the management of solid waste, and has provided appropriate notice to Spokane County regarding the same.

E. WHEREAS, AIRWAY HEIGHTS has identified the WTE as a disposal site capable of processing Municipal Waste from mixed residential, commercial, and industrial sources. The WTE is capable of processing Municipal Waste from mixed residential, commercial, and industrial sources.

NOW, THEREFORE, for and in consideration of the mutual promises set forth hereinafter and the recitals referenced above, the Parties do mutually agree as follows:

SECTION NO. 1: PURPOSE

The purposes of this Agreement are to:

- A. Formally terminate the 1989 Interlocal Agreement as of November 16, 2014. Effective November 17, 2014, this Agreement will replace all terms and conditions contained in the 1989 Agreement; and
- B. Establish the terms and conditions between AIRWAY HEIGHTS and SPOKANE for the disposal of all solid waste collected within AIRWAY HEIGHTS, which is to be delivered to SPOKANE's WTE after November 17, 2014; and
- C. Establish flow control requirements to be maintained by AIRWAY HEIGHTS to ensure the proper disposal of solid waste; and
- D. Establish the terms and conditions for continued service to AIRWAY HEIGHTS self haul customers who deliver solid waste, yard waste, recyclables and household hazardous waste to the WTE.

SECTION NO. 2: DEFINITIONS

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

- A. **AIRWAY HEIGHTS**- means the City of Airway Heights, or any vendor contracted by AIRWAY HEIGHTS for services related to the management of solid waste.
- B. **AIRWAY HEIGHTS Disposal Rate** means the per ton disposal fee, as outlined in Section 5 of this Agreement, that AIRWAY HEIGHTS or its contracted solid waste collection service provider on behalf of AIRWAY HEIGHTS shall pay SPOKANE for each ton of solid waste delivered to the WTE by AIRWAY HEIGHTS's owned and operated commercial vehicles or AIRWAY HEIGHTS's contracted solid waste collection service provider.
- C. **Dangerous Wastes** - means any discarded, useless, unwanted, or abandoned substances, including but not limited to certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment, because such wastes or constituents or combinations of such wastes:
 - 1) Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or

- 2) Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means.

D. **Extremely Hazardous Waste** —means any dangerous waste which:

- 1) Will persist in a hazardous form for several years or more at a disposal site and which in its persistent form:
 - a. Presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic make-up of human beings or wildlife, and
 - b. Is highly toxic to human beings or wildlife.
- 2) If disposed of at a disposal site in such quantities as would present an extreme hazard to human beings or the environment.

E. **Gate Fee** - means the per ton disposal fee outlined in SECTION NO. 5 of this Agreement. AIRWAY HEIGHTS' residents who direct haul solid waste shall pay SPOKANE for each ton of solid waste delivered to the WTE as self haul waste, as defined in Section 5.

F. **Hazardous Waste** - means and includes all dangerous and extremely hazardous waste, including substances composed of both radioactive and hazardous components.

G. **Moderate-Risk Waste** – means:

- 1) any waste that exhibits any of the properties of hazardous waste, but is exempt from regulation under chapter 70.105 RCW solely because the waste is generated in quantities below the threshold for regulation; and
- 2) any household wastes which are generated from the disposal of substances identified by the department as hazardous household substances.

H. **Nonprocessable Waste** - means any solid waste that SPOKANE deems to be unacceptable at the WTE.

I. **Solid Waste or Wastes** - means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to; garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, contaminated soils and contaminated dredged material, and recyclable materials.

J. **Waste To Energy Facility, WTE, or Facility** - means that solid waste facility located at 2900 South Geiger Boulevard, Spokane, Washington 99224, including the solid waste incinerator and the portion of the facility that serves the general public for disposal of household hazardous waste, recyclables, solid waste, yard debris, and other waste products.

SECTION NO. 3: DURATION

- A. This Agreement shall be effective 12:00 A.M. on November 17, 2014 ("Commencement Date") and run through 11:59 P.M. on November 16, 2021, unless AIRWAY HEIGHTS provides written notice of termination as provided under subparagraph C of this Agreement. Under no circumstances shall this Agreement be terminated prior to the end of three (3) years or before November 16, 2017.

Any notice of termination shall be provided in writing and not later than six (6) months prior to the effective date. Notwithstanding the above provisions, this Agreement may be extended in one (1) year increments for a total of three (3) additional years, or as otherwise agreed upon by the Parties (the "**Extension Term**").

- B. **Extension Terms.** At least ninety (90) days prior to expiration of the Initial Term or an Extension Term, a party may deliver written notice of intent to renew this Agreement. The Notice shall propose the period and terms of renewal. The party receiving the notice shall within ten (10) days of delivery respond by stating its intent to renew this Agreement. Thereafter, the Parties shall negotiate the Extension Term in good faith. No response by the party receiving the notice shall be deemed a refusal to extend this Agreement.
- C. **Termination.** This Agreement shall be in effect for seven (7) years. After two and a half (2.5) years, AIRWAY HEIGHTS shall have the option to provide to SPOKANE six (6) months prior written notice of its intent to terminate this Agreement. Should AIRWAY HEIGHTS exercise this early termination option, it will be effective no earlier than the end of three (3) years (November 16, 2017, or any other later time prior to the seven (7) year term of the Agreement.

SECTION NO. 4: DISPOSAL SERVICES

- A. **Scope of Services.** AIRWAY HEIGHTS, or residents of AIRWAY HEIGHTS who choose to "self-haul" waste, shall deliver all Acceptable Waste, as defined in subparagraph B below, Household Hazardous Waste, Recyclables, and Clean Green Yard Debris to the WTE for disposal or processing. Once delivered to the WTE, SPOKANE shall be responsible for all costs associated with the disposal of the Acceptable Waste, including, but not limited to; incineration, ash disposal, by-pass of unburned materials, processing of Household Hazardous Waste, recyclables and Clean Green Yard Debris and all maintenance, operation, repairs and ordinary renewals and replacements necessary for the operation of the WTE. Once Municipal Waste enters the WTE, SPOKANE shall be responsible for determining its weight.
- B. **Acceptable Waste.** The following shall be acceptable waste at the WTE:
- 1) **"Municipal Waste"** including, but not limited to, Solid Waste from mixed residential, commercial, and industrial sources.

- 2) **"Self Haul"** means solid waste delivered to the WTE by the public in privately owned and operated vehicles.
- 3) **"Solid Waste"** meaning all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, yard debris, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, contaminated soils and contaminated dredged material, and recyclable materials.

The above definitions shall be automatically amended to conform to all WTE permits and operating requirements established by state and federal authorities.

- C. **Guaranteed Capacity.** The guaranteed minimum available capacity for Acceptable Waste shall be two-hundred forty-eight thousand two hundred (248,200) tons per year.
- D. **Primary Services.** The WTE shall be maintained in good working order and repair so as to allow AIRWAY HEIGHTS to dispose of its Municipal Waste without interruption or unreasonable delay. Municipal Waste may be delivered and shall be received at the WTE during all regular hours of operation unless otherwise agreed.

SECTION NO. 5: DISPOSAL RATE; BILLING

A. **AIRWAY HEIGHTS' Disposal Rate.** AIRWAY HEIGHTS or its contracted solid waste collection service provider will pay to SPOKANE seventy dollars and fifty cents (\$70.50) per ton for each ton of Municipal Waste delivered to the WTE from AIRWAY HEIGHTS (the "**AIRWAY HEIGHTS Disposal Rate**"). The AIRWAY HEIGHTS Disposal Rate shall be inclusive of all costs, including applicable taxes. SPOKANE agrees not to exceed the authority granted under state or local law, including taxing authority.

- 1) SPOKANE recognizes that AIRWAY HEIGHTS historically did not utilize either of SPOKANE'S closed landfills and therefore is not responsible for the landfill closure/post closure component of the Gate Fee. This cost represents ten dollars (\$10) per ton and is a basis for a reduced Disposal Rate.
- 2) The Parties agree for the duration of this Agreement only, AIRWAY HEIGHTS' Disposal Rate shall remain ten dollars (\$10) per ton less than the WTE Gate Fee.
- 3) SPOKANE guarantees the AIRWAY HEIGHTS' Disposal Rate described above regardless of disposal method (incineration or landfill disposal) SPOKANE utilizes. SPOKANE shall manage all Acceptable Waste, Household Hazardous Waste, Recyclables and Clean Green Yard Debris delivered by AIRWAY HEIGHTS or its citizens to the WTE.

B. **"Self-Haul Rate"** in the event residents of AIRWAY HEIGHTS choose to self-haul Acceptable Waste to the WTE, those residents shall be charged the then current SPOKANE WTE Gate Fee (the **"Self-Haul Disposal Rate"**). For purposes of this Section those residents who self-haul shall have the waste weighed upon entry into the WTE and shall, at that point, pay the WTE Gate Fee directly to the WTE at the WTE weigh station.

C. **Rate Adjustment.**

On January 1st of each year following 2016, SPOKANE will adjust the AIRWAY HEIGHTS Disposal Rate to reflect increases in the United States Department of Labor, Bureau of Labor Statistics, West-Size Class B/C, Consumer Price Index, all Items for All Urban Consumers (CPI-U) (the "Index"). The adjustment factor for computing annual rate adjustments shall be computed by dividing the Index number for October of the just-completed year by the Index number for October of the previous year. In the event the Index number stays the same or decreases, no rate adjustment will be made, and the next rate adjustment shall not occur until the Index number increases to a number exceeding the highest previous Index number, and shall be computed using the previous highest Index number.

Example Calculation of Annual Rate Adjustments:

	INDEX	ADJUST FACTOR	COUNTY DISPOSAL RATE
Base Yr.N	125		\$70.50
N+1	128.844	1.030752	\$72.67
N+2	133.315	1.034710	\$75.19
N+3*	132.474	No change	\$75.19
N+4**	133	No change	\$75.19
N+5	137.748	1.033252	\$77.69
N+6	140.054	1.016741	\$78.99
* No change-Index decreased			
** No charge-Index did not exceed highest previous Index			

- D. **Invoicing and Payment.** SPOKANE shall, through invoice, bill AIRWAY HEIGHTS or its contracted solid waste collection service provider the AIRWAY HEIGHTS Disposal Rate on or before the 20th day of the month for services rendered the previous month. The invoice shall contain the dates of disposal, weight of Solid Waste, disposal cost per ton, and such other information as necessary to support the invoiced amount due. AIRWAY HEIGHTS or its contracted solid waste collection service provider will pay SPOKANE within thirty (30) calendar days of receiving the invoice.
- E. **Billing Questions and Disputes.** If AIRWAY HEIGHTS has any questions, desires further information, or have a dispute regarding the invoice, AIRWAY HEIGHTS shall advise SPOKANE in writing within ten (10) business days of invoice receipt. Notwithstanding payment of an invoice as set forth in section 4.3, AIRWAY HEIGHTS reserves the right, and SPOKANE acknowledges the right to dispute amounts paid without the necessity of making such payment "under protest." Any dispute between the Parties as to an invoice shall be resolved pursuant to Section 8.4 of this Agreement. Past due invoices shall accrue interest at the current local government investment pool rate - until paid.

SECTION NO. 6: AUDIT / RECORDS

AIRWAY HEIGHTS shall maintain for a minimum of three (3) years following final payment all records related to its performance of the Agreement. AIRWAY HEIGHTS shall provide access to authorized SPOKANE representatives at reasonable times and in a reasonable manner to inspect and copy any such record. In the event of conflict between this provision and related auditing provisions required under federal law applicable to the Agreement, the federal law shall prevail.

SPOKANE shall maintain for a minimum of three (3) years following final payment all records related to its performance of the Agreement. SPOKANE shall provide access to authorized AIRWAY HEIGHTS representatives at reasonable times and in a reasonable manner to inspect and copy any such record. In the event of conflict between this provision and related auditing provisions required under federal law applicable to the Agreement, the federal law shall prevail.

SECTION NO. 7: LIABILITY

Each Party to this Agreement shall be responsible for damage to persons or property resulting from the negligence on the part of itself, its employees, its directors, its agents or its officers. The Parties shall each indemnify, defend and hold harmless the other Party, its officers and employees from all claims, demands, or suits in law or equity arising from the Party's intentional or negligent acts or breach of any obligations under this Agreement.

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's or employee's negligence.

Each Party's duty to indemnify shall survive the termination or expiration of this Agreement. Each Party waives, with respect to the other Party only, its immunity under Chapter 51 of the Revised Code of Washington ("RCW"), "Industrial Insurance." The Parties have specifically negotiated this provision. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

SECTION NO. 8: INSURANCE

During the term of this Agreement, SPOKANE and AIRWAY HEIGHTS or its contracted solid waste collection service provider shall each maintain in force at its own expense, the following insurance coverage or self-insurance:

- A. Worker's Compensation Insurance in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers and Employer's Liability or Stop Gap Insurance in the amount of \$5,000,000;
- B. General Liability Insurance on an occurrence basis, with a combined single limit of not less than \$10,000,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this Agreement;
- C. Automobile Liability Insurance with a combined single limit, or the equivalent of not less than \$5,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles; and
- D. Professional Liability Insurance with a combined single limit of not less than \$5,000,000 each claim, incident or occurrence. This is to cover damages caused by the error, omission, or negligent acts related to the professional services to be provided under this Agreement, if any. This coverage must remain in effect for two (2) years after the Agreement is completed.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without providing thirty (30) days written notice from a Party or its insurer(s) to the other Party. Verification of insurance shall be provided upon request.

SECTION NO. 9: RELATIONSHIP OF THE PARTIES

The relationship between the Parties is that of independent contractors. Neither Party, nor its agents and employees, shall under any circumstances be deemed an agent or representative of the other Party and neither shall have authority to act for and/or bind the other in any way, or represent

that it is in any way responsible for acts of the other Party. This Agreement does not establish a joint venture, agency, or partnership between the Parties.

SECTION NO. 10: MISCELLANEOUS

- A. **Assignment and Delegation.** This Agreement shall be binding upon the Parties, their successors and assigns. No Party may assign or delegate, in whole or in part, its interest in this Agreement without the prior written approval of the other Party, which shall not be unreasonably withheld.
- B. **Notices and Other Communications.** All notices, approvals, consents, and other communications required or permitted pursuant to this Agreement shall be in writing and shall be delivered by hand or sent by facsimile or prepaid courier or registered mail, to a Party at the address set forth below, or at such other address provided by such Party via written notice. Such communications shall become effective on the day when delivered by hand or the first (1st) business day following delivery by any other means.

If to AIRWAY HEIGHTS:

City of Airway Heights
Attn: Mayor or Designee
1208 S. Lundstrom
Airway Heights, WA 99001

If to the SPOKANE:

City of Spokane
Attn: Mayor or Designee
Seventh Floor, City Hall
808 West Spokane Falls Boulevard
Spokane, WA 99201

With Copy To:

Witherspoon • Kelley
Attn: Stanley M. Schwartz
422 West Riverside Avenue
Suite 1100
Spokane, WA 99201

With Copy To:

City of Spokane
Attn: City Attorney
Fifth Floor, City Hall
808 West Spokane Falls Boulevard
Spokane, WA 99201

- C. **Governing Law; Venue.** This Agreement is entered into, and its interpretation and enforcement, shall be governed exclusively by its terms and by the laws of the State of Washington, United States of America, without giving effect to that body of laws pertaining to conflict of laws. Any action brought by either Party against the other Party for claims arising out of this Agreement shall only be brought in a court of competent jurisdiction in Spokane County, Washington.
- D. **Meet and Confer / Arbitration.** If either Party has a claim or dispute under this Agreement, notice of the same shall be sent to the other Party. The notice shall provide a brief description of the dispute.

- 1) **Meet and Confer.** Within five (5) business days of the notice, the Parties shall meet and confer to resolve the dispute. If the Parties are unable to resolve the dispute within ten (10) business days of the notice, either party may seek arbitration.
 - 2) **Arbitration.** Arbitration shall be conducted in accordance with the JAMS Arbitration Rules or by an Alternate Dispute Resolution Process that can be mutually agreed upon. The arbitrator's fees and costs shall be equally shared. The arbitrator's decision shall be final, binding on the Parties and enforceable pursuant to RCW Chapter 7.04A.
- E. **Attorneys' Fees.** If any suit or legal action is taken for the enforcement of any provision of this Agreement or as a result of any alleged breach thereof or for a declaration of any right or duty hereunder, the Party who substantially prevails in such suit or legal action shall be paid reasonable attorneys' fees from the Party who does not substantially prevail, and any judgment or decree rendered shall include an award thereof.
- F. **Entire Agreement.** This Agreement embodies the entire understanding among the Parties, is merged and fully integrated, and supersedes any and all prior negotiations, understandings, or agreements.
- G. **Third Parties.** Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.
- H. **Favored Rate Clause.** To the extent enforceable by law, Spokane affirms that if, after execution of this contract, it enters into a new disposal agreement with another jurisdiction which contains the identical terms and waste volume services outlined in this Agreement, to include, but not limited to disposal for jurisdiction's commercially collected garbage, self-haul service to jurisdiction's residents, and moderate risk waste services to jurisdiction's residents, and waste volumes, and charges a lower disposal fee than the Airway Heights Disposal Fee set forth in this Agreement, Spokane shall adjust the Airway Heights Disposal Fee to match the lower Jurisdiction's fee.
- I. **Anti-kickback.** No officer or employee of AIRWAY HEIGHTS, having the power or duty to perform an official act or action related to this Agreement, shall have, or acquire, any interest in this Agreement, or have solicited, accepted, or granted, a present or future gift, favor, service, or other thing of value from any person with an interest in this Agreement.
- J. **Severability.** If any provision of this Agreement is determined by any court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such provision will be enforced to the maximum extent possible given the intent of the Parties hereto. If such clause or provision cannot be so enforced, such provision shall be stricken from this Agreement and the remainder of this Agreement shall be enforced as if such invalid, illegal or unenforceable clause or provision had (to the extent not enforceable) never been contained in this Agreement.
- K. **Amendment; Waivers.** This Agreement shall not be amended, supplemented or modified except in writing executed by authorized representatives of the Parties, with the same

formality of this Agreement. Waiver by a Party of any breach of any provision of this Agreement by the other Party shall not operate, or be construed, as a waiver of any subsequent or other breach and no Party's undertakings or agreements contained in this Agreement shall be deemed to have been waived unless such waiver is made by an instrument in writing signed by an authorized representative of that Party.

- L. **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and either Party may execute this Agreement by signing any such counterpart. Signed counterparts executed and delivered by electronic mail or facsimile transmission shall be binding on the Parties and have the same force and effect as an original signed counterpart.
- M. **Representations and Warranties.** Each Party represents and warrants that it has executed this Agreement freely, fully intending to be bound by the terms and provisions contained herein; that it has full power and authority to execute, deliver and perform this Agreement; that the person signing this Agreement on behalf of such Party has properly been authorized and empowered to enter into this Agreement by and on behalf of such Party; that prior to the date of this Agreement, all corporate action of such Party necessary for the execution, delivery and performance of this Agreement by such Party has been duly taken; and that this Agreement has been duly authorized and executed by such Party, is the legal, valid and binding obligation of such Party, and is enforceable against such Party in accordance with its terms.
- N. **Compliance with Laws.** The Parties shall observe all federal, state and local laws, ordinances and regulations; to the extent they may be applicable to the terms of this Agreement.

SECTION NO. 11: RCW 39.34 REQUIRED CLAUSES

- A. **Purpose:** See Section No. 1 above.
- B. **Duration:** See Section No. 3 above.
- C. **Organization of Separate Entity and Its Powers:** No new or separate legal or administrative entity is created to administer the provisions of this Agreement.
- D. **Responsibilities of the Parties:** See provisions above.
- E. **Agreement to be Filed:** SPOKANE shall file this Agreement with its City Clerk and place it on its web site or other electronically retrievable public source. AIRWAY HEIGHTS shall file this Agreement with its City Clerk or place it on its web site or other electronically retrievable public source.
- F. **Financing:** Each party shall be responsible for the financing of its contractual obligations under its normal budgetary process.
- G. **Termination:** This Agreement can be terminated in accordance with Section 3.

H. **Property Upon Termination:** Title to all property acquired by any party in the performance of this Agreement shall remain with the acquiring party upon termination of the Agreement.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the date first written above.

THE CITY OF AIRWAY HEIGHTS:

Patrick Rushing, Mayor

THE CITY OF SPOKANE:

David Condon, Mayor

ATTEST:

Richard G. Cook, Clerk-Treasurer

ATTEST:

Terry Pfister, City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

APPROVED AS TO FORM:

Stanley M. Schwartz, City Attorney



Agenda Sheet for City Council Meeting of:
11/03/2014

Date Rec'd	10/22/2014
Clerk's File #	OPR 2014-0730
Renews #	

Submitting Dept	SPOKANE REGIONAL SOLID WASTE	Cross Ref #	
Contact Name/Phone	KEN GIMPEL 625-6532	Project #	
Contact E-Mail	KGIMPEL@SPOKANECITY.ORG	Bid #	
Agenda Item Type	Contract Item	Requisition #	CR14870
Agenda Item Name	4490 CONTRACT WITH KNIGHT CONSTRUCTION AND SUPPLY INC		

Agenda Wording

Contract with Knight Construction and Supply Inc., (Deer Park, WA) for emergency and scheduled millwright maintenance work at the Waste to Energy Facility (WTEF) November 17, 2014 to April 17, 2016. Total cost \$1,650,000.00.

Summary (Background)

The necessary scheduled and emergency maintenance work at the WTEF requires specialized millwright skills. Knight Construction and Supply Inc., has been the local maintenance contractor for the WTEF for several years. They have unique knowledge of the tasks involved in the maintenance work at the facility.

Fiscal Impact			Budget Account
Expense	\$ 137,500.00	2014	# 4490-44100-37148-54201
Expense	\$ 1,100,000.00	2015	# 4490-44100-37148-54201
Expense	\$ 412,500.00	2016	# 4490-44100-37148-54201
Select	\$		#
Approvals			Council Notifications
<u>Dept Head</u>	GIMPEL, KEN	<u>Study Session</u>	PWC 10-27-14
<u>Division Director</u>	ROMERO, RICK	<u>Other</u>	
<u>Finance</u>	LESESNE, MICHELE	<u>Distribution List</u>	
<u>Legal</u>	WHALEY, HUNT	ttauscher@spokanecity.org	
<u>For the Mayor</u>	SANDERS, THERESA	lbutz@spokanecity.org	
<u>Additional Approvals</u>		mlesesne@spokanecity.org	
<u>Purchasing</u>			



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

Airway Heights or its contracted solid waste collection service will pay to Spokane \$70.50 per ton for each ton of solid waste delivered to the waste to energy from Airway Heights, adjusted annually on January 1 per CPI. Residents of Airway Heights who choose to self haul waste to the waste to energy facility shall be charged the then current Spokane waste to energy gate fee at the weigh station.

<u>Fiscal Impact</u>		<u>Budget Account</u>	
Select	\$		#
Select	\$		#
<u>Distribution List</u>			

BRIEFING PAPER
Public Works Committee
Spokane Regional Solid Waste System
October 27, 2014

Subject

Contract with Knight Construction and Supply, Inc., from Deer Park, Washington, for emergency and scheduled millwright maintenance work at the Waste to Energy Facility. Cost \$1,650,000.00 for 18 months, plus tax where applicable.

Background

Knight Construction has been the local maintenance contractor for the waste to energy facility for several years. They have unique and specific knowledge of the tasks involved in emergency and scheduled maintenance work at the facility. During the term of this contract staff will work with the contractor to establish a comprehensive scope of work for use during the next procurement process for this ongoing maintenance work.

Impact

The waste to energy facility will continue seamless operation by utilizing Knight Construction for the next 18 months.

Action

Recommend approval.

Funding

Funding is included in the waste to energy operations budget.

C O N T R A C T

THIS CONTRACT is between the CITY OF SPOKANE, a Washington State municipal corporation, as "City", and KNIGHT CONSTRUCTION AND SUPPLY, INC., whose address is 28308 North Cedar Road, Deer Park, Washington 99006, as "Contractor".

The Parties agree as follows:

1. PERFORMANCE. The Contractor will do all work, furnish all labor, materials, tools, construction equipment, transportation, supplies, supervision, organization and other items of work and costs necessary for the proper execution and completion of the work described in the specifications entitled EMERGENCY AND SCHEDULED MILLWRIGHT MAINTENANCE WORK AT THE CITY'S WASTE TO ENERGY FACILITY (WTEF) LOCATED AT 2900 SOUTH GEIGER ROAD, in accordance with the Contractor's Waste to Energy Facility December 2014 Outage Quotes, attached hereto as Exhibit A.
2. CONTRACT DOCUMENTS. The contract documents are this Contract, the Contractor's Waste to Energy Facility December 2014 Outage Quotes, contract provisions, contract plans, standard specifications, standard plans, addenda, various certifications and affidavits, supplemental agreements, and change orders. Federal and state requirements and the terms of this Contract, respectively, supersede other inconsistent provisions. These contract documents are on file in the Solid Waste Disposal Department, and are incorporated into this Contract by reference, as if they were set forth at length.
3. TIME OF PERFORMANCE. This is an eighteen (18) month Contract, and the Contract shall begin on November 17, 2014, and run through April 17, 2016.
4. TERMINATION. The City may, without cause, terminate this Contract at any time. In the event of such termination, the Contractor shall be entitled to receive payment for work performed and costs incurred up to the date of termination.
5. COMPENSATION. The City will pay ONE MILLION SIX HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$1,650,000.00), the amount in the Contractor's quote, as full compensation for everything furnished and done under this Contract, subject to allowable additions and deductions as provided.
6. TAXES. Retail sales tax where applicable shall be added to the amounts due and the Contractor shall be responsible for making payment of the tax to Washington State. The City reserves the right to claim any exemption authorized by law.
7. PAYMENT. The Contractor will send its applications for payment to the Solid Waste Disposal Department Director - Waste to Energy Facility, 2900 South Geiger Street, Spokane, Washington 99224. Payment will be made within thirty (30) days after receipt of the Contractor's application except as provided in RCW 39.76. Five percent (5%) of the Contract price may be retained by the City, in accord with RCW 60.28 for a minimum of forty five (45) days after final acceptance, as a trust fund for the protection and payment of: the claims of any

person arising under the Contract; and the State with respect to taxes imposed pursuant to Titles 50, 51 and 82 RCW which may be due from the Contractor.

8. INDEMNIFICATION.

- A. The Contractor is an independent contractor and not the agent or employee of the City. No liability shall attach to the City for entering into this Contract or because of any act or omission of the Contractor except as expressly provided.
- B. The Contractor agrees to defend, indemnify and hold the City harmless from any and all claims, demands, losses and liabilities to or by third parties arising from, resulting from or connected with services performed or to be performed under this Contract by the Contractor, its agents or employees to the fullest extent permitted by law. The Contractor's duty to indemnify the City shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City, its agents or employees. The Contractor's duty to indemnify the City for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) the City or its agents or employees, and (b) the Contractor or its agents or employees, shall apply only to the extent of negligence of the Contractor or its agents or employees. The Contractor's duty to defend, indemnify and hold the City harmless shall include, as to all claims, demands, losses and liability to which it applies, the City's personnel-related costs, reasonable attorneys' fees, court costs and all other claim-related expenses.
- C. **The Contractor waives immunity under Title 51 RCW to the extent necessary to protect the City's interests under this indemnification. This provision has been specifically negotiated.**

9. BONDS. The Contractor may not commence work until it obtains all insurance, permits and bonds required by the contract documents and applicable law. This includes the execution of a performance bond and a payment bond on the forms attached, each equal to one hundred percent (100%) of the contract price, and written by a corporate surety company licensed to do business in Washington State.

10. INSURANCE. During the term of the Contract, the Contractor shall maintain in force at its own expense, the following insurance coverages:

- A. Worker's Compensation Insurance in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers and Employer's Liability Insurance in the amount of \$1,000,000;
- B. General Liability Insurance on an occurrence basis, with a combined single limit of not less than \$2,000,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this Contract. It shall provide that the City, its officers and employees are additional insureds but only with respect to the Contractor's services to be provided under this Contract;
- C. Property insurance if materials and supplies are furnished by the Contractor. The amount of the insurance coverage shall be the value of the materials and supplies of the completed

value of improvement. Hazard or XCU (explosion, collapse, underground) insurance should be provided if any hazard exists; and

- D. Automobile Liability Insurance with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without sixty (60) days written notice from the Contractor or its insurer(s) to the City.

As evidence of the insurance coverages required by this Contract, the Contractor shall furnish an acceptable Certificate of Insurance (COI) to the City at the time it returns the signed Contract. The COI shall specify all of the parties who are additional insured, and include applicable policy endorsements, and the deductible or retention level, as well as policy limits. Insuring companies or entities are subject to City acceptance and must have a rating of A- or higher by Best. Copies of all applicable endorsements shall be provided. The Contractor shall be solely financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

11. CONTRACTOR'S WARRANTY. The Contractor guarantees all work, labor and materials under this Contract for two (2) years following final acceptance. If any unsatisfactory condition or defect develops within that time, the Contractor will immediately place the work in a condition satisfactory to the City and repair all damage caused by the condition or defect. The Contractor will repair or restore to the City's satisfaction, in accordance with the contract documents and at its expense, all property damaged by his performance under this Contract. This warranty is in addition to any manufacturer's or other warranty in the contract documents.

12. WAGES. The Contractor and all subcontractors will submit a "Statement of Intent to Pay Prevailing Wages" certified by the industrial statistician of the Department of Labor and Industries, prior to any payments. The "Statement of Intent to Pay Prevailing Wages" shall include: (1) the Contractor's registration number; and (2) the prevailing wages under RCW 39.12.020 and the number of workers in each classification. Each voucher claim submitted by the Contractor for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the "Statement(s) of Intent to Pay Prevailing Wages" on file with the City. Prior to the payment of funds held under RCW 60.28, the Contractor and subcontractors must submit an "Affidavit of Wages Paid" certified by the industrial statistician.

13. STATEMENT OF INTENT TO PAY PREVAILING WAGES TO BE POSTED. The Contractor and each subcontractor required to pay the prevailing rate of wages shall post in a location readily visible at the job site: (1) a copy of a "Statement of Intent to Pay Prevailing Wages" approved by the industrial statistician of the State Department of Labor and Industries; and (2) the address and telephone number of the industrial statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.

14. FEES. Reimbursement for the fees paid by the Contractor for the approval of "Statements of Intent to Pay Prevailing Wages" and certification of "Affidavits of Wages Paid" by the industrial statistician of the State Department of Labor and Industries will be added to the amounts due the Contractor. The Contractor will remain responsible for the actual submittal of the documents to the industrial statistician. In order to receive this reimbursement the Contractor

will be required to submit to the City, prior to final acceptance of the work, a list of its subcontractors at all tiers and have their "Statements of Intent to Pay Prevailing Wages" on file with the City.

15. OFF SITE PREFABRICATED ITEMS. In accordance with RCW 39.04.370, the Contractor shall submit certain information about off-site, prefabricated, nonstandard, project specific items produced under the terms of the Contract and produced outside Washington as a part of the "Affidavit of Wages Paid" form filed with the State Department of Labor and Industries.

16. SUBCONTRACTOR RESPONSIBILITY. The Contractor must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350(1) and possesses an electrical contractor license, if required by chapter 19.28 RCW, or an elevator contractor license, if required by chapter 70.87 RCW. The responsibility criteria are listed in the request for bids document.

17. NONDISCRIMINATION. No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Contract because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation including gender expression or gender identity, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. The Contractor agrees to comply with, and to require that all subcontractors comply with, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, as applicable to the Contractor.

18. ASSIGNMENTS. The Contractor may not assign, transfer or sublet any part of the work under this Contract, or assign any monies due, without the written approval of the City, except as may be required by law. In the event of assignment of accounts or monies due under this Contract, the Contractor specifically agrees to give immediate written notice to the City Administrator, no later than five (5) business days after the assignment.

19. ANTI-KICKBACK. No officer or employee of the City of Spokane, having the power or duty to perform an official act or action related to this Contract shall have or acquire any interest in the Contract, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in the Contract.

20. COMPLIANCE WITH LAWS. Each party shall comply with all applicable federal, state, and local laws and regulations that are incorporated herein by reference.

21. DISPUTES. This Contract shall be performed under the laws of the State of Washington. Any litigation to enforce this Contract or any of its provisions shall be brought in Spokane County, Washington.

22. SEVERABILITY. In the event any provision of this Contract should become invalid, the rest of the Contract shall remain in full force and effect.

23. AUDIT / RECORDS. The Contractor and its subcontractors shall maintain for a minimum of three (3) years following final payment all records related to its performance of the Contract. The Contractor and its subcontractors shall provide access to authorized City representatives, at reasonable times and in a reasonable manner to inspect and copy any such record. In the event of conflict between this provision and related auditing provisions required under federal law applicable to the Contract, the federal law shall prevail.

24. BUSINESS REGISTRATION REQUIREMENT. Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid annual business registration. The Contractor shall be responsible for contacting the State of Washington Business License Services at <http://bls.dor.wa.gov> or 1-800-451-7985 to obtain a business registration. If the Contractor does not believe it is required to obtain a business registration, it may contact the City's Taxes and Licenses Division at (509) 625-6070 to request an exemption status determination.

25. CONSTRUAL. The Contractor acknowledges receipt of a copy of the contract documents and agrees to comply with them. The silence or omission in the contract documents concerning any detail required for the proper execution and completion of the work means that only the best general practice is to prevail and that only material and workmanship of the best quality are to be used. This Contract shall be construed neither in favor of nor against either party.

26. MODIFICATIONS. The City may modify this Contract and order changes in the work whenever necessary or advisable. The Contractor will accept modifications when ordered in writing by the Director of Engineering Services, and the Contract time and compensation will be adjusted accordingly.

Dated: _____

CITY OF SPOKANE

By: _____

Title: _____

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Dated: _____
Dated: _____

KNIGHT CONSTRUCTION AND
KNIGHT CONSTRUCTION AND

Email Address, if available:

By: _____

Title: _____

Attachments that are a part of this Contract:

Payment Bond

Performance Bond

Exhibit A – Contractor's Waste to Energy Facility December 2014 Outage Quotes

14-598

PAYMENT BOND

We, KNIGHT CONSTRUCTION AND SUPPLY, INC., as principal, and
We, KNIGHT CONSTRUCTION AND SUPPLY, INC., as principal, and
of Spokane, Washington, in the sum of ONE MILLION SIX HUNDRED FIFTY THOUSAND
AND NO/100 DOLLARS (\$1,650,000.00) for the payment of which, we bind ourselves and our
legal representatives and successors, jointly and severally by this document.

The principal has entered into a contract with the City of Spokane, Washington, to do all
work and furnish all materials for the EMERGENCY AND SCHEDULED MILLWRIGHT
MAINTENANCE WORK AT THE CITY'S WASTE TO ENERGY FACILITY (WTEF)
LOCATED AT 2900 SOUTH GEIGER ROAD project. If the principal shall:

A. pay all laborers, mechanics, subcontractors, material suppliers and all person(s) who shall
supply such person or subcontractors; and pay all taxes and contributions, increases and penalties
as authorized by law; and

B. comply with all applicable federal, state and local laws and regulations;

then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The surety hereby waives notice of and consents to any contract alteration or extension of
time made by the City. Any judgment obtained against the City, which relates to or is covered
by the contract or this bond, shall be conclusive against the principal and the surety, as to the
amount of damages, and their liability, if reasonable notice of the suit has been given.

SIGNED AND SEALED on _____.

KNIGHT CONSTRUCTION AND
KNIGHT CONSTRUCTION AND

Title: _____

A valid POWER OF ATTORNEY
or the surety's agent must
accompany this bond.

AS SURETY

By: _____
Its Attorney in Fact

STATE OF WASHINGTON)
) .ss
County of _____)

I certify that I know or have satisfactory evidence that _____ signed this document;
on oath stated that he/she was authorized to sign the document and acknowledged it as the agent
or representative of the named surety company which is authorized to do business in the State of
Washington, for the uses and purposes mentioned in this document.

DATED on _____.

Signature of Notary

My appointment expires _____

Approved as to form:

Assistant City Attorney

PERFORMANCE BOND

We, KNIGHT CONSTRUCTION AND SUPPLY, INC., as principal, and
We, KNIGHT CONSTRUCTION AND SUPPLY, INC., as principal, and
of Spokane, Washington, in the sum of ONE MILLION SIX HUNDRED FIFTY THOUSAND
AND NO/100 DOLLARS (\$1,650,000.00) for the payment of which, we bind ourselves and our
legal representatives and successors, jointly and severally by this document.

The principal has entered into a contract with the City of Spokane, Washington, to do all
work and furnish all materials for the EMERGENCY AND SCHEDULED MILLWRIGHT
MAINTENANCE WORK AT THE CITY'S WASTE TO ENERGY FACILITY (WTEF)
LOCATED AT 2900 SOUTH GEIGER ROAD project. If the principal shall:

A. promptly and faithfully perform the contract, and any contractual guaranty and indemnify
and hold harmless the City from all loss, damage or claim which may result from any act or
omission of the principal, its agents, employees, or subcontractors; and

B. comply with all applicable federal, state and local laws and regulations;

then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The surety hereby waives notice of and consents to any contract alteration or extension of
time made by the City. Any judgment obtained against the City, which relates to or is covered by
the contract or this bond, shall be conclusive against the principal and the surety, not only as to
the amount of damages, but also as to their liability, if reasonable notice of the suit has been
given.

SIGNED AND SEALED on _____.

KNIGHT CONSTRUCTION AND
KNIGHT CONSTRUCTION AND

Title: _____

A valid POWER OF ATTORNEY
or the surety's agent must
accompany this bond.

AS SURETY

By: _____
Its Attorney in Fact

STATE OF WASHINGTON)
).ss
County of _____)

I certify that I know or have satisfactory evidence that _____ signed this document; on oath stated that he/she was authorized to sign the document and acknowledged it as the agent or representative of the named surety company which is authorized to do business in the State of Washington, for the uses and purposes mentioned in this document.

DATED on _____.

Signature of Notary

My appointment expires _____

Approved as to form:

Assistant City Attorney

Exhibit A

Knight Construction & Supply Inc.

WASTE TO ENERGY DECEMBER 2014 OUTAGE QUOTES

Item - Work Description - NTE Price

- 1 Economizer turning vanes, (Each Boiler),
- 2 SDA Tuning Vanes, (Each Boiler),
- 3 Denox Nozzles R&R, (Each Boiler) Including Material
- 4 Grate R&R 3 zones, (Each Boiler) Includes Mob for Grate Work
- 5 Ungergrate Inspection, (Each Boiler) Includes Mob of UG Inspection
- 6 Misc. Lower Feed Chute Repairs (Each Boiler)
- 7 Misc. Feed Table Repairs (Each Boiler)
- 8 Grate Plenum Seals and Grate Cylinder R&R (Each Blr.)
- 9 Expeller Side Cheek Wear Plate R&R (Ea. Blr.)
- 10 Expeller Sled Rebuild including pins, bushings and Onsite R&R
- 11 Misc. Expeller Chute Repair (Each Boiler)
- 12 Expeller Shear Wall-R&R Formed Wear Surface (Each Boiler)
- 13 Superheater Pendant Tie-Backs
- 14 FF Hopper Patching (Each Boiler),
- 15 FF Hopper Replacement (1 hopper only)
- 16 FF Dirtyside Duct Repair (Each Boiler),
- 17 Fabric Filter tube-sheet R&R (1 module) WSI to R&R Bags
- 18 FF Cleanside Duct & Dresser Coupling Repair, (Each Blr.)
- 19 FF Inlet Damper and Damper Box Repair, (Each Blr.)
- 20 FF Module Wall Repair Below Tubesheet, (Each Blr.)
- 21 ID Fan Duct Repair on Vertical Section (Each Blr.)
- 22 SDA Hopper - Misc. Repairs (Each Boiler)
- 23 Porte Toilets 8 units & 4 handwashing stations (Per Week)

**Agenda Sheet for City Council Meeting of:**
11/03/2014

Date Rec'd	10/22/2014
Clerk's File #	OPR 1991-0473
Renews #	
Cross Ref #	
Project #	
Bid #	
Requisition #	

Submitting Dept	SPOKANE REGIONAL SOLID WASTE
Contact Name/Phone	KEN GIMPEL 625-6532
Contact E-Mail	KGIMPEL@SPOKANECITY.ORG
Agenda Item Type	Contract Item
Agenda Item Name	4490 CONTRACT AMENDMENT WITH REGIONAL DISPOSAL COMPANY

Agenda Wording

Contract amendment/extension with Regional Disposal Company, Inc. (RDC) for transporting and disposal of ash and bypass waste from the WTE Plant.

Summary (Background)

The City currently has a contract with RDC for transportation and disposal of ash from the WTE Plant and bypass waste from the two transfer stations. We currently pay RDC \$51.03 per ton for transport and disposal of ash and \$53.66 per ton for transport and disposal of bypass waste. With the transition of the Regional Solid Waste System and the County taking over operations of the two transfer stations, we were able to negotiate a lower cost contract amendment and extension with RDC.

Fiscal Impact		Budget Account
Expense	\$ 3,439,700.00 2015	# 4490-44600-37148-54201
Select	\$	#
Select	\$	#
Select	\$	#
Approvals		Council Notifications
Dept Head	GIMPEL, KEN	Study Session PWC 10/20/14
Division Director	ROMERO, RICK	Other
Finance	LESESNE, MICHELE	Distribution List
Legal	WHALEY, HUNT	ttauscher@spokanecity.org
For the Mayor	SANDERS, THERESA	lbutz@spokanecity.org
Additional Approvals		mlesesne@spokanecity.org
Purchasing		



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

The term of the contract amendment and extension will mirror our Interlocal Agreement with the County (seven year initial term). This contract amendment will allow for the seamless transition of the transport and disposal of ash and bypass waste from the WTE Plant. The newly negotiated rate for transport and disposal for ash is going from \$51.03 per ton to \$50 per ton. The newly negotiated rate for transport and disposal of bypass waste is going from \$53.66 per ton to \$48 per ton. The newly negotiated transport and disposal rates will save the City approximately \$120,000 per year.

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List

BRIEFING PAPER
Public Works Committee
Solid Waste Disposal Department
October 13, 2014

Subject

Contract amendment/extension with Regional Disposal Company, Inc. (RDC) for transporting and disposal of ash and bypass waste from the WTE Plant.

Background

The City currently has a contract with RDC for transportation and disposal of ash from the WTE Plant and bypass waste from the two transfer stations. We currently pay RDC \$51.03 per ton for transport and disposal of ash and \$53.66 per ton for transport and disposal of bypass waste. With the transition of the Regional Solid Waste System and the County taking over operations of the two transfer stations, we were able to successfully negotiate a lower cost contract amendment and extension with RDC. The term of the contract amendment and extension will mirror our Interlocal Agreement with the County (seven year initial term).

Impact

This contract amendment will allow for the seamless transition of the transport and disposal of ash and bypass waste from the WTE Plant. The newly negotiated rate for transport and disposal for ash is going from \$51.03 per ton to \$50 per ton. The newly negotiated rate for transport and disposal of bypass waste is going from \$53.66 per ton to \$48 per ton. The newly negotiated transport and disposal rates will save the City approximately \$120,000 per year.

Action

Recommend approval.

Funding

This contract is funded by customer disposal fees at the waste to energy facility.

CONTRACT AMENDMENT

THIS CONTRACT AMENDMENT is between the CITY OF SPOKANE, a Washington State municipal corporation, as "City", and REGIONAL DISPOSAL COMPANY, a Washington General Partnership, whose address is 500 Roosevelt Grade Road, Roosevelt, Washington 99356, as "RDC". Jointly referred to herein as the "Parties".

WHEREAS, the Parties entered into a Contract wherein RDC agreed to provide the City with services for the acceptance, storage, handling, uploading, and transport, and disposal of ash, bypass and non-processible waste, among other related services; and

WHEREAS, the Parties agreed to amend the Contract in 1993, 1998, and to extend the Contract in 2011, in accordance with Section 20.1, as amended, the City provided notice to RDC by letter dated January 20, 2011 of the City's intention to renew the Contract through October 21, 2014 or October 21, 2015; and

WHEREAS, the Parties are approaching the end of the renewed term and are desirous of renewing and aligning this Contract for a further term to be in line with the new changes to the City's Solid Waste system and the new Interlocal Agreement (ILA) between the City and the County concerning the Waste to Energy Facility (WTE); and

WHEREAS, in order for the Parties to adapt to the changes in the City's Solid Waste system and to appropriately mirror the WTE ILA, a Contract Amendment between the City and RDC is necessary; -- Now, Therefore,

The parties agree as follows:

1. DOCUMENTS. The Contract dated July 26, 1991, any previous amendments and/or extensions/renewals thereto are incorporated by reference into this document as though written in full and shall remain in full force and effect except as provided herein.
2. EFFECTIVE DATE. This Contract Amendment shall become effective November 17, 2014, and remain in effect until completion of the Contract and all allowable Extensions.
3. AMENDMENT. Sections 7.1(b), 8.1(a), 8.1(b), 8.1(b)3 and 20.1, of the contract documents are amended to read as follows:

7.1(b) ~~delivery of Waste to the Contractor in accordance with the Request for Qualifications.~~ Delivery of all of the City's ash produced by the WTE. Delivery of all of the City's Bypass Waste and Non-processible Waste above and beyond 5,000 tons per year requiring disposal to the Contractor. The City at its sole discretion is allowed to manage up to 5,000 tons per year of Bypass Waste and Non-processible Waste disposal in a City owned landfill.

~~8.1(a) Base Service Fee. The City shall pay a contractor a Service Fee to include all costs incurred in providing services under this Contract, including but not limited to, the cost of applicable taxes, governmental permits (as the term is defined in Section 6.7), labor expense, equipment, materials, supplies, utility expenses, environmental protection, landfill depletion and pre-funded closure and post-closure expenses and all other costs associated with the services provided under this Contract. Effective November 17, 2014, the Service Fee shall be in accordance with the Contractor's Ash, Bypass Waste and Non-processible Waste Price Schedule attached hereto as Attachment Z.~~

8.1(b)

~~CPI Adjustment for Service Fee Components. Change all three references from .85 to .80.~~

8.1(b)3

~~The annual price escalation adjustment effective for calendar year 1999 and each subsequent year shall be as follows:~~

~~The CPI for the September preceding the beginning of each calendar year will be compared with the CPI for the previous September, to calculate the fractional change in CPI over twelve (12) months. This fractional change will be multiplied by .80 to calculate the Contract Adjustment. The previous year's Service Fee Components will then be increased by the Contract Adjustment percentage. These calculations are mathematically as follows:~~

~~Let N be the year for which the Service Fee is being calculated.~~

~~Let CPI (N-1) be the CPI for the September prior to year N.~~

~~Let CPI (N-2) be the CPI for the September two years prior to year N.~~

~~Fractional CPI Change = $(CPI \leq N-1 - CPI \leq N-2) / CPI \leq N-2$~~

~~Contract Adjustment = Fractional CPI Change * .80~~

~~Service Fee Component (N) = $(1 + \text{Contract Adjustment}) * \text{Service Fee Component (N-1)}$~~

~~In the event of a correction to a CPI, the adjusted Service Fee components shall be recalculated using the corrected CPI; however, there will be no recalculation of the adjusted Service Fee components for corrections to the CPI that occur after the period during which the annual adjustment based upon the CPI is in effect. The difference between the payments calculated on the basis of the CPI and the payments calculated on the basis of the corrected CPI shall be reimbursed to the appropriate party as follows:~~

~~(a) If the CPI is increased, the City shall pay the Contractor the difference in twelve (12) equal monthly installments; or~~

~~(b) If the CPI is decreased, the City shall deduct the difference in equal monthly amounts from Payments made to the Contractor during the next twelve (12) months.~~

~~In the event that the standard reference base period of the CPI is changed, the annual adjustment shall reflect the new base period in the first calendar year the new base period is available. Any unresolved dispute regarding any other change in the definition or calculation of the CPI that materially affects the Service Fee under this Article shall be resolved by arbitration in accordance with Article 16 of the Contract.~~

On January 1st of each year following 2015, City will adjust the disposal rates outlined in Attachment Z to reflect increases in the United States Department of Labor, Bureau of Labor Statistics, West-Size Class B/C, Consumer Price Index, all Items for All Urban Consumers (CPI-U) (the "Index"). The adjustment factor for computing annual rate adjustments shall be computed by dividing the Index number for October of the just-completed year by the Index number for October of the previous year. In the event the Index number stays the same or decreases, no rate adjustment will be made, and the next rate adjustment shall not occur until the Index number increases to a number exceeding the highest previous Index number, and shall be computed using the previous highest Index number.

Example Calculation of Annual Rate Adjustments:

	INDEX	ADJUST FACTOR	Ash Disposal Fee
Base Yr.N	125		\$50
N+1	128.844	1.030752	\$51.54
N+2	133.315	1.034710	\$53.33
N+3 *	132.474	No change	\$53.33
N+4 **	133	No change	\$53.33
N+5	137.748	1.033252	\$55.10
N+6	140.054	1.016741	\$56.02
* No change-Index decreased			
** No charge-Index did not exceed highest previous Index			

20.1 ~~The Term of the Contract shall begin on its execution and end ten (10) years from the date Waste is first accepted by the Contractor. The City shall have the right to extend the Contract for three (3) additional five-year periods under the same provisions and for the same Service Fees calculated in accordance with Article 8 of this Contract. The City shall give the Contractor nine (9) months' written notice of its intention to exercise its options to extend the Contract. In the event the City elects to extend the Contract, the~~

~~Contractor must provide to the City, at least one hundred eighty (180) days before the expiration of the current ten or five year period, a new bond or bonds satisfying the requirements of Section 6.4. The Term of the Contract shall begin on November 17, 2014 and run through November 16, 2021. Notwithstanding the above provision, this Contract may be extended for three (3) additional one (1) year terms, or terms otherwise agreed upon by mutual written agreement of the Parties.~~

Dated: _____

CITY OF SPOKANE

By: _____
Title: _____

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Dated: _____

REGIONAL DISPOSAL COMPANY

E-Mail address, if available:

By: _____
Title: _____

Attachments that are part of this Contract Amendment:

Attachment Z: Contractor's Ash, Bypass Waste and Non-processible Waste Price Schedule attached hereto

ATTACHMENT Z**Waste to Energy Facility Ash, Bypass Waste and Non-processible Waste Pricing
November 17, 2014**

WTE Ash	\$50 per ton
WTE Bypass Waste	\$48 per ton
WTE Non-processible Waste	\$48 per ton

**Agenda Sheet for City Council Meeting of:**

11/03/2014

<u>Date Rec'd</u>	10/23/2014
<u>Clerk's File #</u>	OPR 2014-0732
<u>Renews #</u>	

<u>Submitting Dept</u>	SPOKANE REGIONAL SOLID WASTE	<u>Cross Ref #</u>	
<u>Contact Name/Phone</u>	KEN GIMPEL 625-6532	<u>Project #</u>	
<u>Contact E-Mail</u>	KGIMPEL@SPOKANECITY.ORG	<u>Bid #</u>	
<u>Agenda Item Type</u>	Contract Item	<u>Requisition #</u>	CR 14875
<u>Agenda Item Name</u>	4490 CONTRACT WITH ASSETPOINT		

Agenda Wording

Contract with AssetPoint (Greenville, SC) for TabWare Maintenance Management System and support for use at the Waste to Energy Facility from November 17, 2014 to November 16, 2019. \$108,500.00 for the first year.

Summary (Background)

The WTEF uses TabWare Computerized Maintenance Management System for maintenance of the facility's assets. All equipment history, inventory, purchases, work orders and planned maintenance activities are archived within TabWare. This information is critical to the future operations of the facility. AssetPoint is the sole provider of TabWare and its components and the factory-authorized provider of warranty services, training and support.

<u>Fiscal Impact</u>		<u>Budget Account</u>	
Expense	\$ 108,500.00	#	4490-44100-37148-54201
Select	\$	#	
Select	\$	#	
Select	\$	#	
<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	GIMPEL, KEN	<u>Study Session</u>	PWC 10-23-14
<u>Division Director</u>	ROMERO, RICK	<u>Other</u>	
<u>Finance</u>	LESESNE, MICHELE	<u>Distribution List</u>	
<u>Legal</u>	WHALEY, HUNT	ttauscher@spokanecity.org	
<u>For the Mayor</u>	SANDERS, THERESA	lbutz@spokanecity.org	
<u>Additional Approvals</u>		mlesesne@spokanecity.org	
<u>Purchasing</u>			



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

The audit findings and corrective action documents shall remain posted until the auditor/auditing organization determines the findings have been officially mitigated.

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List

CONTRACT

THIS CONTRACT is between the CITY OF SPOKANE, a Washington State municipal corporation, as "City", and ASSETPPOINT, whose address is 770 Pelham Road, Greenville, South Carolina 29615, as "Contractor".

The parties agree as follows:

1. PERFORMANCE. The Contractor shall provide TabWare® SOFTWARE, MAINTENANCE AND SUPPORT FOR USE AT THE CITY'S WASTE TO ENERGY FACILITY (WTEF), in accordance with the Contractor's quote emailed to the City dated September 25, 2014 (attached hereto).
2. CONTRACT TERM. The Contract shall begin November 17, 2014 and run through November 16, 2019, unless terminated earlier. Upon expiration this Contract has the possibility of an extension, upon mutual agreement of the parties, for another five (5) year term.
3. COMPENSATION. The City shall pay the Contractor ONE HUNDRED EIGHT THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$108,500.00), for the first year, excluding applicable taxes, as full compensation for everything furnished and done under this Contract.
4. PAYMENT. The Contractor shall send its applications for payment to the Waste To Energy Facility, 2900 South Geiger Boulevard, Spokane, Washington 99224. Payment will be made within thirty (30) days after receipt of the Contractor's invoice.
5. COMPLIANCE WITH LAWS. Each party shall comply with all applicable federal, state, and local laws and regulations.
6. ASSIGNMENTS. This Contract is binding on the parties and their heirs, successors, and assigns. Neither party may assign, transfer or subcontract its interest, in whole or in part, without the other party's prior written consent.
7. DISPUTES. This Contract shall be performed under the laws of the State of Washington. Any litigation to enforce this Contract or any of its provisions shall be brought in Spokane County, Washington.
8. AMENDMENTS. This Contract may be amended at any time by mutual written agreement.
9. ANTI-KICKBACK. No officer or employee of the City of Spokane, having the

power or duty to perform an official act or action related to this Contract shall have or acquire any interest in the Contract, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in this Contract.

10. TERMINATION. Either party may terminate this Contract by sixty (60) days written notice to the other party. In the event of such termination, the City shall pay the Contractor for all work previously authorized and performed prior to the termination date.

11. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the City, its officers and employees, from and against all claims for damages, liability, cost and expense arising out of the negligent conduct of the Contractor, its officers, employees and subcontractors in connection with the performance of the Contract, except to the extent of those claims arising from the negligence of the City, its officers and employees.

12. SEVERABILITY. In the event any provision of this Contract should become invalid, the rest of the Contract shall remain in full force and effect.

13. STANDARD OF PERFORMANCE. The silence or omission in the Contract regarding any detail required for the proper performance of the work, means that the Contractor shall perform the best general practice and that only material and workmanship of the best quality are to be used.

14. NONDISCRIMINATION. No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Contract because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation including gender expression or gender identity, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. The Contractor agrees to comply with, and to require that all subcontractors comply with, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, as applicable to the Contractor.

15. BUSINESS REGISTRATION REQUIREMENT. Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid annual business registration. The Contractor shall be responsible for contacting the State of Washington Business License Services at <http://bls.dor.wa.gov> or 1-800-451-7985 to obtain a business registration. If the Contractor does not believe it is required to obtain a business registration, it may contact the City's Taxes and Licenses Division at (509) 625-6070 to request an exemption status determination.

16. INSURANCE. During the term of the Contract, the Contractor shall maintain in force at its own expense, the following insurance coverages:

- A. General Liability Insurance on an occurrence basis, with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage.
- B. Professional Liability Insurance with a combined single limit of not less than \$1,000,000 each claim, incident or occurrence. This is to cover damages caused by the error, omission, or negligent acts related to the professional services to be provided under this contract. The coverage must remain in effect for at least three (3) years after the contract is completed.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the City.

As evidence of the insurance coverages required by this Contract, the Contractor shall furnish acceptable insurance certificates to the City at the time it returns the signed Contract. The certificate shall specify all of the parties who are additional insured, and include applicable policy endorsements, and the deductible or retention level, as well as policy limits. Insuring companies or entities are subject to City acceptance and must have a rating of A- or higher by A.M. Best. Copies of all applicable endorsements shall be provided and, if requested complete copies of insurance policies shall be provided to the City. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

17. AUDIT / RECORDS. The Contractor and its subcontractors shall maintain for a minimum of three (3) years following final payment all records related to its performance of the Contract. The Contractor and its subcontractors shall provide access to authorized City representatives, upon thirty (30) days prior written notice and in a reasonable manner to inspect and copy any such record. In the event of conflict between this provision and related auditing provisions required under federal law applicable to the Contract, the federal law shall prevail. Audits are limited to once annually.

Dated: _____

CITY OF SPOKANE

By: _____

Title: _____

Attest: _____

City Clerk

Dated: _____

ASSETPOINT

By: _____

Title: _____

E-Mail address, if available: _____

Approved as to form:

Assistant City Attorney



TABWARETM
Maximizing Asset Performance

TabWare
Preliminary Investment Review

Bob Houlihan, Sr. Account Manager

September 25, 2014



Preliminary Estimates

Description	Qty	Unit Price	Extension
TabWare Named License	15	\$ 1,875	\$ 28,125
Requestor Plant Wide License	1	\$ 7,500	\$ 7,500
Analytics Authoring and Viewing Licenses	1	\$ 10,000	October Promotion
Document Linking License	1	\$ 300	\$ 300
Data Import Utility License	1	\$ 7,500	<u>\$ 7,500</u>
Subtotal Software			\$ 43,425
Yearly Support			\$ 8,685
Yearly Hosting			<u>\$ 13,200</u>
Subtotal Yearly Fees			\$ 21,885
Data Conversion from Wheelabrator to Spokane	150	\$ 200	\$ 30,000
Onsite Training	20	\$ 200	\$ 4,000
Project Management	20	\$ 200	<u>\$ 4,000</u>
Subtotal Services			<u><u>\$ 38,000</u></u>
Total			\$ 103,310

Software Options

Description	Qty	Unit Price	Extension
TabWare Technician for Remote Work Orders	1	\$ 1,295	\$ 1,295
Scheduling-Plant wide Usage	1	\$ 7,500	\$ 7,500
CrossRoads Interface Toolkit	1	\$ 15,000	\$ 15,000
TabLink Online Purchasing for Spare Parts	1	\$ 300	\$ 300

Next Steps

Action	Date	Responsibility	Completed
Review and Finalize Investment	9/30/2014	Chuck and Bob	
Internal Reviews	10/1/2014	Chuck	
Finalize Project Scope	10/3/2014	Chuck, Bob and Rich	
Issue Contracts	10/8/2014	Chuck	
Project Kickoff	10/15/2014	Chuck and Rich	
Go Live	11/15/2014	Chuck and Rich	

BRIEFING PAPER
Public Works Committee
Solid Waste Disposal Department
October 13, 2014

Subject

Sole source authorization and contract with AssetPoint for the purchase of TabWare® Computerized Maintenance Management System and associated software.

Background

The waste to energy facility currently uses TabWare®, a Computerized Maintenance Management System for maintenance of the waste to energy facility's assets. All of the equipment history, inventory, purchases, work orders (standard, safety and emergency), and planned maintenance activities are archived within TabWare®. This information is critical to the future operations of the facility. AssetPoint is the sole provider of TabWare® and its components; it is the sole provider of factory-authorized warranty services and goods or services and AssetPoint is the only provider of training, support and future product enhancements for TabWare®.

Impact

Purchase of TabWare® and accompanying software and support will help facilitate a smooth transition to City operations of the waste to energy. Estimated cost for the first year \$108,500, excluding taxes if applicable.

Action

Recommend approval.

Funding

Funding is included in the 2014 waste to energy operations budget.



Agenda Sheet for City Council Meeting of:
11/03/2014

Date Rec'd	10/22/2014
Clerk's File #	OPR 2007-0767
Renews #	

Submitting Dept	PUBLIC AFFAIRS/COMMUNICATIONS	Cross Ref #	
Contact Name/Phone	JOHN DELAY 6355	Project #	
Contact E-Mail	JDELAY@SPOKANECITY.ORG	Bid #	
Agenda Item Type	Contract Item	Requisition #	CR14842
Agenda Item Name	1940 - CABLE EDUCATIONAL ACCESS AGREEMENT WITH FRIENDS OF KSPS		

Agenda Wording

Amendment No. 4 to Cable Educational Access Agreement with Friends of KSPS, one of the designated operators of Spokane's education access channels, providing a grant (from PEG Fees) for capital expenditures for calendar year 2014 - Up to \$88,000

Summary (Background)

Under the City's Cable Franchise Agreement with Comcast, monies are set aside for public, educational, and government access facilities and equipment needs. By agreement, originally approved in 2007, the City contacts with KSPS to distribute Comcast Grant Funds to C.A.B.L.E participants. (Educational Access Users)

Fiscal Impact		Budget Account	
Expense	\$ \$88,000	#	1940-37330-28800-54201
Select	\$	#	
Select	\$	#	
Select	\$	#	
Approvals		Council Notifications	
Dept Head	CODDINGTON, BRIAN	Study Session	
Division Director		Other	10/28/14 Finance & Tech
Finance	LESESNE, MICHELE	Distribution List	
Legal	DALTON, PAT	bcoddington@spokanecity.org	
For the Mayor	SANDERS, THERESA	jdelay@spokanecity.org	
Additional Approvals		gstokes@ksps.org	
Purchasing		mlesesne@spokanecity.org	



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

The term of the contract amendment and extension will mirror our Interlocal Agreement with the County (seven year initial term). This contract amendment will allow for the seamless transition of the transport and disposal of ash and bypass waste from the WTE Plant. The newly negotiated rate for transport and disposal for ash is going from \$51.03 per ton to \$50 per ton. The newly negotiated rate for transport and disposal of bypass waste is going from \$53.66 per ton to \$48 per ton. The newly negotiated transport and disposal rates will save the City approximately \$120,000 per year.

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List

CABLE EDUCATIONAL ACCESS AGREEMENT
FRIENDS OF KSPS
Amendment No. 4

THIS AGREEMENT is between the CITY OF SPOKANE, a Washington State municipal corporation, as "City," and Friends of KSPS, whose address is 3911 South Regal Street, Spokane, Washington 99223, as "KSPS."

WHEREAS, the City entered into an Agreement dated February 6, 2007, with Spokane School District 81 that provided PEG monies to KSPS for public educational programming, and the above mentioned agreement has been assigned from Spokane School District 81 to KSPS in 2013; and

WHEREAS, KSPS has agreed to continue to provide public educational television on the cable channel designated for that purpose; and

WHEREAS, City staff has proposed and KSPS has accepted capital grant fund reimbursement for 2014 needs from Comcast PEG monies with the grant not involving funds other than PEG fees dedicated to such purposes under the Comcast franchise; and

WHEREAS, KSPS has agreed to continue to public educational television programming and the continued operation of the channel is in the public interest;
-- Now, Therefore,

The parties agree as follows:

1. DOCUMENTS. The Agreement dated February 6, 2007, any previous amendments and/or extensions/renewals thereto are incorporated by reference into this document as though written in full and shall remain in full force and effect except as provided herein.

2. 2014 CAPITAL FUNDING. Subject to applicable Franchise requirements as provided in the cable franchise between the City and the Comcast cable company (C-33571) for PEG Fee source expenditures, the City agrees to pay KSPS from the "PEG Fee" resource identified in Section 19 J of the franchise, a grant up to EIGHTY EIGHT THOUSAND AND NO/100 DOLLARS (\$88,000.00) for capital expenditures for the calendar year 2014. Future grant funding at this value is not a guarantee, and is subject to change on a yearly basis.

A. KSPS agrees to continue to present community public programming on the cable channel designated for this purpose and represents to the City that it has adequate operational funding and other resources necessary to accomplish this function; and

B. KSPS understands its obligation to be sure that all expenditures of PEG fee grant monies are consistent with any Comcast franchise restrictions for use of said monies. KSPS shall furnish the City with reasonable proof, upon request, that its use meets cable franchise requirements. In the event KSPS cannot do so to City's satisfaction, KSPS is responsible to reimburse the City any reduction in PEG funding obligations by Comcast under Section 19 J (4). CKSPS further agrees to indemnify and hold harmless the City from any other loss or liability for failure to the City from failure to satisfy Comcast; and

C. This is a grant from PEG fee resources only. Under no circumstances shall the City be independently liable to KSPS for payment of any sums under this agreement, directly or indirectly by way of reduction of other monies due and payable by Comcast.

3. FUNDING APPROVAL. PEG funds and expenses will be approved upon submission of expense receipts to the City.

Dated: _____

CITY OF SPOKANE

By: _____
Mayor

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Dated: _____

Friends of KSPS

Email Address:
gstokes@ksps.org

By:  _____

Title: General Manager

**Agenda Sheet for City Council Meeting of:**

11/03/2014

Date Rec'd

10/22/2014

Clerk's File #

OPR 2014-0731

Renews #**Submitting Dept**

ASSET MANAGEMENT

Contact Name/Phone

MIKE WERNER 625-6286

Contact E-Mail

MWERNER@SPOKANECITY.ORG

Agenda Item Type

Contract Item

Agenda Item Name

5900 - HILLYARD POLICE PRECINCT RENOVATION

Cross Ref #**Project #****Bid #****Requisition #**

EBO

Agenda Wording

Contract with Western States Construction, Inc. (Valley Ford, WA) for construction/remodel of a new Hillyard Police Precinct located at 5124 N. Market St., Spokane, WA, for an amount not to exceed \$324,304.70 which includes tax and a 10% reserve.

Summary (Background)

Proposals were received in response to the Request for Bids and Western State Construction was chosen as low bidder. This contract provides for the development and renovation of an existing steel structure currently used for storage and police activities. This new precinct will provide the area with a local police presence, a sense of security, reduced crime rates and a safer environment. The construction involves the renovation of the existing structure to accommodate office space,

Fiscal Impact**Budget Account**

Expense \$ 324,304.70

5901 79200 94000 56203

Select \$

#

Select \$

#

Select \$

#

Approvals**Council Notifications****Dept Head**

MILLER, KATHERINE E

Study Session**Division Director**

QUINTRALL, JAN

Other

PCED 10/6/14

Finance

LESESNE, MICHELE

Distribution List**Legal**

WHALEY, HUNT

lhattenburg@spokanecity.org

For the Mayor

SANDERS, THERESA

mlesesne@spokanecity.org

Additional Approvals

mhughes@spokanecity.org

Purchasing

mwerner@spokanecity.org

jknight@spokanecity.org

cwahl@spokanecity.org

ewickert@spokanecity.org



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

.

Summary (Background)

public reception area, security room, conference room, locker rooms and dining area and will house between 15 and 20 officers.

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List

BRIEFING PAPER
Asset Management Group
Tuesday, October 14, 2014

Subject:

This is with regard to the construction of the new Hillyard Police Precinct.

Background:

The Hillyard Police Precinct is the development and renovation of an existing steel structure located in the Hillyard area, currently utilized by the police for storage and police activities. The aim of the renovation is to provide the area with a local Police Precinct. The construction involves the renovation of the existing structure to accommodate office space for police, public reception area, security room, conference room, locker rooms and dining area.

Impacts:

The main goal for this project is to provide improved housing for the Hillyard Police to operate from. The project is aimed at improving crime rates in the region, to provide an improvement to the local standard of living as well as to provide improved facilities for the Hillyard Police.

Action:

We have selected a contractor and are in the process of awarding the job.

CONTRACT

THIS CONTRACT is between the CITY OF SPOKANE, a Washington State municipal corporation, as "City", and WESTERN STATES CONSTRUCTION, INC., whose address is P.O. Box 208, Valleyford, Washington 99036, as "Contractor".

The parties agree as follows:

1. PERFORMANCE. The Contractor will do all work, furnish all labor, materials, tools, construction equipment, transportation, supplies, supervision, organization and other items of work and costs necessary for the proper execution and completion of the work described in the specifications entitled #4054-14 (REBID) HILLYARD POLICE PRECINCT BUILDING REMODEL.
2. CONTRACT DOCUMENTS. The contract documents are this Contract, the Contractor's completed bid proposal form, contract provisions, contract plans, standard specifications, standard plans, addenda, various certifications and affidavits, supplemental agreements, change orders, and subsurface boring logs (if any). Federal and state requirements and the terms of this Contract, respectively, supersede other inconsistent provisions. These contract documents are on file in the Engineering Services Department, and are incorporated into this Contract by reference, as if they were set forth at length.
3. TIME OF PERFORMANCE. The Contractor shall commence work within TEN (10) WORKING DAYS (10 days) after the date of the City's notice to proceed, and once commenced all work must be completed in strict accordance with this Contract within THIRTY FIVE (35) WORKING DAYS (35 days) after the project start date.
4. TERMINATION. This Contract may be terminated in accordance with the contract documents.
5. COMPENSATION. The City will pay TWO HUNDRED NINETY FOUR THOUSAND FIVE HUNDRED SEVENTY SEVEN AND NO/100 DOLLARS (\$294,577.00), the amount in the Contractor's proposal, as full compensation for everything furnished and done under this Contract, subject to allowable additions and deductions as provided.
6. TAXES. Retail sales tax where applicable shall be added to the amounts due and the Contractor shall be responsible for making payment of the tax to Washington State. The City reserves the right to claim any exemption authorized by law.
7. PAYMENT. The Contractor will send its applications for payment to the Asset Management Department – 2nd Floor – City Hall, 808 West Spokane Falls Boulevard, Spokane, Washington 99201. Payment will be made within thirty (30) days after receipt of the Contractor's application except as provided in RCW 39.76. Five percent (5%) of the Contract price may be retained by the City, in accord with RCW 60.28 for a minimum of forty five (45) days after final acceptance, as a trust fund for the protection and payment of: the claims of any person arising under the Contract; and the State with respect to taxes imposed pursuant to Titles 50, 51 and 82 RCW which may be due from the Contractor.

8. INDEMNIFICATION.

- A. The Contractor is an independent contractor and not the agent or employee of the City. No liability shall attach to the City for entering into this Contract or because of any act or omission of the Contractor except as expressly provided.
- B. The Contractor agrees to defend, indemnify and hold the City and Engineers harmless from any and all claims, demands, losses and liabilities to or by third parties arising from, resulting from or connected with services performed or to be performed under this Contract by the Contractor, its agents or employees to the fullest extent permitted by law. The Contractor's duty to indemnify the City and Engineers shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City, its agents or employees. The Contractor's duty to indemnify the City and Engineers for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) the City or its agents or employees, and (b) the Contractor or its agents or employees, shall apply only to the extent of negligence of the Contractor or its agents or employees. Contractor's duty to defend, indemnify and hold the City and Engineers harmless shall include, as to all claims, demands, losses and liability to which it applies, the City's personnel-related costs, reasonable attorneys' fees, court costs and all other claim-related expenses.
- C. **The Contractor waives immunity under Title 51 RCW to the extent necessary to protect the City's interests under this indemnification. This provision has been specifically negotiated.**

9. BONDS. The Contractor may not commence work until it obtains all insurance, permits and bonds required by the contract documents and applicable law. This includes the execution of a performance bond and a payment bond on the forms attached, each equal to one hundred percent (100%) of the contract price, and written by a corporate surety company licensed to do business in Washington State.

10. INSURANCE. The Contractor represents that it and its employees, agents and subcontractors, in connection with the Contract, are protected against the risk of loss by the insurance coverages required in the contract documents. The policies shall be issued by companies that meet with the approval of the City Risk Manager. The policies shall not be canceled without at least minimum required written notice to the City as Additional Insured.

11. CONTRACTOR'S WARRANTY. The Contractor's warranty for all work, labor and materials shall be in accordance with the contract documents.

12. WAGES. The Contractor and all subcontractors will submit a "Statement of Intent to Pay Prevailing Wages" certified by the industrial statistician of the Department of Labor and Industries, prior to any payments. The "Statement of Intent to Pay Prevailing Wages" shall include: (1) the Contractor's registration number; and (2) the prevailing wages under RCW 39.12.020 and the number of workers in each classification. Each voucher claim submitted by the Contractor for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the "Statement(s) of Intent to Pay Prevailing Wages" on file with the City. Prior to the payment of funds held under RCW 60.28, the Contractor and subcontractors must submit an "Affidavit of Wages Paid" certified by the industrial statistician.

13. STATEMENT OF INTENT TO PAY PREVAILING WAGES TO BE POSTED. The

Contractor and each subcontractor required to pay the prevailing rate of wages shall post in a location readily visible at the job site: (1) a copy of a "Statement of Intent to Pay Prevailing Wages" approved by the industrial statistician of the State Department of Labor and Industries; and (2) the address and telephone number of the industrial statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.

14. FEES. Reimbursement for the fees paid by the Contractor for the approval of "Statements of Intent to Pay Prevailing Wages" and certification of "Affidavits of Wages Paid" by the industrial statistician of the State Department of Labor and Industries will be added to the actual submittal of the documents to the industrial statistician. In order to receive this reimbursement the Contractor will be required to submit to the City, prior to final acceptance of the work, a list of its subcontractors at all tiers and have their "Statements of Intent to Pay Prevailing Wages" on file with the City.

15. SUBCONTRACTOR RESPONSIBILITY. The Contractor must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350(1) and possesses an electrical contractor license, if required by chapter 19.28 RCW, or an elevator contractor license, if required by chapter 70.87 RCW. The responsibility criteria are listed in the request for bids document.

16. NONDISCRIMINATION. No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Contract because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation including gender expression or gender identity, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. The Contractor agrees to comply with, and to require that all subcontractors comply with, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, as applicable to the Contractor.

17. ASSIGNMENTS. The Contractor may not assign, transfer or sublet any part of the work under this Contract, or assign any monies due, without the written approval of the City, except as may be required by law. In the event of assignment of accounts or monies due under this Contract, the Contractor specifically agrees to give immediate written notice to the City Administrator, no later than five (5) business days after the assignment.

18. ANTI-KICKBACK. No officer or employee of the City of Spokane, having the power or duty to perform an official act or action related to this Contract shall have or acquire any interest in the Contract, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in the Contract.

19. COMPLIANCE WITH LAWS. Each party shall comply with all applicable federal, state, and local laws and regulations that are incorporated herein by reference.

21. DISPUTES. This Contract shall be performed under the laws of the State of Washington. Any litigation to enforce this Contract or any of its provisions shall be brought in Spokane County, Washington.

22. SEVERABILITY. In the event any provision of this Contract should become invalid, the rest of the Contract shall remain in full force and effect.

23. AUDIT / RECORDS. The Contractor and its subcontractors shall maintain for a minimum of three (3) years following final payment all records related to its performance of the Contract. The Contractor and its subcontractors shall provide access to authorized City representatives, at reasonable times and in a reasonable manner to inspect and copy any such record. In the event of conflict between this provision and related auditing provisions required under federal law applicable to the Contract, the federal law shall prevail.

24. BUSINESS REGISTRATION REQUIREMENT. Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid annual business registration. The Contractor shall be responsible for contacting the State of Washington Business License Services at <http://bls.dor.wa.gov> or 1-800-451-7985 to obtain a business registration. If the Contractor does not believe it is required to obtain a business registration, it may contact the City's Taxes and Licenses Division at (509) 625-6070 to request an exemption status determination.

25. CONSTRUAL. The Contractor acknowledges receipt of a copy of the contract documents and agrees to comply with them. The silence or omission in the contract documents concerning any detail required for the proper execution and completion of the work means that only the best general practice is to prevail and that only material and workmanship of the best quality are to be used. This Contract shall be construed neither in favor of nor against either party.

Dated: _____

CITY OF SPOKANE

By: _____

Title: _____

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Dated: _____

Dated: _____

WESTERN STATES CONSTRUCTION,
WESTERN STATES CONSTRUCTION,

Email Address, if available:

By: _____

Title: _____

Attachments that are a part of this Contract:

Payment Bond

Performance Bond

Contractor's Bid Proposal submitted to the City on September 29, 2014

14-574

PAYMENT BOND

We, WESTERN STATES CONSTRUCTION, INC., as principal, and
We, WESTERN STATES CONSTRUCTION, INC., as principal, and
are held and firmly bound to the City of Spokane, Washington, in the sum of TWO HUNDRED
NINETY FOUR THOUSAND FIVE HUNDRED SEVENTY SEVEN AND NO/100
DOLLARS (\$294,577.00) for the payment of which, we bind ourselves and our legal
representatives and successors, jointly and severally by this document.

The principal has entered into a Contract with the City of Spokane, Washington, to do all
work and furnish all materials for the #4054-14 (REBID) HILLYARD POLICE PRECINCT
BUILDING REMODEL project. If the principal shall:

A. pay all laborers, mechanics, subcontractors, material suppliers and all person(s) who shall

supply such person or subcontractors;

- B. pay all taxes and contributions, increases and penalties as authorized by law including payment of all taxes incurred on the Contract under title 50 and 51 Revised Code of Washington (RCW) and all taxes imposed on the principal under Title 82 RCW; and
- C. comply with all applicable federal, state and local laws and regulations;

then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The surety hereby waives notice of and consents to any contract alteration or extension of time made by the City. Any judgment obtained against the City, which relates to or is covered by the contract or this bond, shall be conclusive against the principal and the surety, as to the amount of damages, and their liability, if reasonable notice of the suit has been given.

SIGNED AND SEALED on _____.

WESTERN STATES CONSTRUCTION,
WESTERN STATES CONSTRUCTION,

By: _____

Title: _____

A valid POWER OF ATTORNEY
for the surety's agent must
accompany this bond.

AS SURETY

By: _____
Its Attorney in Fact

STATE OF WASHINGTON)
) .ss
County of _____)

I certify that I know or have satisfactory evidence that _____
_____ signed this document; on oath stated
that he/she was authorized to sign the document and acknowledged it as the agent or
representative of the named surety company which is authorized to do business in the State of
Washington, for the uses and purposes mentioned in this document.

DATED on _____.

Signature of Notary

My appointment expires _____

Approved as to form:

Assistant City Attorney

PERFORMANCE BOND

We, WESTERN STATES CONSTRUCTION, INC., as principal, and
We, WESTERN STATES CONSTRUCTION, INC., as principal, and
are held and firmly bound to the City of Spokane, Washington, in the sum of TWO HUNDRED
NINETY FOUR THOUSAND FIVE HUNDRED SEVENTY SEVEN AND NO/100
DOLLARS (\$294,577.00) for the payment of which, we bind ourselves and our legal
representatives and successors, jointly and severally by this document.

The principal has entered into a Contract with the City of Spokane, Washington, to do all
work and furnish all materials for the #4054-14 (REBID) HILLYARD POLICE PRECINCT
BUILDING REMODEL project. If the principal shall:

- A. promptly and faithfully perform the contract, and any contractual guaranty and indemnify
and hold harmless the City from all loss, damage or claim which may result from any act
or omission of the principal, its agents, employees, or subcontractors; and
- B. comply with all applicable federal, state and local laws and regulations;

then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The surety hereby waives notice of and consents to any contract alteration or extension of
time made by the City. Any judgment obtained against the City, which relates to or is covered by
the contract or this bond, shall be conclusive against the principal and the surety, not only as to
the amount of damages, but also as to their liability, if reasonable notice of the suit has been
given.

SIGNED AND SEALED on _____

WESTERN STATES CONSTRUCTION,
WESTERN STATES CONSTRUCTION,

By: _____

Title: _____

_____,
AS SURETY

A valid POWER OF ATTORNEY
for the surety's agent must
accompany this bond.

By: _____
Its Attorney in Fact

STATE OF WASHINGTON)
) ss.
County of _____)

I certify that I know or have satisfactory evidence that _____
_____ signed this document; on oath stated that
he/she was authorized to sign the document and acknowledged it as the agent or representative
of the named surety company which is authorized to do business in the State of Washington, for
the uses and purposes mentioned in this document.

DATED on _____.

Signature of Notary

My appointment expires _____

Approved as to form:

Assistant City Attorney

**Agenda Sheet for City Council Meeting of:**

11/03/2014

Date Rec'd

10/22/2014

Clerk's File #

ORD C35173

Renews #**Submitting Dept**

ASSET MANAGEMENT

Cross Ref #

C-35062

Contact Name/Phone

MIKE WERNER 625-6286

Project #**Contact E-Mail**

MWERNER@SPOKANECITY.ORG

Bid #**Agenda Item Type**

Emergency Budget Ordinance

Requisition #**Agenda Item Name**

5900 - EBO - HILLYARD POLICE PRECINCT

Agenda Wording

An ordinance amending Ordinance No. C-35062, passed the City Council November 25, 2013, and entitled, "An ordinance adopting the Annual Budget of the City of Spokane for 2014, making appropriations to the various funds, departments, and programs of

Summary (Background)

As part of the City's ongoing strategy to surplus and dispose of properties that are no longer necessary and reinvest the resulting dollars in long-term facility needs and related to the remodel and rehabilitation of the existing City property on North Market Street as a police precinct, Staff is requesting this Emergency Budget Ordinance. The reallocation of \$375,000 from the sale of the formerly City-owned Anthony's property will allow for the development of the North Market Precinct, bringing

Fiscal Impact**Budget Account**

Neutral \$

#

Select \$

#

Select \$

#

Select \$

#

Approvals**Council Notifications****Dept Head**

WERNER, MICHAEL

Study Session**Division Director**

QUINTRALL, JAN

Other

PCED 10/6/14

Finance

LESESNE, MICHELE

Distribution List**Legal**

DALTON, PAT

lhattenburg@spokanecityorg

For the Mayor

SANDERS, THERESA

lwilliams@spokanecity.org

Additional Approvals

mhughes@spokanecity.org

Purchasing

mwerner@spokanecity.org

jknight@spokanecity.org

htrautman@spokanecity.org



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

the City of Spokane government for the fiscal year ending December 31, 2014, and providing it shall take effect immediately upon passage", and declaring an emergency.

Summary (Background)

bringing community policing to the Hillyard Area.

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List

ORDINANCE NO C35173

An ordinance amending Ordinance No. C-35062, passed the City Council November 25, 2013, and entitled, "An ordinance adopting the Annual Budget of the City of Spokane for 2014, making appropriations to the various funds, departments, and programs of the City of Spokane government for the fiscal year ending December 31, 2014, and providing it shall take effect immediately upon passage", and declaring an emergency.

WHEREAS, subsequent to the adoption of the 2014 budget Ordinance No. C-35062, as above entitled, and which passed the City Council November 25, 2013, it is necessary to make changes in the appropriations of the Asset Management Fund, which changes could not have been anticipated or known at the time of making such budget ordinance; and

WHEREAS, this ordinance has been on file in the City Clerk's Office for five days; - Now, Therefore,

The City of Spokane does ordain:

Section 1. That in the budget of the Asset Management Fund and the budget annexed thereto with reference to the Asset Management Fund, the following changes be made:

From:	5901-99999	Asset Management Fund	
	99999-	Unappropriated Reserves	\$ 375,000
To:	5901-79200	Asset Management Fund	
	94000-56203	Other Improvements	\$ 375,000

Section 2. It is, therefore, by the City Council declared that an urgency and emergency exists for making the changes set forth herein, such urgency and emergency arising from the need to budget for capital improvements to the Hillyard Police Precinct, and because of such need, an urgency and emergency exists for the passage of this ordinance, and also, because the same makes an appropriation, it shall take effect and be in force immediately upon its passage.

Passed the City Council _____

Council President

Attest: _____
City Clerk

Approved as to form: _____
Assistant City Attorney

Mayor

Date

Effective Date



Agenda Sheet for City Council Meeting of:
11/03/2014

Date Rec'd	10/22/2014
Clerk's File #	RES 2014-0104
Renews #	
Cross Ref #	
Project #	
Bid #	
Requisition #	

Submitting Dept	PLANNING & DEVELOPMENT
Contact Name/Phone	ELDON BROWN 625-6305
Contact E-Mail	EBROWN@SPOKANECITY.ORG
Agenda Item Type	Resolutions
Agenda Item Name	0370 - RESOLUTION - STREET VACATION

Agenda Wording

Resolution setting hearing before the City Council for December 8, 2014 for the vacation of an un-named portion of right-of-way, 60 ft. by 447.97 ft., approximately 650 ft. north of 8018 W. Sunset Hwy., requested by Rodney Black and John McCormack.

Summary (Background)

A petition was submitted representing 100% of the abutting property. Staff requests that City Council set a public hearing on the vacation petition.

Fiscal Impact		Budget Account	
Neutral	\$	#	
Select	\$	#	
Select	\$	#	
Select	\$	#	
Approvals		Council Notifications	
<u>Dept Head</u>	CHESNEY, SCOTT	<u>Study Session</u>	
<u>Division Director</u>	QUINTRALL, JAN	<u>Other</u>	PCED - 10/20/14
<u>Finance</u>	LESESNE, MICHELE	<u>Distribution List</u>	
<u>Legal</u>	RICHMAN, JAMES	lhattenburg@spokanecity.org	
<u>For the Mayor</u>	SANDERS, THERESA	dsteele@spokanecity.org	
<u>Additional Approvals</u>			
<u>Purchasing</u>			



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

the City of Spokane government for the fiscal year ending December 31, 2014, and providing it shall take effect immediately upon passage", and declaring an emergency.

Summary (Background)

bringing community policing to the Hillyard Area.

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List

R E S O L U T I O N

WHEREAS, on **July 25, 2013**, the Spokane City Council received a petition for the vacation of an un-named portion of right of way, 60 feet by 447.97 feet, approximately 650 feet north of 8018 West Sunset Highway, in Section 20, T25N, R42E, W.M., Spokane, Washington ; and

WHEREAS, it was determined that the petition was signed by the owners of more than two-thirds of the property abutting an un-named portion of right of way, 60 feet by 447.97 feet, approximately 650 feet north of 8018 West Sunset Highway

WHEREAS, the City Council desires to set a time and date through this resolution to hold a public hearing on the petition to vacate the above property in the City of Spokane;

NOW, THEREFORE,

The City Council does hereby resolve the following:

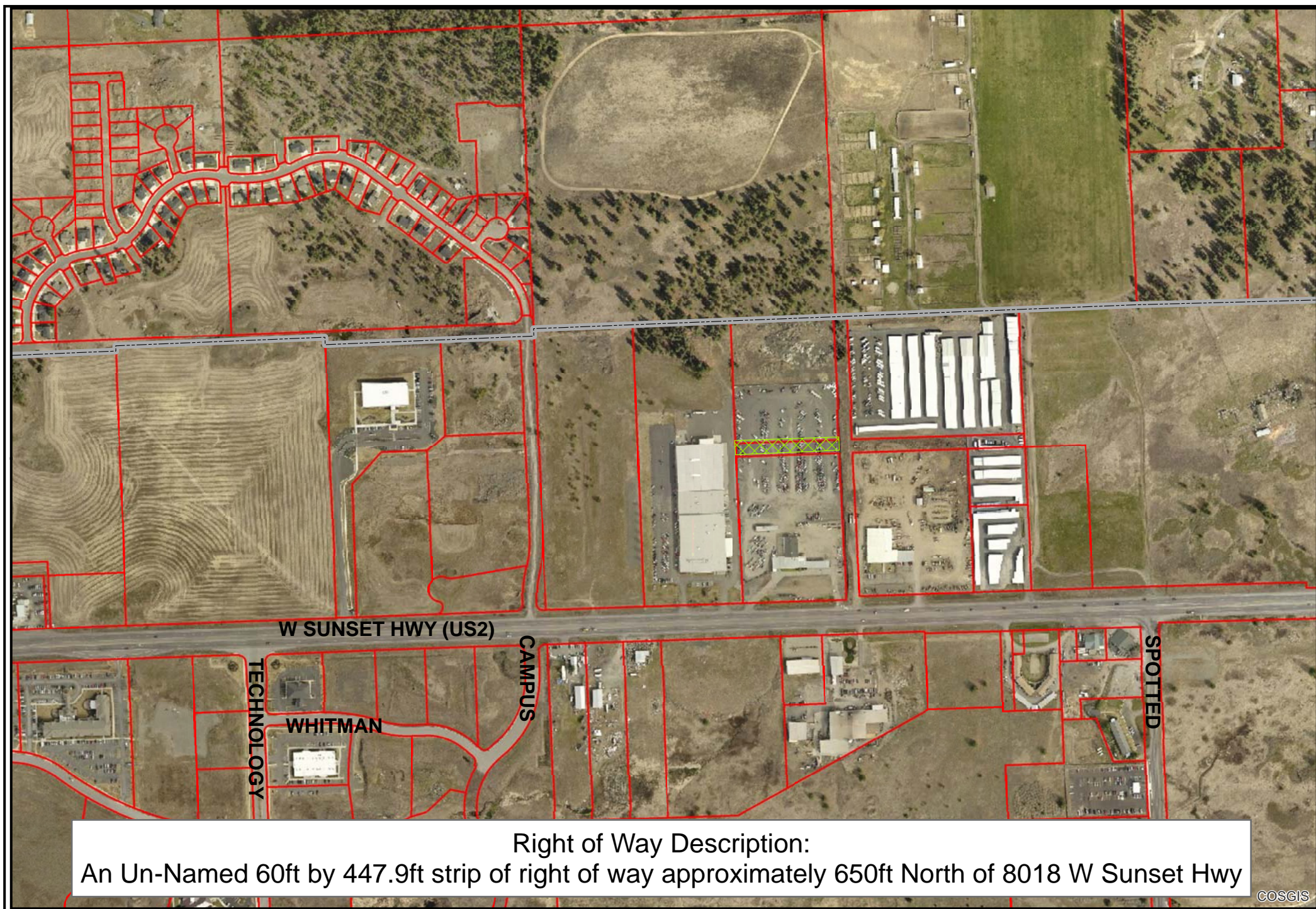
That hearing on the petition to vacate an un-named portion of right of way, 60 feet by 447.97 feet, approximately 650 feet north of 8018 West Sunset Highway will be held in front of the City Council at 6:00 P.M. or as soon thereafter as possible on **December 8, 2014**, and the City Clerk of the City of Spokane is instructed to proceed with all proper notice according to State law.

ADOPTED by the Spokane City Council, this _____ day of _____, 2014.

City Clerk

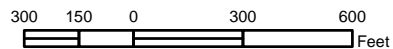
Approved as to form:

Assistant City Attorney



COSGIS

Disclaimer: This is not a legal document. The information shown on this map is compiled from various sources and is subject to revision. This map should not be used to determine the location of facilities in relationship to property lines, sections lines, streets, etc.
Not suitable for design purposes.



 **COSGIS**
City of Spokane GIS



AREA

DISTRIBUTION LIST
VACATION OF UN-NAMED PORTION OF RIGHT-OF-WAY

POLICE DEPARTMENT
ATTN: LT REX OLSON

NEIGHBORHOOD SERVICES
ATTN: ROD MINARIK

FIRE DEPARTMENT
ATTN: LISA JONES

BICYCLE ADVISORY BOARD
ATTN: LOUIS MEULER

CURRENT PLANNING
ATTN: TAMI PALMQUIST

COMCAST
DESIGN & CONSTRUCTION
1717 E BUCKEYE AVE
SPOKANE WA 99207

WATER DEPARTMENT
ATTN: DIRECTOR DAN KEGLEY

AVISTA UTILITIES
PO BOX 3727
SPOKANE WA 99220

WATER DEPARTMENT
ATTN: JIM SAKAMOTO

WATER DEPARTMENT
ATTN: SUPERINTENDENT LYNN SHUPE

CENTURY LINK
ATTN: KAREN STODDARD
904 N COLUMBUS ST
SPOKANE WA 99202

WATER DEPARTMENT
ATTN: CHRIS PETERSCHMIDT

ABC MINI STORAGE
421 W. RIVERSIDE AVE. STE. 470
SPOKANE, WA 99201

STREETS
ATTN: MARK SERBOUSEK

STREETS
TRAFFIC PLANNING
ATTN: GERALD OKIHARA

RA PEARSON CO
8120 W SUNSET HWY
SPOKANE, WA 99224-9048

STREET DEPARTMENT
ATTN: DAUN DOUGLASS

MOORE NON-EXEMPT MARITAL TRUST, JM
PO BOX 2127
SPOKANE, WA 99210

SIGNS AND MARKINGS
ATTN: MARCUS EVELAND

MOORE NON-EXEMPT MARITAL TRUST, JM
7916 W. SUNSET HWY
SPOKANE, WA 99224

ELECTRONIC SERVICE CENTER
ATTN: VAL MELVIN

PLANNING & DEVELOPMENT
ATTN: ERIC JOHNSON

ABC MINI STORAGE
7726 W SUNSET HWY
SPOKANE, WA 99224-9713

CONSTRUCTION MANAGEMENT
ATTN: KEN BROWN

INTEGRATED CAPITAL MANAGEMENT
ATTN: KATHERINE MILLER

WASTEWATER MANAGEMENT
ATTN: BILL PEACOCK

STATE EXAMINER

PARKS & RECREATION DEPARTMENT
ATTN: LEROY EADIE

NEIGHBORHOOD SERVICES
ATTN: JACKIE CARO

**Agenda Sheet for City Council Meeting of:**

11/03/2014

<u>Date Rec'd</u>	10/22/2014
<u>Clerk's File #</u>	RES 2014-0105
<u>Renews #</u>	
<u>Cross Ref #</u>	OPR 2014-0729
<u>Project #</u>	
<u>Bid #</u>	
<u>Requisition #</u>	CR14873

<u>Submitting Dept</u>	SPOKANE REGIONAL SOLID WASTE SYSTEM
<u>Contact Name/Phone</u>	KEN GIMPEL 625-6532
<u>Contact E-Mail</u>	KGIMPEL@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Resolutions
<u>Agenda Item Name</u>	4490 CONTRACT WITH HITACHI ZOSEN INOVA U.S.A. LLC

Agenda Wording

Contract with Hitachi Zosen Inova U.S.A. LLC (Norcross, GA) for necessary spare parts for the Waste to Energy Facility (WTEF), November 17, 2014 to November 16, 2019. Total cost \$157,500.00 excluding tax where applicable.

Summary (Background)

The WTEF has many unique pieces of equipment for which spare parts are available only from select vendors. Hitachi Zosen Inova is the sole vendor of many of these unique parts. This contract will provide for all labor, materials, tools, equipment, transportation, and other items necessary for the provision of these parts.

<u>Fiscal Impact</u>			<u>Budget Account</u>
Expense	\$ 10,000.00	2014	# 4490-44100-37148-54201
Expense	\$ 78,750.00	2015	# 4490-44100-37148-54201
Expense	\$ 68,750.00	2016	# 4490-44100-37148-54201
Select	\$		#
<u>Approvals</u>			<u>Council Notifications</u>
<u>Dept Head</u>	GIMPEL, KEN		<u>Study Session</u>
<u>Division Director</u>	ROMERO, RICK		<u>Other</u>
<u>Finance</u>	LESESNE, MICHELE		<u>Distribution List</u>
<u>Legal</u>	WHALEY, HUNT		ttauscher@spokanecity.org
<u>For the Mayor</u>	SANDERS, THERESA		lbutz@spokanecity.org
<u>Additional Approvals</u>			mlesesne@spokanecity.org
<u>Purchasing</u>			

C O N T R A C T

THIS CONTRACT is between the CITY OF SPOKANE, a Washington State municipal corporation, as "City", and HITACHI ZOSEN INOVA U.S.A LLC (HZI), whose address is 3740 Davinci Court, Norcross, Georgia 30092, as "Contractor".

The parties agree as follows:

1. PERFORMANCE. The Contractor will do all work, furnish all labor, materials, tools, construction equipment, transportation, supplies, organization, and other items of work and costs necessary for the proper execution and completion of THE PROVISION OF THE CITY WASTE TO ENERGY FACILITY'S NECESSARY SPARE PARTS, in accordance with the attached Contractor's letter and pricing chart dated September 29, 2014.
2. TIME OF PERFORMANCE. This Contract shall begin on November 17, 2014 and run through November 16, 2019, and can be renewed upon mutual agreement of the parties for another five (5) year term.
3. TERMINATION. Either party may terminate this Contract by ten (10) days written notice to the other party. In the event of such termination, the City shall pay the Contractor for all work previously authorized and performed prior to the termination date.
4. COMPENSATION. The City will pay ONE HUNDRED FIFTY SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$157,500.00), excluding taxes if applicable, the amount in the Contractor's quote and letter, as full compensation for everything furnished and done under this Contract, subject to allowable additions and deductions as provided.
6. PAYMENT. The Contractor will send its applications for payment to the the Waste to Energy Facility 2900 South Geiger Boulevard, Spokane, Washington 99224. Payment will be made within thirty (30) days after receipt of the Contractor's application except as provided in RCW 39.76.
7. INDEMNIFICATION. The Contractor agrees to defend, indemnify and hold the City harmless from any and all claims, demands, losses and liabilities to or by third parties arising from, resulting from or connected with services performed or to be performed under this Contract by the Contractor, its agents or employees to the fullest extent permitted by law. The Contractor's duty to indemnify the City shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City, its agent or employees. The Contractor's duty to indemnify the City for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) the City or its agents or employees, and (b) the Contractor or its agents or employees, shall apply only to the extent of negligence of the Contractor or its agents or employees. The Contractor's duty to defend, indemnify and hold the City harmless shall include, as to all claims, demands, losses and liability to which it applies, the City's personnel-related costs, reasonable attorneys' fees, court costs and all other claim-related

expenses. **The Contractor waives immunity under Title 51 RCW to the extent necessary to protect the City's interests under this indemnification. This provision has been specifically negotiated.**

8. INSURANCE. During the term of the Contract, the Contractor shall maintain in force at its own expense, the following insurance coverage(s):

- A. Worker's Compensation Insurance in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers; and
- B. General Liability Insurance on an occurrence basis, with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this Contract. It shall provide that the City, its officers and employees are additional insureds but only with respect to the Contractor's services to be provided under this Contract; and
- C. Property insurance if materials and supplies are furnished by the Contractor. The amount of the insurance coverage shall be the value of the materials and supplies of the completed value of improvement. Hazard or XCU (explosion, collapse, underground) insurance should be provided if any hazard exists; and.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the City.

As evidence of the insurance coverages required by this Contract, the Contractor shall furnish an acceptable insurance certificate to the City at the time it returns the signed Contract. The certificate shall specify all of the parties who are additional insured, and include applicable policy endorsements and the deductible or retention level, as well as policy limits. Insuring companies or entities are subject to City acceptance and must have a rating of A- or higher by Best. Copies of all applicable endorsements shall be provided. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

9. CONTRACTOR'S WARRANTY. The Contractor guarantees all work, labor and materials under this Contract for two (2) year following final acceptance. If any unsatisfactory condition or defect develops within that time, the Contractor will immediately place the work in a condition satisfactory to the City and repair all damage caused by the condition or defect. The Contractor will repair or restore to the City's satisfaction, in accordance with the contract documents and at its expense, all property damaged by its performance under this Contract. This warranty is in addition to any manufacturer's or other warranty in the contract documents.

10. NONDISCRIMINATION. No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Contract because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation including gender expression or gender identity, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. The Contractor agrees to comply with, and to require that all subcontractors comply with, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, as applicable to the

Contractor.

11. ASSIGNMENTS. The Contractor may not assign, transfer or sublet any part of the work under this Contract, or assign any monies due, without the written approval of the City, except as may be required by law. In the event of assignment of accounts or monies due under this Contract, the Contractor specifically agrees to give immediate written notice to the City Administrator, no later than five (5) business days after the assignment.

12. ANTI-KICKBACK. No officer or employee of the City of Spokane, having the power or duty to perform an official act or action related to this Contract shall have or acquire any interest in the Contract, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in the Contract.

13. COMPLIANCE WITH LAWS. Each party shall comply with all applicable federal, state, and local laws and regulations that are incorporated herein by reference.

14. - DISPUTES. This Contract shall be performed under the laws of the State of Washington. Any litigation to enforce this Contract or any of its provisions shall be brought in Spokane County, Washington.

15. SEVERABILITY. In the event any provision of this Contract should become invalid, the rest of the Contract shall remain in full force and effect.

17. AUDIT / RECORDS. The Contractor and its subcontractors shall maintain for a minimum of three (3) years following final payment all records related to its performance of the Contract. The Contractor and its subcontractors shall provide access to authorized City representatives, at reasonable times and in a reasonable manner to inspect and copy any such record. In the event of conflict between this provision and related auditing provisions required under federal law applicable to the Contract, the federal law shall prevail.

18. MODIFICATIONS. The City may modify this Contract and order changes in the work whenever necessary or advisable. The Contractor will accept modifications when ordered in writing by the Director of the Waste to Energy Facility or designee, and the Contract time and compensation will be adjusted accordingly.

Dated: _____

CITY OF SPOKANE

By: _____

Title: _____

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Dated: _____

Dated: _____

HITACHI Zosen Inova U.S.A LLC

HITACHI Zosen Inova U.S.A LLC

Email Address, if available:

By: _____

Title: _____

Attachments that are a part of this Contract:

HITACHI Zosen Inova U.S.A LLC letter and pricing chart dated September 29, 2014.

14-575

RESOLUTION NO. 2014-0105

A Resolution declaring Hitachi Zosen INOVA U.S.A LLC (HZI) who currently owns the fabricating casting molds and drawings used to manufacture the spare parts for use in the City's Waste To Energy (WTE) Facility as sole source and thus authorizing its purchase from Hitachi Zosen INOVA U.S.A LLC (HZI), of Norcross, Georgia, at an estimated cost for the first year of \$157,500, excluding taxes if applicable.

WHEREAS, the City is taking over responsibility of the entire operation of the WTE Facility from Wheelabrator on November 17, 2014 and requires the transition be smooth and seamless to avoid disruptions; and

WHEREAS, the WTE Facility currently uses Hitachi Zosen INOVA U.S.A LLC (HZI) who currently owns the fabricating casting molds and drawings used to manufacture the spare parts as a sole source provider to supply its system for maintenance of the waste to electricity assets; and

WHEREAS, the WTE Facility has successfully utilized Hitachi Zosen INOVA U.S.A LLC (HZI) who currently owns the fabricating casting molds and drawings used to manufacture the spare parts for many years; and

WHEREAS, Hitachi Zosen INOVA U.S.A LLC (HZI) provides to the WTE Facility custom manufactured parts of which 18 of the spare part types purchased by the WTE Facility, 16 are proprietary products, exclusive to Hitachi Zosen INOVA U.S.A LLC (HZI); and

WHEREAS, because of the uniqueness of the WTE Facility's spare parts, the City is desirous of continuing the relationship with Hitachi Zosen INOVA U.S.A LLC (HZI) to manufacture these necessary spare parts in order to provide an uninterrupted supply which is critical to the future operations of the WTE Facility; and

WHEREAS, since Hitachi Zosen INOVA U.S.A LLC (HZI) is the sole provider of this licensed and proprietary spare parts product inventory which meets the specialized needs of the City to perform the intended functions at the WTE Facility, the City would like to establish Hitachi Zosen INOVA U.S.A LLC (HZI) as a sole source provider;

WHEREAS, the 2014 public bid limit for the purchase of goods is \$47,400.00;

-- Now, Therefore,

BE IT RESOLVED by the city council for the City of Spokane that it hereby declares Hitachi Zosen INOVA U.S.A LLC (HZI) who currently owns the fabricating casting molds and drawings used to manufacture the WTE Facility spare parts sole source and authorizes its purchase, at an estimated cost for the first year of \$157,500, excluding taxes if applicable.

ADOPTED BY THE CITY COUNCIL ON _____

City Clerk

Approved as to form:

Assistant City Attorney



OFFICE OF THE CITY CLERK
808 W. SPOKANE FALLS BLVD
SPOKANE, WASHINGTON 99201-3342
509.625.6350

September 22, 2014

City Clerk File No.:
ORD C35148

COUNCIL ACTION MEMORANDUM

RE: FINAL READING ORDINANCE C35148 RELATING TO THE CODE ETHICS

During the Spokane City Council's 3:30 p.m. Briefing Session held Monday, September 8, 2014, upon review of the Council's Advance Agenda for September 15, 2014, City Attorney Nancy Isserlis provided an overview of Final Reading Ordinance C35148 relating to the Code of Ethics. Ms. Isserlis noted the proposed ordinance is a new Ethics policy which will hopefully take us into the next decade and be a best practice for the City. She asked that the ordinance have a first reading today and that final action of the ordinance be deferred for six to eight weeks in order to allow a series of discussions in the community regarding the ordinance. She noted the Ethics Committee reviewed the ordinance as recently as last week and made some suggested changes. She further advised the ordinance also needs to be run through union leadership because some of the unions are bound by the current policy and there may be a need to bargain the changes with the unions, as the City enters into negotiation with those unions. Ms. Isserlis stated she would also like to have two or maybe more public meetings so that people in the community can access the ordinance and provide input. Council Member Snyder inquired if the Council could obtain a redline copy of the ordinance reflecting the changes. Ms. Isserlis indicated that staff tried to do that, and stated this ordinance basically repeals in its entirety the former code and creates a completely new code. Council President Stuckart asked if the Council could have a list of the changes. Ms. Isserlis noted she can do that, but doing a redlined version just didn't work. Council Member Snyder indicated he would not be able to vote on the ordinance until the Council is provided some kind of document that is really detailed (with respect to the changes being made). Ms. Isserlis indicated she would do her best and do that. Ms. Mumm invited Ms. Isserlis to come to a Planning, Community and Economic Development meeting and do a side by side with a matrix and show the changes, or something similar, and so that Ms. Isserlis can provide the feedback she is getting as well on the ordinance. Subsequent to additional commentary by Ms. Isserlis and Council, the following action was taken:

Motion by Council Member Snyder, seconded by Council Member Waldref, **to defer** Final Reading Ordinance C35148 to November 3, 2014, **carried unanimously.**

Subsequently, during the City Council's 6:00 p.m. Legislative Session held September 8, Ordinance C35148—relating to the Code of Ethics; adopting a new Chapter 1.04A to Title 1 of the Spokane Municipal Code and repealing Title 1.04 of Title 1 of the Spokane Municipal Code—was read for the first time, with further action deferred (to November 3, 2014).

A handwritten signature in cursive script, appearing to read "Terri L. Pfister", written over a horizontal line.

Terri L. Pfister, MMC
Spokane City Clerk

**Agenda Sheet for City Council Meeting of:**

09/08/2014

Date Rec'd

8/27/2014

Clerk's File #

ORD C35148

Renews #**Submitting Dept**

CITY ATTORNEY

Cross Ref #**Contact Name/Phone**

NANCY ISSERLIS EXT. 6225

Project #**Contact E-Mail**

NISSERLIS@SPOKANECITY.ORG

Bid #**Agenda Item Type**

First Reading Ordinance

Requisition #**Agenda Item Name**

0500 ORDINANCE RELATING TO THE CODE OF ETHICS

Agenda Wording

An Ordinance relating to the Code of Ethics; adopting a new chapter 1.04A to Title 1 of the Spokane Municipal Code and repealing Title 1.04 of Title 1 of the Spokane Municipal Code

Summary (Background)

Language changes to enhance duties and powers of the Ethics Commission and address enforcement powers and complaint process.

Fiscal Impact

Neutral \$ 0.00

Budget Account

0000 00000 00000

Select \$

#

Select \$

#

Select \$

#

Approvals**Dept Head**

DALTON, PAT

Council Notifications**Study Session****Division Director****Other****Finance**

BUSTOS, KIM

Distribution List**Legal**

DALTON, PAT

nisserlis@spokanecity.org

For the Mayor

SANDERS, THERESA

mpiccolo@spokanecity.org

Additional Approvals

rriedinger@spokanecity.org

Purchasing

rimus@spokanecity.org



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

Contractors shall be permitted to replace a first-tiered contractor listed in its bid response, which shall not increase the bid amount.

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List

ORDINANCE NO. C35148

AN ORDINANCE relating to the Code of Ethics; adopting a new chapter 1.04A to Title 1 of the Spokane Municipal Code and repealing Title 1.04 of Title 1 of the Spokane Municipal Code.

The City of Spokane does ordain:

Section 1. That there is adopted a new chapter 1.04A to Title 1 of the Spokane Municipal Code to read as follows::

Chapter 1.04A Code of Ethics

Sections:

- 1.04A.010 Purpose
- 1.04A.020 Definitions
- 1.04A.030 Prohibited Conduct
- 1.04A.040 Penalties for Noncompliance
- 1.04A.050 Recall of Elected Official for Violation of Code of Ethics
- 1.04A.060 Where to Seek Initial Review
- 1.04A.070 Where to Seek Judicial Review
- 1.04A.080 Ethics Commission
- 1.04A.090 Duties and Powers
- 1.04A.100 Ex Parte Communication
- 1.04A.110 Complaint Process of the Ethics Commission
- 1.04A.120 Training
- 1.04A.130 Restrictions on Ethics Commission Members
- 1.04A.140 Vacancy and Removal
- 1.04A.150 Limitation Period
- 1.04A.160 Applicability
- 1.04A.170 Advisory Opinion
- 1.04A.180 Severability

1.04A.010 Purpose

- A. It is the policy of the City of Spokane to uphold, promote and demand the highest standards of ethics from all of its employees and City officers, whether elected, appointed or hired. City officers and employees shall maintain the utmost standards of responsibility, trustworthiness, integrity, truthfulness, honesty and fairness in carrying out their public duties, avoid any improprieties in their roles

as public servants including the appearance of impropriety, and never use their City position, authority or resources for personal gain.

- B. It is the intent of the City Council that this chapter be reasonably construed to accomplish its purpose of protecting the public against decisions that are affected by undue influence, conflicts of interest or any other violation of this Code of Ethics. This Code of Ethics is supplemental to state law, including, but not limited to, chapter 42.20 RCW – Misconduct of Public Officers, chapter 42.23 RCW – Code of Ethics for Municipal Officers – Contract Interests, and chapter 42.36 RCW – Appearance of Fairness Doctrine.
- C. It is the function of the Ethics Commission to pursue the above stated policy of the City of Spokane. The Ethics Commission shall develop training, programs and initiatives in support of this goal.

1.04A.020 Definitions

The following words and phrases as used in this chapter, unless the context clearly indicates otherwise, shall have the following meanings:

- A. “Agency” means any City board, commission, bureau, committee, department, institution, division or tribunal in City government.
- B. “Assist” means to act, or offer or agree to act, in such a way as to help, aid, advise, furnish information to or otherwise provide assistance to another person, believing that the action is of help, aid, advice or assistance of the person with intent so to assist such person.
- C. “Beneficial interest” has the meaning ascribed to it under the Washington case law. However, an ownership interest in a mutual fund or similar investment pooling fund in which the owner has no management powers does not constitute a beneficial interest in the entities in which the fund or pool invests.
- D. “Business” means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, consultant, holding company, joint stock company, receivership, trust or any legal entity organized for profit.
- E. “City” means the City of Spokane, Washington.
- F. “City action” means any action on the part of an agency, including, but not limited to:
 - 1. a decision, determination, finding, ruling or order; and

2. a grant, payment, award, license, contract, transaction, sanction or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling or order.
- G. “City officer” means every individual elected, appointed, hired or otherwise selected to an office or position with the City, or any subdivision, agency, committee or board thereof, whether such individual is paid or unpaid.
- H. “Compensation” means anything of economic value, however designated, that is paid, loaned, granted or transferred, or to be paid, loaned, granted or transferred for, or in consideration of, personal services to any person.
- I. “Confidential information” means:
1. Specific information, rather than generalized knowledge, that is not available to the general public on request; or
 2. Information made confidential by law including but not limited to taxpayer information, RCW 82.32.330; information regarding organized crime, RCW 43.43.856; criminal history information, Chapter 10.97 RCW; medical records, Chapter 70.02 RCW; and juvenile records, RCW 13.50.010; or
 3. Information that is initially disclosed or discussed in executive session, and which is not available to the general public on request; however
 4. Confidential information does not include information authorized by the mayor or a majority vote of the council to be disclosed.
- J. “Contract” or “grant” means an agreement between two or more persons that creates an obligation to do or not to do a particular thing. “Contract” or “grant” includes, but is not limited to, an employment contract, a lease, a license, a purchase agreement or a sales agreement.
- K. “Ethics Commission” means the commission on ethical conduct for and duly appointed by the City.
- L. “Employee” means any person holding a regularly compensated position of employment with the City but does not include elected officers and persons who serve without compensation on City boards and commissions.
- M. “Exempt employee” shall mean those City employees not represented by a recognized labor union and identified by both the City administration and the applicable labor unions as exempt confidential employees.
- N. “Family member” means:
1. a spouse or domestic partner; or

2. any dependent parent, parent-in-law, child or son-in-law or daughter-in-law; or
 3. any parent, parent-in-law, child, son-in-law, daughter-in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of the City officer or employee.
- O. "Gift" means anything of economic value or tangible worth for which no consideration is given. "Gift" does not include:
1. items from family members or friends where it is clear that the gift was not made as part of any design to gain or maintain influence in the agency of which the recipient is an officer or employee;
 2. items related to the outside business of the recipient that are customary and not related to the recipient's performance of official duties;
 3. items exchanged among officials and employees or a social event hosted or sponsored by a City officer or City employee for coworkers;
 4. payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance or trade mission made in an official capacity. As used in this subsection, "reasonable expenses" are limited to travel, lodging and subsistence expenses incurred the day before through the day after the event;
 5. items a City officer or City employee is authorized by law to accept;
 6. payment of enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade or charitable association or institution. As used in this subsection, "reasonable expenses" are limited to travel, lodging and subsistence expenses incurred the day before through the day after the event;
 7. items returned by the recipient to the donor within thirty days of receipt or donated to a charitable organization within thirty days of receipt;
 8. campaign contributions reported under chapter 42.17 RCW;
 9. discounts available to an individual as a member of an employee group, occupation or similar broad-based group;
 10. awards, prizes, scholarships or other items provided in recognition of academic or scientific achievement;

11. attendance of a City officer or employee at a hosted meal when it is provided in conjunction with a meeting directly related to the conduct of City business or where official attendance by the officer or employee as a City representative is appropriate;
 12. an award publicly presented in recognition of public service; or
 13. any item of nominal value which cannot reasonably be presumed to influence the vote, action or judgment of the City officer or employee, or be considered as part of a reward for action or inaction. An item of nominal value shall include incidental items associated with the professional conduct or courtesies of a City officer or employee's duty including the acceptance during the conduct of official business of such items as refreshments, note pads, pens, pins and books.
- P. "Head of agency" means the chief executive officer of an agency. In the case of an agency headed by a commission, board, committee or other body consisting of more than one natural person, agency head means the person or board authorized to appoint agency employees and regulate their conduct.
- Q. "Honorarium" means money or thing of value offered to a City officer or City employee for a speech, appearance, article or similar item or activity in connection with the City officer's or City employee's official role.
- R. "Household member" means any person having a close relationship with and residing in the same household of the City officer or employee, and having agreed to be jointly responsible for basic living expenses.
- S. "Person" means any individual, partnership, association, firm, institution or corporation, business or other entity, however constituted, organized or designated.
- T. "Personal interest" means direct or indirect pecuniary or material benefit accruing to a City officer or employee as a result of legislation or a contract or transaction which is or may be the subject of an official act or action by or with the City except for such contracts or transactions which confer similar benefits to all other persons and/or property similarly situated. For the purpose of this chapter, an City officer or employee is deemed to have a personal interest in the affairs of:
1. any person who is a City officer or employee's family member or household member, as defined in this chapter;
 2. any business entity in which the City officer or employee is an officer, director or employee;

3. any business entity in which the stock of, or legal or beneficial ownership of, in excess of five percent of the total stock or total legal and beneficial ownership, is controlled or owned directly or indirectly by the City officer or employee;
 4. any person or business entity with whom a contractual relationship exists with the City officer or employee; provided, that a contractual obligation of less than five hundred dollars, or a commercially reasonable loan made in the ordinary course of business or a contract for a commercial retail sale shall not be deemed to create an interest in violation of this chapter.
- U. “Regulatory agency” means any City board, commission, department or officer, except those in the legislative or judicial branches, authorized by law to conduct adjudicative proceedings, issue permits or licenses, or to control or affect interests of identified persons.
- V. “Represented employee” shall mean a City employee represented by a recognized labor union.
- W. “Responsibility” in connection with a transaction involving the City, means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or through subordinates, effectively to approve, disapprove or otherwise direct City action in respect of such transaction.
- X. “Staff Director” means the employee appointed by the City Attorney to, in addition to other responsibilities, assist the Ethics Commission in its duties.

1.04A.030 Prohibited Conduct

The following shall constitute a violation of this Code of Ethics:

- A. General Prohibition Against Conflicts of Interest.
In order to avoid becoming involved or implicated in a conflict of interest or impropriety, or an appearance of conflict of interest or impropriety, no current City officer or employee shall have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that might be seen as conflicting with the City officer or employee’s proper discharge of his or her official duties, the conduct of official City business or as adverse to the interests of the City. Performance of a legally required duty by a City officer or employee shall not be considered a violation of the Code of Ethics.
1. Any employee who becomes aware that he or she might have a potential conflict of interest that arises in the course of his or her official duties shall notify in writing his or her supervisor or appointing authority of the potential conflict.

2. Upon receipt of such a notification, the supervisor or appointing authority shall take action to resolve the potential conflict of interest within a reasonable time, which may include, but is not limited to, designating an alternative employee to perform the duty that is involved in the potential conflict. The supervisor or appointing authority shall document the disposition of the potential conflict in writing in files maintained by the appointing authority. The supervisor or appointing authority may request an advisory opinion from the Ethics Commission before addressing and resolving of the potential conflict.

B. Personal Interests in Contracts Prohibited.

No City officer or employee shall participate in his or her capacity as a City officer or employee in the making of a contract in which he or she has a personal interest, direct or indirect, or performs in regard to such a contract some function requiring the exercise of discretion on behalf of the City. Except, that this prohibition shall not apply where the City officer or employee has only a remote interest in the contract, and where the fact and extent of such interest is disclosed and noted in the official minutes or similar records of the City prior to formation of the contract, and thereafter the governing body authorizes, approves or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the City officer(s) having the remote interest as defined below.

C. Remote Interest.

For purposes of this section, a "remote interest" means:

1. that of a non-salaried non-compensated officer of a nonprofit corporation;
2. that of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary;
3. that of a landlord or tenant of a contracting party;
4. that of a holder of less than one percent of the shares of a corporation, limited liability company or other entity which is a contracting party.

D. Personal Influence in Contract Selection Prohibited.

No City officer or employee shall influence the City's selection of, or its conduct of business with, a corporation, person or firm having or proposing to do business with the City if the City officer or employee has a personal interest in or with the corporation, person or firm, unless such interest is a remote interest and

where the fact and extent of such interest is disclosed and noted in the official minutes or similar records of the City prior to formation of the contract, as defined in the preceding section. Provided, however, that no City officer or employee may receive anything of value from the City as a result of any contract to which the City shall be a party except for the City officer or employee's salary or lawful compensation.

E. Representation of Private Person at City Proceeding Prohibited.

No City officer or employee shall appear on behalf of a private person, other than himself or a family member or household member, as defined in this chapter, or except as a witness under subpoena, before any regulatory governmental agency or court of law in an action or proceeding to which the City or a City officer in an official capacity is a party, or accept a retainer or compensation that is contingent upon a specific action by the City. Representation of a private person pursuant to a legally required duty by a City officer or employee is permitted and shall not be considered a violation of the Code of Ethics.

F. Certain Private Employment Prohibited.

No City officer or employee shall engage in or accept private employment, or render services for, any private interest when such employment or service is incompatible with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties.

G. Personal Interest in Legislation Prohibited.

No City officer or employee may benefit either directly or indirectly from any legislation or contract to which the City shall be a party except for the lawful compensation or salary of the City officer or employee unless such interest is a remote interest where the facts and extent of such interest is disclosed. City council members' participation in the enactment of legislation shall be governed by chapter 42.23 RCW – The Code of Ethics for Municipal Officers and chapter 42.36 RCW – The Appearance of Fairness Doctrine. City council members shall not be prohibited from participating in the adoption of legislation when the council member has only a remote interest in the legislation, which has been disclosed, and the legislation is applicable to the general public and not unique to the council member.

H. Continuing Financial Interest.

Where a City officer, employee, or family member of a City officer or employee, has a substantial ongoing financial relationship with a corporation, firm, or person seeking a contract, or proposing to do business with the City, such City officer or employee shall not:

1. Influence or participate in the City's contract selection of or conduct business with such corporation, firm, or person; nor
2. Influence or participate in the City's contract selection of, or conduct business with, a corporation, firm, or party competing against a party that a City officer or employee has such a substantial ongoing financial relationship.
3. For purpose of this section, a substantial ongoing financial relationship is defined as: expanding beyond just a formal contractual relationship. Rather it encompasses any financial interest, direct or indirect, where a City officer, employee, or family member of a City officer or employee is involved in a client-service relationship in which:
 - a. the City officer, employee, or family member of a City officer or employee, receives a substantial portion of his or her revenue or like compensation through such relationship, whether received through his or her corporation, firm, or as an individual; or
 - b. Such client-service relationship is likely to continue to provide considerable potential business or has provided substantial business in the past. This does not include prior financial relationships that are so far removed in time or rare in frequency as to be insignificant.
4. Corporations, firms or persons doing business with the City shall be advised of this provision, and shall certify, as part of any contract with the City, that they are aware of the restrictions in this policy.

I. Disclosure of Confidential Information

1. Disclosure of Confidential Information
No City officer or employee shall, except as required or reasonably believed to be required for the performance of his/her duties, disclose confidential information gained by reason of his/her official position or use such information for his/her own personal interest. "Confidential information" is all information, whether transmitted orally or in writing, that the employee has been informed, is aware, or has reason to believe is intended to be used only for city purposes, is not intended for public disclosure, or is otherwise of such a nature that it is not, at the time, a matter of public record or public knowledge.
2. Confidential information includes, but is not limited to, personal information regarding City officials and employees; private financial and other personal information provided by city taxpayers, license holders, contractors, and customers; intelligence and investigative information,

including the identity of persons filing complaints; formulas, designs, drawings, and research data obtained or produced by the city and preliminary, non-final assessments, opinions, and recommendations concerning city policies and actions. Any public official who is uncertain as to whether certain information is confidential should consult the City Attorney. An employee who is uncertain as to whether certain information is confidential should consult their immediate supervisor or department head.

J. Acceptance of Compensation, Gifts, Favors, Rewards or Gratuity

City employees shall not, directly or indirectly, solicit any gift or give or receive any gift, whether it be money, services, loan, travel, entertainment, hospitality, promise, or any other form, under the following circumstances:

1. It could be reasonably inferred or expected that the gift was intended to influence them in the performance of their official duties; or
2. The gift was intended to serve as a reward for any official action on their part. Public officials and city employees may accept de minimis gifts such as, but not limited to, calendars, coffee mugs, flowers, candy, and other similar items that are given as a customary business practice and have no material significance to the recipient, with such gifts from any one source not to exceed one hundred dollars in value in any twelve-month period. City employees should report any gift to their immediate supervisor. This section shall not apply to gifts made to the city. All such gifts shall be given to the mayor for official disposition. This prohibition shall not apply to those items which are excluded from the definition of gift in SMC 1.04A.020.

K. Fair and Equitable Treatment.

1. No City officer or employee shall knowingly use his or her office or position to secure personal benefit, gain or profit, or use position to secure special privileges or exceptions for himself/herself or for the benefit, gain or profits of any other persons.
2. No City officer or employee shall employ or use the employment of any person under the City officer's or employee's official control or direction for the personal benefit, gain or profit of the City officer or employee or another beyond that which is available to every other person.
3. No City officer or employee shall use City-owned vehicles, equipment, materials, money or property for personal or private convenience or profit. Use is restricted to such services as are available to the public generally, for the authorized conduct of official business (not personal use), and for such purposes and under such conditions as can be reasonably expected to be approved by City policies.

4. Except as authorized by law and in the course of his or her official duties, no City officer or employee shall use the power or authority of his or her office or position with the City in a manner intended to induce or coerce any other person to provide such City employee or any other person with any compensation, gift, or other thing of value directly or indirectly.
 5. City Officers and employees are encouraged to participate in the political process on their own time and outside of the workplace by working on campaigns for the election of any person to any office or for the promotion of or opposition to any ballot proposition, but shall not use or authorize the use of City facilities or resources for such purposes except as authorized by the provisions of RCW 42.17.13.
- L. False and Frivolous complaints prohibited.
No person subject to the Code of Ethics shall knowingly file a false complaint or report of a violation of this Code of Ethics.
- M. Aiding others prohibited.
No City officer or employee may knowingly aid or assist any City officer or employee in the violation of any provision of this Code of Ethics.
- N. Commission of Acts of Moral Turpitude or Dishonesty Prohibited.
No City officer or employee shall commit any act of moral turpitude or dishonesty relating to his or her duties or position as a City officer or employee or arising from business with the City. Conviction of a felony or a misdemeanor involving moral turpitude or dishonesty, the nature of which demonstrates lack of fitness for the position held, shall be considered conclusive evidence of a violation of this Code of Ethics. Demonstrated acts of moral turpitude or dishonesty are not limited to felony or misdemeanor criminal convictions.
- O. Prohibited Conduct After Leaving City Service.
1. Disclosure of Privileged, Confidential or Proprietary Information Prohibited.
No former City officer or employee shall disclose or use any privileged, confidential or proprietary information gained because of his or her City employment.
 2. Participation in City Matters Prohibited.
No former City officer or employee shall, within a period of one year after leaving City office or employment:
 - a. participate in matters involving the City if, while in the course of employment with the City, the former City officer or employee was officially involved in the matter, or personally and substantially participated in the matter, or acted on the matter;

- b. represent any person as an advocate in any matter in which the former City officer or employee was involved while a City officer or employee; or
 - c. participate as or with a bidder, vendor or consultant in any competitive selection process for a City contract in which he or she assisted the City in determining the project, or work to be done, or the process to be used.
- 3. Duty to Inform.
Whenever a City officer or employee wishes to contract with a former City officer or employee for expert or consultant services within one year of the latter's leaving City service, advance notice shall be given to and approval received from the Ethics Commission. Said approval shall be in written form and copied to the mayor at the same time that it is given to the individual making the request.
- 4. Exceptions.
 - a. The prohibitions of subsections (2)(a) and (2)(b) of this section shall not apply to a former City officer or employee acting on behalf of a governmental agency if the Ethics Commission has determined that the service to the agency is not adverse to the interest of the City.
 - b. Nothing in this chapter shall prohibit an official elected to serve a governmental entity other than the City of Spokane from carrying out their official duties for that government entity.
- 5. Corporations, firms or persons doing business with the City shall be advised of this provision, and shall certify, as part of any contract with the City, that they are aware of the restrictions in this policy. If a firm or person doing business with the City assists an employee in violating the provisions of the Code, the firm or business may be disbarred, excluded from contracting with the City for 5 years.

1.04A.040 Penalties for Noncompliance

- A. If the alleged violating party stipulates to the decision of the Ethics Commission, the decision that violation has occurred and acceptance of the consequences specified in the decision becomes final without hearing. However, if stipulation is not acceptable to the party against whom the complaint is filed, the matter will proceed to hearing by the Ethics Commission.
- B. A stipulation or hearing determination by the Ethics Commission that a violation has occurred shall subject the party found in violation to any of the following penalties, which may be imposed by the Ethics Commission:

1. A cease and desist order as to violations of this Code of Ethics.
2. A recommendation to the city council that an appointed committee or commission member be removed from the board or commission.
3. An order to pay to the City damages sustained by the City that are caused by the conduct constituting the violation.
4. In the case of a violator who receives wages from the City, a civil penalty of up to five thousand dollars per violation or three times the economic value of anything received or sought in violation of this chapter or rules adopted under it, whichever is greater, may be imposed. Alternatively, the violator who is a member of a board or commission may be suspended for a number of days to be decided by the Ethics Commission, in lieu of fine but not in lieu of damages.
5. An employee of the city who commits a violation of this chapter may be subjected to disciplinary action, up to and including termination from employment; provided that such disciplinary action is consistent with Career Service Guidelines and any applicable collective bargaining agreement.
6. Costs, including reasonable investigative costs, shall be included as part of the limit under subsection (B)(4) of this section. Costs may not exceed the penalty imposed. The payment owed on the penalty shall be reduced by the amount of the costs paid.
7. As appropriate, the Ethics Commission may refer the disposition of a complaint to the City or County prosecuting attorney's office for appropriate action.
8. Damages under this section may be enforced in the same manner as a judgment in a civil court.

1.04A.050 Recall of Elected Official for Violation of Code of Ethics

- A. Pursuant to City Charter Section 8.5, the city council may consider a resolution to place an elected official's name on a recall ballot based upon the Ethics Commission's recommendation to the city council that the elected official be subject to a recall election. The Ethics Commission must determine that:
 1. an elected official of the City has knowingly committed a violation of the Code of Ethics,
 2. the violation constitutes moral turpitude rendering the elected official unfit to remain in office, and

3. there are no mitigating circumstances.
- B. In considering whether to place an elected official's name on a recall ballot, the city council shall have a resolution submitted to the city clerk's office setting forth the Ethics Commission's determination and recommendation regarding the violation of the Code of Ethics and calling for a public hearing on the matter. The city council shall schedule a hearing at least thirty days from the date the resolution is submitted to the city clerk's office. A copy of the resolution and hearing date shall be personally served upon the elected official. At the time the city council is scheduled to consider the resolution, the chairperson of the Ethics Commission or the Ethics Commission's designee shall appear before the city council to present the Ethics Commission's determination and recommendation. The Ethics Commission shall deliver to the city council all records maintained by the Commission created pursuant to its review and determination of the matter. The elected official who is the subject of the Ethics Commission's shall be given an opportunity to respond to the Ethics Commission's determination and recommendation and to present argument against passage of the resolution by the city council to place the elected officials name on a recall ballot. Both the Ethics Commission's representative and the elected official shall be permitted to respond to questions from the city council.
 - C. The city council, by a vote of a majority of the city council, may pass the resolution to place the elected official's name on a recall election ballot for action by the voters of the City on the next available general or special election established by state law. The city clerk's office shall forward the required resolution to the Spokane County auditor's office pursuant to state law requesting the ballot proposition be placed on the next available general or special election. The city attorney's office shall be responsible for preparing a ballot synopsis for the recall election and any necessary resolutions or other legal documents.
 - D. If approved by a majority of the electors voting in the election, the elected official shall be removed from office effective the date the recall election results are certified by the Spokane County auditor.

1.04A.060 Where to Seek Initial Review

- A. Any person who has been assessed a monetary fine and/or cost bill, or has been disciplined or removed from office, for a violation of this chapter may seek initial review at the Spokane city council by delivering a written notice of appeal to the office of the city council within twenty days of receiving a decision of the Ethics Commission regarding a written notice of the assessed fine and/or cost bill.
- B. The notice of appeal shall be in writing and shall include the mailing address and, if different, the street address where papers may be served on the appellant. The notice of appeal shall contain, in separate numbered paragraphs, statements of

the specific findings of fact, conclusions of law, or aspects of the fine and/or cost bill on which the appellant seeks review, the basis for the appeal, and a brief statement of the relief requested. The appellant shall attach a copy of the committee's written decision being appealed.

- C. The city council will forward a copy of the written notice of appeal to the Ethics Commission and the person making the original complaint within ten days of receiving the notice of appeal from the appellant.
- D. The Ethics Commission shall provide the city council with a copy of the recorded proceedings and all documents offered into evidence at the Ethics Commission hearing within twenty days of receiving a copy of the written notice of appeal from the council.
- E. The city council may determine its own procedures for hearing each appeal by majority vote, as long as it does not conflict with the procedures in this chapter.
- F. In considering the amount of any monetary penalty and/or cost bill, the city council may allow additional testimony. The council may also modify the amount of any monetary penalty and or cost bill.
- G. Any decision to reverse the Ethics Commission's decision finding a violation must be based solely on the administrative record below and after determining that the Commission's decision was arbitrary, capricious or not supported by substantial evidence in the Commission's record.
- H. The city council may not modify any part of the Commission's decision under an appeal filed to the city council under this section unless there is a majority plus one vote.
- I. The Commission's decision shall be deemed to have been upheld unless the city council reverses or modifies the Commission's decision within seventy-five days after the notice of appeal is filed.

1.04A.070 Where to Seek Judicial Review

A person who receives a penalty for noncompliance from the Ethics Commission or an adverse decision from the city council upon review pursuant to SMC 1.04.070 may appeal the decisions by seeking a writ from the Spokane County superior court pursuant to chapter 7.16 RCW, or other appropriate legal action.

Section

1.04A.080 Ethics Commission

- A. The Ethics Commission shall be comprised of seven members who shall be appointed by the mayor and confirmed by the city council. The initial six

members shall be appointed for a one-, two- and three-year term and may be reappointed for one additional three-year term. The seventh member who shall be appointed by members of the Ethics Commission shall serve an initial three-year term and may be reappointed for a second three-year term. The Ethics Commission appointees shall include representatives from the following segments of the community:

1. A person with a professional or academic background in the legal profession including attorneys, law professors or members of the judiciary.
 2. A person from local business with experience in human resources/personnel.
 3. A person who possesses familiarity with politics and the political process.
- B. All reasonable efforts shall be used to locate individuals who satisfy the requirements in subsection (A). In the event that any one of the requirements in subsection (A) cannot reasonably be satisfied, a substitute may be appointed. The substitute shall have a background in a profession which includes a code of ethics as an element of the profession.
- C. The City Attorney shall appoint a Staff Director to the Ethics Commission. The Staff Director shall provide assistance to the Commission as necessary for the Commission to fulfill its obligations and duties.
- D. Commission members shall serve without compensation.

1.04A.090 Duties and Powers

- A. The Ethics Commission shall, with the assistance of the Staff Director, create a manual of its operating policies, procedures, forms, and rules consistent with this chapter and subject to the approval of the city council. The Ethics Commission shall review its manual at least annually for possible modifications. The manual shall be posted and maintained as part of the City's website. (See 1.04.090 D)
- B. The Ethics Commission may, subpoena witnesses, compel their attendance, administer oaths, take the testimony of a person under oath, and in connection therewith, to require the production for examination of any books or papers relating to any matter under investigation or in question before the Commission;
1. In case of refusal to obey a subpoena issued to a person, the Ethics Commission shall petition the superior court of a county within the jurisdiction of which the investigation, proceeding or hearing under this chapter is carried on or within the jurisdiction of which the person refusing to obey is found or resides or transacts business for an order requiring the person to appear before the Ethics Commission or its member to produce

evidence if so ordered, or to give testimony touching the matter under investigation or in question. Failure to obey such order of the court may be punished by the court as contempt.

- C. All hearings of the Ethics Commission shall be conducted as contested hearings under applicable provisions of the Spokane Municipal Code and the rules and regulations adopted by the Ethics Commission. All hearings shall be open to the public. The record of the hearings, as well as all documents submitted in regards to the complaint and the Ethics Commission's investigation, shall be subject to public disclosure laws, chapter 42.56 RCW - Public Records Act.
- D. A Commission member who has a conflict regarding a specific complaint before the Ethics Commission shall recuse himself or herself from hearing that complaint, but shall remain a member of the Commission for future complaints.
- E. The Ethics Commission may, when circumstances make it necessary to do so, retain outside legal counsel and other experts, as needed, after solicitation of recommendations from the City Attorney (unless the need to retain outside counsel is caused by a conflict involving the City Attorney's Office).
- F. The Ethics Commission may make recommendations to the city council for amendments to this chapter and for such other legislation affecting the subject matter of this chapter as the Ethics Commission may deem necessary or desirable.
- G. The Ethics Commission shall develop educational programs which inform agencies, public officials and city officers and employees about City, state and federal ethics laws, and the importance of ethics to the public's confidence in municipal government.

1.04A.100 Ex Parte Communications

- A. After a complaint has been filed and during the pendency of a complaint before the Ethics Commission, no member of the Commission may communicate directly or indirectly with any party or other person about any issue of fact or law regarding the complaint, except that;
 - 1. The members of the Commission may obtain legal advice from the City Attorney or, in the event of a conflict, with independent legal counsel and may discuss the complaint with their staff.
 - 2. The members of the Commission may discuss the complaint at a lawfully conducted meeting. Commission deliberations concerning complaints are subject to exemption from the Open Public Meetings Act, as permitted by law. If any person attempts to communicate with a Commission member regarding the pending complaint, the Commission member shall report the

substance of the communication to the Commission on the public record at the next regular meeting of the Commission.

3. The Commission shall not take testimony or comments from any person regarding complaint except as presented in an investigative report or in the course of a duly noticed public hearing.

1.04A.110 Complaint Process of the Ethics Commission

- A. A complaint that this Code of Ethics has been violated by a City employee or a City officer shall be filed with the Ethics Commission.
- B. Any person may file an official written complaint or inquiry with the Ethics Commission asking whether a current City officer or employee has failed to comply with this Code of Ethics.
- C. Complaints and inquiries must be in writing on a form approved by the Ethics Commission. The form shall contain a statement that must be signed and which states that, to the best of the person's knowledge, information, and belief formed after reasonable reflection, the information in the complaint or inquiry is true. The complaint must describe the facts that constitute the violation of this Code of Ethics in sufficient detail so that the Commission and the person who is the subject of the complaint or inquiry can reasonably be expected to understand the nature of any offense that is being alleged.
- D. The Commission, upon receipt of the complaint, shall acknowledge receipt of the complaint, forward the complaint simultaneously to the person who is complained against, if known, and the City Attorney, and promptly meet and review the complaint. As soon as practicable after giving due consideration to a complaint the Commission shall either:
 1. Dismiss the complaint based on any of the following grounds:
 - a. It has no jurisdiction;
 - b. The alleged violation, if true, would not constitute a violation of this article;
 - c. The alleged violation is a minor or de minimis violation;
 - d. The complaint or inquiry is, on its face, frivolous, groundless or brought for purposes of harassment;
 - e. The matter has become moot because the person who is the subject of the complaint or inquiry is no longer a City officer or employee;

- f. The appointing authority has already taken action as a result of finding a violation and the Commission believes the action was appropriate; or
 - 2. Determine that:
 - a. The complaint alleges facts which, if found to be true, would be sufficient to constitute a violation of the Code of Ethics;
 - b. Further information must be presented for the Commission to determine if a violation of the Code of Ethics has occurred.
- E. If the Commission determines the complaint alleges facts which, if found to be true, would be sufficient to constitute a violation of the Code of Ethics, it may create a stipulation for the City officer or employee subject to the complaint resolving the complaint, the determination of compliance and the penalty, if any to be imposed.
- F. If the complaint is not resolved by stipulation, or earlier in the adjudication process, or additional information is required to establish the factual record necessary for the Commission to determine whether a violation of the Code of Ethics has occurred, the board may convene a hearing at a future date certain. At such a hearing, the Commission may call additional witnesses or consider additional documentary evidence. After final deliberations on additional testimony, statements, or documents presented at the hearing, the Commission shall determine whether or not a violation of the Code of Ethics has occurred.
- G. Any person who is the subject of a complaint may designate a representative if he or she wishes to be represented by someone else, to present evidence, and to cross-examine witnesses. The person who submitted the complaint and the subject of the complaint must be allowed sufficient time to examine and respond to any evidence not presented to them in advance of the hearing.
- H. After the Commission has made its final determination, the Commission shall issue its written findings of fact and conclusions of law, along with its recommended disposition (if applicable). The Commission may, in addition, issue any additional reports, opinions, or recommendations as it deems advisable under the circumstances. All such reports shall be reviewed by the city attorney (or independent legal counsel in the event that a conflict of interest prevents the city attorney from conducting the review) prior to their issuance. The Commission's conclusions shall be based on the preponderance of the evidence standard.
- I. The investigation of complaints shall be completed by the Ethics Commission and written findings and conclusions prepared within sixty days of the date of the complaint. A copy of the written investigation findings and conclusions shall be served on any party against whom a complaint is filed within three days of the

Ethics Commission's final decision. It shall be posted on the City's website for the Ethics Commission no more than twenty-four hours later. Posting on the website will clearly indicate the disposition of the issue in the text of the link and not in the text of the document only.

- J. The City Attorney may require the investigation of complaints and written findings to be completed by the Ethics Commission, in a reasonable amount of time, less than that stated in (I) in circumstances where the matter should be resolved more quickly.
- K. Any individual who is advised of another's violation of this code is responsible to direct the advising party of this code and its procedure for filing complaints.

1.04A.120 Training

- A. The Ethics Commission, with the assistance of the Staff Director, shall prepare, distribute and periodically update an employee handbook on the Code of Ethics, after obtaining the city attorney's review. In addition to the updates the Commission shall disseminate any change in policy that results from a finding of the Commission if it applies to other city employees.
- B. Every appointing authority shall give a copy or electronic version of the handbook and any updates to each employee annually and shall provide annual training to employees regarding the Code of Ethics. Each City employee or official shall read and agree in writing to the City of Spokane Code of Ethics.
- C. Information shall be provided to employees terminating city service regarding the restrictions on former city employees.

1.04A.130 Restrictions on Ethics Commission Members

- A. Restrictions on Holding Office

No member or employee of the Ethics Commission may hold any other City or County office, or be an officer of a political party.

- B. Restrictions on Employment

No member or employee of the Ethics Commission may be a registered lobbyist or campaign consultant, or be employed by or receive gifts or other compensation from a registered lobbyist or campaign consultant. No member of the Ethics Commission may hold employment with the City or County and no employee of the Commission may hold any other employment with the City or County.

- C. Restrictions on Political Activities

No member or employee of the Ethics Commission may participate in any campaign supporting or opposing a candidate for City elective office, a City ballot measure or a City officer running for any elective office. For the purposes of this section, participation in a campaign includes but is not limited to making contributions to or soliciting contributions from any Commission within the Ethics Commission's jurisdiction, publicly endorsing or urging endorsement of a candidate or ballot measure or participating in decisions by organizations to participate in a campaign.

D. Restrictions after Employment

Members and employees of the Ethics Commission are subject to the post - employment restrictions set forth in the City of Spokane Code of Ethics.

1.04A.140 Vacancy and Removal

A. In the event a vacancy occurs, the mayor shall appoint a qualified person to complete the remainder of the term.

1. A member of the Commission may be removed only for misconduct pursuant to this chapter.
2. Any member of the Ethics Commission guilty of official misconduct or convicted of a crime involving moral turpitude or dishonesty shall be removed by the city council upon recommendation by the mayor.

1.04A.150 Limitation Period

A. Any action taken under this chapter must be commenced within three years from the date of the violation. However, if it is shown that the violation was not discovered because of concealment by the person charged, then the action must be commenced within three years from the date the violation was discovered or reasonably should have been discovered:

1. by any person with direct or indirect supervisory responsibilities over the person who allegedly committed the violation; or
2. if no person has direct or indirect supervisory authority over the person who committed the violation, by the appropriate Ethics Commission.

1.04A.160 Applicability

The Code of Ethics shall be applicable to all elected or appointed officers and exempt confidential employees and shall not be applicable to represented employees unless the City and the respective labor union have entered into a

collective bargaining agreement providing that compliance with the Code of Ethics is a condition of employment.

1.04A.170 Advisory Opinions

- A. Upon request of any employee, the mayor or a member of the city council, or any City Officer, the Ethics Commission may also render written advisory opinions concerning the applicability of the Code to hypothetical circumstances and/or situations solely related to the persons making the request.
- B. Upon request of the mayor, or two members of the city council, the board of ethics may also render written advisory opinions concerning the applicability of the code to hypothetical circumstances and/or situations related to a matter of city-wide interest or policy.

1.04A.180 Severability

If any section, subsection, paragraph, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this chapter.

Section 2. That Title 1.04 of the Spokane Municipal Code is repealed.

PASSED BY THE CITY COUNCIL ON _____, 2014.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date

CODE OF ETHICS

HIGHLIGHTED CHANGES

- ❖ Enhanced duties and powers of the Commission.
- ❖ Terms are better defined, such as "gift", "financial interest", "use of City property".
- ❖ Better guidance to those covered by the Code, including mandatory training and handbook for employees.
- ❖ Moral turpitude/dishonesty convictions are conclusive evidence of violation of the Code.
- ❖ Greater enforcement powers for penalties and violations, including post-City employment.
- ❖ Complaint process streamlined.



OFFICE OF THE CITY CLERK
808 W. SPOKANE FALLS BLVD
SPOKANE, WASHINGTON 99201-3342
509.625.6350

September 30, 2014

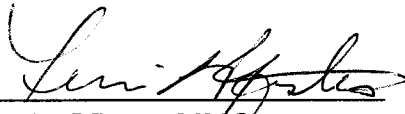
City Clerk File No.:
ORD C35153

COUNCIL ACTION MEMORANDUM:

RE: FINAL READING ORDINANCE C35153 RELATING TO GAMBLING TAXES;
AMENDING SMC SECTION 8.04.020

During the Spokane City Council's 6:00 p.m. Legislative Session held Monday, September 29, 2014, upon consideration of Final Reading Ordinance C35153, Council President Stuckart indicated there has been some conversation with a couple of the gaming rooms regarding the ordinance. He stated a meeting is going to be set up with the City's Budget Director Tim Dunivant, City Council Budget & Performance Analyst Debra Robole, a couple of gaming rooms (representatives), along with he and two other Council Members, to really talk this through and try to come to some consensus instead of spending the next hour debating this (Ordinance C35153) up on the dais. Council President Stuckart requested Ordinance C35153 be deferred for one month. Subsequently, the following action was taken:

Motion by Council Member Fagan, seconded by Council Member Snyder, to so move (to defer Final Reading Ordinance C35153) for one month (to November 3, 2014); **carried unanimously.**


Terri L. Pfister, MMC
Spokane City Clerk

**Agenda Sheet for City Council Meeting of:**

09/29/2014

Date Rec'd

9/4/2014

Clerk's File #

ORD C35153

Renews #**Submitting Dept**

CITY COUNCIL

Cross Ref #**Contact Name/Phone**

JON SNYDER 6254

Project #**Contact E-Mail**

JSNYDER@SPOKANECITY.ORG

Bid #**Agenda Item Type**

Final Reading Ordinance

Requisition #**Agenda Item Name**

0320 ORD RE GAMBLING TAXES

Agenda Wording

An ordinance relating to gambling taxes; amending SMC section 8.04.020.

Summary (Background)

SMC 8.04.020 established a ten percent gambling tax on social card games. This ordinance will revise the gambling tax percentage on social card games to two percent of gross revenue under \$500,000; five percent of gross revenue between \$500,000 and \$1,000,000; and ten percent of gross revenue above \$1,000,000.

Fiscal Impact**Budget Account**

Select \$

#

Select \$

#

Select \$

#

Select \$

#

Approvals**Council Notifications****Dept Head**

MCDANIEL, ADAM

Study Session**Division Director****Other****Finance****Distribution List****Legal**

PICCOLO, MIKE

For the Mayor

SANDERS, THERESA*

Additional Approvals**Purchasing**

ORDINANCE NO. C35153

AN ORDINANCE relating to gambling taxes; amending SMC section 8.04.020.

The City of Spokane does ordain:

Section 1. That SMC section 8.04.020 is amended to read as follows:

8.04.020 Tax Levied

There is levied upon every person, association and organization conducting or operating within the City any gambling activity authorized by state law a tax upon gross receipts or gross revenues of the activity as follows:

- A. Amusement games: Two percent of gross receipts from the amusement game less the amount awarded as prizes except as otherwise provided (RCW 9.46.110(3)(b)).
- B. Bingo games or raffles: Gross receipts less the amount awarded as cash or merchandise prizes during the taxable period, multiplied by five percent or the maximum rate permitted by law, whichever is greater (RCW 9.46.110(3)(a)).
- C. Punchboards and pull tabs: Ten percent of gross receipts from the operation of the games, less the amount awarded as cash or merchandise prizes (RCW 9.46.110(3)(e)).
- D. Social card games: ~~((Fifteen))~~ Eight percent of gross revenue from such games, effective January 1, ~~((2006))~~ 2015. The rate shall be reduced to ~~((ten))~~ six percent effective January 1, ~~((2007))~~ 2016 and four percent effective January 1, 2017.

PASSED by the City Council on _____.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date

**Agenda Sheet for City Council Meeting of:**

11/03/2014

<u>Date Rec'd</u>	10/23/2014
<u>Clerk's File #</u>	ORD C35174
<u>Renews #</u>	

<u>Submitting Dept</u>	CITY COUNCIL	<u>Cross Ref #</u>	
<u>Contact Name/Phone</u>	BEN STUCKART 625-6269	<u>Project #</u>	
<u>Contact E-Mail</u>	AMCDANIEL@SPOKANECITY.ORG	<u>Bid #</u>	
<u>Agenda Item Type</u>	First Reading Ordinance	<u>Requisition #</u>	
<u>Agenda Item Name</u>	0320 AUDIT FINDINGS TRANSPARENCY AND ACCOUNTABILITY ORDINANCE		

Agenda Wording

An ordinance relating to financial audit findings; adopting a new chapter 7.18 to title 7 of the Spokane Municipal Code.

Summary (Background)

This ordinance provides that the City shall post on the webpage, the external website and the City's intranet site all financial audit findings issued the Washington State Auditor's Office, any federal agency, or other applicable and authorized governmental agency as well as any corrective action documents created by the City in response to the audit findings.

<u>Fiscal Impact</u>		<u>Budget Account</u>	
Select	\$	#	
Select	\$	#	
Select	\$	#	
Select	\$	#	
<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	MCDANIEL, ADAM	<u>Study Session</u>	
<u>Division Director</u>		<u>Other</u>	Finance
<u>Finance</u>	DOLAN, PAM	<u>Distribution List</u>	
<u>Legal</u>	PICCOLO, MIKE	Tim Dunivant	
<u>For the Mayor</u>	SANDERS, THERESA	Gavin Cooley	
<u>Additional Approvals</u>		Jennifer Stapleton	
<u>Purchasing</u>			



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

The audit findings and corrective action documents shall remain posted until the auditor/auditing organization determines the findings have been officially mitigated.

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List

Ordinance No. C-35174

AN ORDINANCE relating to financial audit findings; adopting a new chapter 7.18 to title 7 of the Spokane Municipal Code.

WHEREAS, the City receives financial audits from the Washington State Auditor's Office on an annual basis as well as other financial audits from federal agencies providing federally funded grants; and

WHEREAS, those financial audits may including findings requiring corrective actions on behalf of the City; and

WHEREAS, it is the intent of this ordinance to provide full transparency of those findings and the City's corrective action to the public; - - Now, Therefore,

The City of Spokane does ordain:

Section 1. That there is adopted a new chapter 7.18 to title 7 of the Spokane Municipal Code to read as follows:

7.18 Posting of Financial Audit Findings

7.18.010 Posting of Financial Audit Findings and Corrective Action

- A. All financial audit findings issued by the Washington State Auditor's Office, any federal agency, or other applicable and authorized governmental agency shall be posted on the City's external website as well as the City's intranet within two days of receipt or public disclosure by the issuing agency. The postings shall be located on the webpage most applicable to the audit findings.
- B. Any corrective action documents created by the City in response to the audit findings shall also be posted in addition to the original audit findings.
- C. The audit findings and corrective action documents shall remain posted until the auditor/auditing organization determines the findings have been officially mitigated.

PASSED by the City Council on _____.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date

**Agenda Sheet for City Council Meeting of:**

11/03/2014

Date Rec'd

10/23/2014

Clerk's File #

ORD C35175

Renews #

Submitting Dept

PLANNING & DEVELOPMENT

Cross Ref #

RES 2014-0096

Contact Name/Phone

ELDON BROWN 625-6305

Project #Contact E-Mail

EBROWN@SPOKANECITY.ORG

Bid #Agenda Item Type

Hearings

Requisition #Agenda Item Name

0650 HEARING - VACATION OF ALLEY BETWEEN ROWAN AND NEBRASKA

Agenda Wording

Vacation of alley between Rowan Avenue and Nebraska Avenue from Julia Street to Myrtle Street in Section 34, T26N, R43E, W.M., Spokane, Washington.

Summary (Background)

At its legislative session held October 6, 2014 the City Council set a hearing on the above vacation for November 3, 2014. Since that time, staff has solicited responses from all concerned parties.

Fiscal ImpactBudget Account

Neutral \$

#

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

CHESNEY, SCOTT

Study SessionDivision Director

CHESNEY, SCOTT

Other

PCED 6/8/14

Finance

LESESNE, MICHELE

Distribution ListLegal

RICHMAN, JAMES

lhattenburg@spokanecity.org

For the Mayor


SANDERS, THERESA

amcgee@spokanecity.org

Additional Approvals

ebrown@spkanecity.org

Purchasing

 Agenda Sheet for City Council Meeting of: 11/03/2014		<u>Date Rec'd</u>	10/23/2014
		<u>Clerk's File #</u>	ORD C35175
		<u>Renews #</u>	
<u>Submitting Dept</u>	PLANNING & DEVELOPMENT	<u>Cross Ref #</u>	RES 2014-0096
<u>Contact Name/Phone</u>	ELDON BROWN 625-6305	<u>Project #</u>	
<u>Contact E-Mail</u>	EBROWN@SPOKANECITY.ORG	<u>Bid #</u>	
<u>Agenda Item Type</u>	Hearings	<u>Requisition #</u>	
<u>Agenda Item Name</u>	0650 HEARING - VACATION OF ALLEY BETWEEN ROWAN AND NEBRASKA		
<u>Agenda Wording</u>			
Vacation of alley between Rowan Avenue and Nebraska Avenue from Julia Street to Myrtle Street in Section 34, T26N, R43E, W.M., Spokane, Washington.			
<u>Summary (Background)</u>			
At its legislative session held October 6, 2014 the City Council set a hearing on the above vacation for November 3, 2014. Since that time, staff has solicited responses from all concerned parties.			
<u>Fiscal Impact</u>		<u>Budget Account</u>	
Neutral	\$	#	
Select	\$	#	
Select	\$	#	
Select	\$	#	
<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	CHESNEY, SCOTT	<u>Study Session</u>	
<u>Division Director</u>	CHESNEY, SCOTT	<u>Other</u>	PCED 6/8/14
<u>Finance</u>	LESESNE, MICHELE	<u>Distribution List</u>	
<u>Legal</u>	RICHMAN, JAMES	lhattenburg@spokanecity.org	
<u>For the Mayor</u>	SANDERS, THERESA	amcgee@spokanecity.org	
<u>Additional Approvals</u>		ebrown@spkanecity.org	
<u>Purchasing</u>			



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

The audit findings and corrective action documents shall remain posted until the auditor/auditing organization determines the findings have been officially mitigated.

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List

City of Spokane
Planning and Development
808 West Spokane Falls Blvd.
Spokane, WA 99201-3343
(509) 625-6300

ORDINANCE NO. ORD C35175

An ordinance vacating the alley between Rowan Ave and Nebraska Ave from Julia St. to Myrtle St. in Section 34, T26N, R43E, W.M., Spokane, Washington as requested by Kelly M. Beechinor.

WHEREAS, a petition for the vacation of vacating the alley between Rowan Ave and Nebraska Ave from Julia St. to Myrtle St. in Section 34, T26N, R43E, W.M., Spokane, Washington, has been filed with the City Clerk representing 100% of the abutting property owners, and a hearing has been held on this petition before the City Council as provided by RCW 35.79; and

WHEREAS, the City Council has found that the public use, benefit and welfare will best be served by the vacation of said public way; -- NOW, THEREFORE,

The City of Spokane does ordain:

Section 1. That the alley between Rowan Ave and Nebraska Ave from Julia St. to Myrtle St. in Section 34, T26N, R43E, W.M., Spokane, Washington, as requested by Kelly M. Beechinor is hereby vacated. Parcel number not assigned.

Section 2. An easement is reserved and retained over and through the west 100 feet of the vacated alley for utility services of CenturyLink to protect existing utilities.

Section 3. That this ordinance shall not become effective until the owners of property abutting upon the area to be vacated shall have compensated the City of Spokane in an amount equal to the full assessed value of the area herein vacated.

Passed the City Council _____

Council President

Attest: _____
City Clerk

Approved as to Form:

Assistant City Attorney

Mayor

Date: _____

Effective Date: _____

DISTRIBUTION LIST

VACATION OF Alley between Rowan Avenue and Nebraska Avenue from Julia Street to Myrtle Street

POLICE DEPARTMENT
ATTN: LT REX OLSON

NEIGHBORHOOD SERVICES
ATTN: ROD MINARIK

FIRE DEPARTMENT
ATTN: LISA JONES

BICYCLE ADVISORY BOARD
ATTN: LOUIS MEULER

CURRENT PLANNING
ATTN: TAMI PALMQUIST

COMCAST
DESIGN & CONSTRUCTION
1717 E BUCKEYE AVE
SPOKANE WA 99207

WATER DEPARTMENT
ATTN: DIRECTOR DAN KEGLEY

AVISTA UTILITIES
PO BOX 3727
SPOKANE WA 99220

WATER DEPARTMENT
ATTN: JIM SAKAMOTO

WATER DEPARTMENT
ATTN: SUPERINTENDENT LYNN SHUPE

CENTURY LINK
ATTN: KAREN STODDARD
904 N COLUMBUS ST
SPOKANE WA 99202

WATER DEPARTMENT
ATTN: CHRIS PETERSCHMIDT

BURTON TESTAMENTARY TRUST, J B & J
26007 N PTARMIGAN DR
CHATTAROY WA 99003

STREETS
ATTN: MARK SERBOUSEK

STREETS
TRAFFIC PLANNING
ATTN: GERALD OKIHARA

DICKERSON FAMILY REVOCABLE LIVING
TRUST
9907 N WOODRIDGE DR
SPOKANE WA 99208

STREET DEPARTMENT
ATTN: DAUN DOUGLASS

DIXON, EDDIE V
PO BOX 6605
SPOKANE WA 99217

SIGNS AND MARKINGS
ATTN: MARCUS EVELAND

ELECTRONIC SERVICE CENTER
ATTN: VAL MELVIN

FAULKES, JAMES F & ALICE J
3714 E NEBRASKA AVE
SPOKANE WA 99217

PLANNING & DEVELOPMENT
ATTN: ERIC JOHNSON

FAULKES, JAMES F & ALICE J
12912 E VALLEYWAY AVE
SPOKANE WA 99216

CONSTRUCTION MANAGEMENT
ATTN: KEN BROWN

INTEGRATED CAPITAL MANAGEMENT
ATTN: KATHERINE MILLER

GOODWIN REVOCABLE TRUST
PO BOX 239
COLBERT WA 99005

WASTEWATER MANAGEMENT
ATTN: BILL PEACOCK

STATE EXAMINER

KELLY M BEECHINOR PROPERTIES, LLC
4510 N FREYA ST
SPOKANE WA 99217

PARKS & RECREATION DEPARTMENT
ATTN: LEROY EADIE

NEIGHBORHOOD SERVICES
ATTN: JACKIE CARO

MCINTYRE LIVING TRUST
5010 E SUNSHINE LN
COLBERT WA 99005

WOOD, SCOTT A
5515 N JULIA ST
SPOKANE WA 99217

NICE, DWYLA C
7321 N SUTHERLIN ST
SPOKANE WA 99208

SCONIERS DEVELOPMENT LLC
PO BOX 6305
SPOKANE WA 99217

SEAL, MARVIN W
10101 E GIBBS RD
VALLEYFORD WA 99036

SIMONSON, ERIC & JODI & JEAN & CHRIS
5914 W HERMAN RD
DEER PARK WA 99006

SLAMA, CATHERINE M & RONALD R
11504 E MAIN AVE
SPOKANE VALLEY WA 99206

SWAN, HOLLYCE A
1726 E NORTH CRESCENT AVE
SPOKANE WA 99207

TOMBARI, WM A
4102 S REGAL ST STE 202
SPOKANE WA 99223

WENDLAND FAM. REV. LIVING TRST
PO BOX 18156
SPOKANE WA 99228



CITY OF SPOKANE
PLANNING AND DEVELOPMENT SERVICES

808 West Spokane Falls Blvd., Spokane WA 99201-3343
(509) 625-6700 FAX (509) 625-6349

STREET VACATION DRAFT REPORT (P1401843VACA)
July 14, 2014

LOCATION: Vacation of the Alley between Rowan Avenue and Nebraska Avenue from Julia Street to Myrtle Street, as requested by Kelly M. Beechinor

PROPONENT: Kelly M. Beechinor Properties, LLC

PURPOSE: To increase private property size and to reduce crime

HEARING: To be determined

REPORTS:

AVISTA UTILITIES – No comment.

COMCAST – No objections.

CENTURYLINK – Centurylink has a plant on the east side of Julia within this proposed area north of an Avista power pole. From their ped they have 103' of 2" conduit to the building at 5524 N Julia St. Centurylink will need to maintain an easement for this area.

ASSET MANAGEMENT - CAPITAL PROGRAMS – No Comment.

FIRE DEPARTMENT – No objections.

NEIGHBORHOOD SERVICES – No comment.

PARKS DEPARTMENT – No comment.

PLANNING & DEVELOPMENT – DEVELOPER SERVICES – There are no City utilities in the proposed vacation area. Closure work will be required at Julia St. This will consist of the removal of the existing curb returns and the replacement with curb and sidewalk across the vacated alley to the south end.

PLANNING & DEVELOPMENT – TRAFFIC DESIGN – No comment.

PLANNING & DEVELOPMENT – PLANNING – No comment.

POLICE DEPARTMENT – No comment.

SOLID WASTE MANAGEMENT – No comment.

STREET DEPARTMENT – No comment.

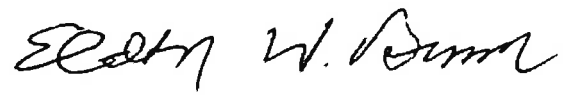
WASTEWATER MANAGEMENT – No objection provided that onsite runoff is retained onsite.

All storm water for the area should be collected and treated on-site.

WATER DEPARTMENT – No comment.

RECOMMENDATION: That the petition be granted and a vacating ordinance be prepared subject to the following conditions:

1. The ordinance will provide that the City of Spokane retain an easement to the entire vacated land for the construction, repair, and maintenance of public and private utilities per RCW 35.79.030 as requested by Century Link, to protect existing and future utilities.
2. On-site runoff must be collected and treated on the site.
3. The plans for termination and closure must be submitted and accepted by Planning and Development – Developer Services, prior to construction, and the improvements must be satisfactorily constructed before final vacation approval. This will be required at the west end of the alley.
4. Existing parcels shall be aggregated to insure no parcel is land-locked.
5. The proponent shall pay to the City of Spokane the assessed valuation for the vacated land as defined by the latest information from the County Assessor's Office. This is calculated to be \$21,941.88 and is to be deposited to Budget Account #3200 49199 99999 39510.
6. That the final reading of the vacation be held in abeyance until all of the above conditions are met, and that the above conditions are met by December 31, 2015.

A handwritten signature in black ink, appearing to read "Eldon W. Brown". The signature is fluid and cursive, with the first name "Eldon" being more prominent than the last name "Brown".

Eldon Brown, P.E.
Principal Engineer – Developer Services

DRAFT

SITE MAP

E Nebraska Ave

N Julia St

N Myrtle St

E Rowan Ave

Right of Way Description:
Alley between Rowan Ave and Nebraska Ave
from Julia St to Myrtle St

COSGIS

Disclaimer: This is not a legal document. The information shown on this map is compiled from various sources and is subject to revision. This map should not be used to determine the location of facilities in relationship to property lines, sections lines, streets, etc.
Not suitable for design purposes.

50 25 0 50 100
Feet



AREA

COSGIS
City of Spokane GIS



**Agenda Sheet for City Council Meeting of:**

10/06/2014

Date Rec'd

9/24/2014

Clerk's File #

FIN 2014-0001

Renews #**Submitting Dept**

FINANCE

Cross Ref #**Contact Name/Phone**

TIM DUNIVANT 625-6845

Project #**Contact E-Mail**

TDUNIVANT@SPOKANECITY.ORG

Bid #**Agenda Item Type**

Report Item

Requisition #**Agenda Item Name**

0410 - SET BUDGET HEARINGS

Agenda Wording

Setting the hearings for review of the 2015 Proposed Budget beginning Monday, October 27, 2014 and continuing thereafter at the regular council meetings and concluding on November 10, 2014.

Summary (Background)

As part of the annual budget process, the City Council will hold public hearings on the proposed 2015 budget for the City of Spokane. Public testimony is welcome on all sections of the budget at each of the budget hearings. The scheduled hearing dates are October 27, November 3, and November 10. The City Council may continue the hearings up to the 25th calendar day prior to the beginning of the next fiscal year (December 6th).

Fiscal Impact**Budget Account**

Select \$

#

Select \$

#

Select \$

#

Select \$

#

Approvals**Council Notifications****Dept Head**

DUNIVANT, TIMOTHY

Study Session**Division Director**

DUNIVANT, TIMOTHY

Other

None

Finance

DOLAN, PAM

Distribution List**Legal**

DALTON, PAT

tdunivant@spokanecity.org

For the Mayor

SANDERS, THERESA

Additional Approvals**Purchasing**
