


01/20/12
2012

| | | | |
|--|---|------------------------------|-------------------------------|
|  Agenda Sheet for City Council Meeting of: 10/31/2011 | | Date Rec'd | 10/21/2011 |
| | | Clerk's File # | OPR 1988-0864 |
| | | Renews # | |
| Submitting Dept | SPOKANE REGIONAL SOLID WASTE SYSTEM | Cross Ref # | |
| Contact Name/Phone | RUSS MENKE 625-6524 | Project # | |
| Contact E-Mail | RMENKE@SPOKANECITY.ORG | Bid # | |
| Agenda Item Type | Contract Item | Requisition # | |
| Agenda Item Name | 4490 INTERLOCAL COOPERATION AGREEMENT REGARDING REGIONAL SOLID WASTE SYSTEM | | |
| Agenda Wording Interlocal Cooperation Agreement to provide for continued use of the Regional Solid Waste System by the County through November 16, 2014, and provide for County approval of rates sufficient to support the costs of the System. | | | |
| Summary (Background) The Regional Solid Waste System is operated pursuant to an interlocal agreement between the City and Spokane County dated April 10, 1989. That agreement has an initial term through April 10, 2014, and provides for automatic renewal for successive 20-year terms unless the City and County agree not to renew it. The new Interlocal Cooperation Agreement amends the 1989 Interlocal by extending it through November 16, 2014, which is also the expiration date of the Wheelabrator Contract Extension. | | | |
| Fiscal Impact | | Budget Account | |
| Neutral | \$ | | # |
| Select | \$ | | # |
| Select | \$ | | # |
| Select | \$ | | # |
| Approvals | | Council Notifications | |
| Dept Head | MENKE, RUSS | Study Session | Public Works Cmte 10/24/11 |
| Division Director | GEMMILL, GERRY | Other | |
| Finance | SIMON, MARILYN | Distribution List | |
| Legal | HOLTAN, CARRIE | rmenke@spokanecity.org | |
| For the Mayor | WEBSTER, DOROTHY | choltan@spokanecity.org | |
| Additional Approvals | | ggemmill@spokanecity.org | |
| Purchasing | | derickson@spokanecounty.org | |
| | | ttauscher@spokanecity.org | |
| | | | |
| | | | |

(OPR 1988-0864)

RECEIVED
01.20.2012
CITY CLERK'S OFFICE
SPOKANE, WA

After filing, return to:
Clerk of the Board of County Commissioners Spokane County
1116 West Broadway Avenue
Spokane, Washington 99260

This is to Certify this is a true and
correct copy of the original document
NO. 11-0980 on file in the County
Commissioners minutes of 11/1/11
dated this 18th day of JANUARY 2012
BY: Amelia Erickson
CLERK OF THE BOARD

City of Spokane City Clerk File # OPR 1988-0864
Spokane County File # 11-0980

**INTERLOCAL COOPERATION AGREEMENT BETWEEN THE CITY OF SPOKANE
AND SPOKANE COUNTY REGARDING CONTRACT EXTENSION BETWEEN CITY
OF SPOKANE AND WHEELABRATOR SPOKANE, INC.**

THIS INTERLOCAL AGREEMENT made and entered into by and between the City of Spokane, a municipal corporation of the State of Washington, having offices for the transaction of business at 808 West Spokane Falls Boulevard, Spokane, Washington 99201, hereinafter referred to as "CITY," and Spokane County, a political subdivision of the State of Washington, having offices for the transaction of business at 1116 West Broadway Avenue, Spokane, Washington 99260, hereinafter referred to as "COUNTY," and jointly hereinafter referred to as the "PARTIES."

RECITALS:

WHEREAS, the City of Spokane, a first class charter city duly organized and existing under and by virtue of the laws of the State of Washington and Spokane County, a class A county duly organized and existing under and by virtue of the laws of the State of Washington, have certain respective powers to regulate the management, handling and disposal of solid waste within the boundaries of the City and unincorporated area of the County, respectively; and

WHEREAS, the CITY and COUNTY entered into an agreement entitled "Amended and Restated Interlocal Cooperation Agreement Between the City of Spokane and Spokane County, Washington, Spokane Regional Solid Waste Management System", dated April 10, 1989 (the "Agreement"); and

WHEREAS, Section 2.7 (Management.) of the Agreement provides in part as follows:

Section 2.7. Management.

(a) The City shall operate the Facility and shall be responsible for making all operational decisions other than major decisions, as more particularly described in subsection (b) below. ...

(b) Decisions relating to the following matters are considered major decisions and, therefore, no modification or change in them may be made without the agreement of the City and

County: ...

(2) Any single discretionary modification of the System costing in excess of \$1,000,000 (renewals or replacements which, in the opinion of the City, are necessary for the efficient or safe operation of the System shall not be deemed discretionary modifications);

(3) Major change ... in the Service Contract increasing annual operating costs by 5% or more;

(4) Any change in the amount or components of Tipping Fees other than changes made to fulfill the requirements of the Bond Ordinance or made in the landfill closure component in accordance with the provisions of Section 2.4 of this Agreement, ...

Major decisions require the concurrence of both the City and the County and shall be made by resolution of their respective governing bodies; and

WHEREAS, on August 28, 1989, the CITY entered into a 1989 Amended and Restated Operation and Maintenance Contract (the "Service Agreement") with Wheelabrator Spokane Inc. (the "Company") whereby the Company undertook operation and maintenance responsibilities for the CITY's Waste to Energy Facility (the "Facility") for a term of twenty (20) years; and

WHEREAS, the initial term of the Service Agreement is set to expire on November 16, 2011; and

WHEREAS, the CITY initiated a lengthy and costly formal "Dispute Resolution" procedure under the Service Agreement with the Company to negotiate a three (3)-year extension to the existing Service Agreement with the Company to align the November 16, 2011 Service Agreement expiration date with termination of the Agreement; and

WHEREAS, the CITY and the Company negotiated a Contract Extension document that would formally settle disputes regarding the existing Service Agreement and that will effectuate necessary Facility renewal and replacements which, in the opinion of the City, are necessary for the efficient and safe operation of the System; and

WHEREAS, the commitments of the CITY under the Contract Extension will require a change in the amount or components of Tipping Fees under Section 2.7 (Management) (b)(4), which requires approval by the COUNTY; and

WHEREAS, the County desires to modify its previous commitments regarding automatic renewals of the Agreement; and

WHEREAS, the COUNTY is desirous of providing its agreement to the City's Contract Extension as provided for under Section 2.7 (Management) (b)(4) within the Agreement, in so far as it requires an increase in the amount of the Tipping fee, subject to certain conditions.

NOW, THEREFORE, for and in consideration of the mutual promises, benefits and detriments stated herein, and for other good and valuable consideration as described herein, the PARTIES adopt the herein above recitals and agree as follows:

SECTION NO. 1 PURPOSE

The purpose of this Interlocal Agreement is for the COUNTY and CITY to reduce to writing the terms and conditions required by the COUNTY before it concurs with the CITY's

execution of the Contract Extension with the Company regarding the operation and maintenance of the CITY's Waste to Energy Facility and the safe and efficient operation of the System. The term Contract Extension shall mean that document, a copy of which is attached hereto as Attachment "A" and incorporated herein by reference, that, among other matters, extends the term of the Service Agreement.

SECTION NO. 2 DURATION

This Interlocal Agreement shall be in full force and effect from the Effective Date until November 16, 2014.

SECTION NO. 3 DEFINED TERMS

Defined terms set forth in this Interlocal Agreement shall have the same meaning set forth in the Agreement unless otherwise defined herein.

SECTION NO. 4 TERMS AND CONDITIONS

A. PARTIES Amendment of Section 5.2 (d) within the Agreement.

Section 5.1 of the Agreement provides that the Agreement may be amended only by written agreement of the City and the County.

Section 5.2 (c) of the Agreement provides that the Agreement may terminated early only by agreement of the City and the County.

Section 5.2 (d) of the Agreement provides as follows:

“(d) This Agreement shall be renewed automatically for successive 20-year terms unless the City and County agree not to renew it.”

The PARTIES, as provided for in Sections 5.1 and 5.2 (c) of the Agreement, agree that Section 5.2(d) of the Agreement is amended to provide as follows:

“(d) This Agreement is not subject to renewal and shall automatically terminate as of November 16, 2014.”

B. COUNTY's concurrence, as provided for in Section 2.7(b) of the Agreement, in CITY's execution of Contract Extension that will result in a change in the amount or components of the Tipping fee.

The COUNTY concurs with the CITY's execution of the Contract Extension as required under Section 2.7(b) (Management.) of the Agreement.

The PARTIES further agree the COUNTY's concurrence pursuant to this Section No. 4 B does not make the COUNTY a signatory to the Contract Extension.

The CITY and COUNTY agree to conduct the requisite "concurring" Vote and prepare the required Resolution commemorating the terms of this Section No. 4 B as required under Section 2.7(b) of the Agreement.

C. COUNTY's concurrence in changes to amount or components of tipping fee due to the Efficiency Restoration Project and the Facility Renewal and Replacement Costs.

The PARTIES agree for the purposes of any required COUNTY approval of changes to amount or components of the Tipping Fee(s) as provided for in Section 2.7(b)(4) of the

Agreement, that for 2011 through the end of the Agreement, no COUNTY approval related to a change in either the amount or components of the Tipping Fee(s) shall be withheld by the COUNTY when the change in amount or component is:

(i) required as a result of the CITY's obligations for up to four million dollars (\$4,000,000) under the Contract Extension related to the Efficiency Restoration Project and the City's obligations for up to three million dollars (\$3,000,000) for the Facility Renewal and Replacement Costs as provided for in Sections 4 and 5 of the Contract Extension,

(ii) required for the CITY to meet its obligations under the Contract Extension to increase the Base Operating Fee for the Extension Term both as defined in the Contract Extension by three and 64/100 dollars (\$3.64) per ton on the annually guaranteed 220,000 tons effective November 16, 2011, adjusted annually in accordance with the escalation adjustments set forth in Appendix H of the Service Agreement, or

(iii) required to maintain an amount of money in the Regional Solid Waste Disposal Reserve Fund / Account not to exceed five (5) percent of the Annual Budget for the System as established under Section 2.6 of the Agreement, exclusive of reserves for any Regional Landfill Costs which reserves shall not exceed \$7.1 Million. Provided upon termination of the Agreement a pro rata share of proceeds remaining in the Regional Solid Waste Disposal Reserve Fund / Account, exclusive of cash reserves for Regional Landfill Costs, shall be rebated to the COUNTY and other Regional Cities. If a Regional City discontinues disposal of its solid waste through the System prior to November 16, 2014, it will not receive a prorata share of the rebate. The County's and other Regional Cities' rebate shall be calculated by multiplying the amount of cash reserves in the fund/account on November 16, 2014 by a ratio of the population in unincorporated Spokane County and individual Regional Cities respectively, divided by the total population in Spokane County, as determined by the Washington Office of Financial Management for that year. Provided, further, the PARTIES agree that neither the County nor the Regional Cities shall have any financial responsibility for Closure, Postclosure or Cleanup of the Regional cell portion of the City's Northside Landfill. The financial responsibility for Closure, Postclosure or Cleanup of the Regional cell portion of the City's Northside Landfill is provided for by the Regional Landfill Costs reserve addressed herein. The City agrees to indemnify and hold harmless the County and Regional Cities with regard to any liability or costs for Closure, Postclosure or Cleanup of the Regional cell portion of the City's Northside Landfill in excess of the Regional Landfill Costs reserve addressed herein.

Provided, further, but for the changes to the amount or components of the Tipping Fee(s) as provided for in Section No. 4C, the COUNTY retains the right as provided for in Section 2.7(b)(4) of the Agreement to approve any other changes to the amount or components of the Tipping Fees, for 2011 through the end of the Agreement.

D. PARTIES Amendment of Section 2.6(d) within the Agreement.

Section 5.1 of the Agreement provides that the Agreement may be amended only by written agreement of the City and the County.

Section 2.6 (d) of the Agreement provides as follows:

“(d) If the City or the County should impose a utility tax on the disposal of Solid Waste at the System, the proceeds of that utility tax on disposal of Solid Waste generated within the County shall be shared, after the deduction of all appropriate

and reasonable administrative costs, between the City and the County proportionately based upon the tons of Solid Waste delivered to the System from the City and the tons of Solid Waste delivered to the System from other sources. Proceeds of that utility tax on disposal of Solid Waste generated outside Spokane County shall be shared, after the deduction of all appropriate and reasonable administrative costs, between the City, the County and the Regional Cities, on the same proportionate basis as Solid Waste generated within the County.”

The PARTIES, as provided for in Sections 5.1 of the Agreement, agree that Section 2.6(d) of the Agreement is superseded and a new Section is added to read as follows:

“(d) In the event the City applies a City utility tax or other City tax on the revenue derived from or the process of disposal of Solid Waste at the System, such tax shall have no application to waste originating outside of the City of Spokane, unless the City is requested in writing by the County or by any other Regional City to apply such tax to solid waste generated in their jurisdiction. In the event that the County and/or a Regional City requests that such tax apply to solid waste generated in their jurisdiction, the revenue from the tax shall be shared with each jurisdiction on a proportional basis to population, after the deduction of appropriate and reasonable administrative costs. For the purpose of this provision, population shall be determined from information maintained by the State of Washington Office of Financial Management (or successor agency) as of December 31st of the calendar year preceding application of the tax.

E. PARTIES Amendment of Section 2.7 (b) within the Agreement.

The PARTIES, as provided for in Sections 5.1 of the Agreement, agree that Section 2.7 (b) of the Agreement is amended and a new final paragraph is added to read as follows:

“The County shall no longer have a right of approval for any major decisions that do not take effect, or which create no monetary impact on Tipping Fees, until after November 16, 2014.”

F. PARTIES Amendment of Section 5.2 (b) within the Agreement.

Section 5.1 of the Agreement provides that the Agreement may be amended only by written agreement of the City and the County.

Section 5.2 (b) of the Agreement provides as follows:

“(b) Except as provided in Section 4.6(a) hereof, this Agreement shall be for a term of 25 years, or for such longer term as the Series 1988 Bonds or any Additional Bonds remain outstanding.”

The PARTIES, as provided for in Sections 5.1 of the Agreement, agree that Section 5.2(b) of the Agreement is amended to provide as follows:

“(b) Except as provided in Section 4.6(a) hereof, this Agreement shall be for a term running through November 16, 2014, or for such longer term as the Series 1988 Bonds.”

SECTION NO. 5 EFFECTIVE DATE

The effective date of this Interlocal Agreement ("Effective Date") shall be when finally

executed by both PARTIES.

SECTION NO. 6 ALL WRITINGS CONTAINED HEREIN/BINDING EFFECT

This Interlocal Agreement contains terms and conditions agreed upon by the PARTIES. The PARTIES agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Interlocal Agreement. No changes or additions to this Interlocal Agreement shall be valid or binding upon the PARTIES unless such change or addition is in writing, executed by the PARTIES. This Interlocal Agreement shall be binding upon the PARTIES hereto, their successors and assigns.

The PARTIES agree that certain provisions of this Interlocal Agreement amend and/or supersede provisions in the Agreement. In the event of an inconsistency between the provisions of this Interlocal Agreement and the provisions of the Agreement, the provisions of this Interlocal Agreement shall control. It is further agreed between the PARTIES that but for those amendments to the Agreement as provided for in this Interlocal Agreement, all other terms, conditions and provisions within the Agreement shall remain in full force and effect unless modified previously by written agreement of the PARTIES.

SECTION NO. 7 VENUE STIPULATION

This Interlocal Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is mutually understood and agreed by each party that this Interlocal Agreement shall be governed by the laws of the State of Washington both as to interpretation and performance. Any action at law, suit in equity or judicial proceeding for the enforcement of this Interlocal Agreement, or any provision hereto, shall be instituted only in courts of competent jurisdiction within Spokane County, Washington.

SECTION NO. 8 SEVERABILITY

The PARTIES agree that if any parts, term or provisions of this Interlocal Agreement are held by the courts to be illegal, the validity of the remaining portions or provisions shall not be affected and the rights and obligations of the PARTIES shall not be affected in regard to the remainder of the Interlocal Agreement.

If it should appear that any part, term or provision of this Interlocal Agreement is in conflict with any statutory provision of the state of Washington, then the part, term or provision thereof that may be in conflict shall be deemed inoperative and null and void insofar as it may be in conflict therewith and this Interlocal Agreement shall be deemed to modify to conform to such statutory provision.

SECTION NO. 9 HEADINGS

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

SECTION NO. 10 TIME OF ESSENCE OF AGREEMENT

Time is of the essence of this Interlocal Agreement and in case any party fails to perform the obligations on its part to be performed at the time fixed for the performance of the respective obligation by the terms of this Interlocal Agreement, the other party may, at its election, hold the

other party liable for all costs and damages, including, without limit, attorneys fees and costs, caused by such delay.

SECTION NO. 11 FILING

The CITY shall file this Interlocal Agreement with its City Clerk. The COUNTY shall place this Interlocal Agreement on its web site or other electronically retrievable public source and shall record this Interlocal Agreement at the County Auditor's Office, with an appropriate cross reference to the Agreement.

SECTION NO. 12 EXECUTION AND APPROVAL

The PARTIES warrant that the officers executing below have been duly authorized to act for and on behalf of the party for purposes of confirming this Interlocal Agreement.

SECTION NO. 13 COMPLIANCE WITH LAWS

The PARTIES shall observe all federal, state and local laws, ordinances and regulations, to the extent that they may be applicable to the terms of this Interlocal Agreement.

SECTION NO. 14 NOTICE

All notices or other communications given hereunder shall be deemed given on: (i) the day such notices or other communications are received when sent by personal delivery; or (ii) the third day following the day on which the same have been mailed by first class delivery, postage prepaid addressed to the COUNTY or the CITY at the address set forth below for such party, or at such other address as either party shall from time-to-time designate by notice in writing to the other party:

COUNTY: Spokane County Chief Executive Officer
or his/her authorized representative 1116 West Broadway Avenue
Spokane, Washington 99260

CITY: Mayor or her designee
City of Spokane
Fifth Floor, City Hall
808 West Spokane Falls Boulevard
Spokane, Washington 99201

With a copy to:

City Attorney
Office of the City Attorney
City of Spokane
5th Floor, City Hall
808 West Spokane Falls Boulevard
Spokane, Washington 99201

SECTION NO. 15 TERMINATION / REMEDIES.

Once this Interlocal Agreement is executed by the PARTIES it may be terminated ONLY

by an Event of Default.

An "Event of Default" under this Interlocal Agreement shall be either PARTIES' failure to perform, observe or comply with the covenants, agreements or conditions on its part contained in this Interlocal Agreement and such default continuing for a period of thirty (30) days after written notice of such failure requesting the same to be remedied shall have been given to the party in default by the non-defaulting party. Provided, however, such failure shall not be an Event of Default if it is knowingly and intentionally waived in writing by the non-defaulting party.

Upon the occurrence and continuance of any Event of Default, the non-defaulting party's exclusive remedies shall be specific performance, declaratory judgment and other equitable remedies.

SECTION NO. 16 SURVIVAL

Any Sections of this Interlocal Agreement which by their sense and context are intended to survive termination, expiration or determination of invalidity of this Agreement shall survive.

SECTION NO. 17 RCW 39.34 REQUIRED CLAUSES

- (A) PURPOSE: See Section No. 1 above.
- (B) DURATION: See Section No. 2 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: See Section No. 11
- (F) TERMINATION: See Section No. 15 above.
- (G) 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 Interlocal Agreement. Jointly acquired property shall be divided in proportion to the percentage share of each PARTY contributing to its acquisition.
- (H) ADMINISTRATION OF THIS INTERLOCAL AGREEMENT: The COUNTY hereby designates the COUNTY CEO or his/her designee for the purpose of administering this Agreement. The CITY hereby designated the CITY ADMINISTRATOR or his/her designee for the purpose of administering this Agreement.

IN WITNESS WHEREOF, the PARTIES have caused this Interlocal Agreement to be executed on date and year opposite their respective signatures.

DATED: _____

CITY OF SPOKANE:

Attest:

Laura Jaseunt
City Clerk

By: [Signature]
Thomas E. Danek, Jr., City Administrator



Acting

Approved as to form:

Larry Holtan
Assistant City Attorney

DATED: _____

BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

AL FRENCH, CHAIR

ATTEST:

DANIELA ERICKSON
Clerk of the Board

TODD MIELKE, VICE CHAIR

MARK RICHARD, COMMISSIONER

Approved as to form:

Deputy Prosecuting Attorney

City Signature Page
(County Signature Page to follow)

IN WITNESS WHEREOF, the PARTIES have caused this Interlocal Agreement to be executed on date and year opposite their respective signatures.

DATED: _____

CITY OF SPOKANE:

Attest:

By: _____
Thomas E. Danek, Jr., City Administrator

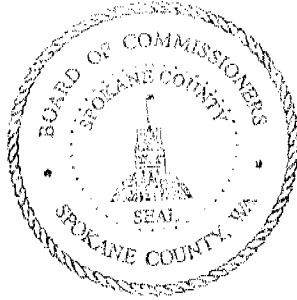
City Clerk

Approved as to form:

Assistant City Attorney

DATED: November 1, 2011

BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON



AL FRENCH, CHAIR

TODD MIELKE, VICE CHAIR

MARK RICHARD, COMMISSIONER

ATTEST:

Danifela Erickson, Clerk of the Board

Approved as to form:

Deputy Prosecuting Attorney

RECEIVED
01-20-2012
CITY CLERK'S OFFICE
SPOKANE, WA

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN)
INTERLOCAL COOPERATION AGREEMENT)
BETWEEN THE CITY OF SPOKANE AND)
SPOKANE COUNTY REGARDING CONTRACT)
EXTENSION BETWEEN CITY OF SPOKANE)
AND WHEELABRATOR SPOKANE, INC.)

RESOLUTION

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

WHEREAS, the City of Spokane (the "City") is a first class charter city duly organized and existing under and by virtue of the laws of the State of Washington; and

WHEREAS, the City Spokane and Spokane County have certain respective powers to regulate the management, handling and disposal of solid waste within the boundaries of the City and unincorporated area of the County, respectively; and

WHEREAS, the City and County entered into an agreement entitled "Amended and Restated Interlocal Cooperation Agreement Between the City of Spokane and Spokane County, Washington, Spokane Regional Solid Waste Management System", dated April 10, 1989 (the "Agreement"): and

WHEREAS, Section 2.7 (Management.) of the Agreement provides in part as follows:

Section 2.7. Management.

(a) The City shall operate the Facility and shall be responsible for making all operational decisions other than major decisions, as more particularly described in subsection (b) below. ...

(b) Decisions relating to the following matters are considered major decisions and, therefore, no modification or change in them may be made without the agreement of the City and County: ...

(2) Any single discretionary modification of the System costing in excess of \$1,000,000 (renewals or replacements which, in the opinion of the City, are necessary for the efficient or safe operation of the System shall not be deemed discretionary modifications);

(3) Major change ... in the Service Contract increasing annual operating costs by 5% or more;

(4) Any change in the amount or components of Tipping Fees other than changes made to fulfill the requirements of the Bond Ordinance or made in the landfill closure component in accordance with the provisions of Section 2.4 of this Agreement...

Major decisions require the concurrence of both the City and the County and shall be made by resolution of their respective governing bodies. ...
; and

WHEREAS, on August 28, 1989, the City entered into a 1989 Amended and Restated Operation and Maintenance Contract (the "Service Agreement") with Wheelabrator Spokane Inc. (the "Company") whereby the Company undertook operation and maintenance responsibilities for the City's Waste to Energy Facility (the "Facility") for a term of twenty (20) years; and

WHEREAS, the initial term of the Service Agreement is set to expire on November 16, 2011;
and

WHEREAS, the City initiated a lengthy and costly formal "Dispute Resolution" procedure under the Service Agreement with the Company to negotiate a three (3)-year extension to the existing Service Agreement with the Company to align the November 16, 2011 Service Agreement expiration date with termination of the Agreement; and

WHEREAS, the City and the Company negotiated a Contract Extension document that would formally settle disputes regarding the existing Service Agreement and that outlined capital projects that will effectuate necessary Facility renewal and replacements which, in the opinion of the City, are necessary for the efficient and safe operation of the System; and

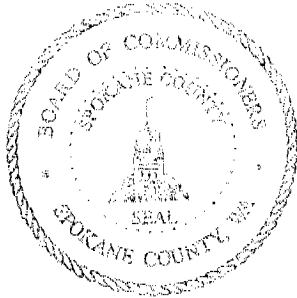
WHEREAS, the Contact Extension and associated contract management fees will require a change in the amount or components of the Tipping fee which requires County approval under Section 2.7 (Management)(b)(4) of the Agreement; and

WHEREAS, the County is desirous of providing its agreement as provided for under Section 2.7 (Management) (b) (4) within the Agreement to the CITY'S Contact Extension, subject to certain conditions.

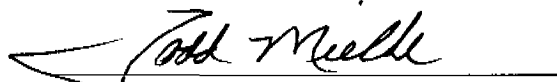
NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Spokane County, Washington, pursuant to the provisions of RCW 36.32.120(6), that either the Chairperson of the Board or a majority of the Board be is hereby authorized to execute that document entitled "INTERLOCAL COOPERATION AGREEMENT BETWEEN THE CITY OF SPOKANE AND SPOKANE COUNTY REGARDING CONTRACT EXTENSION BETWEEN CITY OF SPOKANE AND WHEELABRATOR SPOKANE, INC" a copy of which is attached hereto as Attachment "A" and incorporated herein by reference, subject to execution of the document by the City of Spokane, pursuant to which under certain terms and conditions Spokane County will concur in the City of Spokane's execution of the Contact Extension with Wheelabrator Spokane Inc as provided for under various provisions of Section 2.7 (Management) within the Agreement.

PASSED AND ADOPTED this 1st day of November, 2011.

BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON




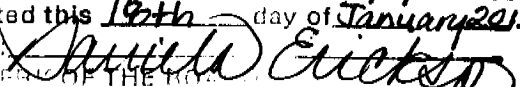

AL FRENCH, Chair


TODD MIELKE, Vice-Chair


MARK RICHARD, Commissioner

ATTEST:


Daniela Erickson, Clerk of the Board
11-0980

This is to Certify this is a true and correct copy of the original document NO. 11-0980 on file in the County Commissioners minutes of 11/1/11 dated this 19th day of January 2012
BY: 
CLERK OF THE BOARD

FOR COUNCIL MEETING OF: February 3, 1992
5 p.m. Consent Agenda
6 p.m. Hearing Agenda

| AC | CATEGORY | RECOMMENDATION |
|----|---------------------|---------------------|
| 0 | Hearing | 0 Accept |
| 0 | Annexation | 0 Approve |
| 0 | Report | 0 Deny |
| 0 | Contract | 0 Place on File |
| 0 | Resolution | 0 Set Hrg./Review |
| 0 | Emergency Ord | Date for: _____ |
| 0 | First Rdg. Ord. | 0 Defer/Continue |
| 0 | Report of City Mgr. | To: _____ |
| 0 | | 0 Council Direction |

Notify Prior to Meeting:
Spokane Valley Advisory Council 0
Other? _____

RECEIVED

TO: **MAYOR AND CITY COUNCIL**
0 For Action
0 For Information

JAN 29 1992

CITY CLERK'S OFFICE
SPOKANE, WA

Clerk's File# _____ OPR 88-864
Eng./LID # _____ Bid # _____

AGENDA WORDING:

Amendment No. 1 to Amended and Restated Interlocal Agreement between the City of Spokane and Spokane County, Washington, regarding the "Spokane Regional Solid Waste Management System," dated April 10, 1989.

BACKGROUND:

At the Project Liaison Board meeting on November 4, 1991, a motion was passed recommending to the City Council and Board of County Commissioners that the above-referenced Interlocal Agreement be amended. This amendment would give authority for the Regional Cities representative on the Liaison Board to be a voting member. The Board of County Commissioners met on January 7, 1992, and adopted a resolution in favor of the amendment. This amendment is now being submitted to City Council with a recommendation for adoption.

ENVIRONMENTAL FINDING: N/A ○

FISCAL IMPACT: N/A

BUDGET ACCOUNT #: N/A (Solid Waste Disposal)

ATTACHMENTS: (List)

Amendment No. 1 on file for review in Office of City Clerk

Signatures of:

Phil Williams
Submitting Department

J. Sloane
Legal

[Signature]
Manager (Finance, Administration, Engineering, or Planning)

Finance

[Signature]
City Manager

COUNCIL ACTION:

DISTRIBUTION AFTER COUNCIL ACTION:

- Legal
- Engineering Services
- Solid Waste Disposal
- Board of County Commissioners

APPROVED BY
SPOKANE CITY COUNCIL:
FEB 03 1992

Marilyn J. Montgomery
CMC/AE, SPOKANE CITY CLERK

AMENDMENT NO. 1 TO AMENDED AND RESTATED
INTERLOCAL COOPERATION AGREEMENT BETWEEN
THE CITY OF SPOKANE AND SPOKANE COUNTY, WASHINGTON
SPOKANE REGIONAL SOLID WASTE MANAGEMENT SYSTEM

THIS AMENDMENT AGREEMENT, made and entered into by and between SPOKANE COUNTY, a political subdivision of the State of Washington, having offices for the transaction of business at West 1116 Broadway Avenue, Spokane, Washington, 99260, (hereinafter referred to as the "County") and THE CITY OF SPOKANE, a municipal corporation, having offices for the transaction of business at West 808 Spokane Falls Blvd., Spokane, Washington, 99201, (hereinafter referred to as the "City"), jointly referred to as the "Parties".

W I T N E S S E T H:

WHEREAS, the City of Spokane, a First Class Charter city, duly organized and existing under and by virtue of the laws of the State of Washington, and Spokane County, a Class A County, duly organized and existing under and by virtue of the laws of the State of Washington, have the power to control the management, handling and disposal of solid waste within the City and unincorporated area of the County, respectively; and

WHEREAS, the City and County entered into a document entitled "Amended and Restated Interlocal Cooperation Agreement Between the City of Spokane and Spokane County, Washington, Spokane Regional Solid Waste Management System", dated April 10, 1989, and now desire to modify Article II (Cooperative Project), Section 2.7 (Management) (c) of said agreement so that the fifth member of the Policy Liaison Board, being a representative selected by the Regional Cities, is a voting, as opposed to non-voting member of said Board;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual benefits running to the City and County respectively, as a result of the amendment set forth hereinafter, the City and the County do hereby agree that the Interlocal Agreement entered into by the Parties on the 10th day of April, 1989, and termed "Amended and Restated Interlocal Cooperation Agreement Between the City of Spokane and Spokane County, Washington, Spokane Regional Solid Waste Management System", be and is hereby amended in Article II (Cooperative Project), Section 2.7 (Management) (c), to provide as follows:

(underlined language added, ~~everstricken~~ language deleted)

(c) The City and County shall form a five-member Policy Liaison Board, comprised of two City representatives, two County representatives and one representative selected by the Regional Cities ~~who shall be a non-voting member~~. The City and the County shall each appoint their representative who shall serve without additional compensation. The purpose and function of the Policy Liaison Board shall be to create a forum for discussion among the City, the County and the Regional Cities concerning the Facility and to create a body to whom information concerning the Facility can be provided. The Policy Liaison Board shall have no independent decision-making authority. The Policy Liaison Board shall review all Facility requests and transmit those requests to the City, County and Regional City representative respectively. The Policy Liaison Board shall review and make a recommendation on those matters set forth in Section 2.7(b) hereinabove. The City shall provide a statement of Facility income and expenses to the Policy Liaison Board promptly at the end of each calendar quarter or on such other periodic basis agreed upon by the City, the County and Regional City representative.

During construction and operational testing and acceptance phases of the Facility, the Policy Liaison Board shall meet at least monthly to review the status of the Facility and to discuss matters which should be reviewed by the City and the County. The City shall cause monthly reports to be made to the Policy Liaison Board during this phase. Prior to acceptance of the Facility by the City, the Policy Liaison Board shall be comprised of members of the City Council and Board of County Commissioners and a member of the City Council of one of the Regional Cities.

After the construction and operational testing and acceptance of the Facility, the Policy Liaison Board shall meet at least once each calendar quarter or on such other periodic basis agreed upon by the members to review operational matters pertaining to the Facility. The City shall cause an operational status report to be made at such meetings. During this phase of the Facility, the Policy Liaison Board may be comprised of representatives of the City, County, or a Regional City or of members of the City Council or Board of County Commissioners or the Council of a Regional City.

The failure of the Policy Liaison Board to meet as provided in this section shall not invalidate this Agreement.

BE IT FURTHER AGREED by the City of Spokane and County of Spokane that but for that change as set forth hereinabove, all other terms, conditions and provisions, to include recitals, set forth in that document executed on April 10, 1989, and entitled "Amended and Restated Interlocal Cooperation Agreement Between the City of Spokane and Spokane County, Washington, Spokane Regional Solid Waste Management System", shall remain in full force and effect, without any change or modification whatsoever.

DATED this 5th day of February, 1992.

CITY OF SPOKANE, WASHINGTON

BY Sheri S. Barnard
MAYOR

ATTEST:

JANET R. OWENS
DEPUTY CITY CLERK

BY Janet R. Owens

APPROVED AS TO FORM:

James C. Sloane
James C. Sloane,
Corporation Counsel

DATED this 7 day of January, 1992.

BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

John R. McBride
John R. McBride

Patricia A. Mummey
Patricia A. Mummey

ATTEST:

WILLIAM E. DONAHUE,
Clerk of the Board

BY William E. Donahue
Deputy Clerk

Steven Hasson
Steven Hasson

Agree\Interloc.jpg

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF SPOKANE COUNTY, WA.

IN THE MATTER OF AUTHORIZING THE)
EXECUTION OF AMENDMENT NO. 1 TO) R E S O L U T I O N
AMENDED AND RESTATED INTERLOCAL)
COOPERATION AGREEMENT BETWEEN THE)
CITY OF SPOKANE AND SPOKANE COUNTY,)
WASHINGTON, SPOKANE REGIONAL SOLID)
WASTE MANAGEMENT SYSTEM)

WHEREAS, pursuant to the provisions of the Revised Code of Washington, Section 36.32.120(6), the Board of County Commissioners of Spokane County has the care of County property and the management of County funds and business; and

WHEREAS, pursuant to the provisions of chapter 39.34 RCW, two (2) or more public entities may jointly cooperate between each other to perform functions which each may individually perform; and

WHEREAS, the City of Spokane and Spokane County have the power to control the management, handling and disposal of solid waste within the City and unincorporated area of the County, respectively; and

WHEREAS, the City and County entered into a document entitled "Amended and Restated Interlocal Cooperation Agreement Between the City of Spokane and Spokane County, Washington, Spokane Regional Solid Waste Management System", dated April 10, 1989, and now desire to modify Article II (Cooperative Project), Section 2.7 (Management) (c) of said agreement so that the fifth member of the Policy Liaison Board, being a representative selected by the Regional Cities, is a voting, as opposed to non-voting member of said Board;

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Spokane County, that the Board of County Commissioners of Spokane County, hereby authorizes the execution of that document entitled "Amendment No. 1 to Amended and Restated Interlocal Cooperation Agreement Between the City of Spokane and Spokane County, Washington, Spokane Regional Solid Waste Management System", pursuant to which the following amendment will be made to such Agreement:

(underlined language added, ~~overstricken~~ language deleted)

(c) The City and County shall form a five-member Policy Liaison Board, comprised of two City representatives, two County representatives and one representative selected by the Regional Cities ~~who shall be a non-voting member~~. The City and the County shall each appoint their representative who shall serve without additional compensation. The purpose and function of the Policy Liaison Board shall be to create a forum for discussion among the City, the County and the Regional Cities concerning the Facility and to create a body to whom information concerning the Facility can be provided. The Policy Liaison Board shall have no independent decision-making authority. The Policy Liaison Board shall review all Facility requests and transmit those requests to the City, County and Regional City representative respectively. The Policy Liaison Board shall review and make a recommendation on those matters set forth in Section 2.7(b) hereinabove. The City shall provide a statement

of Facility income and expenses to the Policy Liaison Board promptly at the end of each calendar quarter or on such other periodic basis agreed upon by the City, the County and Regional City representative.

During construction and operational testing and acceptance phases of the Facility, the Policy Liaison Board shall meet at least monthly to review the status of the Facility and to discuss matters which should be reviewed by the City and the County. The City shall cause monthly reports to be made to the Policy Liaison Board during this phase. Prior to acceptance of the Facility by the City, the Policy Liaison Board shall be comprised of members of the City Council and Board of County Commissioners and a member of the City Council of one of the Regional Cities.

After the construction and operational testing and acceptance of the Facility, the Policy Liaison Board shall meet at least once each calendar quarter or on such other periodic basis agreed upon by the members to review operational matters pertaining to the Facility. The City shall cause an operational status report to be made at such meetings. During this phase of the Facility, the Policy Liaison Board may be comprised of representatives of the City, County, or a Regional City or of members of the City Council or Board of County Commissioners or the Council of a Regional City.

The failure of the Policy Liaison Board to meet as provided in this section shall not invalidate this Agreement.

BE IT FURTHER RESOLVED by the Board of County Commissioners that but for that change as set forth hereinabove, all other terms, conditions and provisions, to include recitals, set forth in that document executed on April 10, 1989, and entitled "Amended and Restated Interlocal Cooperation Agreement Between the City of Spokane and Spokane County, Washington, Spokane Regional Solid Waste Management System", shall remain in full force and effect, without any change or modification whatsoever.

PASSED AND ADOPTED this 7 day of January, 1992.

BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON


John R. McBride


Patricia A. Mummey


Steven Hasson

ATTEST:
WILLIAM E. DONAHUE,
Clerk of the Board

By 
Deputy Clerk

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INTERLOCAL COOPERATION AGREEMENT BETWEEN
THE CITY OF SPOKANE AND SPOKANE COUNTY, WASHINGTON
SPOKANE REGIONAL SOLID WASTE MANAGEMENT SYSTEM

RECITALS

WHEREAS, the City of Spokane, a first class charter city duly organized and existing under and by virtue of the laws of the State of Washington (the "City"), and Spokane County, a class A county duly organized and existing under and by virtue of the laws of the State of Washington (the "County"), have the power to control the management, handling and disposal of solid waste ("solid waste management") within the City and unincorporated area of the County (the "region"), respectively; and

WHEREAS, the Spokane region is faced with serious solid waste management and disposal problems, including pollution of drinking water sources from publicly owned landfills, which require prompt action; and

WHEREAS, the County duly adopted a Solid Waste Management Plan for the region ("Plan") after proper environmental, inter-agency and public review in 1984, which Plan was approved by the Washington State Department of Ecology ("Ecology") in 1986 in accordance with state law; and

WHEREAS, the Plan and other environmental, hazardous and solid waste management studies have identified contamination to the Spokane-Rathdrum Aquifer (the "Aquifer"), a designated sole source aquifer and drinking water source for the region, as a result of certain factors including landfills, some of which are now federally-designated Superfund sites; and

WHEREAS, the City and County are vitally concerned about pollution of the Aquifer from landfills and about prompt implementation of a balanced solid waste management program for the region; and

WHEREAS, consistent with and in order to implement the Plan promptly, the City and County initiated the Spokane Regional Solid Waste Disposal Project ("Project") in 1984 to develop necessary waste reduction and recycling, waste-to-energy and landfill facilities; and

WHEREAS, in light of existing threats to the Aquifer and the need for prompt action, the Plan placed a high priority on planning and implementing a regional mass burn resource recovery steam and electric generating facility (the "Facility"), which will reduce reliance on landfilling and incorporate recycling facilities into the Facility and into recycling/transfer stations associated with the collection of solid waste; and

WHEREAS, the Project was directed by a Regional Solid Waste Disposal Project Policy Committee composed of City and County officials, Ecology, and the public; and

WHEREAS, the Project engaged expert consultants to undertake early planning and feasibility studies on the types of technologies, pollution control measures, siting, and related matters; and

WHEREAS, the City was designated as lead agency under the State Environmental Policy Act (SEPA) and duly conducted environmental review under SEPA commencing with a scoping process in August 1985 to identify the range of alternatives and environmental impacts to be evaluated, which resulted in Draft Environmental Impact Statement (EIS) on the Facility being issued on March 21, 1986; and

WHEREAS, after a public hearing and public and interagency comment process, a Supplemental Draft EIS was issued on April 30, 1986 for a 30-day public comment period, a Final EIS was issued on July 14, 1986, and an Addendum to the Final EIS was issued on April 6, 1987, thereby completing an adequate environmental review process under SEPA on the Facility; and

WHEREAS, the EIS states that additional environmental review will be required in conjunction with a new landfill, whether as a regional landfill or as a residue landfill; and

WHEREAS, no administrative appeals of the SEPA documents were filed as provided by local code under the statewide SEPA rules; and

WHEREAS, the City and the County jointly conducted a process for inviting, evaluating, and selecting a contractor ("Vendor") to design, construct, and operate the Facility in accordance with state and local law, including the establishment of a Vendor Selection Committee; and

WHEREAS, the City and the County approved a Request for Qualifications (RFQ) in May 1986 which was subsequently amended; and

WHEREAS, the City and the County approved evaluation criteria for vendor selection in September 1986; and

WHEREAS, the City and the County approved a Request for Proposals (RFP) in December 1986 which was subsequently amended, and have also reviewed and evaluated the proposals received in response to the RFP; and

WHEREAS, the City and the County determined in May 1987 that Signal Environmental Systems, Inc. (now Wheelabrator Technologies, Inc.) was "the best qualified" to design, construct, and operate the Facility; and

WHEREAS, on November 3, 1987, the City and Wheelabrator Spokane Inc. (the "Company") entered into a Design and Construction Contract and an Operation and Maintenance Contract relating to the Facility; and

WHEREAS, on January 4, 1988, the City and Puget Sound Power & Light Company ("Puget") entered into an Agreement for Firm Power Purchase (Thermal Project) providing for the purchase by Puget of energy produced by the Facility; and

WHEREAS, the City applied for and received a grant of approximately sixty million dollars (\$60,000,000) for the Facility from the Washington State Department of Ecology, which grant contract was executed in November 1986; and

WHEREAS, the City and the County are currently in the process of completing related financing and contractual arrangements with each other and other public and private entities for the implementation of the Facility; and

WHEREAS, at a meeting expected to be held in October 1988, the City proposes to adopt a bond ordinance (the "Bond Ordinance") which would authorize the issuance of a series of bonds (the "Series 1988 Bonds"), secured by and payable from the revenues of the City's solid waste management system, to finance, among other things, a portion of the cost of acquisition and construction by the City of certain improvements and additions to its solid waste management system consisting of the Facility, transfer stations, recycling centers and a residue and bypass landfill (the "1988 Improvements and Additions"); and

WHEREAS, through its solid waste management system, the City currently provides collection and disposal services for solid waste generated within the boundaries of the City; and

WHEREAS, solid waste generated in the unincorporated area of the County and in the other towns and cities in the County and Fairchild Air Force Base ("Fairchild") is currently being disposed of at various disposal sites, including the County's Mica landfill and the privately-owned Marshall landfill located in the County; and

WHEREAS, the City, the County, the other towns and cities in the County, and Fairchild are authorized by Chapter 39.34 and Chapter 70.95 of the Revised Code of Washington to enter into agreements with each other for cooperative action, such as planning, owning, financing, and managing of regional solid waste management facilities; and

WHEREAS, the City and the County have duly entered into interlocal cooperation agreements for cooperative and coordinated solid waste management planning for the region, including phases I and II of the Spokane Regional Solid Waste Disposal Project on

January 29, 1985 and on September 9, 1986, respectively, and the recitals therein are incorporated by reference herein; and

WHEREAS, on November 3, 1987 the City and the County entered into an interlocal agreement (the "1987 Interlocal Agreement") which, among other things, allocated responsibility for the ongoing management and operation of the Facility; and

WHEREAS, on July 18, 1988, pursuant to the recommendation of Seattle-Northwest Securities Corporation, financial advisor to the City and the County, the City and the County entered into an interlocal agreement (the "Rate Stabilization Fee Agreement") relating to, among other things, the increases previously imposed by the City and the County in the tipping fees charged by them for disposal of solid waste at their respective disposal sites in order to provide a fund to be used for the stabilization of tipping fees in the early years of the operation of the Facility; and

WHEREAS, the City and the County desire to enter into this Agreement in order to combine the 1987 Interlocal Agreement and the Rate Stabilization Fee Agreement into one agreement and to provide, among other things, (a) that, commencing as of October 10, 1988, the County will cease providing solid waste disposal services for solid waste generated in the unincorporated area of the County and collecting the Tipping Fees paid for such disposal and the City will provide such solid waste disposal services and collect such Tipping Fees; (b) that, concurrently with the execution hereof, the County will take the appropriate action, pursuant to its Ordinance No. 85-0395 adopted May 14, 1985 (as amended from time to time, the "Flow Control Ordinance"), to direct that solid waste generated in its unincorporated area be disposed of through the City's solid waste management system (except as provided in the Flow Control Ordinance); (c) that the City shall have the right to dispose of solid waste delivered to the System at the County's Mica landfill and to collect all Tipping Fees related thereto; and (d) that the Mica landfill shall be operated and maintained by the County and that the County shall be paid an operating fee therefor by the City from the Revenues of its solid waste management system; and

WHEREAS, the City and the County have entered into or are currently negotiating separate interlocal agreements ("Regional City Interlocal Agreements") with other towns and cities in the County and with Fairchild under which, among other things, such a town or a city or Fairchild would agree to direct that solid waste generated within its boundaries be disposed of through the City's solid waste management system (any such town or city that has entered into, or hereafter enters into, a Regional City Interlocal Agreement being herein called a "Regional City"); and

WHEREAS, in order to reflect the use of its solid waste management system for the disposal of solid waste generated in

the City, the unincorporated area of the County, the Regional Cities and Fairchild, such system shall, from and after the effectiveness of this Agreement, be named the "Spokane Regional Solid Waste Management System" (such system, as further defined herein, being referred to herein as the "System"); and

WHEREAS, additional actions to implement the Plan and the Project and to prepare a Plan update in accordance with Ecology's 1986 Plan approval, including residual and future landfills and additional recycling programs and facilities, are being planned and will be planned in the future, and such actions will occur in phases and will receive timely and appropriate environmental review; and

WHEREAS, after years of planning and the completion of an adequate environmental impact statement and vendor selection process, and after due consideration of the environmental, social, technical, economic and other relevant factors, including public and governmental comment, and observance of applicable federal, state, and local procedures, the City Council and the Board of County Commissioners find the 1988 Improvements and Additions are in the best interests of and will best serve the citizens of the region and needs to be implemented at this time; and

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

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

NOW, THEREFORE, between the parties hereto, the City and County,

OPERATIVE PROVISIONS

IT IS HEREBY AGREED AS FOLLOWS:

ARTICLE I DEFINITIONS

Section 1.1. Purpose. As used in this Agreement, the following words, unless the context otherwise dictates, shall have the following meanings:

A. Additional Bonds shall mean any bonds, other than the Series 1988 Bonds, which the City may hereafter issue pursuant to Article X of the Bond Ordinance having a lien upon the Revenues for the payment of the principal thereof and interest thereon equal to the lien upon the Revenues created by the Bond Ordinance in favor of the Series 1988 Bonds.

B. Agreement shall mean this Interlocal Cooperation Agreement between the City and the County for the ownership, financing and management of the System.

C. Agreement for Firm Power Purchase shall mean the Agreement for Firm Power Purchase (Thermal Project), between Puget Sound Power & Light Company ("Puget"), a Washington corporation, and the City, providing for the purchase of firm power by Puget.

D. Annual Budget shall mean the System budget for a Fiscal Year, as adopted or amended by the City in accordance with Section 8.12 of the Bond Ordinance.

E. Bond Ordinance shall mean an ordinance of the City of Spokane authorizing the issuance, sale and delivery of the Series 1988 Bonds, as the same may be supplemented or amended.

F. Capital Project shall mean an addition to, change or modification in or alteration of the Facility, as provided in Article XI of the Construction Contract or in Article IX of the Service Contract.

G. City shall mean the City of Spokane, Washington, a first class charter city of the State of Washington.

H. City Collection Costs shall mean (a) the City Pre-existing Landfill Costs and (b) all other Costs of the System, Costs of Maintenance and Operation and other costs relating to the System that are allocable to the collection of Solid Waste generated in the City including, without limitation, debt service on any Additional Bonds allocable to costs of the City incurred in connection with the collection of such Solid Waste.

I. City Pre-existing Landfill Costs shall mean Pre-existing Landfill Costs relating to Pre-existing Landfills owned by the City.

J. City Collection Revenues shall mean all revenues of the City attributable to the collection of Solid Waste in the City together with the portion of the landfill closure component allocated to the City pursuant to Section 2.4 hereof.

K. Cleanup shall mean any "removal" or "remedial action," defined as follows:

Removal shall mean the cleanup or removal of released hazardous substances from the environment; such actions as may be necessary to take in the event of the threat of release of hazardous substances into the environment; such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances; the disposal of removed material; or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to

the public health or welfare or to the environment, which may otherwise result from a release or threat of release of hazardous substances.

Remedial action shall mean those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not cause substantial danger to present or future public health or welfare or the environment.

L. Closure shall mean those actions taken by the City or the County to cease disposal activities at Solid Waste disposal facilities, to ensure that all such Solid Waste disposal facilities are closed in conformance with applicable state and federal regulations in effect at the time of such closures, to prepare the site for the Postclosure period, and any other cleanup activities incident thereto.

M. Company shall mean Wheelabrator Spokane Inc., a corporation formed under the laws of the State of Delaware.

N. Construction Contract shall mean the Design and Construction Contract dated November 3, 1987, between the City and the Company, or its successor (as designated and approved by the City and the County), as the same may be amended, modified, or supplemented from time to time in accordance with its terms.

O. Costs of Maintenance and Operation shall mean the City's expenses for operation, maintenance, repairs and ordinary renewals and replacements necessary for the operation of the System and shall include, without limitation, all compensation (including service fees) payable to the Company under the Service Contract, pass-through costs under the Service Contract, administrative expenses, costs appertaining to the transmission of electricity, insurance premiums, legal and engineering expenses, consulting and technical expenses, payments to pension, retirement, health and hospitalization funds, annual charges payable by the City pursuant to any licenses, permits, orders or other authorizations from any agency or regulatory body having lawful jurisdiction, any taxes (excluding discretionary taxes imposed on the System by the City), governmental charges, penalties paid by the City to the Company, and other expenses required to be paid by the City to the extent properly and directly attributable to the operation of the System, costs of transfers or exchanges of the Series 1988 Bonds, all costs incurred by the City pursuant to System Documents, and financing costs of any series of Additional Bonds if such costs are not paid or provided for from the proceeds derived from the sale of such Additional Bonds. Costs of Maintenance and Operation shall not include debt service payments or any provision for depreciation, amortization or similar

charges, or any costs or expenses for new construction or reconstruction other than the costs of restoring any part of the System to be paid from Revenues or any deposits into the City Solid Waste Reserve Fund or the System Landfill Fund. Costs of Maintenance and Operation shall also include all necessary and incidental costs related to the implementation and operation of any waste reduction/recycling program and litter control program established as a part of the System. Specifically excluded from the Costs of Maintenance and Operation are payments to the County of an amount, not to exceed \$20,000,000, for the payment of County Pre-existing Landfill Costs pursuant to this Agreement and amounts paid to the Regional Cities pursuant to Section 2.4 hereof.

P. Costs of the System shall mean, with respect to any part of the System, the City's costs, expenses and liabilities paid or incurred or to be paid or incurred in connection with the planning, engineering, designing, acquiring, constructing, installing, operating, maintaining, financing or disposing of such part of the System and the obtaining of all governmental approvals, certificates, permits and licenses with respect thereto, including, without limitation, the costs relating to the Facility as set forth in Section 4.1 of the Construction Contract, any eminent domain or condemnation expenses incurred in connection with the condemnation or acquisition of landfills by the City, all costs incurred by the City pursuant to System Documents, including without limitation an amount, not to exceed \$20,000,000, for the payment of County Pre-existing Landfill Costs pursuant to this Agreement and amounts paid to the Regional Cities pursuant to Section 2.4 hereof, and debt service on any evidence of indebtedness of the City issued to finance any of the foregoing.

Q. County shall mean Spokane County, Washington, a class A county of the State of Washington.

R. County Pre-existing Landfill Costs shall mean Pre-existing Landfill Costs relating to Pre-existing Landfills owned by the County.

S. Facility shall mean the mass burn resource recovery steam and electric generating facility to be constructed pursuant to the Construction Contract; such facility is the "Facility" as such term is defined in the Construction Contract.

T. Fairchild shall mean Fairchild Air Force Base, a United States Air Force installation located in Spokane County, Washington, which has executed a Regional City Interlocal Agreement.

U. Flow Control Ordinance shall mean Ordinance No. 85-0395 of the County, adopted on May 14, 1985, as may be amended from time to time.

V. Guarantor shall mean Wheelabrator Technologies, Inc., a corporation formed under the laws of the State of Delaware, as Guarantor of the performance by the Company of its obligations under the Construction Contract and the Service Contract, and its successors and assigns.

W. Hazardous Waste shall mean waste which, by reason of its composition or characteristics is a toxic substance or hazardous waste as defined in the Resource Conservation and Recovery Act, 42 USC § 6901 et seq., as amended, and regulations implementing same or in the Toxic Substances Control Act, 15 USC § 2601, et seq., as amended, and regulations implementing same, or the definitions promulgated by the State of Washington for Dangerous Waste and Extremely Hazardous Waste, as revised from time to time.

X. Landfill Costs shall mean the cost of Closure, Postclosure and Cleanup of landfills but excluding costs of operating and maintaining landfills; for purposes of this Agreement, all Landfill Costs shall be either Pre-existing Landfill Costs or Regional Landfill Costs as provided in the definitions of such terms.

Y. Postclosure shall mean the requirements placed upon disposal facilities after closure to ensure their environmental safety for at least a twenty-year period or until the site becomes stabilized (i.e., little or no settlement, gas production, or leachate generation), or for any additional period required by state or federal regulations at the time of post-closure.

Z. Pre-existing Landfill Costs shall mean Landfill Costs relating to Pre-existing Landfills incurred after January 1, 1984, including debt service on Series 1988 Bonds and Additional Bonds allocable to Pre-existing Landfill Costs. The term also shall include all costs incurred by either the City or County in defending, paying, or settling lawsuits, claims or judgments as the result of operating of any Pre-existing Landfills, as well as any costs incurred by the City or County in the design and/or construction of domestic water systems required as a result of the operation of any Pre-existing Landfills and which costs are not recoverable under any insurance policy or grant. In the case of any Pre-existing Landfill that is hereafter designated as a Regional Landfill, Landfill Costs relating to such landfill incurred after such designation shall be considered Pre-existing Landfill Costs only to the extent that such Landfill Costs are allocable to Solid Waste disposed of at such landfill prior to such designation.

AA. Pre-existing Landfills shall mean existing City or County owned Solid Waste disposal sites, (a) that have been closed or (b) that are operating and are used, in the case of such disposal sites owned by the City, primarily for Solid Waste generated in the City and, in the case of such disposal sites

owned by the County, primarily for Solid Waste generated in any unincorporated area of the County. Any such landfill or portion thereof that has been designated as a Regional Landfill shall not be a Pre-existing Landfill.

BB. Rate Covenant shall mean the covenant to be contained in the Bond Ordinance under which the City will agree to fix, maintain and collect collection fees, tipping fees and other similar charges so to provide for the payment of specified costs and expenses relating to the System.

CC. Rate Stabilization Component shall mean that portion of the Tipping Fees collected by the System that have been and will be set aside for rate stabilization purposes pursuant to Article III hereof.

DD. Recyclable Materials shall mean those materials, other than Recovered Materials, which are separated from Solid Waste, either at the source of such Solid Waste or mechanically at any transfer station, recycling facilities or other location, as the case may be, and which are capable of being returned to the economic mainstream by the System. Recyclable Materials may include, but shall not be limited to, bottles, aluminum cans, newspapers, cardboard, paper materials, or other specific commercially marketable items, where and only where such materials have been specially sorted prior to collection, apart from the common municipal solid waste stream for commercial manufacture or recycling.

EE. Regional Cities shall mean at any time any city or town within Spokane County which has executed a Regional City Interlocal Agreement.

FF. Regional City Interlocal Agreements shall have the meaning given to such term in the recitals hereof.

GG. Regional Landfill shall mean any one or more landfills or portions thereof (including any Pre-existing Landfill) hereafter designated by the City, by written notice to the County, as a Regional Landfill, such designation to signify the intention of the City to use such landfill as a disposal site for demolition Solid Waste, bypass Solid Waste, nonprocessible Solid Waste or other category of Solid Waste, irrespective of whether any such Solid Waste is generated in the City, the unincorporated area of the County, the Regional Cities or Fairchild. If a Regional Landfill is sited in the unincorporated area of the County, the County must concur in the designation of such landfill as a Regional Landfill.

HH. Regional Landfill Costs shall mean the cost of Closure, Postclosure and Cleanup of Regional Landfills. The term also shall include all costs incurred by the City in defending, paying or settling lawsuits, claims or judgments as the result of operating of any Regional Landfill as well as any costs incurred by

the City in the design and/or construction of domestic water systems required as a result of the operation of any Regional Landfill. In the case of any Regional Landfill that was previously a Pre-existing Landfill, Landfill Costs relating to such landfill incurred after it was designated as a Regional Landfill shall be considered Regional Landfill Costs only to the extent such Landfill Costs are allocable to Solid Waste disposed of at such landfill prior to such designation.

II. Revenues shall mean all revenues, Tipping Fees, interest income on all Funds and Accounts created by the Bond Ordinance to the extent not paid into or retained in the Construction Fund, energy sale receipts of the System, and charges, rents and other income and receipts (other than any Rebate Amount determined under the Bond Ordinance) derived from the System including, without limitation, (i) collection revenues and all Tipping Fees or comparable charges collected by the City with respect to the System, (ii) any payment of performance liquidated damages or delay liquidated damages under the Construction Contract and the Service Contract, (iii) all amounts due the City under the System Energy Contracts, (iv) all insurance and condemnation proceeds, which shall be deposited into the Renewal and Replacement Account under the Bond Ordinance (except business interruption insurance proceeds, which shall be deposited into the Revenue Account under the Bond Ordinance), (v) all money due the City under any recovered materials or recyclable materials sales agreements or otherwise with respect to the sale of recovered materials or recyclable materials, (vi) any amount payable by any surety under any performance bond, and (vii) any payments due the City under this Agreement, the Regional City Interlocal Agreements, the Construction Contract, the Service Contract, or other documents relating to the System except payments thereunder required to be deposited in the Construction Fund, the Renewal and Replacement Account or the Redemption Account, pursuant to the Bond Ordinance.

JJ. Scale System shall mean the scales, scale house, computer hardware and software and associated equipment necessary to operate an automated ticketing system.

KK. Series 1988 Bonds shall mean the "City of Spokane Regional Solid Waste Management System Revenue Bonds, Series 1988" to be authorized by the Bond Ordinance, which are to be issued to finance, among other things, a portion of the cost of the 1988 Improvements and Additions and which are payable from the Revenues of the System.

LL. Service Contract shall mean the Operation and Maintenance Contract dated November 3, 1987, between the City and the Company, or its successor (as designated and approved by the City and the County) as the same may be amended, modified or supplemented from time to time in accordance with its terms.

MM. Site Preparation shall mean engineering and design, and construction and installation of roads, foundations, earthwork, utilities, (electric, telephone, sewer, water) and concrete slabs necessary for the Scale System.

NN. Solid Waste includes garbage and refuse and shall mean all putrescible and non-putrescible wastes, whether in solid or in liquid form, except liquid-carried industrial wastes and sewage, and including garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, digested sludge, vegetable or animal solid and semi-solid wastes, dead animals, and other discarded solid and semi-solid materials. Solid Waste does not include Recyclable Materials or Hazardous Waste. All materials deposited in cans or containers for collection (other than Recyclable Materials or Hazardous Waste) shall be deemed Solid Waste.

OO. System shall mean the existing Spokane Regional Solid Waste Management System comprised of all property, real or personal, tangible or intangible, that is now owned or hereafter acquired by the City and is used or useful by the City (i) in connection with the collection and disposal of Solid Waste generated within the City's boundaries and (ii) in connection with the disposal of Solid Waste generated and collected elsewhere and delivered to the System for disposal. As of the date hereof, the System includes, without limitation, (a) the City's Northside landfill, (b) the right of the City to dispose of Solid Waste at the County's Mica Landfill pursuant to the County Interlocal Agreement, and (c) the City's refuse collection system and all facilities and equipment appurtenant thereto, together with all equipment, rolling stock facilities, properties, whether real or personal, and vehicles necessary or incident thereto.

PP. Tipping Fees shall mean the amounts charged per Ton of Solid Waste for disposal of Solid Waste by the System, which Tipping Fees shall be determined in accordance with Sections 2.3 and 2.4 hereof.

QQ. 1988 Improvements and Additions shall mean (a) the Facility, (b) recycling centers located at the transfer stations and the Facility, (c) two transfer stations, and (d) the Regional Landfill, including all properties, real or personal, incident thereto.

Section 1.2. Terms Not Defined in this Agreement. Unless the context otherwise requires, capitalized terms used herein (but not defined herein) which are defined in the Bond Ordinance, the Construction Contract, the Service Contract, or the Agreement for Firm Power Purchase shall have the same meanings assigned to them in said documents. If a discrepancy should exist between the definition in any one or more of said documents, the definition in the Bond Ordinance shall be used.

ARTICLE II
COOPERATIVE PROJECT

Section 2.1. Purpose of this Article. The purpose of this Article is to set forth certain agreements between the City and the County relating to the use of the System for the collection, management, handling and disposal of Solid Waste within the City and unincorporated areas of the County, including the establishment of Tipping Fees, establishment of a landfill closure component of the Tipping Fees, enforcement of the Flow Control Ordinance and other matters.

Section 2.2. Ownership of System. The System shall be owned and managed by the City.

Section 2.3. Financing. The City shall finance the portion of the cost of the 1988 Improvements and Additions not paid from grant proceeds, interest earned on investments of prior borrowings or other legally available funds by issuing Series 1988 Bonds and Additional Bonds payable solely from the Revenues of the System and, to provide funds to make such payments, shall agree in the Bond Ordinance to establish collection fees and Tipping Fees that are adequate in amount to comply with the Rate Covenant and otherwise fulfill the requirements of the Bond Ordinance and this Agreement.

Section 2.4. Tipping Fees; Pre-existing Landfill Closure, Postclosure and Cleanup.

(a) In establishing its collection fees and Tipping Fees to comply with the Rate Covenant, the City (i) shall exclude from the costs to be recovered through the Tipping Fees all City Collection Costs, including City Pre-existing Landfill Costs, and shall assume that all City Collection Revenues shall be available solely to pay City Collection Costs; (ii) shall include in the costs to be so recovered all Regional Landfill Costs; and (iii) shall include in the costs to be so recovered, but only through the landfill closure component, the County Pre-existing Landfill Costs.

(b) A necessary element of achieving a regional solution to the regional problem of Solid Waste disposal is funding the cost of Closure, Postclosure, and Cleanup of Pre-existing Landfills. Pursuant to Article IV hereof, the County will authorize the City, commencing as of October 10, 1988, to provide all Solid Waste disposal services previously provided by the County and collect all Tipping Fees therefor. In recognition of the foregoing, the City has included and shall continue to include in the Tipping Fees it establishes for the System, commencing March 1, 1988, a "landfill closure component" the revenues from which for the period commencing October 10, 1988, will be allocated between the City and the County as provided herein, with the County's portion to be used by the County to pay County Pre-existing Landfill Costs.

(c) The parties agree that the County's portion of the revenue from the landfill closure component may be used either (i) by the County for the purpose of paying County Pre-existing Landfill Costs directly or (ii) by the City for the purpose of paying debt service on Series 1988 Bonds or Additional Bonds issued to finance such County Pre-existing Landfill Costs.

(d) To provide this primary source of revenue to the County, while assuring equitable treatment of City and County residents, the revenues collected by the System from the landfill closure component of the System's Tipping Fees will be allocated between the City and County in the same proportion based upon weight that the non-City Solid Waste generated in the County and delivered to the System bears to the Solid Waste generated in the City and delivered to the System.

The landfill closure component shall be established for any period at a level such that the resulting revenues generated by the landfill closure component and allocated to the County (after deducting any amounts allocated to the Regional Cities and Fairchild) are at least equal to the County's Pre-existing Landfill Costs to be paid or amortized from such revenues during the period.

If any of the Regional Cities that enter into a Regional City Interlocal Agreement are determined to have liability under Chapter 70.95B RCW or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in connection with any landfill, the System shall allocate to each such Regional City a portion of the revenues from the landfill closure component of the System's Tipping Fees. Such allocation of revenues shall be in the same proportion that each such entity's Solid Waste generated and delivered to the System bears to the total non-City Solid Waste generated in the County and delivered to the System each year. The portion of non-City Solid Waste generated and delivered to the System by each Regional City shall be determined by the population of each such entity compared to the total non-City population of the County or by such other mechanism as may be mutually agreed upon by the City, the County and such Regional Cities.

Amounts, if any, allocated to a Regional City are to be used to pay all or a portion of such entity's landfill liability and, accordingly, the aggregate amount so allocated shall not exceed the amount of such liability, nor shall it exceed the amount of the landfill closure component paid by such Regional City.

(e) The landfill closure component will be increased or decreased periodically at the request of the County or as deemed necessary by the City to generate the amount of funds required by the County or Regional Cities for Pre-existing Landfill Costs.

(f) Allocation of the revenues from the landfill closure component of the Tipping Fee will be made monthly to reflect the

actual proportions based upon weight of Solid Waste delivered or caused to be delivered to the System each year by the City and County. The determination of the total weight of Solid Waste delivered or caused to be delivered to the System by the City and the County shall be made through the use of Scale Systems or, at any disposal site where Scale Systems are not available, by converting volumes of Solid Waste to tons of Solid Waste at the agreed upon rates of 3 1/3 cubic yards of compacted Solid Waste to one ton of Solid Waste and 6 2/3 cubic yards of noncompacted Solid Waste to one ton of Solid Waste. The determination of whether any particular Solid Waste delivered to a disposal site by any person is from the City or from other areas of the County shall be determined by the City through such methods or systems as the City and the County shall agree and deem appropriate.

(g) The City's and County's allocable revenues, including interest earnings thereon may be used for the following purposes:

(1) City:

- (i) To pay City Pre-existing Landfill Costs currently;
- (ii) To fund a reserve for future City Pre-existing Landfill Costs;
- (iii) To pay debt service on Series 1988 Bonds and Additional Bonds allocable to payment of City Pre-existing Landfill Costs;
- (iv) To fund a closure reserve fund to close City Pre-existing Landfills;
- (v) To pay other City Collection Costs; or
- (vi) Any other lawful purpose of the City.

(2) County:

- (i) To pay County Pre-existing Landfill Costs currently; or
- (ii) To pay debt service on Series 1988 Bonds and Additional Bonds allocable to payment of the County's Pre-existing Landfill Costs.

(3) Regional Cities:

- (i) To pay their proportionate share of landfill closure liability in an amount not to exceed their landfill closure contributions.

(h) The amount of the landfill closure component per ton of Solid Waste will be determined by the County in accordance with its needs. Such amount will be set by the City at a level needed to provide funds sufficient (i) to provide for the payment by the County of all County Pre-existing Landfill Costs that have not been provided for by proceeds of Series 1988 Bonds or Additional Bonds plus (ii) to provide for the payment by the City of debt service on Series 1988 Bonds and Additional Bonds issued to finance County Pre-existing Landfill Costs. The aggregate amount of funds provided to the County or the Regional Cities for the payment of Pre-existing Landfill Costs (including net proceeds of Series 1988 Bonds and Additional Bonds issued to finance County Pre-existing Landfill Costs or Pre-existing Landfill Costs of the Regional Cities and all other funds provided to the County or the Regional Cities through operation of the landfill closure component, but excluding debt service on such bonds to be funded through the landfill closure component) shall not exceed \$20,000,000 (as to the County) plus the amount of the landfill closure component paid by each Regional City and paid to the Regional City pursuant to Section 2.4(d) hereof.

(i) Except to the extent that a landfill closure component of the Tipping Fees shall be imposed and distributed under this Section 2.4, this Agreement shall not be construed in any manner as to create, directly or indirectly, liability to the City for County Pre-existing Landfills, or liability to the County for City Pre-existing Landfills. Nor shall this Agreement alter any current liability the City may have to the County or the County may have to the City with regard to the landfills of the other.

Section 2.5. County's Flow Control Ordinance.

(a) As part of the County's contribution to the regional solution of the regional Solid Waste disposal problem, the County has adopted a Flow Control Ordinance, Chapter 8.56 of the Spokane County Code. That ordinance provides, in essence, that all Solid Waste collected in the unincorporated area of the County shall be disposed of at a site designated by the County. During the term of this Agreement, subject to the exceptions currently in effect contained in its Flow Control Ordinance the County shall designate the System as its sole disposal site at all times the System is in operation, shall not, directly or indirectly, site or permit to be sited any Solid Waste disposal site other than the System, and shall enforce the Flow Control Ordinance continuously; provided, however, that this sentence shall not apply to Hazardous Waste. The designation of the System required by the preceding sentence shall be made by the County concurrently with the effectiveness of this Agreement.

(b) If all or part of the Flow Control Ordinance and/or regulations promulgated thereunder are declared to be invalid by a court of competent jurisdiction or are not continuously enforced by the County, and the County's ability to require the delivery of Solid Waste to the System thereby is impaired, and if

the System is operating at a reduced capacity due to the County's total or partial inability to control the flow of Solid Waste, the County shall be obligated either to deliver or cause to be delivered substituted Solid Waste to the System in an amount equal in volume to the Solid Waste it has represented it can control, or to pay an amount of money which would equal the economic value (including penalties due the Company and lost energy revenue) of such non-delivered Solid Waste. In computing the County's obligation to deliver or pay the economic equivalent of non-delivered Solid Waste, the County shall get credit for all Solid Waste delivered to the System other than Solid Waste delivered by the City and the Regional Cities and Solid Waste delivered to the System by City residents and Regional City residents, or from residents, companies, institutions or others who reside within the City or the Regional Cities but manage their own garbage.

(c) The County's obligation to provide Solid Waste or money equal to the economic value of non-delivered Solid Waste to the System is a general obligation of the County. The economic value of non-delivered Solid Waste will be equal to the reduction in Net Revenue (as hereafter defined) of the System caused solely by the reduced flow of Solid Waste from the unincorporated portions of the County because of the County's inability to enforce its Flow Control Ordinance. "Net Revenue" shall mean Revenues less Costs of Maintenance and Operation.

(d) If the County Flow Control Ordinance is valid and the County enforces it continuously and effectively, but the volume of Solid Waste in the unincorporated area of the County is lower than anticipated, the County shall not be obligated to pay an economic equivalent or to provide the System with substitute Solid Waste. If an unincorporated area becomes incorporated, every possible legal effort shall be taken to obligate said area to assume its allocable share of the County's obligation to provide Solid Waste, as authorized by law.

(e) If the County, by virtue of its continuous enforcement of the Flow Control Ordinance, incurs inverse condemnation costs or expenses, said costs or expenses shall be reimbursed by the System as a Cost of the System or as a Cost of Maintenance and Operation.

Section 2.6. Revenues and Budgets.

(a) The City shall prepare an Annual Budget for the System at the same time the City prepares its general budget and shall submit the System Annual Budget to the County for review and comment at least thirty days prior to its adoption. The System Annual Budget shall separately identify all City Collection Revenues and Costs. The Annual Budget shall include a work plan for implementing the waste reduction/recycling program and the litter control program. Within ten days of its receipt of the System Annual Budget, the County shall deliver its comments in

writing to the City Manager who shall transmit them to the City Council in a timely manner.

(b) The Annual Budget for the System shall establish sufficient Revenues to comply with the Rate Covenant and any similar covenant in any such ordinance authorizing Additional Bonds and to pay at minimum the following expenses:

- (1) Costs of Maintenance and Operation of the System;
- (2) Debt service on the Series 1988 Bonds and Additional Bonds as required by the Bond Ordinance and any such other ordinance;
- (3) Coverage on the Series 1988 Bonds and Additional Bonds as required by the Bond Ordinance and any such other ordinance;
- (4) Series 1988 Bond and Additional Bond reserves, and all other payments required to be made by the Bond Ordinance and any such other ordinance;
- (5) System costs, including renewals and replacements; and
- (6) Landfill closure component as defined by Section 2.4 of this Agreement;

provided, however, that in establishing its collection fees, Tipping Fees and other similar charges to comply with the Rate Covenant and the foregoing, City Collection Costs, including City Pre-existing Landfill Costs, City Collection Revenues, Regional Landfill Costs and County Pre-existing Landfill Costs shall be reflected in Tipping Fees only as provided in Section 2.4(a) hereof.

(c) Tipping Fees shall be uniform for the same class of service, except that Tipping Fees at the System's transfer stations and the Facility may differ to reflect the costs of transporting Solid Waste from the transfer stations to the Facility. Collection fees may continue to vary within the County and between the City and the County.

(d) If the City or the County should impose a utility tax on the disposal of Solid Waste at the System, the proceeds of that utility tax on disposal of Solid Waste generated within the County shall be shared, after the deduction of all appropriate and reasonable administrative costs, between the City and the County proportionately based upon the tons of Solid Waste delivered to the System from the City and the tons of Solid Waste delivered to the System from other sources. Proceeds of that utility tax on disposal of Solid Waste generated outside Spokane County shall be shared, after the deduction of all appropriate

and reasonable administrative costs, between the City, the County and the Regional Cities, on the same proportionate basis as Solid Waste generated within the County.

(e) Other than changes in the Tipping Fee required by the Bond Ordinance or made in accordance with Section 2.4 of this Agreement to provide Revenues to fund Pre-existing Landfill Costs, Tipping Fees shall not be increased or decreased without the agreement of both the City and the County.

Section 2.7. Management.

(a) The City shall operate the Facility and shall be responsible for making all operational decisions other than major decisions, as more particularly described in subsection (b) below. The City shall account for all City Collection Revenues and City Collection Costs separately to assure that such revenues and costs are not included in the calculation of the Tipping Fees. The City may charge City general overhead expenses to the System as a Cost of Maintenance and Operation in the same manner as it uses to allocate City general overhead expenses to its water and sewer utilities. The City shall be responsible for all contract and non-contract employees of the System other than employees of the Company, or its assigns, agents or successor.

(b) Decisions relating to the following matters are considered major decisions and, therefore, no modification or change in them may be made without the agreement of the City and the County:

(1) An expansion of the System's service territory to include use of the System by persons, firms or corporations outside the boundaries of the County;

(2) Any single discretionary modification of the System costing in excess of \$1,000,000 (renewals or replacements which, in the opinion of the City, are necessary for the efficient or safe operation of the System shall not be deemed discretionary modifications);

(3) Major change in the Construction Contract increasing the cost of the Facility by \$1,000,000 or more per change order, or in the Service Contract increasing annual operating costs by 5% or more;

(4) Any change in the amount or components of Tipping Fees other than changes made to fulfill the requirements of the Bond Ordinance or made in the landfill closure component in accordance with the provisions of Section 2.4 of this Agreement.

Major decisions require the concurrence of both the City and the County and shall be made by resolution of their respective governing bodies.

(c) The City and County shall form a four-member Policy Liaison Board, comprised of two City representatives and two County representatives. The City and the County shall each appoint their representatives, who shall serve without additional compensation. The purpose and function of the Policy Liaison Board shall be to create a forum for discussion between the City and the County concerning the Facility and to create a body to whom information concerning the Facility can be provided. The Policy Liaison Board shall have no independent decision-making authority. The Policy Liaison Board shall review all Facility requests and transmit those requests to the City and County respectively. The City shall provide a statement of Facility income and expenses to the Policy Liaison Board promptly at the end of each calendar quarter or on such other periodic basis agreed upon by the City and the County.

During the construction and operational testing and acceptance phases of the Facility, the Policy Liaison Board shall meet at least monthly to review the status of the Facility and to discuss matters which should be reviewed by the City and the County. The City shall cause monthly reports to be made to the Policy Liaison Board during this phase. Prior to acceptance of the Facility by the City, the Policy Liaison Board shall be comprised of members of the City Council and Board of County Commissioners.

After the construction and operational testing and acceptance of the Facility, the Policy Liaison Board shall meet at least once each calendar quarter or on such other periodic basis agreed upon by the members to review operational matters pertaining to the Facility. The City shall cause an operational status report to be made at such meetings. During this phase of the Facility, the Policy Liaison Board may be comprised of representatives of the City or County or of members of the City Council or Board of County Commissioners.

The failure of the Policy Liaison Board to meet as provided in this section shall not invalidate this Agreement.

Section 2.8. Waste Reduction/Recycling Program. The City has implemented and shall continue a comprehensive recycling program to encourage the recycling of Solid Waste throughout the County, through the term of this Agreement.

Section 2.9. Litter Control Program. The City has implemented and shall continue a comprehensive litter control program designed to control the miscellaneous unpermitted dumping of Solid Waste at sites other than at the System throughout the County, through the term of this Agreement.

ARTICLE III
RATE STABILIZATION

Section 3.1. Purpose of this Article. The purpose of this Article III is to amend and restate the Rate Stabilization Fee Agreement.

The City has entered into an Agreement for Firm Power Purchase with Puget Sound Power and Light Company for the sale of electric power from the Facility, which agreement provides for escalating power rates. The Rate Stabilization Special Fund and the Rate Stabilization Account referred to below, are designed to stabilize Tipping Fees in the early years of operation of the Facility and thereby achieve a Tipping Fee rate result which will approximate a leveled power payment contract.

Section 3.2. Rate Stabilization Special Fund. The Treasurer of the City has created a special fund, separate and distinct from all other funds and accounts of the City, designated the "Rate Stabilization Special Fund" (the "Rate Stabilization Fund"). The Rate Stabilization Fund contains two accounts, the "City Account" and the "County Account", into which the City and the County, respectively, since March 1, 1988, have deposited the Rate Stabilization Component that each collects for Solid Waste disposal services initially equivalent to \$12.50 per ton of Solid Waste disposal. As of October 10, 1988, when the County ceases providing Solid Waste disposal services and the City commences providing disposal services previously provided by the County and collecting Tipping Fees therefor, the City shall continue to collect the Rate Stabilization Component on all Solid Waste disposed of by it and deposit such Component into the appropriate accounts of the Rate Stabilization Fund. The Rate Stabilization Component shall continue to be collected and deposited as provided herein at least through the date through which interest on the Series 1988 Bonds and the Additional Bonds is to be paid from the proceeds thereof. Upon the issuance of the Series 1988 Bonds, all amounts in the Rate Stabilization Fund shall be transferred to the Rate Stabilization Account of the Revenue Fund established under the Bond Ordinance (the "Rate Stabilization Account"), which shall not contain any subaccounts. Such transfer is referred to in this Article as the "Bond Ordinance Transfer."

Section 3.3. Use of Money in Special Fund. Money deposited into the City Account, the County Account or the Rate Stabilization Account shall be used to stabilize the Tipping Fees in the early years of the operation of the Facility. Prior to the Bond Ordinance Transfer, the City or the County may borrow up to the amount each has deposited in their respective account pursuant to Section 3.7 hereof.

Section 3.4. Investment of Special Fund. Prior to the Bond Ordinance Transfer, the City shall keep all money in the Rate Stabilization Fund continuously invested in investments lawfully available to the City. Interest earnings on the City Account

shall be accounted for separately and shall be credited to the City Account. Interest earnings on the County Account shall be accounted for separately and shall be credited to the County Account. After the Bond Ordinance Transfer, amounts in the Rate Stabilization Account shall be invested in accordance with the Bond Ordinance.

Section 3.5. Use of Money. Amounts in the Rate Stabilization Fund, and the interest earnings thereon, unless withdrawn as hereinafter provided, shall be used for the purpose of stabilizing Tipping Fees at the Facility during the initial operating years of the Facility or as otherwise required by the Bond Ordinance.

Section 3.6. Withdrawal. Prior to the Bond Ordinance Transfer:

(a) The City and the County may withdraw an equal amount of money from both accounts for the support of the System, and, if additional money is still available in each account, then

(b) If (a) above is provided for, the City or the County may withdraw money from the City Account (in the case of a City withdrawal) or the County Account (in the case of a County withdrawal) in an amount up to the balance in each respective account. Money may be withdrawn from the Rate Stabilization Fund to provide money to the City or to the County for the sole purpose of paying landfill closure costs and expenses for City-owned landfills (in the case of a City withdrawal) or for County-owned landfills (in the case of a County withdrawal). Money may also be withdrawn from the Rate Stabilization Fund to pay City costs or County costs for landfills or disposal sites for which either the City or the County may be liable.

(c) Commencing with the Capitalized Interest Date, and continuing through March 1, 2001, money may be withdrawn monthly from the Rate Stabilization Fund or, assuming the Series 1988 Bonds have been issued, from the Rate Stabilization Account, and shall be used for the purpose of stabilizing Tipping Fees.

(d) Money so withdrawn by the City or the County, pursuant to (a), (b) or (c) above, shall be repaid (with interest at a rate equal to the Rainier National Bank publicly announced prime rate at the time of such withdrawal minus two percent) within five business days after the issuance of Series 1988 Bonds.

After the Bond Ordinance Transfer, amounts shall be withdrawn from the Rate Stabilization Account solely in accordance with the Bond Ordinance.

ARTICLE IV
CESSATION OF DISPOSAL SERVICES BY COUNTY;
USE OF MICA LANDFILL BY CITY

Section 4.1. Cessation of County Disposal Services. Commencing as of October 10, 1988, the County shall cease providing disposal services for Solid Waste generated in the unincorporated area of the County and the Regional Cities and shall cease to collect all Tipping Fees for such services. As of such date, the City shall commence to provide disposal services for such Solid Waste and to collect all Tipping Fees therefor.

Section 4.2. City Right to Use Mica Landfill. During the term of this Agreement, the City shall have the right to use the County's Mica Landfill for the disposal of Solid Waste delivered to the System, so long as Mica Landfill is a Pre-existing Landfill pursuant to this Agreement. Following the Commencement Date of the Facility, the City and the County may negotiate to extend the City's right to use the Mica Landfill as a Regional Landfill.

Section 4.3. Operation of Mica Landfill. Subject to Section 4.4 hereof, the County shall operate and maintain, or cause to be operated and maintained, the Mica Landfill. Until the Commencement Date of the Facility, the City agrees to pay the County monthly, as a Cost of Maintenance and Operation of the System, a non-escalating operating fee equal to \$18.50 per ton of Solid Waste disposed of at the Mica Landfill. Notwithstanding anything contained in this Article to the contrary, the City shall cease to pay such operating fee to the County as of three (3) years following the date of this Agreement, or the occurrence of the Commencement Date of the Facility, whichever shall occur earlier.

Section 4.4. Scale System.

(a) The City shall install at the Mica Landfill a Scale System for the accurate measurement of loads. Such Scale System will be owned, operated, maintained and controlled by the City. The City will purchase the Scale System at an estimated cost of \$150,000. The City shall also provide supervision during the installation of the Scale System the County will pay the cost of site preparation at an estimated cost of \$103,603. The County shall also provide supervision during site preparation. The Scale System may ultimately be relocated to a transfer station.

(b) The City shall be responsible for the management, operation and maintenance of the Scale System. Subject to the County successfully negotiating an amendment with its present contractor operating the Mica Landfill site, and completing appropriate discussions and/or negotiations with the appropriate collective bargaining representatives, the scale operators may be employees of the City and, if so, the City shall be responsible

for their salaries and supervision. The scale operators shall collect all Tipping Fees at the Mica Landfill.

The County or its designee shall be responsible for snow and dirt removal surrounding the Scale System and scale house. The city shall be responsible for all utility bills (water, electricity, telephone) incurred in conjunction with the operation of the Scale System.

Section 4.5. Distribution of Tipping Fees. The Tipping Fees collected by the scale operators at the Mica Landfill shall be deposited in the Revenue Fund of the City's Refuse Department until issuance of the Series 1988 Bonds after which such Tipping Fees shall be deposited in the Revenue Account established under the Bond Ordinance; provided, however, that the portion of the Tipping Fees consisting of the Rate Stabilization Component shall be disbursed as provided in Article III hereof. Amounts deposited in the Revenue Fund of the City's Refuse Department or the Revenue Account established under the Bond Ordinance shall be used by the City to pay Costs of Maintenance and Operation of the System, including the operating fee owed to the County in respect of the Mica Landfill.

Section 4.6. Liabilities. In the event that the City incurs liabilities, costs or expenses under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") as a result of its use of the Mica Landfill pursuant to this Article IV, the County shall reimburse the City for all such liabilities, costs and expenses. The County shall not be obligated to reimburse the City for any liabilities, costs or expenses referred to herein to the extent such liabilities, costs or expenses are allocable to Solid Waste disposal at Mica Landfill after any designation of the Mica Landfill as a Regional Landfill.

Section 4.7. Duration and Termination of this Article.

(a) The term of this Article shall be until the earlier of (i) the Commencement Date, or (ii) three (3) years from the date of this Agreement, unless the City or County notifies the other party to this Agreement in writing of its intent to terminate 30 days before the third anniversary date of this Agreement, unless such other time is agreed to by the parties.

(b) The City shall have a reasonable period of time to remove the Scale System following termination of this Article.

(c) The City shall be responsible for all costs associated with the relocation and/or removal of the Scale System.

ARTICLE V
MISCELLANEOUS

Section 5.1. Amendment of this Agreement. Amendment of this Agreement may be made only by written agreement of the City and the County.

Section 5.2. Duration and Termination of this Agreement.

(a) The System is a regional system for the collection, management, handling and disposal of Solid Waste and is to be operated pursuant to this Agreement. Neither the City nor the County may use the System to the exclusion of the other.

(b) Except as provided in Section 4.6(a) hereof, this Agreement shall be for the term of 25 years, or for such longer term as the Series 1988 Bonds or any Additional Bonds remain outstanding.

(c) This Agreement can be terminated early only by agreement of the City and the County.

(d) This Agreement shall be renewed automatically for successive 20-year terms unless the City and the County agree not to renew it.

(e) Following termination of this Agreement, the City shall own the System and all of its assets.

(f) This Agreement shall be terminated automatically if the Referendum 39 Grant is not available for payment under the Construction Contract provided that this Agreement shall not be terminated for such reason after issuance of the Series 1988 Bonds.

Section 5.3. Waiver. No officer, employee, agent or otherwise of the City or the County has the power, right, or authority to waive any of the conditions or provisions of this Agreement. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement or at law shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law. Failure of the City or the County to enforce at any time any of the provisions of this Agreement or to require at any time performance by the Company of any provision hereof, shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this Agreement or any part hereof, or the right of the City and/or the County to hereafter enforce each and every such provision.

Section 5.4. Headings. The section headings in this Agreement have been inserted solely for the purpose of convenience and ready reference. In no way do they purport to, and shall not be

deemed to, limit or extend the scope or intent of the sections to which they appertain.

Section 5.5. All Writings Contained Herein. This Agreement contains all of the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto. The parties have read and understand all of this Agreement, and now state that no representation, promise, or agreement not expressed in this Agreement has been made to induce the parties to execute the same.

Section 5.6. Filing of this Agreement. The City shall file this Agreement with the City Clerk, County Auditor and Secretary of State.

Section 5.7. Severability. In the event any provision of this Agreement shall be declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not, in any way, be affected or impaired thereby.

Section 5.8. Effective Date. This Agreement shall become effective immediately after it is duly adopted by the Board of County Commissioners and the City Council.

IN WITNESS WHEREOF each of the parties have executed this Agreement by their duly authorized officials.

THIS AGREEMENT supersedes the interlocal agreements of the City and the County entered into on November 3, 1987, and July 18, 1988.

DATED this 11th day of October, 1988.

CITY OF SPOKANE, WASHINGTON

By: Vicki S. McNeill
Vicki S. McNeill, Mayor

Attest:

Marilyn J. Montgomery
Marilyn J. Montgomery,
City Clerk

Terry L. Novak
Terry L. Novak, City Manager

Approved as to Form:

James C. Sloane
James C. Sloane, City Attorney

DATED this 11th day of October, 1988.

SPOKANE COUNTY, WASHINGTON

By: *John R. McBride*
John R. McBride, Chairman

F. Keith Shepard
F. Keith Shepard, Commissioner

Patricia A. Mummey
Patricia A. Mummey, Commissioner

Attest:

William E. Donahue
William E. Donahue,
Clerk of the Board

Marshall R. Farnell
Marshall R. Farnell,
Chief Administrative Officer

Approved as to Form:

James P. Emaco
James P. Emaco, Chief Civil
Deputy Prosecuting Attorney

COUNTY OF SPOKANE

CITY OF SPOKANE

JOINT RESOLUTION

A JOINT RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF SPOKANE COUNTY, WASHINGTON, AND THE CITY COUNCIL OF THE CITY OF SPOKANE, WASHINGTON, APPROVING AND AUTHORIZING THE EXECUTION OF AN INTERLOCAL COOPERATION AGREEMENT BETWEEN THE COUNTY AND THE CITY TO PROVIDE FOR THE MANAGEMENT, OWNERSHIP AND OPERATION OF THE SPOKANE REGIONAL SOLID WASTE MANAGEMENT SYSTEM; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO

BE IT RESOLVED by the Board of County Commissioners of Spokane County, Washington, and by the City Council of the City of Spokane, Washington, as follows:

WHEREAS, the City of Spokane, a first class charter city duly organized and existing under and by virtue of the laws of the State of Washington (the "City"), and the County of Spokane, a class A county duly organized and existing under and by virtue of the laws of the State of Washington (the "County"), have the power to control the management, handling and disposal of solid waste ("solid waste management") within the City and unincorporated area of the County (the "region"), respectively; and

WHEREAS, the City and County desire to improve its solid waste management system (the "System") by the acquisition and construction of a mass burn resource recovery steam and electric generating facility (the "Facility"), transfer stations and recycling centers, as a solution to the regional problems of the management, handling, and disposal of solid waste; and

WHEREAS, the City and County are authorized by Chapters 39.34 and 70.95 of the Revised Code of Washington to enter into agreements with each other for cooperative action, such as planning, owning, financing, and managing of regional solid waste management facilities; and

WHEREAS, after years of planning and the completion of an adequate environmental impact statement and vendor selection process, and after due consideration of the environmental, social, technical, economic and other relevant factors, including public and governmental comment, and observance of applicable federal, state, and local procedures, the City Council and the Board of County Commissioners have found that the improvements to the System are in the best interests of and will best serve the citizens of the region and need to be implemented at this time,

and hereby authorize the execution of an interlocal agreement for their implementation; and

WHEREAS, on November 3, 1987 the City and the County entered into an interlocal agreement (the "1987 Interlocal Agreement") which, among other things, allocated responsibility for the ongoing management and operation of the Facility; and

WHEREAS, on July 18, 1988, the City and the County entered into an interlocal agreement (the "Rate Stabilization Fee Agreement") relating to, among other things, the increases previously imposed by the City and the County in the tipping fees charged by them for disposal of solid waste at their respective disposal sites in order to provide a fund to be used for the stabilization of tipping fees in the early years of the operation of the Facility; and

WHEREAS, the City and the County desire to enter into an interlocal cooperation agreement in order to combine the 1987 Interlocal Agreement and the Rate Stabilization Fee Agreement into one agreement and to make certain other provisions as described therein; and

WHEREAS, the recitals contained in the Interlocal Cooperation Agreement dated October 10, 1988, between the City of Spokane and Spokane County, Washington, on the Spokane Regional Solid Waste Management System are hereby incorporated as findings of fact and recitals herein;

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

Section 1: INTERLOCAL AGREEMENT APPROVED

The Interlocal Cooperation Agreement by and between the City and the County, dated October 10, 1988, providing for the management, ownership and operation of the Spokane Regional Solid Waste Management System Facility, is hereby approved.

Section 2: EXECUTION OF INTERLOCAL AGREEMENT

The Chairman and members of the Board of County Commissioners and the Clerk of the Board are hereby authorized and directed to execute said Interlocal Cooperation Agreement on behalf of the County, and the Mayor and City Clerk are hereby authorized and directed to execute said Interlocal Cooperation Agreement on behalf of the City.

Section 3: EFFECTIVE DATE OF THIS RESOLUTION

This Resolution shall take effect immediately upon its adoption by the Board of County Commissioners and the City Council.

ADOPTED by the City Council of the City of Spokane, Washington, at a lawful open public meeting of the 10th day of October, 1988.

CITY OF SPOKANE, WASHINGTON

Vicki S. McKeill
Mayor

ATTEST:

Marilyn J. Montgomery
City Clerk

Approved as to form:
James C. Row
City Attorney
R. J. [Signature]
Bond Counsel

ADOPTED by the Board of County Commissioners of Spokane County, Washington, at a lawful open public meeting of the 10th day of October, 1988.

BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

John R. McBride
Patricia A. Munnery
Frank Shepard

ATTEST:

WILLIAM E. DONAHUE
Clerk of the Board

By: Sharon Westgate
Deputy Clerk

Approved as to form:

James [Signature]
Chief Civil Deputy
Prosecuting Attorney