



Agenda Sheet for City Council Meeting of:
10/11/2021

Date Rec'd	9/29/2021
Clerk's File #	OPR 2014-0610
Renews #	
Cross Ref #	
Project #	
Bid #	
Requisition #	REVENUE

Submitting Dept	SOLID WASTE DISPOSAL
Contact Name/Phone	CHRIS AVERYT 625-6540
Contact E-Mail	CAVERYT@SPOKANECITY.ORG
Agenda Item Type	Contract Item
Agenda Item Name	4490 INTERLOCAL AGREEMENT WITH THE CITY OF CHENEY FOR DISPOSAL SERVICES

Agenda Wording

Interlocal Agreement (ILA) extension with the City of Cheney for solid waste disposal services at the Waste to Energy Facility from Nov. 17, 2021 - Nov. 16, 2026 for an estimated annual revenue of \$500,000.00.

Summary (Background)

The City of Spokane currently offers disposal services for the City of Cheney's owned and operated solid waste collection vehicles, as well as residential self-hauled loads, at the WTE Facility, under a seven (7) year ILA with an option to extend the term. This extension will be for five years, with all terms of the original agreement remaining the same, including annual CPI increases to the hauler disposal rates. Self-hauled loads will continue to be charged at the current gate rates.

Lease? NO Grant related? NO Public Works? NO

Fiscal Impact

Revenue	\$ 500,000.00
Select	\$
Select	\$
Select	\$

Budget Account

#	4490-44110-37052-34363
#	
#	
#	

Approvals

Dept Head	AVERYT, CHRIS
Division Director	FEIST, MARLENE
Finance	ALBIN-MOORE, ANGELA
Legal	ODLE, MARI
For the Mayor	ORMSBY, MICHAEL

Council Notifications

Study Session\Other	PIES 9/27/21
Council Sponsor	CP Beggs

Additional Approvals

Purchasing	PRINCE, THEA
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Distribution List

mdorgan@spokanecity.org
jsalstrom@spokanecity.org
caveryt@spokanecity.org
Todd Ableman, PW Director, tableman@cityofcheney.org
Chris Grover, Mayor, cgrover@cityofcheney.org

APPROVED BY
SPOKANE CITY COUNCIL:

10/11/2021
Jeni Hester
CITY CLERK

Briefing Paper

Public Infrastructure, Environment and Sustainability Committee

Division & Department:	Public Works Division; Solid Waste Disposal
Subject:	Extension of Interlocal Agreement with the City of Cheney For Disposal Services at the WTE.
Date:	September 27, 2021
Contact (email & phone):	Chris Averyt, caveryt@spokanecity.org , 625-6540
City Council Sponsor:	Breean Beggs, City Council President
Executive Sponsor:	Marlene Feist, Public Works Director
Committee(s) Impacted:	Public Infrastructure, Environment and Sustainability Committee
Type of Agenda item:	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	
Strategic Initiative:	Innovative Infrastructure-Sustainability of the WTE Operations
Deadline:	
Outcome: (deliverables, delivery duties, milestones to meet)	Council approval of Interlocal Agreement extension to continue providing disposal services for the City of Cheney.
Background/History:	
<p>The City of Spokane currently offers disposal services for the City of Cheney's owned and operated solid waste collection vehicles, as well as residential self-hauled loads, at the WTE Facility under an Interlocal Agreement (ILA) which commenced on November 17, 2014 and runs through November 16, 2021, with an option to extend the term as agreed upon by both Parties.</p> <p>This extension to the ILA would be for an additional five years, beginning on November 17, 2021 and run through November 16, 2026. All terms of the original ILA are to remain the same, including annual CPI increases to the disposal rates for the City of Cheney's solid waste collection vehicles and the self-hauled loads will continue to be charged at the current gate rates. The value of the ILA is approximately \$500,000.00 in annual revenue to the City of Spokane.</p>	
Executive Summary:	
<ul style="list-style-type: none"> • Five (5) year extension to the current ILA with the City of Cheney to provide disposal services for Cheney's solid waste collection vehicles at the WTE Facility. • Term from Nov. 17, 2021 through Nov. 16, 2026. • Annual revenue is approx. \$500,000 or \$2.5M for five (5) years. • All terms of the original ILA are to remain the same. 	
Budget Impact:	
Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Annual/Reoccurring expenditure? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A If new, specify funding source: Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impact:	
Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Requires change in current operations/policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A Specify changes required: Known challenges/barriers:	



City of Spokane
INTERLOCAL AGREEMENT EXTENSION
Title: **Solid Waste Disposal Services at the WTEF**

This Interlocal Agreement Extension is made and entered into by and between the **City of Spokane** as ("City"), a Washington municipal corporation, and the **City of Cheney**, whose address is 609 Second Street, Cheney, Washington 99004 as ("**Cheney**"), individually hereafter referenced as a "Party", and together as the "Parties".

WHEREAS, the parties entered into a Interlocal Agreement on September 12, 2014 wherein the City of Spokane agreed to permit the City of Cheney to use the Waste to Energy Facility for Solid Waste Disposal Services Solid Waste Management Plan; and

WHEREAS, the Parties wish to extend the Interlocal Agreement time as provided for in Section 3 A for an additional five (5) years; and

NOW, THEREFORE, in consideration of these terms, the parties mutually agree as follows:

1. CONTRACT DOCUMENTS.

The Interlocal Agreement, dated September 12, 2014, any previous amendments, addendums and / or extensions / renewals thereto, are incorporated by reference into this document as though written in full and shall remain in full force and effect except as provided herein.

2. EFFECTIVE DATE.

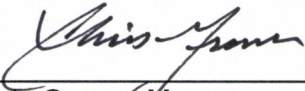
This Interlocal Agreement Extension shall become effective on November 17, 2021.

3. EXTENSION.

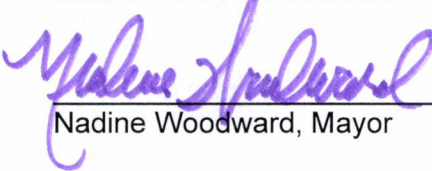
The Interlocal Agreement documents are hereby extended and shall run through 11:59 p.m. on November 16, 2026.

IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants contained, or attached and incorporated and made a part, the parties have executed this Agreement by having legally-binding representatives affix their signatures below.

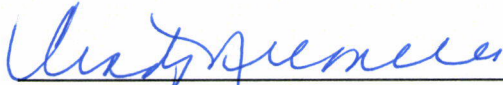
THE CITY OF CHENEY


Chris Grover, Mayor 9-28-2021
Date

THE CITY OF SPOKANE

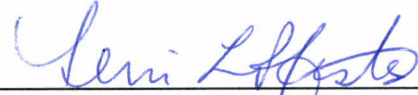

Nadine Woodward, Mayor 10/20/2021
Date

Attest:



Finance Director

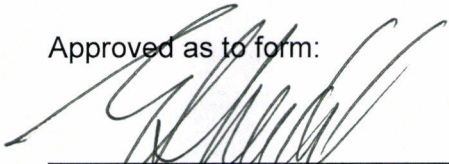
Attest:



Terri Pfister, City Clerk



Approved as to form:



Assistant City Attorney

U2021-074

10.02.14
SS



Agenda Sheet for City Council Meeting of:
09/08/2014

Date Rec'd	8/27/2014
Clerk's File #	OPR 2014-0610
Renews #	
Cross Ref #	
Project #	
Bid #	
Requisition #	

Submitting Dept	SPOKANE REGIONAL SOLID WASTE SYSTEM
Contact Name/Phone	KEN GIMPEL 625-6532
Contact E-Mail	KGIMPEL@SPOKANECITY.ORG
Agenda Item Type	Contract Item
Agenda Item Name	4490 INTERLOCAL AGREEMENT WITH THE CITY OF CHENEY FOR DISPOSAL SERVICES

Agenda Wording
Interlocal Agreement (ILA) with the City of Cheney for solid waste disposal services at the WTE Plant with a term of seven years with three 1-year extension options--\$2.8 million revenue.

Summary (Background)
With the dissolution of the the SRSWS on November 16, 2014, the City of Cheney has elected to develop their own Solid Waste Management Plan and System. This ILA with the City of Cheney is for disposal services at the WTE. The disposal rate described in the ILA is for Cheney's city-owned and operated solid waste collection vehicles only. Cheney citizens who self haul solid waste will pay the same gate fee as all other customers.

Fiscal Impact	Budget Account
Revenue \$ 2,800,000	# 4490-44110-37052-34363
Select \$	#
Select \$	#
Select \$	#

Approvals		Council Notifications	
Dept Head	GIMPEL, KEN	Study Session	Public Works Cmte 8/25/14
Division Director	ROMERO, RICK	Other	
Finance	DOLAN, PAM	Distribution List	
Legal	DALTON, PAT	ttauscher@spokanecity.org	
For the Mayor	SANDERS, THERESA	lbutz@spokanecity.org	
Additional Approvals		<i>J. Faught</i>	
Purchasing			

APPROVED BY SPOKANE CITY COUNCIL ON _____
9/8/2014
[Signature]
 SPOKANE CITY CLERK

BRIEFING PAPER
Public Works Committee/Council Briefing Session
Spokane Regional Solid Waste System
August 25, 2014

Subject

Interlocal Agreement (ILA) with the City of Cheney for solid waste disposal services at the WTE Plant. The term of the ILA is seven years with three 1-year extension options thereafter. The ILA contains a termination clause by either party with twelve months prior notice the other party. The value of the ILA to the City of Spokane is approximately \$2.8 million.

Background

The Interlocal Agreement between the City of Spokane and Spokane County that formed the Spokane Regional Solid Waste System (SRSWS) terminates November 16, 2014. With the dissolution of the SRSWS, Spokane County jurisdictions must decide whether to join the County's new Regional Solid Waste System or develop their own Solid Waste Management Plan and provide all of the services required by state statute. The City of Spokane has elected to remain part of the County's new Regional Solid Waste System. The City of Cheney has elected to develop their own Solid Waste Management Plan and their own Solid Waste Management System. In early August 2014, the City of Cheney's Solid Waste Management Plan was approved by the Department of Ecology. The City of Spokane has been working with the City of Cheney to develop an ILA for disposal services at the WTE Plant. The City of Cheney will provide all other services (recycling, yard waste, household hazardous waste, public education and outreach, etc.) to their citizens and businesses. The disposal rate described in the ILA is for Cheney's city owned and operated solid waste collection vehicles only. Cheney citizens that self haul solid waste to the WTE Plant will pay the same gate fee as all other customers.

Impact

This ILA will provide disposal service only to Cheney's city owned and operated solid waste collection vehicles only. The City of Cheney will be responsible for providing all other state required services to its citizens and businesses. The City of Spokane will benefit from the additional disposal revenue.

Action

Recommend approval of the Interlocal Agreement with the City of Cheney.

Funding

The City of Cheney will pay the City of Spokane approximately \$407,000 per year for solid waste disposal services at the WTE Plant.

City of Spokane No. OPR 2014-0610____
City of Cheney No. _____

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

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

RECITALS

A. CHENEY on September 1, 1989 entered into "An Interlocal Agreement between the City of Spokane, Spokane County and the City of Cheney" (Spokane Auditors File No: 8909150064) (the "**Interlocal Agreement**") to control the management, handling, and disposal of solid waste within CHENEY.

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

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

D. CHENEY, by and through an open meeting of the Cheney City Council held on November 20, 2013, has decided not to enter into a new Interlocal Agreement with Spokane County and has provided appropriate notice to Spokane County regarding the same.

E. In anticipation of the Interlocal Agreement Expiration Date, CHENEY has developed its own Comprehensive Solid Waste Management Plan (the "Plan"), which is under review by the Washington State Department of Ecology ("DOE").

F. In addition to developing its own Plan, CHENEY must identify a disposal site capable of processing Municipal Waste from mixed residential, commercial, and industrial sources. The WTE is capable of processing Municipal Waste from mixed residential, commercial, and industrial sources.

G. In the event the Plan is approved prior to the Interlocal Agreement Expiration Date, the Parties have agreed to terminate the Interlocal Agreement and enter into this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, SPOKANE is willing to permit CHENEY to use the WTE pursuant to CHENEY's Plan and the terms of this Agreement for disposal of CHENEY's Municipal Waste:

SECTION NO. 1: PURPOSE

The purposes of this Agreement are to:

- A. Formally terminate the 1989 Interlocal Agreement as of November 16, 2014 or upon approval of CHENEY's Solid Waste Management Plan by the DOE. Effective November 17, 2014, or upon approval of CHENEY's Solid Waste Management Plan by the DOE this Agreement will replace all terms and conditions contained in the 1989 Agreement; and
- B. Provide that CHENEY will continue to operate in accordance with the terms and conditions of the 1989 Interlocal Agreement including subsequent amendments as mutually agreed to by the Parties, through November 16, 2014 or upon approval of CHENEY's Solid Waste Management Plan by the DOE; and
- C. Establish the terms and conditions between CHENEY and SPOKANE for the disposal of all solid waste collected within CHENEY, which is to be delivered to SPOKANE's WTE; and
- E. Establish flow control requirements to be maintained by CHENEY to ensure the proper disposal of solid waste; and
- F. Establish the terms and conditions for continued service to CHENEY self haul customers who deliver solid waste to the WTE; and
- G. Require CHENEY to provide all services required under RCW 70.95 (with the exception of disposal services) and RCW 70.105, which include; solid waste planning, moderate risk waste management, waste reduction and recycling outreach and education and recycling.

SECTION NO. 2: DEFINITIONS

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

- A. **CHENEY-** means the City of Cheney, or any vendor contracted by CHENEY for services related to the management of solid waste.
- B. **CHENEY Disposal Rate** means the per ton disposal fee, as outlined in Section 5 of this Agreement, that CHENEY shall pay SPOKANE for each ton of solid waste delivered to the WTE by CHENEY's owned and operated commercial vehicles.
- C. **Dangerous Wastes** - means any discarded, useless, unwanted, or abandoned substances, including but not limited to certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment, because such wastes or constituents or combinations of such wastes:
 - 1) Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or
 - 2) Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means.
- D. **Extremely Hazardous Waste** —means any dangerous waste which:
 - 1) Will persist in a hazardous form for several years or more at a disposal site and which in its persistent form:
 - a. Presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic make-up of human beings or wildlife, and
 - b. Is highly toxic to human beings or wildlife.
 - 2) If disposed of at a disposal site in such quantities as would present an extreme hazard to human beings or the environment.
- E. **Gate Fee** - means the per ton disposal fee outlined in SECTION NO. 5 of this Agreement CHENEY's residents shall pay SPOKANE for each ton of solid waste delivered to the WTE as "self haul" waste.
- F. **Hazardous Waste** - means and includes all dangerous and extremely hazardous waste, including substances composed of both radioactive and hazardous components.
- G. **Moderate-Risk Waste** – means:

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

- H. **Nonprocessable Waste** - means any solid waste that SPOKANE deems to be unacceptable at the WTE.
- I. **Solid Waste or Wastes** - means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to; garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, contaminated soils and contaminated dredged material, and recyclable materials.
- J. **Waste To Energy Facility, WTE, or Facility** - means that solid waste facility located at 2900 South Geiger Boulevard, Spokane, Washington 99224, including the solid waste incinerator and the portion of the facility that serves the general public for disposal of household hazardous waste, recyclables, solid waste, yard debris, and other waste products.

SECTION NO. 3: DURATION

- A. This Agreement shall be effective 12:00 A.M. on November 17, 2014 ("Commencement Date") and run through 11:59 P.M. on November 16, 2021, unless CHENEY provides written notice of termination as provided under subparagraph C of this Agreement.

Any notice of termination shall be provided in writing and not later than twelve (12) months prior to the effective date. Notwithstanding the above provisions, this Agreement may be extended in one (1) year increments for a total of three (3) additional years, or as otherwise agreed upon by the Parties (the "Extension Term").

- B. **Extension Terms.** At least ninety (90) days prior to expiration of the Initial Term or an Extension Term, a party may deliver written notice of intent to renew this Agreement. The Notice shall propose the period and terms of renewal. The party receiving the notice shall within ten (10) days of delivery respond by stating its intent to renew this Agreement. Thereafter, the Parties shall negotiate the Extension Term in good faith. No response by the party receiving the notice shall be deemed a refusal to extend this Agreement.
- C. **Termination.** Either PARTY may terminate this Agreement by providing written notice of termination not later than twelve (12) months prior to the effective date.

SECTION NO. 4: DISPOSAL SERVICES

- A. **Scope of Services.** CHENEY, or residents of CHENEY who choose to "self-haul" waste, shall deliver all Acceptable Waste, as defined in subparagraph B below, to the WTE. Once delivered to the WTE, SPOKANE shall be responsible for all costs associated with the disposal of the

Acceptable Waste, including, but not limited to; incineration, ash disposal, by-pass of unburned materials, and all maintenance, operation, repairs and ordinary renewals and replacements necessary for the operation of the WTE. Once Municipal Waste enters the WTE, SPOKANE shall be responsible for determining its weight.

B. **Acceptable Waste.** The following shall be acceptable waste at the WTE:

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

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

C. **Guaranteed Capacity.** The guaranteed minimum available capacity for Acceptable Waste shall be two-hundred forty-eight thousand two hundred (248,200) tons per year.

D. **Primary Services.** The WTE shall be maintained in good working order and repair so as to allow CHENEY to dispose of its Municipal Waste without interruption or unreasonable delay. Municipal Waste may be delivered and shall be received at the WTE during all regular hours of operation unless otherwise agreed.

SECTION NO. 5: DISPOSAL RATE; BILLING

A. **CHENEY Disposal Rate.** CHENEY will pay to SPOKANE sixty dollars (\$60) per ton for each ton of Municipal Waste delivered to the WTE from CHENEY (the "**CHENEY Disposal Rate**"). The CHENEY Disposal Rate shall be inclusive of all costs, including applicable taxes. SPOKANE agrees not to exceed the authority granted under state or local law, including taxing authority.

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

- 2) **Rate Adjustment.** On January 1 of each year following 2015, SPOKANE will adjust the CHENEY Disposal Rate to reflect increases in the United States Department of Labor, Bureau of Labor Statistics, West-Size B/C, Consumer Price Index, All Items for All Urban Consumers (CPI-U) (the "Index"). The adjustment factor for computing annual rate adjustments shall be computed by dividing the Index number for October of the just completed year by the Index number for October of the previous year. In the event the Index number stays the same or decreases, no rate adjustment will be made, and the next rate adjustment shall not occur until the Index number increases to a number exceeding the highest previous Index number, and shall be computed using the previous highest index number.

Example Calculation of Annual Rate Adjustments:

	INDEX	ADJUST FACTOR	CHENEY DISPOSAL RATE
Base Yr.N	125		\$60
N+1	128.844	1.030752	\$61.84
N+2	133.315	1.034710	\$63.99
N+3*	132.474	No change	\$63.99
N+4**	133	No change	\$63.99
N+5	137.748	1.033252	\$66.12
N+6	140.054	1.016741	\$67.23
*No change-Index decreased			
**No change-Index did not exceed highest previous Index			

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

SECTION NO. 6: AUDIT / RECORDS

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

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

SECTION NO. 7: LIABILITY

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

If the comparative negligence of the Parties and their officers and employees is a cause of such damage or injury, the liability, loss, cost, or expense shall be shared between the Parties in proportion to their relative degree of negligence and the right of indemnity shall apply to such proportion.

Where an officer or employee of a Party is acting under the direction and control of the other Party, the Party directing and controlling the officer or employee in the activity and/or omission giving rise to liability shall accept all liability for the other Party's officer's or employee's negligence.

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

SECTION NO. 8: INSURANCE

During the term of this Agreement, SPOKANE and CHENEY shall each maintain in force at its own expense, the following insurance coverage or self-insurance:

- A. Worker's Compensation Insurance in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers and Employer's Liability or Stop Gap Insurance in the amount of \$5,000,000;

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

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

SECTION NO. 9: RELATIONSHIP OF THE PARTIES

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

SECTION NO. 10: MISCELLANEOUS

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

If to CHENEY:

City of Cheney
 Attn: Tom Trulove, Mayor
 609 Second Street
 Cheney, WA 99004

If to SPOKANE:

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

With Copy To:

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

With Copy To:

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

- C. **Governing Law; Venue.** This Agreement is entered into, and its interpretation and enforcement, shall be governed exclusively by its terms and by the laws of the State of Washington, United States of America, without giving effect to that body of laws pertaining to conflict of laws. Any action brought by either Party against the other Party for claims arising out of this Agreement shall only be brought in a court of competent jurisdiction in Spokane County, Washington.
- D. **Meet and Confer / Arbitration.** If either Party has a claim, demand or dispute under this Agreement, notice of the same shall be sent to the other Party. The notice shall provide a brief description of the dispute. Thereafter, the Parties shall follow the below process.
- 1) **Meet and Confer.** Within five (5) business days of the notice, the Parties shall meet and confer to resolve the dispute. If the Parties are unable to resolve the dispute within ten (10) business days of the notice, either party may seek arbitration.
 - 2) **Arbitration.** Arbitration shall be conducted in accordance with the JAMS Arbitration Rules or by an Alternate Dispute Resolution Process that can be mutually agreed upon. The arbitrator's fees and costs shall be equally shared. The arbitration shall be conducted pursuant to RCW Chapter 7.04A with the arbitrator's decision final and binding on the Parties.
- E. **Attorneys' Fees.** If any suit is brought or legal action is taken for the enforcement of any provision of this Agreement or as a result of any alleged breach thereof or for a declaration of any right or duty hereunder, the Party who substantially prevails in such suit or legal action shall be paid reasonable attorneys' fees from the Party who does not substantially prevail, and any judgment or decree rendered shall include an award thereof.
- F. **Entire Agreement.** This Agreement embodies the entire understanding among the Parties, is merged and fully integrated, and supersedes any and all prior negotiations, understandings, or agreements.
- G. **Third Parties.** Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.
- H. **Favored Rate Clause.** To the extent enforceable by law, Spokane affirms that if, after execution of this contract, it enters into a new disposal agreement with another jurisdiction which contains the identical terms and waste volume services outlined in this Agreement, to include, but not limited to disposal for jurisdiction's commercially collected garbage, self self-haul

service to jurisdiction's residents, and moderate risk waste services to jurisdiction's residents, and waste volumes, and charges a lower disposal fee than the CHENEY Disposal Fee set forth in this Agreement, Spokane shall adjust the CHENEY Disposal Fee to match the lower Jurisdiction's fee.


- I. **Anti-kickback.** No officer or employee of CHENEY, having the power or duty to perform an official act or action related to this Agreement, shall have, or acquire, any interest in this Agreement, or have solicited, accepted, or granted, a present or future gift, favor, service, or other thing of value from any person with an interest in this Agreement.
- J. **Severability.** If any provision of this Agreement is determined by any court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such provision will be enforced to the maximum extent possible given the intent of the Parties hereto. If such clause or provision cannot be so enforced, such provision shall be stricken from this Agreement and the remainder of this Agreement shall be enforced as if such invalid, illegal or unenforceable clause or provision had (to the extent not enforceable) never been contained in this Agreement.
- K. **Amendment; Waivers.** This Agreement shall not be amended, supplemented or modified except in writing executed by authorized representatives of the Parties, with the same formality of this Agreement. Waiver by a Party of any breach of any provision of this Agreement by the other Party shall not operate, or be construed, as a waiver of any subsequent or other breach and no Party's undertakings or agreements contained in this Agreement shall be deemed to have been waived unless such waiver is made by an instrument in writing signed by an authorized representative of that Party.
- L. **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and either Party may execute this Agreement by signing any such counterpart. Signed counterparts executed and delivered by electronic mail or facsimile transmission shall be binding on the Parties and have the same force and effect as an original signed counterpart.
- M. **Representations and Warranties.** Each Party represents and warrants that it has executed this Agreement freely, fully intending to be bound by the terms and provisions contained herein; that it has full power and authority to execute, deliver and perform this Agreement; that the person signing this Agreement on behalf of such Party has properly been authorized and empowered to enter into this Agreement by and on behalf of such Party; that prior to the date of this Agreement, all corporate action of such Party necessary for the execution, delivery and performance of this Agreement by such Party has been duly taken; and that this Agreement has been duly authorized and executed by such Party, is the legal, valid and binding obligation of such Party, and is enforceable against such Party in accordance with its terms.
- N. **Compliance with Laws.** The Parties shall observe all federal, state and local laws, ordinances and regulations; to the extent they may be applicable to the terms of this Agreement.

SECTION NO. 11: RCW 39.34 REQUIRED CLAUSES

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

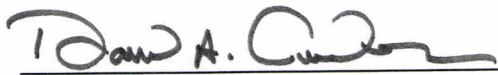
IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the date first written above.

THE CITY OF CHENEY:

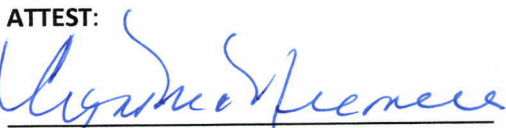


Tom Trulove, Mayor

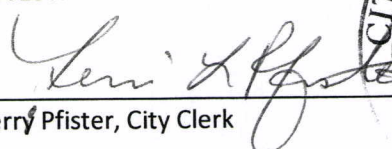
THE CITY OF SPOKANE:




David Condon, Mayor
(09/12/14)
David A. Condon
Mayor
City of Spokane

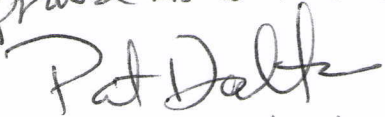
ATTEST:


Cindy Niemeier, Finance Director

ATTEST:


Terry Pfister, City Clerk



Approval as to form:


Asst City Attorney