


Agenda Sheet for City Council Meeting of:

05/15/2023

Date Rec'd

5/1/2023

Clerk's File #

OPR 2018-0413

Renews #**Submitting Dept**

SOLID WASTE DISPOSAL

Cross Ref #**Contact Name/Phone**

CHRIS AVERYT 625-6540

Project #**Contact E-Mail**

CAVERYT@SPOKANECITY.ORG

Bid #**Agenda Item Type**

Contract Item

Requisition #

N/A

Agenda Item Name

4490-INTERLOCAL AGREEMENT RENEWAL WITH FAIRCHILD AIR FORCE BASE

Agenda Wording

Interlocal Agreement (ILA) renewal with Fairchild Air Force Base (FAFB) for disposal of solid waste at Spokane's Waste to Energy Facility. Effective through June 30, 2028 with an anticipated revenue of approximately \$850,000.00 over five years.

Summary (Background)

In 2018, an ILA was entered into between the City of Spokane and FAFB for the disposal of all solid waste collected within FAFB at the WTE. The term of this agreement was for five years with the possibility of five (5) one-year extensions and runs through June 30, 2023. Rather than exercising five (5) separate one-year extensions, the City and FAFB have agreed to do one extension for five (5) years. All previously agreed to terms and conditions will remain the same.

Lease? NO

Grant related? NO

Public Works? NO

Fiscal Impact**Budget Account**

Revenue \$ 850,000.00

4490-44110-37052-34364

Select \$

#

Select \$

#

Select \$

#

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

AVERYT, CHRIS

Study Session\Other

PIES 3/24/23

Division Director

FEIST, MARLENE

Council Sponsor

CM's Kinnear and Bingle

Finance

ALBIN-MOORE, ANGELA

Distribution List**Legal**

SCHOEDEL, ELIZABETH

mdorgan@spokanecity.org

For the Mayor

KIRK, JESSICA

jsalstrom@spokanecity.org

Additional Approvals

tprince@spokanecity.org

Purchasing

caveryt@spokanecity.org

eschoedel@spokanecity.org

DocuSign: Clifford Dockter, Contracting Officer,
clifford.dockter@us.af.milApproved by Spokane City Council
on:

City Clerk

Committee Agenda Sheet

Public Infrastructure, Environment & Sustainability Committee

Submitting Department	Solid Waste Disposal
Contact Name	Chris Averyt
Contact Email & Phone	caveryt@spokanecity.org , 509-625-6540
Council Sponsor(s)	CM Kinnear, CM Bingle
Select Agenda Item Type	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion Time Requested:
Agenda Item Name	Interlocal agreement with Fairchild Air Force Base for the disposal of municipal solid waste at the Waste to Energy Facility.
Summary (Background) *use the Fiscal Impact box below for relevant financial information	<p>On October 1, 1990, the City of Spokane entered into an Interlocal agreement (ILA) to control the management, handling and disposal of solid waste from Fairchild Airforce Base (FAFB). The term was for twenty five (25) years. This Agreement has expired.</p> <p>In 2018, a new ILA was entered into between the City of Spokane and FAFB for the disposal of all solid waste which is collected within FAFB at the Waste to Energy Facility. The term of this agreement was for five years with the possibility of five (5) one-year extensions and runs through June 30, 2023. Rather than exercising five (5) separate one-year extensions, the City and FAFB have agreed to do one extension for five (5) years. All previously agreed to terms and conditions will remain the same.</p>
Proposed Council Action	Consent to extend the interlocal agreement
Fiscal Impact Total Cost: Revenue of approx. \$850,000.00 over five years. Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Funding Source <input type="checkbox"/> One-time <input type="checkbox"/> Recurring Specify funding source: N/A Expense Occurrence <input type="checkbox"/> One-time <input type="checkbox"/> Recurring Other budget impacts: (revenue generating, match requirements, etc.) Revenue generating	
Operations Impacts (If N/A, please give a brief description as to why)	
What impacts would the proposal have on historically excluded communities? This proposal would ensure approved and permitted disposal of solid waste so that historically excluded communities are not impacted by lack of services.	
How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities? N/A – Fairchild AFB is a federal government facility and do not have access to the data outline in this section.	

How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?

Waste volumes and associated revenues are monitored on a monthly basis.

Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

This ILA is in agreement with the Spokane County Solid Waste Management Plan, of which both Fairchild AFB and the City of Spokane are participating entities, in addition to Spokane County Ordinance No. 14-0879 which establishes solid waste flow control from participating jurisdictions to designated disposal facilities such as the WTE.



City of Spokane
**CONTRACT AMENDMENT #1 and
EXTENSION**
Title: **ILA Between FAFB and the City of Spokane**

This Contract Amendment & Extension is made and entered into by and between the **City of Spokane** as ("**City**"), a Washington municipal corporation, and **Fairchild Air Force Base**, whose address is 110 W. Ent Street, Fairchild AFB, Washington 99011 as ("**Fairchild AFB**", individually hereafter referenced as a "Party", and together as the "Parties".

WHEREAS, the parties entered into a Interlocal Agreement between the City of Spokane and Fairchild AFB for disposal of solid waste within Fairchild AFB; and

WHEREAS, FAFB has requested an extension and amendment of the Contract to reflect additional time and thus the original Contract needs to be formally Amended and Extended by this written document; and

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

1. CONTRACT DOCUMENTS.

The Contract, dated July 9, 2018, 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 Contract Amendment & Extension shall become effective on July 1, 2023 and shall end June 30, 2028.

3. AMENDMENT.

The original Contract Section 3: Duration is amended to read as follows:

The Parties may agree to extend this agreement in five (5) year increments commencing the 1st of July 2028, unless one party gives notice to the other party six months prior to the 1st of July of the contract year that is does not intent to extend for an additional five (5) years, in which case this Agreement will terminate on the 30th of June of that year. Any extensions must be in writing and signed by both Parties.

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 Contract Amendment / Extension by having legally-binding representatives affix their signatures below.

FAIRCHILD AIR FORCE BASE

CITY OF SPOKANE

By Clifford Dockter 5/22/2023
Signature Date

By Nadine Woodward 5/24/2023
Signature Date

Clifford Dockter
Type or Print Name

Nadine Woodward
Type or Print Name

contracting officer
Title

Mayor
Title

Attest:

Approved as to form:

Joni K. Hoffman
City Clerk

Margaret Harrington
Assistant City Attorney

Attachments that are part of this Agreement:

Fairchild AFB written request to extend dated March 15, 2023.

U2023-026a




Agenda Sheet for City Council Meeting of:

05/15/2023

Date Rec'd

5/1/2023

Clerk's File #

OPR 2018-0413

Renews #**Submitting Dept**

SOLID WASTE DISPOSAL

Cross Ref #**Contact Name/Phone**

CHRIS AVERYT 625-6540

Project #**Contact E-Mail**

CAVERYT@SPOKANECITY.ORG

Bid #**Agenda Item Type**

Contract Item

Requisition #

N/A

Agenda Item Name

4490-INTERLOCAL AGREEMENT RENEWAL WITH FAIRCHILD AIR FORCE BASE

Agenda Wording

Interlocal Agreement (ILA) renewal with Fairchild Air Force Base (FAFB) for disposal of solid waste at Spokane's Waste to Energy Facility. Effective through June 30, 2028 with an anticipated revenue of approximately \$850,000.00 over five years.

Summary (Background)

In 2018, an ILA was entered into between the City of Spokane and FAFB for the disposal of all solid waste collected within FAFB at the WTE. The term of this agreement was for five years with the possibility of five (5) one-year extensions and runs through June 30, 2023. Rather than exercising five (5) separate one-year extensions, the City and FAFB have agreed to do one extension for five (5) years. All previously agreed to terms and conditions will remain the same.

Lease? NO

Grant related? NO

Public Works? NO

Fiscal Impact**Budget Account**

Revenue \$ 850,000.00

4490-44110-37052-34364

Select \$

#

Select \$

#

Select \$

#

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

AVERYT, CHRIS

Study Session\Other

PIES 3/24/23

Division Director

FEIST, MARLENE

Council Sponsor

CM's Kinnear and Bingle

Finance

ALBIN-MOORE, ANGELA

Distribution List**Legal**

SCHOEDEL, ELIZABETH

mdorgan@spokanecity.org

For the Mayor

KIRK, JESSICA

jsalstrom@spokanecity.org

Additional Approvals

tprince@spokanecity.org

Purchasing

caveryt@spokanecity.org

eschoedel@spokanecity.org

DocuSign: Clifford Dockter, Contracting Officer,
clifford.dockter@us.af.milApproved by Spokane City Council
on:

City Clerk

Committee Agenda Sheet

Public Infrastructure, Environment & Sustainability Committee

Submitting Department	Solid Waste Disposal
Contact Name	Chris Averyt
Contact Email & Phone	caveryt@spokanecity.org , 509-625-6540
Council Sponsor(s)	CM Kinnear, CM Bingle
Select Agenda Item Type	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion Time Requested:
Agenda Item Name	Interlocal agreement with Fairchild Air Force Base for the disposal of municipal solid waste at the Waste to Energy Facility.
Summary (Background) *use the Fiscal Impact box below for relevant financial information	<p>On October 1, 1990, the City of Spokane entered into an Interlocal agreement (ILA) to control the management, handling and disposal of solid waste from Fairchild Airforce Base (FAFB). The term was for twenty five (25) years. This Agreement has expired.</p> <p>In 2018, a new ILA was entered into between the City of Spokane and FAFB for the disposal of all solid waste which is collected within FAFB at the Waste to Energy Facility. The term of this agreement was for five years with the possibility of five (5) one-year extensions and runs through June 30, 2023. Rather than exercising five (5) separate one-year extensions, the City and FAFB have agreed to do one extension for five (5) years. All previously agreed to terms and conditions will remain the same.</p>
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Operations Impacts (If N/A, please give a brief description as to why)	
What impacts would the proposal have on historically excluded communities? This proposal would ensure approved and permitted disposal of solid waste so that historically excluded communities are not impacted by lack of services.	
How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities? N/A – Fairchild AFB is a federal government facility and do not have access to the data outline in this section.	

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City of Spokane
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EXTENSION**
Title: **ILA Between FAFB and the City of Spokane**

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WHEREAS, the parties entered into a Interlocal Agreement between the City of Spokane and Fairchild AFB for disposal of solid waste within Fairchild AFB; and

WHEREAS, FAFB has requested an extension and amendment of the Contract to reflect additional time and thus the original Contract needs to be formally Amended and Extended by this written document; and

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

1. CONTRACT DOCUMENTS.

The Contract, dated July 9, 2018, 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 Contract Amendment & Extension shall become effective on July 1, 2023 and shall end June 30, 2028.

3. AMENDMENT.

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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 Contract Amendment / Extension by having legally-binding representatives affix their signatures below.

FAIRCHILD AIR FORCE BASE

CITY OF SPOKANE

By Clifford Dockter 5/22/2023
Signature Date

By Nadine Woodward 5/24/2023
Signature Date

Clifford Dockter
Type or Print Name

Nadine Woodward
Type or Print Name

Contracting Officer
Title

Mayor
Title

Attest:

Approved as to form:

Joni K. Hoffman
City Clerk

Margaret Harrington
Assistant City Attorney

Attachments that are part of this Agreement:

Fairchild AFB written request to extend dated March 15, 2023.

U2023-026a




Agenda Sheet for City Council Meeting of:

07/09/2018

Date Rec'd	6/18/2018
Clerk's File #	OPR 2018-0413
Renews #	
Cross Ref #	
Project #	
Bid #	
Requisition #	N/A

Submitting Dept	SOLID WASTE DISPOSAL
Contact Name/Phone	DAVID PAINE 625-6878
Contact E-Mail	DPAINE@SPOKANECITY.ORG
Agenda Item Type	Contract Item
Agenda Item Name	4490-INTERLOCAL AGREEMENT WITH FAIRCHILD AIR FORCE BASE

Agenda Wording

Interlocal agreement with Fairchild Air Force Base (FAFB) for disposal of solid waste at Spokane's Waste to Energy Facility (WTEF). Effective through June of 2023, with an anticipated revenue of approximately \$750,000.00 over 5 years.

Summary (Background)

On October 1, 1990, the City of Spokane entered into an Interlocal Agreement to control the management, handling and disposal of solid waste from FAFB. The term was for 25 years and has now expired. The proposed Interlocal agreement establishes terms and conditions between the City of Spokane and FAFB, for the disposal of all solid waste which is collected within FAFB, at the WTEF. The term of this agreement is five years, with five possible one-year extensions.

Fiscal Impact	Grant related? NO	Budget Account
	Public Works? NO	

Revenue	\$ \$750,000.00	# 4490-44110-37052-34364
Select	\$	#
Select	\$	#
Select	\$	#

Approvals

Dept Head	CONKLIN, CHUCK
Division Director	SIMMONS, SCOTT M.
Finance	ALBIN-MOORE, ANGELA
Legal	SCHOEDEL, ELIZABETH
For the Mayor	SANDERS, THERESA

Council Notifications

Study Session	PIES 6/25
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Other
Distribution List

mdorgan@spokanecity.org
jsalstrom@spokanecity.org
tprince@spokanecity.org
eschoedel@spokanecity.org

Additional Approvals
Purchasing

Approved by Spokane City Council on: July 9, 2018.

weather.rogers9@us.af.mil

DocuSigned by:

 CC56CBA4DC84D6...

City of Spokane No. OPR 2018-0A13
Fairchild Air Force Base No. _____

**INTERLOCAL AGREEMENT
BETWEEN FAIRCHILD AIR FORCE BASE AND THE CITY OF SPOKANE
FOR DISPOSAL OF SOLID WASTE**

This WASTE DISPOSAL AGREEMENT (this "**Agreement**") is made and entered into by and between FAIRCHILD AIR FORCE BASE, a Military reservation ("**FAIRCHILD AFB**") and the City of Spokane, a municipal corporation of the State of Washington ("**SPOKANE**"). FAIRCHILD AFB and Spokane are each sometimes referred to herein as "**Party**" and collectively as "**Parties**."

RECITALS

WHEREAS, FAIRCHILD AFB on October 1, 1990 entered into "An Interlocal Agreement between the City of Spokane, Spokane County and FAIRCHILD AFB" (City Clerk's OPR 1990-0884) (the "**Interlocal Agreement**") to control the management, handling, and disposal of solid waste within FAIRCHILD AFB; and

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

WHEREAS, On November 17, 2014, the City of Spokane took over operations of the Waste to Energy Facility located at 2900 South Geiger Blvd., Spokane, Washington, 99224, including the solid waste incinerator and the portion of the facility that serves the general public (the "**WTE**"); and

WHEREAS, FAIRCHILD AFB uses the WTE for locally generated municipal solid waste from mixed residential, commercial and industrial sources and also for regulated solid waste arriving from overseas aircraft; and

WHEREAS, the WTE is capable of processing Municipal Waste from mixed residential, commercial, and industrial sources. The WTE is also capable of processing regulated solid waste arriving from overseas aircraft in accordance with 7 CFR 330.400-330.404 and 9 CFR 94.5; and

WHEREAS, FAIRCHILD AFB has identified the WTE as a disposal site capable of processing Municipal Waste from mixed residential, commercial, and industrial sources and regulated solid waste from overseas aircraft.

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

SECTION NO. 1: PURPOSE

The purposes of this Agreement are to:

- A. Establish the terms and conditions between FAIRCHILD AFB and SPOKANE for the disposal of all solid waste collected within FAIRCHILD AFB, which is to be delivered to SPOKANE's WTE; and
- B. Establish the terms and conditions between FAIRCHILD AFB and SPOKANE for the destruction of Regulated Waste and/or Special Waste; and
- C. Establish flow control requirements to be maintained by FAIRCHILD AFB to ensure all solid waste collected within FAIRCHILD AFB by the Base or its contracted solid waste collection service provider be delivered to SPOKANE'S WTE for proper disposal; and
- D. Establish the terms and conditions for continued service to FAIRCHILD AFB self-haul customers who deliver solid waste, yard waste, recyclables and household hazardous waste to the WTE.

SECTION NO. 2: DEFINITIONS

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

- A. **FAIRCHILD AFB** means FAIRCHILD AIR FORCE BASE, or any vendor contracted by FAIRCHILD AIR FORCE BASE for services related to the management of solid waste.
- B. **FAIRCHILD AFB Disposal Rate** means the per ton disposal fee, as outlined in Section 5 of this Agreement, that FAIRCHILD AFB or its contracted solid waste collection service provider on behalf of FAIRCHILD AFB shall pay SPOKANE for each ton of solid waste delivered to the WTE by FAIRCHILD AFB's owned and operated commercial vehicles or FAIRCHILD AFB'S contracted solid waste collection service provider.

- C. **Gate Fee** - means the per ton disposal fee outlined in this Agreement. FAIRCHILD AFB residents who direct haul solid waste shall pay SPOKANE for each ton of solid waste delivered to the WTE as self-haul waste, as defined in this Agreement.
- D. **Hazardous Waste** - means and includes all dangerous and extremely hazardous waste, including substances composed of both radioactive and hazardous components.
- E. **Regulated (Special) Waste** – means solid waste received from overseas aircraft required to be handled pursuant to 7 CFR 330.400-330.404 & 9 CFR 94.5. Regulated Waste is also considered Special Waste and requires verification of destruction.
- F. **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.
- G. **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 upon execution by both Parties and run through June 30, 2023.

The Parties may agree to extend this Agreement for up to five (5) additional one year time frames commencing 1 July and running through 30 June the following year UNLESS one party gives notice to the other party six months prior to 1 July of any contract year that it does not intend to extend for an additional one (1) year term, in which case the Agreement will terminate on 30 June of that year. Any extensions must be in writing and signed by both Parties.

SECTION NO. 4: DISPOSAL SERVICES

- A. **Scope of Services.** FAIRCHILD AFB, or residents of FAIRCHILD AFB 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) **"Regulated (Special) Waste"** as defined above.
 - 3) **"Self-Haul"** means solid waste delivered to the WTE in privately owned and operated vehicles.
 - 4) The above definitions shall be automatically amended to conform to all WTE permits and operating requirements established by state and federal authorities.
- C. **Non-Acceptable Waste.** All waste not covered by the definitions listed above shall be considered non-acceptable waste and will not be accepted at the WTE, without prior written consent from WTE. Any costs associated with Non-Acceptable Waste which is delivered to the WTE shall be billed and paid for by FAIRCHILD.

SECTION NO. 5: DISPOSAL RATE; BILLING

- A. **FAIRCHILD AFB Disposal Rates.**
- a. **Solid Waste.** FAIRCHILD AFB or its contracted solid waste collection service provider will pay to SPOKANE Seventy three dollars and forty one cents (\$73.41) per ton for each ton of Municipal Waste delivered to the WTE from FAIRCHILD AFB (the **"FAIRCHILD AFB Disposal Rate"**). The FAIRCHILD AFB Disposal Rate shall be inclusive of all costs, including applicable taxes.
 - b. **Regulated (Special) Waste.** FAIRCHILD AFB or its contracted solid waste collection service provider will pay to SPOKANE a minimum charge for each load of Regulated (Special) Waste in the amount of thirty five dollars (\$35) per load for an amount not to exceed 374 pounds of Regulated (Special) Waste. Any Regulated (Special) Waste in excess of 374 pounds shall be charged the Special Handling Rate as provided in the Chapter 13.02 of the Spokane Municipal Code of Regulated Waste or Special Waste which requires a special verified destruction.
 - i. Notwithstanding the above, prior to acceptance of any Regulated or Special Waste, FAIRCHILD AFB shall make arrangements with the WTE for a controlled destruction of the waste and obtain completed approval for destruction.

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

C. **Rate Adjustment.**

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

Example Calculation of Annual Rate Adjustments:

	INDEX	ADJUST FACTOR	FAFB DISPOSAL RATE
Base Yr. = N	125		\$73.41
N+1	128.844	1.030752	\$74.17
N+2	133.315	1.034710	\$75.20
N+3*	132.474	No change	\$75.20
N+4**	133	No change	\$75.20
N+5	137.748	1.033252	\$76.24
N+6	140.054	1.016741	\$77.25
* No change-Index decreased			
** No charge-Index did not exceed highest previous Index			

- D. **Invoicing and Payment.** SPOKANE shall bill FAIRCHILD AFB or its contracted solid waste collection service provider the FAIRCHILD AFB Disposal Rate on or before the 20th day of the month for services rendered the previous month. The invoice shall contain the dates of disposal, weight of Solid Waste, disposal cost per ton, and such other information as necessary to support the invoiced amount due. FAIRCHILD AFB or its contracted solid waste collection service provider will pay SPOKANE within thirty (30) calendar days of receiving the invoice.

- E. **Billing Questions and Disputes.** If FAIRCHILD AFB has any questions, or desires further information, or has a dispute regarding the invoice, FAIRCHILD AFB shall advise SPOKANE in writing within ten (10) business days of invoice receipt. Notwithstanding payment of an invoice as set forth herein, FAIRCHILD AFB 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 10 of this Agreement. Past due invoices shall accrue interest at the current local government investment pool rate - until paid.

SECTION NO. 6: AUDIT / RECORDS

FAIRCHILD AFB shall maintain for a minimum of three (3) years following final payment all records related to its performance of the Agreement. FAIRCHILD AFB 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 FAIRCHILD AFB 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.

To the extent allowable to the Federal Tort Claims Act, 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 FAIRCHILD AFB or its contracted solid waste collection service provider shall each maintain in force at its own expense, the following insurance coverage or self-insurance:

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

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

SECTION NO. 9: RELATIONSHIP OF THE PARTIES

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

SECTION NO. 10: MISCELLANEOUS

- A. **Assignment and Delegation.** This Agreement shall be binding upon the Parties, their successors and assigns. No Party may assign or delegate, in whole or in part, its interest in this

Agreement without the prior written approval of the other Party, which shall not be unreasonably withheld.

- B. **Notices and Other Communications.** All notices, approvals, consents, and other communications required or permitted pursuant to this Agreement shall be in writing and shall be delivered by hand or sent by facsimile or prepaid courier or registered mail, to a Party at the address set forth below, or at such other address provided by such Party via written notice. Such communications shall become effective on the day when delivered by hand or the first (1st) business day following delivery by any other means.

If to FAIRCHILD AFB:

FAIRCHILD AFB
Attn:
Fairchild AFB, WA

If to the SPOKANE:

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

With Copy To:

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.** To the extent allowable by Federal Law, 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. **Dispute Resolution.** To the extent allowable by Federal Law, if either Party has a claim or dispute under this Agreement, notice of the same shall be sent to the other Party. The notice shall provide a brief description of the dispute. The Parties agree to use their best efforts to resolve disputes arising out of or related to this Agreement using good faith negotiations by engaging in the following dispute resolution process should any such disputes arise. The Parties agree that cooperation and communication are essential to resolving issues efficiently.
 - 1. Any disputes or questions of interpretation of this Agreement or the performance of either Party under this Agreement that may arise between FAIRCHILD AFB and SPOKANE will be governed under the dispute resolution process set forth in this Section. Either Party may refer a dispute to the dispute resolution process by providing written notice of such referral to the other Party's Designated Representative.

2. Before either Party may refer a dispute to mediation or provide a notice of the same to the other Party, the Parties will seek to resolve the dispute at the lowest possible level by completing the following steps.
 3. SPOKANE's Director of Solid Waste Disposal and FAIRCHILD AFB's Contracting Office shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within ten (10) days, then the Parties will refer the dispute to SPOKANE's Director of Public Works and FAIRCHILD AFB's Contracting Office.
 4. SPOKANE's Director of Public Works and FAIRCHILD AFB's Contracting Office will meet and confer and attempt to resolve the dispute. If they cannot resolve the dispute within fourteen (14) days, then either Party may initiate mediation.
 5. Within 15 days of the completion of the steps above, each Party shall propose to the other party in writing not more than five (5) candidates to act as mediator. Within seven (7) days of exchanging lists of mediator candidates, the parties will meet and confer to choose one name from the list. If the Parties are unable to agree on a mediator 30 days after completion of the steps above, then the Parties will jointly petition the Presiding Judge of the Spokane County Superior Court to appoint a mediator.
 6. The Parties shall use reasonable efforts to resolve the dispute within 30 days with the assistance of the mediator.
 7. Except as otherwise provided by this Agreement, the Parties shall continue to fulfill their respective duties under this Agreement pending resolution of any dispute.
 8. If mediation fails to resolve the dispute within 30 days of selection of the mediator, the Parties may thereafter seek redress in court.
- 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, each Party will be responsible for their own attorney fees.
- F. **Entire Agreement.** This Agreement embodies the entire understanding among the Parties, is merged and fully integrated, and supersedes any and all prior negotiations, understandings, or agreements.
- G. **Third Parties.** Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.
- H. **Anti-kickback.** No officer or employee of FAIRCHILD AFB, having the power or duty to perform an official act or action related to this Agreement, shall have, or acquire, any interest in this Agreement, or have solicited, accepted, or granted, a present or future gift, favor, service, or other thing of value from any person with an interest in this Agreement.
- I. **Severability.** If any provision of this Agreement is determined by any court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such provision will be enforced to the maximum extent possible given the intent of the Parties hereto. If such clause or provision cannot be so enforced, such provision shall be stricken from this Agreement and the remainder of this Agreement shall be enforced as if such invalid, illegal or unenforceable clause or provision had (to the extent not enforceable) never been contained in this Agreement.

- J. **Amendment; Waivers.** This Agreement shall not be amended, supplemented or modified except in writing executed by authorized representatives of the Parties, with the same formality of this Agreement. Waiver by a Party of any breach of any provision of this Agreement by the other Party shall not operate, or be construed, as a waiver of any subsequent or other breach and no Party's undertakings or agreements contained in this Agreement shall be deemed to have been waived unless such waiver is made by an instrument in writing signed by an authorized representative of that Party.
- K. **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and either Party may execute this Agreement by signing any such counterpart. Signed counterparts executed and delivered by electronic mail or facsimile transmission shall be binding on the Parties and have the same force and effect as an original signed counterpart.
- L. **Representations and Warranties.** Each Party represents and warrants that it has executed this Agreement freely, fully intending to be bound by the terms and provisions contained herein; that it has full power and authority to execute, deliver and perform this Agreement; that the person signing this Agreement on behalf of such Party has properly been authorized and empowered to enter into this Agreement by and on behalf of such Party; that prior to the date of this Agreement, all corporate action of such Party necessary for the execution, delivery and performance of this Agreement by such Party has been duly taken; and that this Agreement has been duly authorized and executed by such Party, is the legal, valid and binding obligation of such Party, and is enforceable against such Party in accordance with its terms.
- M. **Compliance with Laws.** The Parties shall observe all federal, state and local laws, ordinances and regulations; to the extent they may be applicable to the terms of this Agreement.

SECTION NO. 11: RCW 39.34 REQUIRED CLAUSES

- A. **Purpose:** See Section No. 1 above.
- B. **Duration:** See Section No. 3 above.
- C. **Organization of Separate Entity and Its Powers:** No new or separate legal or administrative entity is created to administer the provisions of this Agreement.
- D. **Responsibilities of the Parties:** See provisions above.
- E. **Agreement to be Filed:** SPOKANE shall file this Agreement with its City Clerk and place it on its web site or other electronically retrievable public source. FAIRCHILD AFB shall file this Agreement in accordance with its practices and/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.

FAIRCHILD AIR FORCE BASE:

DocuSigned by:

Heather D. Rogers

Heather D. Rogers

Contracting officer

THE CITY OF SPOKANE:

DocuSigned by:

David A. Condon

David A. Condon, Mayor

ATTEST:

ATTEST:

DocuSigned by:

Jenni Pfister

Jenni Pfister, City Clerk

Approved as to Form:

Assistant Staff Judge Advocate

Approved as to Form:

DocuSigned by:

Pat Dalton

Pat Dalton, Assistant City Attorney

Assistant City Attorney

DS





DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 92D AIR REFUELING WING (AMC)
FAIRCHILD AIR FORCE BASE WASHINGTON

1 June 2018

MEMORANDUM FOR 92 ARW/CC

FROM: 92 ARW/JA

SUBJECT: Legal Review – Determinations Memorandum for Intergovernmental Support Agreement (IGSA).

1. I have reviewed the determinations memorandum for the IGSA between Fairchild AFB (FAFB) and the City of Spokane for waste disposal at the Spokane Waste to Energy facility. I find that it is legally sufficient.

2. **BACKGROUND:** FAFB and the City of Spokane desire to enter into an IGSA for solid waste disposal and regulated waste disposal at the Spokane Waste to Energy facility. Under the agreement, FAFB will be permitted to send designated waste to the Spokane Waste to Energy facility for reduced rates. The estimated cost savings over five years for FAFB is \$247,001.41. Before FAFB may enter in the IGSA with the City of Spokane, 92 ARW/CC must determine that it is in the best interests of the Air Force.

3. **LAW:**

a. 10 U.S.C. § 2679 gives the Department of the Air Force authority to enter into an IGSA with a state or local government, on a sole source basis, if the Secretary of the Air Force determines that the agreement will serve the best interests of the department by enhancing mission effectiveness or creating efficiencies or economies of scale, including reducing costs. 10 U.S.C. § 2679(a)(1).

b. The determination authority under 10 U.S.C. § 2679 has been delegated to Installation commanders. Delegation Memorandum dtd. 30 January 2018. This authority is limited to IGSA's having a total 10-Year Life Cycle Cost of less than \$15 Million per installation support service that would otherwise be spent using appropriated or non-appropriated funds. *Id.*

c. An IGSA under 10 U.S.C. § 2679 may only be used when the supplier of the support already provides such services for its own use, and it may not be for a term of more than five years. 10 U.S.C. § 2679(a)(2-3).

4. **ANALYSIS:** The determinations memorandum for the IGSA between FAFB and the City of Spokane is legally sufficient under 10 U.S.C. § 2679. The memorandum shows that the IGSA is in the best interests of the Air Force because it reduces waste disposal costs for FAFB by \$247,001.41 over five years. The IGSA complies with 10 U.S.C. § 2679 because the City of Spokane already provides the service for its own use, and the agreement does not exceed five years. Finally, the determination authority is 92 ARW/CC because the IGSA has a total

10-Year Life Cycle Cost of less than \$15 Million for waste disposal that would otherwise be spent using appropriated funds.

5. **ERRORS/IRREGULARITIES:** None.

6. **CONCLUSION/RECOMMENDATION:** That 92 ARW/CC authorize the IGSA between FAFB and the City of Spokane by signing the determinations memorandum.


LEO BEHAN, GS-13, DAF
Attorney, Civil Law

I concur


MICHAEL T. HOPKINS, Lt Col, USAF
Staff Judge Advocate