

RECEIVED

RES 2007-0040
CR: OPR 81-1053



AGENDA SHEET FOR COUNCIL MEETING OF: April 30, 2007

APR 19 2007

Submitting Dept.
Public Works & Utilities

Contact Person/Phone No.
Dave Mandyke 625 6272

CITY CLERK'S OFFICE
Council Sponsor
SPOKANE, WA

ADMINISTRATIVE SESSION

- Contract
- Report
- Claims

LEGISLATIVE SESSION

- Emergency Ord
- Resolution
- Final Reading Ord
- First Reading Ord
- Special Consideration
- Hearing

CITY PRIORITY

- Communications
- Economic Development
- Growth Management
- Human Services
- Neighborhoods
- Public Safety
- Quality Service Delivery
- Racial Equity/Cultural Diversity
- Rebuild/Maintain Infrastructure

CLERK'S FILE _____
 RENEWS _____
 CROSS REF 00281-1053
 ENG _____
 BID _____
 REQUISITION _____

STANDING COMMITTEES

(Date of Notification)

- Finance _____
- Neighborhoods _____
- Planning/Community & Econ Dev _____
- Public Safety _____
- Public Works _____

Neighborhood/Commission/Committee Notified: _____
 Action Taken: _____

AGENDA WORDING:

(If contract, include the term.)

A resolution approving settlement of pending litigation with Spokane County relating to the parties' Interlocal Wastewater Management Agreement and directing said agreement be amended in accord with the settlement.

BACKGROUND:

(Attach additional sheet if necessary)

December 22, 1980, the City Council approved an interlocal wastewater management agreement with Spokane County wherein the City Sewer Utility agreed to accept and treat up to a maximum of 10 MGD (million gallons per day) dry weather wastewater flows from the County Sewer Utility. (Clerk file no. 395-30-2; later amendments in Clerk's File OPR 81-1053). In October of 2003, the County stopped paying that portion of its bill it computed as representing municipal taxes. After negotiations failed, a lawsuit was commenced by the County in November of 2005 testing whether these expenses should include City utility taxes paid by the City Sewer Utility on its gross income. In late 2006, the Spokane Superior Court ruled that the City had the legal authority to tax its own utility on revenues from the County payments, but that the intent of the parties specifically as to whether the city utility could pass those tax expenses on to the County under the terms of the contract was not clear and this question should be reserved for trial.

[continued on next page]

RECOMMENDATION: approve ADOPT

Fiscal Impact: <input type="checkbox"/> N/A	Budget Account: <input type="checkbox"/> N/A
Revenue: \$ 525,000	# 4310-43100-35052-34351-99999
● Revenue: \$ 975,000	# 4320-43200-35052-34355-99999

ATTACHMENTS: Include in Packets: Resolution approving settlement
On file for Review in Office of City Clerk:

SIGNATURES:

[Signature]
 Department Head

[Signature]
 Legal

[Signature]
 Division Director

[Signature]
 Chief Operating Officer for Mayor

[Signature]
 Finance

[Signature]
 Council President

DISTRIBUTION:

- Spokane County- Bruce Rawls
- City Sewer- Dale Arnold
- City Sewer- Kevan Brooks
- Spokane County Board- Cmsr Mielke
- Spokane County Clerk for Bd Marlene Feist
- Bruce Lamka Attorney
- Jim Emacio- County Prosec.
- Public Works & Utilities - Thacker

COUNCIL ACTION: ADOPTED BY
 SPOKANE CITY COUNCIL:
April 30, 2007

[CONTINUED]

[Signature]
 CITY CLERK Res 2007-0040

Originally, the County had asked for full refund going back six years to 1997 in the amount of \$2,033,269, with the tax expense removed thereafter. This includes about \$2.14 million withheld since 2003. Representatives of both sides participated in a day long mediation in late January 2007. The result of the mediation was a compromise proposal recommended by all mediation participants:

- 1) The County would entirely drop its \$2.033 refund claim.
- 2) The City Sewer Utility would remove the tax aspect from its billings to the County, but the County would make an immediate payment to the City in lieu of taxes to the City of \$1.5 Million.
- 3) The County would thereafter continue to make payments in lieu of taxes to the City on a gradually ramped down basis over the next 15 years as follows: for years 2007-2011—15% of whatever is due under the contract for treatment service from and after January 1, 2007. For years 2012-2016—10%. For years 2017-2021—5%. Starting in 2022, there would be no further payments in lieu of taxes from the County.

The attached resolution would be to authorize amendment of the Interlocal Agreement and finalization of the settlement recommendation.

RESOLUTION

A resolution approving settlement of pending litigation with Spokane County relating to the parties' Interlocal Wastewater Management Agreement and directing said agreement be amended in accord with the settlement.

WHEREAS, the City of Spokane and Spokane County have been engaged in litigation since November of 2005 over the question of allowable expenses that the City Sewer Utility may charge the County for treatment service for County Sewer Utility wastewater flows at the Water Reclamation Treatment Plant; and

WHEREAS, following a day long mediation earlier this year, with participants including a member of the Board of County Commissioners, the City of Spokane Council President and Mayor, together with staff and attorneys for both sides, a mutual recommendation regarding settlement and compromise of the dispute has been reached;

NOW THEREFORE, following a public hearing and due consideration, be it resolved by the City Council of the City of Spokane:

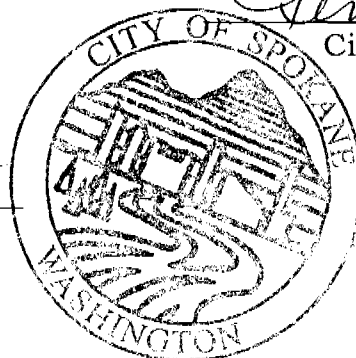
That the Mayor and City Staff be authorized to settle and compromise that dispute between the parties substantially in accord with the proposed Amendment No. 5 of the City-County Wastewater Management Agreement, also Exhibit A hereto, and such officials should execute the same on behalf of the City of Spokane.

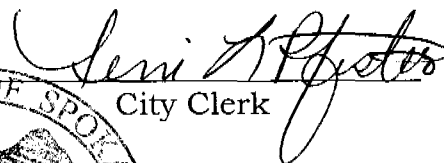
That in accord with RCW 39.34.040, prior to its entry into force, this amendment shall be filed with the county auditor or, alternatively, listed by subject on the City's web site or other electronically retrievable public source.

PASSED the City Council this 30th day of April, 2007.

Approved as to form:


Assistant City Attorney




City Clerk

SETTLEMENT AGREEMENT

1. AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is between Spokane County (the “County”) and the City of Spokane (the “City”). The County and City (collectively, the “Parties”), agree as follows.

2. RECITALS

- 2.1. On December 22, 1980, the County and City entered into an agreement entitled City and County Wastewater Management Agreement (the “Interlocal Wastewater Agreement”). The Interlocal Wastewater Agreement, as amended, provides for the collection and treatment of wastewater flows, as more particularly described therein.
- 2.2. The County and City are parties to litigation concerning their rights and obligations under the Interlocal Wastewater Agreement, which is pending in the Superior Court of the State of Washington, Spokane County, under Cause No. 05-2-05639-2 (the “Litigation”). The County and City resolve the Litigation through this Settlement Agreement.

3. TERMS OF SETTLEMENT

- 3.1. Upon execution of this Settlement Agreement by counsel for the County and City, the Parties will notify the Court that a settlement has been reached, subject to approval by the Parties’ respective legislative bodies. Counsel will jointly seek a stay of all further proceedings to facilitate approval of the settlement of the Litigation.
- 3.2. The terms of this Settlement Agreement, other than Paragraph 3.1, shall be presented to the Board of County Commissioners and to the City Council for approval. Presentation for approval shall be made as expeditiously as reasonably possible, but in no event more than thirty (30) days from the execution of this Settlement Agreement.
- 3.3. The terms of this Settlement Agreement, other than Paragraphs 3.1 and 3.2, shall be binding on the Parties only upon approval by both the Board of County Commissioners and the City Council. If this Settlement Agreement is approved by the Board of County Commissioners and by the City Council, it shall become fully binding and enforceable upon execution by the Mayor and by the Chairman of the Board of County Commissioners for the City and County, respectively. Execution shall be in duplicate originals, with each Party to receive a fully executed original. If this Settlement Agreement is not approved by either the Board of County Commissioners or the City Council, or by neither of them, it shall, except for the obligations created by Paragraphs 3.1 and 3.2, be null and void and have no force or effect, and the Parties shall be returned to their positions, nunc pro tunc, prior to this Settlement Agreement or the mediation in connection therewith.

3.4. Within thirty (30) days of the approval of this Settlement Agreement by the Board of County Commissioners and City Council, the Parties will execute a further Amendment to the Interlocal Agreement in the form of Exhibit A to this Agreement (the "Amendment").

3.5. Contemporaneously with the execution of the Amendment, the County will pay to the City the sum of One Million Five Hundred Thousand Dollars (U.S. \$1,500,000.00). This payment shall be by check or other appropriate instrument made payable to the City Treasurer.

3.6. Approval of this Settlement Agreement shall constitute and effect a mutual release by each Party of all claims of any kind against the other, including its elected officials, officers, agents and employees, past and present, arising out of the subject matter of the Litigation.

3.7. Within ten (10) days of the execution of the Amendment, the Parties will jointly file papers with the Court in the Litigation in the form of Exhibit B to this Agreement for dismissal of their respective claims, with prejudice.

4. EFFECTIVE DATE

This Settlement Agreement shall be effective on the last date of County and City approval as set forth in Section 5.2, below.

5. EXECUTION AND APPROVAL

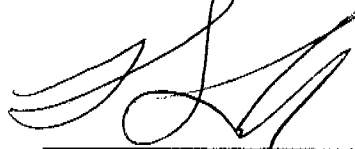
5.1. For purposes of Settlement Agreement Sections 3.1 and 3.2, counsel for the Parties execute this Settlement Agreement this 13th day of April, 2007.

FOSTER PEPPER PLLC



P. Stephen DiJulio, WSBA No. 7139
Attorneys for Spokane County

DAVIS WRIGHT TREMAINE LLP



Bruce Lamka, WSBA No. 9319
Attorneys for City of Spokane

5.2. Each of the Parties represent that the undersigned are duly authorized to execute this Settlement Agreement.

5.2.1. COUNTY

Approved by Spokane County this 1st day of May, 2007.

BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

By [Signature]
Mark Richard, Chair
[Signature]
Bonnie Mager, Vice-chair
[Signature]
Todd Mielke, Commissioner

ATTEST:
[Signature]
Clerk of the Board of Commissioners

APPROVED AS TO FORM:
[Signature]
County Prosecutor, [Signature] DPA

5.2.2. CITY

Approved by the City Council this 30th day of April, 2007, and executed by the Mayor
this 2nd day of May, 2007. *Administrative Services
Division Director for*

CITY OF SPOKANE

By [Signature]
for Dennis P. Hession, Mayor

ATTEST:
[Signature]
City Clerk

APPROVED AS TO FORM:
[Signature]
Assistant City Attorney



Exhibit A

CITY AND COUNTY WASTEWATER MANAGEMENT AGREEMENT

Amendment No. 5

1. AGREEMENT AMENDMENT.

This Agreement Amendment ("Amendment"), is made and entered by and between the City of Spokane (the "City") and Spokane County (the "County"). The Amendment further amends the City and County Wastewater Management Agreement, dated December 22, 1980, inclusive of prior amendments (the "Interlocal Wastewater Agreement"). The City and County (collectively, the Parties), agree as follows.

2. COUNTY CLASS OF SERVICE RATE

2.1. Effective January 1, 2007, no utility tax or other license/excise for revenue on the privilege of doing business that is imposed by the City of Spokane on the Spokane Sewer Utility will be included as a cost of operation and maintenance used in the formula used to compute the County Class of Service Rate (also known as "user charge").

2.2. Section V.F of the Interlocal Wastewater Agreement, is amended, to read as follows:

F. The cost of operation and maintenance of the City sewer utility shall be based on the EPA approved sewer use ordinance and equitable sewer user charge distribution system. The cost of operation and maintenance of that portion of the City system providing service to the County WWUSA shall be identified and shall be the basis of the formula the City uses to develop the user charge for the County. Included in this cost shall be all labor, materials, administrative, legal, engineering, and other necessary operational expenses of the sewer utility. Necessary operational expenses shall include all federal, state or county taxes imposed on the City system as well as any local option sales taxes of general application paid by the City sewer utility. Necessary operational expenses shall not include City of Spokane utility taxes or similar City license/excise for revenue on business activities or the privilege of doing business (however denominated) imposed on the City sewer utility.

2.3. On or before January 30 of each year hereafter, the City shall, as provided by the Interlocal Wastewater Agreement, compute the County Class of Service Rate for that year and inform the County of that Rate by letter to the County Sewer Utility, with a copy to the Chair of the Board of County Commissioners. The County Class of Service Rate so computed by the City shall form the basis of all billings for providing service to the County for that year unless, by March 30 of that year, the County objects in writing to the City Sewer Utility, with a copy to the Mayor. In the event a timely objection is made, the County Sewer Utility will pay all undisputed amounts and the parties will establish the correct amount due under the Interlocal Wastewater Agreement by submitting their dispute for resolution under the Alternative Dispute Resolution provisions of chapter 7.04A RCW.

2.4. The City shall compute the County Class of Service Rate for year 2007 consistent with Section 2.2 of this Amendment. The County Class of Service Rate previously calculated for 2007 will be recalculated and all City billings and County payments made to date for 2007 will be adjusted to conform to this Amendment.

3. PAYMENT IN LIEU OF TAXES

3.1. Effective January 1, 2007, the County Sewer Utility will make an additional annual payment to the City called the Payment in Lieu of Taxes ("PILT"). The amount of the PILT will be a percentage of the total annual gross payments by County to City for the County's Class of Service charge for operation and maintenance, determined in accordance with the Interlocal Wastewater Agreement, as follows:

3.1.1. For Years 2007-2011 – Fifteen Percent (15%) of total amount due under the County's Class of Service Rate;

3.1.2. For Years 2012 – 2016 – Ten Percent (10%) of total amount due under the County's Class of Service Rate;

3.1.3. For Years 2017-2021 – Five Percent (5%) of total amount due under the County's Class of Service Rate; and

3.1.4. No PILT will be made after year 2021.

3.2. Each PILT will be by check or other appropriate instrument made payable to the City Treasurer and shall be delivered to the City Treasurer by County on or before the last business day of January following the year for which the PILT is due.

4. RATIFICATION

Except as amended herein, the terms and conditions of the Interlocal Wastewater Agreement shall remain in full force and effect.

5. EXECUTION AND EFFECTIVE DATE

This Amendment shall take effect and be in force as of January 1, 2007, upon execution by the Parties, below.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their proper officers on the date opposite their respective signature block(s).

5.2. Each of the Parties represent that the undersigned are duly authorized to execute this Settlement Agreement.

5.2.1. COUNTY

Approved by Spokane County this 1st day of May, 2007.

BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

By [Signature]
Mark Richard, Chair
[Signature]
Bonnie Mager, Vice-chair
[Signature]
Todd Mielke, Commissioner

ATTEST
[Signature]
Clerk of the Board of Commissioners

APPROVED AS TO FORM:
[Signature]
County Prosecutor, ~~she~~ DPA

5.2.2. CITY

Approved by the City Council this 30th day of April, 2007, and executed by ^{Administrative Services Division Director for} the Mayor
this 2nd day of May, 2007.

CITY OF SPOKANE

By [Signature]
for Dennis P. Hession, Mayor

ATTEST:
[Signature]
City Clerk

APPROVED AS TO FORM:
[Signature]
Assistant City Attorney



Exhibit B

Dated this ____ day of _____, 2007.

STEVEN J. TUCKER
PROSECUTING ATTORNEY
SPOKANE COUNTY

JAMES S. CRAVEN
CITY ATTORNEY
CITY OF SPOKANE

James P. Emacio, WSBA No. 4862
Senior Civil Deputy Prosecuting Attorney

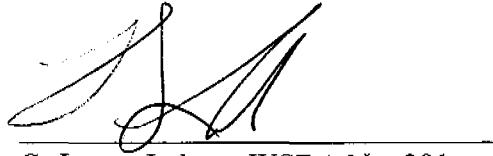
Robert G. Beaumier, Jr., WSBA No. 5512
Assistant City Attorney

BY FOSTER PEPPER PLLC

BY DAVIS WRIGHT TREMAINE LLP


P. Stephen DiJulio
17 May 2007

P. Stephen DiJulio, WSBA No. 7139
John R. Nelson, WSBA No. 16393
Attorneys for Spokane County



C. James Judson, WSBA No. 291
Bruce Lamka, WSBA No. 9319
Attorneys for City of Spokane

ORDER

The Court, having reviewed the forgoing Stipulation and Joint Motion for Dismissal,
and being fully informed, hereby

ORDERS that this action be and it hereby is dismissed with prejudice and without costs
or fees to either party.

Done in open court this ____ day of _____, 2007.

The Honorable Maryann Mareno