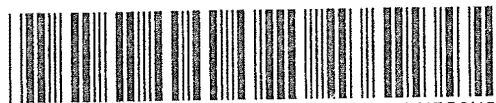


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RESOLUTIONS WHITMAN COUNTY

Document Title: RESOLUTION NO. R-33-01 - A RESOLUTION AUTHORIZING THE EXECUTION OF AN INTERLOCAL GOVERNMENTAL AGREEMENT WITH WASHINGTON STATE UNIVERSITY REGARDING THE CAPITAL AND OPERATING COSTS OF THE PULLMAN WASTEWATER TREATMENT PLANT.

Reference Number(s) of Related Documents: None

Grantors: Washington State University, an institute of higher education and an agency of the state of Washington

Grantee: City of Pullman, a municipal corporation of the state of Washington

Legal Description: N/A

1. N/A

SUBDIVISION	SECTION	TOWNSHIP	RANGE	MERIDIAN

2. Additional legal description: N/A

Assessor's Property Tax Parcel Numbers:

N/A



RESOLUTION NO. R- 33 -01

A RESOLUTION AUTHORIZING THE EXECUTION OF AN INTERLOCAL GOVERNMENTAL AGREEMENT WITH WASHINGTON STATE UNIVERSITY REGARDING THE CAPITAL AND OPERATING COSTS OF THE PULLMAN WASTEWATER TREATMENT PLANT.

WHEREAS, the City Council for the city of Pullman has before it an instrument entitled, "Agreement Relating to Proration of Capital and Operating Costs of the Pullman Wastewater Treatment Plant"; and,

WHEREAS, Washington State University has approved said interlocal governmental agreement; and

WHEREAS, the City Council of the City of Pullman deems it to be in the best interests of the City of Pullman to enter into said interlocal governmental agreement; now, therefore,

IT IS HEREBY RESOLVED by the City Council of the City of Pullman that the Mayor and the finance director be and they are hereby authorized and directed to execute said interlocal governmental agreement; and, having executed the same, to submit one executed original to Washington State University and to file one executed original in the manner authorized by law.

IT IS FURTHER RESOLVED that the Mayor and finance director are each hereby authorized and directed to take such further action as may be appropriate in order to effect the purpose of this Resolution and the Agreement authorized thereby.


ADOPTED by the City Council of the city of Pullman at a regular meeting held on the 24th day of April, 2001.

DATED this 25th day of April, 2001.



Mayor

ATTEST:



Finance Director

**AGREEMENT RELATING TO PRORATION
OF CAPITAL AND OPERATING COSTS
OF THE PULLMAN WASTEWATER TREATMENT PLANT**

This agreement is by and between the city of Pullman, a municipal corporation of the state of Washington (CITY), and Washington State University, an institution of higher education and an agency of the state of Washington (UNIVERSITY).

RECITALS:

1. This Agreement is entered into pursuant to the Interlocal Cooperation Act (RCW 39.34).
2. The City Council of the CITY by resolution has approved and authorized the terms of this Agreement and has authorized the Mayor and Finance Director to sign the Agreement.
3. The Board of Regents of the UNIVERSITY by resolution has approved and authorized the terms of this Agreement and has authorized the Vice President for Business Affairs to sign the Agreement.
4. The CITY has provided wastewater sewer lines and wastewater treatment at the Pullman wastewater treatment plant for the UNIVERSITY for approximately seventy-five (75) years on a cost-sharing basis.
5. The UNIVERSITY, by a cooperative agreement dated February 16, 1979, has provided forty-five point four percent (45.4%) of the local costs for capital improvements and forty-three point five percent (43.5%) of the local costs for maintenance and operation costs of the wastewater treatment plant. Prior to February 16, 1979, the UNIVERSITY similarly shared proportionately in the costs of maintenance and operation of and capital improvements to the wastewater treatment plant and to certain sewer lines serving the UNIVERSITY.
6. In 1997, the CITY, in cooperation with the UNIVERSITY, entered into an agreement with Parametrix, Inc., to provide a General Sewer Plan for the CITY. Included in the General Sewer Plan was an analysis of the percent of total wastewater flow and load that was contributed by the UNIVERSITY. This study (1998 General Sewer Plan) was completed and approved by the Washington State Department of Ecology on January 20, 1999, and by the Pullman City Council on March 9, 1999. The UNIVERSITY by its approval and execution of this Agreement also approves the City's 1998 General Sewer Plan.



7. The February 16, 1979, agreement provides for the negotiation of a new, revised cooperative agreement as required. Considering the results of the 1998 General Sewer Plan, it is hereby mutually agreed between the CITY and the UNIVERSITY that it is appropriate to negotiate a new revised cooperative agreement for allocation of capital improvement costs and operation and maintenance costs.

TERMS OF AGREEMENT:

Now, therefore, in consideration of mutual benefits derived from the cooperative funding of a single wastewater treatment plant and system, it is agreed as follows:

I. PURPOSE

This Agreement is entered into for the purpose of:

- A. Prorating between the CITY and the UNIVERSITY the costs of maintenance and operation related to the CITY's wastewater treatment plant;
- B. Prorating between the CITY and the UNIVERSITY the cost of future capital improvements and additions to the wastewater treatment plant and certain sewer lines serving the UNIVERSITY;
- C. Determining the responsibilities of and relationship between each party during the construction of improvements and the continued operation of the wastewater treatment plant; and
- D. Allocating the assets and liabilities of the system in the event of termination.

II. DURATION AND TERMINATION

The duration of this Agreement shall be from the effective date hereof to June 30, 2020. Prior to the termination of this Agreement, the CITY and the UNIVERSITY will meet to examine then existing conditions affecting the operation of the wastewater treatment plant and system and negotiate a new, revised cooperative agreement in the event the parties desire to continue their agreement.



III. RESPONSIBILITIES OF THE CITY

- A. The CITY has full responsibility for undertaking any analysis or study, design of improvements and additions, coordination with consulting firms, and the supervision, inspection, and administration of construction of improvements to the wastewater treatment plant and the sewer collection system. The CITY may, at its option, consult with the UNIVERSITY regarding any of the above matters.
- B. The CITY has full responsibility for the operation of the wastewater treatment plant, including the retention of competent operating staff and any necessary materials, equipment, and supplies. The CITY may, at its option, consult with the UNIVERSITY regarding such operations.
- C. The CITY will hold the UNIVERSITY harmless from claims or liability for damages to property or persons incurred during the construction of improvements and additions to said plant. The CITY also will hold the UNIVERSITY harmless from claims or liability for damages to property or persons incurred during operation of said plant except for claims arising out of the UNIVERSITY's negligent or willful acts or omissions, including violations of any federal, state, or local law, rule, regulation, or permit for the discharge of waste water that is or is considered to be harmful, detrimental, or injurious to the public health, safety, and welfare caused by the disposal of industrial wastes by the UNIVERSITY.
- D. The wastewater treatment plant and sewer collection system together with all additions and improvements, except for the sewer collection system located within the campus boundary of the UNIVERSITY, shall be the property of the CITY.
- E. The CITY may bill the UNIVERSITY not more often than once per month for the costs of capital improvements and operations and maintenance costs incurred by the CITY. Notwithstanding, the CITY agrees to bill all costs so incurred not later than twelve (12) days following the UNIVERSITY's fiscal year on June 30 for the twelve-month (12-month) fiscal year period preceding the billing.

IV. RESPONSIBILITIES OF THE UNIVERSITY

- A. The UNIVERSITY shall within sixty (60) days of billing by the CITY remit its share of the costs to meet obligations incurred for the costs of approved construction and operation and maintenance costs incurred in the management of

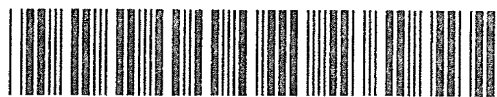


the wastewater treatment plant and sewer collection system in accordance with the terms of this Agreement. Any billing not paid within sixty (60) days shall be considered delinquent and accrue interest at the rate of twelve percent (12%) per annum from the date of the CITY's billing.

- B. In the event the CITY has obtained financing to make any improvements or pay any cost authorized by law, the UNIVERSITY agrees that its payment with respect to its share of the cost of the financing shall not be reduced below the prorated sum in effect at the time the financing occurred.
- C. The UNIVERSITY agrees to consult with the CITY in good faith when requested regarding improvements and maintenance and operation of the wastewater treatment plant.

V. CAPITAL IMPROVEMENTS

- A. The 1998 General Sewer Plan determined that the cost of capital improvements at the wastewater treatment plant should be based mainly on peak design flow but also should include a load factor component, and further estimated that the peak flow and load contribution from the UNIVERSITY amounted to thirty-six point four percent (36.4%) of the peak flow and total load treated at the wastewater treatment plant. Therefore, the UNIVERSITY agrees to provide thirty-six point four percent (36.4%) and the CITY agrees to provide sixty-three point six percent (63.6%) of the costs for capital improvements and additions to the wastewater treatment plant. Costs for capital improvements may include costs incurred for design and construction engineering and architectural services, property acquisition, contract work, force account work, CITY personnel salaries and benefits, and related incidental items as deemed by the CITY to be reasonably necessary for the capital improvement.
- B. Since the UNIVERSITY is on a biennial budget system for capital improvements, the CITY will endeavor to inform the UNIVERSITY of planned capital improvements prior to July 1 of even numbered years to facilitate the UNIVERSITY's capital budget planning. It is acknowledged that emergency conditions may arise which may prevent the CITY from giving the UNIVERSITY such prior notification.
- C. It is agreed that any improvements to sewer lines serving the UNIVERSITY shall have the costs prorated in accordance with the estimated percentage of flows that the UNIVERSITY contributes, or may contribute in the future, to the sewer line relative to the respective non-UNIVERSITY flows and any other



factors deemed appropriate by the CITY and the UNIVERSITY. The CITY and the UNIVERSITY will meet to establish proration of such costs for each particular sewer line improvement proposed. In the event the CITY and UNIVERSITY are unable to agree on said proration by direct negotiation, they agree to participate, in good faith, in a mediation. The mediator shall be chosen by agreement of the parties. The parties agree that mediation shall precede any action in a judicial or quasi-judicial tribunal. If the parties fail to resolve the dispute in mediation, they agree to submit to binding arbitration pursuant to RCW 7.04.

VI. OPERATION AND MAINTENANCE

- A. It is mutually agreed that the average flow and average load estimated for 1992 through 1996 using the year-round load, as established in the 1998 General Sewer Plan, are the appropriate basis for the apportionment of maintenance and operation costs. The noted analysis estimated the related UNIVERSITY contribution to be thirty-six point four percent (36.4%) and the related CITY contribution to be sixty-three point six percent (63.6%). Therefore, the UNIVERSITY agrees to provide thirty-six point four percent (36.4%) of the maintenance and operation costs of the wastewater treatment plant and the CITY agrees to provide sixty-three point six percent (63.6%) of such costs.
- B. A review of the maintenance and operation fee proration between the UNIVERSITY and the CITY shall be made at any time either one of the parties makes written demand on the other, although no more than once in any twelve-month (12-month) period. Such review will consider relative growth of the parties, special operation and maintenance problems that may have developed, and any other factors or considerations that affect the apportionment of the costs. At the written request of either party, review may be made by an independent engineer or engineering firm acceptable to both the CITY and the UNIVERSITY. In the event such a review does proceed, the charge will be borne by the parties according to the existing apportionment prior to the review. In the event a modification to the proportional shares is deemed appropriate, recommendations will be made to the governing bodies of the parties. In the event the parties are unable to agree on the modification to the proportional shares by direct negotiation, they agree to participate, in good faith, in mediation. The mediator shall be chosen by agreement of the parties. The parties agree that mediation shall precede any action in a judicial or quasi-judicial tribunal. If the parties fail to resolve the dispute in mediation, they agree to submit to binding arbitration pursuant to RCW 7.04.



VII. ADMINISTRATION

- A. No new separate legal or administrative entity is created to administer this Agreement.
- B. This Agreement supercedes all previous agreements between the CITY and the UNIVERSITY regarding the wastewater treatment plant, its operation, capital improvements, engineering studies, or any other items related thereto. This Agreement does not alter, modify, or supersede any conduct regulated by federal, state, or local law, rule, regulation, or permit.
- C. All real and personal property and all modifications, improvements, additions, or repairs made to the system, except for the sewer collection system located within the campus boundary of the UNIVERSITY, shall remain the property of the CITY upon termination of the Agreement. The CITY agrees to assume and pay all liabilities of the system upon termination except for claims arising out of the UNIVERSITY's negligent or willful acts or omissions as described in Paragraph III.C and any UNIVERSITY portion of any financial liability existing at termination that initially was financed for a period of more than one year.

VIII. NOTICES

- A. All notices, requests, approvals, consents, or communications which may be required under this Agreement shall be given as follows:

Notice to the UNIVERSITY: Vice President for Business Affairs
 Washington State University
 P.O. Box 641045
 Pullman, WA 99164-1045

Notice to the CITY: City Supervisor
 City of Pullman
 P.O. Box 249
 Pullman, WA 99163

IX. EFFECTIVE DATE AND FILING REQUIREMENTS

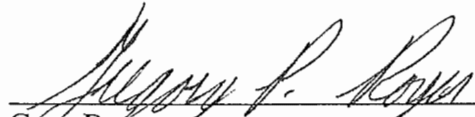
- A. This Agreement shall be effective upon the filing of the fully executed agreement with the Whitman County Auditor.



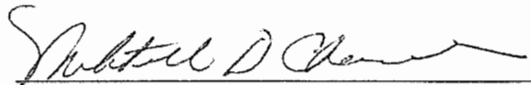
B. Interpretation. As a further condition of this Agreement, the CITY and the UNIVERSITY acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the Agreement, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorneys' fees and costs, whether incurred in a court of law or otherwise.

WASHINGTON STATE UNIVERSITY

CITY OF PULLMAN

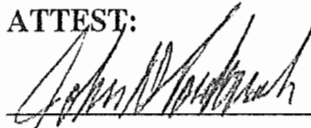


Greg Royer
Vice President for Business Affairs
Date: 3/15/01



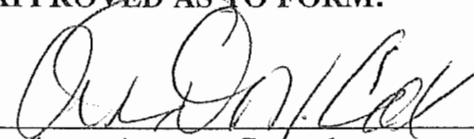
Mitchell D. Chandler
Mayor
Date: April 25, 2001

ATTEST:

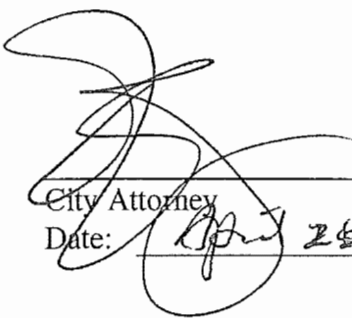


Name: John D. Tonkovich
Finance Director
Date: April 25, 2001

APPROVED AS TO FORM:



Assistant Attorney General
Date: 3/12/01



City Attorney
Date: April 25, 2001