

Return to: City of Spokane  
Attn: City Clerk  
808 W Spokane Falls Blvd  
Spokane, WA 99201

**INTERLOCAL AGREEMENT REGARDING ANNEXATIONS  
OF PORTIONS OF THE WEST PLAINS URBAN GROWTH AREA  
BETWEEN THE CITY OF SPOKANE, THE CITY OF AIRWAY HEIGHTS,  
AND SPOKANE COUNTY 2009-1093A**

**THIS AGREEMENT**, made and entered into this 3rd day of December, 2009 (the "Effective Date") by and between the **City of Spokane**, a Washington municipal corporation, hereinafter "Spokane", the **City of Airway Heights**, a Washington municipal corporation, hereinafter "Airway Heights," and **Spokane County**, a political subdivision of the State of Washington, hereinafter "County", jointly hereinafter referred to as the "parties."

**WITNESSETH:**

**WHEREAS**, Spokane and Airway Heights (hereinafter the "cities") previously entered into an agreement titled "City of Spokane and City of Airway Heights Memorandum of Understanding" (hereinafter the "MOU"), a copy of which (together with amendments thereto) is attached hereto as Exhibit A and the terms of which are incorporated into this Agreement; and

**WHEREAS**, the MOU contemplates the cities entering into an Interlocal Agreement providing for annexations by the cities within the West Plains Annexation Area, as shown in Exhibit B; and

**WHEREAS**, the MOU further anticipates that following the annexations contemplated therein, that the area depicted as the Spokane Annexation Area on Exhibit B shall be part of the City of Spokane and the area depicted as the Airway Heights Annexation Area on said exhibit shall be part of the City of Airway Heights; and

**WHEREAS**, the cities wish to further memorialize their intent as set forth in the MOU by entering into an interlocal agreement that requires both cities to engage in a cooperative annexation process that will ultimately result in the Spokane Annexation Area becoming part of the City of Spokane and the Airway Heights Annexation Area becoming part of the City of Airway Heights; and

**WHEREAS**, Washington's legislature, pursuant to Engrossed Substitute Senate Bill 5808 (codified in RCW 35.13.238), and consistent with the regional cooperation envisioned and anticipated as a result of implementation of the Growth Management Act, Chapter 36.70A RCW ("GMA"), has authorized a new method of annexation referred to as the interlocal method of annexation ("Interlocal Method of Annexation"); and

**WHEREAS**, in an effort to demonstrate regional cooperation and leadership, the parties have elected to pursue the respective annexations contemplated in this Agreement pursuant to the Interlocal Method of Annexation; and

**WHEREAS**, at the County's request, and in lieu of any type of annexation mitigation/revenue sharing between the cities and the County, the cities have agreed to postpone the effective date of the annexations contemplated herein until January 1, 2012; and

**NOW, THEREFORE**, in consideration of the facts and recitals set forth in the MOU and hereinabove, which are adopted herein and made a part of this Agreement and which the parties mutually agree constitute good and adequate consideration for the obligations of the parties set forth herein, the parties hereby agree as follows:

**SECTION NO. 1:    PURPOSE**

The purpose of this Agreement is to set forth certain agreements between the parties relating to annexations by Spokane and Airway Heights within the West Plains Annexation Area.

**SECTION NO. 2:    APPLICABILITY OF THIS AGREEMENT**

The parties agree that the provisions of this Agreement shall apply to annexations by the cities within the West Plains Annexation Area.

**SECTION NO. 3:    ANNEXION PROCEDURES**

**3.1 Interlocal Method of Annexation.** Spokane and Airway Heights will pursue annexation of their respective annexation areas within the West Plains Annexation Area pursuant to the Interlocal Method of Annexation, as authorized by RCW 35.13.238 (the "Interlocal Method of Annexation"). Alternatively, the cities may jointly elect to pursue their respective annexations via the direct petition method of

annexation as authorized by RCW 35.13.125 *et seq* (the "Direct Petition Method of Annexation"). In either case, the County shall be bound by its commitments in this Agreement with respect to the annexations contemplated herein.

### **3.2 Annexation Process.**

**3.2.1 Notice.** The Interlocal Method of Annexation contemplates a city proposing to initiate an annexation of territory served by a fire protection district notifying the district and the county of its intentions and stating the city's interest in an interlocal agreement negotiation process. Within ten (10) days of the Effective Date, Spokane and Airway Heights will send notices that generally conform with Exhibit C. Spokane's notice shall be addressed to the Board of County Commissioners for Spokane County ("BOCC"), Spokane County Fire Protection District No. 10 ("District No. 10"), and Spokane County Fire Protection District No. 3, and shall state Spokane's interest to enter into an interlocal agreement negotiation process relating to Spokane's intention to annex the Spokane Annexation Area. Airway Heights' notice shall be addressed to the BOCC and District No. 10 and shall state Airway Heights' interest to enter into an interlocal agreement negotiation process relating to Airway Heights' intention to annex the Airway Heights Annexation Area.

**3.2.2 Fire District Response.** If any fire protection district having territory within the boundaries of the Spokane Annexation Area and/or Airway Heights Annexation Area timely objects or otherwise provides a negative response to either annexation proposal, the city receiving the negative response may abandon and terminate the Interlocal Method of Annexation with respect to its annexation and proceed to annex that city's respective annexation area (as identified in this Agreement) pursuant to the direct petition method of annexation under Chapter 35.13 RCW. A negative fire protection district response to one city's annexation shall not prejudice the right of the other city to proceed with its annexation pursuant to the Interlocal Method of Annexation. Once Spokane successfully annexes the Spokane Annexation Area, and if Airway Heights thereafter fails, for any reason, to complete its annexation of the Airway Heights Annexation Area with an effective date of January 1, 2012, Spokane shall, following its annexation of the Spokane Annexation Area, and following the exhaustion of any appeals relative to Airway Heights' annexation efforts, proceed to annex the Airway Heights Annexation Area pursuant to the direct petition method of annexation, subject to the requirements and limitation of Section 3.3 herein below regarding the parties adoption of companion resolutions providing for Airway Heights' annexation of the Airway Heights Annexation Area. The parties acknowledge and agree that Spokane may rely entirely on annexation covenants Spokane has collected over the years in exchange for providing sewer and water service to the West Plains Annexation Area.

**3.2.3 Interlocal Agreement.** Assuming no fire protection district has objected or otherwise provided a negative response to an annexation proposal, the city and/or cities (as the case may be depending upon whether one or both cities continue to

proceed under the Direct Petition Method of Annexation) and the County will negotiate interlocal agreements with the respective fire protection districts relating to the city's and/or cities' respective annexations, the terms of which shall be consistent with the requirements of RCW 35.13.238 and this Agreement ("Annexation Agreements"). The County hereby acknowledges and agrees to be a party to the Annexation Agreement(s) and will execute the same upon the request of either or both cities. Once the interlocal agreement negotiation process is complete, the city and/or cities shall thereafter submit a notice of intention to the Spokane County Boundary Review Board ("BRB"); provided, if all parties to the Annexation Agreements are in agreement regarding the boundaries of the territory proposed for annexation, the parties acknowledge and agree that the BRB may not invoke its jurisdiction with respect to the annexation contemplated in the Annexation Agreement(s). If, within ninety (90) days of the Effective Date of this Agreement, one or both of the cities is unable to finalize an Annexation Agreement that includes an agreement by the relevant fire protection district(s) regarding the enumerated goals as set forth in RCW 35.13.238(c)(2)(a), that city may abandon and terminate the Interlocal Method of Annexation and proceed to annex its respective annexation area as identified in this Agreement pursuant to the direct petition method.

**3.2.4 Fire District Employees.** Spokane and Airway Heights will seek fire district cooperation in providing the notification to fire district employees required by RCW 35.13.215(1).

**3.2.5 Annexation Ordinance.** Upon completion of the interlocal agreement negotiation process described in Section 3.2.3 above and execution of the Annexation Agreements, the city or cities shall prepare ordinances relating to each city's respective annexation and shall set public hearings on the ordinances as required by RCW 35.13.238. Each ordinance shall provide for an effective date of January 1, 2012.

**3.3 Direct Petition Method of Annexation.** Upon the abandonment of the Interlocal Method of Annexation by both cities per Section 3.2.2 and/or 3.2.3, Spokane will commence the annexation of the entire West Plains Annexation Area (including the Spokane Annexation Area and Airway Heights Annexation Area) as shown in Exhibit B pursuant to the Direct Petition Method of Annexation. The parties acknowledge and agree that Spokane may rely entirely on annexation covenants Spokane has collected over the years in exchange for providing sewer and water service to the West Plains Annexation Area. Following the successful completion of Spokane's annexation of the West Plains Annexation Area, Spokane and Airway Heights will execute companion resolutions, as authorized by RCW 35.10.217(2) and consistent with the process prescribed therein, providing for Airway Heights' annexation of the Airway Heights Annexation Area.

RCW 35.10.217(2) provides, in summary, the following: (a) the legislative body of a city may by resolution indicate its desire to be annexed to another city in whole or in part or the legislative body of a City proposing to annex part of another city may initiate the annexation by adopting a resolution stating that desire (the "First Resolution"); (b) the

annexation is effective if the other city adopts a resolution concurring in the annexation (the "Second Resolution"), unless owners of property in the area proposed to be annexed, equal in value to 60% or more of the assessed valuation of the property in the area, protest the proposed annexation in writing to the legislative body of the city proposing to annex the area, which terminates the process; with (c) the annexation potentially subject to review by the Boundary Review Board after adoption of the First Resolution. The Second Resolution may not be adopted until the proposed annexation has been approved by the BRB (if its jurisdiction is invoked). To further the purposes of this Agreement and to avoid frustration of the Parties' intent, and assuming Spokane has successfully annexed the entire West Plains Annexation Area, Spokane will within forty-five (45) days of successful annexation of the entire West Plains Annexation Area and exhaustion of appeal periods, adopt a First Resolution indicating its desire for Airway Heights to annex the Airway Heights Annexation Area. In the event Spokane fails to timely adopt said First Resolution, Spokane shall pay annually liquidated damages to the City of Airway Heights the greater of the stipulated sum of \$600,000.00 with such amount adjusted pursuant to the identified CPI index set forth in Section 4.2 or the total property and sale tax revenue received by Spokane from the Airway Heights Annexation Area less \$300,000, until such time as Airway Heights is able to annex the Airway Heights Annexation Area or for a period of seventeen (17) years, whichever shall first occur (the "Liquidated Damages Term"). If, following Spokane's adoption of a First Resolution, Airway Heights is thereafter unable to annex the Airway Heights Annexation Area, Spokane shall, following subsequent requests by Airway Heights initiated pursuant to RCW 35.10.217(2), concur with Airway Heights' efforts to annex the Airway Heights Annexation Area by adopting a Second Resolution within 45 days of receiving Airway Heights' request unless prevented from doing as a result of a BRB decision or a sufficient property owner protest pursuant to RCW 35.10.217(2); provided, Airway Heights shall bear all costs associated with providing required notices. A failure by Spokane to adopt a Second Resolution, unless prevented by law or order, shall result in the payment of liquidated damages to Airway Heights for the Liquidated Damages Term specified herein above. Provided; Spokane's obligation to adopt a Second Resolution shall expire upon its adoption of a total of five companion resolutions (including both First Resolutions and Second Resolutions) or seventeen (17) years from the Effective Date of this Agreement, whichever occurs first. Spokane and the County shall not protest the Airway Heights annexation commenced under RCW 35.10.217 or any other method. Spokane and Airway Heights agree that the above stipulated sum for liquidated damages is a reasonable amount with a precise measure of damages being difficult or incapable of precise computation.

The cities agree that, if Airway Heights is able to annex the Airway Heights Annexation Area, and if Spokane is unsuccessful in its efforts to annex the Spokane Annexation Area, the cities will cooperate to allow Spokane to leverage the annexation covenants that encumber property within the Airway Heights Annexation Area for a larger annexation of areas within the West Plains Urban Growth Area pursuant to the provisions of RCW 35.10.217(2)&(3) recognizing that the County's obligations under this Agreement are limited to annexations within the agreed upon West Plains Annexation Area.

**3.4 Duty of Mutual Cooperation.** None of the parties will invoke the jurisdiction of the BRB with respect to the annexations provided for in this Agreement. None of the parties shall commence or maintain any action of any kind in any forum challenging any of the annexations contemplated in this Agreement. Nor shall any party oppose or otherwise challenge Spokane's reliance on Annexation Covenants (and/or the validity of such covenants), whether before the Boundary Review Board, a Washington court, or any other forum, in the event the parties elect to proceed according to the Direct Petition Method of Annexation. The County's obligations under this Section 3.4 shall terminate on January 1, 2017.

**3.5 GMA Appeal.** Within ten (10) days of the Effective Date, Spokane and Airway Heights will enter a stipulated motion seeking dismissal of Case No. 09-1-0005 currently pending before the Growth Management Hearings Board for Eastern Washington.

#### **SECTION NO. 4: ALLOCATION OF SALES AND PROPERTY TAX REVENUE**

Spokane and Airway Heights have established a formula that will equitably compensate Spokane for revenue that will be lost due to Airway Heights' annexation of the Airway Heights Annexation Area.

**4.1 Term of Revenue Sharing.** The revenue sharing provisions of this Section 4 shall be in effect and continue for a term of seventeen (17) years, commencing on January 1, 2013 ("Commencement Date") and terminating on December 31, 2029 ("Termination Date"), unless otherwise agreed to by Spokane and Airway Heights according to the terms of this Agreement ("Term").

**4.2 Revenue Sharing Payment.** The annual revenue sharing payment by Airway Heights to Spokane shall be three hundred thousand dollars (\$300,000.00), adjusted annually as provided in this section ("Revenue Sharing Payment"). On January 1, 2013 and thereafter on or before January 30 of each year during the Term, Airway Heights shall pay to Spokane, without notice or demand, the Revenue Sharing Payment, addressed to the City Treasurer. Airway Heights shall make such payments to the City, without deduction or offset, no later than January 30 of each year of the Term. The Revenue Sharing Payment will be adjusted annually as of the anniversary date of the Commencement Date of this Agreement by using the Consumer Price Index for All Urban Consumers for the West urban area, 1982-84=100 (the "CPI"). If the stated index is discontinued, Spokane will use the index promulgated by the Department of Labor which in Spokane's opinion most closely approximates the above index, and the Revenue Sharing Payment will be adjusted accordingly. The latest available semi-annual CPI is 217.786 for the 1st half of 2009. Airway Heights shall be responsible for calculating the adjustment and shall, upon request, within thirty (30) days prior to each

anniversary date, provide Spokane with documentation pertaining to the calculated adjustment.

**4.3 Late Fee.** Airway Heights acknowledges that late payment by Airway Heights to Spokane of Revenue Sharing Payments due hereunder will cause Spokane to incur costs not contemplated by this Agreement, the exact amount of which would be extremely difficult and impractical to ascertain. Those costs include, but are not limited to, processing expenses, and accounting expenses. In the event any amount so due is delinquent, Airway Heights shall pay Spokane a late charge, computed at the rate of the lesser of 1-1/2 % per month or the maximum rate permissible by law, upon the total amount so overdue and for each day following its due date that the payment is delinquent. Spokane's acceptance of less than the full amount of any payment due from Airway Heights shall not be deemed an accord and satisfaction or compromise of such payment unless Spokane specifically consents in writing to payment of such lesser sum as an accord and satisfaction or compromise of the amount which Spokane claims.

**4.4 Contingencies.** The cities acknowledge and agree that the annexations contemplated under this Agreement may be subject to potential review by the Boundary Review Board ("BRB"), protest, and referendum.

4.4.1 Airway Heights' revenue sharing obligations hereunder are contingent upon Airway Heights' annexing all or any portion of the Airway Heights Annexation Area. If after exhausting all efforts to annex the Airway Heights Annexation Area as contemplated herein Airway Heights is prevented from annexing or otherwise unable to annex any portion thereof of the Airway Heights Annexation Area, its revenue sharing obligations under this Agreement shall terminate; provided, if Airway Heights thereafter annexes all or any portion of the Airway Heights Annexation Area within seventeen (17) years following the Effective Date of this Agreement, its revenue sharing obligations to Spokane hereunder shall apply with the seventeen- (17-) year revenue sharing Term commencing on the one-year anniversary of the effective date of such annexation.

4.4.2 Modification by the BRB of Airway Heights' proposal to annex the Airway Heights annexation area shall cause Spokane and Airway Heights to renegotiate, in good faith, the revenue sharing provisions of this Agreement which shall continue to apply during the Term – i.e., Airway Heights shall make the agreed upon Revenue Sharing Payment according to the terms of this Agreement unless and until the renegotiations result in a modification of said obligation.

4.4.3 If the cities pursue the Direct Petition Method of Annexation, and if, following Spokane's successful annexation of the West Plains Annexation Area, Airway Heights is unable to annex the Airway Heights Annexation

Area for any reason, the revenue sharing provisions of this Agreement shall terminate; provided, if Airway Heights thereafter annexes all or any portion of the Airway Heights Annexation Area within seventeen (17) years following the Effective Date of this Agreement, its revenue sharing obligations to Spokane hereunder shall apply with the seventeen- (17-) year revenue sharing Term commencing on the one-year anniversary of the effective date of such annexation.

4.4.4 Airway Heights' revenue sharing obligations under this Agreement are not contingent upon the outcome of Spokane's efforts to annex the Spokane Annexation Area or any portion thereof and shall continue regardless of the status of those efforts.

4.4.5 The parties acknowledge that until such time as the West Plains Annexation Area described in this Agreement (or a portion thereof) is annexed by one or both of the cities, the County will continue to provide the same services in said area or portion thereof that it provided prior to the initiation of the annexation(s) and will also continue to receive its regular share of revenues from said area.

**4.5 Fire District No. 10 Mitigation.** Under the Interlocal Method of Annexation, Spokane and Airway Heights will deal directly and independently with Fire District No. 10 with respect to the impacts of that annexation, if any. If it becomes necessary for Spokane to annex the Airway Heights Annexation Area (whether as part of a direct petition annexation of the entire West Plains Annexation Area as provided in Section 3.3 or in a subsequent direct petition annexation of the Airway Heights Annexation Area as provided in Section 3.2.2), and if the Airway Heights Annexation Area is subsequently annexed by Airway Heights pursuant to the process set forth in Section 3.3 above or otherwise, during the Term, Airway Heights shall also be responsible to reimburse Spokane for that portion of Spokane's mitigation payment to Spokane County Fire Protection District No. 10 (the "Fire District") attributable to the Airway Heights Annexation Area, if any, provided such payment to Spokane shall not exceed the amount nor extend beyond the term set forth in the "Spokane County Fire Protection District No. 10, City of Airway Heights, Fire Department Mitigation Services Agreement", dated March 21, 2008; provided further, a termination of said agreement and/or a determination that said agreement is invalid and/or unenforceable shall not excuse Airway Heights from its reimbursement obligations under this Section 4.5. No later than 30 days following the Commencement Date, and thereafter on or before the 30<sup>th</sup> day of each year during the Term, Airway Heights shall pay to Spokane, without notice or demand, such amounts as Spokane is obligated to pay to the Fire District due to Spokane's annexation of the Airway Heights Annexation Area, if any. Airway Heights shall make such payments to the City, without deduction or offset, no later than the 30<sup>th</sup> day of each year of the Term. If, for any reason, Airway Heights is unable to annex the Airway Heights Annexation Area, the reimbursement obligation in this Section 4.5 shall terminate;

provided, if following Spokane's annexation of the Airway Heights Annexation Area, Airway Heights is thereafter successful in annexing the area pursuant to the process set forth in RCW 35.10.217(2) within seventeen (17) years following the Effective Date of this Agreement, its reimbursement obligations under this Section 4.5 shall apply.

#### **SECTION NO. 5: PROVISION OF SERVICES**

If the cities pursue the Direct Petition Method of Annexation, upon approval of Spokane's annexation of the West Plains Annexation Area, Spokane will be responsible for providing full range of urban governmental services to entire annexation area pending Airway Heights' annexation of the Airway Heights Annexation Area. In this case, the cities will develop an interim agreement to allocate responsibility for service provision pending completion of Airway Heights' annexation of Airway Heights Annexation Area.

Both cities are committed to working with each other and with each city's respective bargaining units towards alternative models for providing essential services (and primarily fire protection) in a manner that is more cost effective for residents and tax payers.

#### **SECTION NO. 6: UTILITY SERVICE IN JOINT PLANNING AREA**

Spokane will continue to provide sewer and water service to the Airway Heights Annexation Area, subject to Spokane plans, ordinances, and resolutions. Without limiting the generality of the foregoing, the cities specifically acknowledge and agree that Spokane may impose its utility tax on services provided by Spokane to the Airway Heights Annexation Area. Unless expressly stated herein, nothing in this Agreement shall be deemed to modify the terms of any existing water or sewer service agreements between the parties. Nor shall this Agreement be deemed to impose a duty on Spokane to provide services, Spokane reserving the right to condition the provision of services consistent with Spokane's Comprehensive Plan, ordinances, policies, and municipal code provisions relating to the provision of services beyond Spokane's corporate limits.

#### **SECTION NO. 7: PROTECTION OF ESSENTIAL PUBLIC FACILITIES**

Spokane, Airway Heights and the County acknowledge and agree that the Spokane International Airport and Fairchild Air Force Base are two of the region's most essential public facilities and that the parties should discourage development adjacent to either facility that is incompatible with the facilities' operational needs and/or its ability to carry out its current and/or future missions ("incompatible development"). The term "incompatible development" means permitted land uses that are inconsistent with the Fairchild Air Force Base Joint Land Use Study ("JLUS"), WSDOT Aviation Division Regulations, FAA Regulations, state statutes or regulations. If any party discovers that

an existing comprehensive plan or development regulation does not discourage incompatible development, said party shall take action to amend its comprehensive plan and/or development regulation consistent with the requirements of RCW 36.70.547. Prior to amending its development regulations in a manner that may affect property in the vicinity of either facility, notice shall be provided to (i) the other parties; (ii) the Fairchild Air Force Base commander; and (iii) the Director of the Spokane International Airport. Said notice shall request written recommendations and supporting facts opposing the proposed development regulation or amendment. The notice shall provide sixty days for a response. If there is no response within said 60 days, the party may presume that implementation of the proposed development regulations or amendment will not have any adverse effect on the operation of the facility.

Following execution of the Agreement, the parties shall take action to adopt regulations that prevent incompatible development.

#### **SECTION NO. 8: ADMINISTRATION**

Spokane hereby designates its City Administrator as its representative for the purpose of implementing this Agreement. Airway Heights hereby designates its City Manager as its representative for the purpose of implementing this Agreement. The County hereby designates Chairperson of the Board of County Commissioners as its representative for purposes of implementing this Agreement.

#### **SECTION NO. 9: DISPUTE RESOLUTION**

**MEDIATION AND ARBITRATION.** If any 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.

Mediation. If the parties are unable to resolve the dispute within ten (10) business days, the parties shall engage a mediator to assist the parties in resolving the dispute. The mediator's fees and costs shall be equally shared by the parties.

Arbitration. If the parties cannot resolve their dispute through mediation, the exclusive remedy is binding arbitration 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 arbitrator's decision shall be final, binding on the parties and enforceable pursuant to RCW Chapter 7.04A. The prevailing party shall be entitled to payment of its attorney fees and costs.

For purposes of this Section 9, the terminology "parties" shall refer only to those parties actually involved in the dispute. Any party not involved in the dispute shall not be considered as one of the "parties".

## **SECTION NO. 10: TERMINATION**

This Agreement may be terminated at any time by mutual written consent of the parties. The County's obligations under this Agreement shall terminate upon the earlier of successful completion of the annexations contemplated in this Agreement or January 1, 2017, except as extended by the provisions of Section 13 herein below.

## **SECTION NO. 11: CONTINUED MAINTENANCE OF INFRASTRUCTURE**

The County shall continue to perform routine maintenance of County infrastructure, including streets, sewers, water, storm water, and similar public facilities within the West Plains Annexation Area until the effective date of the annexations contemplated herein.

## **SECTION NO. 12: TAX INCREMENT FINANCING**

The County shall obtain the written approval of Spokane and Airway Heights, which either city may withhold for any reason, prior to creating any new or additional tax increment financing areas within the West Plains Annexation Area or any similar measures that result in the diversion of property and/or sales and use tax to finance public improvements.

## **SECTION NO. 13: COMPREHENSIVE PLAN AMENDMENTS – DEVELOPMENT REVIEW**

In the event there is any challenge of which stays the effective date of the annexations contemplated by either or both cities, then the January 1, 2012 date referenced in subsections 13.2, 13.3, and 13.4 shall be extended until the stay is lifted. Provided further if there is any challenge in court to either or both of the annexations which is successful, then the obligation under this Section shall be null and void as to any successful legal challenge.

**13.1 Land Use Changes.** The County shall not amend any use and/or zoning designations for properties within the boundaries of the West Plains Annexation Area without first providing written notice to both cities and giving due consideration to written and verbal comments submitted timely by the cities. Nor shall the County approve any text amendments to its comprehensive plan or related development regulations that would have the effect of allowing a change of use of property within the boundaries of the West Plains Annexation Area without first providing written notice to both cities and giving due consideration to written and verbal comments timely submitted by the cities.

**13.2 Development Review Within Pending Annexation Areas.** The County shall process to completion any development for which it received a complete permit application and accompanying fee prior to January 1, 2012, except when early transfer of authority occurs as described in Subsection 13.5 below. "Completion" shall mean final

administrative approvals and certifications to include extensions of time in the case of subdivisions, except in the case of legislative actions; in which case decisions will be made by the Board of County Commissioners or transferred to the City Council if annexation has occurred. Where the County continues to have jurisdiction, the County will confer with the cities on all development review decisions affecting the pending annexation area(s).

**13.3 Building Permits.** Except when early transfer of authority occurs as described in Subsection 13.5 below, building, plumbing, mechanical, fuel gas residential, energy, and/or fire code permits issued by the County shall be processed by the County through final inspection and/or certificate of occupancy. Commercial building and residential permit applications, to include ancillary permits i.e. mechanical, plumbing, fire alarm, sprinkler, etc., such as where plan review fees have been paid shall be processed by the County through permit issuance, final inspection, and certificate of occupancy. The final inspection may be a joint City/County inspection, with the city being afforded the opportunity to be in attendance for information purposes. After the effective date of the annexation, the cities and County may meet from time to time to review the status of all active projects in the annexation area remaining under review by the County and determine whether or not responsibility for continued processing should be transferred to the city. Any requested renewals of such applications shall be made to and administered by the city.

**13.4 Code Enforcement.** Upon request, the County will provide the cities with information regarding any properties which are subject to pending County code enforcement action.

**13.5 Early Transfer of Authority Authorized.** It is the intent of the parties to facilitate timely processing of development applications for properties that are located within the boundaries of the West Plains Annexation Area. When a property owner agrees, the County will, in writing, transfer review, permit—processing, and decision authority to the city for projects submitted prior to annexation. If annexation proceedings are delayed to such a degree that it is probable that development review would be completed prior to completion of the annexation, the city will return review and processing authority to the County to ensure continuous processing of development applications

## **SECTION NO. 14: DEFAULT**

The occurrence of any one or more of the following events shall be an “Event of Default” under this Agreement:

14.1 Failure by either Spokane, Airway Heights, or the County to perform, observe, or comply with the covenants, agreements, or conditions on its part contained in this Agreement, other than the making of any payment required hereunder, where that failure continues for a period of thirty (30) days after written notice from the non-defaulting party; or

14.2 Failure by Airway Heights to make any Revenue Sharing Payment when due.

**SECTION NO. 15: REMEDIES**

Following an Event of Default, other than the making of or failure to make any payment required hereunder, any party may commence the Dispute Resolution process set forth in Section 9. Following an Event of Default involving the making of or failure to make any payment required hereunder, the non-defaulting party may at any time, without waiving or limiting any other right or remedy, pursue any remedy allowed by law including, by way of example and without limitation, specific performance, declaratory judgment, and other equitable remedies, and recovery of attorneys' fees and other costs for such enforcement action.

**SECTION NO. 16: NOTICE**

All notices shall be in writing and served on any of the PARTIES either personally or by certified mail, return receipt requested, to the persons below designated as contact persons. Notices sent by certified mail shall be deemed served when deposited in the United State mail, postage prepaid.

SPOKANE: City Administrator or his/her authorized representative  
808 West Spokane Falls Blvd  
Spokane, Washington 99201

AIRWAY HEIGHTS: City Manager or his/her authorized representative  
1208 Lundstrom  
Airway Heights, Washington 99001

COUNTY: Chairperson, Board of County Commissioners  
W. 1116 Broadway  
Spokane, Washington 99260

**SECTION NO. 17: AGREEMENT TO BE FILED**

The County shall file this Agreement with the County Auditor. Spokane shall file this Agreement with its City Clerk. Airway Heights shall file this Agreement with its City Clerk.

**SECTION NO. 18: COMPLIANCE WITH LAWS**

The parties shall observe all applicable federal, state and local laws, ordinances and regulations in conjunction with meeting their respective obligations under the terms of this Agreement.

**SECTION NO. 19: VENUE STIPULATION**

The laws of the State of Washington shall be applicable to the construction and enforcement of this Agreement. Any action at law, suit in equity or judicial proceeding regarding this Agreement shall be instituted only in courts of competent jurisdiction within Spokane County, Washington.

**SECTION NO. 20: MODIFICATION**

No modification or amendment of this Agreement shall be valid until the same is reduced to writing and executed with the same formalities as this present Agreement; provided, upon termination of the County's obligations as provided in Section 10 above, the County's signature shall not be required to amend this Agreement.

**SECTION NO. 21: WAIVER**

No officer, employee, agent or otherwise of any party has the power, right or authority to waive any of the conditions or provisions of this Agreement. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement or at law shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

**SECTION NO. 22: ALL WRITINGS CONTAINED HEREIN**

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

**SECTION NO. 23: HEADINGS**

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

**SECTION NO. 24: SEVERABILITY**

In the event any portion of this Agreement should become invalid, or otherwise unenforceable, the rest of this Agreement shall remain in full force and effect.

**SECTION NO. 25: BINDING EFFECT**

Both parties warrant that they have the full power and authority to execute and deliver this Agreement and to perform their respective obligations under this Agreement. This Agreement constitutes a valid and legally binding obligation of both parties and is enforceable in accordance with its provisions.

**SECTION NO. 26: TIME IS OF THE ESSENCE**

Time is of the essence of this Agreement.

**SECTION NO. 27: RCW 39.34 REQUIRED CLAUSES.**

A. PURPOSE.

See Section No 1 above.

B. DURATION.

See Section No. 10 above.

C. ORGANIZATION OF SEPARATE ENTITY AND ITS POWERS.

No separate legal entity is necessary in conjunction with this Agreement.

D. RESPONSIBILITIES OF THE PARTIES.

See provisions above.

E. AGREEMENT TO BE FILED.

See Section No. 17 above.

F. FINANCING.

See Section No. 4 above.



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

DATED: \_\_\_\_\_



Attest:

City Clerk

*Terri Hoffstedt*  
\_\_\_\_\_

CITY OF SPOKANE

By: *[Signature]*  
Its: \_\_\_\_\_

Approved as to form:

*[Signature]*  
\_\_\_\_\_ Assistant City Attorney

CITY OF AIRWAY HEIGHTS

By: *Albert Trapp*  
Its: *City Manager*

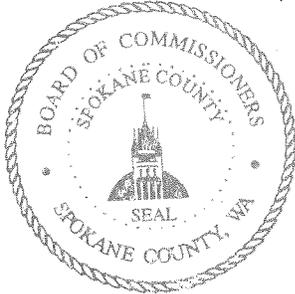
Attest:

City Clerk

*Richard G Cook*  
\_\_\_\_\_

Approved as to form:

*[Signature]*  
\_\_\_\_\_ City Attorney



BOARD OF COUNTY COMMISSIONERS OF SPOKANE COUNTY, WASHINGTON

*[Signature]*  
\_\_\_\_\_ TODD MIELKE, Chair

ATTEST:

Daniela Erickson  
Clerk of the Board

*Daniela Erickson*  
\_\_\_\_\_ 1/5/2010

*[Signature]*  
\_\_\_\_\_ MARK RICHARD, Vice Chair

*[Signature]*  
\_\_\_\_\_ BONNIE MAGER, Commissioner

Exhibit A

Memorandum of Understanding

**FOURTH AMENDMENT OF  
MEMORANDUM OF UNDERSTANDING**

This Fourth Amendment is entered into this 5<sup>th</sup> day of October, 2009, by and between the City of Spokane, a first class charter city of the State of Washington ("Spokane") and the City of Airway Heights, a non-charter code city of the State of Washington ("Airway Heights"), jointly referred to as "parties".

Whereas, on January 20, 2009, the parties entered into a Memorandum of Understanding agreeing to negotiate and approve an interlocal agreement for joint planning within and annexation and de-annexation of urban growth areas lying between the parties' corporate boundaries (the "MOU"); and

Whereas, the parties thereafter executed three amendments of the MOU, each amendment being for the purpose of extending the stand still provisions of the MOU ("Amendments"); and

Whereas, the MOU and Amendments are collectively referred to in this Fourth Amendment as the "MOU"; and

Whereas, the parties wish to amend the MOU all as more particularly set forth in this Fourth Amendment;

NOW THEREFORE, the parties agree as follows:

1. MOU. The MOU and any previous amendments 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. AMENDMENT OF SUBSECTION C(1). Section C(1) of the MOU is amended to extend the Stand Still Period from September 14, 2009 to October 14, 2009.
3. AMENDMENT OF SECTION E(8)(c). Section E(8)(c) of the MOU is amended to extend the deadline for approval of the Interlocal Agreement by both parties until October 14, 2009.
4. AMENDMENT OF SECTION E(8)(d). Section E(8)(d) of the MOU is amended to provide that Spokane will commence annexation of the West Plains Annexation in Winter 2009.

CITY OF SPOKANE

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

Approved as to form:

[Signature]  
Assistant City Attorney

Attest:

[Signature]  
Clerk



CITY OF AIRWAY HEIGHTS

By: Albert Tripp  
Its: City Manager

Approved as to form:

[Signature]  
City Attorney

Attest:

Richard G. Cook  
Clerk

The undersigned agree to place this Fourth Amendment on the agendas of their respective city councils no later than September 22, 2009 for ratification on that date and further agree to exercise best efforts to obtain said ratification.

CITY OF SPOKANE

By: Mary B. Verwer  
Its: Mayor

CITY OF AIRWAY HEIGHTS

By: [Signature]  
Its: Mayor

**THIRD AMENDMENT OF  
MEMORANDUM OF UNDERSTANDING**

This Third Amendment is entered into this 9th day of July, 2009, by and between the City of Spokane, a first class charter city of the State of Washington ("Spokane") and the City of Airway Heights, a non-charter code city of the State of Washington ("Airway Heights"), jointly referred to as "parties".

Whereas, on January 20, 2009, the parties entered into a Memorandum of Understanding agreeing to negotiate and approve an interlocal agreement for joint planning within and annexation and de-annexation of urban growth areas lying between the parties' corporate boundaries (the "MOU"); and

Whereas, on March 2, 2009, the parties executed a First Amendment of the MOU ("First Amendment"); and

Whereas, the parties thereafter executed a Second Amendment of the MOU ("Second Amendment"); and

Whereas, the MOU, the First Amendment, and the Second Amendment are collectively referred to in this Third Amendment as the "MOU".

Whereas, the parties wish to amend the MOU all as more particularly set forth in this Third Amendment;

NOW THEREFORE, the parties agree as follows:

1. MOU. The MOU and any previous amendments 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. AMENDMENT OF SUBSECTION C(1). Section C(1) of the MOU is amended to extend the Stand Still Period from July 13, 2009 to September 14, 2009.
3. AMENDMENT OF SECTION E(8)(c). Section E(8)(c) of the MOU is amended to extend the deadline for approval of the Interlocal Agreement by both parties until September 14, 2009.
4. AMENDMENT OF SECTION E(8)(d). Section E(8)(d) of the MOU is amended to provide that Spokane will commence annexation of the West Plains Annexation in Fall 2009.

CITY OF SPOKANE

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

Attest:

[Signature]  
Clerk

[Signature]  
Assistant City Attorney



CITY OF AIRWAY HEIGHTS

By: Alfred Trip  
Its: City Manager

Attest:

Richard H. Cook  
Clerk

Approved as to form:  
[Signature]  
City Attorney

The undersigned agree to place this <sup>Third</sup> ~~First~~ Amendment on the May 11, 2009 agendas of their respective city councils for ratification on that date and further agree to exercise best efforts to obtain said ratification.

CITY OF SPOKANE

CITY OF AIRWAY HEIGHTS

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

By: Matthew S. Pashen  
Its: Mayor

**SECOND AMENDMENT OF  
MEMORANDUM OF UNDERSTANDING**

This Second Amendment is entered into this \_\_\_\_\_ day of May, 2009, by and between the City of Spokane, a first class charter city of the State of Washington ("Spokane") and the City of Airway Heights, a non-charter code city of the State of Washington ("Airway Heights"), jointly referred to as "parties".

Whereas, on January 20, 2009, the parties entered into a Memorandum of Understanding agreeing to negotiate and approve an interlocal agreement for joint planning within and annexation and de-annexation of urban growth areas lying between the parties' corporate boundaries (the "MOU"); and

Whereas, on March 2, 2009, the parties executed a First Amendment of the MOU ("First Amendment"); and

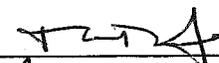
Whereas, the MOU and First Amendment are collectively referred to in this Second Amendment as the "MOU".

Whereas, the parties wish to amend the MOU all as more particularly set forth in this Second Amendment;

NOW THEREFORE, the parties agree as follows:

1. MOU. The MOU and any previous amendments 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. AMENDMENT OF SUBSECTION C(1). Section C(1) of the MOU is amended to extend the Stand Still Period from May 11, 2009 to July 13, 2009.
3. AMENDMENT OF SECTION E(8)(c). Section E(8)(c) of the MOU is amended to extend the deadline for approval of the Interlocal Agreement by both parties until July 13, 2009.
4. AMENDMENT OF SECTION E(8)(d). Section E(8)(d) of the MOU is amended to provide that Spokane will commence annexation of the West Plains Annexation in Summer 2009.

CITY OF SPOKANE

By:   
Its: CITY ADMINISTRATOR

Attest:

*Lena H. [Signature]*

Clerk



Attest:

Clerk

Approved as to form:

*[Signature]*

Assistant City Attorney

CITY OF AIRWAY HEIGHTS

By: *Allan Tripp*

Its: *City Manager*

Approved as to form:

*[Signature]*

City Attorney

The undersigned agree to place this First Amendment on the May 11, 2009 agendas of their respective city councils for ratification on that date and further agree to exercise best efforts to obtain said ratification.

CITY OF SPOKANE

CITY OF AIRWAY HEIGHTS

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: *Michael S. Red*  
Its: *Mayor*

**FIRST AMENDMENT OF  
MEMORANDUM OF UNDERSTANDING**

This First Amendment is entered into this 2<sup>nd</sup> day of ~~February~~ <sup>March</sup>, 2009, by and between the City of Spokane, a first class charter city of the State of Washington ("Spokane") and the City of Airway Heights, a non-charter code city of the State of Washington ("Airway Heights"), jointly referred to as "parties".

Whereas, on January 20, 2009, the parties entered into a Memorandum of Understanding agreeing to negotiate and approve an interlocal agreement for joint planning within and annexation and de-annexation of urban growth areas lying between the parties' corporate boundaries (the "MOU"); and

Whereas, the parties wish to amend the MOU as it relates to extending the stand still provisions, defining activities allowed during the stand still period, and the schedule of events;

NOW THEREFORE, the parties agree as follows:

1. MOU. The MOU, dated January 20, 2009, and any previous amendments 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. AMENDMENT OF SECTION C. Section C of the MOU is amended as follows:

C. STAND STILL AGREEMENT.

1. Stand Still Period. The parties shall, ~~((for a period of 30 days commencing on the Effective Date))~~ <sup>with</sup> ~~until May 26, 2008~~ <sup>MSB 12.06</sup>, cooperate in good faith and attempt to reach an agreement regarding the terms and conditions of the Interlocal Agreement ("Stand Still Period").

2. Prohibited Activities. During the Stand Still Period, which the parties may extend by mutual written agreement, and except as expressly provided herein, the parties and their respective officers, employees, and agents shall not take any action leading towards or otherwise facilitating annexation of all or any portion of the Joint Planning Area. By way of example, and without limitation, neither of the parties shall: (a) Place any matter relating to annexation of the Joint Planning Area on the legislative agenda of their respective city councils; (b) schedule any meetings with property owners relating to annexation of the Joint Planning Area; (c) take any legislative action relating to annexation proposals; or (d) solicit property owner signatures on annexation petitions or cause others to do the same.

3. Exceptions. This stand still provision shall not apply to the following: (a) action by the parties relating to approval of this MOU and any amendments hereto by their respective city councils; (b) annexation activities by Spokane in those areas of the West Plains Annexation Area outside of the Joint Planning Area; (c) the cooperative work contemplated by the parties pursuant to this MOU; (d) discussions and/or correspondence with Spokane County, representatives of the Spokane International Airport, including board members and labor union representatives, the Boundary Review Board, special purpose districts and/or service providers regarding the terms of this MOU and annexation service and/or mitigation agreements; (e) the mutual communication described in Section D herein below; (f) responses by the parties and/or the parties' employees and agents to inquiries by citizens and property owners regarding the terms of this MOU and the potential impacts of annexation on citizens and property owners, including meetings between citizens/property owners and the parties' respective administrative staff ~~((including attorney/client meetings))~~, that are otherwise consistent with the parties obligations under Section (C)(2) herein above; ~~((or))~~ (g) communications by the parties and/or the parties' employees and agents with persons owning or having an interest in property within the West Plains Annexation Area on matters unrelated to annexation; or (h) the meeting contemplated by subsection 8(d) herein below.

4. Utility Covenants. This stand still provision shall not limit Spokane's authority to require Annexation Covenants from property owners requesting Spokane's water and/or sewer service in the West Plains Annexation Area, including the Joint Planning Area.

5. Annexation Activities. For purposes of this Section C, annexation activities by Spokane means contact with property owners outside of the Joint Planning Area advising said owners of the terms of this MOU, reminding property owners of the annexation covenants property owners in the area have signed in exchange for Spokane's utility services ("Annexation Covenants"), and of the benefits of annexation into Spokane. Spokane will: (a) provide Airway Heights with courtesy copies of all such communication occurring after the Effective Date of this MOU and (b) invite Airway Heights to participate in arranged meetings with persons identified herein.

3. AMENDMENT OF SECTION D. Section D of the MOU is amended as follows:

D. MUTUAL COMMUNICATION TO PROPERTY OWNERS IN JOINT PLANNING AREA. ~~((Within 10 days of the Effective Date of this MOU, t))~~  
The Mayors of Spokane and Airway Heights mutually agreed upon the

contents of ((will prepare and mail)) joint letters which have been mailed notifying property owners within the Joint Planning Area of the Annexation Covenants and of the parties' work towards a cooperative approach to annexation of the Joint Planning Area.

4. AMENDMENT OF SECTION E(8). Section E(8) of the MOU is amended as follows:

8. Schedule. The parties commit to the following schedule:

(a) *Weekly meetings* -- Commencing the week of January 19, 2009, the parties shall designate key staff and hold weekly meetings to work on the terms of the Interlocal Agreement.

(b) *January 12, 2009* – MOU submitted to Spokane and Airway Heights City Councils. The parties will exercise best efforts to obtain approval/ratification of the MOU by their respective councils no later than January 20, 2009. The Mayor of each party shall immediately contact the Mayor of the other party if they are unable to obtain city council approval/ratification. This MOU shall not be effective if one or both parties are unable to obtain approval of their respective City Council(s) by January 20, 2009.

(c) ~~((February))~~ May 11, 2009 - Spokane and Airway Heights City Councils adopt Interlocal Agreement and necessary resolutions. If one or both parties are unable to obtain approval of the Interlocal Agreement by their respective City Council(s) on or before 11:59 p.m. Pacific Standard Time on ((January 20,)) May 11, 2009, this MOU shall terminate and be of no further effect; provided, the parties' respective rights and remedies for a violation by the other party of the stand still provisions of this MOU shall survive such termination. If either party is unable to obtain approval of said party's respective City Council by said deadline, the Mayor of said party shall immediately notify the Mayor of the other party by telephone and e-mail.

(d) ~~((March))~~ May 25, 2009 - Spokane will commence annexation of the West Plains Annexation Area by conducting meeting with property owners to initiate annexation. Spokane will thereafter prepare an annexation petition relying primarily on the Annexation Covenants ("Annexation Petition") and will forward the same to the County Assessor for a determination of sufficiency. Within seven (7) days of Spokane's receipt of such ((Upon receiving)) certification from the Assessor, Spokane will schedule a hearing on the Annexation Petition and an annexation Ordinance (to become effective upon BRB approval of the annexation) after which it will submit a notice of intent to the Boundary Review Board. A copy of the Interlocal Agreement will accompany Spokane's notice of

intent and Spokane will ask the BRB to invoke its jurisdiction with respect to the annexation proposal; provided, upon an agreement between Spokane, Airway Heights, and Spokane County that none of the parties shall invoke BRB jurisdiction, neither of the parties will invoke BRB jurisdiction with respect to the annexation proposal.

(e) Within 45 days of BRB final approval of Spokane's annexation of the West Plains Annexation Area, the Spokane City Council will by resolution indicate its desire for the AH Annexation Area to be annexed to Airway Heights ("De-Annexation Resolution") and shall immediately thereafter transmit said resolution to Airway Heights, as authorized by RCW 35.10.217(2).

(f) Within 30 days of Spokane's approval of the De-Annexation Resolution, Airway Heights will submit a notice of intent to the BRB evidencing its intent to annex the AH Annexation Area.

(g) Following BRB approval of Airway Heights' annexation of the AH Annexation Area, the Airway Heights City Council will adopt a resolution concurring with Spokane's De-Annexation Resolution. Airway Heights will provide notice of the public hearing at which it will consider said resolution consistent with the requirements of RCW 35.10.217(2).

(h) If necessary, Spokane adopts de-annexation ordinance for AH Annexation Area; Airway Heights adopts ordinance providing for annexation of AH Annexation Area.

5. NEW SECTION. A new Section E is added to the MOU as follows:

E. Upon the parties mutual execution of the Interlocal Agreement contemplated by this MOU, Spokane will dismiss its petition for review filed with the Eastern Washington Growth Management Hearings Board (EWGMHB) relative to Airway Heights' adoption of Ordinance No. C-695 and related SEPA determinations ("Spokane Petition"). Upon filing of the Spokane Petition, Spokane shall immediately move to stay all proceedings

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before the EWGMHB including the prehearing conference, statement of issues, and preparation of the record to avoid time, expense and unnecessary distraction from the matters set forth herein.

CITY OF SPOKANE

By: Mary B. Verner  
Its: Mayor

Attest:

Leri Pfeiffer  
Clerk

Approved as to form:

Jack  
Assistant City Attorney



Attest:

Richard G. Cook  
Clerk

CITY OF AIRWAY HEIGHTS

By: Martian S. Reed  
Its: Mayor

Approved as to form:

Heby Schubert  
City Attorney

The undersigned agree to place this First Amendment on the March 2, 2009 agendas of their respective city councils for ratification on that date and further agree to exercise best efforts to obtain said ratification.

CITY OF SPOKANE

By: Mary B. Verner  
Its: Mayor

CITY OF AIRWAY HEIGHTS

By: Martian S. Reed  
Its: Mayor

**CITY OF SPOKANE AND CITY OF AIRWAY HEIGHTS  
MEMORANDUM OF UNDERSTANDING**

A. INTRODUCTION. This Memorandum of Understanding is by and between the City of Spokane, a first class charter city of the State of Washington ("Spokane") and the City of Airway Heights, a non-charter code city of the State of Washington ("Airway Heights"), jointly referred to as "parties".

The purpose of this Memorandum of Understanding ("MOU") is to (1) commit the parties to cooperate in good faith and attempt to reach an agreement upon the terms and conditions of an Interlocal Agreement providing for the annexation and de-annexation of a portion of the West Plains Joint Planning Area (or "Joint Planning Area") as depicted on the attached Exhibit B ("Interlocal Agreement for Joint Planning and Annexation of the West Plains Joint Planning Area" or "Interlocal Agreement") and (2) to set forth the parties' understanding as to the principal terms of such an agreement.

B. BACKGROUND. Spokane and Airway Heights believe that mutual cooperation with respect to annexation of the "West Plains Annexation Area" (depicted in Attached Exhibit A), which includes the Joint Planning Area is in the best interests of the citizens of both jurisdictions and of those residing within the West Plains Annexation Area and Joint Planning Area and wish to enter into this Memorandum of Understanding and the subsequent Interlocal Agreement under Chapter 39.34 RCW to address annexations within the Joint Planning Area and to further address the financial impacts of such annexation and the possibility for cooperative provision of urban governmental services within the Joint Planning Area.

C. STAND STILL AGREEMENT.

1. Stand Still Period. The parties shall, for a period of 30 days commencing on the Effective Date, cooperate in good faith and attempt to reach an agreement regarding the terms and conditions of the Interlocal Agreement ("Stand Still Period").

2. Prohibited Activities. During the Stand Still Period, which the parties may extend by mutual written agreement, and except as expressly provided herein, the parties and their respective officers, employees, and agents shall not take any action leading towards or otherwise facilitating annexation of all or any portion of the Joint Planning Area. By way of example, and without limitation, neither of the parties shall: (a) Place any matter relating to annexation of the Joint Planning Area on the legislative agenda of their respective city councils; (b) schedule any meetings with property owners relating to annexation of the Joint Planning Area; (c) take any legislative action relating to annexation proposals; or (d) solicit property owner signatures on annexation petitions or cause others to do the same.

3. Exceptions. This stand still provision shall not apply to the following: (a) action by the parties relating to approval of this MOU by their respective city councils; (b) annexation activities by Spokane in those areas of the West Plains Annexation Area

outside of the Joint Planning Area; (c) the cooperative work contemplated by the parties pursuant to this MOU; (d) discussions and/or correspondence with Spokane County, the Boundary Review Board, special purpose districts and/or service providers regarding the terms of this MOU and annexation service and/or mitigation agreements; (e) the mutual communication described in Section D herein below; (f) responses by the parties and/or the parties' employees and agents to citizen inquires regarding the terms of this MOU and that are otherwise consistent with the parties obligations under Section (C)(2) herein above; or (g) communications by the parties and/or the parties' employees and agents with persons owning or having an interest in property within the West Plains Annexation Area on matters unrelated to annexation.

4. Utility Covenants. This stand still provision shall not limit Spokane's authority to require Annexation Covenants from property owners requesting Spokane's water and/or sewer service in the West Plains Annexation Area, including the Joint Planning Area.

5. Annexation Activities. For purposes of this Section C, annexation activities by Spokane means contact with property owners outside of the Joint Planning Area advising said owners of the terms of this MOU, reminding property owners of the annexation covenants property owners in the area have signed in exchange for Spokane's utility services ("Annexation Covenants"), and of the benefits of annexation into Spokane. Spokane will: (a) provide Airway Heights with courtesy copies of all such communication occurring after the Effective Date of this MOU and (b) invite Airway Heights to participate in arranged meetings with persons identified herein.

D. MUTUAL COMMUNICATION TO PROPERTY OWNERS IN JOINT PLANNING AREA. Within 10 days of the Effective Date of this MOU, the Mayors of Spokane and Airway Heights will prepare and mail joint letters notifying property owners within the Joint Planning Area of the Annexation Covenants and of the parties' work towards a cooperative approach to annexation of the Joint Planning Area.

E. PROPOSED TERMS AND CONDITIONS OF INTERLOCAL AGREEMENT. The parties shall cooperate in good faith and attempt to reach an agreement on an Interlocal Agreement that includes, but is not limited to, the following terms:

1. Property. The Interlocal Agreement shall apply to annexations by the parties within the West Plains Annexation Area, including the Joint Planning Area. The Interlocal Agreement will provide that: (a) Upon Spokane's successful annexation of the West Plains Annexation Area, and subject to the terms of the Interlocal Agreement, Spokane will by resolution indicate its desire for those portions of the Joint Planning Area depicted in Exhibit C ("AH Annexation Area") to be annexed to Airway Heights and shall thereafter transmit said resolution to Airway Heights, as authorized by RCW 35.10.217(2); (b) Airway Heights' annexation of the AH Annexation Area will be effective if Airway Heights adopts a resolution concurring in the annexation, subject to the terms of RCW 35.10.217(2) ("De-annexation"); and (c) the AH Annexation Area will generally be described as that area beginning at the corner of Hayford Road and 21<sup>st</sup> Street, then

east along 21<sup>st</sup> Street to Hazelwood, then north on Hazelwood to a point that is parallel to the southern end of Deer Heights, then east to Deer Heights, then due north on Deer Heights to Hwy 2, then continuing due north to 6<sup>th</sup> Street, then west on 6<sup>th</sup> Street to Hayford Road, then south on Hayford Road to the point of beginning, all of said area being adjacent to the east corporate limits of Airway Heights.

2. Legal Authority. The Interlocal Agreement will provide for Spokane to pursue annexation of the West Plains Annexation Area pursuant to the direct petition method, as authorized by Chapter 35.13 RCW. In order to satisfy the 75 percent signature requirement, the parties agree that Spokane will rely primarily on the Annexation Covenants. The parties mutually agree that, under Washington law, and for purposes of the direct petition method of annexation, the Annexation Covenants constitute the equivalent of the signatures of the current owners of property within the West Plains Annexation Area. The Interlocal Agreement will provide for Airway Heights' subsequent annexation of the AH Annexation Area pursuant to the process set forth in RCW 35.10.217(2). Spokane will place on the City Council Agenda for adoption the resolution contemplated by RCW 35.10.217(2) which provides Spokane is requesting that Airway Heights annex a portion of Spokane. The agreement will provide for the parties' mutual cooperation with the above process. The parties are not providing for a consolidation of the two cities.

3. Miscellaneous. The Interlocal Agreement, pursuant to RCW 39.34, shall provide for the annexation and de-annexation by the parties within the Joint Planning Area in general conformance with the above legal authority. Further terms and conditions, as mutually agreed between the parties, shall ensure mutual cooperation through the annexation process, covenants for de-annexation, remedies to compel performance of the Interlocal Agreement, provision of public health and safety services, revenue sharing and all other reasonably related matters.

4. Revenue Sharing. In consideration for the parties' mutual cooperation in the annexation and de-annexation process outlined herein, the Interlocal Agreement will provide a formula under which the parties will share property and sale tax revenues generated in the AH Annexation Area for an agreed upon term. In addition to said consideration, it is intended that the revenue sharing will be dedicated to supplementing the provision of urban governmental services to the West Plains Annexation Area. The revenue sharing provisions will include contingency formulas to apply in the event the BRB modifies the annexation boundary between Spokane and Airway Heights proposed in this MOU.

5. Utility Services. The Interlocal Agreement will address the terms under which Spokane will provide sewer and water services to the AH Annexation Area, subject to Spokane plans, ordinances and resolutions related to rates, charges and fees. Spokane utility tax may also be assessed on services provided by Spokane to the AH Annexation Area. Unless expressly stated herein, nothing in this MOU shall be deemed to modify the terms of any existing water or sewer service agreements between the parties. Nor shall this MOU be deemed to impose a duty on Spokane to provide

services, Spokane reserving the right to condition the provision of services consistent with Spokane's Comprehensive Plan, ordinances, policies, and municipal code provisions relating to the provision of service beyond Spokane's corporate limits.

6. Dispute Resolution. The Interlocal Agreement will incorporate terms for alternative dispute resolution. The agreement will also provide adequate remedies to encourage full performance of the parties' respective obligations under the agreement.

7. Boundary Review Board / Spokane County. The Interlocal Agreement will obligate the parties to meet and confer with representatives of the Boundary Review Board (BRB) and the Board of County Commissioners for Spokane County in order to successfully advance the annexation/de-annexation and implement the terms of the Interlocal Agreement. The parties recognize that Spokane's annexation of the West Plains Annexation Area and the de-annexation are both subject to potential review by the BRB. The parties acknowledge and agree that it is within their mutual best interest to cooperate and facilitate Spokane's annexation of the West Plains Annexation Area, including the Joint Planning Area, subject to the de-annexation by Airway Heights. The parties further acknowledge and agree that it is within their mutual best interest to cooperate to facilitate the de-annexation following such annexation. To that end, neither party shall oppose or otherwise challenge the efforts of the other party to complete the annexation and de-annexation contemplated by this Memorandum of Understanding and the Interlocal Agreement. The parties shall meet, confer and agree upon written statements of support for the Spokane and Airway Heights annexations.

8. Schedule. The parties commit to the following schedule:

(a) *Weekly meetings* -- Commencing the week of January 19, 2009, the parties shall designate key staff and hold weekly meetings to work on the terms of the Interlocal Agreement.

(b) *January 12, 2009* – MOU submitted to Spokane and Airway Heights City Councils. The parties will exercise best efforts to obtain approval/ratification of the MOU by their respective councils no later than January 20, 2009. The Mayor of each party shall immediately contact the Mayor of the other party if they are unable to obtain city council approval/ratification. This MOU shall not be effective if one or both parties are unable to obtain approval of their respective City Council(s) by January 20, 2009.

(c) *February 2009* - Spokane and Airway Heights City Councils adopt Interlocal Agreement and necessary resolutions. If one or both parties are unable to obtain approval of their respective City Council(s) on or before 11:59 p.m. Pacific Standard Time on January 20, 2009, this MOU shall terminate and be of no further effect. If either party is unable to obtain approval of said party's respective City Council by said deadline, the Mayor of said party shall immediately notify the Mayor of the other party by telephone and e-mail.

(d) *March 2009* - Spokane will commence annexation of the West Plains Annexation Area by conducting meeting with property owners to initiate annexation. Spokane will thereafter prepare an annexation petition relying primarily on the Annexation Covenants ("Annexation Petition") and will forward the same to the County Assessor for a determination of sufficiency. Upon receiving certification from the Assessor, Spokane will schedule a hearing on the Annexation Petition and an annexation Ordinance (to become effective upon BRB approval of the annexation) after which it will submit a notice of intent to the Boundary Review Board. A copy of the Interlocal Agreement will accompany Spokane's notice of intent and Spokane will ask the BRB to invoke its jurisdiction with respect to the annexation proposal.

(e) Within 45 days of BRB final approval of Spokane's annexation of the West Plains Annexation Area, the Spokane City Council will by resolution indicate its desire for the AH Annexation Area to be annexed to Airway Heights ("De-Annexation Resolution") and shall immediately thereafter transmit said resolution to Airway Heights, as authorized by RCW 35.10.217(2).

(f) Within 30 days of Spokane's approval of the De-Annexation Resolution, Airway Heights will submit a notice of intent to the BRB evidencing its intent to annex the AH Annexation Area.

(g) Following BRB approval of Airway Heights' annexation of the AH Annexation Area, the Airway Heights City Council will adopt a resolution concurring with Spokane's De-Annexation Resolution. Airway Heights will provide notice of the public hearing at which it will consider said resolution consistent with the requirements of RCW 35.10.217(2).

(h) If necessary, Spokane adopts de-annexation ordinance for AH Annexation Area; Airway Heights adopts ordinance providing for annexation of AH Annexation Area.

F. **BINDING EFFECT.** Both parties warrant that they have the full power and authority to execute and deliver this MOU and to perform their respective obligations under this MOU. This MOU constitutes a valid and legally binding obligation of both parties and is enforceable in accordance with its provisions.

G. **DEFAULT AND REMEDIES.** It shall be an Event of Default under this MOU if either of the parties fails duly to perform, observe or comply with the Stand Still provisions of Section C herein above during the Stand Still Period, as may be mutually extended by the parties in writing. Upon the occurrence and continuance of an Event of Default, the non-defaulting party may seek specific performance, declaratory judgment, or other equitable remedies and recovery of attorneys' fees and other costs for such enforcement action. In addition to said equitable remedies, upon the occurrence of an Event of Default that leads to or results in annexation of all or a portion of the Joint Planning Area, the defaulting party shall pay the other party an amount equal to all of

the sales and property tax revenues generated within said annexation area for a period of ten (10) years. Each party hereby acknowledges and agrees that damages and/or harm to the other party resulting from such an Event of Default would be such that it is incapable or very difficult of ascertainment, and further agree that the foregoing liquidated damages is a reasonable forecast of just compensation for harm caused by such an Event of Default.

H. EFFECTIVE DATE. This MOU is effective the 20<sup>th</sup> day of January, 2009 (the "Effective Date").

I. WAIVER AND COMPROMISE. Except as provided in Section F and G herein above, this MOU shall not form the basis for any claim, demand, waiver, estoppel, admission or course of action against either party. This MOU is an attempt to reach accommodation and agree to terms and conditions of annexation.

CITY OF SPOKANE

By: [Signature]  
Its: City Administrator

Approved as to form:

[Signature]  
Assistant City Attorney

Attest:

[Signature]  
Clerk

CITY OF AIRWAY HEIGHTS

By: [Signature]  
Its: City Manager

Approved as to form:

[Signature]  
City Attorney

Attest:

[Signature]  
Clerk

The undersigned agree to place this MOU on the January 20, 2009 agendas of their respective city councils for approval on that date and further agree to exercise best efforts to obtain approval of the same.

CITY OF SPOKANE

By Mary B. Verner  
Mary Verner, Mayor

CITY OF AIRWAY HEIGHTS

By Matthew S. Pederson  
Matthew Pederson, Mayor

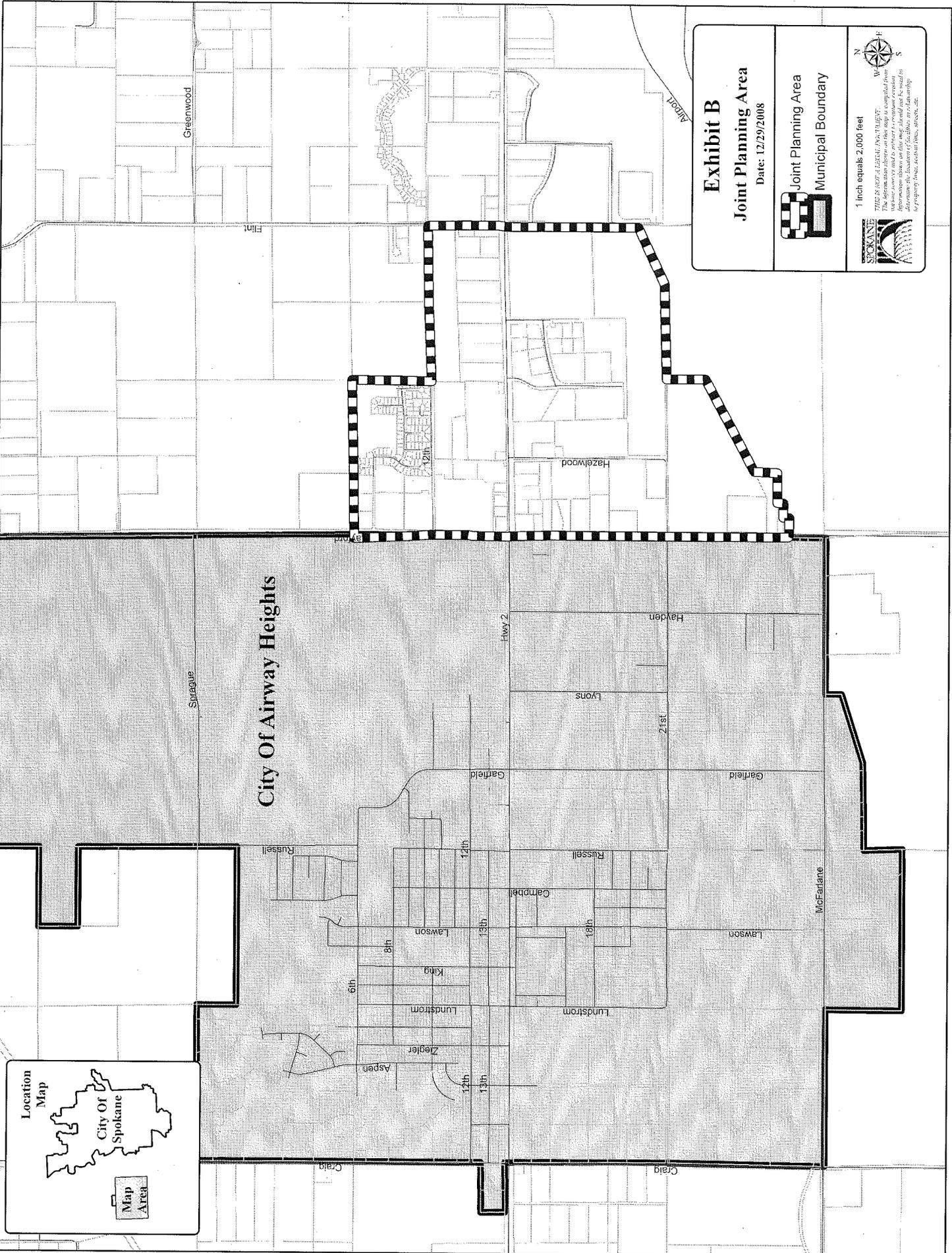
Exhibit A

Map of West Plains Annexation Area



Exhibit B

Map of Joint Planning Area



**Exhibit B**  
**Joint Planning Area**  
 Date: 12/29/2008

**Joint Planning Area**  
**Municipal Boundary**

1 inch equals 2,000 feet

**SPokane**  
 THE GREAT NORTHWEST  
 WASHINGTON  
 WASHINGTON STATE  
 INFORMATION SHOWN ON THIS MAP IS UNOFFICIAL AND NOT GUARANTEED. THE STATE OF WASHINGTON AND THE CITY OF SPOKANE DO NOT WARRANT THE ACCURACY OF THIS INFORMATION. FOR MORE INFORMATION, CONTACT THE CITY OF SPOKANE, 1000 N. MOUNTAIN VIEW, SPOKANE, WA 99208.

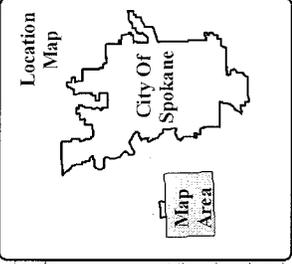
**Location Map**

**City Of Spokane**

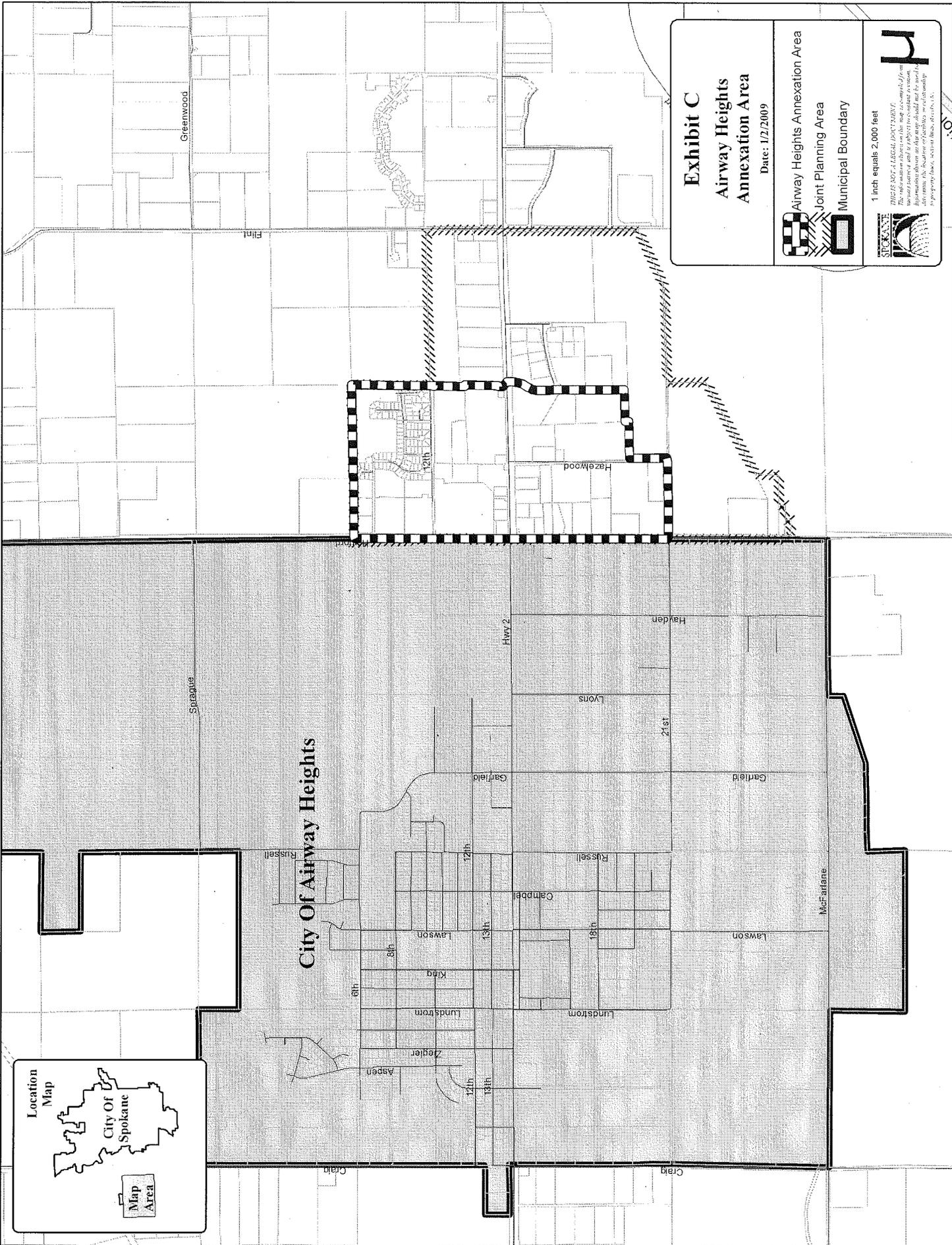
**Map Area**

Exhibit C

Map of AH Annexation Area



# City Of Airway Heights



<b>Exhibit C</b> <b>Airway Heights</b> <b>Annexation Area</b> Date: 1/2/2009	 Airway Heights Annexation Area	 Joint Planning Area	 Municipal Boundary
1 inch equals 2,000 feet			
<small>THIS IS NOT A LEGAL DOCUMENT. The information shown on this map is for informational purposes only and is not intended to be used as a legal document. The City of Airway Heights is not responsible for any errors or omissions on this map. The boundary of the City of Airway Heights is shown on this map. The boundary of the City of Airway Heights is shown on this map. The boundary of the City of Airway Heights is shown on this map.</small>			



JAN 08 2009



AGENDA SHEET FOR COUNCIL MEETING OF: January 20, 2009

CITY CLERK'S OFFICE SPOKANE, WA Council Sponsor

Submitting Dept. Public Works

Contact Person/Phone No. H. Delaney/J. Richman 625-6225

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
ENG
BID
REQUISITION

OPR 2009-0016

STANDING COMMITTEES

(Date of Notification)

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

Neighborhood/Commission/Committee Notified:
Action Taken:

AGENDA WORDING:

CITY OF SPOKANE AND CITY OF AIRWAY HEIGHTS MEMORANDUM OF UNDERSTANDING REGARDING ANNEXATION ON THE WEST PLAINS

BACKGROUND:

(Attach additional sheet if necessary)

Spokane County has designated the Urban Growth Area adjacent to Airway Heights as a Joint Planning Area (JPA) between Spokane, Airway Heights, and Spokane County. This JPA lies within Spokane's water and sewer service areas and Spokane has extended both water and sewer service to the JPA in exchange for property owners' commitments to annex into Spokane. Spokane has collected annexation covenants encompassing approximately 95 % of the assted value of land lying within the JPA. Both Spokane and Airway Heights have been exploring the feasibility of annexing the JPA, and both believe that mutual cooperation regarding annexation of the JPA is in the best interests of the citizens of both jurisdictions and of those residing and conducting business within the JPA and wish to enter into the attached Memorandum of Understanding, which contemplates a subsequent Interlocal Agreement under Chapter 39.34 RCW to address annexations by both parties within the JPA and to further address the financial impacts of such annexation.

RECOMMENDATION: Approve.

Table with Fiscal Impact and Budget Account columns. Fiscal Impact: N/A. Budget Account: N/A. Expenditure: \$ #. Revenue: \$ #. Budget Neutral.

ATTACHMENTS: Include in Packets: MOU & Exhibits

SIGNATURES:

Department Head
Legal

Division Director
For the Mayor

Finance
Council President

DISTRIBUTION: Legal - Richman

PW&U - Mercer

PW&U - Thacker

COUNCIL ACTION:

APPROVED BY SPOKANE CITY COUNCIL:

January 20, 2009
CITY CLERK

Exhibit B

Map of West Plains Annexation Area,  
Spokane Annexation Area, & Airway Heights Annexation Area

Exhibit C

Form of Notice to County and Fire Protection Districts

Re: NOTICE OF REQUEST TO ENTER INTO ANNEXATION INTERLOCAL AGREEMENT NEGOTIATION PROCESS

Dear \_\_\_\_\_:

The elected leaders of the City of Spokane, City of Airway Heights, and Spokane County recently completed negotiations regarding the cities' plans to annex certain territory located within the West Plains Urban Growth Area. A copy of an agreement approved by all three governments is enclosed ("Revenue Sharing Agreement").

Please be advised that, pursuant to RCW 35.13.238, the City of [Spokane or Airway Heights] hereby requests Spokane County's and Spokane County Fire Protection District No. [10's and 3's] participation in an interlocal agreement negotiation process relating to the City of [Spokane's or Airway Heights'] intention to annex certain portions of the West Plains Urban Growth Area, identified as the ["Spokane Annexation Area" or "Airway Heights Annexation Area"] in the enclosed map. Pursuant to RCW 35.13.238, you have forty-five (45) days to respond to this request in the affirmative or negative. A negative response must state the reasons you do not wish to participate in an interlocal agreement negotiation. A failure to respond within the forty-five day period will be deemed an affirmative response and the interlocal negotiation process will proceed.

Thank you for your attention to this notice. Please feel free to call if you have any questions or concerns. We look forward to a productive negotiation resulting in a mutually agreeable interlocal agreement that is consistent with the provisions of RCW 35.13.238.

Very truly yours,

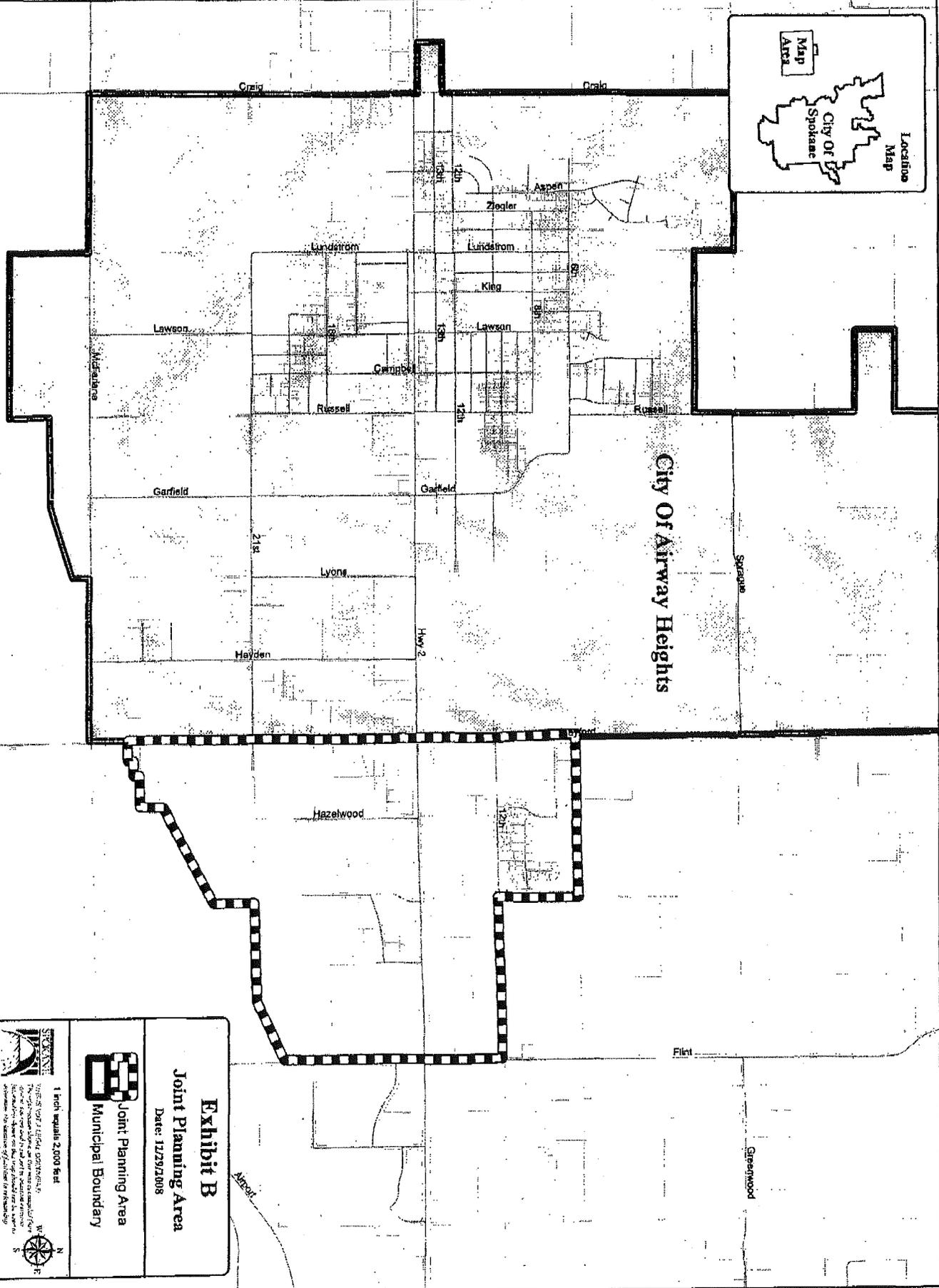
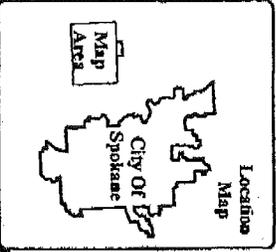
Exhibit A

Map of West Plains Annexation Area



Exhibit B

Map of Joint Planning Area



**Exhibit B**  
**Joint Planning Area**  
 Date: 12/29/2008

  
**Joint Planning Area**  
**Municipal Boundary**

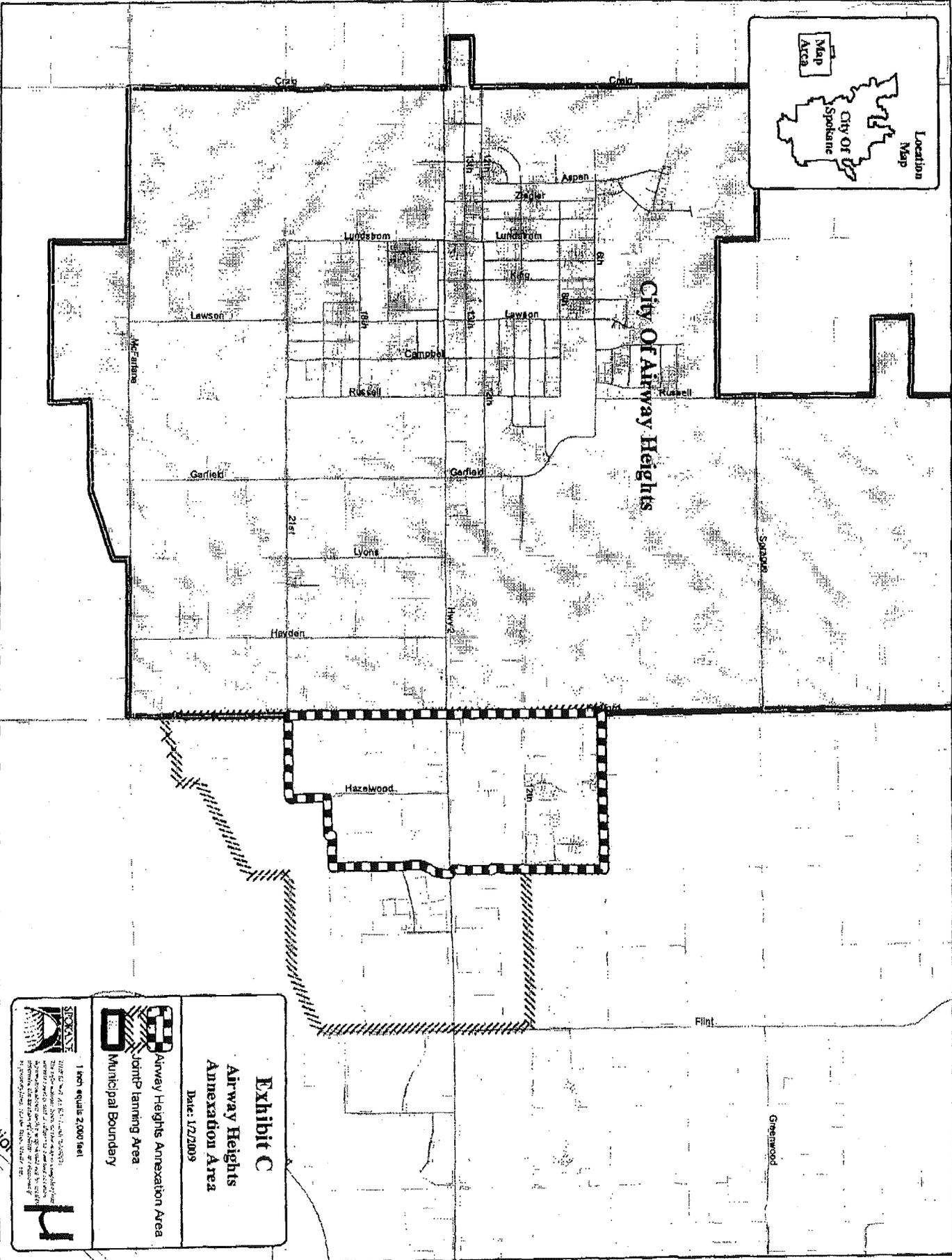
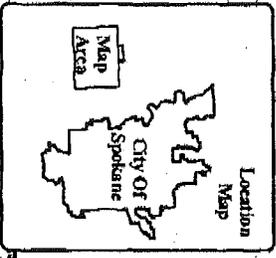
1 inch equals 2,000 feet



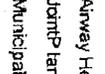
SPokane  
 THE CITY OF SPOKANE, WASHINGTON  
 The information shown on this map is based on the most current data available to the City of Spokane as of the date of publication. The City of Spokane is not responsible for any errors or omissions on this map. The City of Spokane is not responsible for any damages or losses resulting from the use of this map. © 2008 City of Spokane, WA.

Exhibit C

Map of AH Annexation Area



**Exhibit C**  
**Airway Heights**  
**Annexation Area**  
 Date: 1/22/09

 Joint Planning Area  
 Municipal Boundary

1 inch equals 2,000 feet

 SCALE  
 0 100 200 300 400 500  
 Feet

 **h**