

## SEWER CAPACITY AND CONNECTION AGREEMENT

This Agreement dated December 21, 2009, ("Agreement") is entered into by and between the KALISPEL TRIBE OF INDIANS, a federally recognized Indian tribe (the "Tribe") and the CITY OF AIRWAY HEIGHTS, a non-charter code city of the State of Washington ("City"), jointly referred to as the "Parties".

### 1. Introduction

1.1 The Tribe owns a 40-acre parcel upon which it operates the Northern Quest Resort & Casino ("Resort Property") as well as an approximately 250-acre parcel of real property which has been taken into trust for the Tribe ("Development Property"), all as more particularly described on Exhibit A, attached hereto and incorporated herein by reference, which are collectively referred to as the "Properties";

1.2 Both the Resort Property and the Development Property are within the City of Airway Heights and its sewer service area;

1.3 The Tribe, City, and Spokane County ("County"), executed an Intergovernmental Agreement dated April 26, 2006, (the "IGA"), to establish mutual rights and obligations regarding the provision of certain services to the Tribe for the Development Property, specifically including sewer services;

1.4 The City and the City of Spokane, a charter city of the State of Washington ("Spokane"), entered into a Sewer Agreement Between Airway Heights and the City of Spokane for Sewer Service dated June 30, 1993, for the purpose of managing, handling and disposing of wastewater generated by the City with the City purchasing the right to discharge up to 680,000 Gallons Per Day ("GPD") for a term of twenty (20) years ("Sewer Agreement");

1.5 The City is presently constructing an Advanced Water Reclamation Plant (the "AWRP") capable of processing 1 million GPD of effluent discharge in order to meet the increasing wastewater needs of the City and preclude the need to build multiple wastewater treatment facilities on the West Plains;

1.6 By constructing the AWRP, the City will not be placing its wastewater in the Spokane River, which is a direct benefit to the Spokane River and its environs because the AWRP will treat the wastewater and percolate such water into the Palio Channel (an underground formation on the West Plains that conveys and contains ground water), and thereby recharge the Aquifers and ground water system on the West Plains;

1.7 The Tribe is an existing City sewer utility customer with service to its Northern Quest casino facilities and is in the process of completing a hotel on the Resort Property with the intent to develop the Development Property;

1.8 For the purposes of this Agreement, the Tribe is considered a "Customer" of the AWRP. Similar to other Customers, the Tribe desires to prepay its sewer connection fee with the City agreeing to reserve sufficient capacity for the Tribe's projected capacity needs. The Tribe's

prepayment for the projected capacity is pursuant to a fair and equitable apportionment of the cost of providing the wastewater treatment at the AWRP; and

1.9 The Parties desire to enter into this Agreement to provide for the sewer services for the Properties pursuant to the terms and conditions set forth herein.

## **2. Utilities**

2.1 Service Demand for Sewer Services. The Tribe's anticipated total sewer discharge will be 120,000 GPD for the facilities constructed on the Resort Property as of January 1, 2010 plus a convenience store/gas station ("C-store") on the Development Property (collectively the "Service Demand"). On or before January 1, 2012, the City shall measure the average daily flow of sewer effluent from the Properties according to reasonable engineering practice. The calculation will be: (a) the basis for the settle and adjust set forth in Section 2.3(c); and (b) the determination relied upon for the purpose of measuring the amount of sewer effluent discharge pursuant to this Agreement.

### 2.2 Interim and Long-Term Sewer Service to the Properties.

(a) **Interim Service.** The City shall meet the Service Demand of the Properties through existing City municipal facilities, by Interlocal Agreement, or other agreement with Spokane.

(b) **Sewer Capacity.** The City has commenced construction of Phase 1A and 1B of the AWRP generally described in the "City of Airway Heights Wastewater Treatment Facility Plan" prepared by Century West, in association with Esvelt Environmental Engineering, dated February 2005, as amended to include the "Wastewater Treatment Plant Final Design, Airway Heights, Washington, Project No. 30423.026.07" by Century West Engineering Corporation. The City shall be responsible for the design, financing, construction, operation, and maintenance of the AWRP. Following completion of the AWRP and compliance with the terms of this Agreement, the Tribe shall be a customer of the AWRP and its wastewater effluent for the Properties shall be collected and discharged by the City into the AWRP.

(c) The City hereby grants to the Tribe the right to discharge 120,000 GPD into the AWRP in anticipation of the Tribe's anticipated sewer capacity needs ("Reserved Capacity") for the Resort Property and the C-store on the Development Property. Additional capacity and sewer connection arrangements shall be either by separate agreement between the Parties or upon the terms and conditions available to similarly situated customers of the City Sewer Utility. See Section 2.3(e).

2.3 Payment Schedule for Sewer Capacity. The Tribe shall pay to the City the following amounts on the agreed dates in order to prepay for the Reserved Capacity at the AWRP.

(a) The Parties believe that the allocation of grants and funds to the Reserved Capacity Cost is fully consistent and compliant with state and federal law and have entered into this Agreement in that belief. In the event there is a determination by any agency that grants and funds may not be used to determine Reserved Capacity Cost set forth below, the Parties shall

jointly and cooperatively dispute such determination to include, if necessary, litigation in courts of competent jurisdiction with an exhaustion of all appeals to appropriate tribunals. In addition to the above, the Parties shall cooperate to work with state and federal officials for the purpose of reaching an agreement or determination that authorizes the use of grants and funds in a manner consistent with the intent and purpose of the Agreement.

(b) Capacity Cost. The cost of the Reserved Capacity is \$3,214,521.00 for the right to discharge 120,000 gallons per day of wastewater into the AWRP (the "Reserved Capacity Cost"). The Reserved Capacity Cost equals the sewer connection fee which allocates a portion of the cost of capital system development and debt service for the AWRP in a manner that is uniform considering the service and facilities furnished. The pro rata cost of the Reserved Capacity has been determined by dividing the total cost of the AWRP by the available gallon per day discharge. The Tribe's payment for the Reserved Capacity is determined by multiplying the number of gallons per day times the gallon per day cost. Upon full payment to the City, the Tribe shall have the right to use the Reserved Capacity for the Properties. The Tribe may not sell, assign, transfer or pledge the Reserved Capacity without the City's written consent.

(c) Cost Adjustments. The City and Tribe acknowledge that the payment for the Reserved Capacity is an estimate based upon the work and bids received by the City to date for the construction of the AWRP. Upon final completion and acceptance of the AWRP, the Parties will review the Reserved Capacity Cost and settle and adjust the cost, as necessary to achieve a fair and equitable result according to the methodologies set forth herein to include final accounting of all grants and funds allocated/disbursed according to their terms. If the allocation (or credit) of grants and funds is incorrect for the purpose of determining the Reserved Capacity Cost in the Agreement, the Parties shall cooperate in good faith to adjust the Reserved Capacity Cost in a manner that is consistent with any final determination, finding or order by a grant agency, court or other legal authority. If it is determined that the Reserved Capacity Cost is less than a fair and pro rata cost for the Reserved Capacity, then the Parties shall adjust the Payment Schedule in section 2.3(d) below, in a manner that fairly and consistently follows the payment model therein. If it is determined that the Reserved Capacity Cost exceeds a fair and pro rata cost for the Reserved Capacity, in lieu of a cash refund, the Tribe shall be credited with additional sewer discharge capacity. In the event of a dispute with regard to the cost of the Reserved Capacity, the Parties may follow the dispute resolution process set forth in Section 8 of this Agreement.

(d) Payment Schedule. The Tribe's payment for Reserved Capacity shall be payable as follows:

Due Date	Principal Payment Amount	Interest Payment Amount	Principal and Interest Payment
January 10, 2010	\$ 71,507.00	\$4,682.65	\$76,189.65
January 10, 2011	\$ 1,071,507.00	\$48,646.42	\$1,120,153.42
January 10, 2012	\$ 1,071,507.00	\$24,323.21	\$1,095,830.21

Interest on the unpaid balance shall accrue at the rate of 2.27% per annum with principal and interest payable on the Due Date. The Tribe shall have the right, at any time, to prepay the



1208 S. Lundstrom Avenue  
Airway Heights, Washington 99001 0969

The notice shall provide a brief description of the dispute.

5.2 Mediation. If the Parties are unable to resolve the dispute within 20 business days, the Parties shall engage John Bickerman as a mediator to assist the Parties in resolving the dispute. If Mr. Bickerman is no longer providing mediation services, the Parties shall agree on a new mediator of similar experience and background in the issues at hand. The mediator's fees and costs shall be equally shared by whichever Parties are involved in the dispute.

5.3 Arbitration. If the Parties cannot resolve their dispute through mediation, the exclusive remedy is binding (non-administered) arbitration and they shall engage Mr. Bickerman as an arbitrator and use the rules of the CPR Institute for Dispute Resolution. If Mr. Bickerman is no longer providing arbitration services, the Parties shall agree on a new arbitrator of similar experience and background in the issues at hand. The arbitrator's fees and costs shall be equally shared by whichever Parties are involved in the dispute. The arbitrator's decision shall be final and binding on the Parties with the substantially prevailing party entitled to recovery of its reasonable attorney fees and costs.

5.4 Limited Waiver of Immunity. The Parties hereby waive their respective immunity solely for the limited purpose of enforcing the Parties' agreement to arbitrate and arbitrator's decision. The arbitrator's award may be enforced in a court of competent jurisdiction in the following order of preference: (1) United States District Court for the Eastern District of Washington in Spokane; (2) Spokane County Superior Court; and (3) Kalispel Tribal Court.

**6. Governing Law.** This Agreement shall be governed by the laws of the State of Washington. To the extent state law does not address the relevant issues, the laws of the Kalispel Tribe and the United States, as applicable, shall apply.

**7. Community Relations.** The Tribe and the City agree to consult with each other in good faith prior to the distribution of any press release or prior to any public announcement and/or public statement with respect to the substance of this Agreement. The Tribe and the City further agree to consider any suggested changes to any press release or public announcement and/or statement proposed by any other party. The Tribe and the City agree to acknowledge in conjunction with such press release or public announcement and/or statement the statements contained in the Introduction to this Agreement.

**8. Binding Agreement.** This Agreement, including all recitals herein, shall be binding upon the Parties hereto.

This Agreement is in full force and effect as of December 21, 2009, set forth above.

**KALISPEL TRIBE OF INDIANS**

By: Michael G. Jones  
Michael Jones, Tribal Administrator

ATTEST:

By: Nick Brown  
Name: Nick Brown  
Title: Chief Financial Officer

**CITY OF AIRWAY HEIGHTS**

By: Albert Tripp  
Albert Tripp, City Manager

ATTEST:

By: Richard Cook  
Richard Cook, City Clerk

APPROVED AS TO FORM ONLY:

By: Stanley M. Schwartz  
Stanley M. Schwartz, City Attorney

## EXHIBIT A

### LEGAL DESCRIPTIONS OF RESORT AND DEVELOPMENT PROPERTIES

#### Resort Property:

The following described real property is located in the Southeast quarter of Section 13, Township 25 North, Range 41 East, W.M., Spokane County, Washington:

PARCEL "A-1" BEING A PORTION OF PARCEL "A",  
RECORD OF SURVEY BOOK 42, PAGE 12, RECORDS OF  
SPOKANE COUNTY DESCRIBED AS FOLLOWS:  
BEGINNING AT A POINT WHICH IS SITUATED  
S. 89°10'45"W.95.00 FEET FROM THE EASTERLY LINE OF  
SAID SE¼ AND N.00° 49'15"W.105.00 FEET FROM THE  
SOUTHERLY LINE OF SAID SE¼; THENCE FROM SAID  
POINT OF BEGINNING N.00° 49'15"W. 548.00 FEET;  
THENCE S.89° 10'45"W.1604.11 FEET TO A POINT ON THE  
WESTERLY LINE OF SAID PARCEL "A" THENCE  
S.22°51'20"W. ALONG SAID WESTERLY LINE, 551.74 FEET  
TO THE SOUTHWESTERLY CORNER THEREOF; THEN  
N.85°29'41"E. 122.42 FEET; THENCE ALONG A TANGENT  
CURVE TO THE RIGHT HAVING A RADIUS OF 3716.88  
FEET; THROUGH A CENTRAL ANGLE OF 2°57'22" AND AN  
ARC DISTANCE OF 191.77 FEET; THENCE TANGENT TO  
THE PRECEDING CURVE N. 88°27'03" E. 226.04 FEET;  
THENCE ALONG A TANGENT CURVE TO THE RIGHT,  
HAVING A RADIUS OF 4064.30 FEET, THROUGH A  
CENTRAL ANGLE OF 04° 13'28" AND AN ARC DISTANCE  
OF 299.66 FEET; THENCE TANGENT TO THE PRECEDING  
CURVE S. 87° 19'29"E. 947.13 FEET TO A POINT SITUATED  
ON THE NORTHERLY LINE OF THAT CERTAIN  
"ROADWAY EASEMENT" GRANTED TO STATE OF  
WASHINGTON, DATED MARCH 24, 1992; THENCE N.  
83°22'42"E., ALONG SAID NORTHERLY LINE, 41.21 FEET,  
MORE OR LESS TO THE POINT OF BEGINNING; EXCEPT  
THAT PORTION, IF ANY, CONVEYED TO SPOKANE  
COUNTY BY INSTRUMENT RECORDED OCTOBER 28, 1975,  
UNDER AUDITOR'S FILE NO 7510280362; SITUATED IN THE  
COUNTY OF SPOKANE, STATE OF WASHINGTON,  
CONTAINING 20.06 ACRES, MORE OR LESS.

PARCEL "A-2" BEING A PORTION OF PARCEL "A"  
RECORD OF SURVEY, BOOK 42, PAGE 12, RECORDS OF  
SPOKANE COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT WHICH IS SITUATED S. 89°10'45" W. 95.00 FEET FROM THE EASTERLY LINE OF SAID SE¼ AN N. 00°49' 15" W. 105.00 FEET FROM THE SOUTHERLY LINE OF SAID SE¼; THENCE FROM SAID POINT OF COMMENCEMENT N. 00°49' 15" W. 548.00 FEET TO THE POINT OF BEGINNING; THENCE, CONTINUING N. 00°49'15"W.590.87 FEET; THENCE LEAVING SAID RIGHT-OF-WAY LINE S. 89°10'45" W. 1345.02 FEET TO A POINT ON THE WESTERLY LINE OF SAID PARCEL "A", THENCE S. 22°51'20" W., ALONG SAID WESTERLY LINE, 645.18 FEET; THENCE, LEAVING SAID WESTERLY LINE, N. 89°10'45" E. 1604.11 FEET TO THE POINT OF BEGINNING; EXCEPT THAT PORTION, IF ANY, CONVEYED TO SPOKANE COUNTY BY INSTRUMENT RECORDED OCTOBER 28, 1975 UNDER AUDITOR'S FILE NO. 7510280362; SITUATED IN THE COUNTY OF SPOKANE, STATE OF WASHINGTON, CONTAINING 20.00 ACRES, MORE OR LESS.

The above-described parcels contain a total of 40.06 acres, more or less which are subject to all valid rights, reservations, rights-of-way, and easements of record.

The Tribe acquired the Airway Heights parcel on December 20, 1994. The land is identified as BIA tract number 103T100, and was proclaimed a part of the Kalispel Reservation by the AS-IA on October 19, 1996.

**Development Property:**

The Tribe owns approximately 250 acres of real property within the City of Airway Heights that is suitable for development beyond its present use, fully described herein.

PARCEL 1:

THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP  
25 NORTH, RANGE 41 EAST, W.M.;

EXCEPT THE SOUTH HALF OF THE SOUTHEAST QUARTER OF  
SAID NORTHEAST QUARTER;

AND EXCEPT HAYFORD TRAILS ROAD;

SITUATE IN THE CITY OF AIRWAY HEIGHTS, COUNTY OF  
SPOKANE, STATE OF WASHINGTON.

PARCEL 2:

THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 25  
NORTH, RANGE 41 EAST, W.M.;

EXCEPT THE SOUTHEAST QUARTER OF SAID SOUTHEAST  
QUARTER;

AND EXCEPT AIRWAY HEIGHTS CITY SHORT PLAT NO. 90-001 AS  
PER PLAT THEREOF RECORDED IN VOLUME 6 OF SHORT PLATS,-  
PAGE 83;

AND EXCEPT THE SOUTH 30.00 FEET OF THE NORTH HALF OF  
SAID SOUTHEAST QUARTER;

AND EXCEPT THE NORTH 30.00 FEET OF THE SOUTHWEST  
QUARTER OF SAID SOUTHEAST QUARTER;

AND EXCEPT ANY PORTION THEREOF LYING WITHIN HAYFORD  
ROAD;

AND EXCEPT ANY PORTION THEREOF LYING WITHIN PRIMARY  
STATE HIGHWAY NO. 11;

AND EXCEPT THAT PORTION OF THE NORTHEAST QUARTER OF  
SAID SOUTHEAST QUARTER DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT A OF SAID  
AIRWAY HEIGHTS CITY SHORT PLAT NO. 90-001; THENCE NORTH  
00°11'20" WEST, ALONG A LINE 40.00 FEET DISTANT FROM AND  
PARALLEL WITH THE EAST LINE OF SAID SOUTHEAST QUARTER,  
100.00 FEET; THENCE SOUTH 89°32.16" WEST, ALONG A LINE  
PARALLEL WITH THE SOUTH LINE OF SAID NORTHEAST QUARTER  
OF THE SOUTHEAST QUARTER, 580.81 FEET; THENCE SOUTH  
00°11'20" EAST, ALONG A LINE PARALLEL WITH THE EAST LINE OF  
SAID SOUTHWEST QUARTER, 375.00 FEET TO A POINT 30.00 FEET

NORTHERLY FROM AND AT RIGHT ANGLES TO THE SOUTH LINE OF SAID NORTHEAST QUARTER; THENCE NORTH 89°32'16" EAST, ALONG A LINE 30.00 FEET DISTANT FROM AND PARALLEL WITH SAID SOUTH LINE, 105.60 FEET TO THE SOUTHWEST CORNER OF LOT A OF SAID AIRWAY HEIGHTS CITY SHORT PLAT NO. 90-001; THENCE NORTH 00°11'20" WEST, ALONG THE WEST LINE OF SAID LOT A, 275.00 FEET TO THE NORTHWEST CORNER OF SAID LOT A; THENCE NORTH 89°32'16" EAST, ALONG THE NORTH LIEN FO SAID LOT A, 475.21 FEET TO THE POINT OF BEGINNING;

SITUATE IN THE COUNTY OF SPOKANE, STATE OF WASHINGTON.