

## INTERLOCAL AGREEMENT FOR SHARED WATER USE

THIS INTERLOCAL AGREEMENT FOR SHARED WATER USE (this "**Agreement**") is made and entered into as of this 11 day of August, 2015 (the "**Effective Date**") by and between the City of Cheney, a municipal corporation of the State of Washington (the "**City**") and Eastern Washington University, an agency of the State of Washington (the "**University**"). The City and the University are each sometimes referred to herein as "**Party**" and collectively as "**Parties**."

### **RECITALS**

A. Both the City and the University own and operate their own respective water supply systems within the corporate limits of the City;

B. Presently, the City and the University are parties to that certain "Interagency Cooperative Agreement for Shared Water Usage" dated 1994 (the "**Prior Agreement**"), under which either Party may purchase water from the other during periods of need;

C. The Parties desire to terminate the Prior Agreement upon the Effective Date hereof and enter this Agreement to set forth each Party's continued desire to supply and obtain water from the other Party during emergency fire flow situations or other periods of need;

D. It is in the best interest of both the City and the University to have an understanding and agreement as to how both water systems will cooperate to maintain a high level of service to each Party's respective users;

E. The Parties maintain an approved coordinated water system plan in compliance with WAC 246-290-132; and

F. Pursuant to RCW 35.92.170, RCW 35.92.200, and RCW 35.94, the Parties are authorized to enter into this Agreement for the supply of water.

### **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City is willing to provide the University, and the University is willing to provide the City, water supply pursuant to the terms of this Agreement:

1. **Termination of the Prior Agreement.** The Parties mutually agree that the Prior Agreement shall terminate as of the Effective Date of this Agreement.

2. **Interties; Water Meters; Water Quality.**

2.1. Interties. The delivery point at which the City will deliver water to the University from the City's water system (the "**City's Intertie**"), and the delivery point at which the University will deliver

water to the City from the University's water system (the "**University's Intertie**") shall be at each Party's respective metered intertie location currently situated at North 11<sup>th</sup> and Cedar Street, Cheney Washington. The City's Intertie and the University's Intertie are each depicted on Exhibit A attached hereto and incorporated by reference herein. The University owns, operates and maintains the University Intertie structure.

2.2. Water Meters. All water provided by the City to the University shall be metered through a master meter owned by the City at the City's Intertie, and all water provided by the University to the City shall be metered through a master meter owned by the University at the University's Intertie. During the term of this Agreement, each Party shall:

- (a) be responsible for the expenses and maintenance associated with their respective water meters;
- (b) be responsible for the expense and maintenance associated with their respective supervisory control and data acquisition systems and equipment;
- (c) read and keep accurate records of their respective meters for water loss accounting purposes under this Agreement;
- (d) have access to the other Party's meter for reading purposes; and
- (e) have access to the other Party's meter maintenance records.

2.3 Water Quality. The quality of water supplied by either Party to the other pursuant to this Agreement shall meet or exceed all applicable federal and state rules and regulations governing water quality for Group A water systems. Each Party shall be responsible to treat the water supplied to the other to meet or exceed current and future standards required by State adopted limits.

### 3. **Supply of Water.**

3.1. Supply of Water for Emergency Fire Flow Purposes. During the term of this Agreement and upon the University's request, in the event a fire results in an "emergency" as described in WAC 246-290-132(4) or in the event the University requires additional water flow to combat a fire, the City shall supply up to 500 gallons per minute of water, at no cost, to the University for emergency fire flow purposes using the City's reservoir capacity of 4,000,000 gallons during the duration of the fire emergency. The delivery point for the emergency fire flow supply shall be at the City's Intertie.

3.2. Supply of Water During Periods of Need. The Parties may purchase water from one another in mutually agreeable amounts during periods of need. Periods of need may include, but are not limited to, unforeseen circumstances of repairs to water supply systems. Purchase of water shall be at the rate under Section 4.

3.3. Water Supply Interruption. Either Party may temporarily interrupt or reduce delivery of water to the other Party in the event of any unforeseen supply disruption that will take longer than 2 hours to resolve and, if the Party interrupting or reducing delivery of water, acting in good faith, determines that system emergencies, maintenance or repair require supply interruption. In the event of such emergency, the delivering Party shall notify the purchasing Party of the need for such interruption as soon as reasonably possible.

4. **Rate Components and Payment.**

4.1. The rates for water supply services to be paid during the calendar year 2015 pursuant to this Agreement shall be a water volume charge of 1/2 of the City's most current 100 cubic feet retail price which is currently \$0.525 cents per 100 cubic feet consumed.

4.2. Beginning January 1, 2016, and each calendar year thereafter during the term of this Agreement, the Parties may, upon mutual written agreement, annually increase the water volume charges set forth in Section 4.1 at the same rate as the published Washington State fiscal growth factor consumer price index.

4.3. With respect to water supplied pursuant to Sections 3.2 and 3.3 hereof, each Party shall bill the other Party the metered monthly calculated volume charge each month, with payment due within 30 days of the date of billing. Each Party shall provide the other Party with the actual source meter readings which indicate the exact amount of usage (in cubic feet) for the month being billed.

5. **Term; Termination.**

5.1. Term. The initial term of this Agreement shall be for 3 years from its Effective Date. Thereafter, this Agreement may be renewed annually upon mutual agreement of the Parties.

5.2. Termination. This Agreement may be terminated upon 90 days' advance written notice by either Party unless terminated earlier by mutual agreement of the Parties.

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

7. **Liability.** To the fullest extent permitted by law, the Parties shall each indemnify, defend and hold harmless the other Party, its officers, employees, and agents from all claims, losses, demands, or suits in law or equity arising from the Parties' intentional or negligent acts or breach of any obligations under this Agreement, but only in proportion to and to the extent such claims, losses, demands, or suits are caused by the negligence or intentional acts or omissions of the indemnifying Party, its officers, employees, and agents. . Each Party's duty to indemnify shall survive the termination or expiration of this

Agreement. Each Party waives, with respect to the other Party only, its immunity under RCW Chapter 51 "Industrial Insurance." The Parties have specifically negotiated this provision.

## 8. Miscellaneous.

8.1. Assignment and Delegation. This Agreement shall be binding upon the Parties, their successors and assigns. No Party may assign or delegate, in whole or in part, its interest in this Agreement without the prior written approval of the other Party which shall not be unreasonably withheld.

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

**If to the City:**

City of Cheney  
Attn: Director of Public Works  
609 Second Street  
Cheney, WA 99004

**If to the University:**

Eastern Washington University  
Attn: Associate Vice President for  
Facilities and Planning  
101 Rozell  
Cheney, WA 99004

8.3. Governing Law; Venue. This Agreement is entered into, and its interpretation and enforcement, shall be governed exclusively by its terms and by the laws of the State of Washington, United States of America, without giving effect to that body of laws pertaining to conflict of laws. Any action brought by either Party against the other Party for claims arising out of this Agreement shall only be brought in a court of competent jurisdiction in Spokane County, Washington.

8.4. Meet and Confer and Arbitration. If either Party has a claim or dispute under this agreement, notice of the same shall be sent to the other Party. The notice shall provide a brief description of the dispute. Within 5 business days of the notice, the Parties shall meet and confer to resolve the dispute. If the Parties are unable to resolve the dispute within 10 business days of the notice, either party may seek arbitration. Arbitration shall be conducted 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.

8.5. Attorneys' Fees. If any suit is brought or legal action is taken for the enforcement of any provision of this Agreement or as a result of any alleged breach thereof or for a declaration of any right or duty hereunder, the Party who substantially prevails in such suit or legal action shall be paid reasonable attorneys' fees from the Party who does not substantially prevail, and any judgment or decree rendered shall include an award thereof.

8.6. Entire Agreement. This Agreement embodies the entire understanding among the Parties and supersedes any and all prior negotiations, understandings, or agreements.

8.7. Third Parties. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

8.8. Anti-kickback. No officer or employee of the City, having the power or duty to perform an official act or action related to this Agreement, shall have, or acquire, any interest in this Agreement, or have solicited, accepted, or granted, a present or future gift, favor, service, or other thing of value from any person with an interest in this Agreement.

8.9. Severability. If any provision of this Agreement is determined by any court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such provision will be enforced to the maximum extent possible given the intent of the Parties hereto. If such clause or provision cannot be so enforced, such provision shall be stricken from this Agreement and the remainder of this Agreement shall be enforced as if such invalid, illegal or unenforceable clause or provision had (to the extent not enforceable) never been contained in this Agreement.

8.10. Amendment; Waivers. This Agreement shall not be amended, supplemented or modified except in writing executed by authorized representatives of the Parties. Waiver by a Party of any breach of any provision of this Agreement by the other Party shall not operate, or be construed, as a waiver of any subsequent or other breach and no Party's undertakings or agreements contained in this Agreement shall be deemed to have been waived unless such waiver is made by an instrument in writing signed by an authorized representative of that Party.

8.11. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and either Party may execute this Agreement by signing any such counterpart. Signed counterparts executed and delivered by electronic mail or facsimile transmission shall be binding on the Parties and have the same force and effect as an original signed counterpart.

8.12. Representations and Warranties. Each Party represents and warrants that it has executed this Agreement freely, fully intending to be bound by the terms and provisions contained herein; that it has full power and authority to execute, deliver and perform this Agreement; that the person signing this Agreement on behalf of such Party has properly been authorized and empowered to enter into this Agreement by and on behalf of such Party; that prior to the date of this Agreement, all corporate action of such Party necessary for the execution, delivery and performance of this Agreement by such Party has been duly taken; and that this Agreement has been duly authorized and executed by such Party, is the legal, valid and binding obligation of such Party, and is enforceable against such Party in accordance with its terms.

8.13. Compliance with Laws. The Parties shall observe all federal, state and local laws, ordinances and regulations, to the extent that they may be applicable to the terms of this Agreement.

8.14. Recording. This Agreement shall be recorded with the Spokane County Auditor's Office upon its execution.

8.15. Force Majeure. Neither Party shall be liable for any delays in the performance of any of its obligations hereunder due to causes beyond its reasonable control, including but not limited to fire, strike, war, riots, acts of any civil or military authority, acts of God, judicial action, drought, or failure or delay in delivery by suppliers or delays in transportation.

8.16. Records Maintenance. The Parties shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Agreement. The Parties shall retain such records for a

period of six years following the date of final payment. If any litigation, claim or audit is started before the expiration of the six year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. At no addition cost, these records, including materials generated under this Agreement, shall be subject at all reasonable times to inspection, review or audit by the University, personnel duly authorized by the University, the Office of the State Auditor, and federal and state officials so authorized by law, regulation, or agreement. During the term of this Agreement, the Parties shall provide access to these items within Spokane County. Cheney shall be responsible for any audit exceptions or disallowed costs incurred by the University relating to this Agreement. These records retention and review requirements must be included in any subcontracts or assignments.

8.17 Nondiscrimination. During the performance of this Agreement, the Parties shall comply with all state and federal laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act. Neither Party will discriminate, to the extent required by state or federal law, on the basis of race, creed, color, national origin, marital status, sex, sexual orientation, gender identity, age, status as a disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces service medal veteran, or the presence of any sensory, mental or physical disability. In the event of a Party's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Agreement may be immediately terminated.

9. **RCW 39.34.030 Required Clauses.**

9.1. Purpose. See the provisions above.

9.2. Duration. See Section 5.

9.3. Organization of Separate Entity and Its Powers. Each Party is duly organized and in existence. No new or separate legal or administrative entity is created to administer this Agreement.

9.4. Responsibilities of the Parties. See the provisions above.

9.5. Agreement to be Filed. See Section 8.14.

9.6. Financing. Each Party shall be responsible for the financing of its contractual obligations through its budgetary process.

9.7. Termination. See Section 5.


9.8. Property Upon Termination. Upon termination, each Party retains control of its property. Jointly held property shall be divided in proportion to the amount each Party contributed to acquisition.

9.9. Administration. Each Party administers its own functions under this Agreement. For contact information, the Parties have designated the individuals set forth in Section 8.2.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date first written above.

**THE CITY OF CHENEY:**

  
\_\_\_\_\_  
Tom Trulove, Mayor

**EASTERN WASHINGTON UNIVERSITY:**

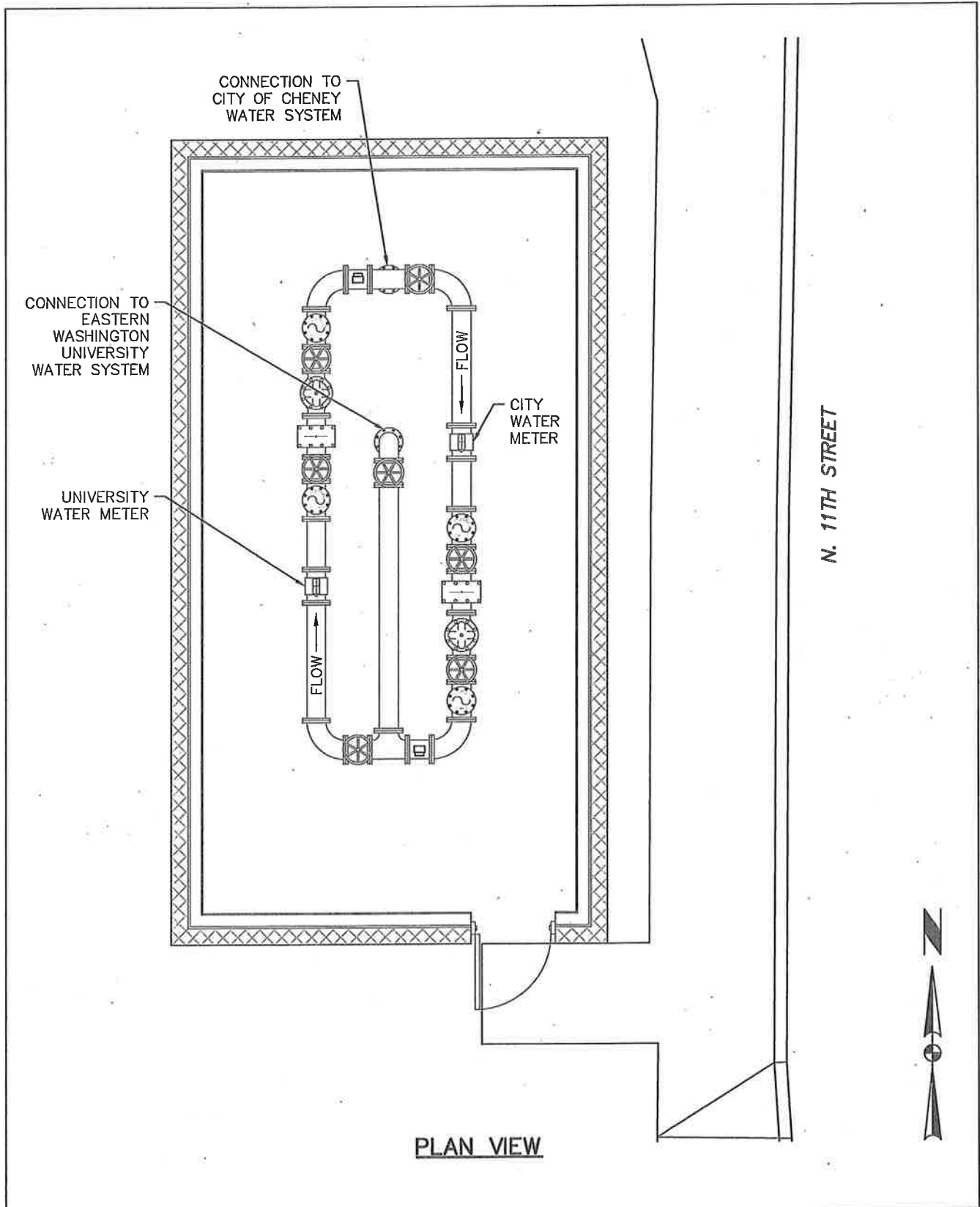
  
\_\_\_\_\_  
Mary Voves, Vice President for Business and Finance

**ATTEST:**

  
\_\_\_\_\_  
Cindy Niemeier, Finance Director

[Signature Page to Interlocal Agreement for Shared Water Use]

**Exhibit "A" - Depiction of the City's Intertie and the University's Intertie**



**PLAN VIEW**

**INTERLOCAL AGREEMENT FOR SHARED WATER USE**

**INTERTIE BUILDING  
116 N. 11TH STREET**

**TD&H**  
Engineering

tdengineering.com  
GREAT FALLS-BOZEMAN-KALISPELL-SHELBY  
SPokane  
LEWISTON  
WATFORD CITY

ACRITANA  
WASHINGTON  
IDAHO  
NORTH DAKOTA

DRAWN BY:	JCR
DESIGNED BY:	DNW
QUALITY CHECK:	DNW
DATE:	07/27/18
JOB NO.	813-079
CAD NO.	INTERTIE-BLDG-EX

**EXHIBIT  
A**