INTERLOCAL AGREEMENT BETWEEN THE CITY OF SPOKANE AND THE CITY OF SPOKANE VALLEY REGARDINGACQUISITION OF PROPERTY BY EMINENT DOMAIN FOR THE HAVANA STREET BRIDGE PROJECT

THIS AGREEMENT made and entered into by and between the City of Spokane, a Washington municipal corporation, and the City of Spokane Valley, a Washington municipal corporation, jointly hereinafter referred to as the "parties."

WITNESSETH:

WHEREAS, the City of Spokane is a first class charter city duly organized and existing under and by virtue of the constitution and laws of the State of Washington, and the Charter of the City; and

WHEREAS, the City of Spokane Valley is a code city duly organized and existing under and by virtue of the constitution and laws of the State of Washington; and

WHEREAS, the laws of the State of Washington (RCW 35.22.280(7)) provide that the City of Spokane may establish, open, alter, widen, extend, and otherwise improve streets, alleys, avenues, sidewalks, and other public property in order to promote the best interest of the City; and

WHEREAS, the laws of the State of Washington (RCW 35A.21.160) provide that the City of Spokane Valley possesses all of the powers which any city of any class may have; and

WHEREAS, the Constitution of the State of Washington, Article I Section 16 and the laws of the State of Washington allow cities to purchase or appropriate private property for public use upon making just compensation to the owners pursuant to Chapter 8.12 RCW; and
WHEREAS, RCW 8.12.030 authorizes cities to condemn land and property for streets and bridges within the limits of such cities; and

WHEREAS, the parties have determined that it is in the best interests of both cities to construct the Havana Street Bridge Project, as set forth in the City of Spokane Public Works File Number 2004062 (hereinafter the "Project"); and

WHEREAS, the property described in this Agreement is necessary to complete the Project; and

WHEREAS, said property which is necessary to complete the Project is located within the corporate limits of the City of Spokane Valley; and

WHEREAS, the City of Spokane Valley has agreed to assist the City of Spokane in acquiring such property according to the terms of this Agreement; and

WHEREAS, Havana Street forms the corporate boundary between the City of Spokane and the City of Spokane Valley, but in places the eastern half of Havana Street remains unincorporated and under the care and responsibility of Spokane County; and

WHEREAS, the City of Spokane is engaged in discussions with Spokane County that will result in the revision of the City of Spokane's corporate boundary to coincide with the eastern edge of Havana Street so as to fully include Havana Street within the corporate limits of the City of Spokane at all places where Havana Street lies on the City of Spokane's eastern corporate limits; and

WHEREAS, Chapter 39.34 RCW authorizes parties to enter into agreements for joint or cooperative action to exercise any power or powers, privileges, or authority exercised or capable of exercise by either of the parties; and

WHEREAS, pursuant to RCW 8.25.290, notice has been mailed to each and every property owner of records, as indicated on the tax rolls of Spokane County according to such addresses shown on such rolls, at least fifteen (15) days prior to the City Council taking final action on this Agreement and related ordinance, including publication of notice of the ordinance in the Spokesman Review and Spokane Valley News Herald for two (2) consecutive weeks before final action by the City Council.

NOW, THEREFORE, in consideration of the facts and recitals set forth 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 City of Spokane and the City of Spokane Valley relating to acquisition of privately owned land and property by eminent domain as is necessary for construction of the Project.

SECTION NO. 2: APPLICABILITY OF THIS AGREEMENT

The parties agree that the provisions of this Agreement shall apply to the land and property described in the ordinance attached hereto as Exhibit “A” (“Eminent Domain Ordinance”).

SECTION NO. 3: ACQUISITION OF PROPERTY BY EMINENT DOMAIN

Upon final action or legislative approval of the Eminent Domain Ordinance by the City of Spokane Valley, the Office of City Attorney for the City of Spokane may commence an action or actions in the Superior Court of Spokane County, State of Washington, in the name of the City of Spokane Valley, to acquire and take by eminent domain the lands and property interests described in the Eminent Domain Ordinance (the “Property”), the parties having found that the Property described therein is necessary for the Project. The title to the Property shall vest in the City of Spokane Valley for public street purposes and all uses incidental thereto, subject to such rights as the City of Spokane determines are necessary, in its sole discretion, for constructing the Project, maintaining the subsequently improved public right-of-way, and enforcement of traffic-related laws and regulations.

SECTION NO. 4: RELOCATION ASSISTANCE

Relocation assistance shall be made available to eligible owners and tenants of the Property. Responsibility for any such costs shall be borne by the City of Spokane as set forth in Section No. 5 below.

SECTION NO. 5: RESPONSIBILITY FOR ACQUISITION COSTS

In recognition that the City of Spokane has assumed responsibility for construction of the Project and that acquisition of the Property is necessary for the Project, as between the parties, the City of Spokane shall be responsible and hereby agrees to pay all Acquisition Costs relating to the Property, as the term Acquisition Costs is defined in this section. For purposes of this Agreement, Acquisition Costs means any and all costs pertaining to efforts to acquire and acquisition of the Property. Without limiting the generality of the foregoing, such costs may include: (a) amounts payable as part of any voluntary agreement and/or settlement relating to acquisition of the Property; (b) amounts awarded by a court/jury to the owner(s) of the Property as just compensation following trial, including any attorneys fees and costs awarded by the court to the owner(s) and/or their attorneys; (c) amounts paid to the owner(s) of the Property and/or their attorneys as attorneys fees and costs upon discontinuance and/or abandonment of efforts to acquire the Property by eminent domain; (d) any relocation assistance paid to such owner(s) or
seller(s), whether or not required under Chapter 8.26 RCW; and (e) costs of necessary appraisals and title insurance to acquire the Property.

SECTION NO. 6: INDEMNITY

The City of Spokane shall defend, indemnify and hold the City of Spokane Valley, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this agreement, except for injuries and damages caused by the sole negligence of the City of Spokane Valley.

Should a court of competent jurisdiction determine that this agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the City of Spokane and its officers, officials, employees, and volunteers, and the City of Spokane Valley, its officers, officials, employees, and volunteers, the City of Spokane's liability hereunder shall be only to the extent of the City of Spokane's negligence, or that of its officers, officials, employees, and volunteers.

SECTION NO. 7: CONFIDENTIAL INFORMATION

The parties acknowledge that they, with the support of counsel, appraisers, and other consultants, are engaging in a cooperative venture for their joint benefit. In furtherance of this cooperative venture and the parties' common interests in obtaining the Property, the parties and their respective legal counsel agree to share information relating to such efforts. Such exchanges and disclosures will be for the exclusive purpose of facilitating the parties' common interests in the acquisition of the Property and will not diminish in any way the confidentiality of the materials exchanged, nor will this exchange constitute a waiver of any of the parties' attorney-client or work product privileges. To the extent allowed by law, and consistent with the parties' respective obligations under the Public Records Act, Chapter 42.56 RCW, the parties each agree to preserve and protect the confidentiality of all financial, valuation, and other proprietary information that they may obtain, and to create and preserve any applicable attorney/client and litigation work product privileges, and public record disclosure exemptions, in compliance with applicable State law.

SECTION NO. 8: CONTROL OF PROJECT

Although the parties may consult and assist the City of Spokane with the acquisition of the Property and the Project, the City of Spokane shall retain final decision making authority and discretion regarding such acquisition and the completion of the Project. The City of Spokane shall pay the costs and expenses to be incurred in connection with the construction of the Project.
SECTION NO. 9: ADMINISTRATION

The City of Spokane hereby designates its City Attorney as its representative for the purpose of implementing this Agreement. The City of Spokane Valley hereby designates its City Attorney as its representative for the purpose of implementing this Agreement.

SECTION NO. 10: TERMINATION

This Agreement may be terminated at any time by mutual written consent of the City of Spokane and the City of Spokane Valley.

SECTION NO. 11: DEFAULT

It shall be an “Event of Default” under this Agreement if either of the parties to perform, observe, or comply with the covenants, agreements, or conditions on its part contained in this Agreement, where that failure continues for a period of fifteen (15) days after written notice from the non-defaulting party.

SECTION NO. 12: REMEDIES

In the event of any Event of Default, 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 attorney's fees and other costs for such enforcement action.

SECTION NO. 13: 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.

CITY OF SPOKANE:  City Attorney
808 West Spokane Falls Blvd
Spokane, Washington 99201

CITY OF SPOKANE VALLEY:  City Attorney
11707 E Sprague, Room 103
Spokane Valley, WA 99206

SECTION NO. 14: AGREEMENT TO BE FILED

The City of Spokane shall file this Agreement with its City Clerk and with the County Auditor. The City of Spokane Valley shall file this Agreement with its City Clerk.
SECTION NO. 15:  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. 16:  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. 17:  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.

SECTION NO. 18:  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. 19:  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. 20:  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. 21:  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. 22: 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. 23: TIME IS OF THE ESSENCE

Time is of the essence of this Agreement.

SECTION NO. 24: 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.

See Section No. 9 above. 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. 14 above.

F. FINANCING.

See Section No. 5 above.

G. TERMINATION.

See Section No. 10 above.

H. PROPERTY UPON TERMINATION.

See Section No. 3.
IN WITNESS WHEREOF, the PARTIES have caused this Agreement to be executed on date and year opposite their respective signatures.

CITY OF SPOKANE

By:  
Title: City Administrator

Approved as to form:

Assistant City Attorney

CITY OF SPOKANE VALLEY

By:  
Title: City Manager

Approved as to form:

City Attorney

Dated:  4/19/09

Attest:  4/15-09

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Exhibit A

AN ORDINANCE PROVIDING FOR THE ACQUISITION BY EMINENT DOMAIN OF CERTAIN LANDS NECESSARY TO BE ACQUIRED FOR PUBLIC PURPOSES IN CONNECTION WITH THE HAVANA STREET BRIDGE PROJECT, LOCATED IN THE CITY OF SPOKANE VALLEY, COUNTY OF SPOKANE, STATE OF WASHINGTON

RECATALS

WHEREAS, the City of Spokane Valley, Washington (the "City") is a code city duly organized and existing under and by virtue of the constitution and laws of the State of Washington.

WHEREAS, the laws of the State of Washington (RCW 35A.21.160) provide that the City possesses all of the powers which any city of any class may have; and

WHEREAS, the laws of the State of Washington, RCW 35.22.280(7) provide that the City may establish, open, alter, widen, extend, and otherwise improve streets, alley, avenues, sidewalks, and other public property in order to promote the best interest of the City.

WHEREAS, the Constitution of the State of Washington, Article I Section 16 and the laws of the State of Washington RCW 35.22.280(6) allow the City to purchase or appropriate private property for public use upon making just compensation to the owners pursuant to RCW Chapter 8.12.

WHEREAS, the City has determined that it is in the City's best interest to cooperate with and facilitate the City of Spokane's completion of the Havana Street Overpass Project, as set forth in City of Spokane Public Works file number 2004062.

WHEREAS, the property identified in Exhibit "A" is necessary to complete the Project.

WHEREAS, pursuant to RCW 8.25.290, notice has been mailed to each and every property owner of records, as indicated on the tax rolls of Spokane County according to such addresses shown on such rolls, at least fifteen (15) days prior to the City Council taking final action on this ordinance, including publication of notice of this ordinance in the Spokesman Review the Spokane Valley News-Herald for two (2) consecutive weeks before final action by the City Council.

NOW, THEREFORE, The City of Spokane Valley does ordain:

Section 1. Public use and necessity requires the City of Spokane Valley to acquire the land and property, and interests therein, as described in Exhibits "A" and "B", together with such additional temporary construction easements as are deemed necessary the City of Spokane, for public purposes in order to complete the Havana Street Bridge Project, including utilities and related improvements, all as set forth in City of Spokane Public Works file number 2004062.

Section 2. Subject to the terms and conditions of the Interlocal Agreement, a copy of which is attached hereto as Exhibit "C", the City Attorney and duly appointed Special Counsel are hereby authorized and directed to commence an action or actions in the Superior Court of Spokane County, State of Washington, in the name of the City of Spokane Valley, to acquire and take by eminent domain the lands and property interests necessary to be acquired for the purposes set forth herein, the lands and property interests to be so taken situate in the City of Spokane Valley, County of Spokane, all in the State of Washington, and more specifically described in Exhibits "A" and "B", attached hereto and by this reference made a part herof, together with such amendments thereto and such additional temporary construction easements as are deemed necessary by City staff to complete the project.

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Section 3. The Office of the City Attorney for the City of Spokane is hereby for the purposes set forth herein appointed as special counsel to the City of Spokane Valley. Said firm shall provide all legal services in conjunction with the Office of the City Attorney for the purpose of representing the joint interests of the City of Spokane Valley and the City of Spokane as expressed in this ordinance.

Section 4. That compensation for the land and property interests described in Exhibit "A" and "B" and all associated costs, expenses, damages and attorney fees shall be solely payable by the City of Spokane from fund account number 3200-94991-95200-56102, and funds which are allocated toward the Havana Street Bridge Project by the City of Spokane Department of Construction Services, pursuant to file number 2004062.

PASSED by the City of Spokane Valley City Council this ____ day of ________________, 2009.

____________________________________
MAYOR

Attest:

____________________________________
City Clerk
Exhibit “A”

Legal Description of Take

Hite Acquisition (Portion of Assessor’s Parcel No. 35142.9041)

All that portion of the northwest quarter of Section 14, Township 25 N., Range 43, E.W.M., lying within the hereinafter described Parcel “A” described as follow:

Beginning at the intersection of the north right of way line of Broadway Avenue and the east right of way of Havana Street; said point of beginning bears N.88°12'37" E., 30.00 feet from the west section line of said Section 14 and N.01°59'41" W., 30.00 feet from the West ¼ corner of said Section 14; thence N.01°59'41" W., along the east right of way line of Havana Street, 300.00 feet; thence N.88°12'37" E., 50.00 feet; thence S.01°59'41"E., 70.00 feet; thence S.43°06'28"W., 63.53 feet; thence S.01°59'41"E., parallel to and 5.00 feet east of the east right of way line of Havana Street, 175.00 feet; thence S.46°53'32"E., 14.17 feet, to the north right of way line of Broadway Avenue, thence S.88°12'37"W., along said north right of way line, 15.00 feet to the point of beginning.

Parcel “A”:

That portion of the Southwest quarter of the Northwest quarter of Section 14, Township 25 North, Range 43 East, W.M., in the City of Spokane Valley, Spokane County, Washington, described as follows:

BEGINNING at the intersection of the North line of Broadway Avenue and the East line of Havana Street;
Thence North 300 feet along the East line of Havana Street;
Thence East 300 feet;
Thence South 300 feet to the North line of Broadway Avenue;
Thence West 300 feet to the POINT OF BEGINNING;

(Contains 5,712 sq. ft.)

Hite Acquisition (Portion of Assessor’s Parcel No. 35142.9078)

All that portion of the northwest quarter of Section 14, Township 25 N., Range 43, E.W.M., lying within the hereinafter described Parcel “A” described as follow:

Beginning on the east right of way line of Havana Street, said point of beginning bears N.88°12'37"E., 30.00 feet; thence N.01°59'41"W., 330.00 feet, from the West ¼ corner of said Section 14; thence N.01°59'41"W., along said east right of way line, 60.00 feet to the northwest corner of said parcel; thence N.88°12'37"E., along the north line of said parcel 50.00 feet; thence S.01°59'41"E., 60.00 feet, to the south line of said parcel; thence S.88°12'37"W., along said south line, 50.00 feet, to the point of beginning.

Parcel “A”:

That portion of the Southwest quarter of the Northwest quarter of Section 14, Township 25 North, Range 43 East, W.M., in the City of Spokane Valley, Spokane County, Washington, described as follows:
BEGINNING at the intersection of the North line of Broadway Avenue and the East line of Havana Street; 
Thence North 300 feet along said East line to the TRUE POINT OF BEGINNING; 
Thence continuing North 60 feet along said East line; 
Thence East 300 feet; 
Thence South 60 feet; 
Thence West 300 feet to the TRUE POINT OF BEGINNING. 

(Contains 3,000 sq. ft.)
Exhibit "B"

Legal Description of Temporary Construction Easement

Hite Temporary Construction Easement (Portion of Assessor's Parcel No. 35142.9041)

A 10 foot wide Temporary Construction Easement lying east of and adjacent to the following described parcel:

All that portion of the northwest quarter of Section 14, Township 25 N., Range 43, E.W.M., lying within the hereinafter described Parcel "A" described as follow:

Beginning at the intersection of the north right of way line of Broadway Avenue and the east right of way of Havana Street; said point of beginning bears N.88°12'37"E., 30.00 feet from the west section line of said Section 14 and N.01°59'41"W., 30.00 feet from the West ¼ corner of said Section 14; thence N.01°59'41" W., along the east right of way line of Havana Street, 300.00 feet; thence N.88°12'37"E., 50.00 feet; thence S.01°59'41"E., 70.00 feet; thence S.43°06'28"W., 63.53 feet; thence S.01°59'41"E., parallel to and 5.00 feet east of the east right of way line of Havana Street, 175.00 feet; thence S.46°53'32"E., 14.17 feet, to the north right of way line of Broadway Avenue, thence S.88°12'37"W., along said north right of way line, 15.00 feet to the point of beginning.

Parcel "A":

That portion of the Southwest quarter of the Northwest quarter of Section 14, Township 25 North, Range 43 East, W.M., in the City of Spokane Valley, Spokane County, Washington, described as follows:

BEGINNING at the intersection of the North line of Broadway Avenue and the East line of Havana Street;
Thence North 300 feet along the East line of Havana Street;
Thence East 300 feet;
Thence South 300 feet to the North line of Broadway Avenue;
Thence West 300 feet to the POINT OF BEGINNING;
(Contains 3,236 sq. ft.)

Hite Temporary Construction Easement (Portion of Assessor's Parcel No. 35142.9078)

A 10 foot wide Temporary Construction Easement east of and adjacent to the following described parcel:

All that portion of the northwest quarter of Section 14, Township 25 N., Range 43, E.W.M., lying within the hereinafter described Parcel "A" described as follow:

Beginning on the east right of way line of Havana Street, said point of beginning bears N.88°12'37"E., 30.00 feet; thence N.01°59'41"W., 330.00 feet, from the West ¼ corner of said Section 14; thence N.01°59'41"W., along said east right of way line, 60.00 feet to the northwest corner of said parcel; thence N.88°12'37"E., along the north line of said parcel 50.00 feet; thence S.01°59'41"E., 60.00 feet, to the south line of said parcel; thence S.88°12'37"W., along said south line, 50.00 feet, to the point of beginning.
And the north 10 feet of the west 175.22 feet, except the west 50 feet of the hereinafter described parcel "A".

Parcel "A":

That portion of the Southwest quarter of the Northwest quarter of Section 14, Township 25 North, Range 43 East, W.M., in the City of Spokane Valley, Spokane County, Washington, described as follows:

BEGINNING at the intersection of the North line of Broadway Avenue and the East line of Havana Street;
Thence North 300 feet along said East line to the TRUE POINT OF BEGINNING;
Thence continuing North 60 feet along said East line;
Thence East 300 feet;
Thence South 60 feet;
Thence West 300 feet to the TRUE POINT OF BEGINNING.

(Contains 1,723 sq. ft.)
Interlocal Agreement between the City of Spokane and the City of Spokane Valley regarding acquisition of property by eminent domain for the Havana Street Bridge project.

The Department of Engineering Services has determined that it is in the City's best interest to construct the Havana Street Bridge project, as set forth in Engineering Services file number 2004062 (the "Project"). Some of the property that is necessary to complete the project is located in the City of Spokane Valley. Spokane Valley is willing to assist the City of Spokane in acquiring the property according to the terms of the attached Interlocal Agreement. The Interlocal Agreement contemplates the City of Spokane Valley adopting an ordinance indicating that the property is necessary for a public purpose, authorizing the filing of a condemnation lawsuit to acquire the property and designating the City of Spokane Attorney's Office as special counsel to pursue the condemnation action on behalf of the parties.

**RECOMMENDATION:**

Approve

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**ATTACHMENTS:** Include in Packets:

On file for Review in Office of City Clerk:

**SIGNATURES:**

Real Estate & Facilities

Legal

Engineering Services, S Decker

Neighborhood Services, J Mallahan

2004062 eminent domain agenda

**COUNCIL ACTION:**

APPROVED BY

SPOKANE CITY COUNCIL:

April 6, 2009

CITY CLERK