

INTERGOVERNMENTAL LOCAL AGREEMENT
FOR STORMWATER PERMIT COMPLIANCE ACTIVITIES
BETWEEN
YAKIMA COUNTY
AND
THE CITIES OF
SELAH, UNION GAP AND SUNNYSIDE

THIS AGREEMENT is made and entered into between Yakima County, a municipal corporation of the State of Washington, hereinafter referred to as "County", and the Cities of Selah, Union Gap and Sunnyside, all being municipal corporations, hereinafter referred to as "Selah", "Union Gap" and "Sunnyside" respectively, or "Cities" when it includes all, or "City" when it is either Selah, Union Gap or Sunnyside; and,

WHEREAS, the County and Cities have authority to operate and maintain storm and surface water management systems and many other services as provided for under their relevant laws; and,

WHEREAS, Yakima County and the Cities of Selah, Union Gap and Sunnyside are required to comply with the State of Washington's Eastern Washington Phase II Municipal Stormwater General Permit, hereinafter referred to as the "Permit"; and,

WHEREAS, the County and Cities under the Permit have been encouraged to coordinate; and,

WHEREAS, the County and Cities acknowledge the benefits of a voluntary, ad hoc regional group, as allowed under the Permit; and,

WHEREAS, the County and Cities formed the Regional Stormwater Working Group (RSWG) in order to provide the best value and service for their citizens concerning the development of a regional stormwater plan to satisfy the Permit for their respective Municipal Separate Storm Sewer Systems (MS4s); and,

WHEREAS, the County and Cities under RCW Chapter 39.34, have the legal authority to enter into interlocal agreements for the sewerage and stormwater management programs within its boundaries consistent with relevant laws; and,

WHEREAS, under this interlocal agreement, the County and Cities agree to obtain and hold their own separate municipal stormwater permits and are responsible for performing all duties to comply with the standards of the Permit, as required by the Permit; and,

WHEREAS, the County and the Cities would like to continue the RSWG as outlined in this agreement for public benefit and for the protection of the quality of surface waters and ground waters of the state by managing the discharge of stormwater through their respective MS4s; and,

NOW, THEREFORE, in consideration of the covenants and agreements to be kept and performed by the parties hereto, it is agreed as follows:

Section 1. Definition of Terms

Wherever the following terms are used in this agreement they shall have the following meaning unless otherwise specifically indicated by the context in which they appear:

- A. Area of Geographic Responsibility The Areas of Geographic Responsibility for the Cities and County are as described in Section S1. of the Permit. For the Cities, this means the entire incorporated area of the City as they exist at the time of execution of this ILA and as they may be amended during the existence of this Agreement. For the County, this means the urbanized areas and the unincorporated urban growth areas associated with permitted Cities within the urbanized areas that are under the jurisdictional control of the County. This geographic area of coverage also includes any urban growth areas that are contiguous to permitted urbanized areas that are under the jurisdictional control of the County.
- B. BMP means Best Management Practice and may include, but is not limited to, a schedule of activity, prohibition of practice, maintenance procedure, and structural and/or managerial practice that, when used singly or in combination, prevents or reduces the release of pollutants and other adverse impacts to receiving waters.
- C. Board or BOCC means the Board of Yakima County Commissioners, its governing body.
- D. Capital Improvement Project (CIP) is a constructed project facility such as a road improvement or stormwater control facility that is generally of a durable nature.
- E. Chief Executive Officer (CEO) means the designated City official responsible for managing the day-to-day business affairs of City. This is either the City Manager for Council-Manager or Mayor for Mayor-Council city government.
- F. Council means the City Council, governing body of a City.
- G. Ecology means the Washington State Department of Ecology.
- H. Monthly Service Charge means the monthly portion of the annual costs distributed between the Parties and paid to the County to perform tasks identified in this Agreement.
- I. Municipal Separate Storm Sewer System (MS4) means a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by the Parties that is designed or used for collecting or conveying stormwater; which is not a combined sewer; and which is not part of a sanitary sewer.
- J. Operation and Maintenance (O&M) means the regular performance of work and corrective measures taken to repair facilities.
- K. Person means the State of Washington, any individual, public or private corporation, political subdivision, governmental agency, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever.
- L. Party (ies) means the individual or collective members of this Interlocal Agreement: Yakima County, City of Selah, City of Union Gap, City of Sunnyside.
- M. Public Services Director means the designated County official responsible for managing the RSWG business affairs for Yakima County.

- N. Regional Stormwater Working Group (RSWG) is an organization formed consisting of representatives from the Parties whose main purpose is to review and make recommendations on regional stormwater policies required under the Permit, as well as to assist in dispute resolution between the Parties.
- O. Service Rate is a rate billed to residents and businesses within a Party's jurisdiction to support their stormwater program.
- P. Systems Development Charge is a rate billed to applicants within a Party's jurisdiction proposing construction or development activities to cover the cost of review and approval of the applicant's project to ensure compliance with the Permit.
- Q. Total Maximum Daily Load (TMDL) means a site-specific allocation of water-borne pollutants from all sources to a particular receiving water to comply with the State's surface water quality criteria.
- R. Underground Injection Control (UIC) means a well that is a manmade subsurface fluid distribution system designed to discharge fluids into the ground and consists of an assemblage of perforated pipes, drain tiles, or similar mechanisms, or a dug hole that is deeper than the largest surface dimension (WAC 173-21-030). UIC systems include drywells, pipe or French drains, drain fields, and other similar devices that are used to discharge stormwater directly into the ground.

Section 2. Transfer of Responsibility

A. Purpose. The purpose for this Agreement is for the Cities and County to coordinate and collaborate on certain responsibilities of the Permit as specified in this document. The responsibilities of the Parties are defined in this Section, Section 3, Section 6 and in Section S3 of the Permit.

B. Limitations. The ownership and maintenance of facilities remains the responsibility of the Parties within their respective jurisdictions. The following stormwater program items for each Party, are not covered under this Agreement and are not included in the estimated program costs:

- Stormwater Equipment Funding
- CIP Funding
- Program Funding Mechanism
- Stormwater Program Reserve Funding
- UIC Program requirements of Chapter 173-218 WAC

C. Division of Responsibilities

1. County will administer portions of this Agreement in Sections 3, 5.A.1, and 5.A.2 with the Cities maintaining specific functions, as defined in Section 2B and 3.
2. Each Party is responsible for funding the program activities to support the Permit within their respective jurisdiction, including those activities defined by this Agreement.
3. Each Party will provide those items and activities necessary to run their respective program and maintain compliance in accordance with the Permit schedule, including but not limited to annual reporting requirements, public education and outreach, mapping of the respective

stormwater systems, MS4 O&M, illicit discharge detection and elimination, and effectiveness assessment.

4. During the term of this Agreement, Parties will operate and maintain all stormwater facilities at the level specified in the Permit and in order to retain Permit compliance.

Section 3. Representation with the EWSG

A. Participation in this agreement means that the Parties also acknowledge the existence and purpose of the Eastern Washington Stormwater Group (EWSG). The EWSG is an ad hoc, voluntary group of municipal stormwater permittees formed to share knowledge and collaborate in the implementation of the Permit in Eastern Washington and consult with Ecology on Eastern Washington needs and requirements. Since 2007, the County has taken the lead role in representing the RSWG members by attending regular EWSG meetings and disseminating information back and forth between the two groups.

B. Participation in this agreement means that the Parties agree that the County will continue in its lead role of representing the RSWG at the EWSG. Cities can choose to directly participate in the EWSG at any time by notifying the County and the Chair of the EWSG in writing and in advance of any regular meeting. The County will withdraw representation of any City in any future EWSG meeting or vote upon written notification.

Section 4. Additional Party Responsibilities

- A. In order for the Parties to fulfill the requirements of the Permit, it is anticipated that the County will occasionally require access to the Cities' MS4 and vice versa. Cities will allow the County access at any reasonable time upon reasonable notice to facilitate permit compliance within the City and the City Area of Geographic Responsibility. Likewise, the County will allow the Cities access at any reasonable time upon reasonable notice to facilitate permit compliance.
- B. The Parties will participate in the RSWG on a voluntary basis to coordinate the regional stormwater quality effort. The RSWG shall meet as desired by the Parties, to discuss status of permit compliance and address any issues related to compliance with the Permit or this interlocal agreement.
- C. UIC Program. Where UICs are a part of the public MS4, the Parties will manage them and report their activities in accordance with the Underground Injection Control (UIC) program as described in Chapter 173-218 WAC.
- D. Parties will perform operation and maintenance or CIP within their area of geographic responsibility when permit activities indicate a permit violation.
- E. Parties may use existing and future equipment sharing agreements when possible to keep stormwater O&M costs down.

Section 5. Determination of Costs; Operating Procedures and Rules Relating to Expenses

A. Determination of Costs and Division of Expenses

1. Unless otherwise identified, the expenses incurred by the County to complete RSWG and ESWG tasks to fulfill this agreement will be distributed on the following percentage basis, as agreed to by the Parties and based on relative numbers of households in each community:
 - Yakima County - 51%
 - City of Selah - 13%
 - City of Union Gap - 14%
 - City of Sunnyside - 22%
2. Upon request, some tasks identified in this agreement will be billed on a case by case basis to a specific City or Cities, such as: construction plan review, post-construction plan review, illicit discharge investigation, and specific training events outside the scope of this agreement. These activities must be requested in writing by the City, acknowledged by the County, and will be billed at actual County wages with fringe benefits and overhead.
3. The distribution of costs will remain fixed for the duration of this agreement, per Section 5.A.1 above. In the event one or more of the Parties withdraws from this Agreement, the Parties shall update said Section.
4. The County will bill for its services monthly for actual wages and benefits expenditure basis plus overhead.
5. In the event a Party withdraws from or is for any reason removed from this Agreement, then that Party shall be financially responsible for the actual percentage of that Party's total annual costs that have been expended or obligated under the Agreement on that Party's behalf as of the date of withdrawal or removal. A Party's unpaid obligations or overpayments under this subsection shall be fully compensated to the appropriate Party within forty five (45) days of the withdrawal or removal. The County's financial records for this Agreement shall be relied upon for determinations required under this subsection.

B. Operating Procedures Relating to Expenses

1. The County shall establish separate accounting codes for the purpose of tracking all expenses and service charges pursuant to the Agreement.
2. The Parties may at any reasonable time upon reasonable notice inspect and audit the books and records of the County with respect to matters within the purview of the Agreement.
3. The Cities shall pay the monthly service charge to the County no later than the 15th day of each month.
4. Payments from Cities to the County overdue by sixty (60) days will be considered late.
5. Interest may accrue on late monthly payments to the County as specified in Section 5.B.4 of this Agreement at a rate of 1.25 times the monthly Local Government

Investment Pool (LGIP) earnings rate as posted for the previous month, and will be applied each month to the unpaid balance.

- C. The Cities and the County will be billed separately by Ecology for their perspective stormwater permit fees at the standard Ecology Stormwater Permit rate for that municipality or jurisdiction. Each Party will be responsible for the payment of their own Ecology Stormwater Permit fee according to the requirements stipulated in the Permit.

Section 6. Administrative and Operating Provisions

- A. Insurance. Each Party is responsible for securing and keeping in full force and effect for the term of this agreement, at its own expense, comprehensive general liability insurance; or if self-insuring shall maintain insurance sufficient to indemnify and defend the injured party against claims for personal injury or death and property damage arising out of the actions of the responsible party, its contractors, employees and agents determined to be responsible for the injury. The Parties shall be responsible only for losses attributable to the sole negligence or intentional conduct of their agency, its elected or appointed officers, officials, employees, agents, contractors or sub-contractors. Each party that performs activities pursuant to this agreement shall maintain worker's compensation insurance, as required by state and federal statute, for its employees engaged in work on the Premises. If such work is contracted, County shall require that all contractors provide worker's compensation insurance for all their employees engaged in work on the Premises. If any class of employees engaged in work on the Premises is not covered under workers' compensation insurance, the contracting party shall cause each contractor to maintain liability insurance for limits of at least \$2,000,000 for each incident, or \$5,000,000 per incident, for injuries caused by accident or negligence.
- B. Indemnification. The parties hereby indemnify and holds harmless each other and those with legal right to enter upon the premises and will defend against any and all demands, claims, suits, risks, liabilities and obligations of any nature and any and all costs or expenses of any nature including, but not limited to, all losses, damages, judgments and reasonable attorney's fees arising from injury to or death of any and all persons and/or all property damage of any kind, whether tangible or intangible, including loss of use, in connection with or related to the construction or excavation performed under this agreement, except only those losses resulting solely from the negligence or willful misconduct of the responsible party, its employees or tenants or guests and agents. Each party's obligation hereunder is without prejudice to the other's rights to assert all defenses they may have against any claimant and the right to seek contribution from any other person or entity which may be responsible for all or any portion of the alleged claim. The Party receiving notice of a claim shall notify each of the other parties to the agreement of any claim as to which that party has the obligation to indemnify the other parties under this Agreement and each Party shall, at its sole cost and expense, defend the other parties against such claim. The defending party's defense shall include, but not be limited to, appearing and defending against any lawsuit and paying any amounts required to be paid pursuant to any judgment or settlement. Each party hereby further indemnifies and holds the other parties and its agents and guests, tenants and visitors from and against any and all demands, claims, suits, risks, liabilities, and obligations of any nature and any and all costs or expenses of any nature, including but not limited to, all losses, damages, judgments and attorney's fees arising from any breach or default in the performance of any obligation to be performed by that party or any assignee of the responsible party under the terms of this Agreement. Notwithstanding the above, if a court determines that this Agreement is subject

to the terms of RCW 4.24.115, 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 any of the parties and its agents and subcontractors, its commissioners, officers, employees or agents, that party's liability under this Paragraph shall be limited to the extent of the responsible party's negligence and that of its agents, employees, contractors, and assignees, including their proportional share of costs, reasonable attorney's fees, and expenses incurred in connection with any claim, action, or proceeding brought with respect to such injury or damage.

- C. Notice of Violation or Fine. All Parties acknowledge that they may receive notices of violations or fines from state or federal agencies for violations of state or federal rules imposed under the Permit. All Parties acknowledge that this agreement implies no shared responsibility for these violations and fines unless otherwise specifically noted by the state or federal agency. The County shall invite the responsible jurisdictions to participate in any discussions with state and federal agencies regarding notices of violation or fines involving jurisdictions actions or responsibility. All Parties acknowledge that they are singularly responsible for complying with all notices of violations and the payment of any fines involving their jurisdiction as a result of these notices or the failure to respond in a timely manner to the notices from a state or federal agencies. If more than one Party is responsible, each responsible City's responsibility for payment will be allocated based on the degree of responsibility and degree of fault of each responsible City. Disputes over the amount a Party is responsible for shall be resolved by the dispute resolution process set out in Section 7 of this Agreement. .
- D. Delegation. Nothing in this Agreement shall be construed as a limitation upon or delegation of the statutory and home rule powers of any City participating in this Agreement, nor as a delegation or limitation of the statutory powers of County. This Agreement shall not limit any right or remedy available to Cities or County against third parties arising from illegal acts of such third parties.

Section 7, Dispute Resolution; Remedies

- A. In the event of a dispute between the Parties regarding their respective rights and obligations pursuant to this Agreement, the disputing Parties shall first attempt to resolve the dispute by negotiation. If a dispute is not resolved by negotiation, the exclusive dispute resolution process to be utilized by the Parties shall be as follows:
1. Step 1. Upon failure of those individuals designated by each Party to negotiate on its behalf to reach an agreement or resolve a dispute, the nature of the dispute shall be put in writing and submitted to City's CEO and the County Public Services Director, who shall meet and attempt to resolve the issue. If the issue in dispute is resolved at this step, there shall be a written determination of such resolution, signed by City's CEO and the County Public Services Director, which determination shall be binding on the parties. Resolution of an issue at this step requires concurrence of both parties' representative. If not resolved in thirty (30) days, this issue may be taken to Step 2.
 2. Step 2. Upon failure of the City's CEO and the County Public Services Director to negotiate on its behalf to reach an agreement or resolve a dispute as provided in Step 1, the nature of the dispute shall be put in writing and submitted to the respective officials of the RSWG, who shall meet and attempt to resolve the issue. If the issue in dispute is resolved at this step, there shall be a written determination of such resolution, signed by City's CEO

and the County Public Services Director, which determination shall be binding on the parties. Resolution of an issue at this step requires concurrence of both parties' representatives. If not resolved in thirty (30) days, this issue may be taken to Step 3.

3. Step 3. In the event a dispute cannot be resolved at Step 2, the Parties shall submit the matter to mediation. The Parties shall attempt to agree on a mediator. In the event they cannot agree, the Parties shall request a list of five (5) mediators for the American Arbitration Association, or such other entity or firm providing mediation services to which the Parties may further agree. Unless the disputing Parties can mutually agree to one mediator from the list provided, each Party shall strike a name in turn, until only one name remains. The order of striking names shall be determined by lot. Any common costs of mediation shall be borne equally by the disputing Parties, who shall each bear their own costs thereof. If the issue is resolved at this step, a written determination of such resolution shall be signed by both Parties. Resolution of an issue at this step requires concurrence by both Parties.
3. Step 4. If any dispute is not settled in Step 3, either Party may request binding arbitration. The Parties shall agree, within ten (10) days of the completion of Step 3, on an arbitrator who shall be an attorney licensed to practice law in Washington (or a retired attorney) or a retired Washington judge, to resolve the dispute. If they are unable to agree on an arbitrator within ten (10) days, then each Party shall appoint an arbitrator. The two arbitrators shall choose a third. If the choice of the second or third arbitrator is not made within ten (10) days of the choosing of the prior arbitrator, then either Party may apply to the presiding judge of the judicial district of Yakima County to appoint the required arbitrator. The arbitrator(s) shall proceed according to the Washington statutes governing arbitration, and the award of the arbitrator(s) shall have the effect therein provided. The arbitration shall take place in Yakima County. Costs of a single or any third arbitrator shall be shared equally by the Parties. Each Party shall pay their own arbitrator. The arbitrators may allow discovery, as provided by Washington law and may grant any remedy or relief which the arbitrator(s) deem just and equitable and within the scope of the agreement of the Parties, including, but not limited to, specific performance of any obligation created under the agreement, any interim or provisional relief that is necessary to protect the rights or property of the Parties, or imposition of sanctions for abuse or frustrations of the arbitration process.

B. Parties may mutually agree in writing to waive any of the above steps, or to enter into alternate processes or additional processes.

Section 8. Attorney Fees

In the event any Party shall institute arbitration as set forth in this Agreement (or any other dispute resolution proceeding) against any other Party to this Agreement, in any way arising out of, connected with or relating to this Agreement, the prevailing Party in that arbitration (or any other dispute resolution proceeding) shall be entitled to recover, in addition to all other appropriate relief, the prevailing Party's costs and reasonable attorney fees incurred in that arbitration (or any other dispute resolution proceeding), said amount to be set by the arbitrator (or courts) before which the matter is tried, heard or decided.

Section 9. Modifications or Amendments

No amendment, change or modification to this Agreement shall be valid, unless in writing and adopted and signed by all the Parties hereto.

Section 10. Final Agreement/Merger

This Agreement contains the final and entire agreement between the Parties and is entered into with the understanding that all prior discussions, representations and agreements are merged into this Intergovernmental Agreement.

Section 11. Duration

This Agreement is effective until the permit expiration date of July 31, 2024. Amendment and/or extension of this ILA for the next Permit cycle shall occur no later than six (6) months before current permit expiration date, or January 31, 2024.

Section 12. Termination

Parties may terminate their obligations under this Agreement for the reasons listed below. The Permit requires that permittees notify Ecology of any/all amendment or termination actions.

- A. If a Party materially defaults in the terms of this Agreement and such default continues for a period of more than thirty (30) days after written notice from the Public Services Director to the defaulting Party specifying the nature of the default. If the default cannot reasonably be cured within thirty (30) days, such default shall be a material breach if the breaching Party fails within thirty (30) days of written notice to commence and pursue curative action with reasonable diligence. One Party's termination by default does not constitute termination of the Agreement by the remaining Parties. This Agreement will be modified to define financial obligation of the remaining Parties.
- B. If the provisions of this Agreement become impracticable due to a change in the law or other changed circumstances, which did not exist at the time of the signing of this Agreement.
- C. Any Party may withdraw from the Agreement upon thirty (30) days written notice to the other Parties. Withdrawal of one Party does not constitute termination of the Agreement by the remaining Parties. In the event of a Party's withdrawal this Agreement will be modified to define the financial obligations of the remaining Parties.

Section 13. Language; Headings

Where the context so requires the singular shall be deemed to include the plural, the plural the singular, and the masculine, feminine or neutral to mean the other. The paragraph captions shall not be used to construe or interpret this Agreement.

Section 14. Drafting; Construction

Each Party intends that this Agreement in all respects shall be deemed and construed to be equally and mutually prepared by all Parties and it is hereby expressly agreed that any uncertainty or ambiguity shall not be construed for or against any Party.

Section 15. Severability

If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired.

Section 16. Effective Date / Counterparts

This Agreement may be signed in counterparts, with each Party hereto receiving copies of all participating Party's fully executed signature pages. This Agreement shall become effective when executed by all Parties hereto.

IN WITNESS WHEREOF, this instrument has been executed in duplicate by authority of lawful actions by the Councils and Board of County Commissioners.

CITY OF SELAH

Sherry Raymond

Sherry Raymond, Mayor

Date: 1/22/2019

Attest: Joe Henne

Joe Henne

Public Works Director

CITY OF UNION GAP

Arlene Fisher

Arlene Fisher, City Manager

Date 1/28/2019

Attest: Dennis Henne

Dennis Henne

Director of Public Works & Community Development

CITY OF SUNNYSIDE

Martin Casey

Martin Casey, City Manager

Date 4/9/19

Attest: Shane Fisher

Shane Fisher

Public Works Director

BOARD OF YAKIMA COUNTY COMMISSIONERS

Michael D. Leita

Michael D. Leita, Chairman

Ron Anderson

Ron Anderson, Commissioner

Norm Childress

Norm Childress, Commissioner

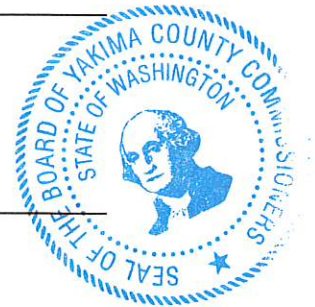
Constituting the Board of County Commissioners for Yakima County, Washington

Date: 4/16/2019

Attest: Kendra Dorais

Kendra Dorais

Acting Clerk of the Board



Approved as to Form:

Deputy Prosecuting Attorney

Deputy Prosecuting Attorney

CITY CONTRACT NO: A-2019-22
RESOLUTION NO: X
COUNCIL MTG: 04-08-19