

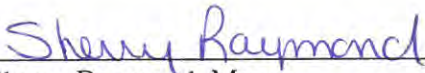
RESOLUTION NO. 2897

RESOLUTION AUTHORIZING THE PUBLIC WORKS DIRECTOR TO SIGN A WATER QUALITY STORMWATER CAPACITY AGREEMENT WITH THE WASHINGTON DEPARTMENT OF ECOLOGY FOR \$70,000 IN GRANT FUNDS FOR THE CITY'S STORMWATER MANAGEMENT PLAN

WHEREAS, the Washington Department of Ecology has awarded the City of Selah a grant of \$70,000 for the City's Stormwater Management Plan;


NOW THEREFORE, BE RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, the Public Works Director be and is authorized to sign a Water Quality Stormwater Capacity Agreement with the Washington Department of Ecology for grant funds in the amount of \$70,000 for the City's Stormwater Management Plan per the requirements of the Secure Access Washington (SAW) and the Department of Ecology's Administration of Grants and Loans (EAGL) account as the main signatory. A copy of the Agreement is attached hereto.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, this 8th day of February 2022.




Sherry Raymond, Mayor

ATTEST:



Dale Novobielski, Clerk/ Treasurer

APPROVED AS TO FORM:



Rob Case, City Attorney



Agreement No. WQSWCAP-2123-SelaPW-00206

WATER QUALITY STORMWATER CAPACITY AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

CITY OF SELAH

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY," and City of Selah, hereinafter referred to as the "RECIPIENT," to carry out with the provided funds activities described herein.

GENERAL INFORMATION

Project Title:	2021-2023 Biennial Stormwater Capacity Grants
Total Cost:	\$70,000.00
Total Eligible Cost:	\$70,000.00
Ecology Share:	\$70,000.00
Recipient Share:	\$0.00
The Effective Date of this Agreement is:	07/01/2021
The Expiration Date of this Agreement is no later than:	03/31/2023
Project Type:	Capacity Grant

Project Short Description:

This project will assist Phase I and II Permittees in implementation or management of municipal stormwater programs.

Project Long Description:

N/A

Overall Goal:

This project will improve water quality in the State of Washington by reducing stormwater pollutants discharged to state water bodies.

State of Washington Department of Ecology
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Recipient Name: City of Selah

RECIPIENT INFORMATION

Organization Name: City of Selah

Federal Tax ID: 91-6001501

DUNS Number: 606701477

Mailing Address: 222 S Rushmore Rd
Selah, WA 98942

Physical Address: 222 S Rushmore Rd
Selah, Washington 98942

Organization Email: rocky.wallace@selahwa.gov

Organization Fax: (509) 698-7372

Contacts

Agreement No: WQSWCAP-2123-SelaPW-00206
 Project Title: 2021-2023 Biennial Stormwater Capacity Grants
 Recipient Name: City of Selah

<p>Project Manager</p>	<p>Rocky Wallace Public Works Director</p> <p>222 S Rushmore Rd Selah, Washington 98942 Email: rocky.wallace@selahwa.gov Phone: (509) 698-7365</p>
<p>Billing Contact</p>	<p>Caprise Groo Public Works Admin Asistant</p> <p>222 S Rushmore Rd Selah, Washington 98942 Email: caprise.groo@selahwa.gov Phone: (509) 698-7380</p>
<p>Authorized Signatory</p>	<p>Rocky Dwain Wallace Public Works Director</p> <p>222 S Rushmore Rd Selah, Washington 98942 Email: rocky.wallace@selahwa.gov Phone: (509) 698-7365</p>

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Recipient Name: City of Selah

ECOLOGY INFORMATION

Mailing Address: Department of Ecology
Water Quality
PO BOX 47600
Olympia, WA 98504-7600

Physical Address: Water Quality
300 Desmond Drive SE
Lacey, WA 98503

Contacts

Project Manager	Kyle Graunke PO Box 47600 Olympia, Washington 98504-7600 Email: kygr461@ecy.wa.gov Phone: (360) 407-6452
Financial Manager	Kyle Graunke PO Box 47600 Olympia, Washington 98504-7600 Email: kygr461@ecy.wa.gov Phone: (360) 407-6452

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 Recipient Name: City of Selah

SCOPE OF WORK

Task Number: 1 **Task Cost:** \$5,000.00

Task Title: Project Administration/Management

Task Description:

A. The RECIPIENT shall carry out all work necessary to meet ECOLOGY grant or loan administration requirements. Responsibilities include, but are not limited to: maintenance of project records; submittal of requests for reimbursement and corresponding backup documentation; progress reports; and a recipient closeout report (including photos).

B. The RECIPIENT shall maintain documentation demonstrating compliance with applicable procurement, contracting, and interlocal agreement requirements; application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items.

C. The RECIPIENT shall manage the project. Efforts include, but are not limited to: conducting, coordinating, and scheduling project activities and assuring quality control. Every effort will be made to maintain effective communication with the RECIPIENT's designees; ECOLOGY; all affected local, state, or federal jurisdictions; and any interested individuals or groups. The RECIPIENT shall carry out this project in accordance with any completion dates outlined in this agreement.

Task Goal Statement:

Properly managed and fully documented project that meets ECOLOGY's grant and loan administrative requirements.

Task Expected Outcome:

- * Timely and complete submittal of requests for reimbursement, quarterly progress reports, Recipient Closeout Report, and two-page Outcome Summary Report.

- * Properly maintained project documentation.

Project Administration/Management

Deliverables

Number	Description	Due Date
1.1	Progress Reports that include descriptions of work accomplished, project challenges, and changes in the project schedule. Submitted at least quarterly in EAGL.	
1.2	Recipient Closeout Report (EAGL Form).	
1.3	Two-page draft and Final Outcome Summary Reports.	

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SCOPE OF WORK

Task Number: 2 **Task Cost: \$65,000.00**

Task Title: Permit Implementation

Task Description:

Conduct work related to implementation of municipal stormwater National Pollutant Discharge Elimination System (NPDES) permit requirements. If the RECIPIENT is out of compliance with the municipal stormwater National Pollutant Discharge Elimination System (NPDES) permit, the RECIPIENT will ensure funds are used to attain compliance where applicable. The following is a list of elements RECIPIENT's project may include.

- 1) Public education and outreach activities, including stewardship activities.
 - 2) Public involvement and participation activities.
 - 3) Illicit discharge detection and elimination (IDDE) program activities, including:
 - a) Mapping of municipal separate storm sewer systems (MS4s).
 - b) Staff training.
 - c) Activities to identify and remove illicit stormwater discharges.
 - d) Field screening procedures.
 - e) Complaint hotline database or tracking system improvements.
 - 4) Activities to support programs to control runoff from new development, redevelopment, and construction sites, including:
 - a) Development of an ordinance and associated technical manual or update of applicable codes.
 - b) Inspections before, during, and upon completion of construction, or for post-construction long-term maintenance.
 - c) Training for plan review or inspection staff.
 - d) Participation in applicable watershed planning effort.
 - 5) Pollution prevention, good housekeeping, and operation and maintenance program activities, such as:
 - a) Inspecting and/or maintaining the MS4 infrastructure.
 - b) Developing and/or implementing policies, procedures, or stormwater pollution prevention plans at municipal properties or facilities.
 - 6) Annual reporting activities.
 - 7) Establishing and refining stormwater utilities, including stable rate structures.
 - 8) Water quality monitoring to implement permit requirements for a Water Cleanup Plan (TMDL). Note that any monitoring funded by this program requires submittal of a Quality Assurance Project Plan (QAPP) that the DEPARTMENT approves prior to awarding funding for monitoring.
- Monitoring, including:
- a) Development of applicable QAPPs.
 - b) Monitoring activities, in accordance with a DEPARTMENT- approved QAPP, to meet Phase I/II permit requirements.
- 9) Structural stormwater controls program activities (Phase I permit requirement)
 - 10) Source control for existing development (Phase I permit requirement), including:
 - a) Inventory and inspection program.
 - b) Technical assistance and enforcement.
 - c) Staff training.
 - 11) Equipment purchases that result directly in improved permit compliance. Equipment purchases must be specific to implementing a permit requirement (such as a vactor truck) rather than general use (such as a pick-up truck). Equipment

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purchases over \$5,000 must be pre-approved by Ecology.

Documentation of all tasks completed is required. Documentation may include: field reports, dates and number of inspections conducted, dates of trainings held and participant lists, number of illicit discharges investigated and removed, summaries of planning, stormwater utility or procedural updates, annual reports, copies of approved QAPPs, summaries of structural or source control activities, summaries of how equipment purchases have increased or improved permit compliance. Capital construction projects, incentives or give-a-ways, grant application preparation, TAPE review for proprietary treatment systems, or tasks that do not support Municipal Stormwater Permit implementation are not eligible expenses.

Task Goal Statement:

This task will improve water quality in the State of Washington by reducing the pollutants delivered by stormwater to lakes, streams, and the Puget Sound by implementing measures required by Phase I and II NPDES permits.

Task Expected Outcome:

RECIPIENTS will implement measures required by Phase I and II NPDES permits.

Permit Implementation

Deliverables

Number	Description	Due Date
2.1	Documentation of tasks completed	

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BUDGET

Funding Distribution EG220364

NOTE: *The above funding distribution number is used to identify this specific agreement and budget on payment remittances and may be referenced on other communications from ECOLOGY. Your agreement may have multiple funding distribution numbers to identify each budget.*

Funding Title: 2021-23 capacity grant Funding Type: Grant
 Funding Effective Date: 07/01/2021 Funding Expiration Date: 03/31/2023

Funding Source:

Title: Model Toxics Control Operating Account (MTCOA)
 Fund:
 Type: State
 Funding Source %: 100%
 Description: MTCA

Approved Indirect Costs Rate: Approved State Indirect Rate: 30%
 Recipient Match %: 0%
 InKind Interlocal Allowed: No
 InKind Other Allowed: No
 Is this Funding Distribution used to match a federal grant? No

2021-23 capacity grant	Task Total
Project Administration/Management	\$ 5,000.00
Permit Implementation	\$ 65,000.00

Total: \$ 70,000.00

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Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
2021-23 capacity grant	0.00 %	\$ 0.00	\$ 70,000.00	\$ 70,000.00
Total		\$ 0.00	\$ 70,000.00	\$ 70,000.00

AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

SPECIAL TERMS AND CONDITIONS

GENERAL FEDERAL CONDITIONS

If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.

A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY

EXCLUSION:

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal

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Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.

8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

B. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING REQUIREMENTS:

CONTRACTOR/RECIPIENT must complete the FFATA Data Collection Form (ECY 070-395) and return it with the signed agreement to ECOLOGY.

Any CONTRACTOR/RECIPIENT that meets each of the criteria below must report compensation for its five top executives using the FFATA Data Collection Form.

- Receives more than \$25,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than \$25,000,000 in annual federal funds.

Ecology will not pay any invoices until it has received a completed and signed FFATA Data Collection Form. Ecology is required to report the FFATA information for federally funded agreements, including the required DUNS number, at www.fsr.gov <http://www.fsr.gov> within 30 days of agreement signature. The FFATA information will be available to the public at www.usaspending.gov <http://www.usaspending.gov>.

For more details on FFATA requirements, see www.fsr.gov <http://www.fsr.gov>.

C. FEDERAL FUNDING PROHIBITION ON CERTAIN TELECOMMUNICATIONS OR VIDEO SURVEILLANCE SERVICES OR EQUIPMENT:

As required by 2 CFR 200.216, federal grant or loan recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf) <https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf>, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

Recipients, subrecipients, and borrowers also may not use federal funds to purchase certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the [System for Award Management \(SAM\)](https://sam.gov/SAM/) <https://sam.gov/SAM/> exclusion list.

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GENERAL TERMS AND CONDITIONS

Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology

GENERAL TERMS AND CONDITIONS

For DEPARTMENT OF ECOLOGY GRANTS and LOANS

06/24/2021 Version

1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/1701004.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

2. AMENDMENTS AND MODIFICATIONS

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

The RECIPIENT must comply with the Washington State Office of the Chief Information Officer, OCIO Policy no. 188, Accessibility (<https://ocio.wa.gov/policy/accessibility>) as it relates to "covered technology." This requirement applies to all products supplied under the Agreement, providing equal access to information technology by individuals with disabilities, including and not limited to web sites/pages, web-based applications, software systems, video and audio content, and electronic documents intended for publishing on Ecology's public web site.

4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take all reasonable action to avoid, minimize, or mitigate adverse effects to archaeological and historic archaeological sites, historic buildings/structures, traditional cultural places, sacred sites, or other cultural resources, hereby referred to as Cultural Resources.

The RECIPIENT must agree to hold harmless ECOLOGY in relation to any claim related to Cultural Resources discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
 - Cultural Resource Consultation and Review should be initiated early in the project planning process and must be completed prior to expenditure of Agreement funds as required by applicable State and Federal requirements.
- * For state funded construction, demolition, or land acquisitions, comply with Governor Executive Order 21-02, Archaeological and Cultural Resources.

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- For projects with any federal involvement, comply with the National Historic Preservation Act of 1966 (Section 106).
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves field activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.
 - Make the IDP readily available to anyone working at the project site.
 - Discuss the IDP with staff, volunteers, and contractors working at the project site.
 - Implement the IDP when Cultural Resources or human remains are found at the project site.
- c) If any Cultural Resources are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
- Immediately stop work and notify the ECOLOGY Program, who will notify the Department of Archaeology and Historic Preservation at (360) 586-3065, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, the Department of Archaeology and Historic Preservation at (360) 790-1633, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting Cultural Resources and human remains.

5. ASSIGNMENT

No right or claim of the RECIPIENT arising under this Agreement shall be transferred or assigned by the RECIPIENT.

6. COMMUNICATION

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

7. COMPENSATION

- a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.
- b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.
- c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.
- d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.
- e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.
- f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.
- g) RECIPIENT will receive payment through Washington State's Office of Financial Management's Statewide Payee Desk. To receive payment you must register as a statewide vendor by submitting a statewide vendor registration form and an IRS W-9 form at website, <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>. If you have questions about the vendor registration process, you can contact Statewide Payee Help Desk at (360) 407-8180 or email PayeeRegistration@ofm.wa.gov.
- h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.
- i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.

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j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this Agreement. Failure to comply may result in delayed reimbursement.

8. COMPLIANCE WITH ALL LAWS

RECIPIENT agrees to comply fully with all applicable federal, state and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
- b) RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.
- c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.
- d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

ECOLOGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

9. CONFLICT OF INTEREST

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

10. CONTRACTING FOR GOODS AND SERVICES

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

11. DISPUTES

When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal decisions as provided for below:

- a) RECIPIENT notifies the funding program of an appeal request.
- b) Appeal request must be in writing and state the disputed issue(s).
- c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- d) ECOLOGY reviews the RECIPIENT's appeal.
- e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review.

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The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

The parties agree that this dispute process will precede any action in a judicial or quasi-judicial tribunal.

Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

Nothing in this Agreement will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

12. ENVIRONMENTAL DATA STANDARDS

a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
- Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
- Submit the QAPP to ECOLOGY for review and approval before the start of the work.

b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at:

<http://www.ecy.wa.gov/eim>.

c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at:

<https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

13. GOVERNING LAW

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

14. INDEMNIFICATION

ECOLOGY will in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this Agreement.

15. INDEPENDENT STATUS

The employees, volunteers, or agents of each party who are engaged in the performance of this Agreement will continue to be employees, volunteers, or agents of that party and will not for any purpose be employees, volunteers, or agents of the other party.

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Recipient Name: City of Selah

16. KICKBACKS

RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this Agreement to give up any part of the compensation to which he/she is otherwise entitled to or receive any fee, commission, or gift in return for award of a subcontract hereunder.

17. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

- a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.
- b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

18. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; (f) Ecology Funding Program Guidelines; and (g) General Terms and Conditions.

19. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

- a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.
- c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

20. PROGRESS REPORTING

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Recipient Name: City of Selah

- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.
- e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the Agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

21. PROPERTY RIGHTS

- a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.
- b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.
- c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.
- d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.
- e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
- f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:
 1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.
 2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.
- g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

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22. RECORDS, AUDITS, AND INSPECTIONS

RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

- a) Be kept in a manner which provides an audit trail for all expenditures.
- b) Be kept in a common file to facilitate audits and inspections.
- c) Clearly indicate total receipts and expenditures related to this Agreement.
- d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder.

RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder.

RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

23. RECOVERY OF FUNDS

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this Agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

24. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

26. SUSPENSION

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

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27. SUSTAINABLE PRACTICES

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

- a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.
- b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, 100% post-consumer recycled paper, and toxic free products.

For more suggestions visit ECOLOGY's web page, Green Purchasing,
<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

28. TERMINATION

a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Failure to Commence Work. ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

Non-Performance. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement.

Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

b) For Convenience

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar days prior written notification to the RECIPIENT, except as noted below. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Non-Allocation of Funds. ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, or renegotiate the Agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the RECIPIENT through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the RECIPIENT. In no

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event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the Agreement and any amendments. If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination. RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

c) By Mutual Agreement

ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.

d) In Event of Termination

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

29. THIRD PARTY BENEFICIARY

RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this Agreement, the state of Washington is named as an express third party beneficiary of such subcontracts with full rights as such.

30. WAIVER

Waiver of a default or breach of any provision of this Agreement is not a waiver of any subsequent default or breach, and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of ECOLOGY.

End of General Terms and Conditions

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, City Manager

Date _____

Attest: Dennis Henne

Director of Public Works & Community
Development

CITY OF SUNNYSIDE

Martin Casey, City Manager

Date _____

Attest: Shane Fisher

Public Works Director

BOARD OF YAKIMA COUNTY
COMMISSIONERS

Michael D. Leita, Chairman

Ron Anderson, Commissioner

Norm Childress, Commissioner

*Constituting the Board of County Commissioners for
Yakima County, Washington*

Date: _____

Attest: Rachel Michael

Clerk of the Board

Approved as to Form:

Deputy Prosecuting Attorney

CITY OF SELAH

Sherry Raymond

Sherry Raymond, Mayor

Date: 11/22/2019

Attest: Joe Henne

Joe Henne

Public Works Director

CITY OF UNION GAP

Arlene Fisher, City Manager

Date _____

Attest: Dennis Henne

Director of Public Works & Community
Development

CITY OF SUNNYSIDE

Martin Casey, City Manager

Date _____

Attest: Shane Fisher

Public Works Director

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Sherry Raymond, Mayor

Date: 1/22/2019

Attest: Joe Henne

Joe Henne
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