

### I. Permittee Information

**Permittee Name**  
City of Asotin

**Permittee Coverage Number**  
WAR046500

**Contact Name**  
Cheryl Sonnen

**Phone Number**  
509-243-2071

**Mailing Address**  
P.O. Box 160

**City**  
Asotin

<b>State</b>	<b>Zip + 4</b>
WA	99402

**Email Address**  
csonnen@co.asotin.wa.us

### II. Regulated Small MS4 Location

**Jurisdiction**  
City of Asotin

*Entity Type: Put an X in the box that applies*

County	City/Town	Other
	X	

**Major Receiving Water(s)**  
Snake River, Asotin Creek

### III. Relying on another Governmental Entity

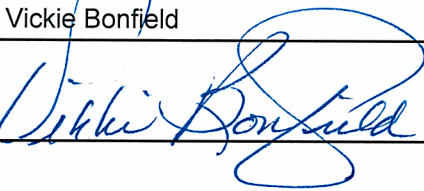
If you are relying on another governmental entity to satisfy one or more of the permit obligations, list the entity and briefly describe the permit obligation(s) they are implementing on your behalf below. ***Attach a copy of your agreement with the other entity to provide additional detail (unless previously submitted).***

Name of Entity:	Permit Obligation(s):
Asotin County per ILA	Public Education & Outreach
(see attached)	Public Participation
	Illicit Discharge Detection & Elimination
	Construction/Post-Construction Stormwater
	Reporting, Training Good Housekeeping

#### IV. Certification

All annual reports must be signed and certified by the responsible official(s) of permittee or co-permittees. Please print and sign this page of the reporting form and mail it (with an original signature) to Ecology at the address noted below. An electronic signature will not suffice.

I certify under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that Qualified Personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for willful violations.

Name	Vickie Bonfield	Title	Mayor	Date	
Name		Title	Mayor	Date	3/26/12
Name		Title		Date	
Name		Title		Date	
Name		Title		Date	

**VI. Status Report Covering Calendar Year 2011****Jurisdiction: City of Asotin**

PLEASE label information in any attachments with corresponding question numbers.

PLEASE fill out your jurisdiction name in line 1 above.

PLEASE refer to the INSTRUCTIONS tab for assistance filling out this table.

For additional clarification on how to answer questions, put cursor over cell with red flagged corners.

PLEASE review your work for completeness and accuracy. Save this worksheet as you go!

Question	Y/N/ NA	Comments (50 word limit)	Name of Attachment & Page Number, if applicable
1 <b>Attached</b> annual written update of Permittee's Stormwater Management Program (SWMP), including applicable requirements under S5.A.3 and S9.	Y	Stormwater Management Plan can be found at <a href="http://www.asotincountystormwater.com/Annual-Reports.html">http://www.asotincountystormwater.com/Annual-Reports.html</a>	
2 <b>Attached</b> a copy of any annexations, incorporations or boundary changes resulting in an increase or decrease in the Permittee's geographic area of permit coverage during the reporting period, and implications for the SWMP as per S9.E.3.	N/A		
3 Tracked or estimated the cost of development and implementation of the SWMP. (S5.A.4.a.ii)	Y	Stormwater program purchased a database to track activities and costs of program implementation. Monthly income and expense report reviewed by the Management Team.	
4 Developed and fully implemented a public education and outreach strategy designed to reach all of the identified target audiences. (S5.B.1.b)	Y		
4a <b>Attached</b> a description of the number and type of public education and involvement activities (S5.B.1.b)	Y		Public Involvement & Participation (3 pages)

Question		Y/N/NA	Comments (50 word limit)	Name of Attachment & Page Number, if applicable
5	Implementing a program or policy with opportunities for the public to participate in the decision making processes involving the development, implementation, and updates of the SWMP. (S5.B.2.a and S9.E.2.c)	Y	The Stormwater Management Team meets on a monthly basis to review the day-to-day activities of the stormwater program and make recommendations on policies related to the program. Management Team meetings are advertised with other municipal meeting notices in the Lewiston Tribune.	
6	Made the most current version of the SWMP available to the public. If posted on website, list address in <i>Comments</i> field. (S5.B.2.b)	Y	2011 SWMP is posted on the website.	<a href="http://www.asotincountystormwater.com/Annual-Reports.html">http://www.asotincountystormwater.com/Annual-Reports.html</a>
7	Completed at least two-thirds of the map of your MS4. (S5.B.3.a)	Y	The Regional Stormwater Program completed mapping for Asotin County and the cities of Asotin and Clarkston.	
7a	<b>Attached</b> a summary of the status of the mapping and updated storm drainage infrastructure information; do not include the map. (S5.B.3.a)	N/A		
8	Developed and fully implemented an ongoing program to detect and address non-stormwater discharges to the MS4, including spills and illicit connections. (S5.B.3.c.i through iv)	Y		
9	Field assessed at least three high priority water bodies to verify outfall locations and detect illicit discharges. (S5.B.3.c.ii)	Y	There are only two water bodies in the City of Asotin permit boundary. Outfalls were assessed during mapping. No illicit discharges detected.	
9a	<b>Attached</b> a summary of outfalls and illicit discharges discovered, and actions taken to eliminate the illicit discharges. (S5.B.3.c.ii)	N/A		
10	Distributed appropriate information to target audiences to inform public employees, businesses, and the general public of hazards associated with illicit discharges. (S5.B.3.d.i)	Y	Display racks set up in Asotin County Courthouse, County Annex building, Asotin City Hall and Clarkston City Hall contain information about illicit discharges. Information provided at outreach booths throughout the year.	

Question		Y/N/ NA	Comments (50 word limit)	Name of Attachment & Page Number, if applicable
11a	Publicized a hotline or other local telephone number for public reporting of illicit discharges, including spills. (S5.B.3.d.ii)	Y	A flyer was developed and provided to residents at the outreach programs attended by the Stormwater Program. Phone number is 509-243-2071	
11b	<b>Attached</b> summary of hotline reports received and follow-up actions taken during the reporting period (S5.B.3.d.ii)	Y	One report was received. A site visit was conducted and corrective action was taken.	
12	Provided adequate training to all staff responsible for identification, investigation, termination, cleanup, and reporting of illicit discharges and illicit connections. (S5.B.3.f)	Y		
13	Provided training to all municipal field staff that as part of their normal job responsibilities might come into contact with or otherwise observe an illicit discharge or illicit connection to the MS4, including office personnel who might receive reports of illicit discharges. (S5.B.3.g)	N	G20 letter submitted. Training will occur in 2012.	
14	Adopted and implemented procedures for IDDE program evaluation and assessment. (S5.B.3.e)	Y		
14a	<b>Attached</b> summary of numbers and types of illicit discharges identified; inspections made; and any feedback received from public education efforts. (S5.B.3.e)	N/A	No illicit discharges identified.	
15	Adopted and implemented procedures for construction site plan review. (S5.B.4.b)	Y		
16	Reviewed <i>Stormwater Site Plans</i> including construction SWPPPs for new development and redevelopment projects.	N/A		
16a	Number of site plans reviewed during the reporting period:	N/A		

Question		Y/N/ NA	Comments (50 word limit)	Name of Attachment & Page Number, if applicable
16b	Number of SWPPPs reviewed during the reporting period:	N/A		
16c	Number of site plans approved during the reporting period:	N/A		
17	Adopted and implemented procedures for site inspection and enforcement of construction stormwater pollution control measures. (S5.B.4.c)	Y		
18	Provided adequate training for all staff involved in permitting, plan review, field inspection and enforcement for construction site runoff control. (S5.B.4.b.i and S5.B.4.c.ii)	Y		
19	Inspected construction-phase stormwater controls at new development and redevelopment projects. (S5.B.4.c.iii)	N/A		
19a	Number of sites inspected during the reporting period:	N/A		
19b	Number of enforcement actions taken during the reporting period:	N/A		
20	Provided information to construction site operators about training available on how to comply with requirements in Appendix I and the BMPs in the <i>Stormwater Management Manual for Eastern Washington</i> , or an equivalent document. (S5.B.4.d and S5.B.5.e)	Y	Developed flyer for contractors, developers, etc., that outlines the County's permit requirements for medium and large projects, along with information regarding Ecology's construction stormwater permit and available training opportunities. Also, The Stormwater Program website was updated with this information. You can view the information at <a href="http://www.asotincountystormwater.com/Contractors.html">http://www.asotincountystormwater.com/Contractors.html</a> . CESCL recertification training was offered in Asotin County. Additionally, the Construction Field Guide was provided to contractors when they applied for stormwater construction permits.	

Question		Y/N/NA	Comments (50 word limit)	Name of Attachment & Page Number, if applicable
21	Adopted and implemented procedures for post-construction site plan review. (S5.B.5.b)	Y		
22	Adopted and implemented procedures for post-construction site inspection and enforcement of post-construction stormwater control measures. (S5.B.5.c)	Y		
23	Inspected post-construction stormwater controls, including structural BMPs, at new development and redevelopment projects. (S5.B.5.c)	N/A		
23a	Number of sites inspected during the reporting period:	N/A		
23b	Number of structural BMPs inspected at new development and redevelopment sites during the reporting period:	N/A		
23c	Number of enforcement actions taken during the reporting period:	N/A		
24	Inspected structural BMPs at least once during installation. (S5.B.5.c.ii)	N/A		
24a	Number of structural BMPs inspected during installation during the reporting period:	N/A		
25	Provided adequate training for all staff involved in permitting, planning, review, inspection and enforcement for post-construction stormwater control. (S5.B.5.d)	Y		
26	Developed and fully implemented the Operation and Maintenance plan for municipal operations. (S5.B.6.a)	N	G20 letter submitted. O&M plans will be completed and training will occur in 2012.	

Question		Y/N/ NA	Comments (50 word limit)	Name of Attachment & Page Number, if applicable
27	Inspected stormwater treatment and flow control facilities owned or operated by the Permittee at least once. (S5.B.6.a.i)	Y	Inspected during mapping process.	
27a	Number of known facilities:		3	
27b	Number of facilities inspected during the reporting period:		3	
28	Have NPDES permit coverage for stormwater discharges for all applicable construction projects and industrial facilities. (S5.B.6.a.i)	Y		
29	Conducted spot checks of stormwater facilities after major storms. (S5.B.6.a.ii)	N/A		
30	Provided adequate training for staff with primary construction, operations, or maintenance job functions that are likely to impact stormwater quality. (S5.B.6.b)	Y	SWPPP training provided in 2010. Updated training available in 2012.	
31	<b>Attached</b> information identifying the BMP(s) selected for runoff treatment BMP effectiveness, and describes that status of identification of sites, if applicable. (S8.C.2.b)	N/A	Below population threshold.	
32	Notified Ecology of the failure to comply with the permit terms and conditions within 30 days of becoming aware of the non-compliance. (G20)	Y	G20 letter submitted to Ecology.	G20 Letter
33	Notified Ecology immediately in cases where the Permittee becomes aware of a discharge into or from the Permittee's MS4 which could constitute a threat to human health, welfare, or the environment? (G3)	N/A		



Question	Y/N/ NA	Comments (50 word limit)	Name of Attachment & Page Number, if applicable
34 Took appropriate action to correct or minimize discharges into or from the MS4 which could constitute a threat to human health, welfare, or the environment. (G3.A)	N/A		
35 <b>Attached</b> a summary of the status of implementation of any actions taken pursuant to S4.F and the results of monitoring, assessment, and evaluation efforts conducted during the reporting period. (S4.F.3.d)]	N/A		

### Information Collection, S8.B.1 Description of Monitoring Studies

If applicable, you are required to provide information to fulfill permit requirement S8.B.1 in each annual report. You must describe any stormwater monitoring or studies conducted by you during the reporting period. If stormwater monitoring was conducted on your behalf, or if studies or investigations conducted by other entities were reported to you, you must briefly describe the type of information gathered or received during the reporting period.

Please note in row #1 of the table below if you have no information to report.

NOTE: Please limit your entries to 255 characters per cell. You may include additional information in your Supplemental Documentation attachment and reference it below with the page number.

### Information Collection

<b>Briefly describe any stormwater monitoring, studies, or type of information collected and analyzed during the reporting period. (S8.B.1)</b>	<b>Who/how to contact for additional information?</b>
1. N/A	
2.	
3.	
4.	
5.	
6.	

## VII. Information Collection, BMP Evaluation, and Monitoring

Complete Part B for all annual reports.

### B. SWMP Evaluation

You are required to assess the appropriateness of the BMPs you have selected to implement your SWMP. This evaluation is necessary to evaluate whether the MEP standard set by the permit is protective of water quality in your receiving water bodies. This assessment may be entirely qualitative. Answer **NA** if you are not yet implementing BMPs for a component of the SWMP. (S8.B.2 and S9)

Question	Y/N/NA	Comments (50 word limit)
1. Are the BMPs selected and implemented for Public Outreach appropriate to minimize pollutants in the MS4 to the MEP?	Y	
2. Are the BMPs selected and implemented for Public Involvement appropriate to minimize pollutants in the MS4 to the MEP?	Y	
3. Are the BMPs selected and implemented for Illicit Discharge Detection and Elimination appropriate to minimize pollutants in the MS4 to the MEP?	Y	
4. Are the BMPs selected and implemented for Construction Stormwater Pollution Prevention appropriate to minimize pollutants in the MS4 to the MEP?	Y	
5. Are the BMPs selected and implemented for Post-Construction Runoff Management appropriate to minimize pollutants in the MS4 to the MEP?	Y	
6. Are the BMPs selected and implemented for Good Housekeeping for Municipal Operations appropriate to minimize pollutants in the MS4 to the MEP?	Y	

## VII. Information Collection, BMP Evaluation, and Monitoring

Complete Part C for all annual reports.

### C. Changes in BMPs or objectives (S8.B)

If any of the BMPs or objectives is being changed, list the old BMP and objective, the new BMP and objective, and a justification for the change below. (S8.B.2., and S9)

NOTE: You may choose to attach additional documentation justifying Changes in BMPs or objectives. Note such attachments in the *Justification for change* field.

	Old BMP	Old Objective	New BMP	New Objective	Justification for Change
1	N/A				
2					
3					
4					
5					
6					
7					

## Public Involvement and Participation

*Develop a program to create opportunities for the public to participate in the decision making process involving the development, implementation, and update of the Stormwater Management Plan and associated ordinances.*

### Public Meetings and Public Hearings

1/3/11	Clarkston City Council	Participated in a meeting with the Clarkston Community Development Committee to discuss the Phase II permit.
2/14/11	Asotin County Commissioners	Board authorized checking account and petty cash for the stormwater utility. Discussed changing the permit boundary.
2/28/11	Asotin County Commissioners	Conducted hearing for Illicit Discharge Detection & Elimination ordinance to clarify the effective date. Advertised per policy.
4/21/11	Clarkston City Council	Clarkston Council sponsored a meeting with Ecology and Respect Clarkston to review the alternate stormwater management plan presented by Respect Clarkston.
5/16/11	Asotin County Commissioners	Board approved utility billing contract.
10/24/11	Asotin County Commissioners	Commissioners conducted a public hearing to discuss making changes to the stormwater program permit boundary. They took public comment and decided to change the boundary to the 2000 Census-defined urbanized area boundary to be effective 1/1/12.
11/21/11	Asotin County Commissioners	Board approved consultant contract to develop O&M plans for Asotin County, Clarkston and Asotin.
10/10/11	Asotin City Council	Discussed hiring consultant to develop O&M plans.

### Stormwater Management Team Meetings

4/19/11	Answered questions from the audience, reviewed the budget, and discussed the permit boundary and bylaws.
6/13/11	Answered questions from the audience, reviewed the budget, and discussed the permit boundary, bylaws and possible changes to interlocal agreement language.
7/11/11	Answered questions from the audience, reviewed the budget, and discussed the permit boundary and sweeper policy.
8/30/11	Answered questions from the audience, reviewed the budget, and discussed the permit boundary, reviewed workload and set priorities and total quality management philosophy.
9/19/11	Answered questions from the audience, reviewed the budget, and discussed the permit boundary, and reviewed the Ecology funding cycle and possible projects.
10/17/11	Answered questions from the audience, reviewed the budget, and discussed best management practices for fire hydrant flushing and PUD well flushing.

11/14/11	Answered questions from the audience, reviewed the budget, discussed hiring consultant to develop operation and maintenance plans, reviewed construction permit fees, discussed PUD well flushing with PUD staff, and discussed how to handle delinquent utility fee payments.
11/2/11	Conducted Management Team budget subcommittee meeting to finalize the stormwater budget for inclusion at the County's budget hearing.
12/12/11	Answered questions from the audience, reviewed the budget, discussed the new Ecology Phase II draft permit workshop and hearing, received presentation from summer intern regarding mapping and development of flow network, discussed developing a training for contractors/builders that work on projects less than one acre and discussed Ecology grant cycle.

## Public Education and Outreach

### *Develop and implement a formal Public Education and Outreach (PE&O) Program*

- Distribute educational materials to the community about the impacts of stormwater discharges to water bodies and the steps that can be taken to reduce pollutants in stormwater.

## Newspaper Articles

1/4/11	Judge rules on stormwater ballot title
1/22/11	Asotin, Whitman counties get stormwater grants
1/24/11	Clarkston votes face stormwater decision
1/25/11	Clarkston council delays funding action awaiting stormwater vote
2/9/11	Stormwater utility fails by wide margin in Clarkston
2/15/11	New stormwater plan presented
3/4/11	State agency flushes Clarkston's alternative stormwater proposal
3/17/11	Clarkston group submits revised stormwater plan
5/22/11	Stormwater workshop brings Clarkston parties together
5/17/11	Bid for stormwater utility billing awarded
6/7/11	Asotin County petition takes aim at stormwater policies
6/14/11	Clarkston Council rolls out utility ordinance
6/18/11	Clarkston still working on stormwater fee issue
6/28/11	Clarkston dumps stormwater utility
8/9/11	Clarkston council OKs adding stormwater fee to sewer bills
8/31/11	Authorities may adjust stormwater boundaries, cutting fees for some
9/19/11	Asotin County examines stormwater permit boundary lines
10/25/11	Stormwater boundary gets smaller
11/14/11	Stormwater team meets today in Asotin
11/22/11	Asotin County to hire a consultant for stormwater issues
12/8/11	State officials hear concerns about new stormwater rules

## TV and Radio Interviews

1/12/11	Participated as a guest on the Opinion Please! radio program to answer questions about the stormwater program requirements and the utility ordinance and fees.
7/13/11	Participated as a guest on the Opinion Please! radio program to answer

	questions about the stormwater program.
11/1/11	Interview with KLEW TV about the permit boundary changes, the new Phase II Permit and hiring a consultant to complete our O&M plans.
12/14/11	Participated as a guest on the Opinion Please! radio program to answer questions about the stormwater program.

### Public Events – Information Booth

#### Asotin County Fair

- Set up booth at Asotin County Fair, April 22 – 24, 2011 to provide information to the public.

#### Alive After Five – Clarkston

- July 7, 2011
- August 5, 2011

### Presentations

Attended Public Works Day activities. Provided grade school students with information about stormwater, sources of pollutants and what they can do to prevent stormwater pollution. Approximately 350 students attended the event.

Sponsored CESCL recertification training in Asotin County. Five participants attended.

### Other

Purchased 4 car wash kits for use for charity car washes - 5 car wash kits rented

Updated website.

New address: [www.asotincountystormwater.com](http://www.asotincountystormwater.com)

Meeting information posted prior to meetings

Provided copies of all ordinances in public locations:

- Courthouse Annex
- Courthouse

Posted current Stormwater Management Plan to website

Display racks with stormwater information, frequently asked questions, construction stormwater requirements, water quality flyers, etc.

- Courthouse Annex
- Courthouse
- Clarkston City Hall
- Asotin City Hall

Developed new website with assistance from Ecology Grants of Regional or Statewide Significance. Website has information for the general public, businesses and construction developers, contractors, etc. The website can be accessed by Eastern WA Permittees to download TV and radio ads, posters, flyers, etc. The website is located at [www.onlyraindownthedrain.com](http://www.onlyraindownthedrain.com).

## Citizen Call: - 3/23/2011

### Notification

Date call received:	3/23/2011	Received By:	Ellen Boatman
Time call received:	3:45:00 PM	Routed To:	Cheryl Sonnen
How Notified:	Telephone	Time Taken for Call:	0
Applies To:	Stormwater	Category:	Illicit discharge

### Complainant details

Name:	Unknown	Address:	Unknown
Phone:	(000) 000-0000	City:	<None>
Wk Phone:	(000) 000-0000	State:	Zip:
Mobile:	(000) 000-0000		
Email:	Unknown		

### Complaint details

Date observed:	3/23/2011	Address:	1402 4th Street
Time observed:		City:	Asotin
Currently discharging:	UNKNOWN	Zip:	99402

#### Details:

Complaint of animal waste washing into road.

Discharge color:	Not Applicable	Discharge odor:	Not Applicable		
Call status:	OPEN	Investigation req'd:	YES		
Priority status:	High	Drainage basin:	<Unknown>		
Receiving Water:	<Unknown>	Sub Basin:	<Unknown>		
Longitude:	0	Map X:	0		
Latitude:	0	Map Y:	0		
		Map Z:	0		
Township:	0	Range:	0	Section:	0
Map Number:	<N/A>	APN:	<N/A>		

#### Final Notes:

I drove by the property. There is a small pen that holds two horses. There is no vegetation in the pen so the ground is disturbed and manure has not been removed. The property slopes to the road. There is at least a 2' buffer of grass around the majority of the pen, except where the private road meets with 4th St. There the buffer is only about 1' wide. I didn't see any discharge the day I visited the property, but this is likely the area if there was any discharge. I let Ellen know what I saw.

### Agencies contacted

Agency	Date contacted
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### Alleged responsible party





## CITY OF ASOTIN

October 17, 2011

(509) 243-4411 P.O. BOX 517 ASOTIN, WASHINGTON 99402

Mr. David Duncan  
Dept. of Ecology  
4601 N. Monroe Street  
Spokane, WA 99205-1295

Re: G20. NON-COMPLIANCE NOTIFICATION  
Permit #WAR046500 – City of Asotin

Dear Mr. Duncan:

The City of Asotin was recently advised by our Regional Stormwater Coordinator (Cheryl Sonnen) of the administrative non-compliances listed below. I was shocked by this news and wish to take this opportunity to express the City of Asotin's commitment to resolve these non-compliances as soon as possible.

This letter is to notify the Department of Ecology of non-compliance with the Phase II Municipal Stormwater Permit #WAR046500 in the following areas of the Permit.

1. **S9. Reporting and Recording and S5.B.2b – Annual report and updated Stormwater Management Plan.**

City of Asotin has not yet submitted a 2010 Annual Report and updated Stormwater Management Plan. This is an administrative non-compliance, not an action on the City's part that will lead to a water quality violation.

2. **S5.B.3c - Illicit Discharge Detection & Elimination plan.**

City of Asotin has not yet developed a written plan for the Illicit Discharge Detection & Elimination program. This is an administrative non-compliance, not an action on the City's part that will lead to a water quality violation. At this time, the City is depending on the IDDE hotline and complaints received by staff.

3. **S5.B.6a. – Operations and Maintenance Plan**

City of Asotin has not yet developed a written O&M Plan. This is an administrative non-compliance, not an action on the City's part that will lead to a water quality violation. O&M activities are being conducted by the Street Crew but an official plan and schedule has not been developed.

The City of Asotin is committed to being in compliance with our Stormwater Permit. We anticipate completing the above Permit Requirements by November 30, 2011.

If you have any questions about these items, feel free to contact me.

Sincerely,

James D. Miller  
Mayor / City of Asotin

cc: Cheryl Sonnen / Stormwater Coordinator  
Asotin County Board of Commissioners  
City of Clarkston  
Jane E. Richards / City Attorney

**INTERLOCAL COOPERATION AGREEMENT  
BETWEEN ASOTIN COUNTY, CITY OF ASOTIN  
AND CITY OF CLARKSTON  
FOR STORM SEWER AND SURFACE WATER MANAGEMENT PUBLIC UTILITY**

This agreement is made by and between Asotin County, City of Asotin and City of Clarkston.

WHEREAS, the Department of Ecology on January 17, 2007, issued the Eastern Washington Phase II Municipal Storm Water Permit in compliance with provisions of the State of Washington Water Pollution Control Law, Chapter 90.48, Revised Code of Washington, and the Federal Water Pollution Control Act (the Clean Water Act), Title 33, United States Code Section 1251, et seq., and

WHEREAS, each of the respective Parties are individual primary permittees of Permit Nos. WAR046500, WAR046501, and WAR046502, respectively; and

WHEREAS, compliance with the permits requires the Cities and the County to regulate the amount of pollution carried by stormwater into national waters, because it causes a potential hazard to the health, safety and welfare of the lives and property in the Service Area

WHEREAS, construction of homes and businesses by the citizens of the county have reduced the amount of pervious surface available for stormwater to be absorbed naturally into the soil and increased the volume and velocity of runoff and amount of pollutants in stormwater, it is appropriate to charge all properties that add to the potential increase of polluted stormwater;

WHEREAS; all funds raised by the stormwater fees for regulation and mitigation of stormwater runoff will be deposited into a single fund and used exclusively for operations and maintenance of the stormwater system, and any revenue generated over and above the cost of daily operations will only be used for purposes of the Regional Storm Sewer and Surface Water Management Public Utility;

WHEREAS, the Parties have independently adopted uniform Illicit Discharge Detection and Elimination (IDDE) Ordinances and Construction Ordinances; and

WHEREAS, in the development of those ordinances a number of public meetings and public hearings were conducted and a Stormwater Advisory Group held public meetings for the purpose of obtaining public input, as required by the permits, resulting in the recommendation that a Storm Water Utility should be created to provide a stable funding mechanism to pay for a Regional Storm Sewer and Surface Water Management Public Utility; and

WHEREAS, the recommendation of the Stormwater Advisory Committee was presented

at open houses, informational meetings, and considered at public hearings held by the legislative bodies of the Cities of Asotin and Clarkston, and the County of Asotin. At these hearings testimony of persons who appeared was considered and any comments received were reviewed and considered prior to a vote by the legislative authorities agreeing to this agreement and establishing the Regional Storm Sewer and Surface Water Management Public Utility;

WHEREAS, the entities have previously entered into an Intergovernmental Cooperation Agreement for fiscal year 2006, Phase II Municipal Stormwater Grants Program between the City of Asotin, the City of Clarkston, and the County of Asotin, on or about the 3rd day of March, 2007, and entered into an Addendum to Interlocal Cooperation Agreement for fiscal year 2008, Phase II Storm Water Grants Program dated on or about the 17th day of April, 2008; and

WHEREAS, by executing this agreement each of the parties commits to the independent creation of a Storm Sewer and Surface Water Management Public Utility pursuant to RCW Chapters 35.67 for the Cities, and 36.89 for the County; and

WHEREAS, the County of Asotin's Board of Commissioners authorize the execution of this agreement by Resolution No. 10-25 adopted on the 27 day of September, 2010; and

WHEREAS, the City of Clarkston's council authorized the execution of this agreement by Resolution No. 2010-18 adopted on the 13<sup>th</sup> day of September, 2010; and

WHEREAS, the City of Asotin's council authorized the execution of this agreement by Resolution No. 2010-449 adopted on the 13<sup>th</sup> day of September, 2010; and

WHEREAS, the parties enter into this Interlocal Cooperation Agreement under the authority of RCW Chapter 39.34 to provide for the joint and/or cooperative exercises of their powers, privileges and authorities to manage stormwater and to comply with the Eastern Washington Phase II Municipal Stormwater Permit.

NOW, THEREFORE, in consideration of the premises and promises, terms and conditions set forth below, it is hereby agreed as follows:

#### **ARTICLE I DEFINITIONS**

**"Agency"** or **"Agencies"** means the entities delegated the authority to implement and enforce this interlocal agreement.

**"Agreement"** means this agreement and all amendments, modifications, and clarifications.

**"Board" or "Board of Commissioners"** means the legislative authority of Asotin County.

**"City of Asotin"** means the municipal corporation organized and existing under the laws of the State of Washington, and particularly those set forth at RCW Title 35A.

**"City of Clarkston"** means the municipal corporation organized and existing under the laws of the State of Washington, and particularly those set forth at RCW Title 35A.

**"City Council"** means the legislative authority of each City.

**"County"** means Asotin County, Washington, a political subdivision organized and existing under the Washington State Constitution and the laws of the State of Washington, and particularly those set forth at RCW Title 36;

**"Equivalent residential unit" or "ERU"** means, and is equal to 3,700 square feet of impervious groundcover, which approximates the median impervious surface area contained on single-family residential parcels within the Service Area. An ERU is the unit of impervious groundcover to be used by the utility in calculating service charges for each parcel of property.

**"Municipal Separate Storm Sewer System (MS4)" or "Stormwater drainage system"** includes, but is not limited to, the system of conveyances including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, street gutters, ditches, dry wells, retention and detention ponds, manmade channels, or storm drains owned and operated by the Parties.

**"GA"** means Greater Asotin Urban Area Regional Storm Sewer and Surface Water Management Public Utility.

**"Improvements"** means those improvements to or comprising Facilities.

**"Management Team"** means the committee established by this Agreement to administer day-to-day operations and to make recommendations for policies, procedures and budgets to the Parties, and that is composed of one (1) County Commissioner, one (1) member each of the City Councils, the County Public Works Director, City of Clarkston Public Works Director and the City of Asotin Mayor or designee. The stormwater coordinator will be a non-voting member of the management team.

**"Party" or "Parties"** means, individually or collectively, the City of Clarkston, City of Asotin and the County of Asotin.

**"Rates"** means rates, fees and charges for regulating and mitigating the volume and velocity of stormwater and pollutants of stormwater, caused by impervious surfaces for service fixed and

imposed pursuant to RCW Chapters 36.89 or 35.67.

**“Regional Storm Sewer and Surface Water Management Public Utility”** or **“Regional Stormwater Utility”** means the agency formed by this Interlocal Agreement to provide for management of the stormwater facility, including but not limited to, ensuring damages caused by stormwater to public and private parties be minimized, identifying and eliminating instances of illicit discharge, reduce surface erosion, implement best management practices for stormwater control on construction sites, implement best management practices for stormwater control on all new construction to minimize property damage and pollution of receiving waters due to stormwater, ensure all necessary reports required by the National Pollutant Discharge Elimination System permit are made, developing and implementing programs to prevent and reduce pollutants from municipal operations.

**“Regional Storm Water Program”** means that program created by this agreement for purposes of allowing the three parties to cooperatively comply with the Eastern Washington Phase II Municipal Storm Water Permit.

**"Service"** means storm and surface water control and disposal facilities, improvements, operations and maintenance, enforcement and monitoring of system, including all related planning and administration furnished pursuant to this Agreement within the service area.

**“Service area”** means the **“Permit Boundary”** which is the geographic areas of the entire incorporated area of the City of Clarkston and the City of Asotin and the urbanized areas and urban growth areas of the cities and the urbanized area under the jurisdictional control of Asotin County and includes the 20-year growth boundary as defined by the Metropolitan Planning Organization.

**"Storm Water Control Facilities" or "Facility"** means any facility, improvement, development, property or interest therein, made, constructed or acquired for the purpose of controlling, or protecting life or property from, any storm, waste, flood or surplus waters wherever located within the Service Area and shall include but not be limited to the improvements and authority described in RCW 86.12.020 and chapters 86.13 and 86.15 RCW.

**“System of Sewerage”** in this Agreement has the same meaning as set forth in RCW 35.67.010 and RCW 36.94.010. The words "public utility" when used in this chapter has the same meaning as the words "system of sewerage."

**"Utility" or "Utilities"** used herein means the Regional Storm Sewer and Surface Water Management Public Utility to be created by each of the Parties pursuant to this Agreement.

## **ARTICLE II PURPOSE**

2.01 The purpose of this Agreement is to jointly and/or cooperatively conceive, implement and develop a Regional Storm Sewer and Surface Water Management Public Utility and implement herein jointly the individual Storm Sewer and Surface Water Management Public Utility for each Agency

2.02 This Regional Storm Sewer and Surface Water Management Public Utility shall establish a program which includes the following elements:

- A. Basin and Watershed Planning. Reserved.
- B. Education. Develop and implement a program to educate the public about land use and human activities that impact water quality and surface water management and the steps that can be taken to reduce pollutants in stormwater.
- C. Capital Improvements. Develop a six-year capital improvement program in conjunction with other participants in the Regional Stormwater Utility which defines the utility's activities related to the acquisition, construction, replacement or renovation of drainage facilities or equipment needed to address surface and stormwater management objectives.
- D. Operations and Maintenance. Develop and implement an operations and maintenance program, including inspection, enforcement and monitoring, to assure that public drainage facilities are functional and effective. The utility shall only operate and maintain publicly owned drainage facilities, however the utility shall regulate the quality and quantity of stormwater runoff from both public and private drainage facilities.
- E. Source Control. Develop and implement a source control program to improve water quality. The source control program shall strengthen the use of BMPs (best management practices). The utility may provide financial assistance through low-interest loans, grants and cost sharing for the installation and/or demonstration of low impact development projects, restoration of streams, and repair of on-site stormwater disposal systems.
- F. Comply with NPDES Permit. Develop, implement and administer stormwater management program in compliance with the Department of Ecology Phase II municipal stormwater permit including annual reporting as required to the Washington State Department of Ecology. Minimum program elements include:

1. Public education and outreach: distribution of educational materials to the community about the impacts of stormwater discharges to water bodies and steps the public can take to reduce pollutants in stormwater.
2. Public involvement and participation: create and provide opportunities for the public to provide input regarding development and implementation of the stormwater program.
3. Illicit discharge detection and elimination: detection and elimination of nonstormwater discharges to the stormwater system.
4. Construction site stormwater runoff control: reduce pollutants in stormwater from construction activities.
5. Post construction stormwater management for new development and redevelopment: to ensure that controls to prevent or minimize water quality impacts are in place.
6. Pollution prevention and good housekeeping for municipal operations: operation and maintenance procedures to reduce pollutant runoff from municipal operations.

2.03 This Agreement is limited to the above purpose and does not apply to any other power, privilege or authority that may be exercised by the parties jointly or independently.

### **ARTICLE III REGIONAL PROGRAM**

3.01 There is hereby created by this Agreement Greater Asotin Urban Area Regional Storm Sewer and Surface Water Management Public Utility (GA) for the purposes set forth above in Section 2.02. The GA shall be managed by The Regional Storm Sewer and Surface Water Management Public Utility coordinator, who shall be a non-voting member of the management team.

3.02 This Agreement is intended to replace and supersede the two prior referenced Interlocal Cooperation Agreements. The Regional Storm Water Program shall be of indefinite duration.

3.03 Asotin County shall be the lead agency for the purposes of employment of the Regional Storm Water Coordinator and other employees of the program, fiscal management and project administration.

**ARTICLE IV  
OWNERSHIP**

- 4.01 Each of the parties shall own the facility within their respective boundary.
- 4.02 The parties may jointly own equipment and other personal property purchased by the Regional Storm Water Program.

**ARTICLE V  
DUTIES OF THE PARTIES**

The parties agree they have a duty to perform each and every agreement, term and condition of this agreement to include the following:

**5.01 Creation of Utility.**

- A. The City of Clarkston shall create a Storm Sewer and Surface Water Management Public Utility pursuant to RCW Chapter 35.67.
- B. The City of Asotin shall create a Storm Sewer and Surface Water Management Public Utility pursuant to RCW Chapter 35.67.
- C. The County of Asotin shall create a Storm Sewer and Surface Water Management Public Utility pursuant to RCW Chapter 36.89.

**5.02 Establishing Utility Rates, Fees and Charges.**

- A. This agreement will set a uniform rate to be adopted independently by the Cities and the County, shall be identical, and shall be fair, equitable and uniform throughout the Service Area.
- B. Subsequent to the implementation of this agreement, no party to the agreement shall unilaterally reduce utility rates, fees and charges below the uniform rate, which at the inception of the utility shall be \$5 per month per ERU. The Parties, by unanimous agreement, may reduce or increase the uniform rate. Said change shall be implemented simultaneously. However, any utility of the agencies hereto may, if necessary, for construction or other utility purpose, raise their utility rates after a public hearing and giving 14 days notice to the signers to this agreement.
- C. None of the parties shall levy, impose or assess any tax, license fee or franchise fee upon or against the Utility, its Facilities, its revenue, or its Utility rates fees or charges.



5.03 **Policies and Standards.** Each party shall adopt policies and standards, consistent with the Eastern Washington Phase II Municipal Stormwater Permit and goals of this Agreement.

**ARTICLE VI  
FINANCING AND BUDGETS**

6.01 **Financing.** The funding for maintenance, operations, improvements and new facilities as well as enforcement, administration and elements referenced in Section 2.02 shall be based upon a utility approach. Improvements and facilities shall be initially funded by obligations payable through utility revenues and generated by service fees to assist in development charges. All fees and charges against property shall be developed on a fair, equitable and uniform basis throughout the service area.

The service charges collected pursuant to this chapter shall be used to fund the additional activities undertaken by the Agencies as required by its NPDES permit. Any revenues collected in excess of the cost of such activities and fines collected for the violation of stormwater regulations shall be set aside into a operational reserve and capital facilities funds maintained by the county treasurer. The moneys set aside into the operational reserve and capital facilities funds and earnings thereon shall be used only for the purposes of the Regional Storm Sewer and Surface Water Management Public Utility.

6.02 **Special fund.** All revenues of each Utility shall be held in a special fund by the Asotin County Treasurer, designated as "Joint Operating Fund of the GA."

6.03 **Budget.** The Management Team shall prepare and submit all budget requests for maintenance, operations, improvements, new facilities, enforcement, and administration of all existing and additional Phase II Permit requirements as set forth in Section 2.02. All budget requests shall be submitted to the respective City Council and/or County Board of Commissioners. No budget request or amendment shall be effective until independently approved by the respective City Council and/or County Board of Commissioners.

6.04 **Accounting.** The County shall be the fiscal agent for the Regional Stormwater Utility. All accounting procedures will be in accordance with federal laws, especially as they pertain to grant funds and in accordance with the Washington State Budgeting, Accounting and Reporting System (BARS).

6.05 **Grant Reimbursement Allocation.** Currently the Regional Stormwater Program has been awarded Stormwater Capacity grants for program administration as follows:

Clarkston	\$89,204
Asotin	\$73,265

County            \$104,893

The parties acknowledge that association with the City of Asotin increases grant funding available to the parties. The City of Asotin participation results in grant funding in higher pro rata return to its small population and stormwater system. The Parties prefer any grant reimbursement be applied to costs incurred by the GA and any fees collected in excess of the costs be deposited 50% in Capital Improvement Program, and 50% to program reserves. The management team may make recommendations regarding this preference as needed.

**6.06 Reimbursement to Individual Agencies for Stormwater Management Activities.** The parties anticipate that as they do activities, operation and maintenance shall be billed to the Regional Utility and paid back to the Party; for Asotin operation and maintenance the first \$3,000 or as recommended by the Management Team; Clarkston who budgeted half of the operation and maintenance expenses that came from their streets fund and half from the utility, Clarkston shall bill the Utility for the work performed on a completed basis for one-half of the expenses of work. Asotin County shall treat operation and maintenance in the same fashion and manner.

**6.07 Billing and Collection of Fees.** Initially all three Parties shall be responsible for billing for their utility and the collection thereof. For the Cities of Asotin and Clarkton, they both will add an additional line to the utility billing and will expect reimbursement from the utility for one-third of their total expenses for billing and collection costs from administration. The County of Asotin may do its own billing and will bill the yet to be determined costs back to the Utility. Clarkston and Asotin will both bill on a monthly basis and by the last day of the next succeeding month transfer the utility fee funds to the County to be held and maintained as this section provides and used accordingly.

## **ARTICLE VII ADMINISTRATION**

### **7.01 Executive Authority Vested in County.**

- A. The Management Team shall have the full power and authority to operate and manage the Regional Storm Water Program (Utility) in accordance with the terms and provisions of this Agreement, the jointly approved budgets, and the respective ordinances of the City of Asotin, City of Clarkston and the County.
- B. Individual agencies shall bill and collect services and charges as well as enforce and foreclose statutory liens against all properties within each party's respective utility area and jurisdiction.

**7.02 Limitations on Executive Authority.**

- A. No obligation may be incurred, issued or assumed for, or on behalf of, the Parties or the Regional Stormwater Program that is payable from a source other than the revenues and assets of each of the respective Storm Water Utilities.
- B. The exercise of any police power relating to the enforcement of storm and surface water control and disposal functions and Facilities within each Party's jurisdiction by way of criminal proceedings or civil penalty is reserved to that Party.
- C. All decisions of a land use or regulatory nature within a Party's respective jurisdiction shall continue to be that Party's responsibility.

**7.03 Daily Administration by Management Team.**

- A. The Parties hereby form and establish a Management Team to administer day-to-day operations and to make recommendations for policies, procedures and budgets to the Parties.
- B. The Management Team shall have the following duties and responsibilities, together with those additional duties and responsibilities assigned to the Management Team by the Parties:
  - 1. To monitor the day-to-day operations and maintenance of the Facilities for operating within the approved budget.
  - 2. To develop specific maintenance standards and schedules to ensure proper operation of all conveyance and storage facilities, such standards and schedules are subject to review and approval by the City Councils and the Board of Commissioners.
  - 3. To assign between the Cities and the County, a geographic division of responsibility for operations and maintenance of Facilities.
  - 4. To provide the employees and equipment necessary to conduct day-to-day operations according to the division of responsibility.
  - 5. To submit proposed annual budgets for review and approval of the Board of Commissioners and the City Council.
  - 6. To prepare and maintain, as part of the annual budgeting process, a six year Capital Improvement Plan (CIP) that prioritizes capital improvement

projects for review and approval by the City Council and the Board of Commissioners.

7. To investigate and pursue all available funding sources for projects identified in the capital improvement plan and other funding for the utility.
8. To receive, review and investigate all citizen complaints and Tort claims relating to operations and maintenance of Facilities and appeals relating to rate charges with assistance of appropriate legal staff, and to make action recommendations thereon to the respective legislative authorities.
9. To be responsible for complying with all Washington Public Meeting and Public Records laws.

7.04 **Records.** Each Party shall have access to all Utility facilities, operations and maintenance records and other related documentation of the other Parties. Records and other documentation for construction of new facilities and improvements shall be compiled and maintained by the County, pursuant to the Public Records Act.

## **ARTICLE VIII CAPITAL FACILITIES AND IMPROVEMENTS**

8.01 **Design, Construction and Maintenance Standards.** The Cities and the County will consider the permit regulations and duties of the stormwater utility when updating and implementing design construction and maintenance standards so that all facilities and improvements in the service area, whether public or private, and shall be consistent with the utility's duties and the requirements of the NPDES permits. Public facilities and improvements outside the service area may be constructed and/or maintained if such facilities and improvements benefit the Utilities. Each Agency shall be responsible for the review and approval of such facilities and improvements within its respective jurisdiction. An Agency may permit facilities or improvements on public property or dedicated right-of-way and may accept ownership of such facilities and improvements only if the proposed dedications are compatible with the storm sewer requirements.

## **ARTICLE IX COST REIMBURSEMENT AND THIRD PARTY CONTRACTS**

9.01 **Reimbursement to Parties.** The Utility shall reimburse the Cities and the County for all funds expended by the parties pursuant to an approved allocation plan recommended by the management team, direct costs and indirect costs expressed as a percentage of wages, based on the current federal indirect rate charged by each party. Such direct support shall include administration and accounting staff, professional staff, maintenance staff, cost to the county as

fiscal agent and equipment. Personnel costs shall be reimbursed based upon actual hourly rate and benefits costs. Equipment costs shall be reimbursed based upon a schedule agreed upon by the parties. The management team may determine whether or not to seek indirect cost reimbursement during their budget deliberations.

9.02 **Third Party Contracts.** The County may, as permitted by law, enter into separate agreements with third parties to perform work for or furnish professional services to the Utility.

9.03 **Emergencies.** Emergency response due to flooding shall be consistent with the plan developed by the Management Team and each Party shall be reimbursed by the Utility for the personnel and equipment used in such response.

## **ARTICLE X COMMENCEMENT AND TERMINATION OF AGREEMENT**

10.01 **Commencement.** This Agreement shall commence upon execution.

10.02 **Termination.** This Agreement may be terminated, in whole or in part, at any time by the joint action of the legislative authorities of the Parties. This Agreement may be unilaterally terminated by one of the Parties, without cause, so long as there are no outstanding Facilities obligations assumed or incurred by the Utilities or the Parties, by providing not less than six (6) months prior written notice to the other party.

10.03 **Disposition of Assets and Liabilities.** Upon termination by one or all Parties, the Facilities located within each City shall be transferred to the Cities and the Facilities located within the unincorporated areas of the County shall be transferred to the County. Equipment and other personal property of the Storm Water Utility and/or the net proceeds from the sale of such assets shall be distributed to the Parties proportionately to their contributions to the Storm Water Utility. In lieu of distribution, the Parties may agree for the Parties' purchase of equipment or other personal property and payment to the other party. Each Party shall assume and pay the obligations remaining due for the Facilities, equipment and personal property it receives on dissolution and thereafter indemnify and hold the other Party harmless therefrom.

## **ARTICLE XI INSURANCE**

11.01 **Insurance Required.** Each Party shall obtain and maintain insurance policies having minimum coverage of Two Million Dollars (\$2,000,000) to meet all legal and social responsibilities for creation of the Utilities and ownership, maintenance and operation of the Facilities, including without limitation, general liability, public liability, professional liability, errors and omissions, officers and directors' liability, property insurance, and workmen's compensation coverage.

11.02 **Policy Provisions.** Limits, deductibles, stop loss provisions, and/or exclusions contained in such policies must be approved by the Parties.

11.03 **Additional Insureds and Certificate.** If permitted by its insurers, each Party, its departments, elected and appointed officials, employees and agents, shall be named as additional insured on such policies. Such policies of insurance shall not be subject to reduction in coverage or cancellation without thirty (30) days prior written notice to the Parties. Each Party provides Certificates of Insurance to the office of the stormwater coordinator within 30 days of signing of this agreement, and annually within 30 days of the anniversary of the signing of this agreement

## **ARTICLE XII CLAIMS AND INDEMNITY**

12.01 **Claims.** Claims shall be received, reviewed and investigated by the Management Team. Uninsured or underinsured claims directly and solely related to Facilities shall be paid from Utility funds and/or revenues.

12.02 **Indemnity.** To the extent of its comparative liability, each Party shall indemnify, defend and hold the other Party, its department, elected and appointed officials, employees, and agents, harmless from and against any and all claims, damages, losses and expenses, including attorney's fees, for any bodily injury, sickness, disease, or death, or any damage to or destruction of property, including the loss of use resulting therefrom, which are alleged or proven to be caused in whole or in part by a negligent act or omission of the Party, its officers, directors, and employees with respect to the performance of this Agreement, the creation of the Utilities, and the ownership, operation and maintenance of the Facilities.

12.03 **Waiver of Subrogation.** Each party waives indemnity and claims for contribution against the other Party to the extent that its damages, losses or expenses are paid by insurance and such policy permit waiver.

## **ARTICLE XIII PERFORMANCE OF AGREEMENT**

13.01 **Compliance with All Laws.** Each Party shall comply with all federal, state and local laws, rules, regulations and ordinances applicable to the performance of this Agreement, including without limitation all those pertaining to wages and hours, confidentiality, disabilities and discrimination.

13.02 **Maintenance and Audit of Records.** Each Party shall maintain books, records, documents and other materials relevant to its performance under this Agreement which sufficiently and accurately reflect any and all direct and indirect costs and expenses incurred or

paid in the course of performing this Agreement. These records shall be subject to inspection, review and audit by any party or its designee, the Washington State Auditor's Office, and authorized federal agencies. Each Party shall retain all such books, records, documents and other materials for six (6) years following the termination of this Agreement or such longer period as may be required by law.

**13.03 On-Site Inspections.** Each Party or its designee may evaluate the performance of this Agreement through on-site inspection to determine whether performance is in compliance with the standards set forth in this Agreement, and in compliance with federal, state and local laws, rules, regulations and ordinances, and in compliance with jointly adopted policies and procedures of the Utility.

**13.04 Rights in Data and Work Product.** Unless otherwise agreed upon by the parties in writing, all data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, sound reproductions, educational courses and materials and other work product which originates from the performance of this Agreement shall be "works for hire" and shall be the joint property of the Parties.

**13.05 Improper Influence.** Each Party agrees, warrants and represents that it did not and will not employ, retain or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining or extending this Agreement. Each party agrees warrants and represents that no gratuity whatsoever has been or will be offered or conferred with a view towards obtaining, maintaining or extending this Agreement.

**13.06 Conflict of Interest.** The elected and appointed officials and employees of the Parties shall not have any personal financial interest, direct or indirect, which gives rise to a conflict of interest as defined by Washington law.

## **ARTICLE XIV DISPUTES**

**14.01 Time.** Time is of the essence of this Agreement.

**14.02 Conflict.** In the event of conflict among the terms and conditions of this Agreement and federal, state or local law, the inconsistency shall be resolved by giving precedence of interpretation in the following order:

1. Applicable federal case law, statutes and regulations; then
2. Applicable Washington case law, statutes and regulations; then
3. Eastern Washington NPDES Phase II Stormwater Permit; then
4. The terms and conditions of this Agreement; then
5. The terms and conditions of each Utility established pursuant to this

- Agreement; then
6. The policies and procedures jointly approved by the Parties for operation and maintenance of the Utilities.

**14.03 Waiver Limited.** A waiver of any term or condition of this Agreement must be in writing and signed by the waiving Party. Any express or implied waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence or omission and shall not constitute a waiver as to any other term or condition or future act, occurrence or omission.

**14.04 Compliance Review Process and Corrective Action.** A party or the management team has the option of initiating a non-compliance action against a party or the management team by written notice in the event of non-compliance with any term or condition of this Agreement. The non-compliant Party shall have thirty (30) days from receipt of such written notice to implement fully corrective action and to provide adequate assurances of continuing future compliance: provided, that the noncompliant party shall have only three (3) business days to demonstrate its compliance and to provide adequate assurances if the non-compliance presents a clear and imminent danger to the health and well-being of the public, a clear violation of federal or state laws, rules or regulations specifically found to be of imminent concern and requiring immediate corrective action, a breach of the time limits for performance under this Agreement, or an imminent loss of federal or state funding of this Agreement.

**14.05 Dispute Resolution.**

**A. Informal Mediation.** Disputes regarding the ownership, operation and maintenance of the Facilities and jointly adopted policies and procedures, other than those which relate to non-compliance requiring only a three (3) day notice pursuant to the preceding subparagraph, shall be informally mediated by a panel comprised of a City elected official appointed by each City Council, a County elected official member of the County's Board of Commissioners appointed by the Board of county Commissioners. The panel shall attempt to resolve the dispute between the Parties through discussion and negotiation among the panel members. There shall be no presentation of evidence or argument to the panel. Decisions of the panel shall not be binding on the Parties and all discussions and negotiations among the panel members shall remain confidential and privileged, pursuant to RCW 7.07.050(5)

**B. Arbitration.** In the event that informal mediation does not resolve a dispute between the Parties, the dispute shall be submitted to arbitration pursuant to RCW Chapter 7.04, et. seq., except as hereafter modified. Such arbitration shall be before one disinterested arbitrator, if one can be agreed upon by the parties. If one arbitrator cannot be agreed upon, then the Parties shall apply to the Superior Court for Whitman County to appoint an arbitrator. The judicial appointment(s) shall be final, conclusive and binding. The controversy shall be resolved and determined in accordance with the laws of Washington as applied to the facts found. Remedies, both equitable and legal, including injunctive relief, may be granted. The decision shall be final,



conclusive and binding on the Parties and a judgment confirming the decisions may be entered in the Asotin County Superior Court.

14.06 **Attorney's Fees.** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and other costs incurred in that action, arbitration or proceeding.

14.07 **Governing Law and Venue.** This Agreement shall be governed exclusively by the laws of the State of Washington. The Asotin County Superior Court shall be the sole proper venue for any and all suits brought to enforce or interpret the provisions of this Agreement.

## **ARTICLE XV GENERAL PROVISIONS**

15.01 **Assignment.** The Parties may not assign any rights or delegate any duties under this Agreement, whether by assignment, subcontract or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of the Agreement.

15.02 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties. There are no understandings or agreements between parties other than those set forth in this Agreement and in the appendices. No other statement, representation or promise has been made to induce the Parties to enter into this Agreement.

15.03 **Modification.** This Agreement may not be amended, supplemented or otherwise modified unless expressly set forth in a written agreement signed by the [Parties subsequent to adoption resolution of all legislative authorities.

15.04 **Invalid Provisions.** If any portion of this Agreement, or its application to any person or circumstances, is held or determined to be invalid, such holding or determination shall not affect the validity or enforceability of any other term or provision and the application of this Agreement to other persons or circumstances shall not be affected.

15.05 **Counterparts.** This Agreement may be executed by the parties using duplicate counterparts.

15.06 **Filing and State Approval.** Pursuant to RCW 39.34.040, this Agreement shall be filed with the County Auditor and the City Clerk prior to its entry into force. To the extent any state officer or agency has control over the services or facilities which may be the subject of this Agreement, then this Agreement shall be submitted to such state officer or

agency for approval pursuant to RCW 39.34.050 prior to its entry into force.

All notices and other correspondence shall be sent and/or delivered to the Agencies as follows:

Asotin County  
P.O. Box 160  
Asotin, WA 99402

City of Clarkston  
829 Fifth Street  
Clarkston, WA 99403

City of Asotin  
130 2nd Street  
Asotin, WA 99402

Adopted: September 27, 2010

COUNTY OF ASOTIN:

Doug Mattoon

Doug Mattoon, Chairman

ATTESTED TO:

Vivian Bly

Vivian Bly, Clerk of the Board

APPROVED AS TO FORM:

Jane Bremner Risley

Jane Bremner Risley  
Chief Deputy Prosecuting Attorney  
WSBA #20791

Adopted: 9-13-10

CITY OF CLARKSTON

Donna M. Engle

Donna Engle, Mayor

ATTEST/AUTHENTICATE:

Vickie Storey

Vickie Storey, City Clerk

APPROVED AS TO FORM:

James Grow

James Grow, City Attorney

Adopted: 9-13-10

CITY OF ASOTIN

Jim Miller

Jim Miller, Mayor

ATTEST/AUTHENTICATE:

Ellen Boatman

Ellen Boatman, City Clerk

APPROVED AS TO FORM:

Scott Broyles

Scott Broyles, Attorney