RESOLUTION NO. 2010-18
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLARKSTON ADOPTING AN INTERLOCAL COOPERATION AGREEMENT BETWEEN ASOTIN COUNTY, CITY OF ASOTIN AND CITY OF CLARKSTON FOR STORM SEWER AND SURFACE WATER MANAGEMENT PUBLIC UTILITY

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 Constructions 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 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, THE CITY COUNCIL OF THE CITY OF CLARKSTON, WASHINGTON, RESOLVES AS FOLLOWS:

The document titled "Interlocal Cooperation Agreement Between Asotin County, City of Asotin and City of Clarkston from Storm Sewer and Surface Water Management Public Utility" as attached is hereby adopted.

Passed in open meeting this 13th day of September, 2010

APPROVED:

Donna M. Engle

Donna M. Engle, Mayor

ATTEST/AUTHENTICATED:

Vickie Storey

Vickie Storey, City Clerk

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 13TH 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 13TH 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 parities 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 that 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, Chairman

ATTESTED TO:

Vivian Bly, Clerk of the Board

APPROVED AS TO FORM:

Jane Bremner Risley
Chief Deputy Prosecuting Attorney
WSBA #20791

Adopted: 9-13-10

CITY OF CLARKSTON

Donna Engle, Mayor

ATTEST/AUTHENTICATE:

Vickie Storey, City Clerk

APPROVED AS TO FORM:

James Grow, City Attorney

Adopted: 9-13-10

CITY OF ASOTIN

Jim Miller, Mayor

ATTEST/AUTHENTICATE:

Ellen Boatman, City Clerk

APPROVED AS TO FORM:

Scott Broyles, Attorney