

NO. 80-04
CBS. # D.5204

City of Yakima, Yakima County,
Terrace Heights Sewer District
and City of Union Gap

AGREEMENT TO AMEND AGREEMENT FOR WASTEWATER TREATMENT
AND DISPOSAL SERVICE.

THIS AGREEMENT entered into this 11th day of FEBRUARY,
1988, by and between the City of Yakima, a municipal corporation, the Terrace
Heights Sewer District, a municipal corporation, the Town of Union Gap, a
municipal corporation, and Yakima County, a municipal corporation, for the
purpose of amending the "Urban Boundary" as set forth in EXHIBIT A of the
AGREEMENT FOR WASTEWATER TREATMENT AND DISPOSAL SERVICE.

WITNESSETH:

WHEREAS, on February 23, 1976, the parties to this Agreement entered
into an AGREEMENT FOR WASTEWATER TREATMENT AND DISPOSAL SERVICE; and

WHEREAS, Section 10 Subsection I Paragraph A of that Agreement refers
to an EXHIBIT A which designates and legally describes the "Urban Boundary"
and the "Planning Boundary" of the Yakima Urban Area; and

WHEREAS, it appears to the parties to this Agreement that it would be
in the public interest to further define the area which is to be included within
the "Urban Boundary" of the Yakima Urban Area; and

WHEREAS, it appears to the parties to this Agreement that it would be in
the public interest to further define the area which is to be included within
the "Urban Boundary" as set forth in EXHIBIT A of the AGREEMENT FOR WASTEWATER
TREATMENT AND DISPOSAL SERVICE;

NOW, THEREFORE, the above-named municipalities do hereby mutually consent
and agree to the following:

1. That EXHIBIT A of the AGREEMENT FOR WASTEWATER TREATMENT AND
DISPOSAL SERVICE entered into February 2, 1976 between the
City of Yakima, Yakima County, Terrace Heights Sewer District
and Town of Union Gap be amended in such a manner so as to
reduce the "Urban Boundary" by deleting the following land:

The north 85 feet of the NW 1/4 of the SW 1/4; and the
SW 1/4 of the NW 1/4; and that portion of the NW 1/4 lying
south of the Yakima Valley Canal, all within Section 30,
Township 13 N., Range 18 E.W.M.

2. Except as herein provided for, AGREEMENT FOR WASTEWATER
TREATMENT AND DISPOSAL SERVICE of February 23, 1976 shall
remain in full force and effect and this amendment shall
only apply to EXHIBIT A thereof.

3. This Agreement shall be in full force and effect and binding upon its execution.

ATTEST:
Sylvia E. Hinojosa
Deputy Auditor and Deputy Clerk

Approved as to form this 14th day of December, 1985.

Tim Hunt
Deputy Prosecuting Attorney

BOARD OF COUNTY COMMISSIONERS

Trabon A. Johnson
Chairman

Charles J. Carrel

Date: Nov. 19, 1985

CITY OF YAKIMA

Steve Paulding
Mayor

Date: 1-21-86

CITY CONTRACT NO. 86-4

ATTEST:
Karen A. Roberts
City Clerk

Approved as to form this 21 day of January, 1986.

Fred H. Anderson
City Attorney

TOWN OF UNION GAP

John F. [Signature]
Mayor

Date: 1/22/86

ATTEST:
Regina D. Williams
City Clerk

Approved as to form this 27th day of January, 1986.

Larry [Signature]
City Attorney

TERRACE HEIGHTS SEWER DISTRICT

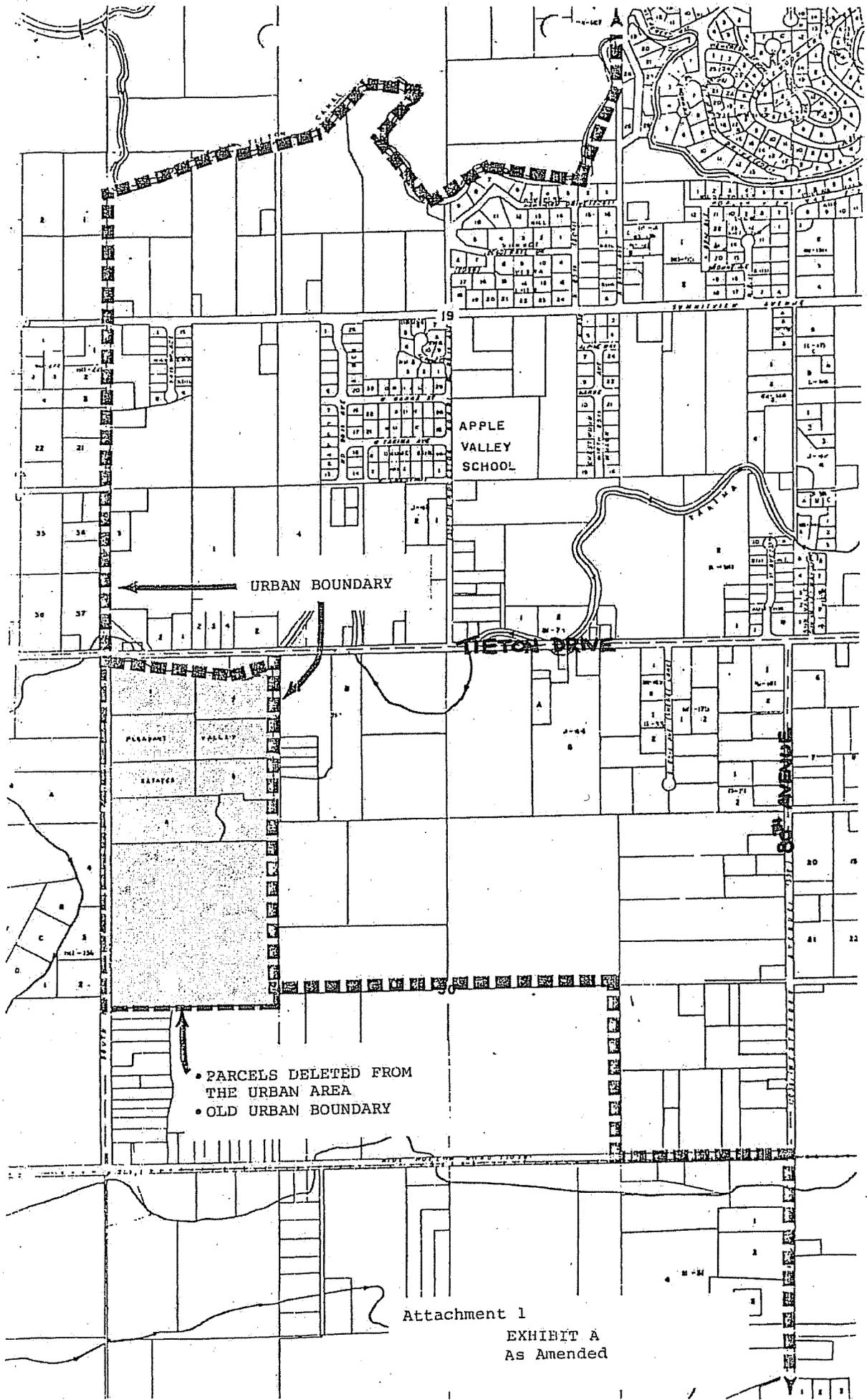
Robert J. [Signature]
Chairman

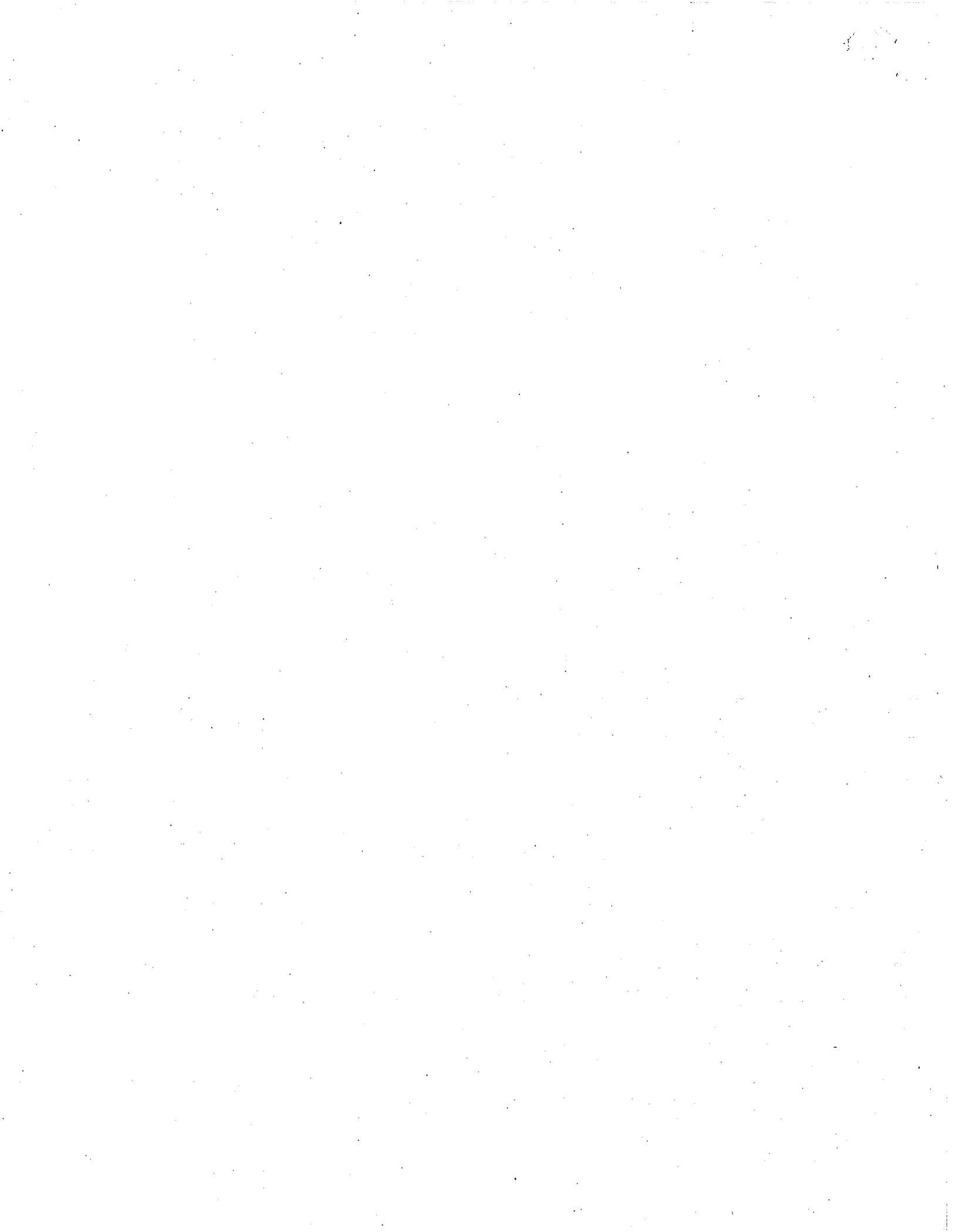
Date: 2/11/86

ATTEST:
Paul C. Anderson
Secretary

Approved as to form this 11th day of Feb, 1986.

[Signature]
Attorney for the District





THIS TEXT INCLUDES AMENDMENTS AUTHORIZED BY:

TEXT AMENDMENT NO. 1 SEPTEMBER, 1982
(MAP) AMENDMENT NO. 2 FEBRUARY, 1986

City of Yakima, Yakima County, Terrace Heights Sewer District and
Town of Union Gap

AGREEMENT FOR WASTEWATER TREATMENT AND DISPOSAL SERVICE

THIS AGREEMENT entered into this 23rd day of February, 1976, by and between the City of Yakima, a municipal corporation, the Town of Union Gap, a municipal corporation, the Terrace Heights Sewer District, a municipal corporation, and Yakima County, a municipal corporation, for the purposes of providing wastewater treatment and disposal service to developed areas within the Yakima Urban Area.

WITNESSETH:

WHEREAS, the existing sewage treatment facilities in the Yakima Urban Area do not meet the current water pollution control requirements and specifically the standards set forth and pursuant to Public Law 92-500; and,

WHEREAS, many unincorporated areas within the Yakima Urban Area are not served by sewers although there is a demonstrated need for public sewer service to eliminate health hazards; and,

WHEREAS, the City of Yakima, Yakima County, the Town of Union Gap, and the Terrace Heights Sewer District entered into an agreement dated April 9, 1974, which authorized the preparation of a Wastewater Facilities Planning Study to determine the least expensive, coordinated Wastewater Management Plan for the entire Yakima Urban Area that will protect the public health and welfare and meet the applicable water pollution control standards; and,

WHEREAS, it has been concluded in the Wastewater Facilities Planning Study, following careful consideration of available alternatives, that upgrading of the existing City of Yakima wastewater treatment facility to provide secondary treatment of wastes from the entire Urban Area is the least expensive solution for meeting the area sewerage needs; and,

WHEREAS, an evaluation of environmental factors associated with the proposed plan shows that the facilities will result in a net environmental benefit to the Urban Area by improving surface and groundwater quality and by eliminating health hazards inherent in septic tank disposal of wastes in built-up portions of the Urban Area many of which have generally unsuitable soil conditions for septic tank disposal; and,

WHEREAS, implementation of the Wastewater Management Plan utilizing the Yakima wastewater treatment facility as the central plant for the entire Urban Area requires suitable long-term agreements between the participating governmental entities for developing, managing and financing the plan; and,

WHEREAS, as relates to Yakima County, RCW Chapter 36.94 provides for establishment of sewerage, water and drainage systems and further provides within RCW 36.94.190 the authority to contract with other entities.

NOW, THEREFORE, the above-named municipalities do hereby mutually consent and agree to the following:

SECTION 1: WASTEWATER TREATMENT & DISPOSAL

By virtue of this agreement, the City of Yakima (City) agrees to accept sewage delivered to it by the Terrace Heights Sewer District (District), the Town of Union Gap (Town) and Yakima County (County), for treatment and disposal. The City will improve and expand its treatment facility to meet pollution control standards and to provide sufficient treatment capacity in accordance with the Wastewater Facilities Plan. Since the County does not presently own or operate sewage collection or wastewater treatment facilities, reference hereinafter to the County and its wastewater facilities shall be construed to mean those facilities that may be developed by the County in the future.

SECTION 2: SEWAGE COLLECTION

I. General Responsibilities

The Terrace Heights Sewer District and the Town of Union Gap shall continue to be responsible for sewage collection within their respective service areas. The District and Town shall construct and operate sewer interceptor and pumping facilities necessary to deliver sewage to the Yakima system. Collections within local improvement districts formed either within the City or within unincorporated areas may be the responsibility of the local governing agency establishing such LIDS.

It is understood and agreed that the City of Yakima, the Town of Union Gap, or the Terrace Heights Sewer District may expand or extend their existing sewage facilities to give service to unincorporated local service areas, including the formation of local improvement districts provided that the development of such areas is approved by the local governing body having jurisdiction over the land to be so improved.

It is further understood and agreed that the County shall have the right to give service to unincorporated local service areas by the formation of local improvement districts or sewer districts and to enter into appropriate agreements with the City of Yakima, Town of Union Gap or Terrace Heights Sewer District for the disposal or transportation of sewage into the regional sewerage system, provided that the development of such area is approved by the local governing body (Board of Yakima County Commissioners) having jurisdiction over the land to be so improved.

II. Service by the Terrace Heights Sewer District to the Keys Road Area

Those properties adjacent to, and on either side of Keys Road in Yakima County, Washington, between the intersection of Keys Road with the Southern boundary of the Yakima Urban Area, and along Keys Road until it intersects with SR 24, should be permitted to connect to the adjacent sewer interceptor belonging to the Terrace Heights Sewer District upon the following terms and conditions:

- A. That not more than one (1) service connection shall be made for each one hundred (100) feet of property adjacent to, or on either side of Keys Road, and to the contiguous interceptor. Provided that any current parcel now having frontage on Keys Road may connect one service line to the interceptor even though such frontage is less than one hundred (100) feet.
- B. No sewer services will be provided to any building, business or to benefit any land usage or other facility of any nature that is located more than two hundred (200) feet measured with a ninety degree angle on either side of the center line of Keys Road in Yakima County, Washington.

SECTION 3: PAYMENT FOR WASTEWATER TREATMENT AND DISPOSAL

(a) The City shall establish sewage disposal charges for Union Gap, Terrace Heights, and Yakima County, or any hereafter developed sewer districts. The rate shall reflect the cost of service for the City to intercept, treat, and dispose of the sewage from these systems, as set forth in paragraph (c) of this Section.

(b) Flow meters will be installed at the point of connection of the County, the Terrace Heights and Union Gap systems to the City system. The meters will be installed by the City at the expense of the system requesting service and thereafter shall be owned and maintained by the City.

(c) Monthly sewage disposal charges shall be determined from the flow measured at the meters using the following model:

$$Cu = Ct \frac{(Vu)}{Vt}$$

Definitions:

Ct = Total treatment and disposal costs per unit of time.
Cu = A user's charge for treatment and disposal per unit of time.
Vu = Volume contribution from a user per unit of time.
Vt = Total volume contribution from all users per unit of time.

The City shall establish a separate wastewater treatment and disposal fund and shall prepare an annual budget of estimated costs for operating the wastewater treatment facilities at the start of each calendar year, which budget shall be used as the basis for the treatment and disposal charges during the year. To the extent that the City's interceptor sewers are utilized to transport wastes from systems operated by the Town, District or County to the treatment facilities, the associated costs are an eligible part of the wastewater treatment and disposal charges. The budget will be based on actual cost experience adjusted to reflect anticipated changed conditions. The wastewater treatment and disposal costs as used herein for determining monthly charges refers to total revenue requirements for the wastewater treatment and disposal operation. Eligible costs include system administration, operation, maintenance, taxes, repair and replacements, debt service for existing and new collection, treatment and disposal facilities utilized by the participants, including the requirements of any resolution providing for the issuance of revenue bonds. Operating surpluses, debt service coverage, reserve funds, the local share of payments from the industrial cost recovery system or any other funds paid initially from the treatment and disposal charges shall be used exclusively for the benefit of the wastewater treatment and disposal facilities.

(d) The City shall submit a bill for the monthly wastewater treatment and disposal charges to the Town, District, or County, on or before the last day of each month for the previous months volume, and such charge shall be due thirty (30) days from the date billed. If any charge or portion thereof due to the City shall remain for 15 days following its due date, the Town, District or County shall be charged with and pay to the City interest on the amount unpaid from its due date until paid at the rate of 6 percent per annum, and the City may, upon failure to pay such amount, enforce payment by any remedy available by law or equity.

(e) The monthly wastewater treatment and disposal charge shall be based on the average sewage flows of each of the systems for the twelve (12) month period ending with the month being billed in order to reduce the effect of monthly variations in sewage flows on the treatment and disposal charges.

(f) In addition to the wastewater treatment and disposal charge outlined above, if the BOD, suspended solids, or other pollutant concentrations from a user exceed the range of concentration of these pollutants in normal domestic sewage, the City may levy a surcharge which shall be computed as follows:

$$Cs = Bc(B) + Sc(S) + PC(P) Vu$$

B = Concentration of BOD from a user above a base level.

Bc = Treatment and disposal cost for a unit of biochemical oxygen demand (BOD).

Cs = A surcharge for wastewaters of excessive strength.

P = Concentration of any pollutant from a user above a base level.

PC = Treatment and disposal cost for a unit of any pollutant.

S = Concentration of suspended solids (SS) from a user above a base level.

Sc = Treatment and disposal cost for a unit of suspended solids.

Vu = Volume contribution from a user per unit of time.

For the purpose of determining the surcharge, 300 mg/l shall be used as the base level for BOD (5 day) and suspended solids.

(g) In the event of meter malfunctioning the City shall estimate the sewage flow discharged by the Town, District or County in order to determine the applicable wastewater treatment and disposal charges.

SECTION 4: SPECIAL WASTES

Wastes prohibited by the U.S. Environmental Protection Agency or by the State Department of Ecology, waste of unusual quantity or organic strength, waste containing toxic or deleterious matter incompatible with the waste treatment process, or that may be harmful to the treatment process or the quality of the receiving waters, shall not be discharged into the City's sewage system except by Special Agreement. Consent to such Special Agreement shall not be unreasonably withheld. As a part of such special agreement, the City may require that concentration of such substances in waste discharged to its system be eliminated or reduced to acceptable limits by pre-treatment. The Town, the District and the County shall be responsible for ensuring that wastes discharged to their respective systems meet the relevant quality standards set forth by the Special Agreement.

SECTION 5: INDUSTRIAL COST RECOVERY

As required by the rules and regulations of the U.S. Environmental Protection Agency, the City shall establish a Cost Recovery System applicable to industrial customers. The amounts due by virtue of this section shall be collected by the responsible participants.

SECTION 6: PERMITS & REGULATIONS

The Town, the District and the County shall be responsible for their respective sewer systems. This includes obtaining any necessary permits, maintaining records, and reporting to the Washington State Department of Ecology, the U.S. Environmental Protection Agency or other regulatory agencies. The City of Yakima shall be responsible for satisfying the permit, records and regulatory requirements related to wastewater treatment and disposal.

Industrial discharges shall likewise be responsible for obtaining any permits governing their waste discharges and for maintaining any records or reports that may be required by the regulatory agencies.

Under no circumstances shall the City incur any liability for the District, Town or County sewer systems or for industrial waste dischargers.

SECTION 7: INFILTRATION/INFLOW

The regulations of the U.S. Environmental Protection Agency require that sewer systems funded by the Agency for improvements not be subject to "excessive" infiltration/inflow as defined by the Agency. The City therefore reserves the right to require the District, the Town and the County to take corrective action to eliminate any excessive infiltration/inflow in their systems.

SECTION 8: TESTING AND COMPLIANCE

The City shall have the right to sample sewage discharged by the District, the Town and the County, in order to determine if the sewage is of unusual strength and subject to a surcharge or if constituents incompatible with the treatment process are being discharged in harmful quantities.

SECTION 9: ARBITRATION

It is understood and agreed that all claims, demands, disputes, differences, and misunderstandings concerning this agreement and its interpretation that may arise between any of the parties hereto from the date hereof until the termination of this contract shall be submitted to and be determined and settled by arbitration in the manner hereinafter set forth:

Each party to dispute shall appoint an arbitrator and the two arbitrators so chosen shall appoint a third arbitrator. In the event that the two arbitrators so chosen cannot agree upon a third arbitrator such third arbitrator shall be appointed by the presiding Judge of the Yakima County Superior Court.

It is further understood and agreed that in the event there are an odd number of disputes to any differences being arbitrated under this agreement, so that the appointment of an arbitrator by the arbitrators chosen by the disputants, leaves an even number of arbitrators then and in that event, the arbitrators chosen by the parties shall appoint two arbitrators or if they cannot agree upon said two arbitrators those arbitrators shall be chosen by the presiding Judge of the Yakima County Superior Court. A decision of the majority of the arbitrators chosen in the manner set forth above shall be binding upon all parties and all arbitration shall be conducted pursuant to Washington State Arbitration Law.

SECTION 10: POLICY AND AGREEMENT RE SEWER SERVICE, REGIONAL PLANNING, AND GOVERNMENT SERVICES

I. Declaration of policy

- A. Yakima Urban Area. Attached hereto and incorporated herein, is a map entitled "Yakima Urban Area" (EXHIBIT A). This map designates and legally describes the Urban Boundary of the Yakima Urban Area. References herein to the "Urban Area" or "Area within the Urban Boundary" refer to land within the boundary defined on Exhibit A.

- B. Sewer Service. It is declared by the four municipal bodies (parties to this agreement) that all of that area within the urban boundary be served by sewers in accordance with the aforementioned Wastewater Facilities Planning Study (Volume 1); that the health and welfare of the community require that all property within the urban boundary have sewers available as soon as financially feasible and practical to do so.

Further, the City of Yakima will provide wholesale users with sufficient treatment plant and interceptor capacity to handle the design sewage flows in Table II-3 of the Yakima Wastewater Facilities Planning Study (Beck Study). These sewage flows, and related information in the Beck Study, comprise the Wastewater Allocation Plan for the Yakima Urban Area. Any changes in the Beck Study represent a change in this Wastewater Agreement and therefore must be reviewed and approved in writing by all parties as specified in Section II of this Agreement.

- C. Regional Planning. The land within the planning boundary shall be controlled by the respective legislative bodies of the parties to this agreement using a single long range comprehensive land use plan and common zoning and subdivision law. The Regional Planning Commission shall serve as the long range planning body for the Urban Area. A hearings examiner shall make current planning decisions within the Urban Area (except in Union Gap which will retain its planning commission to make recommendations on land use matters within the Union Gap City limits). Decisions of the hearings examiner shall be appealable to the affected legislative authority. At present, the City and County planning staffs shall be maintained. Each planning department will continue to provide staff support on land use proposals within its respective jurisdiction. This arrangement shall not preclude future consideration of staff consolidation.
- D. Government Services. It is the declared policy that residents and owners of land, except that devoted to agricultural purposes over 20 acres in size, within the urban boundary are best served by a city or town to provide municipal services rather than the county government and that residents and property owners shall henceforth be encouraged to annex to the adjoining city or town for municipal services, including sewer services.

II. Agreement.

In view of the foregoing declaration of policy, the parties to the "Urban Yakima Area Planning and Development Agreement", dated November 12, 1974 and signed by the County of Yakima, the City of Yakima and the Town of Union Gap, agree to reaffirm its purpose and goals, after it is amended in the following respects:

- A. Section 1 of that agreement, pertaining to the creation and makeup of the Joint Board for Urban Yakima Area Planning and Development, shall be amended to read as follows:
Section 1. JOINT BOARD CREATED.
A Joint Board for Urban Yakima Area Planning and Development shall be created to consist of two Yakima County Commissioners, two Yakima City Council members to be appointed by the Council, and a Union Gap Council member to be appointed by the Council."

formation of LID's or otherwise, shall be subject to the condition that any property owner seeking sewer service whose land is located within the urban boundary, (as designated on EXHIBIT A) shall, as a condition precedent to the receipt of sewer service by the City, be required to immediately annex to the City, if feasible to do so, or to sign an agreement, as a covenant running with the land, to the effect that a petition to annex to the City of Yakima will be signed if and when the landowner is asked by the City to do so. EXCEPT, that annexation of areas that have been designated as Community Development Block Grant target areas, and that have an active neighborhood improvement program, shall be delayed for a period of at least five years after the provision of sewer and/or water service by the City unless the residents seek to annex earlier.

All existing and new development within the unincorporated Urban Area, including any site or structural improvements shall be subject only to issuance of appropriate development permits from the County and shall occur in accordance with adopted Urban Area standards.

V. Yakima County's Obligation to Enter Into the Service of Sewage Delivery.

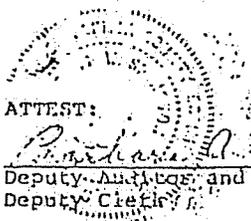
The County of Yakima agrees that it will not, in the Yakima Urban Area, enter the service of sewage delivery unless all other entities involved have been unable or have refused to serve the area concerned on a basis acceptable to the residents, and an impasse has been reached. In that event, and if a necessity for such service for the health and welfare of the people in the area involved is determined to exist, the County agrees that it will not provide sewer service to such area without a delaying period of 90 days after the impasse has developed. During this period, the entities involved will by a joint committee attempt to resolve the issues causing the impasse.

SECTION 11: NOTICE TO BE GIVEN

The City agrees to give the District, the Town and the County reasonable notice of sixty (60) days regarding any action constituting a change pertaining to the terms of this Agreement and further agrees to provide that such change shall be reflected in a written document executed by the parties to this Agreement.

SECTION 12: EFFECTIVE DATE & TERM OF CONTRACT

This Agreement shall be in full force and effect and binding upon its execution. The Agreement shall continue in full force and effect for a period of years established by the treatment and disposal facility bonds, and may be renewed thereafter by mutual agreement.

ATTEST:

Richard R. Brink
Deputy Auditor and
Deputy Clerk

Approved as to Form this
17th day of Feb, 1976
John J. ...
Deputy Prosecuting Attorney

BOARD OF COUNTY COMMISSIONERS

Les Conal
Chairman
Deborah Lambert
Frank A. Ring
Date Feb 17, 1976
* Under instructions furnished in the testimony of
The County Commissioner during, at 2:11:30

ATTEST:
Irma Litzenger
City Clerk
Approved as to Form this
11th day of Feb, 1976
F. H. Andrews
City Attorney

ATTEST:
[Signature]
City Clerk
Approved as to Form this
22nd day of February, 1976
[Signature]
City Attorney

ATTEST:
[Signature]
City Clerk
Approved as to Form this
20th day of February, 1976
[Signature]
Attorney for District

CITY OF YAKIMA
Betty L. Edmondson
Mayor
Date February 17, 1976

TOWN OF UNION GAP
R. N. [Signature]
Mayor
Date 2/23/76

TERRACE HEIGHTS SEWER DISTRICT
[Signature]
Chairman
Date February 18, 1976

SETTLEMENT AGREEMENT

By and Between

The City of Yakima,

The City of Union Gap,

and

The Terrace Heights Sewer District

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SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement Agreement") is entered into on the 9th day of ~~August~~^{Sept. 14}, 1997, by and between the City of Yakima ("Yakima"), the Terrace Heights Sewer District ("Terrace Heights"), and the City of Union Gap ("Union Gap"). For purposes of this Settlement Agreement, Yakima, Terrace Heights, and Union Gap, are the "Parties."

1. RECITALS

- 1.1 The Parties have executed an Agreement for Wastewater Treatment and Disposal Service dated February 23, 1976 ("Agreement") for purposes including Yakima's provision of wastewater treatment and disposal services ("wastewater treatment") to Terrace Heights and Union Gap.
- 1.2 A dispute has arisen regarding the methods used to calculate the charges Yakima assesses Terrace Heights and Union Gap under the Agreement.
- 1.3 This dispute has given rise to certain claims and counterclaims in *City of Yakima v. City of Union Gap and Terrace Heights Sewer District*, Yakima County Superior Court No. 96-2-01083-8 (the "Litigation").
- 1.4 The Parties agree that the Agreement shall remain in effect pursuant to its terms, and this Settlement Agreement shall remain in effect so long as Terrace Heights or Union Gap retain an interest in the capacity of the Yakima's Wastewater Facilities.
- 1.5 The Parties wish to confirm how the Agreement will be implemented in the future.
- 1.6 Yakima, Terrace Heights, and Union Gap desire to enter into this Settlement Agreement in order to provide for certain payments and actions in full settlement of all claims that are or might have been asserted by Yakima against Terrace Heights and Union Gap; and by Terrace Heights and Union Gap against Yakima, in the Litigation or otherwise in connection with rates and charges under the Agreement. The claims subject to this Settlement Agreement include charges related to: strong waste for services rendered through June 30, 1996; Capital Costs and Expenses (including debt service, depreciation, and equitable system cost share); unlisted and unmetered flows; year-end adjustments; state excise tax credits; utility tax; all other past billing and credit issues; and, interest on the foregoing.

2. DEFINITIONS

The following definitions shall apply to this Settlement Agreement, unless specifically provided otherwise herein.

- 2.1 Biochemical Oxygen Demand (BOD): BOD is defined as the rate of oxygen uptake required by bacteria to degrade and stabilize decomposable organic materials in a standard volume of water during a 5-day period at 20°C.
- 2.2 Capital Costs and Expenses. "Capital Costs and Expenses" means costs for capital facilities, which costs shall include but are not limited to loan repayment, debt service, debt service coverage, and capital facility assessments.
- 2.3 Comprehensive Plans. "Comprehensive Plans" mean those comprehensive, utility, or facility plans adopted by the Parties under state law.
- 2.4 Current Method. "Current Method" means the basis for charging wastewater treatment operation and maintenance costs ("Treatment O&M costs") under the Agreement. The Current Method has not been the method previously employed under the Agreement. The Current Method shall not include charges for Capital Costs and Expenses or depreciation. Under the Current Method, the allocation of Treatment O&M costs shall be in the following proportions:

<u>Flow</u> :	100% of Treatment O&M costs;
<u>BOD</u> :	40% of Treatment O&M costs; and
<u>SS</u> :	40% of Treatment O&M costs

Under the Current Method, charges shall be calculated as follows: Terrace Heights' or Union Gap's total flow in million gallons is multiplied by 100% of Treatment O&M costs divided by the total Treatment Plant influent flow in million gallons; plus Terrace Heights' or Union Gap's total pounds of BOD (but only with respect to concentrations greater than 300 parts per million) multiplied by 40% of Treatment O&M costs divided by total Treatment Plant influent pounds of BOD; plus Terrace Heights' or Union Gap's total pounds of SS (but only with respect to concentrations greater than 300 parts per million) multiplied by 40% of Treatment O&M costs divided by total Treatment Plant influent pounds of SS.

- 2.5 Revised Method. "Revised Method" means the basis for charging Treatment O&M costs as provided in this Settlement Agreement. The Revised Method shall not include charges for Capital Costs and Expenses.
- 2.6 Treatment Plant. "Treatment Plant" means the City of Yakima's wastewater treatment plant at 2220 East Viola, currently providing wastewater treatment for Yakima, Terrace Heights, and Union Gap, as such plant may be improved, expanded, or replaced from time to time.
- 2.7 Wastewater Facilities. "Wastewater Facilities" means the Treatment Plant; the Rudkin Road Lift Station at 1916 Rudkin Road; and to the extent agreed upon by the Parties, any other facilities that may be constructed, in the future, for joint use by the Parties.

3. REVISED METHOD FOR BILLINGS

3.1 Future Calculation of Treatment O&M and Strong Waste Charges Under the Agreement. From and after January 1, 1999, Yakima shall no longer assess and bill a strong waste surcharge to Terrace Heights and Union Gap under Section 3(f) of the Agreement. Instead, Yakima shall bill Terrace Heights and Union Gap for treatment of all wastewater, regardless of strength, under Section 3(c) of the Agreement based upon the actual costs to Yakima to treat and dispose of the wastewater as provided in this Settlement Agreement.

3.2 Revised Method of Calculating Treatment O&M Charges. Beginning January 1, 1997, Yakima shall calculate the Treatment O&M charges Terrace Heights and Union Gap pay for wastewater treatment based upon their pro-rata shares of actual Treatment O&M costs. For these new calculations, eligible Treatment O&M costs are those set forth in Section 3 of the Agreement, except that they shall not include Capital Costs and Expenses. All Treatment O&M costs shall be assigned to one of the following categories: (1) flow measured in volume without considering biochemical oxygen demand (BOD) and suspended solids (SS); (2) BOD measured in mass; and, (3) SS measured in mass. For wastewater delivered from January 1, 1997 through December 31, 1998, the Treatment O&M costs shall be allocated to these three categories in the following proportions:

- Flow: 20% of Treatment O&M costs shall be allocated to flow;
- BOD: 40% of Treatment O&M costs shall be allocated to BOD; and
- SS: 40% of Treatment O&M costs shall be allocated to SS

From and after January 1, 1999, Yakima shall continue to allocate its costs based on these proportions, unless or until all Parties agree to revise these proportions. Any such revision shall be based on: (1) a detailed accounting of distribution of Treatment O&M costs by Yakima, or (2) a review of the function and classification of each component of the Treatment Plant and Treatment O&M costs allocated to flow, BOD, and SS of each component. Such review shall be initiated at the request of any Party by notification to the other Parties no later than September 1 of the year prior to the year the revision would be implemented. Such review shall be based upon Ecology- and EPA-approved methods and documents and generally accepted engineering practices.

3.3 Phasing-in of Revised Method. From January 1, 1996 through December 31, 1998 the Revised Method shall be phased in as follows:

3.3.1 January 1, 1996 - June 30, 1996: Yakima shall calculate flow bills for Terrace Heights and Union Gap using the Current Method. These bills shall be recalculated after the end of the year using actual Treatment O&M costs and actual flows. Strong waste charges shall not be billed or recalculated, since they were included in this settlement.

3.3.2 July 1, 1996 - December 31, 1996: Yakima shall calculate flow and strong waste bills for Terrace Heights and Union Gap using the Current Method. These bills shall be recalculated after the end of the year using actual Treatment O&M costs and actual volumes of flow and mass of BOD and SS.

3.3.3 January 1, 1997 - December 31, 1997: Yakima shall calculate bills for Terrace Heights and Union Gap using the Current Method and the Revised Method as follows. The rates charged to Terrace Heights and Union Gap shall equal the calculation under the Current Method plus 40% of the difference between the amount calculated under the Revised Method and the amount calculated under the Current Method. The formula is as follows: Rates = Current Method + .40 x (Revised Method - Current Method).

3.3.4 January 1, 1998 - December 31, 1998: Yakima shall calculate bills for Terrace Heights and Union Gap using the Current Method and the Revised Method as follows. The rates charged to Terrace Heights and Union Gap shall equal the calculation under the Current Method plus 70% of the difference between the amount calculated under the Revised Method and the amount calculated under the Current Method. The formula is as follows: Rates = Current Method + .70 x (Revised Method - Current Method).

3.4 Monthly Treatment O&M Charge. Subject to the phasing-in of the Revised Method under Section 3.3, monthly Treatment O&M charges to Terrace Heights and Union Gap shall be calculated as follows: One-twelfth of the estimated annual Treatment O&M costs for the Treatment Plant (based on the allocations in Section 3.2) for flow, BOD, and SS shall be multiplied by Terrace Heights' and Union Gap's percentage (as applicable) of the total monthly influent flow and loadings of BOD and SS to the Treatment Plant. The total monthly charge for wastewater treatment to Terrace Heights and Union Gap, as applicable, equals the sum of the three amounts calculated in accordance with this Section. Total monthly loadings of BOD and SS shall be determined by using the average strength of Terrace Heights' or Union Gap's wastewater, in a particular month, based on the results of the tests conducted in accordance with Section 4, multiplied by that Party's actual flow for that month. Split sample test results, for a given day, from Terrace Heights or Union Gap, as applicable (from the tests conducted pursuant to Sections 4.3 and 4.4), shall be averaged, using the geometric mean, with Yakima's test results for that day's sample before being included in the calculation for the monthly average of test results.

3.5 Monthly Pumping O&M Charge (Union Gap only). Monthly charges for O&M costs for pumping wastewater at the Rudkin Road Lift Station ("Pumping O&M costs") shall be determined by multiplying the unit cost by the monthly flow contributed by Union Gap. The unit cost shall be determined by dividing the estimated annual costs of O&M (which costs are specified in Section 3 of the Agreement) for the Rudkin Road Lift Station by the estimated annual flow to be pumped by the Rudkin Road Lift Station.

3.6 Annual Adjustment. Monthly Treatment and Pumping O&M charges to Terrace Heights and Union Gap, as applicable, shall be recalculated after the end of each year in accordance with Sections 3.4 and 3.5 except that each recalculation shall use actual costs of operations and maintenance ("O&M") and the total of each Party's actual monthly flows and plant loadings of BOD and SS, as applicable, for the previous year (i.e., the year for which charges are being recalculated). The difference between the amount billed in the previous year and the actual amount owed as determined under this Section ("adjustment") shall be billed or credited to Terrace Heights and/or Union Gap, as applicable. This adjustment shall be determined and billed or credited to Terrace Heights and Union Gap prior to September 30 (with respect to an adjustment for the previous year). Beginning with the adjustment for 1997, interest shall be included at the rate of 6% per annum on; A) any amount owed to Yakima by Terrace Heights or Union Gap not paid within 60 days of the billing; or B) any amount owed to Terrace Heights or Union Gap by Yakima not paid or credited within 60 days of the date of billing or September 30, whichever comes first.

3.7 Union Gap Unmetered Flows.

3.7.1 Definitions: Under the Sewer Service Agreement, City of Yakima-City of Union Gap dated January 10, 1979, and amendments, Union Gap discharges wastewater from certain areas in Union Gap into Yakima's wastewater collection system without measuring the quantity of wastewater using a wastewater flow meter. For purposes of this Settlement Agreement, such flow is "Union Gap Unmetered Flow."

3.7.2 Charges: The charge for the Union Gap Unmetered Flow shall be payable in addition to charges established under Sections 3.1 through 3.6 of this Settlement Agreement. Such charges for Union Gap Unmetered Flow shall be calculated as follows: the quantity of such flow shall be multiplied by 0.5 times the sum of the Treatment Plant unit cost and the Rudkin Road unit cost. The Treatment Plant unit cost shall be determined by dividing 100% of the annual Treatment O&M costs by the annual volume of wastewater flow into the Treatment Plant. The Rudkin Road unit cost shall be determined by dividing 100% of the annual Pumping O&M costs by the annual volume of wastewater pumped at the Rudkin Road Lift Station. On a monthly basis, Union Gap shall provide Yakima with the flow information for all accounts which contribute to Union Gap Unmetered Flow.

3.7.3 Wastewater Flow Meter: At such time that Union Gap installs a wastewater flow meter at the point of discharge of any unmetered flow into the Yakima system, this charge for Union Gap Unmetered Flow for the flow at that location shall be discontinued.

3.8 Acquisition or Operation by Other Entity.

3.8.1 **Public Entity.** In the event the Treatment Plant is acquired or operated by a state, county, or other governmental entity ("agency") such agency may establish rates and charges or costs for services for wastewater treatment notwithstanding the provisions of Section 3 of this Settlement Agreement; provided, however, that Terrace Heights, Union Gap, and Yakima shall all be subject to the same rate structure for wastewater treatment services.

3.8.2 **Private Entity.** In the event the Treatment Plant is acquired or operated by a non-governmental entity, the Parties acknowledge that payments under Section 3 of this Settlement Agreement may include reasonable profit as may be authorized by the contract between Yakima and the non-governmental entity; provided, however, that Terrace Heights, Union Gap, and Yakima shall all be subject to the same rate structure for wastewater treatment services. Rates charged to Terrace Heights and Union Gap shall not include amounts for utility or other taxes imposed by Yakima related to the provision of wastewater treatment service.

4. **SAMPLING AND TESTING**

4.1 Testing of Influent. To determine the amounts of BOD and SS in Terrace Heights' and Union Gap's influent to Yakima's system, the Parties agree to the following protocol.

4.2 Sampling. Yakima shall take samples of wastewater at locations approved by representatives of Yakima, Terrace Heights, and Union Gap. Samples shall be as representative as possible of the overall wastewater stream, and shall be no less than continuous, uninterrupted 24-hour composite samples, or by such other procedures as are mutually agreed among Yakima and Terrace Heights and/or Union Gap. On or before September 30, 1998, the Parties shall install and use flow-paced sampling procedures using refrigerated ISCO, or mutually agreed-upon equivalent, sampling stations. Yakima shall take samples a minimum of five (5) times per month. Yakima may take additional samples at its option; however, Yakima may not charge for more than 10 samples per month without prior permission from the affected Party. At their option, Union Gap and/or Terrace Heights may request that Yakima take additional samples during a particular month. Also, at their option, representatives of Terrace Heights and/or Union Gap may attend the sampling. Yakima shall give reasonable notice of the date and time of sampling.

4.3 Split Sampling. Yakima shall prepare split samples when it takes samples pursuant to Section 4.2, and shall give a split sample to the representative of Terrace Heights and/or Union Gap who attends the sampling. If no representative attends the sampling, Yakima shall keep the split sample at the Treatment Plant until noon the following day.

4.4 Testing. Analysis of the split samples shall be done by laboratories accredited by the Washington State Department of Ecology ("Ecology"). Each Party shall make its Quality Assurance/Quality Control ("QA/QC") results available to any other Party upon that other Party's request, and any Party may observe any other Party's testing procedures. Terrace Heights and Union Gap shall continue to reimburse Yakima for Yakima's actual costs of this sampling and analysis.

4.5 Notification of Sampling Results. Each Party shall promptly notify the other Parties of its test results.

5. SYSTEM OWNERSHIP - CAPACITY - PAYMENT

5.1 Yakima Owns System. Yakima owns the Wastewater Facilities.

5.2 Capacity Allocation. Union Gap and Terrace Heights have an interest in and right to capacity ("Treatment Capacity Allocation") of the Treatment Plant. In addition, Union Gap has an interest in and right to capacity ("Pumping Capacity Allocation") of the Rudkin Road Lift Station and its related force main. Treatment Capacity Allocation and Pumping Capacity Allocation are referred to collectively as "Capacity Allocation." The Capacity Allocations under Sections 5.5 and 5.6 shall remain in effect as set forth in Section 5.5.3.

5.3 Future Calculation of Capital Expenditure Charges. From and after January 1, 1996, Yakima shall bill Terrace Heights and Union Gap for their shares of debt service (including repayment of Public Works Trust Fund (PWTF) loans and excluding any charges for depreciation) on the following basis:

5.3.1 Schedule of Payments. Charges for debt service shall be determined on a pro-rata basis by multiplying each Party's Capacity Allocation by the official schedule for payment for each issuance of bonds. Yakima shall not include any debt service charges for reserves other than those provided for under Sections 5.3.3, 5.3.4, and 5.4. Yakima shall have the sole responsibility to satisfy bond reserve requirements and shall own all amounts accumulated as reserves, and interest thereon. By September 30 of each year, Yakima shall, by invoice or notice, provide to Terrace Heights and Union Gap a schedule for debt service payments for the following year. Terrace Heights and Union Gap's payments are due three working days before the due date listed on the debt service payment schedule. If any payment is late, interest shall accrue at the rate of 6% on the outstanding amount as of the due date listed on the debt service payment schedule.

5.3.2 PWTF. Charges for PWTF loans shall be determined on a pro-rata basis by multiplying each Party's Capacity Allocation by the amounts due under actual PWTF invoices. The Parties acknowledge that Yakima may not be able to provide 30 days notice of the actual amounts due. Yakima shall send Terrace Heights and Union Gap copies of the invoice as soon after it is received as practicable. Terrace Heights and Union Gap shall make payment within 30 days

permanent increase of their Capacity Allocation. Terrace Heights and Union Gap will provide Yakima with copies of their respective wastewater planning documents (and amendments) indicating the jurisdiction's respective wastewater treatment needs. Yakima shall include Union Gap's and Terrace Heights' wastewater treatment needs in its own planning documents and shall plan for expansion of the Wastewater Facilities based on the total capacity needs of all the Parties. When Yakima commences planning for Wastewater Facilities improvement or expansion, Yakima shall notify Union Gap and Terrace Heights of this activity, and upon reasonable notice by Terrace Heights and/or Union Gap, Yakima shall include in any comprehensive or system plans, and in facility design, the additional Capacity Allocation requested by Terrace Heights and/or Union Gap. Terrace Heights and/or Union Gap, as applicable, shall bear all Capital Costs and Expenses associated with any increase Terrace Heights or Union Gap requests, including both expansion costs and costs reflecting any increase in the share of existing wastewater facilities used to provide service to the Party increasing its Capacity Allocation. Each Party shall give prior written notice to the other Parties of Comprehensive Plan processes, drafts, submittals to regulatory agencies and public hearings.

5.7 Temporary Increase. Terrace Heights and/or Union Gap may wish to seek a temporary increase in its Capacity Allocation in the event that it expects to require more capacity than its current Capacity Allocation. Yakima shall consider a request for temporary additional capacity, if at the time of the request, allocating more capacity to Terrace Heights and/or Union Gap would not adversely affect Yakima's ability to serve as authorized by state law. Additionally, Terrace Heights and Union Gap may allocate between each other by separate agreement the capacity recognized in Section 5.5, or as later authorized by the Parties.

6. PAYMENT OF FUTURE DISPUTED AMOUNTS INTO ESCROW

In the event that Terrace Heights or Union Gap disputes any charges imposed under the Agreement or this Settlement Agreement, the Party disputing the charges shall pay all disputed charges into an interest-bearing escrow account. Disbursements from such account shall be made on the joint instruction of Yakima and the Party raising the dispute upon joint resolution of the dispute pursuant to Section 9 of the Agreement, through mediation, or otherwise.

7. CHARGES FOR PAST SERVICE - RELEASE OF CLAIMS

7.1 Yakima-Terrace Heights. Upon execution of this Settlement Agreement and payment of the amount set forth on Exhibit A, Terrace Heights and Yakima agree to release their claims against each other, as set forth in paragraph 1.6 above. A chart of the amounts at issue under this Settlement Agreement and the reconciliation thereof is attached as Exhibit A, which is incorporated herein by this reference. Yakima shall pay Terrace Heights the total amount set forth on Exhibit A within 30 days of the effective date of the Settlement Agreement.

7.2 Yakima-Union Gap. Upon execution of this Settlement Agreement and payment of the amount set forth in Exhibit B, Union Gap and Yakima agree to release their claims against each other as set forth in paragraph 1.6 above. A chart of the amounts at issue under this Settlement Agreement and the reconciliation thereof is attached as Exhibit B, which is incorporated herein by this reference. Union Gap shall pay Yakima the total amount set forth on Exhibit B within 30 days of the effective date of the Settlement Agreement.

8. RESOLUTION OF ISSUES RELATING TO CAPITAL COSTS

8.1 Debt Service Reconciliation. Upon execution of this Settlement Agreement and payment of the amounts set forth in Exhibit A and B, Yakima shall have acquired Terrace Heights' and Union Gap's interests in accumulated reserves that have been generated by their payment of debt service in the past.

8.2 Depreciation. Terrace Heights' and Union Gap's past depreciation payments have been credited to and netted out of the equitable shares of the system cost set forth in Exhibits A and B.

8.3 Equitable Share of System Costs. Upon execution of this Settlement Agreement and payment of the amounts set forth in Exhibit A and B, Terrace Heights and Union Gap shall be deemed to have paid an equitable share of the Capital Costs and Expenses of Yakima's existing Wastewater Facilities, notwithstanding any outstanding share of local cash.

9. UTILITY TAXES

9.1 Utility Tax Settlement. Yakima shall not include, in charges to Terrace Heights or Union Gap under the Agreement or this Settlement Agreement, any amounts for its own utility taxes or any taxes other than those that are both (1) imposed by third parties and (2) related to the Wastewater Facilities and their operation.

9.2 Order of Dismissal. Upon the respective Parties' receipt of all payments required under this Settlement Agreement (the reconciliation of which is set forth in Exhibits A and B), the Parties shall enter into an Order of Dismissal, dismissing the Litigation with prejudice.

10. REPRESENTATIONS AND WARRANTIES

10.1 Warranty of Capacity to Execute Agreement. Yakima, Terrace Heights, and Union Gap represent and warrant that no other person or entity has or has had any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement except as otherwise set forth herein and that the Parties have the right and authority to execute this Settlement Agreement and receive any sum specified in it; and that they have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Settlement Agreement.

10.2 Performance. The Parties each agree to diligently perform any other acts and execute and deliver any further documents which may be reasonable and necessary to carry out the terms and provisions of this Settlement Agreement.

11. MISCELLANEOUS

11.1 Payment for Benefit of Facility Only. Any money Terrace Heights and Union Gap pay under the Agreement or the Settlement Agreement shall be used exclusively for the benefit of the Wastewater Facilities except as is allowed under Section 3.8.

11.2 Binding Effect. This Settlement Agreement, including but not limited to any Capacity Allocation under Section 5, shall be binding upon and inure to the benefit of the Parties hereto and their predecessors, successors, heirs and assigns.

11.3 Governing Law. This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of Washington.

11.4 No Third-Party Beneficiary. This Settlement Agreement is entered into for the exclusive benefit of the Parties hereto and shall not be construed to create any rights in any third party.

11.5 Litigation. Each Party shall bear its own costs and expenses relating to the mediation and the Litigation, and Yakima shall not include its mediation or the Litigation costs and expenses in charges to Terrace Heights and Union Gap.

11.6 Entire Agreement. This Settlement Agreement and all exhibits hereto constitute the entire agreement between the Parties relating to the settlement of the disputes relating to the claims identified in Section 1.6. No statements, communications, letters or agreements relating to this settlement shall have any force or effect unless embodied in this Settlement Agreement or the Exhibits hereto. No representation, promise, inducement or statement of intention has been made by any Party to any other Party relating to the settlement which is not set forth in this Settlement Agreement and no Party shall be bound by or liable for any alleged representation, promise, inducement or statement of intention not so set forth.

11.7 Modification of Agreement. No modification or waiver of this Settlement Agreement or any part hereof shall be valid or effective unless in writing and signed by all Parties to this Settlement Agreement; no waiver of any breach or condition of this Settlement Agreement shall be deemed to be a waiver of any other subsequent breach or condition, whether of like or different nature.

11.8 Authorization to Enter Dismissal. The Parties to this Settlement Agreement hereby authorize and instruct their attorneys to, upon payment of the amounts set forth in this Settlement Agreement, seek an order of dismissal of the Litigation with prejudice.

11.9 Multiple Counterparts. This Settlement Agreement, or any amendment thereto, may be executed in multiple counterparts, each of which shall be deemed an original agreement, and all of which shall constitute one agreement, by each of the Parties hereto on the date respectively indicated in the acknowledgments of such Parties, notwithstanding that all of the Parties are not signatories to the original or the same counterpart, to be effective as of the day and year first above written.

11.10 Effectiveness. This Settlement Agreement shall become effective upon execution by all of the Parties and shall remain in effect for as long as Terrace Heights or Union Gap have an interest in the capacity of the Wastewater Facilities. The Agreement shall remain in effect pursuant to its terms.

11.11 Accounting. Annually, Yakima shall provide Terrace Heights and Union Gap with an accounting with respect to all charges under this Agreement and this Settlement Agreement.

ATTEST:



Karen S Roberts
Karen S Roberts
Yakima City Clerk
CITY CONTRACT NO: 97-85
RESOLUTION NO. R-97-107

CITY OF YAKIMA

R. A. Zais, Jr.
R. A. Zais, Jr.
City Manager

Date: 8/27, 1997

ATTEST:

Kathleen M Holscher
Kathleen M. Holscher
Union Gap City Clerk

CITY OF UNION GAP

Paul Burlingame
Paul Burlingame
City Manager

Date: 9/9, 1997

ATTEST:

Lucille McFarland
Lucille McFarland
District Secretary

TERRACE HEIGHTS SEWER DISTRICT

Norman Alderson
Norman Alderson
District Manager

Date: 8/28, 1997

ITEM B

SPECIAL AGREEMENT

between

The City of Yakima

and

City of Union Gap

This Special Agreement is entered into this 25th day of September, 2006, between the City of Yakima (the "City") and City of Union Gap ("Union Gap") (the "Parties") for the general purpose of providing wastewater services and enforcement within the wastewater service area for Union Gap.

I. RECITALS

A. The City owns and operates a wastewater treatment system and administers a delegated pretreatment program to prevent the discharge of waste that would cause interference with, or pass through of, its wastewater treatment system.

B. Union Gap owns and operates a wastewater collection system, and utilizes the City's wastewater treatment system to treat wastewater collected by Union Gap's system. The February 23, 1976, Agreement for Wastewater Treatment and Disposal Service by and between the City and three contributing jurisdictions, the County of Yakima (the "County"), the Town (now, City) of Union Gap and the Terrace Heights Sewer District (the "1976 Agreement"), and the September 9, 1997, Settlement Agreement among the City, Union Gap and Terrace Heights (the "1997 Agreement") govern various aspects of the use of the City's wastewater treatment system by Union Gap.

C. Owners and operators of facilities located in Union Gap currently contribute wastewater that includes industrial waste ("Industrial Users"). Such facilities are "industrial dischargers" within the meaning of the City's pretreatment ordinance, Yakima Municipal Code Section ("YMC") 7.65.020, and "Industrial Users" within the meaning of 40 Code of Federal Regulations ("C.F.R.") 403.3(h). In addition, some of these Industrial Users may be "significant industrial dischargers" or "Significant Industrial Users," as defined by YMC 7.65.020 and 40 C.F.R. 403.3(t), respectively ("SIUs"). The terms "Pretreatment Standard" and "Pretreatment Requirement," as used in this Special Agreement, have the same meanings as those set out in 40 C.F.R. 403.3.

D. Under Section 4 of the 1976 Agreement, the parties to that agreement agreed that:

Wastes prohibited by the U.S. Environmental Protection Agency or by the State Department of Ecology, waste of unusual quantity or organic strength, waste containing toxic or deleterious matter

incompatible with the waste treatment process, or that may be harmful to the treatment process or the quality of the receiving waters, shall not be discharged into the City's sewage system except by Special Agreement. Consent to such Special Agreement shall not be unreasonably withheld. As a part of such special agreement, the City may require that concentration of such substances in waste discharged to its system be eliminated or reduced to acceptable limits by pre-treatment. The Town [Union Gap], the District [Terrace Heights] and the County shall be responsible for ensuring that wastes discharged to their respective systems meet the relevant quality standards set forth by the Special Agreement.

E. The City is required to implement a pretreatment program to control discharges from all Industrial Users of its wastewater treatment system pursuant to requirements set out in 40 C.F.R. Part 403, Chapter 90.48 RCW, Chapters 173-208 WAC, 173-216 WAC, 173-201A WAC, and 173-240 WAC and the City's National Pollution Discharge Elimination System Permit ("NPDES Permit"). In 2000, the City and Union Gap entered a Special Agreement (the "2000 Special Agreement") as required by the 1976 Agreement and supporting the City's pretreatment authority. In accordance with the requirements of the 2000 Special Agreement, Union Gap adopted a sewer use ordinance, Ordinance No. 2242, which implemented sewer use and pretreatment regulations. In addition, Section VIII.B of the 2000 Special Agreement requires the City and Union Gap to periodically conduct a review of and develop revisions to the 2000 Special Agreement in order to ensure that the Parties continue to comply with the Pretreatment Standards and Pretreatment Requirements.

F. In 2003, as a part of its renewal of the City's National Pollution Discharge Elimination System Permit ("NPDES Permit"), the Washington Department of Ecology ("Ecology") granted the City full authority to administer its pretreatment program. Under Section S6.A.1.j of the NPDES Permit, the City must take the following action:

Establish, where necessary, contracts or legally binding agreements with contributing jurisdictions to ensure compliance with applicable pretreatment requirements by commercial or industrial users within these jurisdictions. These contracts or agreements shall identify the agency responsible for the various implementation and enforcement activities to be performed in the contributing jurisdiction. In addition, the Permittee shall be required to develop a Memorandum of Understanding (or Interlocal Agreement) that outlines the specific roles, responsibilities, and pretreatment activities of each jurisdiction.

G. Union Gap has authority under RCW 35.92.020 to adopt and enforce a pretreatment ordinance and other controls on Industrial Users as set forth in this Special Agreement.

H. As required by Section VIII.B of the 2000 Special Agreement, the City and Union Gap have conducted a review of and developed revisions to the 2000 Special Agreement. To

implement those revisions, the requirements of Section 4 of the 1976 Agreement, and the obligations of Section S6.A.1.j of the City's NPDES Permit, the Parties are entering into this Special Agreement. The Parties intend that all provisions of the 1976 Agreement, including Section 4 of the 1976 Agreement, and the 1997 Agreement remain in full force and effect.

Therefore, the Parties agree as follows:

II. SEWER USE ORDINANCE

A. Union Gap shall maintain and diligently enforce a sewer use ordinance that is no less stringent and is as broad in scope as the sewer use ordinance of the City (Chapter 7.65 YMC) as may be amended from time to time ("City Sewer Use Ordinance"); provided, however, that the sewer use ordinance need not include wastewater discharge permitting authority if Ecology has not delegated such authority to Union Gap. Union Gap's sewer use ordinance will include pollutant-specific local limits that address at least the same pollutant parameters and that are at least as stringent as the local limits included in the City Sewer Use Ordinance. Union Gap's sewer use ordinance will include the ability to control, through a permit, order, agreement, or similar means, the contribution to the City's wastewater treatment system from each Industrial User within Union Gap's jurisdiction, pursuant to 40 C.F.R. 403.8(f)(1)(iii).

B. Before revising the City Sewer Use Ordinance or any component thereof, the City will forward a copy of the proposed revision(s) to Union Gap for review. Union Gap will provide any comment on such revision(s) within thirty (30) days of receipt of the City's proposed revisions. The City shall take into consideration Union Gap's comments in finalizing its revision(s).

C. When the City completes any revisions to the City Sewer Use Ordinance or any component thereof, it will forward a copy of the final revisions to Union Gap. Union Gap will adopt revisions to its sewer use ordinance that are at least as stringent as those adopted by the City. Union Gap will forward to the City its proposed revisions for review within forty-five (45) days of receipt of the City's revisions. Union Gap will adopt its revisions within forty-five (45) days of receiving approval from the City of its content.

D. Nothing in this Special Agreement precludes Union Gap from enacting and enforcing regulations more stringent than those set forth herein.

III. DUTIES AND RESPONSIBILITY OF UNION GAP

A. Union Gap will take all actions reasonable and necessary to ensure that Industrial Users, including SIUs, within its boundaries are subject to an approved pretreatment program to the extent required by 40 C.F.R. 403.8. Such actions shall include, but are not limited to, Union Gap's performance of all technical and administrative duties necessary to implement its sewer use ordinance (except for the issuance of waste discharge permits and the associated permit enforcement authority, which remain the responsibility of Ecology until Ecology delegates this authority to Union Gap). Union Gap will:

- (1) Update the industrial waste survey as set out in more detail in Sections B and C below;
- (2) Ensure that all Industrial Users required to obtain a wastewater discharge permit (or equivalent individual control mechanism) have been issued such permit or authorization by either Ecology or Union Gap (after Ecology delegates this authority to Union Gap) prior to discharge;
- (3) Conduct annual inspections, sampling, and analysis of all SIUs, as well as other Industrial Users that may have the potential to affect the City's wastewater treatment system;
- (4) Enforce its sewer use ordinance against Industrial Users that do not comply with Pretreatment Requirements, Pretreatment Standards or its sewer use ordinance and inform the City and Ecology of all violations of its sewer use ordinance or of any other need for enforcement action; and
- (5) Take emergency action to stop or prevent any discharge that presents or may present an imminent danger to the health or welfare of humans, that reasonably appears to threaten the environment, that reasonably threatens to cause interference, pass through, or sludge contamination, or that may cause the City to fail to comply with the terms of its NPDES Permit.

B. Union Gap shall maintain a current list of Industrial Users located in its jurisdiction ("nondomestic inventory"). The nondomestic inventory shall include, but not be limited to, name and address of owner and operator, nature of discharge, emergency contact, and copy of all discharge permits. Union Gap will require each existing wastewater customer located within its jurisdiction that may be an Industrial User to provide an industrial waste survey within sixty (60) days of the date of this Special Agreement and an updated industrial waste survey by January 1, 2011. Union Gap will forward a copy of these surveys to the City and Ecology.

C. Whenever a new Industrial User begins operations in Union Gap, or any time an existing Industrial User implements changes in its operations or processes that significantly affect its wastewater constituents or characteristics, or storage of chemicals (these changes include, but are not limited to, flow increases of twenty percent (20%) or greater, the commencement of discharge of any substance prohibited or limited under the City Sewer Use Ordinance, and the addition of any process covered by national categorical pretreatment standards), or has an enforcement action brought against it, or at any time requested by the City or Ecology, Union Gap will require that such Industrial User respond to an industrial user survey that includes information reasonably requested by the City for purposes of permit compliance. Union Gap will forward a copy of the completed survey to the City and Ecology.

D. Union Gap will provide the City and Ecology access to or copies of all records or documents relevant to the pretreatment program for any Industrial User located in Union Gap or discharging through Union Gap to the City.

E. Union Gap shall inspect and sample all SIUs and a representative number of other Industrial Users located in its jurisdiction each year. Union Gap will sample SIUs and Industrial Users more frequently if required by Federal or State law or if actual or potential violations of the Pretreatment Requirements or Pretreatment Standards occur. Union Gap will submit written notice of scheduled inspections a minimum of five (5) working days prior to such inspection to the City and Ecology, providing the opportunity for the City and Ecology to attend all inspections. If an inspection is in response to an emergency situation and such notice is not possible, Union Gap will make every effort to informally notify the City and Ecology of the impending inspection so the City and Ecology may attend. Union Gap will forward copies of all inspection reports, including, if available, the laboratory data associated with the samples taken during the inspection, to the City and Ecology within twenty (20) days of the inspection. Union Gap will submit to the City and Ecology its procedures for sampling and analyses, including all procedures in place for quality assurance and quality control. All procedures will conform to those set out in 40 C.F.R. 403.12(b)(5)(ii)-(v) and 40 C.F.R. Part 136, except as otherwise required by the U.S. Environmental Protection Agency.

F. The City may conduct inspections and sampling at any Industrial User's facility located within Union Gap, provided that a written notice of scheduled inspections is delivered to Union Gap a minimum of five (5) working days prior to the inspection. If an inspection is in response to an emergency situation and such notice is not possible, the City will make every effort to informally notify Union Gap of the impending inspection so Union Gap may attend. The City will forward copies of all inspection reports, including, if available, the laboratory data associated with the samples taken during the inspection, to Union Gap within twenty (20) days of the inspection. The City will submit to Union Gap its procedures for sampling and analyses, including all procedures in place for quality assurance and quality control. All procedures will conform to those set out in 40 C.F.R. 403.12(b)(5)(ii)-(v) and 40 C.F.R. Part 136, except as otherwise required by the U.S. Environmental Protection Agency.

G. Union Gap will submit an annual report to the City and Ecology. Such report shall be received by the City and Ecology on or before February 5th each year and consist of a summary of the pretreatment activities conducted during the previous calendar year. The report shall include the following information:

- (1) An updated nondomestic inventory;
- (2) Laboratory data results for all Industrial User sampling that Union Gap conducted in the previous year;
- (3) Compliance status of each SIU and of additional Industrial Users that have the potential to affect the City's wastewater treatment system, or have violated Pretreatment Standards or Pretreatment Requirements as set out in the City Sewer Use Ordinance within the past year;
- (4) Copies of all wastewater discharge permits or discharge agreements issued to SIUs; and

(5) A list of Industrial Users scheduled for inspection and/or monitoring for the next year, and the expected frequency of the inspection and monitoring activities.

H. Union Gap shall be responsible for all costs related to its performance of the technical and administrative duties necessary to implement its pretreatment requirements under this Special Agreement. Union Gap shall be responsible for the reasonable costs incurred by the City in its oversight of the Union Gap pretreatment program, provided that the City provides advance notice of such oversight and such oversight is necessary for compliance with this Agreement or permit responsibilities. Union Gap shall be responsible for all costs for tasks performed, by the City, at Union Gap's request. All costs incurred by the City for oversight shall be provided on an itemized invoice listing all tasks performed and associated costs. The City shall provide a cost schedule for pretreatment activities.

IV. EXTRA-JURISDICTIONAL NEW INDUSTRIAL USERS

Before an Industrial User located outside the jurisdiction of Union Gap discharges into Union Gap's sewer system, Union Gap and the City will enter into an agreement with the jurisdiction in which such Industrial User is located. Such agreement must include terms that are substantially equivalent to this Special Agreement and must be fully secured prior to a discharge from any Industrial User outside the jurisdiction of Union Gap.

V. ENFORCEMENT AND DISPUTE RESOLUTION

A. The City shall have all enforcement remedies available to it under the City Sewer Use Ordinance, this Special Agreement and applicable law in the event that the City finds that wastewater discharged from Union Gap's sewer system has violated or is violating the Pretreatment Standards and requirements of the City Sewer Use Ordinance.

B. The Parties shall seek to resolve other disputes concerning this Special Agreement and its interpretation that may arise between the City and Union Gap from the date hereof until the termination of this Special Agreement at the lowest possible level as promptly as possible. In the event that the Parties' efforts to resolve such a dispute are not effective, they may agree to proceed with mediation or arbitration. Each Party retains all remedies available to it at law or in equity.

VI. EMERGENCY ACTIONS

The City may take, or direct Union Gap to take reasonable emergency action necessary to stop or prevent any discharge that presents, or may present, an imminent danger to the health or welfare of humans, that reasonably appears to threaten the environment, that threatens to cause interference, pass through, or biosolids contamination, or that may cause the City to fail to comply with the terms of its NPDES Permit. The City will provide informal notice to the Industrial User of its intent to take emergency action prior to taking action. The City will also use reasonable efforts to notify Union Gap (such efforts to include telephone contact) of its intent to take emergency action prior to taking action. Depending on the immediacy of the need for action, however, the opportunity to respond may be limited to a hearing after the emergency powers of the City have been exercised.

VII. INDEMNIFICATION

A. Union Gap shall indemnify and hold the City harmless for all damages, fines, and costs (including, without limitation, attorneys', consultants' and experts' fees) incurred as a result of industrial waste discharged from Union Gap's sewer system in violation of federal or state laws or regulations or the pretreatment program maintained pursuant to this Special Agreement. In addition, Union Gap will indemnify and hold harmless the City, its elected officials, officers, employees, agents and representatives, from and against any and all damages, fines, costs (including, without limitation, attorneys', consultants' and experts' fees, and fees to establish the right to indemnification), judgments, and liabilities (except to the extent that any of the same results from the indemnified party's negligent act or omission), arising out of or related to any act or omission of Union Gap, its employees, subcontractors, agents, or servants; provided, however, that such act or omission is directly related to Union Gap's duties or responsibilities under this Special Agreement. These rights to indemnification shall survive the termination of this Special Agreement.

B. The City will indemnify and hold harmless Union Gap, its elected officials, officers, employees, agents and representatives, from and against any and all damages, fines, costs (including, without limitation, attorneys', consultants' and experts' fees, and fees to establish the right to indemnification), judgments, and liabilities (except to the extent that any of the same results from the indemnified party's negligent act or omission), arising out of or related to any act or omission of the City, its employees, subcontractors, agents, or servants; provided, however, that such act or omission is directly related to the City's duties or responsibilities under this Special Agreement. This right to indemnification shall survive the termination of this Special Agreement.

VIII. GENERAL PROVISIONS

A. If any term of this Special Agreement is held to be invalid in any judicial action, the remaining terms of this Special Agreement will be unaffected.

B. The Parties will review and revise this Special Agreement to ensure compliance with the Federal Clean Water Act (42 U.S.C. §1251 et seq.), the Washington State Water Pollution Control Act (Chapter 90.48 RCW), the rules and regulations (see, e.g., 40 C.F.R. Part 403 and Chapter 173-216) issued thereunder and the City's NPDES Permit, as necessary, but no later than five (5) years from the date on which the Special Agreement was signed and implemented by the Parties and no later than ninety (90) days from the date on which Ecology grants Union Gap partial or full authority to administer a pretreatment program.

C. This Special Agreement shall terminate upon the written agreement of the Parties, at which time all benefits, responsibilities, and obligations under this Agreement, including, but not limited to, permission to any Industrial User to discharge to the City's wastewater treatment system, will cease unless provided otherwise in this Special Agreement. Union Gap may terminate this Special Agreement by providing thirty (30) days written notice to the City and ceasing to discharge industrial waste from the Union Gap's sewer system to the City's wastewater treatment system. Termination shall be effective following thirty (30) days from receipt of any such notice, at which time all benefits, responsibilities, and obligations under this

Special Agreement, including but not limited to permission to any Industrial User to discharge to the City's wastewater treatment system, will cease unless provided otherwise in this Special Agreement (e.g. Section VII provides that certain indemnifications shall survive the termination of this Special Agreement).

D. This Agreement shall in all respects be governed by the laws of the State of Washington. Venue for any legal action arising under this Special Agreement, including under Section V.A above, shall be in Yakima County Superior Court.

E. This Special Agreement replaces the 2000 Special Agreement in its entirety, and shall be in full force and effect and binding upon its execution.

THE CITY OF YAKIMA

THE CITY OF UNION GAP

By: *Danik Zhill for*
R. A. Zais, Jr., City Manager

By: *Aubrey C. Reeves*
Its: *Mayor*

ATTEST:

Deborah J. Moore
Deborah J. Moore, City Clerk

ATTEST:

Kathryn Thompson, CMC
Clerk

Contract No. 2006-78
Resolution No. R-2006-125



[Signature]
Union Gap Attorney