

GCB 2981

Flood Response at the US 12 - 40th Avenue Interchange

This Agreement is made and entered into between the Washington State Department of Transportation, hereinafter "WSDOT", and the City of Yakima, hereinafter the "CITY" and hereinafter individually the "Party" and collectively the "Parties."

Recitals

1. The Parties have determined from the floods of February 2016 and March 2017 which closed US 12 - 40th Avenue Exits/Interchange that there is a need for cooperation between WSDOT and the CITY to coordinate flood response at this location; and
2. The Parties have determined that this location is within the CITY's jurisdiction and that the CITY is the lead agency during a flood response; and
3. WSDOT is the property owner of the 40th Avenue Interchange and has agreed to allow certain flood fighting measures meant to divert flood waters during high water events from specific areas (flood fight) to the CITY during certain mutually agreed upon events; and

Now, Therefore, pursuant to the authority granted by RCW 39.34, *The Interlocal Cooperation Act* for the purpose of performing the orderly response during a flood fight at this location, the above recitals are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, covenants, and performances contained herein, and Exhibit A - Location Map (Exhibit A), Exhibit B - Flood Berm Schematic (Exhibit B) and Exhibit C - Staging Area Map (Exhibit C) which are attached hereto and made a part hereof,

It Is Mutually Agreed As Follows:

1. Purpose

The Parties have determined that during a flood fight, should flood water from Cowiche Creek present an imminent threat to enter into and flood the 40th Avenue Interchange, efforts shall be made to divert flood water away from homes and development by blocking the Interchange with flood berms and/or other materials as shown on Exhibits A and B.

2. CITY Responsibilities

- 2.1 The CITY will work in good faith to mitigate flood water from reaching the 40th Avenue and Fruitvale Boulevard Intersection. The CITY will place a berm or other diversion measure on WSDOT property with the intention of diverting said flood waters to the Naches River. In the event the CITY anticipates the possibility of a high water event within Cowiche Creek, this Agreement authorizes the CITY to utilize the identified area within WSDOT property on Exhibit C for staging equipment and materials. The CITY shall ensure all equipment and materials placed in the staging area are outside the Work Zone Clear Zone (WZCZ) and do not impact traffic at the 40th Avenue and Fruitvale Boulevard Intersection.

- 2.2 The CITY shall contact WSDOT's Traffic Management Center at (509) 577-1910 to notify WSDOT that flooding will or is occurring.
- 2.3 At the conclusion of flood fighting efforts, the CITY shall immediately remove any and all equipment and material from the WSDOT property that prohibits WSDOT from reopening the 40th Avenue Interchange to traffic. Once the 40th Avenue Interchange is reopened to traffic, WSDOT may allow extended storage of CITY equipment/material in areas within WSDOT property as shown in Exhibit C that do not impact traffic on or near the 40th Avenue Interchange.
- 2.4 The CITY shall repair any damaged WSDOT-owned roadways caused by the CITY's flood fight operations to the roadways' pre-existing condition. If at that time WSDOT determines they want to perform betterments to the damaged roadways, the CITY agrees to pay only repair costs and WSDOT will cover the incremental cost of the betterment.

3. WSDOT Responsibilities

- 3.1 WSDOT will cooperate with the CITY, in the CITY's efforts to mitigate flood water from reaching the intersection of 40th Avenue and Fruitvale Boulevard by allowing the CITY access to WSDOT property during flood fight events, and furnishing traffic control.
- 3.2 WSDOT will close the 40th Avenue Interchange to traffic for safety of the public and to aid the CITY in its flood fighting efforts once the CITY has notified WSDOT of the events identified in Section 2.2 of this Agreement. WSDOT will furnish labor and materials for the required traffic control for the 40th Avenue Interchange closure and reopening once the event has ended.
- 3.3 WSDOT will allow the CITY to utilize the identified WSDOT property as a staging area for equipment and materials in preparation of a possible flood. If the CITY utilizes the WSDOT property for staging of equipment and material, the CITY shall maintain the WSDOT owned staging area in a neat and clean appearance. If used for a flood fight, the CITY shall return the staging area to its pre-existing condition once the flood fight efforts have concluded. At the conclusion of the flood fight efforts, if requested by the CITY, WSDOT will allow the CITY to store flood fight equipment and materials for an extended amount of time, as determined by WSDOT. During this extended amount of time the CITY shall maintain the staging area to be in a neat and clean appearance and perform weed control to the satisfaction of WSDOT. The CITY agrees not to utilize the WSDOT owned staging area as a staging area for any other CITY roadway operations or CITY construction projects. The WSDOT-owned staging area shall only be utilized for flood fight operations.
- 3.4 WSDOT has the authority to consult with the CITY and assist with the management of flood fight operations in the event any of WSDOT's roadway infrastructure are in danger of becoming severely damaged.
- 3.5 WSDOT will not be responsible for roadway repairs caused by the flood waters being diverted by the CITY's placement of the berm or other diversion measures.

4. Indemnification

The CITY shall protect, defend, indemnify, and hold harmless WSDOT and its employees and/or authorized agents, while acting within the scope of their employment, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, the CITY's actions performed pursuant to Agreement GCB 2981. The CITY shall not be required to indemnify, defend, or hold harmless WSDOT if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of WSDOT; provided that, if such claims, suit, or actions result from the concurrent negligence of (a) the WSDOT, its employee and/or authorized agents, and (b) the CITY, its elected and appointed officials, employees and/or authorized agents and/or contractors, or seeks cost recovery for those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable to the extent of the negligence of the CITY, its employees, authorized agents, and/or contractors.

5. Venue

In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties agree that any such action or proceeding shall be brought in the Superior Court situated in Yakima County, Washington unless filing in another County is required under any provision of the Revised Code of Washington. Further, the Parties agree that each will be solely responsible for payment of its own attorneys' fee, witness fees, and costs.

6. Term of Agreement

Unless otherwise provided herein, the term of this Agreement shall commence as of the date this Agreement is fully executed and shall remain in effect as long as there remains the threat or possibility that flood water from the Cowiche Creek may enter into the intersection of 40th Avenue and Fruitvale Boulevard, unless otherwise terminated in accordance with Section 9.

7. Assignment

No Party to this Agreement shall transfer or assign any right or obligation hereunder without the prior written consent of all the Parties.

8. Modification

No modification of this Agreement is valid unless evidenced in writing and signed by the Parties. No verbal agreement may supersede, replace, or amend this section. There are no costs associated with this Agreement between the CITY and WSDOT.

9. Termination

Either Party may terminate this Agreement in writing with a 180-day notice if a Party is in default or it is determined by one or both Parties that the Agreement is no longer required.

10. Disputes

In the event that a dispute arises under this Agreement, it shall be resolved as follows: The WSDOT and the CITY shall each appoint a member to a disputes board; these two members shall select a third board member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. An attempt at such dispute resolution in compliance with aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute. The Parties shall equally share in the cost of the third disputes board member; however, each Party shall be responsible for its own costs and fees.

11. Right of Entry

Subject to the terms of this agreement, the WSDOT hereby permits to the CITY in the event of a flood (or flood fight) and its authorized agents and their employees, a right of entry upon WSDOT-owned property onto which access is necessary for the construction, maintaining and removal of the diversion measures and roadway repairs.

In Witness Whereof, the Parties hereto have executed this Agreement as of Party's date signed last below.

CITY OF YAKIMA	WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
By:	By:
Printed:	Printed: Todd V. Trepanier, P.E.
Title:	Title: SCR Regional Administrator
Date:	Date:
APPROVE AS TO FORM	APPROVE AS TO FORM
By:	By:
Printed:	Printed: Mark Schumock
Title:	Title: Assistant Attorney General
Date:	Date: