

**MEMORANDUM OF AGREEMENT**  
**Between Chelan County Public Utility District,**  
**City of Wenatchee, and**  
**Washington State Department of Ecology**

**1.1 PARTIES**

This agreement (“Agreement”) is entered into between Chelan County Public Utility District (“Chelan PUD”), City of Wenatchee (“Wenatchee”), and Washington State Department of Ecology (“Ecology”). The above entities are each a “Party” and are collectively referred to as “Parties.”

**1.2 PURPOSE AND USE**

The purpose of this Agreement is to document the transfer of funds from Chelan PUD to Wenatchee to be utilized for the North Wenatchee Stormwater Facility Water Quality Improvements Project in full satisfaction of the natural resource damages estimated by Ecology (using Washington State’s Oil Spill Compensation Schedule (WAC 173-183-400)) relating to the September 1, 2015 Rock Island Dam spill, the February 18, 2016 Rock Island Dam spill, the January 1, 2018 Rock Island Dam spill, the January 14, 2018 Rocky Reach Dam spill, February 25, 2019 Rocky Reach Dam spill, October 9, 2019 Rocky Reach Dam spill, October 11, 2019 Rocky Reach Dam spill, December 13, 2019 Rocky Reach Dam spill into the Columbia River.

**1.3 DESCRIPTION OF THE PROJECTS**

Funds available under this Agreement must be applied by Wenatchee to the following project:

**North Wenatchee Stormwater Facility Water Quality Improvements Project**

The North Wenatchee Avenue Stormwater Facility is a diversion structure that directs stormwater runoff from about 75 percent of the north end of the City of Wenatchee to a series of three ditches running north along railroad tracks which ultimately discharge into the Wenatchee River. This project will reduce stormwater pollutants discharging to the Wenatchee River and restore the waterways in the Horan Natural Area for local wildlife.

The project will be accomplished in three phases:

- Phase 1 – Replace failing pipe at the Hawley Street Outfall
- Phase 2 – Install water quality treatment between Wenatchee Avenue and the North Wenatchee Avenue Stormwater Facility.
- Phase 3- Install a pipe in the existing ditch and eliminate outfall to the Wenatchee River.

This Agreement will provide funding to Phase 2 of the project. Phase 2 is a stormwater filtration system that removes total suspended solids, hydrocarbons, and metals.

## 1.4 PERFORMANCE

- A. Payment: In full satisfaction of the compensation of natural resource damages estimated by Ecology, Chelan PUD has agreed to pay Wenatchee the sum of \$43,016.82, which payment upon receipt will fully satisfy all of Chelan PUD's performance obligations under this Agreement. Chelan PUD agrees to provide the payment to Wenatchee by October 31, 2020. Wenatchee shall advise Chelan PUD of any requirements for the form of the check (e.g., payee, reference to this Agreement, or the like). The payment shall be sent to:

Brad Posenjack  
Finance Director  
City of Wenatchee  
PO Box 519  
Wenatchee, WA 98807

Wenatchee shall use the funds provided by Chelan PUD exclusively for the project listed in section 1.3, and shall expend all such funds no later than December 31, 2025.

Wenatchee shall provide Ecology with proof of receipt of the funds in the form of a letter or email from Wenatchee to Ecology, with a copy to Chelan PUD, through the contacts listed herein within two (2) weeks of receipt.

If, by October 31, 2020, Wenatchee is unable to accept the funds for any reason, the parties agree that the funds shall be paid directly to the Department of Ecology. If this occurs, Chelan PUD shall have no further obligation to Wenatchee to make a payment and Chelan PUD shall not be in breach of this Agreement. Furthermore, Ecology shall have no obligation to make any payments to Wenatchee and shall not be in breach of this Agreement by failing to make such payments.

- B. Reporting Requirements: Wenatchee must satisfactorily demonstrate the timely use of funds by submitting quarterly progress reports to Ecology. Ecology reserves the right to amend or terminate this Agreement if Wenatchee does not document timely use of funds. Wenatchee shall provide Ecology a final written report for the project listed in section 1.3 to document that the project is completed as described in the plan.

## 1.5 PERIOD OF PERFORMANCE

Wenatchee will apply the funds received consistent with this Agreement by December 31, 2025.

If, on December 31, 2025, funds remain, Wenatchee must provide written notice to Ecology specifying the amount of the remaining funds and containing a statement either: (1) requesting an extension to complete the project; (2) proposing a new project after providing an explanation as to why the original project has become unfeasible; or (3) specifying that the balance of unused funds will be forwarded to Ecology.

In its discretion, Ecology may approve or deny Wenatchee' request for an extension or proposal for a new project. In this event, Wenatchee, upon written demand from Ecology, will forward the balance of the unused funds to Ecology. In addition, in the event that Wenatchee is unable to perform or to continue the duties set forth in section 1.3, Wenatchee, upon written demand from Ecology, will forward the balance of the unused funds to Ecology.

## **1.6 NOTICES**

All communications contemplated under this Agreement shall be made to the following:

For Wenatchee:	Jessica Shaw Deputy Public Works Director-Utilities City of Wenatchee PO Box 519 Wenatchee, WA 98807 <a href="mailto:jshaw@wenatcheewa.gov">jshaw@wenatcheewa.gov</a>
For Chelan PUD:	Jennifer Burns Chelan County PUD PO Box 1231 Wenatchee, WA 98807 <a href="mailto:jennifer.burns@chelanpud.org">jennifer.burns@chelanpud.org</a>
For Ecology:	Geoff Baran Natural Resource Damage Assessment Lead Spill Prevention, Preparedness and Response Program Washington State Department of Ecology P.O. Box 47600 Olympia, WA 98504-7600 <a href="mailto:geoff.baran@ecy.wa.gov">geoff.baran@ecy.wa.gov</a>

## **1.7 ASSURANCES**

The Parties agree that Wenatchee shall be solely responsible for the completion of the project identified in section 1.3 and that Chelan PUD will not acquire any ownership or property interest in the project listed in section 1.3. The Parties further agree that Chelan PUD shall have no responsibility whatsoever for the performance or success of the matters set forth in section 1.3.

## **1.8 ENTIRE AGREEMENT**

This Agreement represents all the terms and conditions agreed upon by the Parties.

## **1.9 ARCHAEOLOGICAL AND CULTURAL RESOURCES**

Wenatchee shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological and historic resources. Wenatchee must agree to hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the project funded under this Agreement.

Wenatchee shall:

- a) Contact Ecology to discuss any Cultural Resources requirements for their project:
  - For projects with any federal involvement, if required, comply with the National Historic Preservation Act.
  - Any cultural resources federal or state requirements must be completed prior to the start of any work on the project site.
- b) Wenatchee shall submit an Inadvertent Discovery Plan (IDP) to Ecology prior to implementing any project that involves ground disturbing activities. Ecology will provide the IDP form.

Wenatchee shall:

- Keep the IDP at the project site.
  - Make the IDP readily available to anyone working at the project site.
  - Discuss the IDP with staff and contractors working at the project site.
  - Implement the IDP when cultural resources or human remains are found at the project site.
- c) If any archeological or historic resources are found while conducting work under this Agreement:
    - Immediately stop work and notify Ecology, the Department of Archaeology and Historic Preservation at (360) 586-3064, any affected Tribe, and the local government.
  - d) If any human remains are found while conducting work under this Agreement:
    - Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then Ecology.
  - e) Comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.

## **1.10 ASSIGNMENT**

No claim arising under this Agreement is assignable or delegable by either party in whole or in part without the express consent of the other party, which consent shall not be unreasonably withheld.

### **1.11 THIRD PARTY BENEFICIARIES**

Nothing in this Agreement, express or implied, is intended to confer on any person or entity, other than the Parties to this Agreement, any right, remedy or benefit of any nature whatsoever.

### **1.12 TERMINATION**

In the event that Chelan PUD fails to perform under this Agreement, Wenatchee may pursue all remedies available under Washington law for collection and enforcement.

### **1.13 APPROVAL**

This Agreement may be altered, amended, or waived only by a written amendment executed by all Parties.

### **1.14 GOVERNING LAW**

This Agreement will be interpreted under and governed by the laws of the State of Washington.

### **1.15 EFFECTIVE DATE**

This Agreement is executed by the persons signing below, who individually certify that they have authority to execute the Agreement. This Agreement is dated and effective as of the date of the last signature below.

**Chelan County Public Utility District**

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Printed Name

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Date

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Signature

**City of Wenatchee**

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Printed Name

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Date

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Signature

**Washington State Department of Ecology**

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Printed Name

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Date

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Signature