



## WENATCHEE CITY COUNCIL

Thursday, August 23, 2018

Wenatchee City Hall  
129 South Chelan Avenue  
Wenatchee, WA 98801

### AGENDA

#### 5:15 p.m. Regular Meeting

#### 1. Call to Order, Pledge of Allegiance, and Roll Call.

#### 2. Consent Items:

- Motion to approve agenda, vouchers, and minutes from previous meetings.

##### Vouchers:

Claim checks #187094 through #187195 in the amount of \$496,901.60 for August 9, 2018

Claim checks #187197 through #187205 in the amount of \$9,852.61 for August 15, 2018

Claim checks #187196 and #187206 through #187245 in the amount of \$729,573.90 for August 16, 2018

Payroll distribution in the amount of \$329,605.00 for August 20, 2018

Wire #1445 and #1446 in the amount of \$45,331.90 for August 27, 2018

#### 3. Citizen Requests/Comments.

The "Citizen Comments" period is to provide the opportunity for members of the public to address the Council on items either not on the agenda or not listed as a public hearing. The Mayor will ask if there are any citizens wishing to address the Council. When recognized, please step up to the microphone, give your name and mailing address, and state the matter of your interest. If your interest is an agenda item, the Mayor may suggest that your comments wait until that time. Citizen comments will be limited to three minutes.

#### 4. Presentations. None.

#### 5. Action Items.

- A. Saddle Rock Gold Knob Prospect Site Agreed Order with Department of Ecology  
Presented by Parks, Recreation & Cultural Services Director David Erickson

*Motion to authorize the Mayor to sign the Agreed Order between the City of Wenatchee and State of Washington Department of Ecology for the Gold Knob Prospect Site.*

- B. Centennial Park Facility Use Agreement  
Presented by Parks, Recreation & Cultural Services Director David Erickson

*Motion for City Council to approve the Facility Use Agreement with the Wenatchee Valley Museum and Cultural Center as recommended by the Arts, Recreation and Parks Commission.*

- C. Wenatchee Community Center Garden Space Naming  
Presented by Parks, Recreation & Cultural Services Director David Erickson

*Motion for City Council approval of the name "The Cesar Chavez Garden" as the official name of the community garden space at the Wenatchee Community Center, and authorize the applicant to design and install signs consistent with the City sign code and specific community center agreements as recommended by the Arts, Recreation and Parks Commission.*

- D. WSU Property Integrated Planning Grant  
Presented by Economic Development Director Steve King

*Motion for City Council to authorize the Mayor to sign an Integrated Planning Grant Agreement with the Washington State Department of Ecology for the evaluation of environmental contamination and the planning of ultimate use of property owned by Washington State University.*

- E. Parking Garage Memorandum of Understanding  
Presented by Economic Development Director Steve King

*Motion for City Council to authorize the Mayor to sign a Memorandum of Understanding with Prime Properties, LLC, establishing the framework for a public private partnership for the construction of a waterfront parking garage.*

- F. Planning Commission Member Appointment – Rani Sampson  
Presented by Community Development Director Glen DeVries

*Motion to approve Resolution No. 2018-30, appointing a voting representative to the Wenatchee Planning Commission to fill an unexpired term ending December 31, 2019 (Rani Sampson).*

- G. Assignment of Council Districts  
Presented by Executive Services Director Allison Williams

*Motion for City Council to determine the assignment of Councilmembers and then approval of Resolution No. 2018-29, assigning councilmembers to voting districts.*

**6. Public Hearing Items.** None.

**7. Reports.**

- a. Mayor's Report
- b. Reports/New Business of Council Committees

**8. Announcements.**

**9. Adjournment.**



**DRAFT**

## WENATCHEE CITY COUNCIL

**Thursday, August 9, 2018**

Wenatchee City Hall  
129 South Chelan Avenue  
Wenatchee, WA 98801

### MINUTES

**In attendance:**

Mayor Frank Kuntz  
Councilmember Jim Bailey  
Councilmember Ruth Esparza  
Councilmember Lyle Markhart  
Councilmember Keith Huffaker  
Councilmember Mark Kulaas  
Councilmember Linda Herald  
Councilmember Mike Poirier

**Staff in attendance:**

Executive Services Director Allison Williams  
City Attorney Steve Smith  
City Clerk Tammy Stanger  
IS Support Jessi Saucedo  
Public Information Officer Annagrisel Alvarez  
Public Works Director Rob Jammerman  
Economic Development Director Steve King  
Senior Utility Engineer Jeremy Hoover  
Finance Director Brad Posenjak  
Police Chief Steve Crown  
Accounting Manager Denise Pearce  
City Engineer Gary Owen

---

#### 4:30 p.m. Executive Session

The Mayor called the meeting to order at 4:30 p.m. for the purpose of meeting in executive session.

*Motion by Councilmember Keith Huffaker to meet in executive session to discuss with legal counsel representing the city matters relating to litigation or potential litigation to which the city is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the city. RCW 42.30.110(1)(i), with legal counsel present, and for no more than 40 minutes; motion seconded by Councilmember Jim Bailey. Motion carried (7-0).*

Council adjourned from executive session at 5:02 p.m.

## 5:15 p.m. Regular Meeting

### 1. Call to Order, Pledge of Allegiance, and Roll Call

The Mayor called the regular meeting to order at 5:15 p.m. Councilmember Linda Herald led the Pledge of Allegiance. All Councilmembers were present.

### 2. Consent Items

- Motion to approve agenda, vouchers, and minutes from previous meetings.

*Motion by Councilmember Keith Huffaker to approve the consent items. Councilmember Lyle Markhart seconded the motion. Motion carried (7-0).*

### 3. Citizen Requests/Comments

Mayte Bailmas, 3660 North Cascade, East Wenatchee, Washington, presented a conflict she has with the Department of Health in selling her baked goods at Methow Park, and asked for assistance. Councilmember Keith Huffaker is a representative on the Board for the Chelan-Douglas Health District and will follow up with Mayte.

### 4. Presentations

- Wenatchee Downtown Association Annual Report presented by WDA Executive Director Linda Haglund, Program & Event Director Meredith Hilger, and WDA President Stacey Doré-Asher. While last year was a challenging year, they persevered and this year is ending up much better.
- Certificate of Municipal Leadership Presentation. Mayor Frank Kuntz announced that Councilmember Ruth Esparza has received a Certificate of Municipal Leadership from the Association of Washington Cities.

### 5. Public Hearing Item

- A. Consideration of Moving to Election of Council Members by District (continuation of public hearing from July 12, 2018)

Executive Services Director Allison Williams provided an overview from the prior Council meeting, at which a public hearing was held and staff together with the City Attorney provided an overview of the background information that would provide the basis for the decision of City Council to move to election of Council members by District versus the current at large system. This background information, all of which is on the City's website at [www.wenatchewa.gov](http://www.wenatchewa.gov) under "Mayor's Office" included:

- 1) A review of the work done, public outreach carried out and ultimate recommendation of the Electoral Process Committee to move to a District system
- 2) A review of the new Washington Voters Rights Act
- 3) An update on proposed districts as developed by Bill Cooper, expert retained for the purposes of developing defensible districts.

After consideration of the public testimony, the public hearing was continued to the regular meeting of August 9, 2108. During the interceding time period, written public comments have been received and are provided as a part of the packet.

In addition, Council member Ruth Esparza reached out to Bill Cooper to have him develop a three district scenario along with accompanying demographics and a statement of consideration based on his professional opinion.

A key premise of the Federal Voting Rights Act and the Washington State Voters Rights Act is to assure that we have an election system that will provide the opportunity for all to have access to elective office (one person, one vote). In the Washington State Voters Rights Act, the test is:

- 1) Protected Class: Does our city have a large racial, ethnic or linguistic minority group?
- 2) Racially Polarized Voting: Has there been evidence in elections (not just City Council elections) of a pattern of people voting based on race?
- 3) Vote Dillution: Has there been evidence in city wide votes that racial, ethnic or linguistic minority votes have been cancelled out by votes from the majority?

In consideration of the Ordinances, City Council must determine which election system will most fairly provide the opportunity for our City Council to resemble the diversity of our City.

Staff recommends that City Council move to adopt a system of election of Council members by District.

Councilmember Mark Kulaas placed the below motion on the table.

Councilmembers commented.

With no further discussion, the following motion was passed.

*Motion by Councilmember Mark Kulaas to adopt Ordinance No. 2018-19, adding Chapter 1.15 Voting Districts to the Wenatchee City Code establishing voting districts for the positions of City Councilmembers, that being five districts and two at-large positions. Councilmember Keith Huffaker seconded the motion. Motion carried (6-1, Esparza nay).*

## 6. Action Items

### B. Sewer Connection Loan Program

Finance Director Brad Posenjak and Accounting Supervisor Denise Pearce presented the staff report, and provided a draft of the Sewer Connection Fees Policies and Guidelines. Council asked questions and discussed the financing options interest rates coming to agree on: financing of \$3,000 and above, up to 60 months, interest rate is prime plus 1%; financing \$5,000 and above, up to 120 months, interest rate is prime plus 2%.

*Motion by Councilmember Linda Herald to approve Ordinance No. 2018-21, of the City Council of the City of Wenatchee relating to the sewer utility and to incentives for conversion of on-site septic systems serving existing single family residences to public sewers for the purposes of making more efficient use of the City's sewer services and protecting the City's groundwater supply; adding a new section to Chapter 4.08 of the Wenatchee City Code (WCC) to be codified as WCC 4.08.140; providing for the creation of connection financing options and rules and regulations pertaining to financing, for severability, and for effective dates. Councilmember Mike Poirier seconded the motion. Motion carried (7-0).*

The Mayor called for a 5 minute recess at 6:06 p.m. The meeting reconvened at 6:12 p.m.

### C. Horse Lake Road Sanitary Sewer Extension – Project No. 1713

Senior Utility Engineer Jeremy Hoover presented the staff report. Council asked questions.

*Motion by Councilmember Keith Huffaker for City Council to award the contract for construction of the Horse Lake Road Sanitary Sewer Extension Project #1713 to DW Excavating, Inc., in the amount of \$504,323.41, and further authorize the Mayor to approve the construction contract. Councilmember Linda Herald seconded the motion. Motion carried (7-0).*

### D. Miller Street Realignment and Storm Repairs: PWTF Construction Loan Contract

City Engineer Gary Owen presented the staff report. Council asked questions.

*Motion by Councilmember Mike Poirier for City Council to approve the Public Works Board Construction Loan Contract number PC18-96103-019 and authorize the Mayor's signature on the document. Councilmember Jim Bailey seconded the motion. Motion carried (7-0).*

E. Wenatchee Underground Conduit Project SW17-05 Bid Award

Public Works Director Rob Jammerman presented the staff report. Council asked questions.

*Motion by Councilmember Keith Huffaker for City Council to authorize the Mayor to sign the contract with Neppel Electrical for the Wenatchee Underground Conduit Project SW17-05 in the amount of \$149,592.00. Councilmember Lyle Markhart seconded the motion. Motion carried (7-0).*

F. WSU Sponsored Project Agreement ORSO #134458-001

Police Chief Steve Crown presented the staff report. Council asked questions.

*Motion by Councilmember Jim Bailey for City Council to approve the Sponsored Project Agreement (ORSO #134458-001) with Washington State University. Councilmember Lyle Markhart seconded the motion. Motion carried (7-0).*

G. Architectural and Engineering Services for City Hall Remodel

Economic Development Director Steve King presented the staff report. Council asked questions.

*Motion by Councilmember Keith Huffaker for City Council to authorize the Mayor to negotiate and sign a contract with Forte Architects and Pacific Engineering for services associated with remodeling City Hall. Councilmember Linda Herald seconded the motion. Motion carried (7-0).*

H. Wenatchee Federal Building Architectural Services – Contract Extension

Economic Development Director Steve King presented the staff report. Council asked questions.

*Motion by Councilmember Mark Kulaas for City Council to authorize the Mayor to sign Amendment #1 to the contract with ARC Architects extending the completion date to January 1, 2019. Councilmember Ruth Esparza seconded the motion. Motion carried (7-0).*

I. Engineering Services for NEPA and Pre-Design Services

Economic Development Director Steve King presented the staff report. Council asked questions.

*Motion by Councilmember Ruth Esparza for City Council to authorize the Mayor to negotiate and sign a contract with KPG Engineering for services associated with NEPA*



review for Confluence Parkway and preliminary engineering design for the North Wenatchee Master Plan. Councilmember Lyle Markhart seconded the motion. Motion carried (7-0).

J. RH2 General Services Amendment – 2 & 3

Public Works Director Rob Jammerman presented the staff report. Council asked questions.

Motion by Councilmember Mike Poirier for City Council to approve the contract agreement amendments 2 & 3 with RH2 Engineering agreement providing on-call engineering and SCADA support services and authorize the Mayor's signature. Councilmember Linda Herald seconded the motion. Motion carried (7-0).

## 7. Public Hearing item

K. 2019-2024 Transportation Improvement Program

City Engineer Gary Owen presented the staff report. Council had no questions or comments.

The Mayor asked for public comment. There was no one who wished to speak.

Motion by Councilmember Mark Kulaas to approve Ordinance No. 2018-22, adopting a revised and extended comprehensive street program for the ensuing six years for the City of Wenatchee as required by the laws of the State of Washington. Councilmember Jim Bailey seconded the motion. Motion carried (7-0).

## 8. Reports.

a. Mayor's Report

1. The Mayor reported that he attended the Smart Cities Tour in Spokane on Wednesday.
2. No work session next week. Councilmember Mark Kulaas asked Councilmembers be more proactive in what they want for work sessions.
3. The Mayor added that the city is working in partnership with the Port and PUD to study the Fifth Street location and assisting with the ultimate transition.

b. Reports/New Business of Council Committees

1. Councilmember Mark Kulaas reported that he attended a meeting of the Wenatchee Downtown Association yesterday.
2. Councilmember Keith Huffaker reported that Rivercom Director Jim Fosse announced his retirement.

3. Councilmember Linda Herald reported that she attended a dinner on Tuesday with Misawa exchange students.

**9. Announcements.** None.

**10. Adjournment.** With no further business the meeting adjourned at 7:13 p.m.

---

Frank J. Kuntz, Mayor

Attest:

---

Tammy L. Stanger, City Clerk



# MEMO

To: Mayor Kuntz and City Council  
From: Dave Erickson, Parks, Recreation and Cultural Services Director  
Re: Agreed Order with the Department of Ecology  
Date: July 20, 2018

***ACTION REQUESTED:***

***Motion to authorize the Mayor to sign the Agreed Order between the City of Wenatchee and State of Washington Department of Ecology For the Gold Knob Prospect Site.***

***BACKGROUND:***

Saddle Rock is a landmark in the Wenatchee Valley and has been a popular destination for hikers, bicyclists and horseback riders for decades. In 2011, the City of Wenatchee completed the purchase of the property with the assistance and support of the Chelan-Douglas Land Trust, Washington State Recreation Conservation Office and local citizens. The City of Wenatchee dedicated the property as the Saddle Rock Regional Park on July 16, 2011.

The 325 acre property was previously owned by the Washington Department of Natural Resources (DNR) for over 100 years. Based on DNR records, it received small mining lease payments from 1891 to 1989. In connection with due diligence, a Phase I Environmental Assessment indicated possible mining waste rock sites created during DNR ownership and arsenic concentrations exceeding Model Toxics Control Act (MTCA) standards. Decades of public use without oversight has also led to severe erosion problems and habitat deterioration.

The Washington Department of Ecology (Ecology) conducted an initial investigation of the site in the spring of 2011. Waste rock samples from six sites along with soil samples from surrounding areas were collected to compare the concentration of metals in waste rock to background concentrations. Analysis indicated significant arsenic concentrations in the indigenous materials and two additional areas were identified for further testing. Laboratory analysis of the materials confirmed arsenic concentrations exceeding the MTCA standards.

In 2012 the City received an integrated planning grant from the Department of Ecology through which a remedial investigation (RI), cultural resources report and feasibility study (FS) for cleanup was prepared. The RI report identified and estimated 6,045 cubic yards of waste rock that were impacted above MTCA standards. The constituents of concern included arsenic, mercury, selenium, silver, and barium. Arsenic was detected above the screening level of 14.4 mg/kg in all waste rock samples, whereas the other constituents of concern were not always present at concentrations above their respective screening levels. Contaminated shallow soils were identified downslope of the waste rock piles; however, the amount of contaminated downslope soils have not yet been determined.

The resulting preferred response alternative involves the excavation, transportation and disposal of waste materials at a permitted, lined and monitored landfill and sealing any open adits. New temporary haul roads will be constructed and existing roads improved for equipment access. Downslope areas and portions of haul roads will be restored using the seeding of native grasses.

The remaining haul roads will be restored to include drainage and surface improvements. A map of the park is contained in Exhibit A of the agreed order. Due to the size of the documents, the Remedial Investigation Report Feasibility Study Report, Technical Memorandum have not been included with this agenda report, but are available if desired.

Funding for the project is to come partially through grants from the State of Washington as administered by Ecology's Toxics Cleanup Program (TCP). Applications for MCTA grants began in 2013. A \$900,000 MCTA grant for the first phase of the project has been awarded and a second \$1.2 million dollar grant for phase two has been submitted for consideration. As the executed agreed order is a condition of the grant issuance, the acceptance of the grant will follow when the agreed order is fully signed.

Ecology has indicated the cleanup is to be divided between Phase 1 (lower four waste rock areas) and Phase 2 (upper two to three waste rock piles). The phasing is occurring due to funding considerations and since the lower four waste rock piles contain approximately 87% percent of the materials to be removed and are significantly easier to reach than the Phase 2 waste rock areas. Note that all areas of the site are on land with significant slopes.

Prior to final design of the IRA, additional data collection is needed to 1) establish pile-specific background arsenic concentrations and 2) to determine downslope areas requiring cleanup. These data collection activities are detailed in Technical Memorandum, Gold Knob Prospect (aka Saddle Rock Park), Establishing Site Cleanup Levels and Areas, prepared by the Department of Ecology, June 2018.

Ecology has also indicated that cleanup is anticipated to be effectively guided by analysis of arsenic in the field using a field x-ray fluorescentometer (XRF) arsenic. After cleanup has reached near completion, confirmatory laboratory analysis for all constituents of concern will take place.

For much of this year, the draft scope of work and request for proposals for the project were prepared jointly with the Department of Ecology. They are ready to advertise when the agreed order and MCTA grants are approved.

The agreed order has been reviewed by the City attorney.

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

AGREED ORDER

City of Wenatchee

No. DE 15823

RE: Gold Knob Prospect Site (FSID 22496)  
1200 Circle Street  
Wenatchee WA

TO: Mayor Frank Kuntz  
City of Wenatchee  
P.O. Box 519  
Wenatchee WA 98807-0519

**TABLE OF CONTENTS**

I.	INTRODUCTION.....	2
II.	JURISDICTION.....	2
III.	PARTIES BOUND.....	2
IV.	DEFINITIONS.....	2
V.	FINDINGS OF FACT.....	3
VI.	ECOLOGY DETERMINATIONS.....	4
VII.	WORK TO BE PERFORMED.....	5
VIII.	TERMS AND CONDITIONS.....	7
	A. Payment of Remedial Action Costs.....	7
	B. Designated Project Coordinators.....	7
	C. Performance.....	8
	D. Access.....	9
	E. Sampling, Data Submittal, and Availability.....	9
	F. Public Participation.....	10
	G. Retention of Records.....	11
	H. Resolution of Disputes.....	12
	I. Extension of Schedule.....	13
	J. Amendment of Order.....	15
	K. Endangerment.....	15
	L. Reservation of Rights.....	16
	M. Transfer of Interest in Property.....	17
	N. Compliance with Applicable Laws.....	17
	O. Indemnification.....	19
IX.	SATISFACTION OF ORDER.....	19
X.	ENFORCEMENT.....	19

Agreed Order No. DE 15823  
Page 2 of 21

EXHIBIT A            Site Location Map  
EXHIBIT B            Scope of Work (SOW) and Schedule

### I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the City of Wenatchee (referred to as the PLP) under this Agreed Order (Order) is to provide for an interim remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the PLP to perform the scope of work describe in **Exhibit B** of this order for the site identified by Ecology as the Gold Knob Prospect Site, located at 1200 Circle Street, Wenatchee, Washington (the Site). Ecology believes the actions required by this Order are in the public interest.

### II. JURISDICTION

This Agreed Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

### III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. The PLP agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the PLP's responsibility under this Order. The PLP shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

### IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in RCW 70.105D and WAC 173-340 shall control the meanings of the terms in this Order.

- A. Site: The Site is referred to as "Gold Knob Prospect" aka "Saddle Rock Regional Park" and is identified by Ecology as Facility Site ID 22496. The Site constitutes a facility under

Agreed Order No. DE 15823  
Page 3 of 21

RCW 70.105D.020(8). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located. Based upon factors currently known to Ecology, the Site is located at 1200 Circle Street, Wenatchee, Washington as shown in the Site Location Map (**Exhibit A**).

B. Parties: Refers to the State of Washington, Department of Ecology and the City of Wenatchee.

C. Potentially Liable Person (PLP): Refers to the City of Wenatchee.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order.

All exhibits are integral and enforceable parts of this Order.

#### V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by the PLP:

- A. The listed owner of the property located at 1200 Circle Street, Wenatchee WA is "City of Wenatchee" based on the Chelan County Assessor's website. The site is located within parcel 222016300000.
- B. The *Remedial Investigation, Saddle Rock Park, Wenatchee, Washington* report and Appendix C of the report, document historical mining activities (e.g. prospecting) that resulted in the release of mine waste.
- C. The *Remedial Investigation, Saddle Rock Park, Wenatchee, Washington* report found concentrations of metals in soil higher than natural background concentrations and in excess of MTCA cleanup levels. These metals concentrations pose a risk to human health and the environment therefore cleanup is needed.
- D. The *Feasibility Study, Saddle Rock Park, Wenatchee, Washington* report developed and screened various remedial alternatives for addressing the contamination. The Feasibility Study found Alternative 1, excavation and offsite disposal of waste rock and downgradient

Agreed Order No. DE 15823  
Page 4 of 21

areas that are impacted by the waste rock piles to be the more permanent solution. The City of Wenatchee and Ecology later identified Alternative 1 as the preferred solution.

#### **VI. ECOLOGY DETERMINATIONS**

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by the PLP.

- A. The City of Wenatchee is an “owner or operator” as defined in RCW 70.105D.020(22) of a “facility” as defined in RCW 70.105D.020(8).
- B. Based upon credible evidence, Ecology issued a PLP status letter to the City of Wenatchee dated December 17, 2013, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that the City of Wenatchee is a PLP under RCW 70.105D.040 and notified the City of Wenatchee of this determination by letter dated March 27, 2014.
- C. Pursuant to RCW 70.105D.030(1) and .050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.
- D. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. Any Party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, the Parties will follow the process in Section VII.D. If the Parties are not in agreement, Ecology reserves its authority to require interim



Agreed Order No. DE 15823  
Page 5 of 21

action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action itself.

## VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the PLP take the following remedial actions at the Site. And that these actions must be conducted in accordance with WAC 173-340:

A. The PLP will complete work in accordance with the schedule and terms of the Scope of Work and Schedule, **Exhibit B**, and all other requirements of this Order. The following naming conventions shall be used for documents: Draft (designation for a document not yet approved by Ecology); and Final (designation for a document after public comment and/or Ecology approval).

B. The PLP shall submit to Ecology written quarterly Progress Reports that describe the actions taken during the previous quarter to implement the requirements of this Order. All Progress Reports shall be submitted by the fifteenth (15th) day of the month in which they are due after the effective date of this Order. Unless otherwise specified by Ecology, Progress Reports and any other documents submitted pursuant to this Order shall be sent by email with copy by U.S. mail, to Ecology's project coordinator. The Progress Reports shall include the following:

- a. A list of on-site activities that have taken place during the quarter;
- b. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests;
- c. Description of all deviations from the Scope of Work and Schedule (**Exhibit B**) during the current quarter and any planned deviations in the upcoming quarter;
- d. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule;

Agreed Order No. DE 15823  
Page 6 of 21

- e. All raw laboratory data (including laboratory analyses) received during the previous quarter (if not previously submitted to Ecology), together with a detailed description of the underlying samples collected; and
- f. A list of deliverables for the upcoming quarter if different from the schedule.

C. All plans or other deliverables submitted by the PLP for Ecology's review and approval under the Scope of Work and Schedule (**Exhibit B**) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

D. If the Parties agree on an interim action under Section VI.H, the PLP shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). The PLP shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and the PLP is required to conduct the interim action in accordance with the approved Interim Action Work Plan.

E. If Ecology determines that the PLP has failed to make sufficient progress or failed to implement the remedial action required under this Order, in whole or in part, Ecology may, after notice to the PLP, perform any or all portions of the remedial action that remains incomplete, or at Ecology's discretion, allow the PLP opportunity to correct. The PLP shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

F. Except where necessary to abate an emergency situation, the PLP shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

Agreed Order No. DE 15823  
Page 7 of 21

## VIII. TERMS AND CONDITIONS

### A. Payment of Remedial Action Costs

The PLP shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under RCW 70.105D, including remedial actions, oversight, and administration. These costs shall include work performed subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). For all Ecology costs incurred, the PLP shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70.105D.055, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

### B. Designated Project Coordinators

The project coordinator for Ecology is:

Frank P. Winslow  
Toxics Cleanup Program  
Washington State Department of Ecology  
Central Regional Office  
1250 W. Alder Street, Union Gap, WA 98903  
Tel: 509-454-7835  
Fax: 509.575.2809  
frank.winslow@ecy.wa.gov

**Commented [DE(1)]:** City has no funding available for the project or to pay Ecology. I'm assuming that this will have to come from the MTCA grant.

Agreed Order No. DE 15823  
Page 8 of 21

The project coordinator for the PLP is:

Mr. Dave Erickson  
Parks, Recreation and Cultural Services Director  
City of Wenatchee  
PO Box 519  
1350 McKittrick Street  
Wenatchee WA 98801

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the PLP, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

**C. Performance**

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct supervision of an engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43 and 18.220.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

Agreed Order No. DE 15823  
Page 9 of 21

Any documents submitted containing geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

The PLP shall notify Ecology in writing of the identity of any supervising engineer(s) and geologist(s), contractor(s) and subcontractor(s) to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

**D. Access**

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that the PLP either own, control, or have access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the PLP's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the PLP. The PLP shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the PLP where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the PLP unless an emergency prevents such notice. For access to the facility necessary for any activity related to the terms of this Order, the City of Wenatchee agrees to facilitate such access. Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

**E. Sampling, Data Submittal, and Availability**

With respect to the implementation of this Order, the PLP shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data generated under this order shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work

Agreed Order No. DE 15823  
Page 10 of 21

to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the PLP shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the PLP pursuant to implementation of this Order, provided that doing so does not interfere with the PLP's sampling. The PLP shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the PLP and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.D (Access), Ecology shall notify the PLP seven (7) days prior to any sample collection activity (other than split sampling activities) unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

**F. Public Participation**

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing this public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

Ecology shall maintain the responsibility for public participation at the Site. However, the PLP shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing lists and prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and

Agreed Order No. DE 15823  
Page 11 of 21

distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise, Ecology shall notify the PLP prior to the issuance of all press releases and fact sheets related to the Site, and before meetings related to the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the PLP that do not receive prior Ecology approval, the PLP shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. Wenatchee Public Library  
310 Douglas St, Wenatchee, WA 98801
- b. Department of Ecology  
Central Regional Office  
1250 W. Alder St, Union Gap, WA 98903

**Commented [DE(2)]:** The official repository for the City is City Hall at 129 South Chelan Avenue, Wenatchee WA 98801. A caveat is that I maintain all project files and park grant work at the Public Services Center – 1350 McKittrick Street, Wenatchee WA 98801. We don't utilize the Library so this should be changed.

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology's Central Regional Office in Union Gap Washington.

#### **G. Retention of Records**

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, the PLP shall preserve all records, reports, documents, and

Agreed Order No. DE 15823  
Page 12 of 21

underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, the PLP shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right the PLP may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If the PLP withholds any requested records based on an assertion of privilege, the PLPs shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

#### **H. Resolution of Disputes**

1. In the event that the PLP elects to invoke dispute resolution the PLPs must utilize the procedure set forth below.

a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), the PLP has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; the PLP's position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

c. The PLP may then request regional management review of the dispute. This request (Formal Dispute Notice) must be submitted in writing to the Central Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal



Agreed Order No. DE 15823  
Page 13 of 21

Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

d. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section VII.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

#### **I. Extension of Schedule**

1. The PLP request for an extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended;
- b. The length of the extension sought;
- c. The reason(s) for the extension; and
- d. Any related deadline or schedule that would be affected if the extension were granted.

Agreed Order No. DE 15823  
Page 14 of 21

2. The burden shall be on the PLP to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

**Commented [DE(3)]:** Need to define the time period like what was done in the other sections like section J below second sentence.

- a. Circumstances beyond the reasonable control and despite the due diligence of the PLP including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the PLP;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII.K (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the PLP.

3. Ecology shall act upon the PLP's written request for extension in a timely fashion. Ecology shall give the PLP written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.J (Amendment of Order) when a schedule extension is granted.

4. At the PLP's request, an extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

- a. Delays in the issuance of a necessary permit which was applied for in a timely manner;
- b. Other circumstances deemed exceptional or extraordinary by Ecology; or
- c. Endangerment as described in Section VIII.K (Endangerment).

Agreed Order No. DE 15823  
Page 15 of 21

**J. Amendment of Order**

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.L (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and the PLP. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, the PLP shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If Ecology determines that the change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.H (Resolution of Disputes).

**K. Endangerment**

In the event Ecology determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct the PLP to cease such activities for such period of time as it deems necessary to abate the danger. The PLP shall immediately comply with such direction.

In the event the PLP determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment, the PLP may cease such activities. The PLP shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction, the PLP shall provide Ecology with documentation of the

Agreed Order No. DE 15823  
Page 16 of 21

basis for the determination or cessation of such activities. If Ecology disagrees with the PLP's cessation of activities, it may direct the PLP to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, the PLP's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.I (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

**L. Reservation of Rights**

This Order is not a settlement under RCW 70.105D. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against the PLP to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the PLP regarding remedial actions required by this Order, provided the PLP complies with this Order.

Ecology nevertheless reserves its rights under RCW 70.105D, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health or the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding any injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

By entering into this Order, the PLP does not admit to any liability for the Site. Although the PLP is committing to conducting the work required by this Order under the terms of this Order, the PLP expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

Agreed Order No. DE 15823  
Page 17 of 21

**M. Transfer of Interest in Property**

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the PLP without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to the PLP transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the PLP shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, the PLP shall notify Ecology of said transfer. Upon transfer of any interest, the PLP shall notify all transferees of any restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

**N. Compliance with Applicable Laws**

1. All actions carried out by the PLP pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, except as provided in RCW 70.105D.090. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order. The PLP has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or the PLP, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and the PLP must implement those requirements.

2. All actions carried out by the PLP pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. At this time, no relevant and appropriate requirements have been identified as being applicable to the actions required by this Order. If additional relevant and appropriate requirements are identified by Ecology or the PLP, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and the PLP must implement those requirements.

**Commented [DE(4)]:** This former DNR property was purchased by the City using State grant which requires it to be owned by the City and open to the public in perpetuity so this section is probably moot.

Agreed Order No. DE 15823  
Page 18 of 21

3. Pursuant to RCW 70.105D.090(1), the PLP may be exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, the PLP shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70.105D.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

4. The PLP has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the PLP determine that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or the PLP shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLP shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the PLP and on how the PLP must meet those requirements. Ecology shall inform the PLP in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The PLP shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for the state to administer any federal law, the exemption shall not apply and the PLP shall comply with both the

Agreed Order No. DE 15823  
Page 19 of 21

procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits or approvals.

**O. Indemnification**

The PLP agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of the PLP, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the PLP shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

**Commented [DE(5)]:** City Insurance, Risk Management and Attorneys typically require mutual indemnification. When the scope is done I will forward this to them for their review.

**IX. SATISFACTION OF ORDER**

The provisions of this Order shall be deemed satisfied upon the PLP's receipt of written notification from Ecology that the PLP has completed the remedial activity required by this Order, as amended by any modifications, and that the PLP has complied with all other provisions of this Agreed Order.

**X. ENFORCEMENT**

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

- A. The Attorney General may bring an action to enforce this Order in a state or federal court.
- B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
- C. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:
  - 1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.

Agreed Order No. DE 15823  
Page 20 of 21

2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70.105D.060.

DRAFT



Agreed Order No. DE 15823  
Page 21 of 21

Effective date of this Order: \_\_\_\_\_

CITY OF WENATCHEE

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

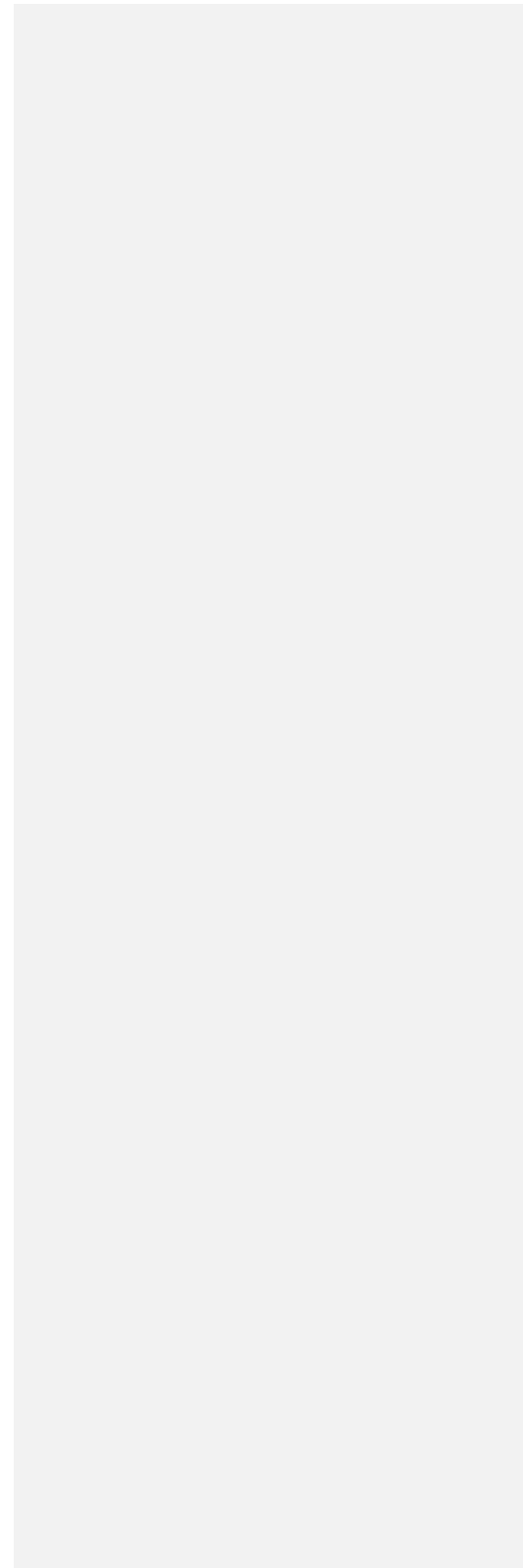
\_\_\_\_\_  
**Frank Kuntz**

Mayor  
City of Wenatchee  
P.O. Box 519  
Wenatchee, WA 98807-0519  
(509) 888-6204

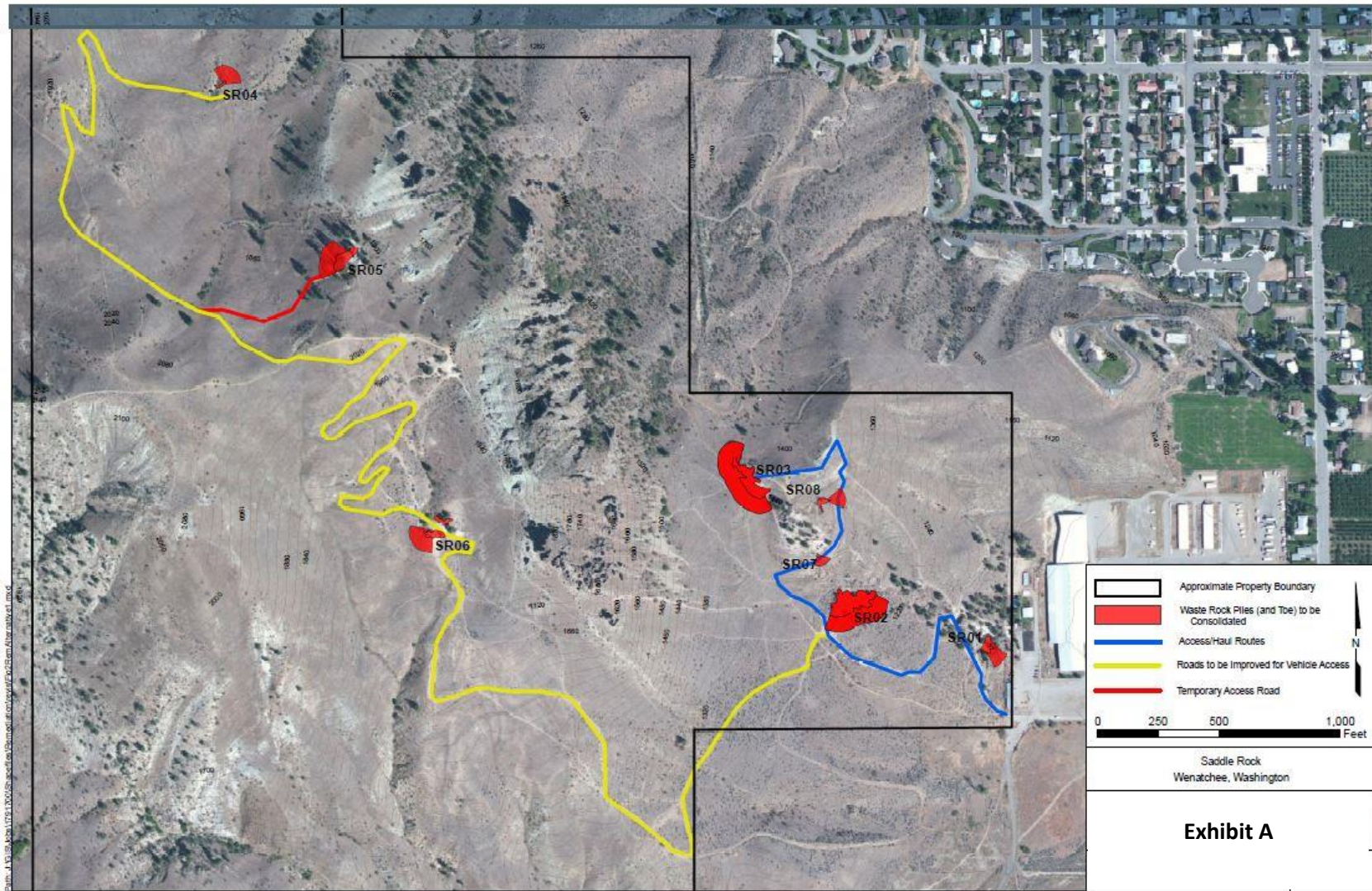
\_\_\_\_\_  
**Valerie Bound**

Section Manager  
Toxics Cleanup Program  
Central Regional Office  
(509) 454-7886

DRAFT



### EXHIBIT A – SITE LOCATION MAP



\*Note: The Site is generally located at 1200 Circle Street in Wenatchee, and is defined by the extent of waste rock and soil contamination, not property boundaries. The mapped waste rock piles and associated downslope areas are shown in red.

Map source: HartCrowser 2013.

## **EXHIBIT B –SCOPE OF WORK (SOW) AND SCHEDULE**

### **SCOPE OF WORK**

#### **PURPOSE**

The work under this Agreed Order (AO) involves the steps needed in order to complete Interim Remedial, Action (IRA) cleanup activities at the Site. A Feasibility Study report was prepared for the City of Wenatchee (CITY) in June 2013. This Feasibility Study identified and screened various remedial alternatives for the Site. The more permanent option for the Site was identified as excavation and offsite disposal of waste rock piles in addition to downslope areas impacted by the waste rock piles.

This Scope of Work (SOW) is for the development and implementation of an IRA at the Site. The Department of Ecology (Ecology) and CITY have procured grant funds for cleanup of the Site; however, the grant funds allocated for 2018 and 2019 are not anticipated to be sufficient for cleanup of the entire Site. Therefore, this SOW is for the first phase of cleanup (Phase 1) at the Site. The IRA presented herein is for the cleanup of four waste rock piles and their associated impacted downslope areas. The four waste rock piles to be addressed during Phase 1 are SR-01, SR-02, SR-03, and SR-08. These four waste rock piles contain approximately 87% of the arsenic mass and total waste rock volume, and are located with the lower 33% of the Site with respect to elevation. The remaining areas; SR-04, SR-05, and SR-06, will be addressed in a later phase. The remaining piles, although containing only 13% of the arsenic mass and waste rock volume, offer considerable more challenges with respect to slope and distance. It is anticipated that the lessons learned during the Phase 1 IRA will help considerably in developing cleanup plans for the remaining waste rock piles.

The CITY shall coordinate with Ecology throughout the development of the project tasks and shall keep Ecology informed of changes to any project plans, and of any issues or problems as they develop.

The SOW is divided into four major tasks as follows:

- TASK 1. Interim Remedial Action Preliminary Design and Costs
- TASK 2. Interim Remedial Action Design Sampling and Analysis
- TASK 3. Interim Remedial Action Final Design
- TASK 4. Interim Remedial Action Implementation
- TASK 5. State Environmental Policy Act (SEPA) Compliance Support

## Exhibit B Scope of Work and Schedule

### **TASK 1. INTERIM REMEDIAL ACTION PRELIMINARY DESIGN AND COST ESTIMATION**

#### **Purpose of IRA Preliminary Design**

The planned IRA has some challenges with respect to implementation due to the steep slopes at the Site. The alternatives evaluated during the FS included the assumption that the existing road and trail system would be utilized to the extent possible to retain the aesthetic character of the area for recreational purposes and to reduce road construction costs.

Within the Phase 1 area, the existing road and trail system includes road segments with slopes as steep as 22%. Slopes on the individual waste rock piles range from a minimum of 17% (SR-02 and SR-03) to a maximum of 46% (SR-08). For comparison purposes, the maximum slope on an interstate highway is 6 to 7%, and the maximum slope for mining work with heavy equipment is typically limited to 10%. A maximum slope for light vehicles, is commonly specified at 20%. Therefore, use of the existing roads and trail system for implementing the IRA carries some very significant implementability and safety considerations.

Prior to moving forward with the design and implementation of the IRA, validation of the assumed usage of the existing road and trail system is needed. This validation is to be provided within an IRA Preliminary Design Report. The purpose of the IRA Preliminary Design Report is to 1) ensure that the scope of work to be executed is consistent with CITY and Ecology expectations, and 2) provide a sufficient basis for creating a detailed cost estimate for implantation of the IRA.

#### **Components of the IRA Preliminary Design**

Components of the Preliminary Design Report will include:

1. Narrative describing the purpose of the Preliminary Design Report, objectives of the project, overview of methods to be employed, and project deliverables.
2. Identification of the heavy equipment (makes and models) that could potentially be used for excavation of waste rock and soil, and hauling the soil to a loading and unloading area located at the base of the hill. This analysis should also include recommendations for equipment to be used based on technical, safety, and cost considerations.
3. Verification of the routing of the roadways that will be used to access the Phase 1 waste rock piles (SR-01, SR-02, SR-03, and SR-08), including which roads will be kept and which roads will be reclaimed, at the end of the IRA.

## Exhibit B Scope of Work and Schedule

4. Verification of the road/trail improvements that will be required to safely implement the IRA. To include storm water management features.
5. Details of post IRA reclamation and revegetation requirements, materials and procedures. This includes delineation of anticipated revegetation areas for each waste rock pile and road that will be reclaimed. Also includes anticipated grading, addition of soil amendments, and erosion control.
6. Estimated schedule for IRA Design and Implementation, including bidding and contracting phases.
7. Definition of safe operating hours with respect to daylight, traffic, and public safety considerations and defined routes of dump trucks to and from the Wenatchee Regional Landfill.
8. Dust control requirements and procedures.
9. Contaminated area physical delineation methods (for both delineating contaminated areas prior to the IRA Implementation, and delineated contaminated versus clean areas during the IRA Implementation).
10. A detailed engineering cost estimate for IRA Implementation (to be provided under separate cover from the IRA Preliminary Design Report). This engineering estimate should provide estimated costs for the estimated quantities of contaminated waste rock and downslope soils from the FS report, and also provide for costs for an estimated additional quantity of waste rock and downslope soils, based on known uncertainties. This cost estimate should also include estimated quantities of revegetation materials for each waste rock area and road to be reclaimed. The detailed engineering cost estimate will also need to include separate line items for Design Sampling and Analysis and IRA implementation Sampling and Analysis, discussed below under TASK2.
11. Development of an appropriate cost basis for bidding of the IRA construction (i.e. Schedule of Values table), given uncertainties in the amount of waste rock and soil (waste) that will need to be removed at each of the four Phase 1 waste rock areas. This is an important consideration since uncertainties with volumes under a lump sum contract would require contractors to assume worst case scenarios in order to mitigate risks. The preliminary design report should discuss uncertainties in volumes for each of the four pile areas. Note: a change of waste volume at a distant and higher elevation pile (e.g. SR-03) would have a significantly larger cost consequence than a change of volume at a lower elevation pile (e.g. SR-01). Therefore, costing in the Schedule of Values table should be provided on a per pile basis, with unit cost adjustments for amounts less than or greater than estimated volumes.

## Exhibit B Scope of Work and Schedule

### **IRA Preliminary Design Report**

The CITY's Consultant/Contractor shall prepare the *Draft* IRA Preliminary Design Report and submit two hard copies and one electronic copy in Adobe (.pdf) format to Ecology for review. The CITY's Consultant/Contractor shall address Ecology's comments and then prepare the *Final* IRA Preliminary Design Report and submit two hard copies and one electronic copy in Adobe (.pdf) format, to Ecology. IRA estimated costs developed under this task will be provided under separate cover.

### **TASK 2. INTERIM REMEDIAL ACTION DESIGN SAMPLING AND ANALYSIS**

The CITY's consultant/contractor shall conduct design sampling and analysis to 1) establish arsenic background concentrations for each waste rock pile area and 2) to determine whether or not downslope areas have been impacted by waste rock. These determinations shall be made through IRA Design Sampling and Analysis, consistent with Ecology's 2018 *Technical Memorandum, Gold Knob Prospect (aka Saddle Rock Park), Establishing Site Cleanup Levels and Areas*.

At the end of the IRA Design Sampling and Analysis, data should be sufficient to physically delineate (e.g. with flagging) the areas where excavation and offsite disposal is required based on downslope soils having arsenic concentrations statistically significantly greater than upslope soil. The CITY's consultant/contractor will prepare an IRA Design Sampling and Analysis Report, which will present the methods and results of the assessment and make recommendations with respect to cleanup of downslope areas.

The CITY's Consultant/Contractor shall prepare the *Draft* IRA Design Sampling and Analysis Report and submit two hard copies and one electronic copy in Adobe (.pdf) format to Ecology for review. The CITY's Consultant/Contractor shall address Ecology's comments and then prepare the *Final* IRA Design Sampling and Analysis Report and submit two hard copies and one electronic copy in Adobe (.pdf) format, to Ecology.

### **TASK 3. INTERIM REMEDIAL ACTION DESIGN**

The CITY's consultant/contractor shall prepare a draft IRA Design Report for submittal to Ecology.

#### **Components of the IRA Design Report**

This report will provide details on cleanup activities to be conducted including the following components:

1. IRA Design narrative including discussion of the purpose of the document,
2. Reiteration of the contents of the Preliminary Design Report.

## Exhibit B Scope of Work and Schedule

3. Narrative description of planned remedial action
4. IRA Schedule
5. IRA Design Drawings (Plans and Sections)
6. IRA Design Specifications
7. IRA Safety Plan
8. IRA Confirmatory SAP
9. Landfill acceptance of waste documentation

### **IRA Schedule**

The IRA Schedule should define the anticipated cleanup schedule including preparatory activities such as design sampling and analysis, and preparation work for roads and the loading and unloading area, and the anticipated schedule for each waste rock area, based on the current estimated volumes. It is understood that changes in volumes will result in a change of schedule.

### **IRA Design Drawings and Specifications**

IRA Design Drawings shall include plans and sections including a topographic map and several sections for the Site as a whole, and a detailed topographic plan map and several sections for each waste rock pile. The sections should include both the current surface and the anticipated post excavation surface. A plan map should also be provided for the loading area.

IRA Design Specifications should include detailed specifications for road and trail construction (including storm water management features), specifications for the construction of the loading area, specifications for grading and reclamation of the excavated areas and temporary access road.

### **IRA Safety Plans**

The IRA Safety Plan will include safety procedures for the project including prevention of contamination exposure to workers, locations of hospitals and emergency procedures, a site security plan to ensure no members of the public have access to the areas where work is being performed, safety plans specific to steep slope operations, and safety plans for hauling soil from the Site to the Greater Wenatchee Regional Landfill.

### **IRA Confirmatory Sampling and Analysis Plan**

The IRA Confirmatory SAP will define the criteria for the confirmatory soil sampling program. This SAP should be prepared by the CITY's Consultant/Contractor consistent with Ecology's 2018 *Technical Memorandum, Gold Knob Prospect (aka Saddle Rock Park), Establishing Site Cleanup Levels and Areas*. This will include the spacing and depths of sampling locations and sampling and analysis methods. The IRA Confirmatory SAP should include a plan map for each waste rock/toe area depicting planned sampling locations. The SAP methods should also be consistent with the discussion of the

## Exhibit B Scope of Work and Schedule

Confirmatory Sampling and Analysis Program, discussed under Task 4, below. The SAP should detail all equipment to be used and operating and calibration procedures. The SAP should include specifications for QA/QC samples (types and frequencies) including performance evaluation standards, field duplicates, and decontamination rinsate blanks. The SAP should also discuss the data quality review components of laboratory analytical data and associated QA/QC samples.

### **IRA Design Report**

The CITY's Consultant/Contractor shall prepare the *Draft* IRA Design Report and submit two hard copies and one electronic copy in Adobe (.pdf) format to Ecology for review. The CITY's Consultant/Contractor shall address Ecology's comments and then prepare the *Final* Remedial Design Report and submit two hard copies and one electronic copy in Adobe (.pdf) format, to Ecology.

## **TASK 4. INTERIM REMEDIAL ACTION IMPLEMENTATION**

After Ecology approval of the Remedial Design Report, the CITY shall implement the Phase 1 IRA.

### **Components of the Phase 1 IRA**

The components of the remedial action will include the following components:

1. Project infrastructure setup (loading and unloading area, road and trail development)
2. Excavation areas delineation
3. Excavation and hauling of waste rock and soil from pile areas to loading and unloading area
4. Loading of dump trucks at the loading and unloading area and hauling to the Wenatchee Regional landfill
5. Confirmatory soil sampling
6. Surface reclamation and revegetation (e.g. surface grading, soil amendment (if needed), seeding, and erosion control/mulching)
7. Remedial Action completion report

### **Loading and Unloading Area Preparation**

The SOW requires the CITY to develop a loading and unloading area in a relatively flat area at the base of the hill. This loading and unloading area needs to be sufficiently large for heavy equipment to safely bring and unload waste rock and soil from the Site, temporarily place this material in stockpiles, and then load dump trucks for hauling the soil to the landfill.



## Exhibit B Scope of Work and Schedule

### **Road and Trail Development**

Road and trail work will include modifications as required for safe operations, correcting existing erosion problems, and making stormwater management improvements. Each waste rock area will need a safe work area for loading of waste to haul to the loading and unloading area. This may require some regrading efforts to ensure safe movement of heavy equipment.

### **Excavation Areas Preliminary Delineation**

The preliminary delineation of excavation areas will be based on the results of the IRA Design Sampling and Analysis conducted under Task 2 plus data from the RI Report. The delineated area polygons should be recorded using GPS equipment to allow for mapping of the four waste rock and associated contaminated toe areas. Physical area delineation (e.g. pin flags and/or flagging), should be maintained to the extent possible during the execution of the IRA, with the understanding that final excavation limits will be determined after completion of the confirmatory sampling and analysis program.

### **Confirmatory Sampling and Analysis Program**

Confirmatory sampling and analysis will be conducted consistent with Ecology's 2018 *Technical Memorandum, Gold Knob Prospect (aka Saddle Rock Park), Establishing Site Cleanup Levels and Areas*. During excavation, it is anticipated that there may be no clear visual difference between contaminated and uncontaminated (or native) soils. Therefore, confirmatory sampling and analysis will need to be performed continuously as part of the IRA. Arsenic will be used as an indicator hazardous substance during cleanup. A high quality field x-ray fluorescence (XRF) instrument, when calibrated and used properly, is anticipated to provide sufficient quality arsenic data to guide the cleanup.

After cleanup is complete at a given waste rock area based on XRF results, confirmatory samples will be collected and analyzed at an offsite laboratory for site constituents of concern using EPA standard analytical methods with reporting limits lower than the proposed cleanup levels. Additional excavation and confirmatory sampling may be required if the confirmatory laboratory analytical results indicate exceedance of cleanup levels for any of the Site constituents of concern, as directed by Ecology.

### **Final Excavation Limits**

The final excavation limits and topography should be mapped for inclusion in As-Built drawings for each waste rock/contaminated downslope area. The final limit of the excavation should be marked with pin flags or survey tape after excavation is complete.

### **Surface reclamation and revegetation**

In addition to mapping of areas that have been excavated during the IRA, additional mapped overlays should be prepared for reclamation regrading, and revegetation efforts. These features will be included in As-Built drawings for each waste rock/contaminated downslope area. The estimated amount and types of materials deployed for revegetation purposes should be tabulated by waste rock area and road/trail area being reclaimed.

## Exhibit B Scope of Work and Schedule

### **Deliverables**

The IRA completion report should include the following components:

- Disposal weight tickets and estimated volume by waste rock area.
- As-built maps for each waste rock area delineating the waste rock areas on topography before excavation and overlays for excavation, regrading, and revegetation areas and added storm water management features.
- Maps for each waste rock area confirmatory sampling locations and depths (final not interim locations).
- Tabulations of confirmatory results for Site constituents of concern (including both confirmatory arsenic XRF results and laboratory analytical results for constituents of concern).
- Data quality review for the XRF results.
- Laboratory analytical reports including laboratory QA/QC samples, and associated data quality review.
- Receipts for purchased revegetation materials

The CITY's Consultant/Contractor shall prepare the *Draft* IRA Completion Report and submit two hard copies and one electronic copy in Adobe (.pdf) format to Ecology for review. The CITY's Consultant/Contractor shall address Ecology's comments and then prepare the *Final* IRA Completion Report and submit two hard copies and one electronic copy in Adobe (.pdf) format, to Ecology.

### **TASK 5. SEPA COMPLIANCE**

The CITY shall be responsible for assisting Ecology with its compliance with the State Environmental Policy Act (SEPA) Rules (WAC 197-11-250 through 268), including the CITY's preparing and submitting a draft and final environmental checklist and, if the result of the threshold determination is a determination of significance (DS), preparing and submitting draft and draft final environmental impact statements. The CITY shall assist Ecology with coordinating SEPA public involvement requirements with MTCA public involvement requirements whenever possible, such that public comment periods and meetings or hearings can be held concurrently.

Exhibit B Scope of Work and Schedule

## SCHEDULE OF DELIVERABLES

The schedule for deliverables described in the Agreed Order and the Scope of Work is presented below. If the date for submission of any item or notification required by this Schedule of Deliverables occurs on a weekend, state or federal holiday, the date for submission of that item or notification is extended to the next business day following the weekend or holiday. Where a deliverable due date is triggered by Ecology notification, comments or approval, the starting date for the period shown is the date the CITY received such notification, comments or approval by certified mail, return receipt requested, unless otherwise noted below. Where triggered by Ecology receipt of a deliverable, the starting date for the period shown is the date that Ecology receives the deliverable by email.

<b>Task</b>	<b>SOW Deliverable</b>	<b>Deliverable description</b>	<b>Subtask Duration</b>	<b>Completion Times</b>	<b>Estimated Date</b>
	Effective date of Agreed Order			After signing and public notice.	
	Procurement of ENGINEER	RFP Package and CITY selection materials	30 days	Within 30 days following signing of Agreed Order.	
		Selection and Contracting of ENGINEER	30 days	Within 30 days of Proposal deadline.	
1.	IRA Preliminary Design and Cost Estimate	Submittal of draft document to CITY & Ecology	60 days	Within 60 calendar days following the effective date of the Agreed Order	
		IRA Preliminary Design Review Meeting	1 day	Within 10 calendar days following receipt of draft document	
		Submittal of final document to CITY & Ecology <sup>1</sup>	30 days	Within 30 calendar days of submittal of draft document	
2.	IRA Design Sampling & Analysis	Submittal of draft document to CITY & Ecology <sup>2</sup>	90 days	Within 90 calendar days following the effective date of the Agreed Order	
		Submittal of final document to CITY & Ecology <sup>1</sup>	30 days	Within 30 calendar days of submittal of draft document	
3.	IRA Design	Submittal of draft document and Bid Package	120 days	Within 120 days following City & Ecology approval	

Exhibit B Scope of Work and Schedule

		to CITY & Ecology		of IRA Preliminary design and Cost estimate	
		IRA Preliminary Design Review Meeting	1 day	Within 10 calendar days following receipt of draft document	
		Submittal of final document and Bid Package to CITY & Ecology <sup>1</sup>	30 days	Within 30 calendar days of submittal of draft document	
	Procurement of Construction CONTRACTOR	Bidding by City	60 days	Within 60 days following City & Ecology approval of design document and bid package	
		Selection & Contracting of CONTRACTOR	30 days	Within 30 days of bid due deadline.	
4a.	IRA Field Implementation	IRA Field Implementation Kickoff Meeting	1 day	Within 30 days of Ecology approval of Final Design Report	
		Start of IRA Field Implementation	1 day	Within 1 day following Kickoff meeting	
		Completion of IRA Field Implementation <sup>2</sup>	90 days	Within 90 days of Field Implementation Start	
4b.	IRA Completion Report	Submittal of draft document to CITY & Ecology	60 days	Within 60 days following completion of field implementation	
		IRA Completion Report Review Meeting	1 Day	Within 10 days following submittal of draft document.	
		City & Ecology comments on draft document	30 days	Within 30 calendar days following receipt of draft document	
		Submittal of final document to CITY & Ecology <sup>1</sup>	30 days	Within 30 calendar days of City & Ecology approval of responses to comments	

## Exhibit B Scope of Work and Schedule

1 – Ecology reserves the right, at the sole discretion of Ecology, to require one additional comment and document revision round, if needed. All Ecology comments must be addressed to Ecology's satisfaction prior to document finalization.

2 – Any field delays due to weather or safety considerations shall be considered by Ecology.



# MEMO

Parks, Recreation and Cultural Services Department

To: Mayor Kuntz and City Council  
From: Dave Erickson, Parks, Recreation and Cultural Services Director  
Re: Centennial Park Facility Use Agreement  
Date: July 18, 2018

**ACTION REQUESTED:**

***Move the approval of the facility use agreement with the Wenatchee Valley Museum and Cultural Center as recommended by the Arts, Recreation and Parks Commission.***

**BACKGROUND:**

In mid-June the Wenatchee Valley Museum and Cultural Center approached the Parks, Recreation and Cultural Services Department about the possibility of the museum renting a portion of the Centennial Park parking area to accommodate their summer program use. The Museum indicated that they don't have enough available parking for their program staff or senior volunteers and street parking is typically full.

After exploring several alternatives, a facility use agreement was prepared to accommodate the use. It is contained below.

Through the agreement the museum would be allowed to place temporary signs to reserve 6 of the 10 parking spaces in the park for ten weeks during the summer from 8:30-4:00pm, Monday through Thursday.



The museum is satisfied with the content of the agreement. It has been reviewed by the City Attorney and was unanimously recommended for approval the Arts, Recreation and Parks Commission at their meeting of July 17, 2018.

## Facility Use Agreement

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2018, between the City of Wenatchee, a municipal corporation (the "CITY") and Wenatchee Valley Museum and Cultural Center, a Washington Non-profit Corporation (hereinafter as "MUSEUM"), collectively referred to herein as the "Parties", in consideration of the mutual promises and covenants hereinafter set forth.

### RECITALS

1. The City owns and operates Centennial Park located at 130 South Wenatchee Avenue.
2. The park has approximately ten designated parking spaces.
3. The Wenatchee Valley Museum and Cultural Center is located adjacent to Centennial Park. It conducts summer youth enrichment programming in the facility during the summer.
4. The Museum is in need of additional parking to accommodate their summer program staff and would like to utilize a portion of the parking in Centennial Park.
5. City is willing to allow such use under the terms and conditions set forth in this Agreement.

### AGREEMENT

#### 1.0 Premises

- 1.1 City grants to the Museum the right to reserve and use six parking spaces in the Centennial Park parking area for ten weeks, Monday through Thursday during the hours of 8:30-4:00pm. The remainder of the parking spaces are open to the public.
- 1.2 City makes no warranty of the premises' suitability for the Museum's intended uses under this Agreement, and Museum agrees to accept the property "as is" in the condition in which it exists on the commencement of the term of this Agreement.

#### 2.0 Term

- 2.1 The initial term shall commence on July 1, 2018 and terminate on September 1, 2018.
- 2.2 The term for 2019 begins generally when the Wenatchee School District concludes its school year and extends for ten weeks unless otherwise terminated upon mutual agreement of both Parties.
- 2.3 The agreement will automatically renew on an annual basis unless otherwise terminated upon mutual agreement of both Parties.

### 3.0 Payment

3.1 Museum shall pay rental to City in the sum of Two Hundred and no/100 Dollars (\$100) for use of the premises each year during the term of this agreement. Said payment shall be due and payable in advance of the first use. Payments shall be made to City of Wenatchee Parks, Recreation and Cultural Services Department, PO Box 519, Wenatchee Washington 98807.

### 4.0 Insurance

4.1 The Museum shall provide insurance coverage for their use of the Premises naming the City as additional insured consistent with other facilities.

### 5.0 Indemnification

5.1 The Museum shall indemnify, defend and hold harmless City, its respective officers, agents and employees, from and against any and all claims, losses or liability, including reasonable attorney's fees incurred in the defense thereof, or any portion thereof, arising from injury or death to persons or damage to property, occasioned by any negligent act, omission, or failure of the City, its officers, agents, and employees, in connection with the use of the Premises described in this Agreement.

### 6.0 Maintenance and Operation

6.1 The City or its subcontractors will continue to provide for the maintenance and operation of the Premises in a manner consistent with current levels.

### 7.0 Alterations and Capital Improvements

7.1 Museum shall make no changes, improvements, or alterations to the premises without the prior consent of City.

7.2 Museum may place temporary, "Reserved for Museum Use" or "Museum Parking Only, 8:30-4:30pm Monday through Thursday" or similar parking signs to designate their reserved spaces.

### 8.0 Assignment of Rights

8.1 The rights of Museum under this Agreement are personal to the Museum, and may not be assigned or sublet by the Museum without the prior written consent of City.

### 9.0 Severability

9.1 In the event that any provision of this Agreement shall be determined to be unenforceable or otherwise invalid for any reason, such provision shall be enforced and validated to the extent permitted by law. All other provisions of this agreement are severable, and the unenforceability or invalidity of any single provision hereof shall not affect the remaining provisions.



10.0 Modification; Binding Effect

10.1 The terms and conditions of this Agreement shall be binding on the Parties hereto, their heirs, successors, administrators, and assigns and shall be construed in accordance with the laws of the State of Washington. No alteration, changes, or amendments of this Agreement will be binding upon either party unless the same are written and executed by the parties.

11.0 Time is of the Essence

11.1 Time is of the essence of this Agreement, and of each and every term, condition and provision.

12.0 Attorneys Fees

12.1 In the event of litigation regarding any terms of this Agreement, each party shall bear their own attorney's fees and costs incurred therein.

13.0 Notices

13.1 Notices under this Agreement must be in writing and must be sent by registered or certified mail to the last known address of the party to whom the notice is to be given, as designated by such party in writing. The City and Museum hereby designate their addresses as follows:

City of Wenatchee  
P.O. Box 519  
Wenatchee, WA 98807

Wenatchee Valley Museum and Cultural Center  
127 South Mission Street  
Wenatchee, WA 98801

14.0 Governing Law/Venue

14.1 This Agreement is governed by the laws of the State of Washington. The jurisdiction of any action hereunder shall be in the Superior Court, Chelan County, Washington.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

CITY OF WENATCHEE

By \_\_\_\_\_  
FRANK KUNTZ, Mayor

DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

WENATCHEE VALLEY MUSEUM AND CULTURAL CENTER

By \_\_\_\_\_  
DARRELL DICKESON, Interim Director



# MEMO

Parks, Recreation and Cultural Services Department

To: Mayor Kuntz and City Council  
From: Dave Erickson, Parks, Recreation and Cultural Services Director  
Re: Park Area Naming  
Date: July 18, 2018

***ACTION REQUESTED:***

**Move approval of the name “The Cesar Chavez Garden” as the official name of the community garden space at the Wenatchee Community Center, and authorize the applicant to design and install signs consistent with the City sign code and specific community center requirements as recommended by the Arts, Recreation and Parks Commission.**

***BACKGROUND:***

The City of Wenatchee owns the Wenatchee Community Center (located at 504 South Chelan Avenue). It was established to unite the community by embracing cultures, families and individuals through collaboration, assistance and support. The Center has six primary areas of focus including: Family services for vulnerable populations, early childhood education, adult basic education and training, youth recreation, food bank and veteran’s services. The center is comprised of four buildings, parking and landscaped grounds.

The former St. Joes Church was acquired by the City of Wenatchee in 2003 and renovations completed in 2006. Funding for the acquisition and renovation came from the following sources: Community Development Block Grant, City of Wenatchee (Memorial Hall Insurance Settlement), State of Washington Grant, HUD Entitlement (CDBG), Gates Foundation Grant, Port of Chelan County Grant, City of Wenatchee (Sale of HUD Homes), Distressed County Funds, Community Action Council Grant, Community Center Board Fundraising. Each of the funding sources came with specific operational requirements.

The City operated the Center from the time of its opening through the end of 2013. After a year and a half long RFP process was completed a management agreement was entered into with Chelan Douglas Community Action. Additional background about the Community Center is available if desired.

In 2009 the City undertook the process to create a community garden on an underutilized portion of the community center grounds located between the parking lot and Methow Street (below).



The goal of this project was to begin to address the need for community garden space by constructing a garden that served approximately 20 households in South Wenatchee.

Over the next six months, staff prepared a design of the garden and began fundraising and donation efforts. Grant applications were prepared and submitted to the Community Foundation of North Central Washington, Gardenburger, City Neighborhood Matching Grant and Alcoa Foundation.

Using volunteers and city staff the garden was constructed from March through the end of the summer in 2009. This process involved adding a water meter and irrigation, constructing a retaining wall, adding a fence along Methow Street, soil testing and removing contaminated soil, importing certified organic planting soil and designing and installing a recognition sign. 25 garden plots were able to be accommodated in the space. The final project cost was \$12,850. This cost was covered through the grants, a contribution from the Lions Club, city staff support, city budget allocation and community donations.

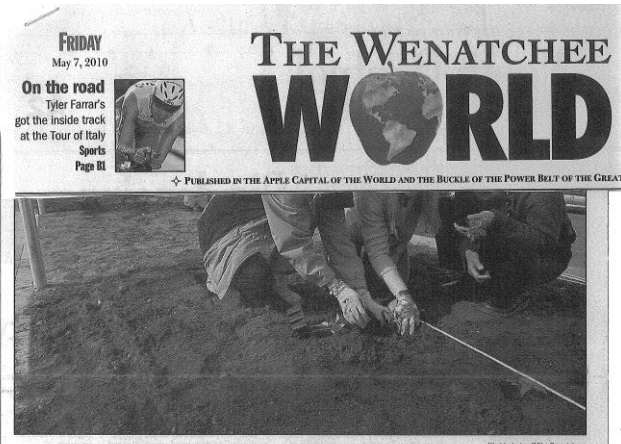


Also in 2009 staff prepared garden policies and procedures and began promoting and administering the

community garden program. Response to the garden was overwhelmingly positive. All 25 plots were used from 2010 through 2013.

During the first year of operation, the project expanded from the original construction project to also include monthly gardening workshops coordinated by the City. These started in February and ran through November on topics ranging from square foot gardening to crop rotation, water conservation and food preserving. A scanned copy of one of the program flyers is attached.

The project helped bring together volunteers from EAT Local, Americorps, Master Gardeners, Miso Day Church, Ambitions, Boy Scouts and over 35 other community volunteers.



First-time gardeners Katie Stefanides and Karen Jones get help from longtime gardener Jirapon Ingram in planting pepper and tomato plants in their plot at the new Wenatchee Community Garden. The garden, at the Wenatchee Community Center in Wenatchee, has 25 plots that are leased for \$5 a year and eight hours of volunteer work.

## Community spirit thrives in new community garden

◆ For \$5 a year and little work, neighbors have a place to plant whatever they want

**BY RICK STEIGMEYER**  
World staff writer

WENATCHEE — Soon tomatoes, peppers, peas, beans and new friendships will grow where once there were only weeds and rock.

Experienced and first-time gardeners braved an afternoon shower and chilly weather Thursday evening to get their plants in the soil at the Wenatchee Community Garden, a new project behind the Wenatchee Community Center stretching from the corner of Spokane Street and

"This is a lot of fun because it's a community effort," said David Gerlach, the center's manager. His daughters, Becky, 6, and Natalia, 8, were planting peppers and tomatoes with 9-year-old Christine Ingram in one 9-by-9-foot plot.

"We're doing peppers, who hoo!" said an excited, dirty-fingered Becky.

Next to them, Katie Stefanides and Karen Jones, two adults and first-time gardeners, were spading up dirt and planning out what would go where in their tiny piece of ground.

"This is really exciting. We heard about square-foot gardening and we're going to do it," said Stefanides. They were referring to the inter-

Katie Stefanides is planting cucumbers in the

## Growing a garden from the ground up

**World staff writer**

David Gerlach, Wenatchee Community Center coordinator, and his son Nicolas, 15, (not pictured) work on installing a well along the east border of a community garden area being installed at the Wenatchee Community Center. Twenty-five plots, each 10-by-10 feet, will be available for planting for \$5 a year.

## Community gardens under construction

**BY BRUCE LEE**  
World staff writer

A small strip along Meshow Street is undergoing a transformation. The plan is to turn the space from a place where parking lots to a place that's producing food and flowers.

Wenatchee Community Center coordinator David Gerlach says the future home of a new community garden space was "mostly dirt and rubble. It had become a dumping ground." His idea held a community garden to spruce up the site and provide a place for people to grow veggies and flowers.

Now with the help of grants — \$1,500 from the Community Foundation of North Central Washington and a \$625 grant from the city — Gerlach is planning the garden plot — the first of 25 garden plots. A grant from the city is also providing approval from Gerlach's neighbor, a vegetable purveyor manufacturer that offers community garden plots.

Gerlach and volunteers, including his wife and three children, are constructing the garden plot that will line the west side of the Community Center. The western entrance to the Community Center parking lot will be torn up to make the plot. The entrance won't be much of a loss, says Gerlach, since people frequently used the entrance to "jackrabbit through the lot."

The plots, each 10-by-10 feet will be available to anyone with the willingness and \$5 to maintain a spot. Already, nine plots have been reserved. Gerlach says the fee will help offset water costs. Those who have plots are also

asked to volunteer eight hours a year in cooperative spaces of the garden.

Neighbors including Bruce and Laura Morrison, have volunteered to be "well" with other gardeners as well as "gardeners."

"I'm hoping we can do it as an improvement, not just a place to park the cars," Gerlach says of the plan. "I'm hoping we can do it as an improvement, not just a place to park the cars."

Gerlach says volunteers have already chipped in to help build a new community garden area. The concrete border being used as a garden wall was salvaged from a city street extension project, saving money for other garden needs.

## Community Garden Meeting

Do you like to garden, but don't have a space at your home or apartment for your flowers or vegetables?

Garden plots now available!

Would you like to start gardening but need some help?

Free classes from MASTER GARDENERS!

**SIGN UP FOR YOUR GARDEN PLOT!**

When:  
Thursday  
August 27  
6:00 a.m.

Where:  
Community Center Social Hall.

What:  
Meeting to discuss upcoming plans of the community garden as well as a time to ask questions about the garden.

Contact David Gerlach at 509-888-1561.

## Community Garden Meeting

Do you like to garden, but don't have a space at your home or apartment for your flowers or vegetables?

Garden plots now available!

Would you like to start gardening but need some help?

Free classes from MASTER GARDENERS!

**SIGN UP FOR YOUR GARDEN PLOT!**

When:  
Thursday  
August 27  
6:00 a.m.

Where:  
Community Center Social Hall.

What:  
Meeting to discuss upcoming plans of the community garden as well as a time to ask questions about the garden.

Contact David Gerlach at 509-888-1561.

People plant plots at the Wenatchee Community Garden at the Community Center on Thursday afternoon. The garden stretches from the corner of Spokane Street and along Meshow Street.

More work is planned for the garden area as contributions come in.

"It's been a leap of faith, started, but a lot of people had to get involved," he said. "If it works a little bit of interest and a little bit of happiness, well, that's what it's all about."

When the City contracted with Chelan Douglas Community Action to manage the Community Center, operation of the garden also transferred.

In the Spring of 2018 a request was received by the City to name the garden. A copy of the application is below.

**City of Wenatchee  
Parks, Recreation and Cultural Services Department  
Park/Facility Naming Nomination Form**

**CRITERIA**  
It is the policy of the City of Wenatchee to choose names for public parks and recreation facilities based on the site's relationship to the following criteria:

- Neighborhood, geographic or common usage identification.
- A natural or geological feature.
- A historical figure, place, event or other instance of historical or cultural significance.
- An individual (living or deceased) who has made a significant land and/or monetary contribution to the park system or who has had the contribution made "in Memoriam"; and when the names has been stipulated as a condition of the donation. For the purposes of this section, a "significant" donation may approximate 25 percent of total project/property cost.
- An individual who has contributed outstanding civic service to the City of Wenatchee and who has been deceased for a period of at least two years.

**NOMINATION INFORMATION** The César Chávez Garden

1. Proposed Park/Facility Name: Methan Mini Garden

2. Proposed park name to be named for:

Neighborhood  Geographic Area  Cultural Significance  
 Geologic Feature  Historical Figure  Significant Contribution  
 Outstanding Civic Service

3. If named for a person, are they deceased?  Yes  No

4. Please describe below the significant contributions the nominee has accomplished demonstrating service and commitment to the City of Wenatchee or, describe significance of the historical, geographical, geological or cultural resource. see attached

5. If an individual or group, please include documentation (news clippings, list of accomplishments, photographs, etc.) that illustrate the contributions made to the City of Wenatchee.

6. Nominator Name: Wendy Letzing Phone Number: 509-436-1601  
 Address: 14 N Mission Wenatchee WA 98801  
 E-mail Address: sandyf@cascadia.cc.org

Please return to:  
 Wenatchee Parks, Recreation and Cultural Services • 1350 McKittrick Street, PO Box 519 • Wenatchee, WA 98807

Cesar Chavez dedicated his life for farm workers so we should honor him. We believe the community garden should be named The Cesar Chavez Memorial Garden because he was just like Martin Luther King Jr., he helped farm workers get better working conditions and there are many farmworkers here in Wenatchee.

One reason we should name the community garden The Cesar Chavez Memorial Garden is because he was just like Martin Luther King Jr. Martin Luther King Jr. changed laws for african-americans and Cesar Chavez helped change laws for Mexican farmworkers. They both changed laws with non-violence. If Martin Luther King Jr. has a day named after him and a memorial, then Cesar Chavez should to.

Another reason we should name the community garden The Cesar Chavez Memorial Garden is many people in Wenatchee are farmworkers and Cesar Chavez helped farm workers by getting them better working conditions. If Cesar Chavez hadn't persevered, farmworkers' rights wouldn't be the same. For example, they would still have bad pay and be treated poorly. They would not have bathrooms, clean drinking water and they would have pesticides sprayed on them.

In conclusion, we believe the community garden should be named The Cesar Chavez Memorial Garden because he was just like Martin Luther King Jr., he helped farm workers get better working conditions and there are many farmworkers here in Wenatchee. The people of Wenatchee would feel grateful if the garden was named after Cesar Chavez.

Sincerely,  
 Mr. Parr's Fourth Grade Class  
 Lincoln Elementary

*Handwritten signatures:*  
 Zay Bailey, Diego Barrera, Benirios, Jorge Sanchez, Yamin Manjari, Maria del Rosario Morales, Fatma Ayman, Melanie Apuriano, City Name: Kimberl Rios, Christian Melcharez, Diana Melendez, Alex Rios Sawyer, Publi Guatiero, Aaron Favelle, Dean Stevenson, Felipe Gonzalez, A. J. Meade, Jose Lynn Rodriguez

The City has a formalized naming policy and procedure to name park areas. It is:

## PARK NAMING

### 2.12

**1.0 Purpose**

1.1 The purpose of this is to establish a policy and procedure for the naming of City owned and operated parks and recreation facilities.

**2.0 Policies**

2.1 It is the policy of the City of Wenatchee to choose names for public parks and recreation facilities based on the site's relationship to the following criteria:

2.1.1 Neighborhood, geographic or common usage identification.

- 2.1.2 A natural or geological feature.
- 2.1.3 A historical figure, place, event or other instance of historical or cultural significance as verified by Museum staff.
- 2.1.4 An individual (living or deceased) who has made a significant land and/or monetary contribution to the park system or who has had the contribution made "In Memoriam"; and when the names has been stipulated as a condition of the donation. For the purposes of this section, a "significant" donation may approximate 25 percent of total project cost ("total project" includes property and development costs).
- 2.1.5 An individual who has contributed outstanding civic service to the City of Wenatchee and who has been deceased for a period of at least two years.
- 2.2 The Wenatchee Arts, Recreation and Parks Commission shall receive public input to name public parks or recreation facilities and submit their recommendation in the form of a ranked list to the City Council for final selection.
- 2.3 A park's interior features and/or facilities may have names other than that of the entire park. These names are subject to criteria designated in Section 2.1 above.
- 2.4 A name, once adopted, should be bestowed with the intention that it will be permanent and changes should be strongly resisted.
- 2.5 Following selection of a park or recreation facility name by the City Council, the Parks, Recreation and Cultural Services Department will identify the specific park or facility by appropriate signing specifying the name and completion of dedication date.

### **3.0 Procedures**

- 3.1 The Arts, Recreation and Parks Commission will set up time limits for naming process at a maximum of 90 days.
- 3.2 Each park name must be accompanied by an official nomination form supporting reasons for the name.
- 3.3 Forms will be posted on the city web site and available throughout the community.
- 3.4 If there is a competition for choosing a park name, the Arts, Recreation and Parks Commission will establish rules and guidelines for the contest.
- 3.5 Public input is encouraged during the entire process, however the requirements of an official nomination form and reasons for the name are necessary.
- 3.6 After voting on the names, the Arts, Recreation and Parks Commission will submit a ranked list of names to the City Council for final selection. The names will be reflective of

the criteria listed in Section 2.1.

- 3.7 The Arts, Recreation and Parks Commission will review and update the above listed policy and procedures as needed.

At their May 15, 2018 meeting the Arts, Recreation and Parks Commission reviewed the naming request and recommended moving ahead with a naming process, following the adopted naming policy and to collect additional public input. Staff prepared and distributed press releases in English and Spanish on May 16, 2018 and appeared on radio, television and in print media to promote the process. A few examples are attached below.

**City of Wenatchee Parks, Recreation and Cultural Services**  
PO Box 519 • Wenatchee, Washington 98807 • (509) 888-3284 • www.wenatcheewa.gov

**FOR IMMEDIATE RELEASE**

**HELP NAME THE COMMUNITY GARDEN AT THE WENATCHEE COMMUNITY CENTER**

The City of Wenatchee owns the Wenatchee Community Center (located at 504 South Chelan Avenue). It was established in 2006 to unite the community by embracing cultures, families and individuals through collaboration, assistance and support. The center is comprised of four buildings, parking and landscaped grounds.

In 2009 the City undertook the process to create a community garden on an underutilized portion of the property between the parking lot and Methow Street. The goal of this project was to begin to address the need for community garden space by constructing a garden that served approximately 25 households in South Wenatchee.

The project helped bring together volunteers from EAT Local, Americorps, Master Gardeners, Missio Day Church, Ambitions, Boy Scouts and over 35 other community volunteers. The final project cost was \$12,850 which was covered through grants, a contribution from the Lions Club, city staff support and community donations.

The Wenatchee Arts, Recreation and Parks Commission is currently accepting nominations for the naming of the garden. It is the policy of the City of Wenatchee to choose names based on the following criteria:

- Neighborhood, geographic or common usage identification.
- A natural or geological feature.
- A historical figure, place, event or other instance of historical or cultural significance.
- An individual (living or deceased) who has made a significant land and/or monetary contribution to the park system or who has had the contribution made "in Memoriam", and when the names has been stipulated as a condition of the donation. For the purposes of this section, a "significant" donation may approximate 25 percent of total project/property cost.
- An individual who has contributed outstanding civic service to the City of Wenatchee and who has been deceased for a period of at least two years.

Nomination forms may be obtained by calling the Parks, Recreation and Cultural Services Department at: 888-3284, stopping by the office at 1350 McKittrick Street or by emailing Cammy Coble at [ccoble@wenatcheeva.gov](mailto:ccoble@wenatcheeva.gov). **The DEADLINE for nominations is JUNE 22, 2018.**

For more information contact Dave Erickson at 888-3280 or [dackerison@wenatcheeva.gov](mailto:dackerison@wenatcheeva.gov)



**Wenatchee Community Garden Needs A Name, City Taking Suggestions Now**

June 14, 2018 | 0

The community garden at Wenatchee's Community Center will get a new name this summer. The city's Parks & Recreation commission is taking name suggestions through next week. Also several projects at Wenatchee parks are getting underway, as Marcus Bellissimo reports. Photo: WenatcheeWA.gov

[READ MORE](#)

**Local Television Station**  
A Reflection and a Spotlight of the Communities We Call Home.  
LocalTV: Channel 12 • Charter: Channel 19


HOME PROGRAMS NEWS SPORTS LIFESTYLE CALENDAR CONTACT

Home » News » Weather » The Wenatchee Community Garden needs a name

**The Wenatchee Community Garden needs a name**

By Grant Olson - 05/21/2018

Share on Facebook Tweet on Twitter



The City of Wenatchee is asking for your help in naming the Community Garden at the Wenatchee Community Center. The city owns the Community Center at 504 South Chelan. In 2009 the City undertook the process to create a community garden on an underutilized portion of the property between the parking lot and Methow Street. The goal of this project

Contributors who provided the funding to construct the garden were also contacted for input. Through that process an additional name suggestion for the community garden was received.

**Wenatchee Community Center Community Garden**

Through their generous donations and contributions, the following helped to create this garden for the community:

Community Foundation of North Central Washington  
Wenatchee Central Lion's Club  
Kingston Foundation  
City of Wenatchee  
Mary Jane Gurnard  
Kiwanis Club of Riverview  
Apple Valley Construction  
Riverview Landscaping  
Marcos Construction  
Missio Dei  
Intermountain AmeriCorps  
Literacy Council of Chelan and Douglas Counties  
Eagle Scout Shawn Wells  
Boy Scout Troop 38  
Chelan Master Gardeners  
EAT Local

**Thank You!**



4/21/18

**City of Wenatchee Parks, Recreation and Cultural Services Department Park/Facility Naming Nomination Form**

**CRITERIA**  
It is the policy of the City of Wenatchee to choose names for public parks and recreation facilities based on the site's relationship to the following criteria:

- Neighborhood, geographic or common usage identification.
- A natural or geological feature.
- A historical figure, place, event or other instance of historical or cultural significance.
- An individual (living or deceased) who has made a significant land and/or monetary contribution to the park system or who has had the contribution made "in Memoriam", and when the names has been stipulated as a condition of the donation. For the purposes of this section, a "significant" donation may approximate 25 percent of total project/property cost.
- An individual who has contributed outstanding civic service to the City of Wenatchee and who has been deceased for a period of at least two years.

**NOMINATION INFORMATION**

1. Proposed Park/Facility Name: Wenatchee Central Lions Community Garden

2. Proposed park name to be named for:

Neighborhood  Geographic Area  Cultural Significance  
 Geologic Feature  Historical Figure  Significant Contribution  
 Outstanding Civic Service

3. If named for a person, are they deceased?  Yes  No

4. Please describe below the significant contributions the nominee has accomplished demonstrating service and commitment to the City of Wenatchee or, describe significance of the historical, geographical, geological or cultural resource.  
See attached

5. If an individual or group, please include documentation (news clippings, list of accomplishments, photographs, etc.) that describe the contributions made to the City of Wenatchee.  
See photo attached.


6. Nominator Name: Steve Olive Phone Number: 509-670-4300  
Address: P.O. Box 135 Wenatchee, WA 98807  
E-mail address: stevolive11en@gmail.com

Please return to:  
Wenatchee Parks, Recreation and Cultural Services • 1350 McKittrick Street, PO Box 519 • Wenatchee, WA 98807

City of Wenatchee Parks, Recreation and Culture Services Naming Application, continued

#4. In 2007 and 2010 the Wenatchee Central Lions Club participated in two of the Wenatchee Community Center's projects. The Lions Club contributed \$28,900 in 2007 for renovation of the kitchen and patio areas and sold pavers to help fund the Center's project. Volunteer hours were also provided during the renovation.

In 2010 \$1,500 was contributed to the Community Garden to further enhance the Wenatchee Community Center. The Lions Club takes pride in the service and funds donated to our community making the Wenatchee Valley a better place to live.





The Wenatchee Community Center was also contacted for email, phone and address information of the current garden plot renters so they could be reached for input. Attempts were made to contact each of the gardeners. 11 renters provided comment (some rent multiple plots). The comments included:

*“Perfect to change name because the naming states that it’s a community garden and it confuses people that are not renting plots and taking the vegetables from the plot renters. The trespassers justification is that the sign says “Community garden” so, it must be for the community.” (Translated)*

*Misleading the people gets confused. People thinks it’s a community garden for the community and it’s not open to the community.” (Translated)*

*Community garden is not for the community people.*

*Misconception that community garden belongs to the community.*

*The name should be appropriate to what it should be. The name needs to reflect the community.*

*We’ve had problem here at the community garden recently. I’ve seen it worse whenever Methow Park host event the next day we come back finding that our vegetables have been taken or smashed on the road. People who have events at Methow park mess with the community garden!*

*Whatever you decide to name it its fine, but it would be very nice to name-make it a commemorate garden.*

*Let people know more about it. It’s a very cool thing we have here, I’ve meet new people there. I use to own a plot in another city it was called the P-Patch. It’s such a great thing for communities.*

*Change the name because the name right now is misleading to people and they always get confused. People thinks it’s a community garden for the community which makes it ok for others to harvest the vegetable because it’s labeled “community garden”.*

*I’ve had issue where people park their car next to the garden and we don’t have access to our plots. People will leave their parked cars for weeks. “*

At their meeting of July 17, 2018 the Arts, Recreation and Parks Commission again discussed the re-naming of the garden. Following a discussion of both proposed names and taking into consideration the naming policy and comments received by the community **the Commission recommended renaming the garden to The Cesar Chavez Garden by a 3-1 vote.**

---

**COUNCIL AGENDA REPORT**  
**City of Wenatchee**

---



**TO:** Frank Kuntz, Mayor  
City Council

**FROM:** Steve King, Economic Development Director

**SUBJECT:** WSU Property Integrated Planning Grant

**DATE:** August 20, 2018

**MEETING DATE:** August 23, 2018

---

**I. OVERVIEW**

Washington State University's Tree Fruit Research and Extension Center is located at the corner of Springwater and Western Avenues. This facility has been and continues to be a key research facility supporting agriculture in Washington State as part of WSU's land grant university mission. For example, recently, the Cosmic Crisp apple was developed at the facility. In addition, the site is home to the United State Department of Agriculture Agricultural Research Station. Both WSU and USDA ARS work together pushing advances in the tree fruit industry and other fields such as soil sciences and water resources.

The grass roots Our Valley Our Future initiative has identified a game changer of establishing 4 year presence in the Wenatchee Valley to further a community that values education along with bringing the benefits of an Innovation District to our region. Much focus has been given to what we already have and the good work that has been done over the years in an effort to grow and invest this presence along with Wenatchee Valley Community College, the K-12 system, hydro power research, and private research efforts.

WSU is looking at selling off underutilized property state wide. Approximately 9 acres has been identified as surplus property at the Wenatchee facility as shown below. Prior to WSU selling the property on the open market, staff recommends the property is evaluated for community benefit and to look for opportunities to grow the research facility.



**COUNCIL AGENDA REPORT**  
**City of Wenatchee**



The property to be surplus is likely contaminated as a result of agricultural chemicals applied in the past and thus the City applied for and was successful in obtaining an Integrated Planning Grant from the Department of Ecology to perform environmental investigation and look for opportunities to redevelop the property to create beneficial use and enhance our community. This is the same grant program the city was successful in implementing for the former Public Works site, currently under construction with a new hotel. Principally, the program is designed to determine what environmental hazards need to be addressed if any prior to redevelopment.

The WSU surplus property is a particularly important property as it located directly above the research facility to the east and is adjacent to property owned by Wenatchee School District to the west. The number one need for WSU related to success of the facility is housing for researchers, students, post docs, etc. In addition, to WSU's needs locally, there is also a need for housing for medical students and educators in general as the valley continues to deal with a housing crisis. As a result, housing has been identified as a possible use for this property. An integrated planning grant will allow the city to hire a consultant to evaluate the site for contamination and for the ultimate use for housing. This effort will have the potential of ensuring that this property is used in the best interest of the community, the WSU research center, and the School District.

Staff is recommending that the city enter into a \$200,000 grant agreement with the WSDOE to perform the work associated with the scope of work. This work will also inform our Comprehensive Plan to identify those codes necessary to support growth of the WSU Treefruit Research and Extension Facility.

---

---

**COUNCIL AGENDA REPORT**  
**City of Wenatchee**

---

---



**II. ACTION REQUESTED**

*Staff recommends the City Council authorize the Mayor to sign an Integrated Planning grant agreement with the Washington State Department of Ecology for the evaluation environmental contamination and the planning of ultimate use of property owned by Washington State University.*

**III. FISCAL IMPACT Submitted to the Finance Committee Yes No**

The \$200,000 grant from WSDOE does not require any match. The fiscal impact to the city will be city staff resources. The City will hire a consultant to perform the work.

**IV. PROPOSED PROJECT SCHEDULE**

Work will begin this fall in coordination with WSU.

**V. REFERENCE(S)**

WSDOE Grant Agreement

**VI. ADMINISTRATIVE ROUTING**

Tammy Stanger, City Clerk  
Allison Williams, Executive Services Director  
Brad Posenjak, Finance Director



## **Agreement No. TCPRA-1921-Wenatc-00149**

### **TOXICS CLEANUP REMEDIAL ACTION GRANT PROGRAM AGREEMENT**

#### **BETWEEN**

**THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY**

#### **AND**

**CITY OF WENATCHEE**

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as “ECOLOGY,” and CITY OF WENATCHEE, hereinafter referred to as the “RECIPIENT,” to carry out with the provided funds activities described herein.

---

#### **GENERAL INFORMATION**

Project Title:	WSU Tree Fruit Research Center Property Redevelopment
Total Cost:	\$200,000.00
Total Eligible Cost:	\$200,000.00
Ecology Share:	\$200,000.00
Recipient Share:	\$0.00
The Effective Date of this Agreement is:	03/01/2018
The Expiration Date of this Agreement is no later than:	06/30/2019
Project Type:	Integrated Planning Grant

#### Project Short Description:

Evaluation of potential acquisition and redevelopment of a property formerly used for tree fruit research into a community asset that will support affordable housing for the growing researcher and student population. The property contains suspected contamination in the soil and groundwater that will impede private sector market purchase. Redevelopment would support the RECIPIENT's goals for infill development and the larger goals of Washington State under the Growth Management Act.

#### Project Long Description:

The Washington State University (WSU) Tree Fruit Research and Extension Center (TFREC) Property is located at 1100 N Western Avenue at the corner of N Western Avenue and Springwater Avenue. The Property contains suspected contamination related to historic tree fruit research operations which included storage of pesticides and other agriculture-related chemicals, and fuel products. The RECIPIENT is interested in facilitating the development of affordable housing, promoting new economic development, and encouraging infill development in accordance with the Growth Management Act.

Agreement No: TCPRA-1921-Wenatch-00149

Project Title: WSU Tree Fruit Research Center Property Redevelopment

Recipient Name: CITY OF WENATCHEE

The Property has and continues to support family wage research jobs and has brought new residents to Wenatchee. However, many of the TFREC research orchards and related operations are moving to less developed areas of Chelan County and WSU is planning to surplus a portion of the Property so that it can be redeveloped into a higher and better use. The RECIPIENT is considering acquiring the Property but needs to conduct due diligence activities prior to acquisition to determine if there is any environmental contamination resulting from historic uses that would require cleanup during redevelopment activities.

#### Redevelopment Potential

Since the 1960s, WSU has operated the TFREC on the Property. While the TFREC continues to grow in its current location, the research orchards have moved into the more rural areas of Chelan County given the urbanization of the surrounding area. Meanwhile, affordable housing development has fallen behind the pace of academic job growth. The RECIPIENT sees WSU's plan to surplus the Property as an opportunity to put it to a higher and better use and fill the affordable housing gap associated with the research center in Wenatchee. The 10-acre site will likely support affordable housing. Therefore, a market analysis of affordable housing, as well as evaluation of complimentary uses are necessary components of the RECIPIENT's planned due diligence activities.

To mindfully accommodate affordable housing, as well as public space, the RECIPIENT will develop a master redevelopment plan for the Property. With the redevelopment plan, a strategic timeline and list of funding sources for incrementally adding facilities will be created to guide the RECIPIENT through redevelopment of the Property. The master plan will allow for effective integration of the RECIPIENT's redevelopment plans for the Property into its capital facilities plan to help schedule out long-term investments that may be needed.

#### Environmental Nexus

The objective of the Integrated Planning Grant is to provide local government agencies with much needed support for planning, cleanup, and redevelopment of contaminated property. This Property has a long history of agricultural operations, and these uses have resulted in the potential for contamination in the soil and groundwater.

The 10-acre TFREC property has served WSU as a space for agricultural testing since the 1960s. A portion of the Site, called the Test Plot Area, was used for pesticide disposal testing for nearly 20 years and is listed on ECOLOGY's Confirmed and Suspected Hazardous Sites List. This area went through an assessment and remediation process resulting in a No Further Action opinion in 2007. However, the excavation area covered less than one percent of the Property's area, leaving most of the Property uncharacterized. Phase I and Phase II environmental site assessments (ESAs) are needed to identify the nature and extent of contamination in soil and groundwater that are likely the result of the historic land uses. Four underground storage tanks have been removed from the property but may have contributed to potential contamination at the Property.

It is critical that prior to purchase, the RECIPIENT gain a better understanding of the nature and extent of contamination, and environmental liabilities associated with assuming ownership of the Property.

A key component of this Integrated Planning Grant will be the analysis of existing environmental assessment documents, Phase I and Phase II ESAs, identification of any data gaps that may exist, and collaboration with ECOLOGY staff in the development and implementation of an environmental investigation approach that better characterizes the nature and extent of contamination and develops initial estimates of the magnitude of cleanup required to meet MTCA cleanup levels.

#### Overall Goal:

Agreement No: TCPRA-1921-Wenatch-00149

Project Title: WSU Tree Fruit Research Center Property Redevelopment

Recipient Name: CITY OF WENATCHEE

The goals of the project are based on the triple bottom line approach.

#### Environment

- Address legacy contamination issues on the site
- Support infill/brownfield redevelopment in accordance with the Growth Management Act

#### Economy

- Support the growing number of researchers and students who want to live and work in Wenatchee
- Create affordable housing
- Increase the value of the surrounding properties through developing a higher and better use on the Property

#### Community

- Create housing that can accommodate the growing researcher and student population
- Support new businesses to serve people living in the area
- Create new open space

Agreement No: TCPRA-1921-Wenatc-00149  
 Project Title: WSU Tree Fruit Research Center Property Redevelopment  
 Recipient Name: CITY OF WENATCHEE

**RECIPIENT INFORMATION**

Organization Name: CITY OF WENATCHEE  
 Federal Tax ID: 91-6001291  
 DUNS Number: 075746545  
 Mailing Address: PO Box 519  
 Wenatchee, WA 98807-0519  
 Physical Address: 1350 McKittrick St, Ste A  
 Wenatchee, Washington 98801  
 Organization Email: fkuntz@wenatcheewa.gov

**Contacts**

<p><b>Project Manager</b></p>	<p>Jessica Shaw                  Environmental Manager                    P.O. Box 519                  Wenatchee, Washington 98807-0519                  Email: jshaw@wenatcheewa.gov                  Phone: (509) 888-3225</p>
<p><b>Billing Contact</b></p>	<p>Jessica Shaw                  Environmental Manager                    P.O. Box 519                  Wenatchee, Washington 98807-0519                  Email: jshaw@wenatcheewa.gov                  Phone: (509) 888-3225</p>
<p><b>Authorized Signatory</b></p>	<p>Frank J. Kuntz                  Mayor                    129 South Chelan                  P.O. Box 519                  Wenatchee, Washington 98807                  Email: fkuntz@wenatcheewa.gov</p>



**ECOLOGY INFORMATION**

Mailing Address: Department of Ecology  
Toxics Cleanup  
PO BOX 47600  
Olympia, WA 98504-7600

Physical Address: Toxics Cleanup  
300 Desmond Drive SE  
Lacey, WA 98503

**Contacts**

<b>Project Manager</b>	Jeff Newschwander  1250 W Alder St. Union Gap, Washington 98903-0009 Email: jene461@ecy.wa.gov Phone: (509) 454-7842
<b>Financial Manager</b>	Lydia Lindwall  PO Box 47600 Olympia, Washington 98504-7600 Email: llin461@ecy.wa.gov Phone: (360) 407-6210
<b>Technical Advisor</b>	Margo Thompson  PO Box 47600 Olympia, Washington 98504-7600 Email: math461@ecy.wa.gov Phone: (360) 407-7336

**AUTHORIZING SIGNATURES**

RECIPIENT agrees to furnish the necessary personnel, equipment, materials, services, and otherwise do all things necessary for or incidental to the performance of work as set forth in this Agreement.

RECIPIENT acknowledges that they had the opportunity to review the entire Agreement, including all the terms and conditions of this Agreement, Scope of Work, attachments, and incorporated or referenced documents, as well as all applicable laws, statutes, rules, regulations, and guidelines mentioned in this Agreement. Furthermore, the RECIPIENT has read, understood, and accepts all requirements contained within this Agreement.

This Agreement contains the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein.

No subsequent modifications or amendments to this agreement will be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and ECOLOGY and made a part of this agreement. ECOLOGY and RECIPIENT may change their respective staff contacts without the concurrence of either party.

This Agreement shall be subject to the written approval of Ecology’s authorized representative and shall not be binding until so approved.

The signatories to this Agreement represent that they have the authority to execute this Agreement and bind their respective organizations to this Agreement.

IN WITNESS WHEREOF: the parties hereto, having read this Agreement in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

Washington State  
Department of Ecology

CITY OF WENATCHEE

By: \_\_\_\_\_

By: \_\_\_\_\_

Jim Pendowski  
Toxics Cleanup  
Program Manager  
Date

Frank J. Kuntz  
Mayor  
Date

Template Approved to Form by  
Attorney General's Office

## SCOPE OF WORK

Task Number: 1 **Task Cost: \$5,000.00**

Task Title: GRANT AND PROJECT ADMINISTRATION - J008

### Task Description:

This task funds the RECIPIENT's eligible costs ECOLOGY deems reasonable and necessary to administer the grant and manage project activities.

Eligible administrative costs may also include those incurred performing activities to:

- Ensure compliance with the terms of the approved work plans, Agreed Order/Consent Decree/AOC, as applicable, except legal costs.
- Perform Public Involvement Activities: Plan and hold meetings and communications with the public, consultants/contractors, or ECOLOGY not billed under another task.
- Procure and manage consultants and construction contractors.
- Perform quality control and quality assurance oversight of all project elements.
- Manage the grant, develop, and maintain grant files.
- Prepare and submit payment requests, and progress reports, spending plans, or other reports.
- Conduct, coordinate, and schedule activities related to multiple tasks or the grant as a whole.
- Purchase services, supplies, tools, and equipment needed to accomplish grant tasks.  
(Equipment purchases are conditionally eligible and require prior written approval by ECOLOGY's Financial Manager).
- Attend training events approved in advance, including related travel costs. (Training requires prior approval by ECOLOGY'S Financial Manager).
- Perform Environmental impact analysis.
- Perform Cost-benefit analyses.
- Conduct research or studies relevant to multiple tasks or sites.
- Manage scientific Data.

### Spending Plans:

The RECIPIENT shall submit a spending plan to ECOLOGY. The spending plan identifies the amount by quarter in which the RECIPIENT plans to bill ECOLOGY for accumulated costs through the term of the agreement.

The spending plan must be updated at least quarterly to reflect actual expenditures and projections for the remainder of grant/loan reimbursement requests.

The spending plan form in EAGL must be updated with each payment request/progress report.

### Travel & Per Diem:

ECOLOGY will reimburse travel costs at the state per diem rate in effect when the costs were incurred. Any costs incurred over the state rate will be the sole responsibility of the contractor or recipient unless an exception is provided in writing by the financial manager prior to the costs being incurred. The RECIPIENT may bill costs related to vehicle usage at the state approved mileage rate. Any other motor pool costs, such as the cost of parking the RECIPIENT's vehicles at their own office, purchasing, or maintaining vehicles are considered part of overhead and may not be direct billed to this grant.

### Task Goal Statement:

To manage the grant and project, and complete all administrative documentation and billings in accordance with

Agreement No: TCPRA-1921-Wenatch-00149

Project Title: WSU Tree Fruit Research Center Property Redevelopment

Recipient Name: CITY OF WENATCHEE

accounting standards, the terms and conditions of the grant, the Administrative Requirements for Recipients of Ecology Grants and Loans Managed in EAGL.

Task Expected Outcome:

Project documentation will be properly developed and maintained in accordance with the terms and conditions of the grant, and the Administrative Requirements for Recipients of Ecology Grants and Loans Managed in EAGL.

Recipient Task Coordinator: Jessica Shaw

**GRANT AND PROJECT ADMINISTRATION - J008**

**Deliverables**

Number	Description	Due Date
1.1	Quarterly grant payment requests/progress reports (PRPR) with proper documentation. (unless otherwise approved in advance by ECOLOGY)	
1.2	Updated spending plan form completed in EAGL with each PRPR	

**SCOPE OF WORK**

Task Number: 3 **Task Cost: \$65,000.00**

Task Title: REMEDIAL INVESTIGATIONS - J003

Task Description:

This task funds the RECIPIENT’s eligible costs ECOLOGY deems reasonable and necessary to plan and perform remedial site investigations consistent with the scope of work in the approved work plan for the Site. This includes the review of documents related to prior environmental investigations at the site, Phase 1 and 2 studies, sampling and analysis costs, identification and testing of potential sources of contamination, surveying/mapping, data management, reports, and RECIPIENT staff costs for these activities not billed under the Grant and Project Administration task. RECIPIENT shall complete Phase 1 and 2 Environmental Site Assessments and document the results in a report provided to ECOLOGY. RECIPIENT shall prepare a draft sampling plan and submit to ECOLOGY for approval before implementing the plan.

Task Goal Statement:

To compile Site information, and conduct field investigations that adequately characterize the nature and extent of contamination at the Site to enable the development and evaluation of alternatives for the cleanup of the Site if required.

Task Expected Outcome:

The results of the Site investigations are documented in a report that can be used to aid the development and evaluation of any required cleanup alternatives for the Site.

Recipient Task Coordinator: Steve King

**REMEDIAL INVESTIGATIONS - J003**

**Deliverables**

Number	Description	Due Date
3.1	Remedial Investigation Report	

**SCOPE OF WORK**

Task Number: 4 **Task Cost:** \$20,000.00

Task Title: FEASIBILITY STUDY AND REMEDY SELECTION - J004

Task Description:

This task funds the RECIPIENT’s eligible costs ECOLOGY deems reasonable and necessary to plan and perform an analysis of the feasibility of potential cleanup options identified for the Site during remedial site investigation activities. This work must be consistent with the scope of work approved by the Ecology Project Manager for the Site.

Eligible costs may also include pilot tests, treatability studies, stormwater source control engineering studies, Environmental Impact Statements, data management, public involvement, and RECIPIENT staff costs related to these activities not billed under the Grant and Project Administration task.

Opportunities for cost savings and efficiencies between cleanup and redevelopment may be identified as part of the evaluation of cleanup alternatives.

If adequate funding remains in the agreement at completion of the focused feasibility study, the RECIPIENT may develop a draft cleanup action plan. Deliverable 4.1 the focused feasibility study is the primary deliverable. Deliverable 4.2, the draft cleanup action plan is not required but is listed as an option.

Task Goal Statement:

The results of the Focused Feasibility Study are documented in a report and adequate information has been provided so a cleanup action can be selected as needed.

Task Expected Outcome:

The results of the Focused Feasibility Study are documented in a report and adequate information has been provided so necessary cleanup actions can be selected. A draft cleanup action plan may be developed if adequate funding remains in the agreement following the completion of the focused feasibility study.

Recipient Task Coordinator: Steve King

**FEASIBILITY STUDY AND REMEDY SELECTION - J004**

**Deliverables**

Number	Description	Due Date
4.1	Feasibility Study	
4.2	Draft Cleanup Action Plan (DCAP)	

## SCOPE OF WORK

Task Number: 9 **Task Cost:** \$110,000.00

Task Title: INTEGRATED PLANNING ACTIVITIES - J011

### Task Description:

This task funds RECIPIENT integrated planning activities ECOLOGY deems reasonable and necessary to complete needed economic assessments, planning, and development of implementation strategies for the redevelopment of the Site.

Eligible costs may include:

- Review of reports and technical documents related to the site assessment process;
- Technical communications between the RECIPIENT, their contractors, potentially liable parties, and ECOLOGY;
- Economic impact research and evaluations;
- Conceptual economic impact model;
- Right-of-way analysis for site configuration;
- Conceptual site plan;
- GIS analysis;
- Boundary and topographic survey;
- Stakeholder interviews, surveys, and meetings;
- Community Involvement/outreach, such as open house forums to solicit comments on plans and technical documents;
- Development strategies;
- Regulatory assessment;
- Market Studies;
- Policy recommendations.

The RECIPIENT shall:

- Consult and coordinate with the ECOLOGY project manager in the development of consultant scopes of work for activities under this task;
- Provide ECOLOGY with copies of all draft and final technical documents, plans, reports, data and analyses, GIS models, communication materials, public information materials, web page content, open house agendas, surveys and the results, and any other deliverables developed or funded under this task;
- Provide ECOLOGY the advanced notice of community events or meetings about the grant funded work; and
- Verify the eligibility of costs with the ECOLOGY grant financial manager. Costs not approved by the ECOLOGY grant financial manager are the responsibility of the RECIPIENT.

Costs for remedial actions that are the responsibility of potentially liable parties are not grant eligible.

Costs for technical, advertising, and communications materials not approved by ECOLOGY are the responsibility of the RECIPIENT.

### Task Goal Statement:

To complete an integrated planning study that considers site specific environmental information with and assessment of economic and market based property redevelop issues to create a vision to guide property reuse.

### Task Expected Outcome:

Agreement No: TCPRA-1921-Wenatch-00149

Project Title: WSU Tree Fruit Research Center Property Redevelopment

Recipient Name: CITY OF WENATCHEE

An integrated planning study will be completed that guides redevelopment of the property.

Recipient Task Coordinator: Steve King

**INTEGRATED PLANNING ACTIVITIES - J011**

**Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
9.1	Integrated Planning Implementation Strategy Report	



**BUDGET**

**Funding Distribution EG180434**

**NOTE:** *The above funding distribution number is used to identify this specific agreement and budget on payment remittances and may be referenced on other communications from ECOLOGY. Your agreement may have multiple funding distribution numbers to identify each budget.*

Funding Title: WSU Tree Fruit Research Property- Wenatche Funding Type: Grant  
Funding Effective Date: 03/01/2018 Funding Expiration Date: 06/30/2019

Funding Source:

Title: Local Toxics Control Account (LTCA)

Type: State

Funding Source %: 100%

Description: Remedial action grants and loans are provided to Local Governments in Washington State to assist with the cleanup of publicly owned lands contaminated with hazardous substances. Grants or loans offered included those for cleanups conducted under state or federal cleanup order or consent decree, independent cleanups, safe drinking water actions, areawide groundwater investigations, and integrated planning activities. The remedial action grant and loan program was created by the Model Toxics Control Act (MTCA), Chapter 70.105D RCW. MTCA directed ECOLOGY to adopt rules for grant and loan issuance and performance. Those rules are in Chapter 173-322A WAC, Remedial Action Grants and Loans. Funds for remedial action grants and loans come from a tax on hazardous substances. MTCA directs 44% of the tax revenue into the Local Toxics Control Account (LTCA). Each biennium, the Legislature appropriates a portion of the funds in the LTCA for remedial action grants and loans.

Approved Indirect Costs Rate: Approved State Indirect Rate: 25%

Recipient Match %: 0%

InKind Interlocal Allowed: No

InKind Other Allowed: No

Is this Funding Distribution used to match a federal grant? No

Agreement No: TCPRA-1921-Wenatch-00149

Project Title: WSU Tree Fruit Research Center Property Redevelopment

Recipient Name: CITY OF WENATCHEE

<b>WSU Tree Fruit Research Property- Wenatchee IPG</b>	<b>Task Total</b>
REMEDIAL INVESTIGATIONS - J003	\$ 65,000.00
FEASIBILITY STUDY AND REMEDY SELECTION - J004	\$ 20,000.00
INTEGRATED PLANNING ACTIVITIES - J011	\$ 110,000.00
GRANT AND PROJECT ADMINISTRATION - J008	\$ 5,000.00

**Total: \$ 200,000.00**

**Funding Distribution Summary**

**Recipient / Ecology Share**

<b>Funding Distribution Name</b>	<b>Recipient Match %</b>	<b>Recipient Share</b>	<b>Ecology Share</b>	<b>Total</b>
WSU Tree Fruit Research Property- Wenatchee IPG	0.00 %	\$ 0.00	\$ 200,000.00	\$ 200,000.00
<b>Total</b>		<b>\$ 0.00</b>	<b>\$ 200,000.00</b>	<b>\$ 200,000.00</b>

**AGREEMENT SPECIFIC TERMS AND CONDITIONS**

N/A

**SPECIAL TERMS AND CONDITIONS**

**GENERAL FEDERAL CONDITIONS**

**If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.**

**A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION:**

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of

Agreement No: TCPRA-1921-Wenatch-00149

Project Title: WSU Tree Fruit Research Center Property Redevelopment

Recipient Name: CITY OF WENATCHEE

Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.

8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

#### B. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING

##### REQUIREMENTS:

CONTRACTOR/RECIPIENT must complete the FFATA Data Collection Form (ECY 070-395) and return it with the signed agreement to ECOLOGY.

Any CONTRACTOR/RECIPIENT that meets each of the criteria below must report compensation for its five top executives using the FFATA Data Collection Form.

- Receives more than \$25,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than \$25,000,000 in annual federal funds.

Ecology will not pay any invoices until it has received a completed and signed FFATA Data Collection Form. Ecology is required to report the FFATA information for federally funded agreements, including the required DUNS number, at [www.fsr.gov](http://www.fsr.gov) <http://www.fsr.gov> within 30 days of agreement signature. The FFATA information will be available to the public at [www.usaspending.gov](http://www.usaspending.gov) <http://www.usaspending.gov>.

For more details on FFATA requirements, see [www.fsr.gov](http://www.fsr.gov) <http://www.fsr.gov>.

## GENERAL TERMS AND CONDITIONS

### Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology

#### GENERAL TERMS AND CONDITIONS AS OF LAST UPDATED 1/22/2018 VERSION

##### 1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/1701004.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

##### 2. AMENDMENTS AND MODIFICATIONS

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

##### 3. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological and historic resources. The RECIPIENT 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 RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
  - For capital construction projects or land acquisitions for capital construction projects, if required, comply with Governor Executive Order 05-05, Archaeology and Cultural Resources.
  - 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) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves ground disturbing activities. ECOLOGY will provide the IDP form.

RECIPIENT 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 the ECOLOGY Program, 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:

Agreement No: TCPRA-1921-Wenatch-00149

Project Title: WSU Tree Fruit Research Center Property Redevelopment

Recipient Name: CITY OF WENATCHEE

- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then the ECOLOGY Program.

- 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.

#### 4. ASSIGNMENT

No right or claim of the RECIPIENT arising under this Agreement shall be transferred or assigned by the RECIPIENT.

#### 5. COMMUNICATION

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

#### 6. COMPENSATION

- a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.

- b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.

- c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.

- d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.

- e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.

- f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.

- g) RECIPIENT will receive payment through Washington State Department of Enterprise Services' Statewide Payee Desk. RECIPIENT must register as a payee by submitting a Statewide Payee Registration form and an IRS W-9 form at the website, <http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>. For any questions about the vendor registration process contact the Statewide Payee Help Desk at (360) 407-8180 or email [payeehelpdesk@watech.wa.gov](mailto:payeehelpdesk@watech.wa.gov).

- h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.

- i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.

- j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this agreement. Failure to comply may result in delayed reimbursement.

#### 7. COMPLIANCE WITH ALL LAWS

RECIPIENT agrees to comply fully with all applicable federal, state and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.

- b) RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.

- c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.

- d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

Agreement No: TCPRA-1921-Wenatch-00149

Project Title: WSU Tree Fruit Research Center Property Redevelopment

Recipient Name: CITY OF WENATCHEE

ECOLOGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

#### 8. CONFLICT OF INTEREST

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

#### 9. CONTRACTING FOR GOODS AND SERVICES

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

#### 10. DISPUTES

When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal decisions as provided for below:

- a) RECIPIENT notifies the funding program of an appeal request.
- b) Appeal request must be in writing and state the disputed issue(s).
- c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- d) ECOLOGY reviews the RECIPIENT's appeal.
- e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review.

The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

The parties agree that this dispute process will precede any action in a judicial or quasi-judicial tribunal.

Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

Nothing in this Agreement will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

#### 11. ENVIRONMENTAL DATA STANDARDS

- a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact

Agreement No: TCPRA-1921-Wenatch-00149

Project Title: WSU Tree Fruit Research Center Property Redevelopment

Recipient Name: CITY OF WENATCHEE

the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.

- Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).

- Submit the QAPP to ECOLOGY for review and approval before the start of the work.

b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at: <http://www.ecy.wa.gov/eim>.

c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at:

<https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

## 12. GOVERNING LAW

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

## 13. INDEMNIFICATION

ECOLOGY will in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this Agreement.

## 14. INDEPENDENT STATUS

The employees, volunteers, or agents of each party who are engaged in the performance of this Agreement will continue to be employees, volunteers, or agents of that party and will not for any purpose be employees, volunteers, or agents of the other party.

## 15. KICKBACKS

RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this Agreement to give up any part of the compensation to which he/she is otherwise entitled to or receive any fee, commission, or gift in return for award of a subcontract hereunder.

## 16. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

- a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.

- b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.

- c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified



minority and women's businesses.

d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

#### 17. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; and (f) the General Terms and Conditions.

#### 18. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

- a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.
- c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

#### 19. PROGRESS REPORTING

- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.
- e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

#### 20. PROPERTY RIGHTS

- a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to

Agreement No: TCPRA-1921-Wenatch-00149  
Project Title: WSU Tree Fruit Research Center Property Redevelopment  
Recipient Name: CITY OF WENATCHEE

authorize others to use the same for federal, state, or local government purposes.

b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.

c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.

d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.

e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.

f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:

1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.

2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.

g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

## 21. RECORDS, AUDITS, AND INSPECTIONS

RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

- a) Be kept in a manner which provides an audit trail for all expenditures.
- b) Be kept in a common file to facilitate audits and inspections.
- c) Clearly indicate total receipts and expenditures related to this Agreement.
- d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder.

RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of

Agreement No: TCPRA-1921-Wenatch-00149

Project Title: WSU Tree Fruit Research Center Property Redevelopment

Recipient Name: CITY OF WENATCHEE

this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder. RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

## 22. RECOVERY OF FUNDS

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this Agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

## 23. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

## 24. STATE ENVIRONMENTAL POLICY ACT (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

## 25. SUSPENSION

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

## 26. SUSTAINABLE PRACTICES

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.

b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, and 100% post-consumer recycled paper.

For more suggestions visit ECOLOGY's web page: Green Purchasing, ,

<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

## 27. TERMINATION

a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the

Agreement No: TCPRA-1921-Wenatch-00149

Project Title: WSU Tree Fruit Research Center Property Redevelopment

Recipient Name: CITY OF WENATCHEE

RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination. Failure to Commence Work. ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

Non-Performance. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement. Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

b) For Convenience

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar days prior written notification to the RECIPIENT, except as noted below. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Non-Allocation of Funds. ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, or renegotiate the Agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the recipient/contractor through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the recipient/contractor. In no event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the agreement and any amendments.

If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

c) By Mutual Agreement

ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.

d) In Event of Termination

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work

Agreement No: TCPRA-1921-Wenatc-00149

Project Title: WSU Tree Fruit Research Center Property Redevelopment

Recipient Name: CITY OF WENATCHEE

completed on such documents and other materials.

Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

#### 28. THIRD PARTY BENEFICIARY

RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this Agreement, the state of Washington is named as an express third party beneficiary of such subcontracts with full rights as such.

#### 29. WAIVER

Waiver of a default or breach of any provision of this Agreement is not a waiver of any subsequent default or breach, and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of ECOLOGY.

---

---

**COUNCIL AGENDA REPORT**  
**City of Wenatchee**

---

---



**TO:** Frank Kuntz, Mayor  
City Council

**FROM:** Steve King, Economic Development Director

**SUBJECT:** Parking Garage Memorandum of Understanding

**DATE:** August 20, 2018

**MEETING DATE:** August 23, 2018

---

**I. OVERVIEW**

The City of Wenatchee has been working diligently with property owners to implement the Wenatchee Waterfront subarea plan adopted in 2004. The waterfront plan included focusing intensely on the area that is a part of Wenatchee Downtown. Those efforts have resulted in the development of the Pybus Public Market and the Hilton Garden Hotel, currently under construction.

A critical step has been helping to develop the infrastructure to support these developments. In 2009, the city was awarded Local Revitalization Financing which has provided over \$7.6M in capital to invest in infrastructure and support private development. To date, \$3.5M has been invested in the environmental cleanup of the former city public works site, the Pybus Public Market, and roadways in the District. \$3.0M of the remaining funds have been slated to invest in public parking to support the intense activity that is occurring and continuing to grow in the vicinity of the public market.

Given the value of property and the desire to realize the greatest level of development, city staff has been working with the Public Works – Economic Development Committee to develop the most effective parking options. Over 9 parking options have been evaluated while narrowing it down to two sites. Proposals were requested for the two sites for structured parking. After review with both properties, owners the only option available to the City at this time is a site located directly across from the Pybus Market next to the Worx Gym. This site is optimal based on its location and being next to the RR tracks.

Additionally, as part of due diligence, the city hired DCI Engineering to help establish feasibility and preliminary cost estimates. DCI developed the a garage configuration for the site that would provide 169 stalls.



---

---

**COUNCIL AGENDA REPORT**  
**City of Wenatchee**

---

---



The attached memorandum of understanding provides the framework and the principles for a public private partnership in the development of a public parking garage. In condensed form, this partnership provides benefit to the public by providing 150 new parking spaces available to the public during peak parking periods. Within a 169 stall parking garage, 114 of the stalls will be 100% under public control with 26 spaces available during peak parking periods on weekends and during the night. Another 11 shared stalls would be available for nights and weekends as part of the public private partnership. These parking spaces are intended to serve patrons of the Public Market, Chelan PUD, and businesses located in the waterfront District. The estimated cost of this parking is between \$3.0 and \$3.5 Million to be funded entirely using LRF funds intended for this purpose. These funds are not available to be used for other city functions and they do not take away dollars from existing city programs or budgets. The parking garage will be privately owned, under city control through a 30 year lease. The first step in this agreement is to enter into a shared parking agreement to establish 36 shared parking stalls prior to construction of the garage. The next step will be to enter into a development agreement with costs to facilitate the construction of the garage anticipated in the spring of 2019.

**II. ACTION REQUESTED**

*Staff recommends the City Council authorize the Mayor to sign a Memorandum of Understanding with Prime Properties, LLC establishing the framework for a public private partnership for the construction of a waterfront parking garage.*

**III. FISCAL IMPACT Submitted to the Finance Committee Yes No**

The estimate fiscal impact for this project is \$3.0M to \$3.5M utilizing LRF funding and potentially reimbursement funding from the Public Works Site. The city also anticipates expenditures of approximately \$10,000 per year for maintenance of the garage. It is likely with the development of a downtown and waterfront parking program, that minimal fees will be charged for parking in the garage to pay for operations and maintenance.

A cost estimate for the garage will be developed in detail to ensure that budget targets can be met. The private partner will carry the risk associated with bringing the project to fruition within the established budget.

**IV. PROPOSED PROJECT SCHEDULE**

The objective of the city is to have a parking garage constructed by the end of 2019. The objective of the public private partnership is to have the garage constructed by Summer of 2019.

**V. REFERENCE(S)**

See attached Memorandum of Understanding.

**VI. ADMINISTRATIVE ROUTING**

Tammy Stanger, City Clerk  
Allison Williams, Executive Services Director  
Brad Posenjak, Finance Director

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE CITY OF WENATCHEE  
AND  
PRIME PROPERTIES, LLC**

**ESTABLISHING A FRAMEWORK FOR A PUBLIC – PRIVATE PARTNERSHIP  
FOR THE DEVELOPMENT OF A WATERFRONT PARKING GARAGE**

**RECITALS:**

WHEREAS, parking is in high demand during specific periods around the Pybus Market and a new Hotel currently under construction; and

WHEREAS, the City of Wenatchee desires to secure an additional 150 public parking stalls using \$3 Million of the Waterfront Local Revitalization Award from the State of Washington; and

WHEREAS, the City desires to maximize the amount of parking available to the public with its limited resources; and

WHEREAS, the City of Wenatchee has completed the Waterfront Subarea Plan and identified the importance of intense development in the South node of the waterfront in downtown Wenatchee; and

WHEREAS, the city desires to minimize land coverage with surface parking; and

WHEREAS, preliminary engineering has been performed to determine the size and approximate parking stall count; and

WHEREAS, Prime Properties, LLC owns property directly across Worthen Street from the Pybus Market at 12 North Worthen Street; and

WHEREAS, Prime Properties, LLC owns excess land currently in the form of surface parking; and

WHEREAS, Prime Properties, LLC desires to maximize parking for current and future tenants of the property located between Orondo Ave and the pedestrian bridge, Riverwalk Crossing; and

WHEREAS, public private partnerships have been utilized in Washington State for efficient development of public facilities; and

WHEREAS a public-private partnership will maximize parking benefiting both the City and Prime Properties, LLC.

**AGREEMENT:**

NOW, THEREFORE, the parties agree as follows:

1. Understanding. Subject to completing a satisfactory feasibility study, Prime Properties, LLC intends to build a parking garage and the City intends to lease parking spaces for a period of 30 years for the benefit of the public with the option of extending an additional 20 years. Based on preliminary



engineering, the City desires to lease 114 parking stalls on the 2<sup>nd</sup> and 3<sup>rd</sup> levels of a three-story parking garage. In addition, the City will lease an additional 36 parking stalls as shared parking in which the stalls will be open for City use on Saturdays, Sundays, and week day nights between 5:30 p.m. and 12:00 a.m. The approximate location of the parking garage is illustrated on Exhibit A. The approximate location of the the parking stalls to be shared and the approximate dimensions of the proposed parking garage is illustrated on Exhibit B.

The City agrees to enter into a lease for Prime Properties, LLC to make available for public parking the 36 shared parking stalls prior to entering into a development agreement for the parking garage to provide additional spaces between now and the construction of the garage. Fair market value will be paid for the lease of these stalls.

The parties understand that the current gym operation will need 84 parking stalls reserved for gym use during peak gym operating periods. These stalls will include existing stalls surrounding the gym and approximately 30 stalls on the ground floor of the parking garage.

Prime Properties, LLC will provide a preliminary design of the parking garage and obtain an accurate construction cost estimate prior to finalizing a lease agreement for 114 stalls within the garage. Both parties agree that if the cost estimate is above both parties' available resources or otherwise make the project not economically feasible, this memorandum of understanding will terminate and be of no further force or effect.

The parties understand that the City's initial cost estimates are based on values of \$9,000 per surface stall including land and \$25,000 per stall for structured parking including land. Both parties understand the City's budget is not to exceed \$3 million.

Both parties agree the best time to construct the parking garage is between February and May 31<sup>st</sup> before the farmers market and activities around Pybus become busy. Construction is anticipated to take six months and therefore, construction is anticipated to be completed by August of 2019. Interim parking arrangements and cooperation between property owners will be necessary. The City will help facilitate interim parking strategies including the use of public parking near the Convention Center.

Both parties understand that the design and construction of the garage will need to meet City code and address items provided for in Exhibit C.

Upon completion of the garage, Prime Properties, LLC will provide operation and maintenance of the garage. The City will provide a stop gap of \$ \$10,000 per year for maintenance of the stalls leased by the City. The garage will be equipped with a gate and automatic fee collection system. The intent of fee collection will be to cover the cost of maintaining and operating the garage.

2. Liability. No liability will arise or be assumed between the parties as a result of this Memorandum of Understanding.

3. Term. The parties agree that the term of this Memorandum of Understanding shall end on December 31, 2018, and be of no further force and effect. The term may be extended only by written agreement of each of the parties.

4. Notice. Any notice or communication required or permitted under this Memorandum of Understanding shall be sufficiently given if delivered in person or by first class, U.S. mail, to the addresses set forth below:

Prime Properties, LLC  
12 North Worthen Street  
Wenatchee, WA 98801

City of Wenatchee  
126 South Chelan  
Wenatchee, WA 98801

5. Assignment. Neither party may assign or transfer the responsibilities or agreement made herein without the prior written consent of the nonassigning party, which approval may be withheld for any reason.

6. Entire Agreement. This Memorandum of Understanding constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous representations, discussions, negotiations, and memorandums, whether written or oral.

PRIME PROPERTIES, LLC

By \_\_\_\_\_  
\_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

CITY OF WENATCHEE

By \_\_\_\_\_  
\_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Exhibit A

Prime Properties, LLC Property Ownership and Approx. Garage Location



Exhibit B

Approximate Garage Layout and Dimensions (DCI Engineering)

**DCI ENGINEERS®**  
707 W 2nd Avenue  
Spokane, Washington 99201  
P: (509) 455-4448 www.dci-engineers.com  
CIVIL / STRUCTURAL  
© Copyright 12/18/2018 DCI Engineers, Inc. All Rights Reserved.  
This drawing was prepared by DCI Engineers, Inc. or its employees. It is the property of DCI Engineers, Inc.

PREPARED BY:

SIGNATURE:

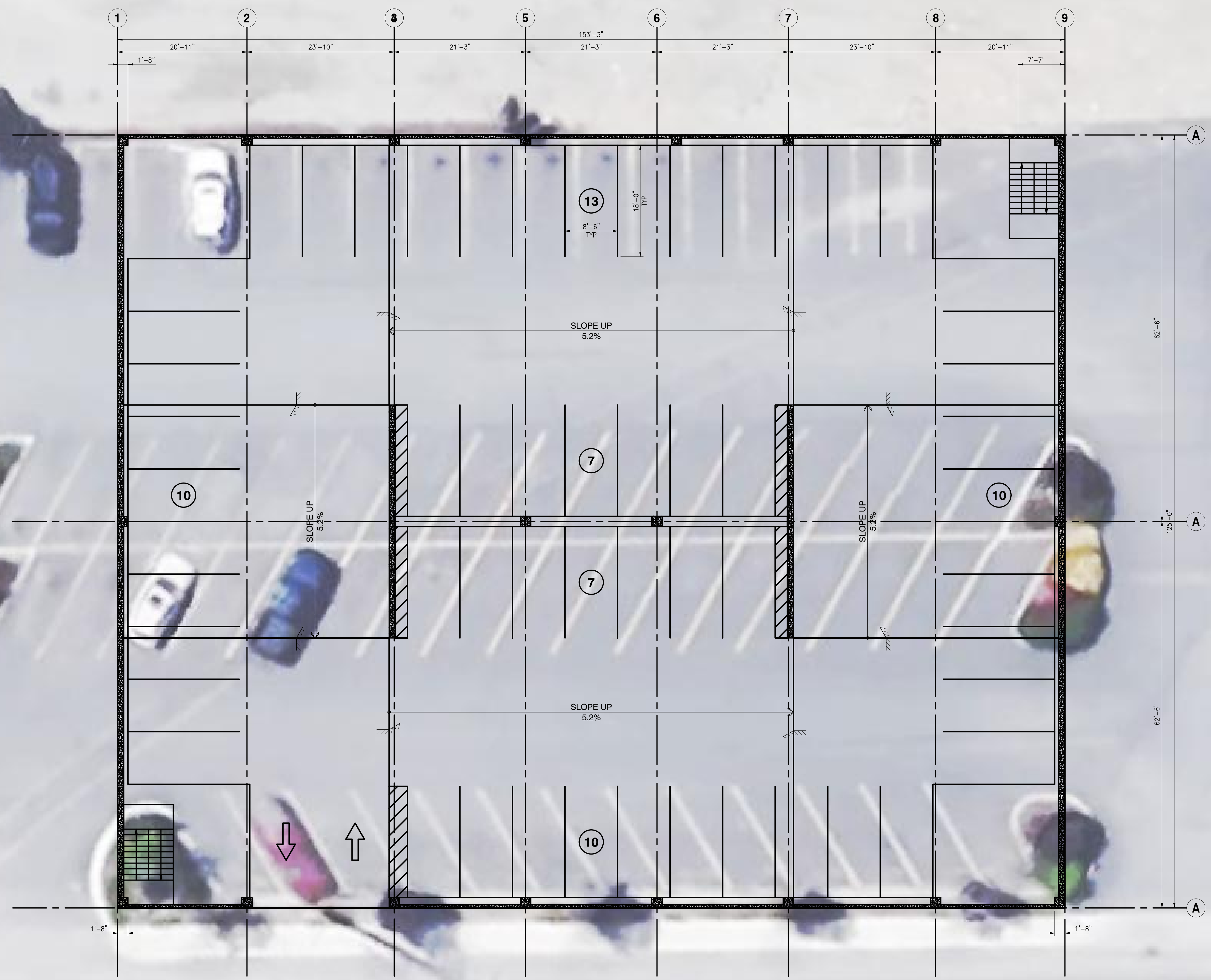
REVISIONS:

APPROVALS:	Job No.:	17041-0306
Proj. Manager:	CTC	
Drawn:	BSD	
Reviewed:		
Eng. Chk.:	12/18/2017	
Date:		
Scale:	AS NOTED	

PROJECT TITLE:  
**WENATCHEE PS STUDY**  
**CITY OF WENATCHEE**

SHEET TITLE:  
**STRUCTURAL FOUNDATION PLAN**

SHEET NO.  
**S2.1**



**NOTE:**

- APPROX 169 STALLS
- ESTIMATED BUILDING COST = \$3.0M (INCLUDES SOFT COST)

**FOUNDATION PLAN**  
SCALE: 1/8"=1'-0"

## Exhibit C

### Design Elements

1. Structure type and design: The parking structure will have to meet building codes including ADA. The structure may be situated to accommodate future uses on the property if desired. The parking structure on the west side of Worthen is anticipated to be an above grade structure. Façade aesthetic improvements are required for the street front. Landscaping on the top level is not required if not visible from the street. Both parties should expect that during the design, the city will want reasonable input into aesthetics.
2. Automated attendant and fee collection system: The garage needs to be equipped with a stall count sign and a fee collection system. The purpose for this is that the city may at some time in the future impose fees for parking above the cost of maintenance. At a minimum, the system must at least be a pay on foot system with gates and ticket dispensers. More technological advanced systems exist and are encouraged. Please indicate what system you propose.
3. Wayfinding: The structure will need to be signed with the city's brand logo for public parking.
4. Security and Lighting: The structure will need to include good lighting to help create security in addition to video cameras accessible to our Police Dept.

---

---

**COUNCIL AGENDA REPORT  
COMMUNITY DEVELOPMENT DEPARTMENT**

---

---

**TO:** Frank Kuntz, Mayor  
City Council

**FROM:** Glen DeVries, Director of Community Development

**SUBJECT:** Planning Commission Member Appointment – Rani Sampson

**DATE:** August 20, 2018

**MEETING DATE:** August 23, 2018

---

**I. OVERVIEW**

The City of Wenatchee Planning Commission currently has one vacant position following the resignation of Commissioner Tony Freytag in May 2018.

In accordance with the City of Wenatchee Zoning Code, the Planning Commission consists of 7 members appointed by a majority of the City Council. The term of each planning commissioner shall be for a period of four years.

At their regular meeting on August 15, 2018, the Planning Commission interviewed one applicant for the current vacant position. Following their deliberation, the Planning Commission agreed to recommend the appointment of Rani Sampson to the Planning Commission.

**II. ACTION REQUESTED**

City staff and members of the Planning Commission recommend that City Council pass Resolution No. 2018-30, appointing Rani Sampson to the Planning Commission to fill the unexpired term left by Commissioner Freytag ending December 31, 2019.

**III. FISCAL IMPACT Submitted to the Finance Committee: No**

None, the Planning Commission is made up of volunteer members.

**IV. REFERENCE(S)**

1. Resolution 2018-30
2. Rani Sampson Application

**V. ADMINISTRATIVE ROUTING**

Tammy Stanger, City Clerk

## RESOLUTION NO. 2018-30

**A RESOLUTION,** appointing a voting representative to the Wenatchee Planning Commission to fill an unexpired term ending December 31, 2019.

**WHEREAS,** Rani K. Sampson has expressed interest in being appointed to the Wenatchee Planning Commission.

**WHEREAS,** the Wenatchee Planning Commission interviewed and voted to recommend Rani K. Sampson to fill the current vacancy on the Board.

**NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF WENATCHEE** makes the following appointment on the Planning Commission:

**NAME & ADDRESS**

Rani K. Sampson  
1118 Monroe St.  
Wenatchee, WA 98801

**TERM EXPIRES**

December 31, 2019

**PASSED BY THE CITY COUNCIL OF THE CITY OF WENATCHEE** at a regular meeting thereof this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

CITY OF WENATCHEE, a Municipal  
Corporation

By: \_\_\_\_\_  
FRANK KUNTZ, Mayor

ATTEST:

By: \_\_\_\_\_  
TAMMY STANGER, City Clerk



APPROVED:

By: \_\_\_\_\_  
STEVE D. SMITH, City Attorney

---

---

## COUNCIL AGENDA REPORT

---

---

**TO:** Frank Kuntz, Mayor  
City Council Members

**FROM:** Allison Williams, Executive Services Director; Steve Smith, City Attorney

**SUBJECT:** Resolution 2018-29

**DATE:** August 20, 2018

---

**Overview:** At the August 9th meeting of the City Council, the City Council adopted Ordinance 2018-19 creating a five district and two at-large council voting system. The next step is to determine Council representation for the new districts and at-large positions. Resolution 2018-29 reviews the action taken and the basis for making these appointments.

The city's voting system has not been deemed illegal. The City, on its own volition, initiated a review of its voting system in 2015. As a result of that process, the City is opting into the five district and two at-large voting system. Because the City opted into the district system in the timeframe allowed by the Washington State Voting Rights Act (VRA), and the lack of clarity on how the VRA comports with RCW 35A.13.180 and the schedule of general election cycles, the City Attorney is advising that we follow RCW 35A.12.180 in that the change would not affect the terms to be served by the Council members. In the case where we have more than one Council member in a District, the Council member with the shortest term would need to be assigned to a District with a vacancy. In a review of the distribution of Council members, assignments will need to occur. This system is allowed to be used until the next scheduled elections. The City has four Council members up for election in November 2019 and three in November 2021.

Council member addresses have been confirmed. Currently, Districts 1, 3,4 and both at-large positions are open and outside of an agreed upon assignment or a voted assignment, assignments can be made by drawing "out of a hat." Mayor Kuntz and Mayor Pro-Tem Ruth Esparza reviewed and confirmed this process with staff and City Attorney, Steve Smith.

**Action requested:** Staff recommends that council determine the assignment of council members and then approval of Resolution 2018-29 confirming the assignments of Council members to the new districts and at-large positions.

## **RESOLUTION NO. 2018-29**

**A RESOLUTION**, of the Council of the City of Wenatchee, Washington assigning councilmembers to voting districts.

**WHEREAS**, on August 9, 2018, the City Council of the City of Wenatchee adopted Ordinance No. 2018-19, creating a five district and two at-large council voting system; and

**WHEREAS**, ESSB 6002, known as the Washington Voting Rights Act of 2018, provides, in pertinent part, that if the City "... invokes its authority under Section 201 of this Act and the plan is adopted during the period of time between January 16<sup>th</sup> and on or before the first Monday of November, the next election will occur as scheduled and organized under the current electoral system, but the [city] shall order new elections to occur pursuant to the remedy at the general election the following calendar year"; and

**WHEREAS**, RCW 35A.12.180 provides, in pertinent part, that "the council of a non-charter code city organized under this chapter may divide the city into wards or change the boundaries of existing wards. No change in the boundaries of wards shall affect the term of any councilmember, and councilmembers shall serve out their terms in the wards of their residences at the time of their elections; PROVIDED, that if this results in one ward being represented by more councilmembers than the number to which it is entitled those having the shortest unexpired terms shall be assigned by the council to wards where there is a vacancy, and

the councilmembers so assigned shall be deemed to be residents of the wards to which they are assigned for purposes of those positions being vacant.”; and

**WHEREAS**, the adoption of the district voting system set forth in Ordinance No. 2018-19 resulted in the following distribution of existing councilmembers:

- District 1 - Unrepresented
- District 2 - Mike Poirer (2019)  
Lyle Markhardt (2019)  
Jim Bailey (2021)
- District 3 - Ruth Esparza (2021)  
Keith Huffaker (2021)  
Linda Herald (2019)
- District 4 - Unrepresented
- District 5 - Mark Kulaas (2021)

**WHEREAS**, the next general election for councilmembers is scheduled for November 2019 which is next followed by the general election in November 2021.

**WHEREAS**, pursuant to RCW 35A.12.180, the Council desires to reassign councilmembers for purposes of representing all districts.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WENATCHEE DOES HEREBY RESOLVE** as follows:

**SECTION I**

The Council voting districts set forth in Ordinance No. 2018-19 shall be represented as follows, and individual councilmembers shall be assigned accordingly:

- District 1 - \_\_\_\_\_ (\_\_\_\_)
- District 2 - Jim Bailey (2021)
- District 3 - \_\_\_\_\_ (\_\_\_\_)
- District 4 - \_\_\_\_\_ (\_\_\_\_)
- District 5 - Mark Kulaas (2021)
- At-Large “A” - \_\_\_\_\_ (\_\_\_\_)
- At-Large “B” - \_\_\_\_\_ (\_\_\_\_)

**SECTION II**

Consistent with ESSB 6002 and RCW 35A.12.180, the election for individual council districts and at-large positions shall occur at the next general election immediately prior to the expiration of the current term of the councilmember assigned thereto.

**SECTION III**

This Resolution shall take effect immediately.

**PASSED BY THE CITY COUNCIL OF THE CITY OF WENATCHEE**, at a regular meeting thereof, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

CITY OF WENATCHEE, a Municipal  
Corporation

By: \_\_\_\_\_  
FRANK KUNTZ, Mayor

ATTEST:

By: \_\_\_\_\_  
TAMMY STANGER, City Clerk

APPROVED:

By: \_\_\_\_\_  
STEVE D. SMITH, City Attorney