Return Document to:  
City of Wenatchee  
Dept. of Public Works  
P.O. Box 519  
Wenatchee, WA 98807-0519

The information contained in this boxed section is for recording purposes only in accordance with RCW 36.18 and RCW 65.04, and is not to be relied upon for any other purposes, and shall not affect the intent of or any warranty contained in the document itself.

| Document Title: Interlocal Agreement Re: Annual O&M of Wenatchee Valley Regional Decant Facility |
| Reference Number of Documents Released: N/A |
| Reference Numbers of Related Documents: AFN # 2370444 |
| Grantor: Chelan County and City of Wenatchee |
| Grantee: Chelan County and City of Wenatchee |
| Legal Description (Abbreviated): N/A |
| Parcel Number(s): N/A |

INTERLOCAL AGREEMENT FOR  
WENATCHEE VALLEY REGIONAL DECANT FACILITY

This Agreement ("Agreement") is made and entered between Chelan County ("County") and the City of Wenatchee ("Wenatchee"), individually referred to as a "Party" and together as the "Parties".

WHEREAS, Chapter 39.34 RCW provides that two or more public agencies may enter into an interlocal agreement for joint or cooperative action to perform government functions and deliver government services;

WHEREAS, the Federal Clean Water Act, 33 U.S.C. § 1251 et seq. and the Phase II Stormwater Final Rule promulgated by the U.S. Environmental Protection Agency ("EPA") require the operators of certain small municipal separate stormwater sewer systems to obtain National Pollutant Discharge Elimination System ("NPDES") permit coverage;

WHEREAS, in Washington State, the EPA has delegated authority for enforcement of the Federal Clean Water Act, including development and administration of the NPDES stormwater permit program, to the Washington State Department of Ecology ("Ecology");

Interlocal Agreement for Wenatchee Valley Regional Decant Facility  
Page 1 of 10
WHEREAS, Chelan County and Wenatchee are permittees under the current Eastern Washington Phase II Municipal Stormwater Permit;

WHEREAS, the Parties are the recipients of an Ecology Grant for a decant facility to promote and assist the Parties' compliance with NDPS Phase II permit objectives and requirements; and

WHEREAS, to achieve compliance with requirements of their respective stormwater permits, Chelan County and Wenatchee entered into an interlocal agreement dated October 24, 2012, under which the Parties agreed to cooperatively design and construct a regional decant facility ("Facility") to process the Parties' street sweeping debris, eductor wastes, and snow; and

WHEREAS, the October 24, 2012 interlocal agreement terminated at Douglas County's withdrawal from that agreement; and

WHEREAS, the Parties wish to enter this Agreement to continue their cooperative action for compliance with the requirements of their stormwater permits, and to apportion among the Parties responsibility for the remaining Facility construction expenses and for operational and maintenance ("O&M") costs

NOW, THEREFORE, the Parties agree as follows:

1. **DURATION**
   a. This Agreement shall be effective for a period of five (5) years following the date of filing of the Agreement with the Chelan County Auditor pursuant to RCW 39.34.040.
   
b. If one or both of the Parties decides that it does not wish to participate in the operations and maintenance of the Facility, thereby terminating its use of the Facility, said Party shall give ninety (90) days advance written notice prior to the end of the year and shall be responsible for its pro rata share of costs only up through the completion of the current operating year in which it terminates use, at which point said Party shall have terminated its rights under the Agreement.

2. **ADMINISTRATION**
   a. No separate legal entity or joint board is, or will be, established for this cooperative undertaking.
   
b. The City of Wenatchee shall administer operation and maintenance of the Facility and shall provide necessary related engineering, administrative, and
clerical services.

c. Both Parties may participate in negotiation of user contracts with haulers or with other agencies, for example East Wenatchee, WSDOT, PUD, or private companies. User contracts shall not be effective until agreed in writing by both Parties. Future Facility users, other than the Parties, shall not be included in the management decisions of the Facility and shall not have recourse nor standing to negotiate terms of modifications, amendments, or renewals of this Agreement.

d. Wenatchee shall provide the County with quarterly status reports and updates of Facility finances, operations, and maintenance.

3. PROPERTY

a. The Facility is located at 1745 South Wenatchee Avenue, Wenatchee, Washington on a parcel which is, and shall remain, real property owned by the City of Wenatchee.

b. Wenatchee shall be responsible to acquire, hold, and dispose of equipment, materials, and supplies necessary for Facility operation and maintenance. Equipment, materials, and supplies purchased by Wenatchee shall be Wenatchee’s property.

c. Ownership of equipment, lent or rented by the County to Wenatchee for Facility operation or maintenance, shall remain with the County. The Parties may alternatively enter a separate agreement(s) for equipment loan or rental.

4. PURPOSES

The purposes of this Agreement are to provide for completion of Facility construction and to set forth the Parties’ respective responsibilities for Facility operation and maintenance.

5. BUDGET FOR FACILITY CONSTRUCTION

a. The Ecology Grant shall fund 75% of eligible project cost and the Parties be responsible to provide the remaining 25% of funding. Each Party shall fund construction in its relative proportion of the amounts below, and except for Wenatchee which shall be solely responsible for cost overruns, the Parties’ funding obligations shall not exceed the following amounts:
b. After the Wenatchee City Engineer's acceptance of the completed project, Wenatchee shall submit an invoice to the County for the County’s pro-rata share of the construction costs calculated according to the preceding paragraph. Payment shall be due within thirty (30) calendar days of the Party’s receipt of the invoice.

c. Allocation of the Parties’ pro rata construction costs above reflects an adjustment for payments made by Douglas County, Chelan County, City of East Wenatchee and City of Wenatchee pursuant to the interlocal agreement filed with the Chelan County Auditor under AFN # 2370444.

6. BUDGET FOR FACILITY OPERATION AND MAINTENANCE

The Parties shall together adopt an operation and maintenance budget for each calendar year during which this Agreement is operative. Budgets adopted pursuant to this Agreement are incorporated by reference and made part of this Agreement.

7. OPERATION AND MAINTENANCE

a. The Parties shall comply with the most current Wenatchee Regional Decant Facility Operations and Maintenance Plan (Plan). It is recognized that the Plan is a dynamic document that will be updated as required to comply with changing regulations and operating conditions to ensure an efficiently operating facility for the Parties. Changes to the Plan shall not modify the legal relations between the Parties as set forth in this Agreement.

b. “Operation and maintenance expenses” means all costs and expenses related to operating and maintaining the Facility, including, but not limited to, direct labor and fringe benefits of Wenatchee employees performing such labor, and the costs of utilities, equipment - including the repair and replacement thereof, material sampling and testing, tools, materials, supplies, insurance premiums, contract services, inspections, regulatory compliance, and applicable taxes.

c. Wenatchee shall submit an invoice to the County on or before December 15th for the County’s share of operation, maintenance, and disposal expenses for the 12 months immediately preceding the “billing period”. Payment will be due not later than the following January 31st. The first invoice will be submitted on or before December 15, 2015. At the end of each billing period, the percent
usage of each Party shall be calculated using the amount of solids each jurisdiction brought to the site during the billing period. The annual percent usage will then be used to calculate each Party's proportionate share of the actual operation and maintenance costs for the billing period. Disposal fees will be included in the annual invoice and will be billed based on the fees set forth by Waste Management.

d. Wenatchee's overhead and direct expenses for Facility administration ("administration costs") for a billing period shall not exceed 15% of the actual Facility operation and maintenance expenses for the billing period. Administrative costs shall be prorated between the Parties and other users for each billing period in the proportion to the amount of solids each Party and user brings to the Facility during the billing period.

e. If damages are incurred to the Facility attributable to a Party, the cost of repairing the damage plus a 15% administration fee will be billed to that Party.

f. If a suspect load is brought to the Facility as defined by the Plan, the Party responsible for the load will pay for the testing and disposal as well as any costs associated with cleaning the Facility following the removal of the suspect load plus a 15% administration fee.

g. Prior to expiration of initial 5-year term of this Agreement, the Parties will evaluate the need for the implementation of a Facility capital reserve fund that each Party and user might fund proportionate to their historical use of the Facility. A capital reserve fund amount should be based on Facility valuation and in accordance with standard engineering practices for costing major repairs and replacement work. Pertinent studies, data, and other documentation shall be furnished to each Party jurisdiction for evaluation and analysis. Implementation of a Facility capital reserve fund shall require a written agreement of the Parties.

8. PARTIES’ REPRESENTATIVES AND CONTACTS

The following shall be the Parties’ authorized representatives and designated contacts for administration of this Agreement:

City of Wenatchee:
Public Works Director
P.O. Box 519
City of Wenatchee Public Services Center
1350 McKittrick Street, Suite A
Wenatchee, WA 98807-0519
Phone: 509.888.3200

Interlocal Agreement for Wenatchee Valley Regional Decant Facility
Page 5 of 10
Fax: 509.888.3201
Email: dfrazier@wenatcheewa.gov

Chelan County:
Public Works Director/County Engineer
Chelan County Public Works Department
316 Washington Street, Suite 402
Wenatchee, WA 98801
Phone: 509.667.6415
Fax: 509.667.6250
Email: public.works@co.chelan.wa.us

9. RECORDS

a. Wenatchee shall maintain all records related to this Agreement for the longest retention period applicable to the specific records under Washington Law.

b. Wenatchee’s records related to this Agreement shall be available and subject to inspection, review and audit by any Party or its designee, and the Washington State Auditor’s Office at any time during normal business hours upon seven calendar days advance notice.

10. METHODS OF AMENDMENT

Either Party may request amendment to a provision contained in this Agreement. An amendment shall not be effective unless made in writing and signed by authorized representatives of both Parties.

11. WAIVER OF BREACH

A Party’s waiver of the other Party’s breach of any provision of this Agreement must be in writing and shall not operate or be construed as a waiver of any subsequent breach.

12. INDEMNITY

a. Each Party to this Agreement, shall protect, defend, indemnify, and save harmless the other Party, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, each of the Party’s own negligent acts or omissions with respect to the provisions of this Agreement. Neither Party
will be required to indemnify, defend, or save harmless the other Party if the
claim, suit, or action for injuries, death, or damages (both to persons and/or
property) is caused by the sole negligence of the other Party. Where such
claims, suits, or actions result from the concurrent negligence of the Parties, the
indemnity provisions provided herein shall be valid and enforceable only to the
extent of the Party’s own negligence. The indemnification obligation described in
this section shall survive the termination of this Agreement.

b. Each Party agrees to waive its immunity under Title 51 RCW to the extent it is
required to indemnify, defend and hold harmless the other Party and its
agencies, officials, agents or employees pursuant to this Section. The Parties
waiver of immunity by the provisions of this Section does not extend to claims by
any employee of a Party directly against said Party. This waiver has been
mutually negotiated by the Parties.

Initials: Wenatchee Chelan County

13. DISPUTE RESOLUTION

If a dispute arises regarding any matter addressed in or related to this
Agreement, the Parties agree first to attempt to resolve such dispute by a
telephone call or in person between the Parties’ authorized contact persons, or
their designees. If the matter is not resolved by consultation in a telephone call,
the Parties further agree that before taking any other action or seeking any legal
remedy, the Parties authorized contact persons, or authorized designees,
will participate in a good faith in-person negotiation to resolve any such dispute.

14. VENUE AND COSTS OF SUIT

a. The Kittitas County Superior Court shall be the sole proper venue for any and
all suits brought to enforce or interpret the provisions of this Agreement.

b. In the event of legal action or other proceeding brought to enforce or
interpret this Agreement, each Party shall pay its own attorney fees and costs
incurred in that action or proceeding.

15. INTEGRATION CLAUSE

a. This Agreement contains all the terms and conditions agreed upon by and
between the Parties. The recitals and agreed-upon budgets are incorporated by
this reference and made a part of this Agreement.
b. This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original but all of which together shall be identical and constitute one and the same Agreement.

c. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

16. **INTERPRETATION**

This Agreement has been submitted to the scrutiny of each of the Parties and their legal counsel, if desired, and it shall be given a fair and reasonable interpretation in accordance with its words, without consideration or weight given to its being drafted by any Party or its counsel.

17. **SEVERABILITY**

If any term or condition of this Agreement or its application to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

IN WITNESS whereof, the Parties hereto have executed this Agreement on the date signed last by the Parties below.
SIGNATURE PAGE 1 of 2

Adopted: 7/3/2015  CITY OF WENATCHEE

Frank Kuntz, Mayor

Date: 7/23/15

ATTEST:

Yvonne Hargreave
City Clerk
Date: 7/23/2015

APPROVED AS TO FORM:

City Attorney
Date: 7/23/15

Interlocal Agreement for Wenatchee Valley Regional Decant Facility
Page 9 of 10
SIGNATURE PAGE 2 of 2

Adopted: 7/21/15

CHELAN COUNTY
BOARD OF COUNTY COMMISSIONERS

Ron Walter, Chairman
Doug England, Commissioner
Keith W. Goehner, Commissioner

ATTEST: CARLYE BAITY

Clerk of the Board

Date: 7/21/15

APPROVED AS TO FORM:

Deputy Prosecuting Attorney

Date: 7/15/2015

Interlocal Agreement for Wenatchee Valley Regional Decant Facility
Page 10 of 10