FUNDING AGREEMENT
BETWEEN THE
CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION
AND
CHELAN COUNTY PUBLIC UTILITY DISTRICT NO. 1
FOR
AQUISITION OF WHITE STURGEON FOR CHELAN COUNTY PUD

THIS AGREEMENT is made and entered into by and between the Confederated Tribes and Bands of the YAKAMA NATION ("YN") and PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON ("Chelan PUD"), each a "Party" and collectively "the Parties".

WHEREAS the Parties desire to enter into an agreement to provide funding to the YN to facilitate Chelan PUD in the collection and spawning of mature brood stock and larval collection of white sturgeon required for annual supplementation to meet obligations for stocking white sturgeon yearlings annually, or as determined by the Rocky Reach Fish Forum (RRFF), and as described in the Rocky Reach White Sturgeon Management Plan (WSMP). This obligation is a component of Chelan PUD's Rock Reach License issued February 19, 2009.

IT IS MUTUALLY AGREED THAT:

I. PURPOSE AND SCOPE

The purpose of the Agreement is to set forth the tasks to be performed by the YN to assist in the promotion of white sturgeon population growth in the Rocky Reach Reservoir (Reservoir). This Agreement will benefit the District by assisting in the effort to increase the population of white sturgeon in the Reservoir through implementing a supplementation program to a level commensurate with available habitat based on ongoing monitoring data and results.

For the years 2014, 2015, and 2016, the YN shall provide Chelan PUD with the following; (1) sufficient viable, fertilized eggs for the culture of between 0-6,500 yearling white sturgeon; or (2) sufficient viable white sturgeon larvae for the culture of between 0- 6,500 yearling white sturgeon; or (3) a combination of fertilized eggs and larvae culture of between 0- 6,500 yearling white sturgeon. Each of these options will be executed in accordance with production goals of the Rocky Reach WSMP, based on results of Chelan PUD's indexing program and/or the evaluation of spawning potential, and annual plans approved by the RRFF.

The YN shall provide fertilized eggs and/or sturgeon larvae to Chelan PUD by August 1 of each year of the Agreement. The origin of the gametes and/or larvae shall be consistent with the WSMP and annual plans approved by the RRFF.

In each year of the Agreement, the Parties will agree in writing by March 1, to conduct one or more of the following discrete activities: (1) collection and transport of sturgeon broodstock by YN to the Marion
Drain Sturgeon Hatchery, (2) spawning adult broodstock collected by either the YN or Chelan PUD or its contractors to achieve viable fertilized eggs, and/or (3) collection of larval fish from the Columbia River. In 2014, the Parties agree to conduct activities (2) and (3) as described above.

It is expected that conducting one or more of the aforementioned activities will result in the following:

Fertilized sturgeon eggs: The YN shall be responsible for receiving sturgeon adults either caught by Chelan PUD's contractors or by the YN at the Yakama Nation's Marion Drain Sturgeon Hatchery. The YN shall be responsible for obtaining eggs and milt from spawners, culturing the eggs through fertilization, and maintaining the viability of the fertilized eggs until transfer to Chelan PUD is completed. Each container of fertilized eggs transferred to Chelan PUD will be labeled with (1) the estimated number of eggs contained therein, and (2) the parental origins of broodstock contributing to the individual container. Chelan PUD shall be responsible for transporting fertilized eggs to the Chelan Hatchery, or other Chelan PUD-contracted hatchery, for rearing.

Sturgeon larvae: The YN shall deploy D-ring samplers at locations downstream of mainstem Columbia River dam location(s) to be determined by the Rocky Reach Fish Forum (RRFF) to capture free-swimming white sturgeon larvae. The Yakama Nation shall be responsible for maintaining the viability of the larvae until transfer to Chelan PUD is completed. This will initially be a pilot program to investigate the feasibility of capturing wild-spawned larvae, transporting them to Marion Drain White Sturgeon facility, or other hatchery facility, and raising them to a sufficient size where they can be released as part of Chelan PUD’s white sturgeon supplementation program. The YN shall annually provide a brief technical report summarizing the feasibility of capturing wild-spawned larvae, numbers of larvae collected, general collection location, and progressive survival and growth prior to release.

Fish Health Screening shall be consistent with the Draft WDFW White Sturgeon Fish Health Plan, March 6, 2014, as amended and/or finalized, and distributed to the RRFF. Both Parties agree that pathogen screening is a necessary prerequisite to culturing and subsequently releasing sturgeon into the Columbia River.

Chelan PUD agrees to obtain approval from the RRFF that the District’s WSMP obligations for sturgeon production are fully met by the proposed activities and funding described herein in conjunction with additional white sturgeon brood collection efforts funded by the District. The approval may be on an annual basis for each year’s activities and funding, or as soon as practicable for the years’ activities and funding (2014-2016).

II. PERIOD OF PERFORMANCE

The term of this Agreement shall commence upon the date of execution of the Agreement and terminate December 31, 2016, unless terminated sooner as provided herein.

III. PAYMENT
The Parties have estimated that the cost of the work herein shall not exceed $196,373 through 2016. Compensation for services shall be based on the rates and terms set forth in Attachment A. This Agreement and budgets herein cover services and equipment only. The contract price may be modified only in writing and executed by both Parties. Compensation for services shall not exceed the annual not-to-exceed amounts described herein and set forth in Table 1.

Table 1: Annual not-to-exceed price by calendar year

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>Effective dates of contract by calendar year</th>
<th>Not-to-exceed budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>Contract execution-December 31, 2014</td>
<td>$46,927</td>
</tr>
<tr>
<td>2015</td>
<td>January 1, 2015-December 31, 2015</td>
<td>$74,723</td>
</tr>
<tr>
<td>2016</td>
<td>January 1, 2016-December 31, 2016</td>
<td>$74,723</td>
</tr>
<tr>
<td></td>
<td>TOTAL NTE</td>
<td>$196,373</td>
</tr>
</tbody>
</table>

IV. REPORTING REQUIREMENTS

Upon transfer of fertilized eggs from YN to Chelan PUD, in any year of the Agreement, YN shall provide documentation summarizing (1) the origin and sex of each sturgeon incorporated into the broodstock, (2) the resultant brood matrix and associated family groups from spawning activities, and (3) the number of fertilized eggs associated with each family group.

V. NOTIFICATION

The YN shall notify Chelan PUD in the event the YN acquires a sturgeon that may be used for spawning. The notification shall include the sex of the fish and any determination of its estimated spawning condition/ripeness.

The YN shall notify the District of their anticipated spawning schedule to coordinate the transfer of fertilized eggs to Chelan PUD. This notice shall be provided as soon as practicable but at least 48 hours before spawning activities begin.

Both Parties recognize that the successful coordination of spawning activities and egg and/or larvae transfer requires communications that may extend beyond those notifications described here. Both Parties agree to provide updates and new contact information whenever necessary to ensure successful coordination.

Chelan PUD agrees to provide a designated Contact to receive notifications related to spawning activities and egg and/or larvae transfer. Chelan PUD’s Contact will have 24 hour access to e-mail and phone communication.
All YN notifications related to spawning and egg and/or larvae transfer will be by e-mail and phone to Chelan PUD’s designated Contact. Chelan PUD’s designated Contact shall be:

Lance Keller, Fisheries Biologist
Office Phone: (509) 661-4299
Cell Phone: (509) 669-8722
Email: Lance.Keller@chelanpud.org

All communications and invoices other than related to the coordination of fertilized egg and/or larvae transfer shall be directed to the Project Coordinator identified in Section XV of the Agreement.

VI. BILLING PROCEDURES

The YN shall submit a verified and correct invoice to Chelan PUD’s Accounts Payable Department at the completion of each task. Invoices may be delivered or mailed to: Accounts Payable, Public Utility District No. 1 of Chelan County, 327 N. Wenatchee Ave., P.O. Box 1231, Wenatchee, WA 98807 or via e-mail at APDept@chelanpud.org.

Each calendar year activities shall be invoiced to Chelan PUD prior to December 31 of the same year. Chelan PUD shall pay the YN within 30 days of the date the correct invoice was received by Chelan PUD.

VII. AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

VIII. TERMINATION

Either Party may terminate this Agreement upon 15 days prior written notification to the other Party. If this Agreement is so terminated, the terminating party shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement rendered prior to the effective date of termination.

IX. GOVERNANCE

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

a. Applicable state and federal statutes and rules;
b. Statement of work; and
c. Any other provisions of the Agreement, including material incorporated by reference.

X. INDEMNITY

The YN agrees that it will indemnify and hold harmless Chelan PUD and any all of Chelan PUD’s officers, principals, agents and employees, from any liability, loss, damage, cost, charge or expense, whether direct or indirect and whether occasioned by injury or loss to persons or property, to which Chelan PUD or said other indemnitees may be put or subject by reason of any act, action, neglect, omission or default under the Agreement on the part of the YN or any subcontractor or any of the YN’s or subcontractor’s officers, principals, agents or employees. With regard to any claim based on the concurrent negligence of the indemnitor, his agent or employee, and the indemnitee, the indemnitor’s liability under this section shall apply to the full extent of the negligence of the indemnitor, his agent or employee. This indemnity obligation specifically includes liability or alleged liability that may arise from injury or loss suffered by any employee or the YN or any subcontractor.

XI. RECORDS MAINTENANCE

YN shall maintain books, records, documents, and other evidence, which sufficiently and property reflect all direct and indirect costs expended by it relating to this Agreement. These records shall be subject to inspection, review or audit by any Party or their authorized representatives, the Office of the Washington State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to the Agreement will be retained for six years after expiration and the Office of the Washington State Auditor, federal auditors, and any persons duly authorized by the Parties shall have full access and the right to examine any materials during this period.

XII. DISPUTES

In the event of any dispute, claim, question, or disagreement (“dispute”) arising from or relating to this Agreement or the breach thereof, Chelan PUD and the YN Agreement Coordinators shall use their reasonable best efforts to resolve the dispute within five (5) business days of submission by either Party to the other of such dispute notice. If Chelan PUD and the YN Agreement Coordinators are unable to resolve the dispute within such five (5) business day period, they shall immediately escalate the matter to the YN’s senior official(s) with appropriate authority to resolve the dispute and the Chelan PUD’s appropriate authority who shall have ten business days to resolve the dispute. If these representatives are unable to resolve the dispute within such period, either Party may pursue its available legal and equitable remedies.

Chelan PUD and the YN agree that the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Agreement that are not affected by the dispute.

XIII. WAIVER

A failure by either Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the Party and attached to the original Agreement.
XIV. SEVERABILITY

If any provisions of this Agreement or any provisions 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, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

XV. CONTRACT MANAGEMENT

The Agreement Coordinator for each of the Parties shall be responsible for and shall be the contact person for all communications, notices and billings regarding the performance of this Agreement.

The Project Coordinator for YN is: The Project Coordinator for Chelan PUD is:
Yakama Nation Chelan County PUD
Steve Parker Alene Underwood
P.O. Box 151 327 Wenatchee Avenue
Toppenish, WA 98948 Wenatchee, WA 98801
Phone: (509) 865-5121 Phone: (509) 661-4364

XVI. INDEPENDENT CONTRACTOR

The Parties understand and agree that they YN is acting hereunder as an independent contractor. YN shall observe and comply with all laws and regulations of all federal, state, and local governments that may in any manner affect the performance of this Agreement. No agent, employee or representative of Chelan PUD shall be deemed to be an agent, employee or representative of YN for any purpose, and no agent, employee or representative of YN shall be deemed to be an agent, employee or representative for Chelan PUD.

XVII. SOVEREIGN IMMUNITY

By entering into this Agreement, the YN does not waive its sovereign immunity from suit.

XVIII. ALL WRITINGS CONTAINED HERETIN

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

XIX. AUTHORIZED SIGNATURES

Each individual executing this Agreement warrants he is fully authorized to bind his principal to the terms and conditions of this Agreement.

IN WITNESS THEREOF, the Parties have executed the Agreement.
CONFEDERATED BANDS AND TRIBES
OF THE YAKAMA NATION

By: ___________________________
Title: CHAIRMAN
Date: 9-22-14

PUBLIC UTILITY DISTRICT NO. 1
OF CHelan COUNTY

By: ___________________________
Title: Managing Director, Generation & Trans.
Date: 10/16/14

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