

**RESOLUTION 2021-EE**

**A RESOLUTION OF THE TOWN OF EATONVILLE, WASHINGTON,  
AUTHORIZING THE MAYOR TO EXECUTE A COOPERATION, FUNDING  
AND JOINT DEFENSE AGREEMENT WITH WEYERHAEUSER**

**WHEREAS**, between 1950 and 1980 the Town of Eatonville (“Town”) leased property from Weyerhaeuser Company (“Weyerhaeuser”) for the purposes of operating a municipal landfill; and

**WHEREAS**, upon closure of the landfill, proper mitigation measures were not taken to clean up the municipal waste; and

**WHEREAS**, in order to mitigate the cleanup of the site, the Town and Weyerhaeuser have entered into an Agreed Order with the Washington State Department of Ecology (“Ecology”) to provide remedial action at the site; and

**WHEREAS**, under the Cooperation, Funding and Joint Defense Agreement, attached hereto as Exhibit A, the Town and Weyerhaeuser intend to cooperate in discussions and in conducting the remedial actions required by the Agreed Order; and

**WHEREAS**, it is the desire of the Town to partner with Weyerhaeuser to share the remedial action costs incurred as required by the Agreed Order; now, therefore,

**THE TOWN COUNCIL OF THE TOWN OF EATONVILLE, WASHINGTON, HEREBY  
RESOLVES AS FOLLOWS:**

**THAT:** The Town Council approves and the Mayor is authorized to execute the Cooperation, Funding and Joint Defense Agreement hereto attached as Exhibit A.

**PASSED** by the Town Council of Town of Eatonville and attested by the Town Clerk in authentication of such passage this 9<sup>th</sup> day of August 2021.

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Mike Schaub, Mayor

ATTEST:

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Miranda Doll, Town Clerk

## **COOPERATION, FUNDING, AND JOINT DEFENSE AGREEMENT FOR THE FORMER EATONVILLE LANDFILL IN EATONVILLE, WASHINGTON**

This Cooperation, Funding, and Joint Defense Agreement (“Agreement”) for the former Eatonville Landfill in Eatonville, Washington (“Site”) is made and entered into by and between the Town of Eatonville (“Eatonville”) and Weyerhaeuser Company (“Weyerhaeuser”) (each a “Party” and collectively, the “Parties”).

### **I. RECITALS**

A. Weyerhaeuser is the current owner of property located as shown on the attached Exhibit A in Eatonville, Washington. Between 1950 and 1980, Weyerhaeuser leased the property to Eatonville for operation of a municipal landfill.

B. On August \_\_, 2021, Weyerhaeuser and Eatonville entered into an Agreed Order No. 20072 with the Washington State Department of Ecology (“Ecology”) to conduct remedial actions at the Site, specifically, preparation of a remedial investigation (“RI”), feasibility study (“FS”), and draft cleanup action plan (“DCAP”) for the Site. The Agreed Order is attached as Exhibit B to this Agreement.

C. With this Agreement, the Parties intend to cooperate in discussions with Ecology and in conducting the remedial actions required by the Agreed Order. The Parties further intend to share all remedial action costs the Parties will incur as required by the Agreed Order, in accordance with the terms and procedures set forth in this Agreement. The Parties believe it is in their mutual interest to cooperate and share costs to achieve resolution of the Agreed Order.

### **II. TERMS AND CONDITIONS**

**1. Incorporation of Recitals.** The foregoing recitals are incorporated herein as terms and conditions of this Agreement.

**2. Cooperation.** The Parties, including their contractors, consultants, agents, and representatives, intend to cooperate in good faith with each other in the conduct of the actions covered by this Agreement. The Parties intend to each play a lead role in the implementation of remedial actions, communications and discussions with Ecology, and review of all reports, data, correspondence, and other communications.

**3. Disputes on Ecology Deliverables.** The Parties recognize the importance of presenting unified positions to Ecology to the greatest extent possible. The Parties shall therefore work to resolve any disagreements they may have regarding the remedial actions at the Site. Should the Parties disagree on any Ecology submittal, they shall meet and confer to discuss their differences prior to finalizing and providing the Ecology submittal to the agency. The Parties shall cooperate in good faith to attempt to resolve their differences. If, after a reasonable meet and confer, the Parties are still unable to resolve their differences related to an Ecology

deliverable, the Parties may make separate submissions. The Parties shall comply with section 15 below to resolve all other disputes arising under this Agreement.

**4. Funding.** The Parties agree to fund the remedial actions required by the Agreed Order as provided herein. This Agreement does not obligate either Party to conduct or otherwise fund any remedial actions beyond those required under the Agreed Order, nor does it set precedent for any future funding agreement that may be executed to address any future remedial actions. This Agreement is without prejudice to either Party's rights to recover remedial action costs from any Party not a signatory to the Agreement.

**a. "Remedial Action Cost(s)."** Shall have the same meaning as RCW 70A.305.020(33).

**b. Scope.** This Agreement addresses remedial action costs incurred by the Parties as required by the Agreed Order, including any amendment. The Agreement does not address any other remedial action costs that may be incurred at, for, or related to the Site.

**c. Agreed Order Costs.** The Parties agree to an interim, non-binding remedial action cost sharing arrangement whereby Weyerhaeuser and Eatonville shall each pay 50% of remedial action costs required under the Agreed Order as those costs become due and payable, subject to the procedures described in 4(d) below. Eatonville has taken steps to obtain grant funding from Ecology and may seek other grant funding opportunities. Eatonville will continue to undertake good faith efforts to obtain grant funding for the Remedial Action Costs to be incurred under the Agreed Order. However, the payment obligation of Eatonville under this Agreement is expressly contingent on receipt of grant funding. This interim, non-binding arrangement is without prejudice to either Party's ability to seek additional remedial action costs, and any other fees, costs or other remedy from the other Party following completion of all remedial actions required by the Agreed Order. The Parties agree that until expiration or termination of this Agreement, they will not initiate action against each other for any claims or causes of action relating to the work performed under this Agreement. All applicable statutes of limitations shall be tolled from the time of mutual execution of this Agreement and all claims of laches shall be waived for any claims or causes of action relating to the subject matter of this Agreement that one Party may have against the other Party for the period of time this Agreement is in effect.

**d. Procedure.** The remedial actions required under the Agreed Order will be performed by consultants working under contract with Weyerhaeuser, provided that Eatonville shall remit payment to Weyerhaeuser of Eatonville's 50% share of Agreed Order remedial action costs, as set forth in this Paragraph and subject to subsection 4(c) above. Weyerhaeuser shall forward all invoices for Agreed Order remedial action costs to Eatonville within ten (10) business days of receipt by Weyerhaeuser. Within fourteen (14) days of receipt by Eatonville, Eatonville shall notify Weyerhaeuser in writing of any portion(s) of each invoice that Eatonville disputes, the basis for the dispute, and the proposed resolution of the dispute. If Eatonville does not so notify Weyerhaeuser of disputed invoices, Eatonville shall, within forty-five (45) days of receipt of Agreed Order invoices, remit payment to Weyerhaeuser of Eatonville's 50% share of each invoice. Weyerhaeuser shall promptly pay the invoice vendor the invoiced amount or the reduced amount agreed to by Weyerhaeuser and Eatonville.

**e. Other Remedial Action Costs.** The Parties recognize that Ecology may require other remedial actions at the Site beyond those required by the Agreed Order. Such remedial actions, if any, are out of scope of this Agreement. The Parties agree to negotiate in good faith to reach an agreement regarding an equitable allocation of such costs.

**f. Legal Fees.** The Parties agree that this Agreement shall not include legal fees. This Agreement is without prejudice to either Party's ability to seek legal fees as provided in any other applicable law, statute, regulation, or other recognized authority.

**5. Project Coordinators.** The Project Coordinator for Weyerhaeuser is Carol Wiseman. The Project Coordinator for Eatonville is Abby Gribi. Either Party may change its Project Coordinator by informing the other Party in writing without need to formally amend this Agreement.

**6. Consultants.** Weyerhaeuser has retained GSI Water Solutions as an environmental consultant for completion of the Agreed Order work. Weyerhaeuser reserves the right to retain additional or different consultants for any Agreed Order work, subject to Eatonville's written agreement, which Eatonville shall not unreasonably withhold. Weyerhaeuser shall ensure its consultants are contractually obligated to comply with all applicable laws and regulations when performing work under this Agreement.

**7. Joint Defense.** In order to pursue the Parties' separate but common interests, defenses and claims effectively, the Parties are best served by the ability to (i) candidly discuss documents, facts, data, strategies, and other information; (ii) share drafts, work product of counsel, including legal theories, impressions, conclusions, and/or opinions; and (iii) share privileged or confidential information.

**a. Maintenance of Applicable Privileges.** The Parties will share Joint Defense Information with the understanding that any Joint Defense Information so shared is protected from disclosure to any third party by the Parties' respective attorney-client privileges, work product privileges, common interest privileges, and any other applicable privileges.

**b. No Waiver.** The exchange of Joint Defense Information by the Parties does not diminish in any way the confidentiality of the Joint Defense Information and does not constitute a waiver of any privilege.

**c. Sharing Joint Defense Information.** The Parties will not disclose Joint Defense Information with any other entity not a party to this Agreement without first obtaining the consent of the other Party to this Agreement. Joint Defense Information may be shared between the Parties, their employees who have a need to know, with legal counsel and insurers, with consultants retained by either Party, by Weyerhaeuser where it reasonably determines that disclosure is required by applicable federal securities law or regulation or generally accepted accounting principles, and by Eatonville as needed to comply with law. Shared Joint Defense Information may only be used as contemplated by this Agreement. All such shared information is "Joint Defense Information". The confidentiality of Joint Defense Information shall survive termination of this Agreement by either Party. A Party may disclose to others, or use in any

manner, information which the Party can show has been published and/or has become part of the public record.

**d. Responding to Third-Party Demands for Information.** If either Party receives a demand from any third party, by subpoena, public records request, or otherwise, a request or demand for Joint Defense Information, counsel for the Party receiving the request will immediately notify counsel for the other Party, and all counsel shall take steps to assert all applicable rights and privileges with respect to the requested Joint Defense Information. Counsel for the Parties shall cooperate in any proceeding relating to any such request for Joint Defense Information including, if necessary, seeking an order for protection from discovery or disclosure.

**8. Reservation of Rights Against Third Parties.** The Parties do not waive, and expressly reserve, all claims they may have against any and all third parties, including without limitation any insurers, claims under the Model Toxics Control Act, RCW Ch. 70A.305 or any other legal, statutory, or contractual basis for recovery of expenses and losses incurred by the Parties, or by either Party individually, in performing investigation and cleanup activities at the Site.

**9. Liability.** By entering into this Agreement, the Parties do not admit or concede any liability or responsibility arising from the presence of any hazardous substances at or near the Site. No actions taken by any Party pursuant to this Agreement shall be construed as an admission of liability or equitable responsibility for the presence of any hazardous substance at or near the Site.

**10. Termination of Agreement.** This Agreement shall be in effect until termination by the earliest of any of the following events:

- a.** By mutual written agreement of the Parties.
- b.** As a result of a breach by a Party, provided that (i) written notice of breach is delivered to the Party alleged to be in breach and (ii) the Agreement is terminated, effective seven (7) days following delivery of written notice of the breach, unless the Party alleged to be in breach cures the alleged breach before the expiration of seven (7) days.
- c.** Upon “Satisfaction of the Order” in accordance with Section IX of the Agreed Order.

**11. Admissibility.** This Agreement shall not be admissible in any court or administrative proceeding as evidence of responsibility or liability of any Party with regard to any hazardous substance that may be present at the Site. This Agreement shall be admissible, however, in any action to enforce any term of the Agreement. If necessary for purposes of audit or as needed in connection with grant funding, Eatonville may also provide a copy of the Agreement to relevant entities. This Agreement is a public record pursuant to RCW 42.56.

**12. Third Parties.** This Agreement is not intended for the benefit of any third party and is not enforceable by any third party, including any government agency or regulatory authority.

**13. Notices.** All Notices regarding this Agreement shall be through the Parties' Project Coordinators, with a copy to the Parties' counsel:

As to Weyerhaeuser:

Carol Wiseman  
220 Occidental Ave South  
Seattle, WA 98104  
(206) 539-4074

With a copy to:

Law Department  
Attn: Meli MacCurdy  
220 Occidental Ave South  
Seattle, WA 98104  
[meline.maccurdy@weyerhaeuser.com](mailto:meline.maccurdy@weyerhaeuser.com)  
(206) 539-3986

As to Eatonville:

Abby Gribi  
PO Box 309  
201 Center Street  
Eatonville, WA 98328  
[townadmin@eatonville-wa.gov](mailto:townadmin@eatonville-wa.gov)  
(360) 832-3361 ext 105

With a copy to:

William Joyce  
Joyce Ziker Partners, PLLC  
1601 Fifth Ave Suite 2040  
Seattle, WA 98101-1686  
[wjoyce@jzplaw.com](mailto:wjoyce@jzplaw.com)  
(206) 957-5951

**14. Successors and Assigns.** This Agreement is binding on the successors and assigns of the Parties.

**15. Dispute Resolution.** The Parties agree to work cooperatively to resolve any dispute. If any Party to this Agreement considers an issue covered by this Agreement to be in dispute, it shall provide the other Party with written notice. The Parties shall meet as soon as possible to attempt to resolve the dispute. If the Parties are unable to resolve the dispute, they shall retain a mutually acceptable mediator to resolve the dispute prior to filing a lawsuit. Each

Party reserves all rights and defenses available to them under applicable laws. Disputes on Ecology deliverables shall be resolved in accordance with section 3 above.

**16. Amendments.** Amendments shall become effective upon signature by both Parties.

**17. Entire Agreement.** This Agreement contains the entire understanding of the Parties with respect to the subjects and issues covered by this Agreement.

**18. Unenforceable Provisions.** If any provision of this Agreement is held to be unenforceable, it shall be adjusted, rather than voided, to achieve the intent of the Parties.

**19. Applicable Law and Venue.** This Agreement shall be interpreted and enforced pursuant to the laws of the State of Washington. Venue for any lawsuit arising out of this Agreement shall be in Pierce County, Washington.

**20. Effective Date.** This Agreement shall be effective as of the latest date of signature of the Parties below.

**21. Authority to Sign.** Each of the representatives for the Parties signing this Agreement is legally authorized to enter into the terms and conditions of this Agreement and is legally authorized to bind such Parties to this Agreement.

**22. Counterparts.** The Agreement may be executed in two counterparts.

**23. No Partnership or Joint Venture.** Nothing in this Agreement shall be deemed to create a partnership or joint venture and/or principal and agent relationship between the Parties. No Party or authorized representative shall have authority to act as a general agent for the other Party or to bid or undertake any contracts enforceable against the other Party.

**24. Construction of this Agreement.** The Parties have been represented by counsel, and this Agreement is the result of negotiation between each Party's counsel. This Agreement shall not be construed against any Party to this Agreement but will instead be considered to have been negotiated equally and at arm's length.

**WEYERHAEUSER COMPANY**

By: Hester Sewin

Its: VP Corp. & Govt. Affairs

Date: August 2, 2021

**TOWN OF EATONVILLE**

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_