INTERLOCAL AGREEMENT FOR WOOD RECYCLING

THIS INTERLOCAL AGREEMENT made this 28th day of December 1999, between Public Utility District No. 1 of Chelan County, a public utility incorporated under the laws of the State of Washington, (hereinafter referred to as the "PUD") and Chelan County, a municipal corporation under the laws of the State of Washington, (hereinafter referred to as the "County"), and sometimes collectively referred to as the "Parties":

I. RECITALS:

WHEREAS, Chelan County is authorized pursuant to Chapter 36.58 RCW, and other relevant laws of the State of Washington to collect, handle and dispose of solid waste and recyclable materials in the unincorporated areas of the County; and

WHEREAS, the PUD is authorized pursuant to Chapter 54.16 RCW to contract with the County for the purpose of carrying out its authorized powers, and

WHEREAS, Chelan County is duly authorized pursuant to Chapter 36.01 RCW and Chapter 36.89 RCW to establish, acquire, develop, construct and improve public health facilities; and

WHEREAS, the parties recognize the mutual benefits of purchasing a wood grinder; wood recycling is an important alternative to open burning of woody debris; and

WHEREAS, the PUD possesses the personnel and expertise necessary to maintain and operate wood grinding equipment; and

WHEREAS, the County possesses adequate facilities to accommodate use of the grinder by others and the personnel and expertise necessary to maintain the property so utilized; and

WHEREAS, the parties are public agencies as defined in RCW 39.34.020 and desire to enter into this Interlocal Agreement pursuant to Chapter 39.34 RCW, the Washington Interlocal Corporation Act; and

NOW, THEREFORE, in consideration of the mutual benefits contained herein, the parties hereby mutually agree as follows:

II. AGREEMENT

1. Purpose. The purpose of this agreement is to facilitate the acquisition, maintenance and operation of a wood grinder for use by multiple public entities and others in order to provide an accessible alternative to open burning of woody debris.
2. Incorporation. The recitals set forth above are hereby incorporated into this agreement by this reference and are binding commitments and representations.

3. Purchase of Grinding Equipment. The County and PUD shall mutually agree on the size and type of grinding equipment to purchase. The County shall be responsible for purchasing the equipment.

4. Purchase Cost Sharing. The approximate total cost of the wood grinding equipment is preliminarily known to be $170,000.00. The PUD shall pay the County $37,500.00 to be used toward the purchase price. Chelan County shall provide $132,500.00 of which $94,250.00 is a Washington State Department of Ecology approved allocation of Chelan County’s solid waste planning funds. The remaining $38,250.00 shall also be paid by Chelan County. Any excess monies from the various funding sources for the purchase of the grinder, including the money contributed by the PUD, shall be used to support the operation of the compost project.

5. Ownership of Equipment. The County and PUD shall mutually own the grinding equipment on an equal basis, unless otherwise agreed upon prior to the expiration of three years from the date of the execution of this agreement. The parties may enter into an agreement within the first three years of this contract whereby either party may reimburse the other party its initial investment in exchange for full, unencumbered ownership of the equipment, subject to the terms and conditions of the Coordinated Prevention Grant Agreement for 1997 and 1998, Grant #9600168. If this agreement is terminated after a period of three years from date of execution, the County shall retain full, unencumbered ownership.

6. Operation. The PUD shall be solely responsible for the mobilization, operation, maintenance, staffing, and repair of the equipment. No other entity shall operate the equipment without the prior written agreement of the PUD and the County. The schedule for operation of the equipment shall be established by the PUD so as to provide flexibility to the PUD in operating the grinding equipment. The County shall provide a minimum of ten business days notice that operation of the grinding equipment is necessary for County purposes.

7. Operation and Maintenance Costs. The PUD shall be reimbursed all costs for materials and labor incurred due to mobilizing, operating, staffing, maintaining and repairing the equipment from total usage fees collected. In the event that costs for necessary repairs, including labor and mobilization costs associated with necessary repairs, exceed total usage fees collected, reimbursement shall be subject to the provisions of Section Nine herein. Notwithstanding the provisions of Section Nine, in no event shall the County be obligated to pay the PUD any monies for operation, maintenance, staffing, labor, or mobilization of the grinding equipment in excess of any amounts collected in the usage fees account. Labor costs of the PUD shall consist of wages and benefits, for the labor hours expended by the PUD. The PUD shall provide an accounting of the operation and maintenance costs on a quarterly basis. The County shall pay the PUD’s costs out of the proceeds in the usage fund within forty-five
(45) days only after such accounting is agreed upon by the County.

8. Usage Fees. The PUD and the County shall mutually establish usage charges for grinding services. The usage charge shall be established and maintained at a rate to recoup and recover all operation, mobilization, staffing, maintenance, repair and replacement costs. Both the County and the PUD shall pay usage charges for actual usage of the grinding equipment by each of those entities. Usage charges shall be collected and paid at the time of use. The parties anticipate allowing the public and other entities to use the grinding services. The usage charges imposed on others shall be collected by the County subject to the provisions of Sections Thirteen and Fourteen herein, and deposited into a fund as referenced in Section Nine herein. The PUD and the County shall maintain records as to all materials ground.

9. Fund. The County shall maintain a fund and records associated therewith into which all usage charges shall be deposited. This fund shall be used to pay all operation, maintenance, mobilization, staffing, and repair costs incurred by the PUD and/or Chelan County related to the grinding equipment. In the event that repair costs are incurred by prior mutual agreement of the Parties, which exceed the value of the fund, then the Parties shall share on an equal basis said expense which is in excess of the fund value. In the event this agreement is terminated pursuant to Section Eleven herein, the fund value, whether negative or positive, shall be divided on said equal basis, unless otherwise agreed upon by the Parties. No recoupment for payment of repair costs in excess of fund value is permitted to either Party should the fund value re-accrue sufficiently, unless otherwise mutually agreed upon by the Parties.

10. Term. This agreement shall be effective immediately upon execution and shall remain in effect for fifteen (15) years unless and until terminated pursuant to the provisions stated herein.

11. Termination of Agreement.

   (1) Termination for Ceasation of Use. If, after three years, the PUD ceases to use, repair, maintain, operate, staff, or mobilize as needed the grinding equipment for a period of sixty (60) days, this agreement and all of the PUD's rights hereunder shall terminate and title to the grinding equipment shall vest in the County and this agreement shall be deemed automatically revoked. If the PUD ceases to use, repair, maintain, operate, staff or mobilize as needed the grinding equipment prior to the expiration of three years, termination pursuant to this subsection shall also be subject to the provisions of Section Five herein.

   (2) Termination for Breach or Default. In the event either Party breaches or fails to perform or observe any of the terms and conditions herein, and fails to cure such breach or default within thirty (30) days of the nonbreaching party giving the breaching party written notice thereof, or if not reasonably capable of being cured within such thirty (30) days, within such other period of time that may be deemed reasonable under the circumstances, the nonbreaching party may terminate the breaching Party's
rights under this agreement, in addition to and not in limitation of any other remedy of
the nonbreaching Party at law or in equity, and the failure of the nonbreaching Party to
exercise said right at any time shall not waive the nonbreaching Party's right to
terminate for any future breach or default. In the event termination pursuant to this
subsection occurs after the expiration of three years, title to the grinding equipment shall
vest in the County and the agreement herein shall be deemed automatically revoked.
Should termination pursuant to this subsection occur prior to the expiration of three
years, said termination shall also be subject to the provisions of Section Five herein.

(3) Termination at Will. After the expiration of three years, except as
provided in (1) and (2), either party may terminate this agreement at will upon one
hundred twenty (120) days notice to the other party of that party's intent to terminate this
agreement. Upon such termination, title to the grinding equipment shall vest in the
County and the agreement shall be deemed automatically revoked. If termination
pursuant to this subsection occurs prior to the expiration of three years from date of its
execution, said termination shall also be subject to the provisions of Section Five herein.

(4) Release of Obligations on Termination. The termination of this
agreement shall not release the parties from any liability or obligation with respect to
any matter occurring prior to such termination.

12. Tipper Fees and Disposal of Material. The PUD agrees that it will transport
to the County's Dryden transfer facility a minimum of 100 cubic yards of chipped
material from the PUD's grinding operations at its own site per year. The PUD agrees
to pay the cost of such transportation and the tipper fee charged by the County for the
disposal of such chipped/ground material.

13. County's Facilities. The equipment may be stored and used at the County's
Dryden transfer station and at other locations as determined and arranged by the
County. When the equipment is being used or stored at one of these County selected
sites, the County shall be fully responsible for collection of usage fees and the security
of the equipment. The County shall be responsible for disposal of all material from non-
PUD sources, which is not suitable for grinding, when the equipment is on a County
selected site.

14. PUD's Facilities. The equipment may be stored and used at the PUD's
hydro-electric projects and at other locations as determined and arranged by the PUD.
When the equipment is being used or stored at one of these PUD selected sites, the
PUD shall be fully responsible for collection of usage fees, insuring all material is
suitable for grinding and insuring the security of the equipment at the site. The PUD
shall be responsible for the proper disposal of any material from non-County
government sources that is not suitable for grinding.

15. Independent Contractor. The parties agree that the PUD is an independent
contractor with respect to services conducted or provided pursuant to this agreement.
Nothing in this agreement shall be considered to create the relationship of employer and
employee between the parties hereto. Neither the PUD nor any employee of the PUD shall be entitled to any benefits afforded to County’s employees by virtue of the services provided by the PUD and/or actions of the PUD pursuant to the terms of this agreement.

16. **Indemnification.** The PUD agrees to indemnify, hold harmless, and defend the County from and against any and all liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney’s fees) which the County may hereafter incur, become responsible for, or pay out as a result of death or bodily injuries to any person, destruction or damage to any property, contamination of, or adverse effect on the environment, or any violation of governmental laws, regulations or orders, caused, in whole or in part, by any negligent or willful act or omission of the PUD, its employees, agents, officials or subcontractors in the performance of this agreement.

Likewise, the County agrees to indemnify and hold harmless, and defend the PUD from and against any and all liabilities, claims, penalties, forfeitures, suits and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney’s fees) which the PUD may hereafter incur, become responsible for, or pay out as a result of death or bodily injuries to any person, destruction or damage to any property, contamination of, or adverse effect on the environment or any violation of governmental laws, regulations or orders, caused in whole or in part, by any negligent or willful act or omission of the County, its employees, agents, officials or subcontractors in the performance of this agreement.

17. **Insurance.** The parties agree to maintain in force public liability and comprehensive general liability insurance with a minimum coverage of $1,000,000.00 per occurrence for personal injury and property damage.

18. **Severability.** In the event any provisions of this agreement shall be determined to be unenforceable or otherwise invalid for any reason, such provisions shall be enforced to the extent permitted by law. All provisions of this agreement are severable and the unenforceability or invalidity of a single provision herein shall not affect the remaining provisions.

19. **Governing Law and Venue.** This agreement shall be governed by the laws of the State of Washington and venue for any lawsuit shall be in the Chelan County Superior Court.

20. **Notices and Communications.** Any notices required or communications desired pursuant to this agreement may be transmitted either orally or by written request via U. S. Mail, facsimile or personal delivery. Any notices, except service of process, shall be effective if personally served on the other party or if mailed by registered or certified mail, return receipt requested, to the following addresses:
21. **Entire Agreement.** This agreement represents the entire and integrated agreement between the County and the PUD and supersedes all prior negotiations, representations or agreements, either written or oral.

22. **Amendment.** This agreement may not be altered, amended or modified in any way unless such modification, alteration or amendment is reduced to writing, mutually agreed upon and signed by both parties.

23. **Attorney’s Fees.** In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this agreement, such enforcing party shall be entitled to compensation for its reasonable attorney’s fees and costs. In the event of litigation regarding any of the terms of this agreement, the substantially prevailing party shall be entitled, in addition to other relief, to such reasonable attorney’s fees and costs as determined by the court.

24. **Waiver of Breach.** The waiver of either party of the breach of any provision of this agreement by the other party must be in writing and shall not operate or be construed as a waiver of any subsequent breach by such other party.

25. **Savings Clause.** Nothing in this agreement shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provisions of this agreement and any statute, law, public regulations or ordinance, the latter shall prevail but in such event, the provisions of this agreement affected shall be curtailed and limited only to the extent necessary to bring it within legal requirements.

26. **Filing.** This agreement shall be filed with the Chelan County Auditor’s Office, Recording Department, pursuant to RCW 39.34.040.

27. **Interpretation.** This agreement has been submitted to the scrutiny of all parties and their 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. All words used in the singular shall include the plural; the present tense shall include the future tense; and the masculine gender shall include the feminine and neuter genders.

28. **Access to Records.** Each party and its authorized representatives shall have access to any books, documents, papers and records of the other party which are pertinent to this agreement for the purposes of making audits, examinations, excerpts and transcriptions. All such records and other records pertinent to this agreement and
work undertaken pursuant to this agreement shall be retained by the parties for a period of three years and after the final audit of the completed contract, unless a longer period of time is required to resolve a finding or litigation. In such cases, the parties may enter into a subsequent written agreement with respect to a longer period of record retention.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this 28th day of December 1999.

BOARD OF CHELAN COUNTY COMMISSIONERS

[Signatures]

JOHN A. HUNTER, CHAIR

JIM C. LYNCH, COMMISSIONER

ESTHER STEFANIW, COMMISSIONER

ATTEST: EVELYN L. ARNOLD, Auditor and Clerk of the Board

By: EVELYN L. ARNOLD

KATHLEEN L. WARD

Deputy Auditor/Clerk of the Board

ATTEST:

DAVID R. KOBERSTEIN, P.E.
Director/County Engineer

Approved as to form:

[Signature]

CHELAN COUNTY PROSECUTOR
PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY

BY

ROGER A. BRADEN, General Manager as authorized by Res. No. 99-11337