INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT ("Agreement") is hereby entered into this date by and between the CITY OF WENATCHEE (the "City"), and CHELAN COUNTY PUD #1 (the "District"), sometimes collectively referred to as the "Parties."

WHEREAS, the City is engaged in a street improvement project involving widening and rerouting Walla Walla Street, Wenatchee, Chelan County, Washington (the "Project"), as generally depicted on the Project map included in the City’s bid package; and,

WHEREAS, the City notified the District of its desire for the District to underground, to locate and, for a portion of the Project, to relocate the District’s Utility System Facilities in the Project area; and

WHEREAS, City and District staff have worked cooperatively through the design phase of the Project, pursuant to those requirements set forth in the Utility System Franchise Agreement between the Parties, dated February 18, 2005 (City Ordinance No. 2005-03); and

WHEREAS, as a result of the cooperative planning meetings between the parties, the District submitted plans and specifications for its Utility System Facilities Work (including Electrical System, Broadband System and Water Work, all collectively hereafter referred to as "District Work"), to the City for inclusion as Alternatives in the City public bid package for the Project, scheduled to go out for public bid on or around April 5, 2007; and

WHEREAS, the District desires to complete all of its Utility System Facilities Work in the Project area, including Electrical, Broadband, and Water Work as generally described in Exhibit A, B and C, attached hereto and incorporated herein by this reference, before the City installs final paving; and

WHEREAS, the City and the District desire to continue their cooperative efforts through public bidding, during the construction of the Project by the City contractor, and during the additional construction work to be performed by the District associated with the Project, as set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the foregoing representations, which are incorporated by this reference into the Agreement, the City and the District agree as follows:
1. **Purpose.** The purpose of this Agreement is to mitigate costs for both Parties by coordinating the District’s Work as described herein, as part of the City’s Project concurrent with other City Project construction improvements, by inclusion of the District’s Work as an Alternative in the City’s Project bid package, and to set forth duties and responsibilities of each Party during the construction of the District’s Work as part of the City’s Project.

2. **Scope of Work.** The District’s Scope of Work to be completed as part of the City’s bid package for the Project is set forth in Exhibits A, B, and C. The general description of the improvements for Electrical System and Broadband System Work is set forth in Exhibit A. A cost estimate for bid items associated with the Electrical System and Broadband System Work is set forth in Exhibit B. The general description of the District Water Work line improvements and a cost estimate for bid items associated with the District Water Work are set forth in Exhibit C.

It is anticipated that the District will perform other construction work contemporaneously with and post-City contractor work such as installation of electrical conductors, switches, transformers and other items required for electrical conversion (all referred to herein as “Other District Work”).

3. **District’s Obligations.** The District shall:

   3.1. Provide plans and specifications to the City for inclusion in its public bid package. City hereby acknowledges receipt of the District plans and specifications for the District Work.

   3.2. Assume liability, indemnify, defend and hold harmless the City for District negligent design of the plans and specifications for the District Work being included within the City Project.

   3.3. Provide for reimbursement not to exceed, unless otherwise agreed, for those City Project costs associated with the construction of District Work and the administration of the City's contract with the Project contractor, as set forth in Exhibits B and C.

   3.4. Have the responsibility for that portion of the City’s Project related to the District Work, under the City Construction Contract including inspection, final approval, and dispute resolution.

   3.5. Perform Other District Work, as deemed necessary and as designed by the District, to complete the conversion and relocation of Electrical and Broadband Systems, subject to costs being shared by the District and the City pursuant to those percentages set forth in Exhibit B.
4. **City's Obligations.** The City shall:

4.1. Administer the bidding and contract award, consistent with the City's public bid laws for the City Project, including:
   a.) Preparing bid documents to require that costs associated with the District Work be separately itemized in the bid submittal;
   b.) Advertising for construction bids;
   c.) Prequalification of contractors;
   d.) Inclusion in the construction contract of a requirement for the Contractor to name the District as an additional insured under its insurance obligations; and
   e.) Awarding of the construction contract.

4.2. Subject to the provisions of this Agreement, administer the construction contract, including:
   a.) Scheduling the construction work;
   b.) Disbursement of payments to the Project contractor (subject to District's approval in advance);
   c.) Administration of change orders (subject to District's approval in advance); and
   d.) Provide timely and proper notice to the District for inspection of the District's Work performed by the Contractor under the terms of City's contract with the Contractor.

4.3. Provide field engineering, including survey control and construction staking.

4.4. Be responsible for the administration, management and budget for this Project.

4.5. Payment to District, after District invoice, for District Work and Other District Work, based upon the cost sharing percentages set forth in Exhibit B.

5. **Duration and Termination.** This Agreement shall become effective upon the filing of the executed Agreement with the Chelan County Auditor, or alternatively listed by subject on the District's web site pursuant to RCW 39.34.040. This agreement will terminate upon the completion of the Project, and the final payment for the District Work is received by the City from the District.

6. **Cost.** The costs associated with the District Work shall be determined by line item for that portion of the Project set out in the lowest responsible bid for the entire Project accepted by the City, after prior approval of the District for District Work, and including administrative and engineering fees in amounts as estimated and set forth as line items on Exhibit B, plus any other costs, reasonably incurred by the City.
related and attributable to the District Work, as approved by the District (the "Total District Cost"). The Total District Cost shall be adjusted to reflect any change orders, or the portion thereof, attributable to any change in the District Work, approved by the District. The District shall reimburse the City an amount equal to the Total District Cost, as adjusted for change orders as set forth herein. Cost estimates prepared by the District for the District Work are attached as Exhibit B and Exhibit C for the purposes of assisting in the City's engineering estimate necessary for public bid. The parties acknowledge the actual bid accepted by the City may be higher or lower.

7. Payment. Upon receipt of a correct invoice from the City, the District shall make periodic progress payments to the City. Each progress payment and the final payment are due within 20 days of the date the invoice is mailed by the City to the District.

8. Records. The City shall keep and maintain accurate and complete cost records pertaining to the Project and the Agreement. The District shall have full access and the right to examine any such records during the term of this Agreement. All records, books, documents and other materials maintained, prepared, or issued by the District in the implementation of this Agreement shall be the property of the District, which shall have the responsibility of the retention and release of those materials.

9. Mutual Indemnity. The District shall indemnify, defend and hold harmless the City, its officers, agents and employees, from and against any and all claims, losses or liability, 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 District, its officers, agents, and employees, in connection with the District Work described in this Agreement, or arising out of the District's non-observance or non-performance of any law, ordinance, or regulation applicable to the District Work.

The indemnification obligation of District shall not be limited in any way by the application of any workmen's compensation acts, disability benefit acts or other employee benefit acts and the District expressly waives the protection afforded by such laws. The foregoing waiver and indemnification obligations have been mutually negotiated.

The City shall indemnify, defend and hold harmless the District, its officers, agents, employees, contractors, and subcontractors from and against any and all claims, losses or liability, 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 District Work and City Project described in this Agreement, or arising out of the City's non-observance or
non-performance of any law, ordinance, or regulation applicable to the District Work and City Project.

The indemnification obligation of the City shall not be limited in any way by the application of any workmen’s compensation acts, disability benefit acts or other employee benefit acts and the City expressly waives the protection afforded by such laws. The foregoing waiver and indemnification obligations have been mutually negotiated.

10. **Severability.** 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.

11. **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 attorneys’ 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 attorneys’ fees and costs as determined by the court.

12. **Construction.** This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements or understandings among the Parties with respect thereto. This Agreement may be amended only by an agreement in writing signed by the Parties.

13. **Mutual Negotiation and Construction.** This Agreement and each of the terms and provisions hereof are deemed to have been explicitly negotiated between, and mutually drafted by, the Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either Party.

14. **Governing Law; Venue.** This Agreement is governed by the laws of the state of Washington, without regard to its conflict of law provisions. The jurisdiction of any action hereunder shall be in the Superior Court, Chelan County, Washington.

15. **Confidential Information Disclosure.** Prior to City completion of the City Project public bid, Exhibits B and C of this agreement shall be considered confidential information and shall be marked as such.
16. Public Disclosure. The obligations of the parties regarding confidential information may be subject to state and federal public disclosure laws, as now exist or as may be hereafter amended. The parties may disclose confidential information to the extent it is required to be disclosed pursuant to the public disclosure laws. If a public disclosure of confidential information is requested, the party receiving the request agrees to notify the other of such request at least ten (10) business days prior to disclosure being made. The other party may immediately seek a protective order in the appropriate court. The receiving party will reasonably cooperate with the other in such action, but is under no obligation to obtain or seek any court protection.

17. Relationship of Parties. The Parties intend that an independent contractor relationship will be created by this Agreement. The conduct and control of the Project Contract and safety measures required by Project Contract lie solely with the City and its Contractor. Neither party, their officers, employees, agents, contractors or subcontractors shall be considered an agent or employee of the other for any purpose and neither party is entitled to any of the benefits that the other provides for its respective employees.

APPROVED BY

THE CITY OF WENATCHEE

this 16th day of April, 2007.

By: [Signature]

Name: Dennis Johnson

Title: Mayor

Attest: [Signature]

City Clerk

APPROVED BY

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON

this 18th day of March, 2007.

By: [Signature]

Name: Richard L. Jones

Title: General Manager

Attest: [Signature]