INTERAGENCY AGREEMENT RE FUELING OF MOTOR VEHICLES

BETWEEN

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY

And

CITY OF WENATCHEE

THIS AGREEMENT is made and entered into this 28th day of August 2008, by and between Public Utility District No. 1 of Chelan County ("District") and the City of Wenatchee ("City"), hereinafter collectively referred to as "Parties."

IT IS THE PURPOSE OF THIS AGREEMENT to allow access for the fueling of City vehicles at District facilities.

RECITALS

The City and the District are each authorized to own, operate and maintain motor vehicles in furtherance of their respective public corporate purposes.

The District operates and maintains a fueling facility on 5th Street in the City of Wenatchee.

The District and the City have previously determined that it is mutually beneficial to fuel both District and City motor vehicles at the District’s 5th Street fueling facility and have done so by agreement in accordance with Chapter 39.34 RCW since July 1, 1994.

The District and the City have determined that it continues to be mutually beneficial to fuel both District and City motor vehicles at the District’s 5th Street fueling facility in accordance with the provisions of Chapter 39.34 RCW, but desire to enter into this new Agreement to update, supersede and replace the provisions of the July 1, 1994 agreement.

NOW, THEREFORE, in consideration of the mutual covenants, benefits and obligations provided herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follow:

1. **Fueling Facilities.**

   District shall operate and maintain its 5th Street fueling facilities for the mutual benefit of the District and the City. The District shall allow the City reasonable access at all hours for the purpose of fueling City vehicles.
2. **Chip Key Reader.**

   The City currently uses a chip-key reader and chip keys to fuel City vehicles. The City shall be responsible for costs associated with making the City vehicles compatible with the District’s fueling system, including without limitation, labor costs associated with setting up City vehicles in the District’s fuel system.

3. **Fuel Price.**

   The District will charge $0.10 per gallon over the actual cost of the fuel to the District, including the sales tax imposed by the State for red dyed diesel fuel and all other actual costs. The purpose of the $0.10 shall be to cover the District’s increased administrative and maintenance costs that result from the City’s use of the facility. The increased charge per gallon shall be reviewed by the District on an annual basis to determine its adequacy in meeting the increased costs and will be adjusted as appropriate to cover the next year’s projected costs. Any increase in charges shall not exceed the increased costs. The City shall compute and be responsible for the payment of all road taxes imposed by State for on-road applications.

4. **Fueling Times.**

   The Parties shall work together to provide City reasonable access to fueling facilities and to minimize interference with the normal operations of the City and the District. The Parties acknowledge that both Parties operate and need access to fuel vehicles 24 hours a day, 7 days a week.

5. **Bid for Fuel.**

   District bids for fuel shall include estimated quantities of fuel for both the City and the District. City shall provide data necessary for City estimates to District on request. The District shall not be liable to City for additional fuel costs, if any, incurred by City in the event the District’s fuel supply is temporarily depleted.

6. **Cost of Improvements and Additions.**

   In the event that the District’s 5th Street fueling facilities require improvements or additions for the purpose of maintaining the provision of fuel to both the District and the City, the District may request the City help fund the needed additions or improvements. At the termination of this Agreement, any and all additions or improvements shall be and remain the property of the District, unless the Parties agree otherwise in writing.

7. **Billing.**

   The District shall prepare and forward to the City an itemized billing showing the amounts of fuel provided to the City, as well as any incidental supplies, including but not limited to motor oil or antifreeze. The City shall pay the District within twenty (20) days of receiving the bill for the prior month.
Compensation under this Agreement shall be in accordance with the provisions of RCW 39.34.130.

8. **Insurance and Indemnification.**

The City shall provide liability insurance coverage for the duration of this Agreement for its officers, agents and employees’ activities while they are involved in the performance of this Agreement in an amount of not less than $1 million ($1,000,000.00). The District’s Risk Manager or designee shall be provided proof of such insurance within thirty (30) days of the execution of this Agreement and the District will be named as an additional insured as respects this Agreement. If the City is self-insured, evidence of $1 million ($1,000,000.00) per occurrence coverage for general liability shall be provided to the District’s Risk Manager or designee by the administrator of the self-insurance program.

Further, the City shall indemnify, defend and hold harmless the District and any and all of the District’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 the District or said other indemnitees may be put or subject by reason of any act, action, neglect, omission or default under this Agreement or otherwise on the part of the City or any of its officers or employees. Such indemnity obligation shall not apply where such injury or loss is solely caused by the negligence of the indemnitee. With regard to any claim based on the concurrent negligence of the indemnitor, its agent or employee, and the indemnitee, the indemnitor’s liability under this paragraph shall apply to the full extent of the negligence of the indemnitee, its agent or employee.

9. **Term and Termination.**

The Term of this Agreement shall be for a period of five (5) years from the effective date above written. This Agreement may be extended an additional five (5) years by the Parties by mutual assent.

The District may terminate this Agreement as follows:

1) by providing one (1) year advance written notice.
2) immediately, in the event that the District is prohibited or prevented from dispensing fuel at the 5th Street facilities.

The City may terminate this Agreement as follows:

1) by providing sixty (60) days advance written notice.

Either Party may terminate this Agreement on thirty (30) days written notice for material breach by the other Party, provided, however, that in the event that the breaching Party cures the breach prior to the expiration of the thirty (30) day notice period this Agreement shall not terminate.
10. **Effective Date.**

   This Agreement shall be effective on the day and year first written above.

11. **Authority.**

   The Parties hereto each represent that they now possess the lawful authority to enter in this Agreement.

12. **Merger.**

   This Agreement constitutes the entire agreement of the Parties regarding the subject matter hereof. This Agreement may only be modified in writing, signed by authorized representatives of the District and the City.

13. **Records.**

   The Parties to this Agreement shall each maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the service(s) described herein. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

   Records and other documents, in any medium, furnished by one party to this agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

14. **Independence.**

   The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

15. **Governing Law.**

   This Agreement is entered into pursuant to and under the authority granted by the laws of the State of Washington, including without limitation Chapter 39.34 RCW. The provisions of this Agreement shall be governed by and construed to conform to those laws.
16. **Assignment.**

The benefits and obligations provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either Party in whole or in part, without the express prior written consent of the other Party.

17. **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.

18. **Severability.**

If any provision of this Agreement 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.

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

By: [Signature]

Richard Riazzi, General Manager

Date: 1-6-09

**CITY OF WENATCHEE**

By: [Signature]

Dennis Johnson, Mayor

Date: August 28, 2008