INTERLOCAL AGREEMENT BETWEEN CITY OF WENATCHEE AND PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY

THIS INTERLOCAL AGREEMENT ("Agreement") is hereby entered into by and between City of Wenatchee, Washington (the "City"), and Public Utility District No. 1 of Chelan County, Washington (the "District"), sometimes collectively referred to as the "Parties". This Agreement is made pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW.

WHEREAS, the City is engaged in South Wenatchee Avenue Improvements, involving improvements to South Wenatchee Avenue in Chelan County, Washington (the "Project"), as generally depicted on the Project plans and specifications included in the City’s bid package ("Contract Bid Documents"); and,

WHEREAS, the City and the District are Parties to a Franchise Agreement for electric transmission and distribution facilities entered into on February 18, 2005, Ordinance No. 2005-03 ("Franchise Agreement"); and

WHEREAS, the City staff and the District staff have worked cooperatively through the design phase of the Project for the mutual benefit of the Parties and to assure compliance with the Parties’ Franchise and Use Agreements; and

WHEREAS, as a result of the cooperative planning between the Parties, the District developed plans and specifications for water work (the "District Work") for inclusion in the Contract Bid Documents. District Work is specifically referred to as Group 3 Work in the Contract Bid Documents. The Project is scheduled to be advertised for bid around June 13, 2012; and

WHEREAS, the District desires to complete its District Work in the Project area, as generally described in attached Sheet 38, before final completion of the Project; and

WHEREAS, as set forth in this Agreement, the City and the District desire to continue their cooperative efforts through bidding, construction of the District Work and the Project by the City Contractor ("Contractor"), and for such work as may be performed by the Parties’ respective forces in addition to each Party’s work under the awarded Project Contract ("Contract"); and

WHEREAS, the Project is funded with a combination of federal, state, and local funding, the Washington State Department of Transportation ("WSDOT"), Federal Highway Administration ("FHWA") and other federal and state agencies have oversight responsibility and authority and the parties will be required to cooperate with oversight.
NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and 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 coordinate District Work concurrent with Project construction improvements, by inclusion of the District Work as Group 3 Work in the Contract Bid Documents, and to set forth duties and responsibilities of each Party for the District Work done in conjunction with the Project.

2. Scope of Work. District Work for the Project is set forth in Exhibit A. District Work includes the installation of approximately 370 feet of new 8-inch ductile iron water main by the Contractor. Also included is the required coordination between the Contractor and District crews for connections of new main to the existing main.

3. City Obligations. The City shall:

3.1. Administer the bidding and contract award, consistent with bid laws applicable to the Project, including:
   a.) Preparing the Contract Bid Documents to include the District Work as provided in Exhibit A;
   b.) Advertising for Project bids and administering the Project bidding process, including coordinating and forwarding to the District prospective bidders' requests for information related to District Work;
   c.) Requiring the Contractor to name the District as an additional insured under its insurance obligations in the Contract;
   d.) Allow for District inspection of bid proposals after bid opening; and
   e.) Awarding of the Contract.

3.2. Administer the Contract subject to the provisions of this Agreement for District Work, including:
   a.) Contract administration for the complete Contract, including District Work;
   b.) Communication and coordination with the Contractor to schedule all Work, including District Work, and to be the lead agency for inspection and for coordinating resolution of questions and issues arising during the performance of the Contract;
   c.) Disbursement of payments to the Project Contractor relating to District Work, subject to the District's written approval in advance;
   d.) Administration of change orders relating to District Work subject to the District's written approval in advance; and
   e.) Allowing for District inspection of the District Work performed by the Contractor.

3.3. Provide construction engineering, including survey control (except as set forth in paragraph 4.3 below).
3.4 Determine Project completion. Completion shall not be determined until the District has provided written acceptance to the City of District Work performed by the Contractor under the terms of the Contract.

3.5 Determine final acceptance of the Project.

3.6 Assign to the District any claims or defenses it has related to the District Work and the District's obligations set forth in Sections 4.9 and 4.11 below.

4. District Obligations. The District shall:

4.1. Provide plans, specifications, and an engineering estimate of costs for the District Work to the City as necessary for inclusion in the Contract Bid Documents.

4.2. In consultation with the City, answer and document responses to prospective bidders' questions relating to District Work prior to bid award and provide the City with the copies of the documentation.

4.3. Provide inspection, project management, engineering, materials testing, and other services as needed to ensure that District Work is performed in compliance with the Contract.

4.4. Provide review and written approval to the City for any change orders for District Work before implementation.

4.5. Reimburse the City for City administration costs for District Work.

4.6. Reimburse the City for Costs of District Work.

4.7. Provide the City with written acceptance of District Work, performed by the Contractor, at Project completion.

4.8. Provide to the City with red-lines of District Work for inclusion in the City's as-builts.

4.9. Assume liability, indemnify, defend and hold harmless the City for claims related to District design of the plans and/or specifications for the District Work, for District inspection of District Work, and for District errors and omissions in its District Work.

4.10. Cooperate with oversight and audits of the Project.

4.11. Pursue and prosecute at its sole cost and discretion any actions against the Contractor for breach of contract related to District Work.
5. Filing and Effective Date. This Agreement shall become effective upon the date of filing of the executed Agreement with the Chelan County Auditor. The City shall file this Agreement with the Chelan County Auditor promptly after the Agreement is executed.

6. Duration and Termination. Subject to the provisions of section 6.1 below, this Agreement will terminate after final payment for the City’s administration costs and for the District Work is received by the City from the District upon the completion of the Project; except, this Agreement may be terminated prior to the award of the Contract by written mutual agreement signed by authorized personnel of each party, by City rejection of all bids, or by the District directing the City in writing to reject all bids for the Group 3 District Work. Additionally, WSDOT and FHWA must approve incorporation of the District Work into the Project. This Agreement terminates if WSDOT and FHWA do not approve incorporation of the District Work into the project. The City shall promptly notify the District in writing in the event that this Agreement is terminated due to WSDOT and FHWA failure to timely grant the required approval.

6.1 The District’s obligations for the following matters shall survive the termination of this Agreement:
   a. The District’s obligation to provide the City with red-lines of District Work for inclusion in the City’s as-buils as set forth in Section 4.8 above;
   b. The District’s obligation to assume liability, indemnify, defend and hold harmless the City for claims related to District design of the plans and/or specifications for the District Work, and for District errors and omissions in its District Work as set forth in Section 4.9 above;
   c. The District’s obligation cooperate with audits of the Project as set forth in Section 4.10 above; and
   d. The District’s obligation to pursue and prosecute at its sole cost and discretion any actions against the Contractor for breach of contract related to District Work as set forth in Section 4.11 above.

7. Property and Equipment. Upon termination of this Agreement, all property and equipment purchased by the City in furtherance of this Agreement shall remain property of the City and all property and equipment purchased by the District in furtherance of this Agreement shall remain property of the District. All property and equipment shall be returned to the owner within a reasonable time after termination of this Agreement.

8. Costs. Each Party shall be responsible for its respective costs of work under the Contract.

8.1. The Costs of District Work shall be the cost to complete Group 3 Work, and shall be adjusted for changes to District Work, if any, as set forth under Section 1-04.4 of the Standard Specifications 2010, adopted below.
8.2. The District shall be responsible for its internal costs for District inspection, engineering, project management, materials testing, and other District tasks and services not defined in this Agreement.

8.3. The District shall reimburse the City in the amount of five percent (5%) of the completed Costs of District Work for City administration of District Work.

9. Payment. Upon receipt of periodic invoices from the City, the District shall make corresponding periodic progress payments to the City. Each progress payment and the final payment are due within thirty (30) days of the date the related invoice is mailed by the City to the District.

10. Records. The Parties shall be responsible for record keeping, record retention, and access to records as follows:

9.1. The City shall keep and maintain accurate and complete cost records pertaining to the Project as administered under the Contract and this Agreement ("City Records"). The District shall have full access and the right to examine City Records during the term of this Agreement and until expiration of the applicable record retention period.

9.2. All records, books, documents and other materials owned, used, retained, maintained, prepared, or issued by the District in the implementation of this Agreement ("District Records") shall be the property of the District, which shall have the responsibility of the retention and release of those materials. The City shall have full access and the right to examine District Records during the term of this Agreement and until expiration of the applicable record retention period. Federal and state agencies with funding, oversight, auditing or investigative need or right to examine District Records shall likewise have full access and the right to examine District Records during the term of this Agreement and until expiration of the applicable record retention period.

11. Mutual Indemnity. To the fullest extent allowed by law:

11.1. 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, or arising out of the District’s non-observance or non-performance of any law, ordinance, or regulation applicable to the District Work.

11.2. The indemnification obligation of the 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.

11.3. 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 Project, or arising out of the City’s non-observance or non-performance of any law, ordinance, or regulation applicable to the Project.

11.4. 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.

12. Amendment. The City and the District may mutually amend this Agreement. Such amendment(s) shall not be binding unless made in writing and signed by personnel authorized to the bind the City and the District.

13. Public Records Act. Public records of either party to this agreement which contain confidential information may be subject to state public records act and other public records laws, as now exist or as may be hereafter amended. If inspection and/or copying of public records containing confidential information is requested, the party to this agreement receiving such request agrees to notify the other party’s Public Records Officer of the request at least ten (10) business days prior to the records being made available for inspection or copying by the requestor. The other party to this agreement may promptly seek a protective order in the appropriate court. The party to which a public records act request is made will reasonably cooperate with the other party to this agreement in its protective order action, but is under no obligation to obtain or seek any court protection. The Parties Public Records Officers are:

13.1. The City

City Clerk
PO Box 519
129 South Chelan Avenue
Wenatchee, WA 98801
tel. (509)888-6204
fax (509)888-3636
cityclerk@wenatcheewa.gov

13.2. The District

Public Records Officer
Public Utility District No. 1 of Chelan County
14. Relationship of Parties. The Parties intend that an independent contractor relationship will be created by this Agreement. 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.
15. Contact Information. The following shall be the contact person for each party:

15.1. The District
John Goodwill, Project Manager
Public Utility District No. 1 of Chelan County
327 N. Wenatchee Ave
Wenatchee, WA 98807
tel. 509-661-4022
fax 509-661-8148
john.goodwill@chelanpud.org

15.2. The City
Matt Leonard, Assistant City Engineer
City of Wenatchee
1350 Mckittrick Street
Wenatchee, WA 98801
tel. 509-888-3205
fax 509-888-3201
mleonard@wenatcheewa.gov

15.3. Each party shall arrange for an alternate contact person in the circumstance that the aforementioned contact person is unavailable.

16. Governing Law; Venue. This Agreement is governed by the laws of the State of Washington, both as to interpretation and performance. Any action at law, suit in equity or other judicial proceeding for enforcement of this Agreement shall be instituted only in the Superior Court of Chelan County, State of Washington.

17. Disputes. In the event that a dispute arises under this Agreement and prior to initiation of any legal action, authorized representatives of each party shall meet and negotiate in good faith to attempt to resolve the dispute.

18. Attorney Fees; Costs. If it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this agreement, each party shall be responsible for its own attorneys’ fees and costs.

19. 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.

20. 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.


21. Franchise and Use Agreements. This Agreement is specific to the Project only and does not otherwise amend or alter the Parties' existing Franchise Agreement and Use Agreement.

22. Entire Agreement. The preamble and the Exhibit A attached to this Agreement are incorporated into this Agreement. This instrument embodies the whole agreement of the Parties. There are no promises, terms, conditions, or obligations between the Parties with regard to the subject matter of this Agreement other than those contained in this Agreement. This Agreement supersedes all previous communications, representations or agreements, either oral or written between the parties about the subject matter of the Agreement.
APPROVED BY
Dated this 12 day of July, 2012.

City of Wenatchee

Frank Kuntz, Mayor

ATTEST:

Tammy Stanger, City Clerk
Dated: 7/12/12

APPROVED AS TO FORM

Steve D. Smith
City Attorney
Date: 7/12/12
APPROVED BY

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON

DATED this 19th day of June 2012.

[Signature]
Acting General Manager
EXHIBIT A
CHELAN COUNTY PUD
SOUTH WENATCHEE AVENUE IMPROVEMENTS
BID DOCUMENTS

CONFIDENTIAL