INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (the "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, Port of Chelan County, and the Pybus Market Charitable Foundation are engaged in community development project involving the construction and operation of a new public market and public parking commonly known and referred to as the Pybus Market (hereinafter "Pybus Market") located on real property owned by the Port of Chelan County and the Pybus Market Charitable Foundation; and

WHEREAS, the City has obtained a perpetual easement from the Pybus Market Charitable Foundation for public parking and access on the Pybus site located in Wenatchee, Washington adjacent to property that the District leases from the City and upon which the District operates and maintains the Wenatchee Riverfront Park ("Park") pursuant to the District's license to operate the Rock Island Hydroelectric Project No. 943 ("Rock Island"); and

WHEREAS, the City has requested access to the Riverfront Park access road and adjacent greenbelt area as depicted in Exhibit A attached hereto and incorporated herein by this reference ("Road") which the District owns and maintains as part of the Riverfront Park. The City has requested access in order for the City to provide public vehicular access to the Public Market; and in support of the redevelopment of the Wenatchee waterfront; and

WHEREAS, the City and District have entered into the "Second Amendment to the Ground Lease" to define the terms and conditions for allowance of connection to the Road; and

WHEREAS, the District desires to permit the City to repair, modify, improve, use and maintain the Road to provide for public vehicular use of the Road and access to the Pybus Market on the terms and conditions hereof; and

WHEREAS, the City is performing a street improvement project on Worthen Street and Orondo Avenue to support development of the Waterfront; and

WHEREAS, the City and District desire to take advantage of the efficiencies of incorporating improvements to the Road into the City street improvement projects; and

WHEREAS, City and District staff have worked cooperatively through the conceptual design phase for the repair, modification and improvement of the Road ("Project"); and

WHEREAS, as a result of the cooperative planning meetings between the Parties, the City and the District desire to continue their cooperative efforts through final design, public bidding, construction and financing of the Project and to provide for the ongoing use, operation and maintenance of the Road by the City as set forth in this Agreement;

WHEREAS, the City is authorized by chapter 39.104 Revised Code of Washington (RCW) (the "Act"), under certain conditions, to establish an increment area within the boundaries of the City and
to finance public improvements using local revitalization financing in order to promote and facilitate
the orderly redevelopment of and to encourage economic growth and development within the
increment area; and

WHEREAS, the City has worked with the District over the past several years regarding
construction of certain public improvements in anticipation of local revitalization financing located in
the Wenatchee Riverfront Planning Area. Such improvements include, but are not limited to, a
project commonly known as the Pybus Public Market, that will include space for the permanent
location of outdoor farmer’s market and participation in regional food bank distribution, a public plaza
area with parking and pedestrian access, and a gateway to the South Node providing improved
pedestrian access to the Riverfront Park and Orondo Street boat landing; and

WHEREAS, improvements to the Road will benefit the overall redevelopment of the South
Node through improved public access to the Park and adjoining properties; and

WHEREAS, in accordance with the provisions of the Act, the City Council enacted Ordinance
2009-26 (the “Ordinance”) establishing the Local Revitalization Financing District - Wenatchee
Waterfront (the “LRF Waterfront District”), describing the public improvements, the boundaries of the
LRF Waterfront District, estimating the cost of public improvements and the portion of those public
improvement costs to be financed by local revitalization financing, including payment of public
improvement costs on a “pay-as-you-go” basis; and

WHEREAS, in furtherance of the Ordinance establishing the LRF Waterfront District, and in
addition to this Development Agreement, the City Council may take further action(s) authorizing the
City to incur indebtedness, in the form of an inter-fund loan, note, line of credit, bond anticipation note
or other interim financing, or bonds or other long-term indebtedness, contractual commitments or
some combination thereof to finance or pay for the public improvements costs in the LRF Waterfront
District; and

WHEREAS, without the commitment of the City to prioritize the use of Incremental Revenue
derived from the LRF Waterfront District or other resources toward the improvement of the Road, the
District would not undertake the significant improvements proposed for the Road; and

WHEREAS, without the commitment of the City to repay the District for the investment of up to
$150,000 toward the improvement of the Road, the District would not undertake the significant
improvements proposed for the Road; and

WHEREAS, the terms of repayment of the District’s investment are provided under 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 provide for the continued cooperation of the Parties for the design, public bidding, construction and financing of the Project and to provide for the ongoing use, operation and maintenance of the Road by the City as set forth in this Agreement.

2. **Term.**

This Agreement shall be effective on the latest date of execution by the Parties ("Effective Date").

This Agreement shall terminate on completion of the payment provisions set out at Section 6 hereof.

Upon termination of this Agreement, all obligations and liabilities incurred by the Parties through the date of termination shall be preserved until satisfied.

Notwithstanding any provision of this Agreement to the contrary, the rights and obligations of this Agreement set out at Sections 8 and 9 shall survive termination of this Agreement.

3. **Scope of Work.**

The Scope of Work for improvements to the Road includes a structural overlay of the Road and reconfiguration of the road drainage system. The City’s consultant is developing plans and specifications for improvements to the Road which shall be approved by the District prior to bid.

4. **Project Completion.**

City shall complete the construction of the Project, including:

4.1. Upon District approval the plans and specifications will be included by the City in a public bid package.

4.2. Administering the bidding and contract award, consistent with public bid laws for the City Project, including:
   a.) Preparing bid documents;
   b.) Advertising for construction bids;
   c.) Awarding of the construction contract.

4.3. Administering the construction contract for the Project, including:
   a.) Scheduling the construction work in coordination with the District;
   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.) Coordinating with the District to provide traffic control and access to the Park during construction;
   e.) Coordinating and providing all inspection and permitting necessary to the Project;
f.) Invoicing the District during Project construction in accordance with the provisions of Section 4 of this Agreement; and

g.) Coordinating final acceptance of the Project following construction, including, inter alia, obtaining the District's written acknowledgement of Project completion prior to final acceptance of the Project ("Final Acceptance").

4.4. Providing field engineering, including survey control and construction staking and as-built drawings.

4.5. Administering and managing the budget for this Project.

5. Local Revitalization Financing District (LRF) - Wenatchee Waterfront.

Ordinance 2009-26 Establishing Increment Area. As required in 39.104 RCW, the City Council determined that establishing the LRF Waterfront District is in the best interests of the City, all as set forth in the Ordinance. The City has determined that the Public improvements identified in this agreement, the costs associated with the Public Improvements, and the Contractual Obligations identified in this Agreement are eligible and otherwise qualify under 39.104 RCW for reimbursement as determined in the Ordinance.

5.1. Construction of the Public Improvements. The City will construct improvements to the Road as specified in Section 3 of this agreement.

5.2. Authorization of Project Indebtedness. As a material consideration for entering this Agreement, the City hereby determines that it is in the best interests of the City to incur project indebtedness through the Contractual Obligations for repayment set forth herein.

6. Project Funding.

The District and the City shall fund the construction of the Project as follows:

6.1. The District will advance up to, but not to exceed, $150,000.00 for actual Project construction costs. The City shall be responsible for all construction costs in excess of $150,000.00. Upon receipt of a correct invoice from the construction contractor ("Contractor Invoice"), the City shall invoice the District for the amount of the Contractor Invoice ("City Invoice"). The District shall make periodic progress payments to the City based upon correct City Invoices. Each progress payment and the final payment following Final Acceptance shall be due within 20 days of the date the City Invoice is received by the District. The total of all City Invoices shall not exceed $150,000.00.

6.2. The City shall not be entitled to receive from the District and shall not invoice the District for any administrative costs or fees associated with the Project, including without limitation, Project construction. As between the Parties, all of City's internal and administrative costs and expense associated with the Project shall be borne by City.
6.3. The City shall repay the District as outlined in Section 5 pursuant to Section 6.4 hereof.

6.4. Following Final Acceptance of the Project and satisfaction of the payment obligations set forth in Section 6.1, the City shall be obligated to make payments to the District for all District funds advanced pursuant to Section 6.1 hereof together with interest thereon at the rate of 5.28% per annum amortized over 7 years pursuant to the following payment schedule:

<table>
<thead>
<tr>
<th>Payment Schedule Due</th>
<th>Beginning Balance</th>
<th>Payment</th>
<th>Interest</th>
<th>Principal Payment</th>
<th>Ending Balance</th>
</tr>
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<tr>
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<td>$150,000</td>
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<td>$6,955.52</td>
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<td>$112,502.25</td>
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<tr>
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<tr>
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<td>$21,315.53</td>
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<tr>
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<tr>
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<td>$26,186.64</td>
<td>$1,313.31</td>
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</tr>
</tbody>
</table>

Provided, however that if the City does not receive the state contribution, as indicated in Section 5, and the funds do not become available to City by December 31, 2016, and provided further that the City is in compliance with its repayment obligations under this subsection, then, the District agrees to forgive 50% of the loaned amount and the City’s repayment obligation pursuant to this subsection shall terminate upon the City making a final January 15, 2017 payment which will equal 50% of the loaned amount plus interest. The following payment schedule indicates the City’s obligation to repay the loan at 50%:

<table>
<thead>
<tr>
<th>Payment Schedule Due</th>
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<th>Payment</th>
<th>Interest</th>
<th>Principal Payment</th>
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<td>$250.14</td>
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</table>

Provided further that in the event that the Project costs are less than $150,000.00 then the total actual Project costs shall be amortized at 5.28% over a period of 7 years and the above payment schedules shall be replaced with revised payment schedule.

The City shall have the option to prepay principal in part or in full to reduce interest paid and to accelerate fulfillment of the obligations set forth above. Adjustment of the above amortization schedules will be performed upon prepayment of principal.

7. Post Project Completion Obligations.

The responsibilities of the City and District for the road and greenbelt following project completion are specified in an agreement entitled the Second Amendment to the Ground Lease.
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 of litigation regarding any of the terms of this Agreement, each party shall pay their own attorneys fees and costs.
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.


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.


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.


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.


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.

17. No Third Party Beneficiaries.

This Agreement is made and entered into for the sole benefit of the Parties, and the Parties intend that no other person or entity shall be a direct or indirect beneficiary of this Agreement.
APPROVED BY
THE CITY OF WENATCHEE
this 21st day of August, 2012.
By: Frank J. Kuntz
Name: Frank J. Kuntz
Title: Mayor
Attest: Jammie Stanger
City Clerk

APPROVED BY
PUBLIC UTILITY DISTRICT NO. 1 OF
CHELAN COUNTY, WASHINGTON
this 22nd day of August, 2012.
By: Kirk Hudson for John Jamney
Name: Kirk Hudson
Title: Acting General Manager
Attest: Sheila Salma
Clerk of the Board
FIRST AMENDMENT OF GROUND LEASE

This First Amendment of Ground Lease ("First Amendment") is made and entered into effective this 22nd day of August, 2012 by and between, PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON ("District") and the CITY OF WENATCHEE, WASHINGTON ("City"). The District and the City are sometimes referred to hereinafter collectively as "Parties" and individually as "Party".

WITNESSETH:

WHEREAS, the Parties by Wenatchee Riverfront Park Agreement ("Agreement") and Ground Lease ("Lease") agreement dated November 22, 1983, entered into a Lease of certain real property in accordance with the terms and provisions of that certain Lease agreement which is attached hereto and made a part hereof by this reference, and

WHEREAS, the Lease describes the Lease Premises at Section 2.1 and more specifically in Exhibit C attached thereto; and

WHEREAS, the Parties desire to add some real property to the Lease Premises, remove some real property from the Lease Premises and restate and correct the legal description for the Lease Premises, and

WHEREAS, the Parties in light of same now desire to amend the terms and provisions of said lease agreement only as provided herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the Parties agree as follows:

August 22, 2012
1. **Description.** The description of the Lease Premises set out in the Lease at Section 2.1 and in the attached Exhibit C shall be, and hereby is, replaced by the description attached hereto as Exhibit “A”.

2. **Ratification.** All other terms and provisions of the Lease except as expressly amended hereby are ratified, affirmed and approved.

**CITY OF WENATCHEE**

By: Frank Kantz  
Title: Mayor  
Date: **8/20/12**

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

By: Keith Truscott  
Title: Director, Natural Resources  
Date: **8/22/12**
State of Washington
County of Chelan

I certify that I know or have satisfactory evidence that FRANK KUNTZ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of City of Wenatchee to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 22 day of Aug., 2012.

Signature: [Signature]
Tammy L. Stanger, Notary Public
My Appointment Expires 28/13

State of Washington
County of Chelan

I certify that I know or have satisfactory evidence that KEITH TRUSCOTT is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Director of Natural Resources of Public Utility District No. 1 of Chelan County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 22 day of August, 2012.

Signature: [Signature]
Sheila A. Salmon, Notary Public
My Appointment Expires 7/20/13
Exhibit “A”

That portion of the hereinafter described Tracts lying easterly of the following described Park Boundary Line:

**Tracts**
Lot 2 and Lot 3, Block 2, Second Suburban Home Addition to Wenatchee Washington, as filed in Volume 1 of Plats at Page 23, records of Chelan County.

The vacated portion of Fifth Street as platted on said Second Suburban Home Addition.

Lot 1 and Lot 2, Block 1, Second Suburban Home Addition to Wenatchee Washington, as filed in Volume 1 of Plats at Page 23, records of Chelan County.

A portion of the Southwest Quarter of the Northeast Quarter of Section 3, Township 22 North, Range 20 East, W.M. bounded on the Northeast by the Columbia River, bounded on the Southeast by the Northwest line of Lot 12, Block 1 Riverfront Addition to the city of Wenatchee, bounded on the Southwest by a line drawn parallel with and distant 320 feet Northeasterly of, as measured at right angles to the Burlington Northern Santa Fe main track centerline, and bounded on the Northwest by the Southeasterly line of Lot 2 Block 1, Second Suburban Home Addition to Wenatchee.

All of Riverfront addition to Wenatchee, according to the plat thereof recorded in Volume 2 of Plats at Page 64, records of Chelan County, together with all Streets and Alleys shown on said plat.

**Park Boundary Line**
Commencing from a 1 inch brass cap in a monument case at the intersection of Kittitas and Columbia Streets in the City of Wenatchee, situated in Chelan County, and the State of Washington:
Thence South 29°16’55” East along the centerline of said Columbia Street, 306.6 feet;
Thence North 60°40’50” East, 615.67 feet to a point labeled as “19” shown on that Record of Survey of Chelan County P.U.D. Exhibit R, filed in Book 15 at Pages 65 and 66, and the point of beginning of the park boundary line being described.
Thence along a non tangent curve concave to the Southwest, being the abandoned Great Northern spur line easterly right of way with a chord bearing of North 34°26’ 49” West, a chord length of 98.69 feet, and a radius of 1004.93 feet, to a point labeled as “20a” on said Survey;
Thence following the boundary of said Survey through the following courses: North 16°58′44” West, 238.47 feet to a point labeled “21”;
Thence North 25°52’49” West, 156.66 feet, to a point labeled “22”;
Thence North 06°18’36” West, 289.59 feet, to a point labeled “23”;
Thence North 28°48′36” West, 415.00 feet, to a point labeled “24”;
Thence South 61°10’07” West, 30.31 feet, to a point labeled “25”;
Thence North 28°48′46” West, 158.96 feet, to a point labeled “26a”;
Thence North 19°11′28” East, 67.28 feet, to a point labeled “27a”;

August 22, 2012
Thence North 28°48'46" West, 231.00 feet, to a point labeled “28”;  
Thence North 61°10'07" East, 20.00 feet, to a point labeled “29”;  
Thence North 28°48'46" West, 225.00 feet, to point labeled “30”;  
Thence North 73°49'19" West, 106.05 feet, to a point labeled “31”;  
Thence South 61°10'07" West, 190.00 feet, to a point Labeled “32”;  
Thence North 28°50'21" West, 125.0 feet, to a point labeled “33”;  
Thence South 73°51'39" East, 84.90 feet, to a marked by a rebar and cap stamped “H.D.& A. L.S. 2989” also being the point labeled “34”;

Thence from this point “34”, following a boundary described in a Record of Survey for the City of Wenatchee filed in Book 57, Page 79, and recorded under Auditor’s file number 2361609, in Chelan County, Washington, described as follows:
Thence North 61°02'22” East 180.99 feet to a 5/8" rebar and cap, LS 22964, set under said survey;  
Thence North 16°15'30” East 99.68 feet to a 5/8" rebar and cap, LS 22964, set under said survey;  
Thence North 29°13'34” West 188.28 feet to a 5/8" rebar and cap, LS 22964, set under said survey;  
Thence North 61°23'22” East 12.50 feet to a 5/8" rebar and cap, LS 22964, set under said survey;  
Thence North 28°36'38” West 162.60 feet to a 5/8" rebar and cap, LS 22964, set under said survey also being the centerline of vacated First Street;  
Thence South 61°02'36” West, along said centerline 324.57 feet to an existing 5/8" rebar and cap labeled L.S. 9619, said point also being point “37a” as depicted in that Record of Survey of Chelan County P.U.D. Exhibit R, filed in Book 15 at Pages 65 and 66;

Thence from point “37a” returning to that Record of Survey of Chelan County P.U.D. Exhibit R, filed in Book 15 at Pages 65 and 66 and following the boundary described as follows:
Thence North 28°50'21” West, along said Survey boundary, 259.14 feet to a point labeled “38a”;  
Thence continuing along said Survey boundary, North 61°07'37” East, 215.74 feet to a point labeled “38b”;  
Thence continuing along said Survey boundary, North 16°03'26” East, 48.34 feet to a point labeled “39a”;  
Thence North 29°20'01” West, 835.45 feet to a point which is 20 feet from the centerline of Riverside Drive as now monumented when measured at right angles;  
Thence on a non-tangent curve to the left, which is Southeasterly, concentric too and 20 feet distant from the center line of Riverside Drive as now monumented, said curve having a radius of 145 feet, arc length of 59.28 feet, a Chord bearing of North 17°19'47” West and Chord length of 58.87 feet, to a point 20.00 feet Northeasterly from a rebar and cap stamped N.W.G. L.S. 39892 in a monument case marking the centerline of said Riverside Drive;  
Thence North 29°02'30” West, along a line 20 feet northeasterly and parallel with the centerline of said Riverside Drive as measured at right angles there from, 179.16 feet;  
Thence along a curve to the right, concentric to and 20.00 feet distant from said centerline, with a radius of 105.00 feet, a length of 51.67 feet;  
Thence on a curve to the left, concentric to and 20.00 feet distant from said centerline, with a radius of 145.00 feet a length of 72.11feet;  
Thence North 29°20'27” West along a line 20 feet Northeasterly and parallel with said centerline.
as measured at right angles there from, 234.80 feet;
Thence along a curve to the left with a radius of 130.00 feet, a length of 80.50 feet;
Thence North 64°49'11" West, along a line 30 feet Northeasterly and parallel with said centerline
as measured at right angles there from, 37.91 feet;
Thence North 30°58'01" East, 1.99 feet to a rebar and cap stamped "Erlandsen" marking an angle
point on the southerly line of Lot 1 SS # 1668, as filed in book 5 of Short Plats at page 5, records of
Chelan County;
Thence continuing North 30°58'01" East, along the Southeasterly line of said short plat, 92.60 feet
to a rebar and cap stamped "Erlandsen", marking the East most point of Lot 1;
Thence North 29°17'50" West, along the boundary of said Lot 1, 107.36 feet, to a rebar and cap
stamped "F.P.E. LS 22963";
Thence South 60°33'33" West, along the boundary of said Lot 1, 89.61 feet;
Thence on a non-tangent curve concave to the Southwest, with a chord bearing of North 34°39'49"
West, a chord distance of 44.49 feet, a radius of 62.5 feet, for a length of 45.49 feet;
Thence on a curve to the right, with a radius of 240.50 feet, a length of 63.04 feet;
Thence South 49°30'08" West, 11.50 feet;
Thence on a non-tangent curve concave to the Southwest, with a chord bearing of North 43°05'04"
West, a chord distance of 59.76 feet, a radius of 662.0 feet, for a length of 59.78 feet;
Thence on a curve to the right, with a radius of 488.00 feet, a length of 77.96 feet;
Thence North 32°42'35" West, 63.86 feet;
Thence on a curve to the right with a radius of 15.00 feet, a length of 13.91 feet;
Thence on a curve to the left with a radius of 15.00 feet, a length of 3.66 feet, to a point 20.00 feet
distant when measured at right angles from the monumented centerline of said Riverside Drive;
Thence North 29°17'43" West, parallel to the said centerline, 164.28 feet, to the Northerly line of
Lot 2 Block 2, Second Suburban Home Addition to Wenatchee as filed in book 1 of Plats at page
23, records of Chelan County;
Thence North 60°28'53" East, along the line the line between Lot 2 Block 2 and Lot 3 Block 3, of
said Addition, 148.99 feet, to a rebar and cap stamped "C.C.P.U.D. LS 35989" as Shown on
Record of Survey in book 54 at page 80, records of Chelan County;
Thence continuing North 60°28'53" East, along the line the line between Lot 2 Block 2 and Lot 3
Block 3, of said Addition, to the Columbia River and the end of the line being described.
SECOND AMENDMENT OF GROUND LEASE

Re: Pybus Market Access

This Second Amendment of Ground Lease ("Second Amendment") is made and entered into effective this 22nd day of August, 2012, by and between PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON ("District") and the CITY OF WENATCHEE, WASHINGTON ("City"). The District and the City are sometimes referred to hereinafter collectively as "Parties," and individually as "Party".

WITNESSETH:

WHEREAS, the Parties by the Wenatchee Riverfront Park Agreement ("Agreement"), and Ground Lease agreement, both dated November 22, 1983, and First Amendment to Ground Lease, dated August 22, 2012, (Ground Lease and First Amendment to Ground Lease are collectively "Lease"), entered into a Lease of certain real property in accordance with the terms and provisions of that certain Lease agreement which is made a part hereof by this reference; and

WHEREAS, the Lease specifically describes the Lease Premises at Exhibit "A" of the First Amendment to Ground Lease attached thereto, which Lease Premises the District operates as the Riverfront Park ("Park"); and

WHEREAS, the City is in the process of facilitating redevelopment of the South Node of the Wenatchee Waterfront and may be awarded State Local Revitalization Financing to help finance the development of public improvements benefitting the waterfront district; and

WHEREAS, the Parties agree that this amendment is necessary to address specific areas of coordination for the development of a Public Market, the redevelopment of the former

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Public Works Site, development of additional parking in the area, development of additional parking associated with the Day Use Moorage project, and access to the park access road; and

WHEREAS, the City, Port of Chelan County, and the Pybus Market Charitable Foundation are engaged in a project involving the construction and operation of a new public market and public parking commonly known and referred to as the Pybus Market (hereinafter "Pybus Market") to be located on real property owned by the Port of Chelan County and the Pybus Market Charitable Foundation adjacent to the Park; and

WHEREAS, the City has obtained a perpetual easement from the Pybus Market Charitable Foundation for the benefit of public parking and access serving the Park, the Public Market, and adjoining properties; and

WHEREAS, the City desires to construct a pedestrian and bicycle access to the Park at the end of the vacated Orondo Street to facilitate access from the Pybus Market and downtown to the Park consistent with the Waterfront Subarea Plan; and

WHEREAS, the City desires to see the redevelopment the former Public Works site at 25 North Worthen and is developing new park area within the Park consistent with the new Park boundary identified in the First Amendment to the Ground Lease; and

WHEREAS, the City requests pedestrian access to the trails in the Park from the former Public Works Site in order to encourage interaction between the future private use of this property and the Park; and

WHEREAS, the District has requested the construction of additional boat trailer parking consistent with the Interlocal Agreement Orondo Day Use Moorage; and

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WHEREAS, the City has requested vehicular access to the Riverfront Park access road ("Road") and adjacent greenbelt area, further described herein and ("Greenbelt"), both depicted in Exhibit A attached hereto and incorporated herein by this references which the District operates and maintains as part of the Riverfront Park. The City has requested vehicular access to the Pybus Market; and

WHEREAS, the City desires the Road serve as a public street and is willing to accept the maintenance responsibility of the Road and Greenbelt located between the Road and the adjoining properties in consideration for the District’s granting access to the Road from the Pybus Market; and

WHEREAS, the City has agreed to be the interface between the District and adjoining property owners throughout the redevelopment of the waterfront; and

WHEREAS, the City may request additional access points to adjoining properties in the future consistent with the intent of this agreement and which shall be subject to District approval; and

WHEREAS, the Road is in need of maintenance, and the City has agreed to upgrade the Road to improve its structural strength consistent with an Interlocal Agreement for construction improvements to the Road ("Improvements"); and

WHEREAS, the Parties agree that the nature of, and need for, ongoing maintenance and repair of the Road will change due to the City’s proposed Improvements and use of the Road; and

WHEREAS, the Parties desire to establish each Party’s responsibilities as they relate to the Improvements and Road; and

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WHEREAS, the Parties, in light of the foregoing, now agree to amend the terms and provisions of said Lease agreement only as provided herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the Parties agree as follows:

1. **Road Improvements.** The City shall construct the Improvements pursuant to a separate Interlocal Agreement between the Parties dated ________ ("Construction and Funding Agreement") the terms and conditions of which are incorporated herein by this reference.

2. **Use of Road.** Following Project Completion as that term is defined in the Construction and Funding Agreement, the City may immediately use the Road to provide public vehicular access to the Pybus Market. Use of the Road to provide vehicular access to other property(ies) adjacent to the Road shall require and be subject to the prior approval of the District, which approval shall be granted in the District’s sole discretion. All use of the Road other than for District purposes shall be subject to the terms and conditions of this Second Amendment, including, inter alia, the following:

   a) **Access Points.** The City may install and maintain, at City’s sole cost and expense, up to a total of four (4) predefined access points to/from the Road ("Access Points"). The approximate locations of the Access Points are identified at Exhibit "A," attached hereto. City agrees that there shall be no other vehicular access to/from the Road other than the four predefined Access Points. Pursuant to the Construction and Funding Agreement, final locations of the Access Points shall be approved by the District. The City may request that the District approve and permit additional access points to the Road.

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upon redevelopment of other properties adjacent to the Road, which approval may be granted at the District’s sole discretion.

b) **District Use.** The District’s use of the Road to provide access to Riverfront Park and District facilities (“Park Access”) shall be prior and paramount to City’s use of the Road. The City’s use of the Road specific to this Agreement is intended to allow the Road to act as a low volume public street to provide access to the Pybus Market. Access to other properties adjacent to the Road shall be subject to the prior approval of the District, which approval may be granted in the District’s sole discretion, as the redevelopment of the adjacent properties occurs over time. Additional vehicular access points to the Road beyond that which is specifically described in Exhibit A shall require prior District approval and be consistent with the Waterfront Mixed Use zoning district. The City’s use of the Road and/or access to the Road shall not interfere with the use of the Road for Park Access. In the event that the District is required by any Federal, State or local agency having jurisdiction over the District or its license to operate the Rock Island Hydroelectric Project, including, without limitation, the Federal Energy Regulatory Commission (“FERC”) to alter the Road or the use of the Road, the District’s may take such action as the District, in its sole discretion, deems necessary to comply. City shall cooperate with the District’s efforts. The District will make reasonable efforts to accommodate the City’s continued use of the Road to provide access consistent with the intent of this Agreement. Notwithstanding the forgoing, the City and District agree that they shall work cooperatively to address concerns that may arise related to Park Access and the City’s use of the Road.
c) Parking.

i. There shall continue to be 17 parking spaces on the west side of the Road designated for Park use.

ii. None of the parking spaces designated for Park use, including the 17 parking spaces located along the west side of the Road, shall be counted to satisfy any parking requirements associated with the development of the Pybus Market, the Public Works site or any other property not subject to the Lease. The City shall apply parking codes consistent with the codes in place at the time of development.

iii. City shall develop eleven (11) additional vehicle with attached boat trailer parking spaces to serve the Orondo Street boat launch, subject to District approval of location and plans.

iv. The Road will remain open to public use Park access 24 hours a day/7 days a week.

v. The City shall have the authority to issue traffic violations and the responsibility to police the Road.

vi. Access to the adjacent properties to and from the Road shall not be developed to accommodate truck traffic including garbage and delivery trucks.

vii. Following Project Completion as defined in the Construction and Funding Agreement, any improvements, modification or alterations to the Road shall be subject to District review and approval, which
approval shall not be unreasonably withheld. For purposes of this subsection, it shall not be unreasonable for the District to withhold approval for reasons related to the operation of the Rock Island Hydroelectric Project or to comply with FERC order or directive.

viii. There shall be no unauthorized use of the Road. The only use of the Road authorized by this Second Amendment, other than for continued Park Access, shall be vehicular and pedestrian access as described herein. No part of the property subject to the Lease, including, but not limited to the Road, shall be used for any other purpose that is not expressly authorized and permitted in advance by the District in writing.

2. **Operation and Maintenance of the Road and Greenbelt.** The City shall operate and maintain the Road from the East curb, including the curb, to the Western edge of the Leased Property, as depicted at Exhibit A attached hereto.

   a. **Road Surface.** The City shall keep the Road in good and safe repair consistent with City maintenance standards and practices. All maintenance and repairs shall be made promptly. In the event that the City does not make repairs as needed, the District shall provide the City 15 business day written notice of necessary repairs. In the event the City fails to repair the Road or fails to make satisfactory arrangements to repair the Road, in the District’s discretion, within 15 business days of the District’s notice, the District may make the repairs at the City’s expense. Major repairs such as resurfacing shall be planned a year in advance in cooperative planning between the parties.
b. **Greenbelt.** For purposes of this Second Amendment, the greenbelt is defined as that portion of the Lease Premises located between the western curb of the Road and the western edge of the Lease Premises as depicted at Exhibit A attached hereto. ("Greenbelt"). Beginning __________, the City shall, at City’s cost and expense, operate and maintain the Greenbelt. The Greenbelt will be maintained, and developed if necessary, as a vegetation buffer between properties adjacent to the park and the Road, in a form and manner compatible with the park, subject to District review and approval. The intent of modifications to the greenbelt is to tie the landscaping into the adjoining property landscaping to create a seamless interface with the Park. This concept is consistent with property owner obligations to maintain to the edge of the travel way within City Streets. Any modification to or change of the Greenbelt require prior written District approval. In the event the City fails to maintain and/or repair the Greenbelt or fails to make satisfactory arrangements to maintain and/or repair the Greenbelt, in the District’s discretion, within 15 business days of the District’s notice, the District may make the maintenance and/or repairs at the City’s expense. Should a leak develop in the irrigation system located within the Greenbelt, the City will reimburse the District for the estimated volume of water loss due to the leak.

3. **Pedestrian and Bicycle Access.** City may develop, at City’s sole cost and expense, pedestrian and/or bicycle access from the vacated Orondo Ave. right of way to the loop trail. The City may also develop, at its sole cost and expense, pedestrian and/or bicycle access from the

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former Public Works property located at 25 North Worthen to the loop trail and Riverwalk crossing.

4. **Agency Permits and Approvals.** The City shall obtain, at the City’s sole expense, all necessary permits and approvals from all Federal, State and/or local agencies having jurisdiction over any activity authorized by this Second Amendment related to City’s use, operation, improvement, modification, maintenance and/or repair of the Road for Market Access or any other City use or the Road.

5. **City Indemnification.** The City shall, and hereby agrees to, indemnify, defend and hold the District harmless from and against any and all claims, suits, actions, damages, injuries, claims of injury or damage or any other cause of action resulting from and/or in any way related to the Road, any modifications, alterations, maintenance, signage and/or use thereof by the City and/or the use of the Road by the public, as a result of or arising out of the City’s exercise of its rights and/or obligations, or failure thereof, pursuant to this Second Amendment.

6. **District Indemnification.** The District shall, and hereby agrees to, indemnify, defend and hold the City harmless from and against any and all claims, suits, actions, damages, injuries, claims of injury or damage or any other cause of action resulting from or arising out of the District’s exercise of its rights and/or obligations, or failure thereof, pursuant to this Second Amendment.

7. **Ratification.** All other terms and provisions of the Lease except as expressly amended hereby are ratified, affirmed and approved.

August 20, 2012
State of Washington
County of Chelan

I certify that I know or have satisfactory evidence that FRANK KUNTZ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of City of Wenatchee to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED the 22nd day of August, 2012.

Signature
Tammie Stanger, Notary Public
My Appointment Expires 2-8-13

State of Washington
County of Chelan

I certify that I know or have satisfactory evidence that KEITH TRUSCOTT is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Director of Natural Resources of Public Utility District No. 1 of Chelan County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 22nd day of August, 2012.

Signature
Sheila Salmon, Notary Public
My Appointment Expires 7-20-13

August 20, 2012