INTERLOCAL AGREEMENT
(Orondo Day Use Moorage)

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."

RECITALS

The City, through the Waterfront Sub-Area Planning process (2003) and the Wenatchee Visioning Process (2002), has determined that it is a priority of the community to have more public access to the Columbia River for recreational opportunities.

The District’s licensing agreement with FERC for the Rock Island Hydroelectric Project No. 943 through December 31, 2028 has no provisions for day use moorage in Wenatchee Riverfront Park and it is the desire of the City to develop a day use moorage facility ("Day Use Moorage") at this location.

The City and the District entered into a Ground Lease ("Lease") for City-owned land within the boundary of Wenatchee Riverfront Park effective November 22, 1983 and continuing thereafter until expiration of the FERC License. The Lease provides for the District’s construction, maintenance and operation of Wenatchee Riverfront Park.

The City, with demonstrated community support and the support of the District, has secured the necessary funding and permitting, completed the planning process and designed a new Day Use Moorage facility at the Orondo Avenue Boat Basin located within the Wenatchee Riverfront Park.

The District, on the terms and conditions set forth herein, has agreed to include the Day Use Moorage and its ongoing maintenance and operation into its operations related to the Wenatchee Riverfront Park.

The Parties desire to move forward with the construction and operation of the Day Use Moorage as described 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 Parties agree as follows:

1. Purpose. The purpose of this Agreement is to provide for cooperative and coordinated efforts related to the procurement, construction and ongoing operation
and maintenance of the Day Use Moorage facilities at the Orondo Avenue Boat Basin. To accomplish this purpose, this Agreement sets forth the duties and responsibilities between the Parties related to the Day Use Moorage facilities including, among other items, design, procurement, construction and operation and maintenance.

2. **Scope of Work.** The City shall design, procure, fund and construct Day Use Moorage facilities in the Wenatchee Riverfront Park at the Orondo Boat Basin. The Day Use Moorage facilities shall be constructed in accordance with the plans and specifications attached hereto at Exhibit “A” and incorporated herein by this reference. The Day Use Moorage facilities generally consist of a day use moorage dock, including pilings and an access ramp extending over the water to provide public day-use boat docking facilities, and a paved pedestrian trail, realigned as necessary to accommodate all facilities. The facilities shall not include any fueling station, gasoline pumps or other similar facilities.

3. **Plans and Specifications.** The City will provide complete and final design plans and bid specifications for all facilities and appurtenances required for the construction and maintenance of the Day Use Moorage facilities to the District for comment and review prior to the City awarding bids. Review and comment by the District shall not be deemed to impose any liability on the District for design or construction of the Day Use Moorage facilities. The plans shall include all mitigation requirements associated with any and all permits obtained. Construction of the Day Use Moorage facilities shall proceed in accordance with the plans and specifications, including approved change orders, if any, approved by the District.

4. **Permits.** There are various permits necessary for the construction of the Day Use Moorage. City warrants that all permits including, but not limited to, Federal Energy Regulatory Commission (“FERC”); environmental; shoreline; construction; and building permits have been or will be obtained prior to the City awarding bids for the Project or commencing construction of the Project. The City shall not award bids or commence construction of the Project until it has provided satisfactory proof to the District that all necessary permits have been issued and the conditions of such permits can be fully met. With respect to the FERC review process, the District will, or has, applied to FERC for the necessary approvals and FERC approval has been received.

   A. City shall pay all costs associated with obtaining all permits with the exception of the FERC permit which costs shall be paid by the District.

   B. Prior to construction, the City shall also obtain, from the District, a Temporary Construction Permit for ingress and egress over, upon and across a portion of
the Wenatchee Riverfront Park lands for the purposes of construction of the Project. A draft form of the District’s standard permit is attached for reference.

C. In the event additional permitting requirements are imposed and/or discovered after construction commences but before acceptance, the City shall be solely responsible for obtaining said permits, satisfying any permit conditions or obligations and paying the costs associated with such permits.

D. The City shall be solely responsible for complying with and satisfying all permit conditions and obligations, including the costs associated with compliance therewith and/or satisfaction thereof.

5. **Funding.** If the Project received funding from the Recreation Conservation Office (“RCO”), the City shall be solely responsible for complying with any requirements of the RCO, with the exception of long term maintenance and operation of the Project as set forth in Section 11. If there are any other obligations as a result of the City securing funding for the Project from other public or private source, the City shall be solely responsible for satisfying any and all obligations associated therewith in perpetuity.

6. **Solicitation of Bids and Bid Award.** The City shall not award any contract for construction of the Project until all of the above requirements have been fulfilled by the City to the satisfaction of the District. The City is solely responsible for bidding of this Project. The District shall not be required to take any steps towards the bidding or construction of the Project.

7. **Construction Management.** The City will be solely responsible for managing the construction of the Project and provide quality control over such construction. The District may provide, at its sole cost, a designated representative to be on site during construction. District personnel shall not have direct Project related communication with the City’s contractor, and all Project related communications between the District and the City’s contractor shall be directed through the City’s project personnel. The presence of a District representative during construction shall not be deemed to impose any liability upon the District for the design or construction of the Project. The City is solely responsible for the design and construction of the Project at the City’s sole risk and expense.

If, during the course of construction change orders are necessary that result in changes to the design of the Project facilities, the City's designated representative will consult and confer with the District. Notice of a proposed change by the City shall be given to the District's Director of Shared Services, currently Steve Currin, or his designated representative. The District shall act reasonably promptly to address any proposed change order. No change will be made to the plans and specifications
unless agreed upon in writing by the District and the City. The City shall be solely responsible for all risk and expense, including without limitation increased construction costs associated with the change.

8. **Compliance with all Laws.** The City and its contractors shall comply with all federal, state and local laws, rules and regulations related to the design, construction and permitting of the Project.

9. **Design and Construction Costs.** The City shall be solely responsible for paying the total costs of the Project. The total costs of the Project as used herein includes, without limitation, all design costs, permitting costs, construction costs and mitigation costs. The City shall provide the District will evidence of full Project funding prior to award of a bid for construction of the Project.

10. **Acceptance and Ownership.** Following completed construction and acceptance of the Project by the City, and the completion of any applicable warranty period in the event that such warranty is non-transferable, the District shall inspect the Project facilities to determine whether the Project conforms to the design and construction standards and the permits and, if the Project facilities are acceptable to the District, provide City with a written Notice of Acceptance of the constructed Project facilities. If the Project does not meet any of those requirements, in the District's reasonable opinion, the District shall not be required to accept the Project. If the Project does not meet the design and construction standards in the District's reasonable determination, the City shall take the necessary steps for the Project to conform to said standards to the reasonable satisfaction of the District, after which the District shall provide the City with a written Notice of Acceptance.

Title to the Project facilities shall pass to the District on the effective date of the Notice of Acceptance. Prior to the effective date of the Notice of Acceptance, title and all risk of loss shall remain with the City. From and after the effective date of the Notice of Acceptance, the District will comply with all continuing obligations of the permits for the Project.

For a period commensurate with any statute of limitations and/or statute of repose applicable to claims by the City against the design professional or the construction contractor, the City shall be responsible to repair or replace any defect in the project that arises due to negligent design, a design failure or due to construction not in conformance with the construction plans and specifications.

Following Notice of Acceptance, the Lease between the Parties shall be amended as necessary to reflect the addition of the Project.
11. Operation and Maintenance. Following Notice of Acceptance and transfer of title to the District, the District will operate and maintain the Project as part of the Wenatchee Riverfront Park for the useful life of the Project facilities.

12. Parking Expansion. The original design for the Project included expanded boat trailer parking at the Wenatchee Riverfront Park at the Orondo Boat Basin. The purpose of the expanded parking is to accommodate the anticipated increased parking demand associated with the Project. For funding reasons the expanded parking is not a part of the current Project design. As partial consideration for this Agreement, the City shall continue to diligently seek funding to provide expanded parking at the Project location or another location agreed by the Parties. The City and the District commit to work cooperatively to address parking concerns in the location of the Project.

13. Duration and Termination. Subject to the provisions related to providing notice prior to award, 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. The term of this Agreement will run commensurate with the term of the Lease.

14. 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.

15. 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’s ownership, operation and maintenance of the Project after Notice of Acceptance and transfer of title to the Project to the District.

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, contractors and employees, in connection with the Project,
including without limitation the design, permitting, procurement and construction of
the Project facilities, or arising out of the City's, or the City's contractors, non-
observance or non-performance of any law, ordinance, or regulation applicable to
the Project. The City's indemnification obligations under this section shall survive
termination of this Agreement and shall continue following transfer of title to the
Project to the District following Notice of Acceptance.

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.

16. 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.

17. 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.

18. 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.

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. 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.
21. 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 18th day of August, 2009.

By:  
Name:  
Title:  

APPROVED BY

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON

this 20th day of August, 2009.

By:  
Name:  
Title:  

Interlocal – Orondo Day Use Mocragae - PUD
FIRST AMENDMENT TO INTERLOCAL AGREEMENT
(Orondo Day Use Moorage)

BY THIS AMENDMENT TO INTERLOCAL AGREEMENT, made and entered into effective this 12 day of December, 2012, the CITY OF WENATCHEE (“City”) and PUBLIC UTILITY DISTRICT NO. 1 OF CHelan COUNTY, WASHINGTON (“District”), hereby amend that Interlocal Agreement for Orondo Day Use Moorage (“Interlocal”), which was entered into on August 20, 2009, as follows:

1. **Replace Section 10 – Acceptance and Ownership.** Section 10 – Acceptance and Ownership is replaced in its entirety with the following:

   **Acceptance and Ownership.** Following completed construction and acceptance of the Project by the City, and the completion of any applicable warranty period in the event that such warranty is non-transferable, the District shall inspect the Project facilities to determine whether the Project conforms to the design and construction standards and the permits and, if the Project facilities are acceptable to the District, provide City with a written Notice of Acceptance of the constructed Project facilities. If the Project does not meet any of those requirements, in the District’s reasonable opinion, the District shall not be required to accept the Project. If the Project does not meet the design and construction standards in the District’s reasonable determination, the City shall take the necessary steps for the Project to conform to said standards to the reasonable satisfaction of the District, after which the District shall provide the City with a written Notice of Acceptance.

   Title to the Project facilities shall pass to the District on the effective date of the Notice of Acceptance. Prior to the effective date of the Notice of Acceptance, title and all risk of loss shall remain with the City. From and after the effective date of the Notice of Acceptance, the District will comply with all continuing obligations of the permits for the Project.

   Upon termination and/or expiration of the Lease, title to and ownership of the Project facilities, together with any and all operations, maintenance and repair obligations, and all other obligations, shall automatically revert to City.

   For a period commensurate with any statute of limitations and/or statute of repose applicable to claims by the City against the design professional or the construction contractor, the City shall be responsible to repair or replace any defect in the Project that arises due to negligent design, a design failure or due to construction not in conformance with the construction plans and specifications.

   Following Notice of Acceptance, the Lease between the Parties shall be amended as necessary to reflect the addition of the Project.

2. **Replace Section 11 – Operation and Maintenance.** Section 11 – Operation and Maintenance is replaced in its entirety with the following:

   **Operation and Maintenance.** Following Notice of Acceptance and transfer of title to the District, the District will operate and maintain the Project as part of the Wenatchee Riverfront Park for the useful life of the Project facilities, or until termination of the Lease and ownership of the Project reverts to the City, whichever is sooner.
3. **Terms.** This Amendment does not change or modify any other terms of the Interlocal.

CITY OF WENATCHEE

Frank Kuntz
Mayor
Date: **12-13-12**

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY

John Janney
General Manager
Date: **12-17-12**