INTERLOCAL AGREEMENT
FOR BURCH MOUNTAIN ROAD MAINTENANCE

THIS Interlocal Agreement (referred to herein as Interlocal Agreement or Agreement) is made and entered into by and among Chelan County (County), the Washington State Department of Transportation (WSDOT), Washington State Patrol (WSP), Public Utility District No. 1 of Chelan County (CPUD), also individually referred to as a “Party” or collectively as the “Parties”, as the context may require.

WHEREAS, the Board of Chelan County Commissioners designated and classified Burch Mountain Road, from milepost 1.2 to milepost 7.14 as a primitive road; and

WHEREAS, neither RCW 36.75.300 nor the County code imposes design or maintenance standards or requirements on primitive roads; and

WHEREAS, the County does not have sufficient funds to maintain the primitive road portion of Burch Mountain Road (hereafter for convenience referred to as “Burch Mountain Road”); and

WHEREAS, WSDOT, WSP, and CPUD chose to locate their respective communication facilities at sites which are accessed by Burch Mountain Road; and

WHEREAS, Burch Mountain Road is currently maintained by the County at base level; and

WHEREAS, access by the Parties to their communication facilities is critical to the operations and the maintenance of those facilities and a road maintained above the present base level is deemed necessary; and

WHEREAS, the County, WSDOT, WSP, and CPUD recognize that it is to the mutual benefit of the Parties for the County to maintain Burch Mountain Road above the present base level, and in return, the Parties agree to reimburse the County each in the amount of their pro rata share for the costs of road maintenance above the present base level; and

WHEREAS, Burlington Northern Santa Fe Railway (BNSF) and AT&T (AT&T) also have communication facilities accessed by way of Burch Mountain Road and benefit from the road being maintained; and

WHEREAS, the Parties agree that the County may enter into separate agreements with BNSF and AT&T in which those private companies may also reimburse the County for their pro rata shares of the Burch Mountain Road maintenance costs; and
NOW, THEREFORE, pursuant to chapter 39.34 RCW, the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, covenants, and performances contained herein, and the attached Exhibits which are incorporated and made a part hereof,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. **Purpose.** This Agreement authorizes the County, on behalf of the other Parties, to perform the Work, as defined in Section 2 of this Agreement, and for the other Parties to reimburse to the County for an equal pro rata share of the expense incurred to accomplish the Work.

2. **Scope of the Work.** The Parties agree that the County, on behalf of the other Parties to this Agreement, shall perform the following “Work”.

   2.1 The extensive repair and the necessary maintenance of Burch Mountain Road, lying within Chelan County, Washington, from milepost 1.2 to milepost 7.14 and as depicted in Exhibit A.

   2.2 “Extensive repair” means full grading and drainage work to re-establish the existing roadway prism. This work should be limited to a one time effort not to exceed $10,000 per party. Additional occurrences of “extensive repair” efforts may be performed upon approval of all Parties.

   2.3 “Necessary maintenance” means road work including surface repairs and routine grading to maintain the existing roadway prism. This work may be yearly and will not exceed $1000 per party per year.

   2.4 Provide the necessary materials, equipment, labor, engineering, administrative, and clerical services to accomplish the extensive repair and necessary maintenance, in compliance with state public procurement requirements.

3. **Administration.** The County Engineer shall administer the Agreement and shall have full powers necessary for the purposes authorized under this Agreement. The Administrator’s contact information is as follows:

   Chelan County Engineer
   Chelan County Public Works Department
   316 Washington Street, Suite 402
   Wenatchee, WA 98801
   Phone: (509)667-6415
   Fax: (509)667-6250
4. **Effective Date; Duration.**

4.1 This Agreement shall become effective upon the completion of all of the following: (1) final execution by all Parties hereto, (2) unless sooner or otherwise agreed in writing by the Parties, final execution of the agreement(s) between the County and BNSF and AT&T for Burch Mountain Road maintenance (notice and conformed copies of which shall be provided by the County to all other Parties, and (3) filing of this Interlocal Agreement with the Chelan County Auditor. In the event that the County wishes to perform work ahead of all Parties executing this Agreement and the agreement between the County and BNSF and AT&T, the County shall pay for the pro rata share of the parties that have not executed the applicable agreements. In that case the Agreement shall become effective to those parties who have executed. This prorated share will apply only to the extensive repair as described in Section 2.2.

4.2 This Agreement shall remain in force until terminated in writing by all Parties, as provided in section 5 of this Agreement. This Agreement shall not extend more than twenty years from the effective date hereof, unless all Parties or remaining Parties agree in writing to amend this Agreement and extend the term.

5. **Termination.**

5.1 The Parties may terminate this Agreement at any time in writing, executed and adopted by resolution of the Party's legislative body or the duly authorized agency administrator, as the case may be. If the Agreement is terminated, each Party shall be responsible for the performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

5.2 Any Party may terminate its participation in this Agreement upon thirty calendar days written notice to the authorized representatives of all other Parties, and to the representatives of BNSF and/or AT&T (if the County enters into a similar agreement(s) with either or both of those companies). Notice may be made by personal service or by U.S. mail as provided under Civil Rule 5 of the Rules for Superior Court in Washington. Notice served by U.S. mail shall be deemed received on the third day following, but not including, the date of mailing. A Party terminating its participation in this Agreement under this provision shall be liable for the performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.
Notwithstanding the above, if a terminating Party still has communication facilities to which it needs access over the Burch Mountain Road, it shall be obligated to continue contributions under the terms of this Agreement until such communications facilities are abandoned and/or removed.

In the event that such communications facilities are transferred to a successor that is a public agency under RCW 39.34.020, such successor shall be subject to the terms and conditions of this Agreement.

If a Party's communication facilities have been removed and access is no longer required, the terminating Party's share of expenses shall be reallocated in equal shares among the remaining Parties to the Agreement and to BNSF and AT&T. Notwithstanding any reallocation, the not to exceed amounts per party set forth below in Section 7.5 shall still be applicable.

6. Amendment. This Agreement may only be amended in writing and signed by the Parties with the same formalities as the original, including approval of the county legislative body or the authorized agency administrator, and including the requirement for filing with the County Auditor.

7. Financing the Work; Reimbursement for County Costs. WSDOT, WSP and CPUD agree to reimburse the County for a percentage based on equal shares of all the Parties to this or any related agreements executed by the County for the Work to maintain the Burch Mountain Road above the present base level.

7.1 The basis for reimbursement shall be the actual cost of materials, labor, equipment rental (not to exceed current Rental Rate Blue Book values), plus all costs of fringe benefits to labor, including but not limited to Social Security, retirement, industrial and medical aid costs, prorated sick leave, holidays and vacation time, and group medical insurance.

7.2 An additional ten (10) percent of the total costs shall be added for County overhead expenses for accounting, billing and administrative services.

7.3 The County will periodically, as costs are incurred, submit to each Party an invoice which shall include or be accompanied by a certified statement of costs of the materials, service and/or equipment rental and shall specify the Party's share of costs pursuant to this Agreement.

7.4 Within thirty (30) calendar days of receiving an invoice from the County, a Party shall pay its share of costs shown on the invoice.
7.5 The Parties agree that under this Agreement there will be a maximum $10,000 one-time contribution and costs will not exceed $1,000 per year per Party thereafter.

7.5.1 A Party’s costs may be provided in kind by equal shares of materials, labor or equipment supplied by a Party to this Agreement other than the County. The Party’s rental rates will be used to determine equipment rates not to exceed current Blue Book Rental Rate values.

7.5.2 Cost determination and acceptance of in kind materials, labor or equipment will be at the discretion of the County.

7.5.3 The Parties agree that a Party providing materials, labor or equipment in lieu of the payment of costs may also apply to any agreement(s) between the County and BNSF or AT&T regarding maintenance of Burch Mountain Road.

7.5.4 If any donation is received from an outside party to this Agreement or the agreement(s) between the County and BNSF or AT&T, the donation will be used to reduce the overall cost of the work prior to dividing the cost into equal shares.

8. Records. Each Party shall maintain and make available for inspection, review, and audit the books, records, documents and other materials related to its performance under this Agreement for the applicable record retention period required by law or Party policy. The records retention period shall be tolled during the pendency of any claim or suit related in any way to this Agreement, and any records for which a Party has custody or responsibility shall not be destroyed or purged until final resolution of all claims or lawsuits.

9. Legal Relations.

9.1 The Parties agree that the County’s relation to each Party shall be at all times under this Agreement as an independent contractor. Employees of the County are and will remain employees of the County. Likewise, the Parties agree that any Party providing labor to assist in the Work shall be at all times under this Agreement as an independent contractor.

9.2 The County shall defend, indemnify and hold a Party, its officers, officials, employees and agents harmless from any and all claims, injuries, damages (both to persons and/or property), losses or suits including attorney fees, arising out of or in connection with the County’s performance (and that of its agents, employees, contractors, or
subcontractors) of this Interlocal Agreement, except for injuries and damages caused by another Party.

Each Party shall defend, indemnify and hold all other Parties of this Interlocal Agreement, their officers, officials, employees and agents harmless from any and all claims, injuries, damages (both to persons and/or property), losses or suits including attorney fees, arising out of or in connection with the Party’s performance of this Interlocal Agreement, except for injuries and damages caused by that Party, its agents, employees, contractors or subcontractors.

Each of the mutual indemnity obligations set forth above specifically include liability or alleged liability that may arise from injury or loss suffered by an employee of the County, its contractors, or any subcontractors, or any employee of the other Parties, regardless of any immunity provided by the Washington Industrial Insurance Act, RCW Title 51, or any other applicable law. THE TERMS OF THIS SECTION, SPECIFICALLY INCLUDING THE PRECEDING WAIVER OF IMMUNITY, SHALL BE DEEMED MUTUALLY NEGOTIATED TO THE FULLEST EXTENT ALLOWED BY THE LAWS OF WASHINGTON APPLICABLE TO THE OTHER PARTIES.

The indemnity and waiver provisions of this section shall survive the expiration of this Agreement or termination by any Party.

9.3 In the event that a dispute arises regarding any matter addressed in or related to this Interlocal Agreement and before any other action, the interested Parties agree to first attempt to resolve the dispute by a face-to-face meeting, or by a telephone call, between the interested Parties’ authorized representatives.

9.3.1 If a dispute affects the interests of more than two Parties, all Parties shall participate in dispute resolution.

9.3.2 The Parties agree to participate in good faith negotiation to resolve any dispute arising under this Agreement.

9.3.3 The resolution of a dispute shall be memorialized in writing and signed by the Parties’ representatives.

9.4 This Agreement shall be governed exclusively by the laws of the State of Washington.
9.5 The Chelan County Superior Court shall be the sole proper venue for any and all suits brought to enforce or interpret the provisions of this Interlocal Agreement.

9.6 If any legal action or other proceeding is brought for the enforcement of this Interlocal Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Interlocal Agreement, each Party shall pay its own attorney's fees incurred in that action, arbitration or proceeding.

10. **Applicable Laws.** The Parties, in performance of this Interlocal Agreement, shall abide by all applicable federal, Washington State and local laws, statutes, codes, ordinances, regulations, and rules.

11. **Interpretation and Order of Precedence.**

11.1 This Agreement has been submitted to the scrutiny of the Parties and their counsel, and it shall be given a fair and reasonable interpretation in accordance with its words, without consideration or weight given to its being drafted by any Party or its counsel.

11.2 A conflict or inconsistency between the terms or conditions of this Agreement shall be resolved by the following descending order of precedence (with 1 having precedence over 2, 3, etc.):

1. Applicable federal, Washington State, and local laws, statutes, codes, ordinances, and regulations;
2. Amendments to the Interlocal Agreement;
3. The Interlocal Agreement, including Exhibit A.

12. **Waiver of Breach.** The waiver by a Party of the breach of any provision of this Agreement by any other Party must be in writing and shall not operate or be construed as a waiver of any subsequent breach by such other Party.

13. **Assignment.** Except as provided in section 5.2, no Party may assign its rights under this Interlocal Agreement, except by amendment of the Agreement as provided in Section 6 above. In the absence of the requisite amendment of the Agreement, any attempted assignment shall be void and shall constitute a material breach of this Interlocal Agreement.

14. **Property.** The Parties do not anticipate acquiring jointly-owned personal or real property under this Agreement. Any personal property of a Party used in the performance of this Agreement in the possession of the another Party shall be returned to the owner promptly upon completion of each requested task, except
two or more of the Parties may agree in writing to bailment of personal property for the convenience of either or both of the Parties.

15. Incorporated Documents and Terms. The following are incorporated into this Interlocal Agreement by reference:

15.1 Applicable federal, Washington State, and local laws, statutes, codes, ordinances, regulations, and rules; and

15.2 The recitals contained in the preamble to this Interlocal Agreement.


16.1 This Interlocal Agreement contains all the terms and conditions agreed upon by and between the Parties.

16.2 This Interlocal Agreement may be executed simultaneously or in several counterparts, each of which shall be deemed an original, but all of which together shall be identical and constitute one and the same Interlocal Agreement.

16.3 No other understandings, oral or otherwise, regarding the subject matter of this Interlocal Agreement shall be deemed to exist or to bind any of the parties hereto.

17. Parties' Representatives. The following shall be the Parties' authorized representatives and contact persons for administration of this Agreement, communication, and service of all notices, except service of process:

For the County:

Chelan County Engineer
Chelan County Public Works Department
316 Washington Street, Suite 402
Wenatchee, WA 98801
Phone: (509)630-6415
Fax: (509)667-6250

For WSDOT:

Washington State Department of Transportation
Assistant Region Administrator for Maintenance
1551 North Wenatchee Ave,
Wenatchee, WA 98801

WSDOT Agreement No. GCB 1418
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18. Related Agreements. The County may enter agreements with BNSF and AT&T whereby those companies will each also pay a pro rata share of the costs of maintenance for Burch Mountain Road. The County agrees, within a reasonable time, to provide copies of the BNSF and AT&T agreement(s) to the other Parties to this Agreement. Contact information for the authorized representatives of BNSF and AT&T contained in the copies of such agreement(s) is incorporated herein by this reference.

19. Severability. In the event any term or condition of this Interlocal Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this Interlocal Agreement are declared severable.

20. Filing with the Auditor.

The fully and duly executed Interlocal Agreement shall be filed with the Chelan County Auditor pursuant to RCW 39.34.040.
Dated at Wenatchee, Washington this 4th day of June, 2013.

CHELAN COUNTY

BOARD OF COUNTY COMMISSIONERS

[Signatures]

ATTEST: CARLYE DUNNING

Clerk of the Board

WSDOT Agreement No. GCB 1418
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WASHINGTON STATE PATROL

Signature: [Signature]
Date Signed: [Date]

Printed Name and Title

APPROVED AS TO FORM:
By: [Signature]
Assistant Attorney General
Date: [Date]

NOTARIAL CERTIFICATE
WSP ACKNOWLEDGMENT

STATE OF WASHINGTON ) ss.
COUNTY OF THURSTON )

I certify that I know or have satisfactory evidence that [Name] is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the [Title] of the Washington State Patrol, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: [Date]

(Certificate of signature)

[Signature]
(Print Name)

Notary Public in and for the State of Washington, residing at

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WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION  

By: ___Signed___  
Dave Bierschbach, Assistant Region Administrator for Maintenance  

Date: 5/30/13  

APPROVED AS TO FORM  

By: ___Signed___  
Ann E. Salay, Assistant Attorney General  

Print Name: Ann E. Salay  

Date: 5-23-13
PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY

By: [Signature]  
Date Signed: 07/28/13

STEVEN CURRIT - DIRECTOR OF SHARED SERVICES

Printed Name and Title

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