JOINT PURCHASING AND INVENTORY TRANSFER AGREEMENT

THIS JOINT PURCHASING AND INVENTORY TRANSFER AGREEMENT (this “Agreement”) is made and entered into as of the ____ day of April, 1997, by and between PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, WASHINGTON, a municipal corporation organized and existing under the laws of the State of Washington (“Snohomish PUD”), and PUBLIC UTILITY DISTRICT NO. 1 OF CHelan COUNTY, WASHINGTON, a municipal corporation organized and existing under the laws of the State of Washington (“Chelan PUD”), with reference to the following facts:

A. Snohomish PUD and Chelan PUD are both Washington public utility districts governed by the provisions of Title 54 of the Revised Code of Washington (the “RCW”), and in particular by the provisions of RCW Chapter 54.04 relating to purchases of materials; and

B. Notwithstanding that Snohomish PUD and Chelan PUD purchase many materials which are either identical or comparable, the traditional practice of the two utilities has been to purchase materials independently of each other; and

C. Since many of the materials purchased by Snohomish PUD and Chelan PUD in the normal course are either identical or comparable, Snohomish PUD and Chelan PUD have determined that it would be advisable for them to combine forces for the purchase of such materials, pursuant to the provisions of RCW 54.16.090 and RCW 54.16.200, in order to be able to take advantage of economies of scale and other efficiencies; and

D. Snohomish PUD and Chelan PUD wish to enter into this Agreement in order to establish a framework for joint purchases of materials.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. PURPOSE.

The purposes of this Agreement are to enable the parties to make joint purchases of materials for their electrical distribution systems, hydroelectric generation systems, water/wastewater systems and related facilities and to enable either party to transfer inventory to the other party under conditions satisfying the applicable requirements of this Agreement.
2. **TERM.**

The term of this Agreement (the “Term”) shall begin on the date first above written and this Agreement shall continue indefinitely in full force and effect unless terminated by one or both of the parties in accordance with the provisions of this Agreement.

3. **NO SEPARATE LEGAL OR ADMINISTRATIVE ENTITY.**

No separate legal or administrative entity will be created to fulfill the purposes of this Agreement.

4. **FINANCING.**

The parties do not anticipate that this Agreement will be financed. Responsibility for payment for materials will be apportioned between the parties in accordance with the terms and conditions of the individual contracts for purchase. Payment will be made using the parties’ respective standard procedures.

5. **PROCEDURES RELATING TO JOINT PURCHASES.**

5.1 When, at any time during the Term, either party makes a determination to solicit formal or informal bids for the purchase of materials, such party shall, to the fullest extent practicable under the circumstances, comply with the following procedures relating to joint purchases. (The party taking the lead role in any such prospective joint purchase is hereinafter referred to as the “Lead PUD,” and the other party is hereinafter referred to as the “Non-Lead PUD.”)

5.2 Not later than 30 days prior to the proposed date for issuance of the bid solicitation materials (such date, the “Proposed Bid Date”), the Lead PUD shall notify the Non-Lead PUD of the proposed purchase. Such notice shall identify the Proposed Bid Date, and shall describe each and all of the materials proposed to be purchased with sufficient specificity to afford the Non-Lead PUD a reasonable basis for determining whether or not to join in the proposed purchase.

5.3 Not later than 20 days prior to the Proposed Bid Date, the Non-Lead PUD shall notify the Lead PUD of its determination whether or not it wishes to join in the proposed purchase. In the event that the Non-Lead PUD decides to join in the purchase, it shall identify in such notice each and all of the specific materials which it wishes to purchase, and the quantity of each thereof. In the event that the Non-Lead PUD does not wish to join in the purchase, the Lead PUD shall have no further obligation to the Non-Lead PUD in connection with the proposed purchase, and shall be free to proceed in any manner as it could in the absence of this Agreement.
5.4 In the event that the Non-Lead PUD notifies the Lead PUD that it wishes to join in the purchase, the Lead PUD shall, not later than 15 days prior to the Proposed Bid Date, deliver to the Non-Lead PUD a complete set of the proposed bid solicitation materials. The Non-Lead PUD shall review such materials and provide its comments thereon and proposed revisions thereto to the Lead PUD not later than 10 days prior to the Proposed Bid Date. The Lead PUD shall, within three days after receipt of such comments and proposed revisions, modify the proposed bid solicitation materials to the extent which it deems necessary or appropriate to incorporate such comments and proposed revisions, and discuss with the Non-Lead PUD any comments and proposed revisions which the Lead PUD determines not to incorporate into the materials. In the event that the Non-Lead PUD determines that, by virtue of the failure of any of its comments or proposed revisions to be reflected into the bid solicitation materials, the Non-Lead PUD no longer wishes to participate in the proposed purchase, it may withdraw from the proposed bid solicitation by notice thereof to the Lead PUD not later than five days prior to the Proposed Bid Date.

5.5 Notice of each joint bid solicitation shall be published in accordance with the provisions of RCW 54.04.070 in at least one newspaper of general circulation in each of Snohomish County and Chelan County. Each party shall be entitled to undertake any additional publication or notice of any joint bid solicitation which it may deem necessary or advisable. Both parties' joint bid solicitation notices shall be substantially identical in content.

5.6 Within 24 hours after the Lead PUD has opened the bids received in response to a joint bid solicitation, the Lead PUD shall notify the Non-Lead PUD of the identity of the bidders, the amount bid by each bidder, and the Lead PUD’s determination of the lowest responsible bidder to which the Lead PUD recommends bid award. The Non-Lead PUD shall notify the Lead PUD as soon as practicable thereafter, and in any event not later than two days after such notice from the Lead PUD, of any disagreement which the Non-Lead PUD may have with the Lead PUD’s recommended bid award. In the event of any such disagreement, the parties shall attempt to resolve their differences as quickly as possible; provided, however, that in the event that the parties are not able to agree on the lowest responsible bidder within five days after the bid opening, each party may, independently of the other and if the bid documents so allow, award its purchases under the bid solicitation to the bidder which it determines to be the lowest responsible bidder. If the bid documents do not allow the parties to award their purchases independently of each other, all bids shall be rejected.
6. **CERTAIN TERMS AND CONDITIONS OF JOINT PURCHASES**

6.1 Each party shall have sole responsibility and sole liability for its purchases under and in connection with this Agreement. In no event shall either party have any responsibility or liability whatsoever for any obligation of the other party, including but not limited to any payment obligation, under or in connection with this Agreement.

6.2 The Lead PUD shall require that shipping and delivery of materials purchased under any joint purchasing arrangement be made to each party independently, unless such separate shipment and delivery would substantially increase the amount payable by one or both of the parties for or with respect to the purchased materials. In any such event, the parties shall determine whether there is available any mutually advantageous alternative shipment and delivery arrangement, and shall use any such alternative arrangement which is acceptable to both parties.

6.3 The Lead PUD shall require that the bid bonds provided by all bidders, and any performance bond, payment bond, bond in lieu of retainage or other similar instrument provided by any selected bidder, name both the Lead PUD and the Non-Lead PUD as beneficiaries or obligees.

6.4 The Lead PUD shall require that all warranties provided for or with respect to any materials purchased jointly pursuant to this Agreement shall run in favor of both the Lead PUD and the Non-Lead PUD. The Lead PUD shall further require that either or both the Lead PUD and the Non-Lead PUD shall be entitled to bring any warranty claims with respect to purchased materials.

7. **PURCHASES NOT SUBJECT TO THIS AGREEMENT**

7.1 The provisions of this Agreement shall not in any event apply to emergency purchases by either party under RCW 54.04.070 or for contracting for public work.

7.2 The provisions of this Agreement shall not apply to purchases made by either party jointly or in cooperation with any other federal, state or local governmental entity; provided, however, that in the event that either party proposes to engage in any joint or cooperative purchase with any such other governmental entity, such party may, in its discretion, provide advance notice of such proposed purchase to the other party, in order to permit such other party to take advantage of any available opportunity to participate therein.
8. **CONFIDENTIALITY.**

Except as required by applicable law or regulation, neither party shall disclose publicly or to any third party (other than its agents, contractors, subcontractors and professional advisers, for the purposes provided in this Agreement, and then only subject to the confidentiality requirements of this Agreement) any information received from the other party pursuant to this Agreement, including but not limited to information concerning finances and financial condition, business relationships, business operations, business strategies and prospects, employees and relations with employees, agents, contractors and subcontractors, which such other party may reasonably designate in writing as confidential or proprietary information.

9. **INDEPENDENT CONTRACTORS; OBLIGATIONS SEVERAL.**

The parties hereto are independent contractors and shall not be deemed to be partners, joint venturers or agents of each other for any purpose whatsoever. Each and all of the obligations, responsibilities and liabilities of the parties under and in connection with this Agreement are several, and not joint.

10. **INDEMNIFICATION.**

10.1 Snohomish PUD hereby indemnifies and agrees to hold harmless and release Chelan PUD and its elected and other officials, officers, employees and agents and each of the heirs, personal representatives, successors and assigns of any of the foregoing from and against any and all "Covered Liabilities" (as hereinafter defined) arising out of or in connection with (i) any negligent act or omission or willful misconduct of Snohomish PUD under or in connection with this Agreement or (ii) any failure of Snohomish PUD duly to perform or observe any term, provision, covenant, agreement or condition hereunder to be performed or observed by or on behalf of Snohomish PUD. In any and all claims against Chelan PUD by any employee of Snohomish PUD, the indemnification and hold harmless obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Snohomish PUD under workers compensation acts, disability benefit acts, or other employee benefit acts; and Snohomish PUD hereby agrees not to claim or otherwise use against Chelan PUD, in defense against any actual or asserted liability of Snohomish PUD to Chelan PUD under this section, any immunity or limitation on liability provided to Snohomish PUD under any of such acts.

10.2 Chelan PUD hereby indemnifies and agrees to hold harmless and release Snohomish PUD and its elected and other officials, officers, employees and agents and each of the heirs, personal representatives, successors and assigns of any of the foregoing from and against any and all Covered Liabilities arising out of or in connection with (i)
any negligent act or omission or willful misconduct of Chelan PUD under or in connection with this Agreement or (ii) any failure of Chelan PUD duly to perform or observe any term, provision, covenant, agreement or condition hereunder to be performed or observed by or on behalf of Chelan PUD. In any and all claims against Snohomish PUD by any employee of Chelan PUD, the indemnification and hold harmless obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Chelan PUD under workers compensation acts, disability benefit acts, or other employee benefit acts; and Chelan PUD hereby agrees not to claim or otherwise use against Snohomish PUD, in defense against any actual or asserted liability of Chelan PUD to Snohomish PUD under this section, any immunity or limitation on liability provided to Chelan PUD under any of such acts.

10.3 “Covered Liabilities” means any and all losses, liabilities, claims, damages, costs, demands, fines, judgments and penalties, together with reasonable attorneys’ fees and out-of-pocket expenses incurred in connection with any of the foregoing.

11. **TERMINATION.**

Either party shall be entitled to terminate this Agreement and, except as otherwise set forth in this Agreement, each and all of its obligations hereunder, for any reason whatsoever and at any time, effective immediately upon notice to the other party. Termination will not affect the parties’ rights or obligations under any executory contracts for the purchase of materials.

12. **SUBCONTRACTS; ASSIGNMENT; BINDING AGREEMENT.**

12.1 Neither party may subcontract, transfer, or assign its rights or obligations under or in connection with this Agreement without the prior written consent of the other party, which consent may be granted or withheld by such other party in its sole discretion.

12.2 In the event of any permitted transfer or assignment hereunder, the transferor or assignor shall to the extent of the transferred or assigned obligations, and only to such extent, be relieved of obligations accruing from and after the effective date of such transfer or assignment; provided, however, that under no circumstances shall any transfer or assignment relieve the transferor or assignor of any liability for any breach of this Agreement occurring prior to the effective date of such transfer or assignment.

12.3 This Agreement is binding on and shall inure to the benefit of the parties and their respective successors, permitted assigns and legal representatives.
13. **SURVIVAL.**

The provisions of Sections 8, 9 and 10 of this Agreement shall, without regard to any investigation made by or for any of the parties hereto, survive the termination or expiration of this Agreement. The expiration or termination of this Agreement shall not relieve any party of any liability for any breach of this Agreement.

14. **STORAGE AND DELIVERY OF MATERIALS: INVENTORY TRANSFERS.**

14.1 The parties anticipate that materials purchased pursuant to this Agreement will generally be shipped and delivered to each party independently. However, when the parties agree, some or all of the materials purchased by both parties may be delivered by the applicable vendor to the facilities of either one of the parties alone. In any such event, the receiving party shall hold such materials in storage, free of charge, on behalf of the other party for such period or periods, not to exceed a reasonable period in the aggregate, until such time or times as such other party requests that such materials be released to it; provided, however, that shipment and delivery of such materials to such other party after any such release shall be at such other party’s sole cost and expense. During such storage period, the receiving party shall take reasonable precautions to protect and preserve the safety and security of the other party’s materials. Notwithstanding the foregoing, title to and risk of loss of any such materials shall remain with the owner of the materials, and any such storage shall be at the sole risk of such party and such party shall have sole responsibility for risk of loss, insurance and payment of any insurance deductible with respect to such materials. If materials of the same kind are owned by both parties and stored in one of the party’s facilities and only part of the materials are damaged or destroyed, the risk of loss shall be shared equally, regardless of the number of items owned by either party.

14.2 In the event that one party (the “Transferor”) has purchased for its own use, and has in its inventory, materials which are not foreseeably required by the Transferor for purposes of its business or operations, and the other party (the “Transferee”) requires any of such materials for its business or operations, then the Transferor shall, upon request of the Transferee, transfer such materials out of its inventory and sell such materials to the Transferee at the average cost of the materials then in the Transferee’s inventory and having the same stock code number as the transferred materials. The parties agree to make such transfers pursuant to RCW 39.33 to the extent permitted by law, and otherwise pursuant to the procedures of RCW 54.16.180. In connection with any such transfers, the Transferor shall not declare as surplus any amount of material which is not in fact surplus at the applicable time, and the Transferee shall not request any amount of material which is in excess of its actual and foreseeable needs at the applicable time. The Transferor shall in any event have sole and unilateral discretion, at any and all times, to determine
whether and to what extent materials are surplus to its needs. Any such transfer and sale shall be without any warranty whatsoever, express or implied, from the Transferor to the Transferee, and the Transferee shall be solely responsible for shipment and delivery of the materials to it, at its sole cost and expense, F.O.B. the Transferor’s facilities.

15. NOTICES AND OTHER COMMUNICATIONS.

15.1 Any notice required or permitted to be given under or pursuant to this Agreement shall be in writing and shall be delivered to the intended recipient party at its address set forth below either (i) in person, (ii) by nationally recognized overnight delivery service, (iii) by United States Certified Mail, return receipt requested or (iv) by facsimile machine providing printed confirmation of the effectiveness of transmission. Notices delivered in person or sent by overnight delivery service or facsimile shall be effective upon delivery. Notices sent by Certified Mail shall be effective on the date shown on the return receipt as the date of delivery or on the final date on which the Post Office certifies that it was unable to deliver.

If to Snohomish PUD:  
Public Utility District No. 1 of Snohomish County, Washington  
2320 California Street  
Everett, WA 98201  
Attn: Ms. Josephine Howe  
Senior Manager  
Materials Systems and Records  
Facsimile No.: (206) 347-5575  
Telephone No.: (206) 347-5542  

with a copy to:  
Public Utility District No. 1 of Snohomish County, Washington  
2320 California Street  
Everett, WA 98201  
Attn: General Counsel  
Facsimile No.: (206) 258-8305  
Telephone No.: (206) 258-8688
If to Chelan PUD:

Public Utility District No. 1 of Chelan County, Washington
327 North Wenatchee Avenue
P. O. Box 1231
Wenatchee, WA 98807-1231
Attn: Ms. D. Jeannie King
    Director, Materials Management
Facsimile No.: (509) 664-2884
Telephone No.: (509) 663-8121

with a copy to:

Davis, Arneil, Dorsey, Kight & Parlette
617 Washington
P. O. Box 2136
Wenatchee, WA 98807
Attn: Mr. Thomas F. O'Connell
Facsimile No.: (509) 662-9074
Telephone No.: (509) 662-3551

15.2 Either party may change the address to which, or the individual to whom, notices should be sent by giving notice of such change in accordance with the requirements of this section.

16. **NO THIRD PARTY BENEFICIARIES.**

Except as expressly set forth in Section 10 of this Agreement, none of the provisions of this Agreement shall inure to the benefit of or be enforceable by any third party.

17. **ENTIRE AGREEMENT.**

This Agreement sets forth the entire agreement of the parties and supersedes any and all prior agreements with respect to the subject matter of this Agreement. The rights and obligations of the parties hereunder shall be subject to and governed by this Agreement. The headings used herein are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.
18. **WAIVERS.**

Except as otherwise provided herein or as agreed by the parties, no provision of this Agreement may be waived except as documented or confirmed in writing. Any waiver at any time by a party of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection therewith, shall not be deemed a waiver with respect to any subsequent default or matter. Either party may waive any notice or agree to accept a shorter notice than specified in this Agreement. Such waiver of notice or acceptance of shorter notice by a party at any time shall not be considered a waiver with respect to any subsequent notice required under this Agreement.

19. **INVALID PROVISION.**

The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

20. **AMENDMENT.**

No change, amendment or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by both parties.

21. **FURTHER ASSURANCES.**

Each party hereto covenants and agrees to do all things necessary or advisable, including but not limited to the preparation, execution, delivery and recording of any instruments or agreements, in order to confirm and better assure the intent and purposes of this Agreement.

22. **COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

23. **GOVERNING LAW; VENUE.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington (regardless of the laws that might otherwise govern under applicable principles of conflicts of law of such state). Venue for actions arising from or related to this Agreement shall be in either Snohomish County Superior Court or Chelan County Superior Court in accordance with applicable law; provided, however, that this venue provision shall not bar either party from bringing a third party action against the other party if the first party is a defendant and such third party claim arises from or is related to this Agreement.
24. **RULES OF CONSTRUCTION.**

Whenever in this Agreement the context so suggests, references to the masculine shall be deemed to include the feminine, references to the singular shall be deemed to include the plural, and references to “or” shall be deemed to be disjunctive but not necessarily exclusive. No provision of this Agreement shall be construed in favor of or against either of the parties hereto by reason of the extent to which any such party or its counsel participated in the drafting thereof or by reason of the extent to which such provision or any other provision or provisions of this Agreement is or are inconsistent with any prior draft thereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, WASHINGTON

By: [Signature]

Richard E. Johnson
General Manager

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON

By: [Signature]

Roger A. Braden
General Manager