INTERLOCAL COOPERATION AGREEMENT
RE: Rocky Reach Juvenile Fish Bypass System PIT-tag Monitoring System

THIS AGREEMENT is made this date by and between PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON ("Chelan"), a municipal corporation, and PUBLIC UTILITY DISTRICT NO. 1 OF DOUGLAS COUNTY, WASHINGTON ("Douglas"), a municipal corporation, sometimes collectively referred to as the "Districts" or "Parties."

RECITALS

The Districts are authorized, pursuant to RCW Chapters 39.34 and Title 54, to enter into cooperative agreements for the efficient use of resources.

Douglas is preparing to conduct its first 10-year Habitat Conservation Plan check-in study in 2010 and desires to install a Passive Integrated Transponder-tag monitoring system in the Rocky Reach Juvenile Fish Bypass System, which is owned and operated by Chelan.

Chelan is willing to permit Douglas to install the System in the RRJFB on the terms and conditions set out in this Agreement. Chelan will benefit from the data and information available from the System.

NOW THEREFORE; in consideration of the mutual promises and covenant contained herein, the parties agree as follows:

I.   RECITALS

The recitals set forth above are incorporated herein as if fully set forth.

II.   DEFINITIONS

"Douglas" shall mean Public Utility District No. 1 of Douglas County, Washington.

"Chelan" shall mean Public Utility District No. 1 of Chelan County, Washington.

"Effective Date" shall mean the date that this Agreement becomes effective and shall be the date that this Agreement is signed by the last signing party.

"HCP" shall mean Habitat Conservation Plan.

"Generation Market Price" shall mean the applicable Dow Jones Mid-Columbia Firm Peak and Off-Peak energy prices.

"Reduced" or "Lost Generation Market Price" shall mean the applicable Dow Jones Mid-Columbia Firm Peak and Off-Peak energy prices, for the respective hours of reduced or lost generation.

"PIT Tag" shall mean a Passive Integrated Transponder tag.

"Project" shall mean the Rocky Reach Hydro-Electric Project.
“Renewal Term” shall mean each of the two consecutive five (5) year terms following the expiration of the Term.

“RRJFB” shall mean Rocky Reach Juvenile Fish Bypass System.

“System” shall mean the Passive Integrated Transponder tag monitoring system contemplated to be installed by Douglas pursuant to this Agreement.

“Term” shall mean the first ten (10) year term of this Agreement commencing with the Effective Date.

III. SYSTEM OBLIGATIONS

1. System Siting and Design. Douglas shall identify and submit to Chelan for investigation, review and, ultimately, approval or disapproval, at Chelan’s sole discretion, a preferred System siting and design to integrate the System into the RRJFB. To facilitate this submission, Chelan will provide Douglas with engineering drawings and schematics of the RRJFB. Douglas shall keep the drawings and schematics confidential and shall return them to Chelan upon request.

   a. Part of the investigation and review shall include a noise listening evaluation. Chelan shall provide personnel and equipment for operating on-site equipment (gates, pumps, screen cleaner, trash rake, etc.) during the noise listening evaluation.

   b. Douglas shall reimburse Chelan for all reasonable use of Chelan resources (personnel, materials, equipment, consultants and contracts) related to Chelan’s review and approval of the System suitability and siting; including without limitation the noise listening evaluations, the antenna research and design, and all subsequent review and analysis (mechanical, electrical, biological and hydro engineering) to determine the suitability and integration of the System into the RRJFB. The reimbursement shall include all reasonable internal and external costs, including without limitation pay and benefits, together with a ten percent (10%) administrative fee. Reimbursement shall be made by Douglas on a monthly basis upon invoices submitted by Chelan to Douglas. Douglas shall be obligated to pay these amounts to Chelan even if Chelan ultimately disapproves the System.

2. System Installation. In the event Chelan approves the System for installation, and subject to Chelan’s own needs, Chelan agrees to provide mechanical, electrical, biological, and hydro engineering services to provide input regarding System installation. If Chelan’s mechanical, electrical, biological or hydro engineering resources are needed for Chelan-owned projects, at Chelan’s sole discretion, Chelan may be unavailable to provide said resources. Douglas shall at all times remain fully responsible for System installation. Douglas shall remain ultimately responsible for contract development and contract management related to System installation. Chelan shall have the right to have an inspector on site at all times to monitor the installation. All Contract Documents, specifically including, but not limited to, Bid Documents, Specifications and contract drawings shall be submitted to Chelan for approval in advance of bidding. All contract changes and change orders shall be subject to Chelan’s approval in advance. Chelan’s approval shall not relieve Douglas of its obligations under this Agreement, including, without limitation, the Indemnity and Waiver, Payment, and System Obligations.

If any Chelan resources (personnel, materials, equipment) are utilized for construction and/or installation of the System, all reasonable internal and external costs, including without limitation pay and benefits, together with a ten percent (10%) administrative fee, shall be fully reimbursed by Douglas on a monthly basis upon invoices submitted by Chelan to Douglas.
All permitting obligations related to the System, including, without limitation, System installation, shall be the sole obligation of Douglas. Douglas, and Douglas's contractors, vendors, employees and agents shall comply with all applicable Federal, State and local laws, regulations, rules and directives related to the System and System installation. All Project or FERC related permitting, approvals or correspondence shall be completed by Chelan and all costs and expense related thereto shall be reimbursed by Douglas.

3. **Ownership and Data Access.** Following installation of the System, and completion of the applicable warranty period, Chelan shall provide a Notice of Acceptance of the constructed System to Douglas in writing. Title to the System shall pass to Chelan 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 Douglas.

Except as otherwise limited herein, following installation of the System, Douglas and Chelan shall each have the right to receive and use all data and information from the System for their own business and operational purposes. Either party may provide the data and information to third parties for their respective business and operational purposes. Subject to the termination provisions of this Agreement, the System will be integrated with the PTAGIS database and as such, data from the System will be directly uploaded to PTAGIS and publicly available for retrieval from the PTAGIS web portal.

4. **System Repair, Operation and Maintenance.**

a. Beginning with the second year of System operation, Chelan and Douglas shall share annual System operation and maintenance ("O&M") costs equally. Douglas shall be solely responsible for all O&M costs for the first year.

b. During the term of this Agreement, repair costs shall be the responsibility of Douglas. For purposes of this Agreement the term "repair costs" shall mean those costs or expenses associated with restoring the System to a level of performance at least equivalent to the performance at the time of the Notice of Acceptance caused by circumstances other than a failure of proper operation and maintenance. In the event Douglas decides not to make necessary repairs to the System, then this Agreement may be terminated by Chelan on thirty (30) days written notice.

c. Douglas commits to operation of the System only within Chelan’s planned RRJFB operations period for a given year.

d. In the event that Chelan and Douglas implement survival studies that have overlapping/conflicting time-frames, the studies shall be coordinated to the greatest extent possible. In the event of a study conflict that cannot be overcome by coordination, Chelan’s survival studies shall take priority.

e. In the event that either Party determines that the System requires repair or adjustment during Chelan’s planned RRJFB operations period, that may reasonably require modification or temporary cessation of operations of the RRJFB, all RRJFB operational modifications shall be coordinated by and/or through Chelan, and at Chelan’s sole discretion, may be approved or rejected. Douglas shall be responsible for coordinating with the Rocky Reach Habitat Conservation Plan Coordinating Committee.

f. In the event Douglas anticipates that modified RRJFB operations are necessary during Chelan’s planned RRJFB operations period, then Douglas may request such modified
RRJFB operations in writing. Chelan shall have ten (10) business days from the receipt of said request to approve or deny the request. In the event that Chelan denies the request, Douglas expressly agrees that Chelan shall have no liability to Douglas whatsoever associated with said denial of the repair or adjustment, or the delay or worsening thereof, including without limitation for incorrect, failed or delayed data or information from the System. In the event that Chelan approves Douglas’ request for such modified RRJFB operations during Chelan’s planned RRJFB operations period, then Chelan shall advise Douglas in writing, and Douglas shall be responsible for fully reimbursing Chelan for all reasonable costs and expenses associated with RRJFB alternative operations, including, without limitation, lost generation revenues, and together with a ten percent (10%) administrative fee. In the event that Chelan unilaterally requires alternative RRJFB operations, in the absence of any request from Douglas for alternative or modified operations, Chelan shall advise Douglas in writing, and Douglas shall not be responsible for reimbursing Chelan for any costs and expenses associated with RRJFB alternative operations.
IV. TERM AND TERMINATION

1. This Agreement shall be effective on the date of execution. The initial Term of this Agreement shall be 10 years beginning at midnight on the Effective Date with two five-year renewal terms.

2. Unless notice of termination is given as provided in this Agreement of termination, there shall be two consecutive five-year renewal terms. Neither party shall be obligated to renew this Agreement if, at the time the renewal term is to begin, the other is in default under the terms of this Agreement. Unless otherwise agreed by the Parties, each Renewal Term shall be on the same terms and conditions as set forth in this Agreement.

3. **Termination for Convenience.** This Agreement may be terminated for convenience by either District, which termination shall be effective 90 days after the date on which such notice of termination, in writing, is received by the other District or on expiration of the current term (or Renewal Term) whichever is earlier.

4. **Termination for Breach.** This Agreement may be terminated by either Party upon the occurrence of a material breach by the other Party and failure to cure the breach within thirty (30) days, or if the cure reasonably requires more than thirty (30) days, the defaulting Party fails to commence the cure within thirty (30) days and thereafter fails to diligently and continuously prosecute the cure to completion.

5. **Termination for Project Interference.** This Agreement may be terminated at any time effective immediately upon delivery of written notice by Chelan in the event that Chelan determines, in the exercise of its reasonable discretion that the System interferes with the operation of the Project, the operation of the RRJFB, or Chelan’s license or regulatory obligations related to the Project.

6. **Effect of Termination.** In the event that this Agreement is terminated:

   a. If title to the System has not passed to Chelan pursuant to this Agreement, Douglas shall remove the System at its sole risk and expense and return the RRJFB to its preexisting condition and, in addition to any indemnification and defense obligations contained in this Agreement, reimburse Chelan for all reasonable costs and expense incurred by Chelan through the effective date of the termination.

   b. If title to the System has passed to Chelan pursuant to this Agreement, Douglas shall have no right or interest in the System (except Douglas shall continue to have access to any data or information collected from the System) from and after the effective date of the termination provided that the System is functional and in operation and Douglas is paying for fifty percent (50%) of the operations and maintenance costs of the System. In addition, Douglas shall, for the remainder of the then effective term continue to be obligated to Chelan for one-half (50%) of the O&M costs of the System, which obligation shall specifically survive termination.

7. Both Parties agree that if Chelan or an agency, regulatory body or other entity with jurisdiction over the Project or Chelan’s License obligations determines that the System interferes with Chelan’s operation of the Project, the operation of the RRJFB, or Chelan’s license or regulatory obligations related to the Project, (collectively “Interference”) that the Interference shall be remedied by the Parties as soon as practicable or within a timeline established by the entity having jurisdiction, whichever is sooner. In the event that the Interference cannot be so remedied, this Agreement shall be immediately terminated without further right or obligation to either Party; provided, however, that the System shall be removed. The costs of remedy and/or removal shall be borne by Douglas.
V. INDEMNITY AND WAIVER OF CLAIMS

1. The Districts agree to indemnify, defend and hold the other District, its elected officials, officers and employees, agents or representatives, harmless from any and all claims, damages, demands, suits and actions including attorneys fees, costs and expenses incurred in connection therewith in enforcing the indemnity, arising out of or in any way related to their respective obligations under this Agreement; provided that the Districts shall not be responsible for claims, actions or damages caused by the other District’s negligence to the extent of the other District’s negligence. In addition, Douglas agrees that it shall indemnify, defend and hold Chelan harmless from any and all claims, damages, demands, suits and actions including reasonable attorney fees, costs and expenses incurred in connection therewith arising out of or in any way related to the design, installation and operation of the System.

2. The Districts agree to hold one another harmless for injuries suffered by their own employees or contractors/subcontractors. This indemnity obligation specifically includes liability or alleged liability that may arise from injury or loss suffered by any employee of either party regardless of any immunity provided by the Washington Industrial Insurance Act, RCW Title 51, or any other applicable law.

3. Under no circumstances shall Chelan have any liability whatsoever to Douglas (whether in contract, tort or otherwise) or any other entity or person for sickness of, or injury to, fish.

4. The terms of this section, specifically including the waiver of immunity, shall be deemed mutually negotiated to the fullest extent allowed by the laws of Washington.

VI. PAYMENT

All payments due by either Party hereunder shall be made within 30 days of the date of the invoice. Any unpaid invoices will accrue interest at a rate of ten (10%) percent per annum.

VII. ADMINISTRATION OF AGREEMENT

This Agreement shall be jointly administered by a representative of Douglas and a representative of Chelan. Absent written notice by one party to the other, the administrators shall be: Chelan – Keith Truscott; Douglas – Tom Kahler.

VIII. EFFECT OF OTHER AGREEMENTS

This Agreement shall not change or affect the responsibilities and obligations of Chelan under its Rocky Reach and Rock Island Habitat Conservation Plans, nor the responsibilities and obligations of Douglas under its Wells Habitat Conservation Plan.

IX. JURISDICTION AND ATTORNEY FEES

This Agreement shall be governed by the laws of the State of Washington. Venue for any legal action shall be in the Superior Court for Chelan County, Washington. The Parties stipulate that the judge shall not be a Chelan or Douglas customer. The substantially prevailing party in any legal action shall be entitled to reasonable attorney fees and all reasonable costs, including, but not limited to, expert witness fees and travel and lodging expenses.
X. GENERAL PROVISIONS

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or any authorized representative of each party. This Agreement constitutes the entire agreement between the Parties, and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on either Party except to the extent incorporated in this Agreement. Neither Party may assign, transfer, license, convey, sell, hypothecate or encumber any right or obligation created by this Agreement without the prior written consent of the other Party.

XI. AUTHORITY

Each person signing this Agreement expressly represents that they have the full authority of the entities on behalf of which they are signing to execute this Agreement and to bind those entities to the terms of this Agreement.

XII. RELATIONSHIP OF THE DISTRICTS

No agent, employee or representative of Douglas shall be deemed to be an agent, employee, or representative of Chelan for any purpose, and the employees of Douglas are not entitled to any of the benefits Chelan provides to Chelan employees. No agent, employee or representative for Chelan shall be deemed to be an agent, employee or representative of Douglas for any purpose, and the employees of Chelan are not entitled to any of the benefits Douglas provides to Douglas employees.

The Districts intend that the Districts are and shall continue to be independent contractors and maintain all control over their respective personnel, standards of performance, discipline, and all other aspects of personnel performance.

XIII. FILING

The Parties shall, in compliance with RCW 39.34, upon execution of this Agreement, file the Agreement with the county auditor (Douglas) or post an electronic copy of the Agreement on their website (Chelan) at the following address:

http://www.chelanpud.org/interlocal-agreements.html
XIV. NOTICE

Any notice given or required to be given by the Parties to this Agreement shall be delivered in writing to the following individuals unless another individual is specified by a party by providing written notice of same.

IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed on the date indicated below.

PUBLIC UTILITY DISTRICT NO. 1
OF DOUGLAS COUNTY, WASHINGTON

By: _____________________________
    William Dobbins

Title: General Manager

Date: ___________ 2009

PUBLIC UTILITY DISTRICT NO. 1
OF CHELAN COUNTY, WASHINGTON

By: _____________________________
    Richard Rice

Title: General Manager (Acting)

Date: ___________ 2009