INTERLOCAL AGREEMENT BETWEEN CHELAN COUNTY AND PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY

THIS INTERLOCAL AGREEMENT ("Agreement") is hereby entered into by and between Chelan County, Washington (the “County”), and Public Utility District No. 1 of Chelan County, Washington (the “District”), sometimes collectively referred to as the “Parties”. This Agreement is made pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW.

WHEREAS, the County is engaged in County Road Project 612 ("CRP612"), the Eagle Creek Road Improvement Project Phase I, involving improvements to Eagle Creek Road in Chelan County, Washington (the “Project”), as generally depicted on the Project plans and specifications included in the County’s bid package ("Contract Bid Documents"); and,

WHEREAS, the County and the District are Parties to a Franchise Agreement for electric transmission and distribution facilities entered into on May 30, 1972 ("Franchise Agreement") and a Communication Infrastructure Right-of-Way Use Agreement ("Use Agreement") entered into on June 7, 2005; and

WHEREAS, the County staff and the District staff have worked cooperatively through the design phase of the Project for the mutual benefit of the Parties and to assure compliance with the Parties’ Franchise and Use Agreements: and

WHEREAS, as a result of the cooperative planning meetings between the Parties, the District developed plans and specifications for its electric and fiber work (the “District Work”) for inclusion in the Contract Bid Documents. District Work is specifically referred to as Group 2 Work in the Contract Bid Documents. The Project is scheduled to be advertized for bid on or around mid-to-late February 2011; and

WHEREAS, the District desires to complete its District Work in the Project area, as generally described in attached Exhibit A, the Chelan County PUD Eagle Creek Power/Fiber Bid Documents, before final completion of the Project; and

WHEREAS, as set forth in this Agreement, the County and the District desire to continue their cooperative efforts through bidding, construction of the District Work and the Project by the County Contractor ("Contractor"), and for such work as may be performed by the Parties’ respective forces in addition to each Party’s work under the awarded Project Contract ("Contract"); and

WHEREAS, the Project is funded with a combination of federal, state, and local funding, the Washington State Department of Transportation ("WSDOT"), Federal Highway Administration ("FHWA") and other federal and state agencies have oversight responsibility and authority and the parties will be required to cooperate with oversight.
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 County and the District agree as follows:

1. **Purpose.** The purpose of this Agreement is to coordinate District Work concurrent with Project construction improvements, by inclusion of the District Work as Group 2 Work in the Contract Bid Documents, and to set forth duties and responsibilities of each Party for the District Work done in conjunction with the Project.

2. **Scope of Work.** District Work for the Chelan County PUD Eagle Creek Power/Fiber project is set forth in Exhibit A. District Work includes the installation of approximately one (1) mile of electrical and fiber optic duct and vault system, as well as all electrical work necessary to provide a complete electrical system including, but not limited to all wiring of primary voltages cable in ducts, wiring in power vaults, splicing, switching, grounding, terminations, customer transfers, and removal of existing facilities.

3. **County Obligations.** The County shall:

   3.1. Administer the bidding and contract award, consistent with bid laws applicable to the Project, including:
   a.) Preparing the Contract Bid Documents to include the District Work as provided in Exhibit A;
   b.) Advertising for Project bids and administering the Project bidding process, including coordinating and forwarding to the District prospective bidders’ requests for information related to District Work;
   c.) Requiring the Contractor to name the District as an additional insured under its insurance obligations in the Contract;
   d.) Provide for District inspection of bid proposals after bid opening; and
   e.) Awarding of the Contract.

   3.2. Administer the Contract subject to the provisions of this Agreement for District Work, including:
   a.) Contract administration for the complete Contract, including District Work;
   b.) Communication and coordination with the Contractor to schedule all Work, including District Work, and to be the lead agency for inspection and for coordinating resolution of questions and issues arising during the performance of the Contract;
   c.) Disbursement of payments to the Project Contractor relating to District Work, subject to the District’s written approval in advance;
   d.) Administration of change orders relating to District Work subject to the District’s written approval in advance; and
e.) Allowing for District inspection of the District Work performed by the Contractor.

3.3. Provide construction engineering, except as set forth in paragraph 4.3 below, including survey control and construction staking.

3.4 Determine Project completion. Completion shall not be determined until the District has provided written acceptance to the County of District Work performed by the Contractor under the terms of the Contract.

3.5 Determine final acceptance of the Project.

4. District Obligations. The District shall:

4.1. Provide plans, specifications, and an engineering estimate of costs for the District Work to the County for inclusion in the Contract Bid Documents.

4.2. In consultation with the County, answer and document responses to prospective bidders’ questions relating to District Work prior to bid award and provide the County with the copies of the documentation.

4.3. Provide inspection, project management, engineering, materials testing, and other services as needed to ensure that District Work is performed in compliance with the Contract.

4.4. Provide review and written approval to the County for any change orders for District Work before implementation.

4.5. Reimburse the County for County administration costs for District Work.

4.6. Reimburse the County for Costs of District Work.

4.7. Provide the County with written acceptance of District Work, performed by the Contractor, at Project completion.

4.8. Provide to the County with red-lines of District Work for inclusion in the County’s as-builds.

4.9. Assume liability, indemnify, defend and hold harmless the County for claims related to District design of the plans and/or specifications for the District Work, for District inspection of District Work, and for District errors and omissions in its District Work.

4.10. Cooperate with oversight and audits of the Project.
5. **Filing and Effective Date.** This Agreement shall become effective upon the date of filing of the executed Agreement with the Chelan County Auditor. The County shall file this Agreement with the Chelan County Auditor promptly after the Agreement is executed.

6. **Duration and Termination.** This Agreement will terminate after final payment for the District Work is received by the County from the District upon the completion of the Project; except, this Agreement may be terminated prior to the award of the Contract by written mutual agreement signed by authorized personnel of each party, by County rejection of all bids, or by the District directing the County in writing to reject all bids for the District Work. Additionally, WSDOT and FHWA must approve incorporation of the District Work into the Project. This Agreement terminates if WSDOT and FHWA do not approve incorporation of the District Work into the Project by 5:00 p.m. on March 4, 2011. The County shall promptly notify the District in writing in the event that this Agreement is terminated due to WSDOT and FHWA failure to timely grant the required approval.

7. **Property and Equipment.** Upon termination of this Agreement, all property and equipment purchased by the County in furtherance of this Agreement shall remain property of the County and all property and equipment purchased by the District in furtherance of this Agreement shall remain property of the District. All property and equipment shall be returned to the owner within a reasonable time after termination of this Agreement.

8. **Costs.** Each Party shall be responsible for its respective costs of work under the Contract.

8.1. The Costs of District Work shall be the cost to complete Group 2 Work, and shall be adjusted for changes to District Work, if any, as set forth under Section 1-04.4 of the Standard Specifications 2010, adopted below.

8.2. The District shall be responsible for its internal costs for District inspection, engineering, project management, materials testing, and other District tasks and services not defined in this Agreement.

8.3. The District shall reimburse the County in the amount of five percent (5%) of the completed Costs of District Work for County administration of District Work.

9. **Payment.** Upon receipt of periodic invoices from the County, the District shall make corresponding periodic progress payments to the County. Each progress payment and the final payment are due within thirty (30) days of the date the related invoice is mailed by the County to the District.

10. **Records.** The Parties shall be responsible for record keeping, record retention, and access to records as follows:
9.1. The County shall keep and maintain accurate and complete cost records pertaining to the Project as administered under the Contract and this Agreement ("County Records"). The District shall have full access and the right to examine County Records during the term of this Agreement and until expiration of the applicable record retention period.

9.2. All records, books, documents and other materials owned, used, retained, maintained, prepared, or issued by the District in the implementation of this Agreement ("District Records") shall be the property of the District, which shall have the responsibility of the retention and release of those materials. The County shall have full access and the right to examine District Records during the term of this Agreement and until expiration of the applicable record retention period. Federal and state agencies with funding, oversight, auditing or investigative need or right to examine District Records shall likewise have full access and the right to examine District Records during the term of this Agreement and until expiration of the applicable record retention period.

11. Mutual Indemnity. To the fullest extent allowed by law:

11.1. The District shall indemnify, defend and hold harmless the County, 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, or arising out of the District’s non-observance or non-performance of any law, ordinance, or regulation applicable to the District Work.

11.2. The indemnification obligation of the 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.

11.3. The County 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 County, its officers, agents, and employees, in connection with the Project, or arising out of the County’s non-observance or non-performance of any law, ordinance, or regulation applicable to the Project.

11.4. The indemnification obligation of the County 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 County expressly waives the protection afforded by such laws. The foregoing waiver and indemnification obligations have been mutually negotiated.

12. Amendment. The County and the District may mutually amend this Agreement. Such amendment(s) shall not be binding unless made in writing and signed by personnel authorized to the bind the County and the District.

13. Public Records Act. Public records of either party to this agreement which contain confidential information may be subject to state public records act and other public records laws, as now exist or as may be hereafter amended. If inspection and/or copying of public records containing confidential information is requested, the party to this agreement receiving such request agrees to notify the other party’s Public Records Officer of the request at least ten (10) business days prior to the records being made available for inspection or copying by the requestor. The other party to this agreement may promptly seek a protective order in the appropriate court. The party to which a public records act request is made will reasonably cooperate with the other party to this agreement in its protective order action, but is under no obligation to obtain or seek any court protection. The Parties Public Records Officers are:

13.1. The County
Public Records Officer
Chelan County Public Works Department
316 Washington Street, Suite 402
Wenatchee, WA 98801
tel. (509)667-6415
fax (509)667-6250
PW@co.chelan.wa.us

13.2. The District
Public Records Officer
Public Utility District No. 1 of Chelan County
327 N. Wenatchee Ave
Wenatchee, WA 98807
tel. (509)661-4258
fax (509)661-8121

14. Relationship of Parties. The Parties intend that an independent contractor relationship will be created by this Agreement. 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.
15. Contact Information. The following shall be the contact person for each party:

15.1. The District
John Goodwill, Project Manager
Public Utility District No. 1 of Chelan County
327 N. Wenatchee Ave
Wenatchee, WA 98807
tel. 509-661-4022
fax 509-661-8148
john.goodwill@chelanpud.org

15.2. The County
Paula Cox, Assistant County Engineer
Chelan County Public Works Department
316 Washington Street, Suite 402
Wenatchee, WA 98801
tel. 509-667-6415
fax 509-667-6250
paulah.cox@co.chelan.wa.us

15.3. Each party shall arrange for an alternate contact person in the circumstance that the aforementioned contact person is unavailable.

16. Governing Law; Venue. This Agreement is governed by the laws of the State of Washington, both as to interpretation and performance. Any action at law, suit in equity or other judicial proceeding for enforcement of this Agreement shall be instituted only in the Superior Court of Chelan County, State of Washington.

17. Disputes. In the event that a dispute arises under this Agreement and prior to initiation of any legal action, authorized representatives of each party shall meet and negotiate in good faith to attempt to resolve the dispute.

18. Attorney Fees; Costs. If it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this agreement, each party shall be responsible for its own attorneys’ fees and costs.

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. 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.

20. **Standard Specifications.** The 2010 edition of the Washington State Department of Transportation's *Standard Specifications for Road, Bridge, and Municipal Construction*, as amended on the effective date of this Agreement, ("Standard Specifications: 2010") is adopted by this reference and incorporated in this Agreement, except, the express provisions of this Agreement, the Contract Bid Documents, and the Contract shall govern over any conflicting corresponding provision in the Standard Specifications: 2010.

21. **Franchise and Use Agreements.** This Agreement is specific to the Project only and does not otherwise amend or alter the Parties' existing Franchise Agreement and Use Agreement.

22. **Entire Agreement.** The preamble and the Exhibit A attached to this Agreement are incorporated into this Agreement. This instrument embodies the whole agreement of the Parties. There are no promises, terms, conditions, or obligations between the Parties with regard to the subject matter of this Agreement other than those contained in this Agreement. This Agreement supersedes all previous communications, representations or agreements, either oral or written between the parties about the subject matter of the Agreement.
APPROVED BY

Dated this 28th day of February 2011.

BOARD OF COUNTY COMMISSIONERS

DOUG ENGLAND, Chairman

RON WALTER, Commissioner

KEITH GOEHNER, Commissioner

ATTEST:  LORI MILLER

Clerk of the Board (Deputy)

Dated:  Feb 28, 2011

APPROVED AS TO FORM

LOUIS N. CHERNAK
Deputy Prosecuting Attorney

Date:  2-25-2011
APPROVED BY

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON

DATED this 7th day of March 2011.

[Signature]

General Manager
EXHIBIT A
CHELAN COUNTY PUD EAGLE CREEK POWER/FIBER
BID DOCUMENTS

CHELAN COUNTY
EAGLE CREEK ROAD IMPROVEMENTS (CRP612)

CONFIDENTIAL
RESOLUTION NO. 11-13630

A RESOLUTION AUTHORIZING PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON TO ENTER INTO AN INTERLOCAL AGREEMENT WITH CHELAN COUNTY FOR COORDINATION AND CONSTRUCTION OF DISTRICT ELECTRIC AND BROADBAND INFRASTRUCTURE AS PART OF THE COUNTY’S EAGLE CREEK ROAD IMPROVEMENT PROJECT

FACTUAL BACKGROUND AND REASONS FOR ACTION

Public Utility District No. 1 of Chelan County (District) and Chelan County (County) are parties to a Franchise Agreement for electric transmission and distribution facilities entered into on May 30, 1972, and a Communication Infrastructure Right-of-Way Use Agreement entered into on June 7, 2005.

County staff and District staff have worked cooperatively through the design phase of the County’s Road Project 612, the Eagle Creek Road Improvement Project Phase I for the mutual benefit of the parties and to assure compliance with the parties’ Franchise and Use Agreements. The project is scheduled for construction and completion by the County in 2011.

As a result of cooperative planning meetings between the parties, the District developed plans and specifications for its electric and fiber work (“District work”) for inclusion in the County’s contract bid documents. The District desires to complete its District work in the project area, as generally described in Exhibit A of an Interlocal Agreement which has been negotiated by the parties.

District work includes the installation of approximately one (1) mile of electrical and fiber optic duct and vault system, as well as all electrical work necessary to provide a complete electrical system including, but not limited to all wiring of primary voltages cable in ducts, wiring in power vaults, splicing, switching, grounding, terminations, customer transfers, and removal of existing facilities.

The County anticipates public bid of the project (with District work included as an alternative) around March 7, 2011. The proposed project contract would require the County’s contractor to perform District work as defined in Exhibit A of the Interlocal Agreement. District staff has determined that the District has an opportunity to reduce project costs associated with replacement of aged and unreliable direct bury power and installation of broadband vault and duct systems for the Eagle Creek service area.

Joint utilization of the County’s contractor, in accordance with the terms of the proposed Interlocal Agreement, will work to the mutual benefit of the District and
County. Such cooperative action will result in savings to the public and will better serve the needs of the customers of both the District and the County.

The District staff recommends that the Interlocal Agreement for cooperative action and the use of the County's contractor be approved and executed by the District's General Manager.

The General Manager has reviewed staff's recommendation and concurs in the same.

**ACTIONS**

IT IS RESOLVED BY THE COMMISSION OF PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON, as follows:

**Section 1.** Cooperative action between the District and the County related to the Eagle Creek Road Improvement Project Phase I is in the best interest of the respective entities and should be coordinated through the use of an Interlocal Agreement, a copy of which will be on file in the office of the District.

**Section 2.** The General Manager of the District is hereby authorized and directed to execute the Interlocal Agreement with Chelan County on the behalf of the District.

DATED this 22nd day of February 2011.

[Signatures]

ATTEST:

[Signatures]

Seal

CAW