CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117974

AN ORDINANCE relating to the City Light Department; authorizing the General Manager and Chief Executive Officer to execute an agreement with Lake Union Building LLC, one of three participants in the Department's Pay for Performance pilot program.

WHEREAS, the City Light Department ("City Light") acquires energy efficiency as its first priority energy resource and has been doing so since 1977; and

WHEREAS, City Light wishes to pursue innovative means of promoting energy efficiency, including the concept of pay for performance whereby customers are paid for energy efficiency over time; and

WHEREAS, the City of Seattle's 2013 Climate Action Plan, adopted by the City Council through Resolution 31447, included a recommendation that City Light "pilot a utility incentive program that would pay for actual energy savings over time instead of providing up-front payment for projected savings," and the Resolution expressed the Council's desire that departments move forward quickly with a number of specific recommendations including this one; and

WHEREAS, City Light issued a Request for Proposal to solicit participants in a pilot program to test the pay for performance concept and selected three proposals submitted by building owners Lake Union Building LLC; Union Square LLC; and Talon Portfolio Services, LLC; and

WHEREAS, City Light's authority to enter into agreements to purchase power, including energy savings, is limited to a duration of two years but the pilot program is to extend for three years, including payment of energy conservation incentives; and

WHEREAS, City Light has entered into initial two-year agreements with the selected participants but wishes to enter into funding agreements with the building owners for the entire three year period; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The General Manager and Chief Executive Officer of City Light, or his designee, is hereby authorized to execute for and on behalf of the City energy conservation

funding agreements with Lake Union Building LLC, substantially in the form attached hereto as Attachment 1.

Section 2. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2013, and signed by me in open session in authentication of its passage this _____ day of _____, 2013.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2013.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2013.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Conservation funding agreement with Lake Union Building LLC

ATTACHMENT 1 to SCL Pay for Perf Lk Union Bldg Agreement ORD

ESS13-17078

SEATTLE CITY LIGHT
ENERGY SMART SERVICES PROGRAM
PAY-FOR-PERFORMANCE ENERGY MANAGEMENT
FOR EXISTING FACILITIES
PARTICIPATION AGREEMENT

The City of Seattle, City Light Department ("City Light") enters into an energy conservation Agreement with **Lake Union Building LLC** ("Participant") as follows:

1. **AUTHORITY.** Participant warrants that he/she has the authority to enter into this Agreement for the project known as **Pay-for-Performance (P4P) Energy Management** located at **1700 Westlake Ave N, Seattle, Washington, 98109** ("the project").

2. **TERM OF AGREEMENT.** This Agreement shall be in force from the date of execution of this Agreement through **December 31, 2016**.

3. **PAY-FOR-PERFORMANCE ENERGY MANAGEMENT.**

   Participant agrees to engage in P4P at the project and monitor energy use and operations as set out in Attachment A. Electrical conservation activities shall be pursued and maintained by Participant's staff or through third-party contracts. Participant agrees that the P4P implementation will be approved by City Light for participation in this program. Installation, operation, and system implementation performed by third-party contractor(s) is to be provided under a separate contract between Participant and the third-party contractor(s). City Light shall not be a party to any such contract. Participant expressly acknowledges that City Light's involvement with respect to the P4P Program is undertaken solely in connection with funding for such a program. All obligations to any third-party contractor(s), including payments for any related cost shall be Participant's sole responsibility.

   Participant agrees to report base year energy and energy use and savings to City Light on an annual basis for the three performance years.

   Participant agrees to grant City Light or its designated representative access to the energy management and information system (EMIS) software and all input data used in the calculation of energy savings. Access shall entail either a copy of the EMIS software installed on a computer controlled by City Light or its designated representative or remote account access to a web-based version of the software. Participant acknowledges that software access could require a separate agreement between City Light and the software provider or Participant for a license to use said software. All algorithms used by the software must be documented and available to City Light and/or its representatives.

4. **COMPLIANCE WITH APPLICABLE LAWS AND CODES.** Participant shall comply with all applicable Federal, State and local laws, codes, regulations and requirements in the design of the project.

5. **PAYMENT.** Payment shall be dependent upon City Light review for compliance with the terms of this Agreement, including Attachment A.

   City Light will compensate Participant for actual energy reduction in accordance with Attachment A for each year of the Program.

   Participant shall submit to City Light the consumption baseline summary and energy use and savings on an annual basis for three years.

   Following approval of the energy savings and documentation by City Light, the payment to Participant shall be made by City Light in accordance with Attachment A.

6. **DATA COLLECTION.** Under the Energy Smart Services Program, City Light collects and compiles information on the performance and energy use of facilities, and related equipment for purposes of evaluation and preparing case studies. For sites using energy other than electricity, Participant agrees to assist City Light in obtaining consumption documentation for the three-year period following start of the project for the same purpose. Should this energy use information not be available without tenant approval or consent following occupancy, Participant further agrees to allow City Light to request permission or obtain consent or provide the information needed by City Light to obtain such from the tenants for the same consecutive period.

   Participant agrees to participate in interview(s) with City Light and/or their representatives to collect data related to: selection, implementation, operation, energy use, and conservation measures identified through use of the site incented in the P4P Program. Participant will work with City Light and/or their representatives to review and comment on draft case studies as referenced in Attachment A.

   Participant agrees to allow publication of case studies and/or white papers by City Light and/or their representatives summarizing the results of the P4P Pilot Program.

   All unpublished data shall be treated by all parties as confidential, subject to State and Federal public disclosure laws.

7. **ALTERNATE FUNDING.** The Participant has the option of including additional measures not contained in the measure list submitted with the original proposal to the P4P project at the facility. However, if the Participant wishes to receive alternate funding from City Light, exclusive of the P4P program, for the installation of any energy conservation measures not contained in the measure list submitted with the original proposal, **Participant must execute a separate Agreement with City Light before construction or installation begins.** Additional documentation for determination of actual or projected savings may be required.

8. **INDEMNIFICATION.** Participant releases and shall defend, indemnify and hold harmless City Light, its successors and assigns, and the respective directors, officers, elected officials, employees and agents of City Light and its successors and assigns from any and all claims, losses, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees) arising out of or in connection with this Agreement, the purchase, installation or use of any conservation measures contemplated by this Agreement, or the acts or omissions of the Participant or any of its suppliers or contractors of any tier, the respective successors and assigns of Participant or any such suppliers or contractors, the directors, officers, employees and agents of each of the foregoing, or anyone acting on the Participant's behalf in connection with this Agreement or the purchase, installation or use of the conservation measures contemplated by this Agreement. Such indemnity, protection and hold harmless shall include any demand, claim, suit or judgment for damages to property or injury to or death of persons, including officers, agents, and employees of either party hereto including payment made under or in connection with any Worker's Compensation Law or under any plan for employees' disability and death benefits. PARTICIPANT EXPRESSLY WAIVES BY MUTUAL NEGOTIATION, WITH RESPECT TO CITY LIGHT, ALL IMMUNITY AND LIMITATION ON LIABILITY UNDER ANY INDUSTRIAL INSURANCE ACT, INCLUDING TITLE 51 RCW, OTHER WORKER'S COMPENSATION ACT, DISABILITY BENEFIT ACT, OR OTHER EMPLOYEE BENEFIT ACT OF ANY JURISDICTION WHICH WOULD OTHERWISE BE APPLICABLE IN THE CASE OF SUCH CLAIM.

9. **WARRANTY.** Any warranties with respect to the conservation activities pursued within the three-year P4P performance measurement period are solely matters to be agreed upon between Participant and its third-party contractor(s). City Light makes no representations or warranties and shall not in any way be liable for or with respect to the design, equipment, installation and/or use of the conservation measures contemplated by this Agreement, including any warranties or merchantability of fitness for a particular purpose. City Light makes no implied or express warranties or promises that the conservation measures contemplated by this Agreement will actually produce any energy savings.

10. **ATTORNEYS' FEES AND COSTS.** In the event legal action is taken or commenced among the parties hereto, declaratory or otherwise, for the enforcement of any of the covenants, terms, or conditions of this Agreement, the prevailing party shall be entitled to its costs and reasonable attorney fees as determined by the trial and appellate courts.

    Costs and reasonable attorney fees shall include, but not be limited to, reasonable attorney fees, paralegal and legal support staff expenses, costs of arbitration, mediation, expert witnesses, exhibits, reasonable investigations, and reimbursement for all time, expense, and overhead of all prevailing party personnel or consultants assisting in the legal action or responding to or investigating a claim or demand.

11. **AMENDMENTS.** If either party to this Agreement desires a change in the items specified in this Agreement, this Agreement must be amended through written request and mutual written agreement.

12. **AFFIRMATIVE EFFORTS TO UTILIZE WOMEN'S AND MINORITY BUSINESSES (WMBEs).** The City encourages the utilization of Minority Business Enterprises ("MBEs") and Women's Business Enterprises ("WBEs") (collectively, "WMBEs"), in all City contracts.

13. **NONDISCRIMINATION AND AFFIRMATIVE ACTION.** (Seattle Municipal Code, Ch. 20.44) The City of Seattle is an equal opportunity and affirmative action employer. It is the City's expectation that to the maximum extent feasible, Participant will adhere to these policies during the performance of this Agreement.

14. **TERMINATION OF AGREEMENT.** If through any cause Participant fails to comply with the obligations under this Agreement, City Light shall have the right to terminate this Agreement by giving written notice to Participant of such termination. Upon receipt of written notice, Participant will have 30 calendar days to cure the noncompliance or produce substantial evidence of Participant's efforts to cure. If Participant fails to do so, then City Light shall terminate this Agreement.

PARTICIPANT	**SEATTLE CITY LIGHT**
By_____ *(signature)	By _____
_____ *(print name)	Glenn Atwood, Director Conservation Resources Division
*Title_____	Date_____
*Date_____	
*Company_____	
*Address_____	
_____	
Tax ID No. (IRS)_____	
Business Legal Status:	
_____Corporation _____Sole Proprietorship _____Partnership	
Other:_____	

Standard Specifications

Participation & Implementation Requirements

As a condition of receiving P4P funding, the participant must implement the following activities:

1. The P4P program spans a three-year performance period to begin on the mutually agreed Performance Period Start Date and as such represents a three-year agreement term. Participant must commit to engaging in program activities for the full three-year term.

2. For the duration of this Agreement, Participant shall implement energy efficiency activities and projects at Participant's facility and establish and maintain an energy-use data-tracking system to include an established baseline, energy use, weather (or other relevant data), and energy savings.

3. Participant agrees to send SCL all information necessary to determine energy savings. Information may include electrical, natural gas, weather, occupancy, and any other relevant data that would impact energy usage.

4. Participant must submit to SCL (or have submitted on its behalf) monthly Activity Logs and an annual Energy Savings Report . The Energy Savings Report is due annually and must track energy usage and variables affecting energy use over the course of the previous year. Yearly funding amounts will be based on the verified savings in the Energy Savings Report.

5. Participant or their appointed measurement & verification provider agrees to conduct a meeting with SCL on a quarterly basis during the first performance year for the purposes of reviewing the energy tracking software tool and data.

P4P Payment Schedule

The beginning of the Performance Measurement Period will be negotiated for each project and called out in the Project-Specific Specifications. The first performance year begins at the Performance Measurement Period start date.

Payments are made at the conclusion of each performance-year based upon the SCL -verified savings in the Energy Savings Report and the project-specific energy savings incentive rate called out in the Project-Specific Specifications.

Customer Deliverables

As a condition of P4P funding, the participant must submit the following items to City Light for review and approval for the duration of the agreement.

Monthly

1. A Monthly Activity Report to include a minimum of the following elements:

   a) Significant actions taken in the pursuit of energy savings including:
      i) Brief description of actions, including action type: capital, operational, behavioral
      ii) Approximate dates at which the actions were initiated
      iii) Validation of actions taken (photos, trends, observations)

   b) Events flagged for potential non-routine adjustments to baseline
      i) Brief description of event
      ii) Event date and duration
      iii) Estimate of energy effect / proposed adjustment algorithm

   c) Energy use report from the energy management and information system (EMIS) software tool.

After the first performance year, the frequency of the activity report may decrease to quarterly.

Quarterly

1. In-person meeting with the staff responsible for the EMIS software tool to review the progress and discuss the input data, incorporation of adjustments, trajectory of savings, and reporting format.

After the first performance year, the frequency of this review may decrease to twice a year.

Annual

1. A letter from the Participant to City Light indicating that the Participant has completed the actions and deliverables outlined in this agreement and is requesting payment of their P4P incentive. In this letter, the Participant will indicate which performance year period the request pertains to and will include the EES agreement number, a list of items which have been submitted, the calculated P4P kWh savings achieved, and the customers expected incentive

amount.

2. The Annual Energy Report with attached appendices. Report appendices will include a minimum of the following elements:

   a. Baseline Energy Model projected through performance period to include all data input to the model (outside air temperature, degree-days, occupancy, etc.) presented at monthly resolution or finer.

   b. List of non-routine adjustments to baseline, including all assumptions and calculations to estimate the effect on the baseline energy use.

   c. Adjusted Baseline Energy Model projected through performance period

   d. Time Series Graph(s) for the period, including actual electricity usage, predicted electricity usage, and electric savings accumulated.

Conditions for Payment

1. Upon receipt of a participant's submittals (as outlined above), City Light staff will review all documentation for completeness and accuracy. Any request for re-work or additional supporting documentation will be communicated to the participant within two weeks of receipt of submittals.

2. Once a final P4P kWh savings and incentive have been determined, City Light will process the incentive payment for the relevant performance year period.

Project-Specific Specifications

Baseline Period, Performance Measurement Period, and Energy Savings Incentive

Annual payments will be made at the conclusion of each of the three years of the performance measurement period. Annual energy savings for the period will be based on the difference between a projection of energy use for the year produced by the EMIS software, adjusted for significant non-routine events, and the actual energy use for the year, as measured by the utility meter.

The projection of energy use shall be based on twelve months of historical energy use for the facility. This twelve-month period is the baseline year.

1. The baseline year shall be the twelve months beginning **March 1st, 2012**.

2. The performance measurement period shall be the three years beginning **October 1st, 2013**

A single incentive rate shall apply to all P4P electric energy savings for the duration of this agreement.

A single incentive rate shall apply to all P4P electric energy savings for the duration of this agreement.

3. For successful completion of the activities and submittals as outlined in the Standard Specification, Seattle City Light will provide an incentive of **$0.08** dollars per kilowatt-hour ($/kWh) of verified electric energy savings.

Anticipated Measures

Acceptance of the proposed incentive rate by SCL is contingent on the projected mix of measures as proposed by the Participant. As such these measures are precluded from eligibility for funding from other City Light energy efficiency programs for the duration of the P4P pilot. The anticipated mix of measures at the facility is as follows:

		Anticipated Savings, kWh		
	Measure Description	Year 1	Year 2	Year 3
1	Upgrade HVAC Control System	345,610	347,338	349,075
	Totals	345,610	347,338	349,075

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
City Light	Glenn Atwood/684-3740	Anthony Colello/684-5292

Legislation Title:
AN ORDINANCE relating to the City Light Department; authorizing the General Manager and Chief Executive Officer to execute an agreement with Lake Union Building LLC, one of three participants in the Department's Pay for Performance pilot program.

Summary of the Legislation:

This legislation approves an energy conservation agreement with Lake Union Building LLC, one of three participants in City Light's three-year pay for performance pilot program. Separate legislation authorizes the agreements with the other two participants.

Background:
Energy conservation continues to be City Light's first priority energy resource, and City Light continuously seeks out innovative ways to partner with customers and trade allies to meet its energy savings targets. City Light provides financial incentives to help customers overcome barriers to investing in cost-effective energy conservation, and under its current program design, that typically involves a single up-front payment once conservation measures have been installed, inspected and the energy savings verified.

As a result of input from technical advisors and various energy service providers, the City's 2013 Climate Action Plan, adopted by the City Council through Resolution 31447, included a recommendation that City Light "pilot a utility incentive program that would pay for actual energy savings over time instead of providing up-front payment for projected savings," and the Resolution expressed the Council's desire that departments move forward quickly with a number of specific recommendations including this one.

City Light issued an RFP seeking participants in a pilot program, focusing on commercial office buildings. Respondents were asked to identify the building and energy conservation measures to be implemented, to request the financial incentive rate required for their participation, and to partner with an energy service provider who could estimate the baseline energy savings over the pilot period (adjusted for key factors such as weather, occupancy, and building use). Three participants were selected, as summarized in the table below. The results of the pilot will inform a decision by late 2016 as to whether or not to adopt this approach as a standard conservation program offering.

City Light's current authority for agreements to purchase energy, interpreted to include acquiring energy conservation savings, is limited to two years. This pilot involves energy conservation payments to be made over a three year period, so City Light is seeking authority to enter into three year agreements with the pilot participants.

City Light will use its 2013 conservation incentive budget to fund this pilot, so no additional budget authorization is required.

Building/Address	Owner	Annual Incentive Rate ($/kWh)
Lake Union Building/1700 Westlake Avenue North	Lake Union Building LLC	$0.08
One Union Square/600 University Street	Union Square LLC	$0.228
1111 Third Avenue/1111Third Avenue	Talon Portfolio Services, LLC	$0.116

Please check one of the following:

__X__ This legislation does not have any financial implications.

____ This legislation has financial implications.

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
Yes. Authorization of the agreements under the pilot program will allow City Light to make use of more of its 2013 budget authority. The expected total funding amount under the three agreements is $1,229,507. In the long-term, if the pilot program shows that this approach is practical and cost-effective, it would expand the tools available to City Light to encourage energy conservation.

b) **What is the financial cost of not implementing the legislation?**
None.

c) **Does this legislation affect any departments besides the originating department?**
No.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**
None.

e) **Is a public hearing required for this legislation?**
No.

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No.

g) Does this legislation affect a piece of property?
No.

h) Other Issues:
None.

List attachments to the fiscal note below:
None.

City of Seattle
Office of the Mayor

October 29, 2013

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill that authorizes City Light to enter into a conservation funding agreement with Lake Union Building LLC for the building at 1700 Westlake Avenue North. Lake Union Building LLC is one of three parties chosen to participate in City Light's Pay for Performance pilot program. This three-year pilot program is intended to test an innovative model for encouraging commercial customers to use electricity more efficiently. City Light's current authority for agreements to purchase energy, interpreted to include acquiring energy conservation savings, is limited to two years. This pilot involves energy conservation payments to be made over a three year period, so City Light is seeking authority to enter into agreements through 2016 with the pilot participants.

City Light provides financial incentives to help its customers overcome barriers to investing in cost-effective energy conservation. Under the current program design, the utility makes a single up-front payment once conservation measures have been installed, inspected and the energy savings are verified. The City's 2013 Climate Action Plan, adopted by the City Council through Resolution 31447, included a recommendation for City Light to "pilot a utility incentive program that would pay for actual energy savings over time instead of providing up-front payment for projected savings." At the end of this pilot program, City Light expects to have enough information to decide whether it should include this approach as part of its regular conservation program offerings.

Energy conservation continues to be City Light's first priority energy resource. This effort is the latest example of the utility's leadership and innovation in working with customers and trade allies to promote energy conservation and its economic and environmental benefits. Thank you for your consideration of this legislation. Should you have any questions, please contact Glenn Atwood at 684-3740.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
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