

Ordinance No. 119703

Council Bill No. 112929

AN ORDINANCE relating to the City Light Department; authorizing a 10-year agreement with Whatcom County providing for quarterly payments for general and emergency law enforcement and other governmental services provided by Whatcom County to the residents of Newhalem and Diablo in order to promote the public peace, health and welfare of those residents and City's Skagit Project facilities

CF No. 112929

Date Introduced:	<u>10-4-99</u>	
Date 1st Referred:	<u>10-4-99</u>	
Date Re - Referred:	To: (committee) <u>Utilities & Environmental Mgmt</u>	
Date Re - Referred:	To: (committee)	
Date of Final Passage:	Full Council Vote: <u>9-0</u>	
Date Presented to Mayor:	Date Approved: <u>10/19/99</u>	
Date Returned to City Clerk:	Date Published: <u>2 PM</u>	T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>
Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

The City of Seattle - Legislative Department
Council Bill/Ordinance sponsored by: _____

Law Department

Committee Action

2-0 passed UPMC

10-11-99 Full Council: Passed

This file is complete and ready for presentation to Full Council

Law Department

Law Dept. Review

OMP
Review

City Clerk
Review

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: Pageker
Councilmember

Law Department

Committee Action:

2-0 passed UPMC

10-11-99 Full Council: Passed 9-0

This file is complete and ready for presentation to Full Council. Committee: _____
(initial/date)

Law Department

Law Dept. Review

OMP
Review

JD
City Clerk
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T.O. ☒
F.T. ☐

ORDINANCE 119703

AN ORDINANCE relating to the City Light Department; authorizing a 10-year agreement with Whatcom County providing for quarterly payments for general and emergency law enforcement and other governmental services provided by Whatcom County to the residents of Newhalem and Diablo in order to promote the public peace, health and welfare of those residents and the City's Skagit Project facilities.

WHEREAS, RCW 35.21.420 authorizes cities owning and operating public utilities having facilities for the generation of electricity located in the counties other than that in which such cities are located to contribute to the support of the county governments as it relates to the peace, health, safety and welfare as concerns the utility facilities and the personnel employed in connection therewith, and enter into contracts with such counties therefore; and

WHEREAS, a portion of the generating facilities of the City's electric light and power plant is located in Whatcom County; and

WHEREAS, the City and the County have previously operated under two previous 5-year agreements and a one year extension in 1998, pursuant to RCW 35.21.420, and the parties have negotiated terms and conditions for a new agreement; and

WHEREAS, the County continued to provide services following the expiration of the previous agreement on December 31, 1998, and it was the intent of the County and the City to negotiate compensation for those services provided within the framework of the new agreement; Now, Therefore,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Mayor is hereby authorized for and on behalf of the City of Seattle to execute and deliver an agreement with Whatcom County substantially in the form of the "Agreement" attached hereto as Exhibit A. The Agreement with Whatcom County provides for quarterly payments for the years 1999 through 2008, inclusive, for the support of the county government, as authorized by RCW 35.21.420. The payments are based on the compensation methodology for state taxation of public utility districts, and the Agreement also extends the same payment methodology retroactively to the previous contracts for the years 1993 through 1998. The County agrees to provide services to the residents of Newhalem and Diablo, including the furnishing by said County of at least one deputy sheriff for general

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1 and emergency law enforcement services and responses to Newhalem and Diablo area, including but not
2 limited to the City's Skagit Project facilities. The Agreement is subject to termination by either party by
3 giving one-year written notice.

4 Section 2. Any act pursuant to the authority of this ordinance and prior to its effective date is
5 hereby ratified and confirmed.

6 Section 3. This ordinance shall take effect and be in force thirty (30) days from and after its
7 approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after
8 presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

9 Passed by the City Council the 11th day of October, 1999, and signed by me in open
10 session in authentication of its passage this 11th day of October, 1999.

11 John A. Neal
12 President of the City Council

13 Approved by me this 19th day of October, 1999.

14 Dee Dee Seale
15 Mayor

16
17 Filed by me this 19th day of October, 1999.

18 Judith E. Rupp
19 City Clerk

20 (Seal)

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AGREEMENT

THIS AGREEMENT is entered into between THE CITY OF SEATTLE, a Municipal Corporation of the State of Washington, hereinafter called the "City," and the COUNTY OF WHATCOM, a Municipal Corporation of the State of Washington, hereafter called the "County."

WITNESSETH:

WHEREAS, RCW 35.21.420 authorizes cities owning and operating public utilities having facilities for the generation of electricity located in the counties other than that in which such cities are located to contribute to the support of the county governments as it relates to the peace, health, safety and welfare as concerns the utility facilities and the personnel employed in connection therewith, and enter into contracts with such counties therefore; and

WHEREAS, a portion of the generating facilities of the City's electric light and power plant is located in Whatcom County; and

WHEREAS, the City and the County have previously operated under two previous 5-year agreements and a one year extension in 1998, pursuant to RCW 35.21.420, and the parties have negotiated terms and conditions for a new agreement; and

WHEREAS, the County continued to provide services following the expiration of the previous agreement on December 31, 1998, and it was the intent of the County and the City to negotiate compensation for those services provided within the framework of the new agreement;

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

1. **Term.** The term of this Agreement shall be from January 1, 1999 through December 31, 2008, unless terminated or extended as specified herein. The term shall be as stated regardless of the date of signature. This agreement may be extended by mutual agreement of the parties under the same terms, or mutually acceptable terms, for two 3-year extensions.

2. **Compensation Methodology.** The City and County mutually accept the compensation methodology prescribed by state law for taxation of the generation facilities of public utility districts as the basis for the City's impact compensation of the County for the term of this agreement and any extension thereof. It is further agreed that the impact compensation methodology shall be retroactively applied to the previous contracts between the City and the County. The City, therefore, agrees to further compensate the County for the difference between the value of the retroactive

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application of the impact compensation methodology and past payments made pursuant to previous contracts.

3. Annual Escalator. All annual impact compensation payments shall be subject to an escalator of 3.1% that shall be applicable on an annual basis, beginning in 2000, for the term of this contract and any subsequent extensions.

4. Retroactive Payment Adjustments. The City agrees to pay the County \$1,113,843.00 as full compensation for the retroactive application of the impact compensation methodology for past contracts. The County agrees to accept said amount in ten annual installment payments of \$111,384.00.

5. Payment Schedule. The City shall pay, and the County shall accept, the sums of money listed in accordance with the following schedule as the full amount of compensation pursuant to this agreement. Said amounts represent the current impact compensation, including an escalator of 3.1%, and retroactive adjustments to past contracts. Annual payments shall be as follows:

<u>Year</u>	<u>Impact Payment</u>	<u>Retro Difference</u>	<u>Total Annual Payment</u>
1999	580,466	111,384	691,850
2000	598,460	111,384	709,845
2001	617,013	111,384	728,397
2002	636,140	111,384	747,524
2003	655,860	111,384	767,245
2004	676,192	111,384	787,576
2005	697,154	111,384	808,538
2006	718,766	111,384	830,150
2007	741,048	111,384	852,432
2008	<u>764,020</u>	<u>111,384</u>	<u>875,404</u>
Total	\$6,685,120	\$1,113,843	\$7,798,962

The annual payment shall consist of the total of the yearly Impact Payment and the yearly Retro Difference. Each annual payment shall be paid in four equal quarterly installments, payable on January 1, April 1, July 1 and October 1 of each year, or, if these dates fall on a Saturday, Sunday or holiday, on the first business day following these dates. The first installment shall be payable within thirty days of the signing of this agreement and shall be in an amount equal to the amount accruing through the quarter in which the agreement is signed.

6. Deputy Station. The County will station at least one (1) deputy sheriff with current emergency medical technician (EMT) certification and one (1) fully equipped, late-model sheriff's law enforcement vehicle, together with related expenses for general and emergency law enforcement services and responses at the Skagit Project. The deputy sheriff will patrol a normal 40-hour workweek and be subject to emergency call out during non-patrol hours. The deputy sheriff's primary function shall be providing

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general and emergency law enforcement services and responses in the Newhalem and Diablo areas including, but not limited to the City's Skagit Project facilities. The Deputy Sheriff's work schedule, including office and patrol hours, shall be established by the Whatcom County Sheriff's Office in cooperation with the City. The City must be notified in writing and at least five working days in advance of schedule changes. Work schedule approval and change requests shall be submitted to the Skagit Manager, Seattle City Light. The City shall have the option to establish office space on the Skagit Project for use by the deputy sheriff. The City will continue to furnish support for radio communications, including rack space, antenna and a microwave link from Newhalem to Babcock Mountain.

7. Housing for Deputy. The City will provide suitable housing at the Newhalem site to the County for the deputy sheriff to the same standard as is currently provided and as specified in the Residential Lease Agreement between the City and the County. The County will be responsible for the payment of reasonable rent and normal utility costs associated with the residence.

8. Services Provided. The County agrees to provide to Newhalem and Diablo residents all services normally provided to all other County residents in rural areas through the term of this agreement. The compensation established in Item 5 above shall cover all such services provided by the County during the term of this Agreement.

9. Administration of Agreement. Any concerns or complaints that arise related to the provision of service as outlined in Items 6, 7 and 8 shall be directed to the Whatcom County Executive Office, 311 Grand Ave, Bellingham, WA 98225. The City's interests shall be represented by the Superintendent's Office, Seattle City Light, 700 Fifth Ave, #3254, Seattle, WA 98104-5031.

10. Dispute Resolution. In the event that the City and the County have a dispute over the provisions of services or payment for said services, the aggrieved party shall give written notice to the other of the nature of the dispute within ten (10) working days of the occurrence giving rise to the dispute. Both parties agree to designate a representative who will meet within a reasonable period acceptable and attempt to resolve the dispute to the mutual satisfaction of both parties.

If, within fifteen (15) working days, the appointed representatives fail to resolve any dispute in accordance with the above provisions, the parties shall submit the dispute to arbitration. In such an event, within thirty (30) days after submitting the matter to arbitration, one representative of each party shall meet with the other to select a single arbitrator from an arbitrators list from the American Arbitration Association qualified to serve as arbitrator. If these representatives fail to select an arbitrator within thirty (30) calendar days after the notice of submittal, then the arbitrator shall be selected by the American Arbitration Association. All arbitrators shall be persons knowledgeable, skilled and experienced in the fields pertaining to the dispute, and no person shall be eligible for selection as an arbitrator who is an officer, director, or

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employee of any party who is otherwise interested in the matter to be arbitrated. All arbitrators shall adhere to the "Code of Ethics for Arbitrators in Commercial Disputes" by the American Arbitration Association and the American Bar Association. Except as otherwise agreed by the parties, the arbitration shall be governed by the commercial arbitration rules of the American Arbitration Association (or the rules of practice of a similar, disinterested organization if the American Arbitration Association should cease to exist), provided that to the extent such rules conflict with the applicable laws then in force which are specifically applicable to arbitration proceedings, such laws shall govern. Unless extended by agreement of the parties or by the arbitrator for good cause shown, discovery shall be completed and the hearing shall commence within sixty (60) days after the parties proposals to resolve the dispute have been provided. Within 120 calendar days after the parties positions have been submitted to the arbitrator, unless said arbitrator requests and is granted an extension of time by the parties, said arbitrator will submit a decision to the parties in writing and the parties hereby agree to be bound by that decision. After the decision of the arbitrator, each party shall immediately take whatever action is required to comply with the arbitrator's decision. Any and all fees and expenses of the arbitrator and/or the American Arbitration Association shall be borne equally by both parties. The decision of the arbitrator shall be final and specifically enforceable, provided that any party may petition a court of competent jurisdiction for confirmation and enforcement of a decision, and for vacation of a decision solely for error of law. In the event that the parties are unable, through no fault of their own, to obtain a valid enforceable arbitration decision, either party shall be entitled to seek legal and equitable remedies in a court of competent jurisdiction.

11. **Termination.** Each party shall have the right to terminate this Agreement by giving one year prior written notice to the other party. In the event of termination, the City shall be liable for payments in accordance with the terms of this Agreement for services rendered prior to the effective date of termination.

12. **Severability.** It is understood and agreed by the parties hereto that if any part of this Agreement is determined to be illegal, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be construed as if the Agreement did not contain the particular illegal part.

13. **Extent of Agreement.** This Agreement contains all of the terms and conditions agreed upon by the parties hereto. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Agreement.

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CITY OF SEATTLE

WHATCOM COUNTY

By _____
Paul Schell, Mayor

By _____
Pete Kremen, County Executive

Attest:

Approved as to Form:

Finance Director

Civil Deputy Prosecuting Attorney

STATE OF WASHINGTON)
) ss.
County of King)

On this ____ day of _____, 199____, before me personally appeared PAUL SCHELL, to me known to be the Mayor of the CITY OF SEATTLE, and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of
Washington residing at _____.
My appointment expires: _____

STATE OF WASHINGTON)
) ss.
County of Whatcom)

On this ____ day of _____, 199____, before me personally appeared PETE KREMEN, to me known to be the County Executive of WHATCOM COUNTY, and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of
Washington residing at Bellingham.
My appointment expires: _____



City of Seattle

Paul Schell, Mayor

Seattle City Light

Gary Zarker, Superintendent

September 24, 1999

The Honorable Sue Donaldson, President
Seattle City Council
600 Fourth Avenue
11th Floor, Municipal Building
Seattle, WA 98104-1873

Attn: Joan Walters, Director, City Budget Office

Dear Councilmember Donaldson:

Ordinance authorizing a 10-year agreement with Whatcom County for governmental services

Enclosed for your consideration is a proposed ordinance authorizing a 10-year agreement, for the years 1999 through 2008, with Whatcom County to provide quarterly payments for general and emergency law enforcement and other government services for Seattle City Light's Skagit Project facilities and personnel.

Seattle City Light currently makes payments to local jurisdictions where we operate generating facilities. These payments compensate them for lost revenue or additional financial burdens such as services for our facilities and personnel, pursuant to RCW 35.21.420 and 35.21.425. In Whatcom County's case, payments are for the support of the county government as authorized by RCW 35.21.420. The City of Seattle and Whatcom County have operated under two previous five-year agreements and a one-year extension that expired on December 31, 1998. Following the expiration of the interim agreement Whatcom County continued to provide services while the terms of a new agreement were negotiated.

As you may recall, Whatcom County sought legislation (House Bill 2421) in the 1998 session to impose a tax of two percent on the wholesale value of electricity generated at municipally owned or operated facilities located outside the boundaries of the city. In opposing this bill, Seattle pledged to develop a more appropriate formula for payments to both Whatcom and Pend Oreille Counties. A priority for our negotiations with Whatcom County was inclusion in the agreement of a payment methodology that would be comparable to the standard by which other public utilities in this state compensate host counties. Our payment negotiations with Pend Oreille County continue.

700 Fifth Avenue, Suite 3300, Seattle, WA 98104-5031

Tel: (206) 625-3000, TTY/TDD: (206) 684-3225, Fax: (206) 625-3709

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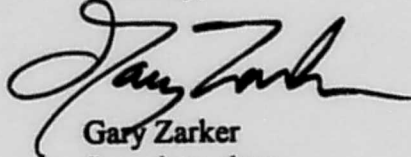
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The Honorable Sue Donaldson, President
Page 2
September 24, 1999

Key aspects of the agreement include the following: 1) Payments are based on the compensation methodology prescribed by state law for taxation of generation facilities of public utility districts; 2) The payment methodology is extended retroactively to previous contracts for the years 1993 through 1998 resulting in a payment adjustment of \$1,113,843, payable to Whatcom County in 10 annual installments; and 3) Annual payments are subject to an escalator of 3.1 percent, beginning in 2000.

If you have any questions relating to the ordinance or the agreement itself, please contact me at 684-3200 or Lisa Rennie of my staff at 684-3793.

Sincerely,



Gary Zarker
Superintendent

LR:sb

Enclosures

cc: w/enclosures
Lisa Fitzhugh, Special Assistant to the Mayor
Will Patton, Law
Cliff Traisman, Director, OIR
Bennie Barnes, OIR

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STATE OF WASHINGTON - KING COUNTY

111571

City of Seattle, City Clerk

—ss.

No. ORDINANCE TI

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CTOT: 119701, 03, 04, 08

was published on

11/01/99

The amount of the fee charged for the foregoing publication is the sum of \$, which amount has been paid in full.

Subscribed and sworn to before me on

11/01/99

Notary Public for the State of Washington,
residing in Seattle

Affidavit of Publication

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City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on October 11, 1999, and published here by title only, will be mailed upon request, or can be accessed electronically at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 119701

AN ORDINANCE relating to the Police Department; authorizing a grant agreement in the amount of Ninety Nine Thousand Two Hundred Fifty Dollars (\$99,250) with the Office of Community Oriented Policing Services, United States Department of Justice for financial assistance through the Program Policy Support and Evaluation (PPSE) Division to participate in the PPSE Fellowship Program; accepting the money when received; increasing the 1999 Budget of the Police Department by making a reimbursable appropriation, and ratifying and confirming prior acts; all by a three-fourths vote of the City Council.

ORDINANCE NO. 119703

AN ORDINANCE relating to the City Light Department; authorizing a 10-year agreement with Whatcom County providing for quarterly payments for general and emergency law enforcement and other governmental services provided by Whatcom County to the residents of Newhalem and Diablo in order to promote the public peace, health and welfare of those residents and the City's Skagit Project facilities.

ORDINANCE NO. 119704

AN ORDINANCE relating to the City Light Department; accepting distribution easements in King County, Washington over portions of Parcels A and B, City of Seattle Short Subdivision No. 9702827; Lots 2 and 3 in the City of Shoreline Short Plat No. SHSP 97-022; Lot 1, City of Shoreline Short Plat No. SHSP 97-003; Parcel D, City of Seattle Short Subdivision No. 9601495; Parcels A, E and F, City of Seattle Short Subdivision No. 9506253; Lots A and C, City of Seattle Short Subdivision No. 9706670; Lot 1, City of Shoreline Short Plat No. SHSP 97-077, said easements to be under the jurisdiction of the City Light Department.

ORDINANCE NO. 119708

AN ORDINANCE relating to the 1999 adopted budget; abrogating and reappropriating unexpended allowances within the Executive Services Department 1999 budget; all by three-fourths vote of the City Council.

ORDINANCE NO. 119709

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

Publication ordered by JUDITH PIP-PIN, City Clerk.

Date of official publication in Daily Journal of Commerce, Seattle, November 1, 1999. 11/1(111571)

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TIME AL. DATE STAMP

SPONSORSHIP

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY
THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

Margaret Pagler

FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO:

PRESIDENT'S SIGNATURE

C. S. 20.28

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