Ordinance No. 122895

Council Bill No. 116428

AN ORDINANCE relating to the City Light Department; authorizing a 15-year agreement with Whatcom County providing for payments for general and emergency law enforcement and other governmental services provided by Whatcom County to the City's Skagit Hydroelectric Project generation facilities and the residents of Newhalem and Diablo.

CF No. _____

Date Introduced: 12.15.08	
Date 1st Referred:	To: (committee) Energy + Technology
Date Re - Referred:	To: (committee)
Date Re - Referred:	To: (committee)
Date of Final Passage: 1.5.09	Full Council Vote: 9-0
Date Presented to Mayor: 1.6.09	Date Approved: 1.7.09 ✓
Date Returned to City Clerk: 1.7.09	Date Published: 2 T.O. ___ F.T. ___
Date Vetoed by Mayor:	Date Veto Published:
Date Passed Over Veto:	Veto Sustained:

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: Bruce A. Harrell

Councilmember

Committee Action:

12/17/08 BH, JG Aye

1.5.09 Passed 9-0

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

LAW DEPARTMENT

Law Dept. Review | OMP Review | City Clerk Review | Electronic Copy Loaded | Indexed

City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

December 9, 2008

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill authorizing a new 15-year Impact Payment Agreement, between the City of Seattle and Whatcom County for the support of general and emergency law enforcement and other governmental services provided by the County to the Skagit Hydroelectric Project facilities and personnel.

Impact payments are made under state law (RCW 35.21.420), which authorizes cities owning and operating public utilities having electric generation facilities located in counties other than that in which such cities are located to provide for county services which support utility facilities and personnel. Impact payment agreements between the City and the County have existed for many years, the most recent of which is the previous 10-year agreement that expires on December 31, 2008.

Key components of the new Impact Payment Agreement include the following: 1) continuation of the compensation methodology previously established in the last agreement, with a one-time payment; 2) application of 2.3171736 percent escalation factor beginning in 2010, which is an adjustment (based on the estimated rate of inflation for the next 10 years) to the annual escalator of 3.1 percent applied in the previous agreement; 3) an increase in the length of the agreement from 10 to 15 years; and 4) termination by either party upon one-year written notice.

The new agreement with Whatcom County addresses the impacts of the Skagit Project by providing compensation to the County for its services. Thank you for your consideration of this legislation. Should you have questions, please contact Sung Yang at 386-0049.

Sincerely,

GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7th Floor, P.O. Box 94749, Seattle, WA 98124-4749
Tel: (206) 684-4000, TDD: (206) 615-0476 Fax: (206) 684-5360, Email: mayors.office@seattle.gov
An equal employment opportunity, affirmative action employer. Accommodations for people with disabilities provided upon request.

ORDINANCE 122895

AN ORDINANCE relating to the City Light Department; authorizing a 15-year agreement with Whatcom County providing for payments for general and emergency law enforcement and other governmental services provided by Whatcom County to the City's Skagit Hydroelectric Project generation facilities and the residents of Newhalem and Diablo.

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 provide for the peace, health, safety and welfare of such county as concerns the utility facilities and the personnel employed in connection therewith, and to enter into contracts with such counties therefor; and

WHEREAS, the City's Skagit Hydroelectric Project generating facilities and the towns of Diablo and Newhalem are located in Whatcom County; and

WHEREAS, the City and the County previously entered into a 10-year agreement, pursuant to RCW 35.21.420, which expires on December 31, 2008; and

Whereas, the City and the County have negotiated terms and conditions for a new agreement; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of the City Light Department is hereby authorized for and on behalf of the City of Seattle to execute and deliver a 15-year agreement with Whatcom County, substantially in the form of the Impact Payment Agreement attached hereto as Exhibit A (the "Agreement") with such changes as the Superintendent may deem appropriate and are consistent with this ordinance. The Agreement is for the support of general and emergency law enforcement and other governmental services provided by Whatcom County to the City's Skagit Hydroelectric Project facilities and the residents of Newhalem and Diablo, all as authorized by RCW 35.21.420. The Agreement is subject to termination by either party upon one year written notice.

THIS CITY CLERK

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

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

Passed by the City Council the 5th day of January, ~~2008~~ 2009, and signed by me in open session in authentication of its passage this 5th day of January, ~~2008~~ 2009.

President _____ of the City Council

Approved by me this 7th day of January, ~~2008~~ 2009.

Gregory J. Nickels, Mayor

Filed by me this 7th day of January, 2008.

City Clerk

(Seal)

Exhibit A: Form of Impact Payment Agreement

FORM OF
IMPACT PAYMENT AGREEMENT

This Impact Payment Agreement (the "Agreement") is entered into between THE CITY OF SEATTLE, a municipal corporation of the State of Washington, acting by and through its City Light Department (the "City") and the COUNTY OF WHATCOM, a municipal corporation of the State of Washington (the "County").

W I T N E S S E T H:

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 provide for the peace, health, safety and welfare of such county as concerns the utility facilities and the personnel employed in connection therewith, and to enter into contracts with such counties therefor; and

WHEREAS, a portion of the City Light Department ("Seattle City Light") hydroelectric generating facilities is located in Whatcom County; and

WHEREAS, pursuant to RCW 35.21.420 the City and the County previously entered into a 10-year agreement that expired on December 31, 2008 (the "Previous Agreement"); and

WHEREAS, the City and the County have negotiated terms and conditions for a new agreement, including a one-time payment, to adequately compensate the County for services consistent with RCW 35.21.420.

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, 2009 through December 31, 2023, 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**. For the term of this Agreement and any extension thereof, the City and County agree to use the compensation methodology established in the Previous Agreement, which utilized the rate of taxation imposed under state law on the output of generation facilities of Public Utility Districts.

3. **Annual Escalator**. All annual impact compensation payments shall be subject to an escalator of 2.3171736% that shall be applicable on an annual basis starting in 2010 for the term of this Agreement and any subsequent extensions. Notwithstanding

the foregoing, if the Puget Sound Consumer Price Index, All Urban Consumers, as measured by the last Index for each calendar year, rises or falls one full point or more above or below 2.3171736%, the parties agree to enter into discussions regarding modifying the annual escalator. If these discussions result in the parties agreeing to a new annual escalator, that new annual escalator will be used to calculate the amount of future payments.

4. **Retroactive Payment Adjustments**. The City and County agree that the retroactive payments paid by the City under the Previous Agreement are full compensation for the retroactive application of the impact compensation methodology to past contracts entered into by the parties under RCW 35.21.420 and that such retroactive payments will not be continued under this Agreement.

5. **Payment Schedule**. The City shall pay, and the County shall accept, the sums of money listed in the following schedule as the full amount of compensation pursuant to this Agreement. The amount due in 2009 represents the 2008 base impact payment of $764,020 plus a one-time payment of $131,669 for a total payment of $895,689. An annual escalator of 2.3171736% has been added to the amounts due in 2010 and thereafter. In the event that the annual escalator of 2.3171736% is changed pursuant to Item 3 of this Agreement, the amounts payable will be modified accordingly.

Annual payments shall be as follows:

Year	Total Annual Payment
2009	$895,689
2010	$916,443
2011	$937,679
2012	$959,407
2013	$981,638
2014	$1,004,384
2015	$1,027,657
2016	$1,051,470
2017	$1,075,834
2018	$1,100,763
2019	$1,126,270
2020	$1,152,367
2021	$1,179,070
2022	$1,206,391
2023	$1,234,345
Total	$15,849,406

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 complete execution of this Agreement and shall be the amount accruing from January 1, 2009 through the quarter in which the Agreement is fully executed.

6. **Deputy Station**. The County will station and pay all costs related to at least one (1) deputy sheriff with current First Responder Training (which will be offered by Seattle City Light) and one (1) fully equipped, late-model sheriff's law enforcement vehicle. The deputy sheriff's primary function shall be providing 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 will patrol during a normal 40-hour workweek and be subject to emergency call out during non-patrol hours. When the deputy sheriff is away on leave of absence and not present at the Skagit Project, the Whatcom County Sheriff's Office will provide a replacement during the period of absence. If an event requiring a law enforcement response occurs at a time when the resident deputy is off-duty or otherwise unavailable, Dispatch will notify the on-duty Sheriff's Office supervisor who will make an assessment regarding the need for a timely response. If deemed necessary to public safety, the Whatcom County Sheriff's Office will:

1. Contact the resident deputy sheriff and direct him/her to respond; OR
2. Deploy On-Duty Sheriff's Office resources; OR
3. Contact and call out the closest Off-Duty Sheriff's Office deputy sheriff

If the deputy sheriff assigned to the City's Skagit Project does not possess current First Responder Training, the County will ensure that the deputy sheriff enrolls and successfully completes the First Responder Training as offered by Seattle City Light. Seattle City Light agrees to pay for the resident deputy sheriff's First Responder Training.

The deputy sheriff's work schedule, including office and patrol hours, shall be established by the 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 unless an emergency arises that precludes the ability to provide such notice, in which case notice will be provided as soon as possible. Approved work schedules and changes shall be submitted to the Skagit Project Manager, Seattle City Light. The City shall have the option to establish office space at 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.

The Whatcom County Sheriff's Office will be the primary provider of law enforcement services at the Skagit Project. Any other law enforcement work that the City may seek, including additional security services, shall, to the extent practicable, be coordinated in advance with the Sheriff. However, the final determination of the necessity of additional law enforcement or security work at the Skagit Project shall rest with the City.

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, Suite 3200, Seattle, WA 98124.

10. **Dispute Resolution**. In the event that the City and the County have a dispute over any provision of this Agreement, the aggrieved party shall give written notice to the other party 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 and attempt to resolve the dispute to the mutual satisfaction of both parties.

If, within fifteen (15) working days of their first meeting, 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 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, during its term or any extension thereof, 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. **Miscellaneous**. 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. The provisions of this Agreement shall be construed as a whole according to their common meaning and consistent with the other provisions herein contained in order to achieve the objectives and purposes of this Agreement. Each party and its counsel has reviewed and revised this Agreement. Each party agrees that the usual rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

CITY OF SEATTLE
City Light Department

By_____
Jorge Carrasco, Superintendent

WHATCOM COUNTY

By_____
Dewey Desler, Deputy Administrator

Approved as to Form:

_____
Civil Deputy Prosecuting Attorney

STATE OF WASHINGTON)
) ss.
County of King)

On this ___ day of _____, 200___, before me personally appeared Jorge Carrasco, to me known to be the Superintendent of the City Light Department of the CITY OF SEATTLE, and who executed the above instrument and 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 _____, 200___, before me personally appeared Dewey Desler, to me known to be the Deputy Administrator of WHATCOM COUNTY, and who executed the above instrument and 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:_____

Form revised February 6, 2008

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Seattle City Light	Lisa Rennie/684-3793	Karl Stickel 684-8085

Legislation Title:
AN ORDINANCE relating to the City Light Department; authorizing a 15-year agreement with Whatcom County providing for payments for general and emergency law enforcement and other governmental services provided by Whatcom County to the City's Skagit Hydroelectric Project generation facilities and the residents of Newhalem and Diablo.

- **Summary of the Legislation:**

Authorizes the Superintendent of Seattle City Light to execute and deliver, on behalf of the City, a 15-year impact payment agreement with Whatcom County, including a one-time payment, to compensate the County for government services provided to the Skagit Project facilities and personnel.

1. **Base Payment Methodology.** Continuation of the compensation methodology established in the previous 10-year agreement, which utilized the rate of taxation imposed under state law on the output of generation facilities of Public Utility Districts. The previously established compensation methodology applies the state PUD generation privilege tax rate to the 1998 Skagit Project generation output to create a base impact payment.

2. **Annual Escalator.** Application of a 2.3171736 percent escalation factor based on the CPI-U (consumer price index for all urban consumers) for the Puget Sound region to annual payments beginning in 2010; which includes a provision for the parties to enter into discussions to modify the annual escalator if the Index rises or falls one full point or more above or below the 2.3171736 percent. The 2.3171736 percent is an adjustment (based on Seattle's estimated rate of inflation for the next 10 years) to the annual escalator of 3.1 percent applied in the previous agreement.

3. **Retroactive Payment.** The retroactive payment adjustments paid by Seattle City Light under the previous agreement are full compensation for the retroactive application of the impact payment methodology to past contracts. Since this condition has been fulfilled, the retroactive payments will not be continued under the new Impact Payment Agreement.

4. **Length of Agreement.** 15–year agreement (2009 – 2023).

5. **Termination.** The Impact Payment Agreement is subject to termination by either party upon one-year written notice.

Annual payments under the new Impact Payment Agreement are as follows:

Year	Total Annual Payment
2009	$895,689
2010	$916,443
2011	$937,679
2012	$959,407
2013	$981,638
2014	$1,004,384
2015	$1,027,657
2016	$1,051,470
2017	$1,075,834
2018	$1,100,763
2019	$1,126,270
2020	$1,152,367
2021	$1,179,070
2022	$1,206,391
2023	$1,234,345
Total	$15,849,406

The amount due in 2009 represents the 2008 base impact payment of $764,020 (see Attachment B to this fiscal note) plus a one-time payment of $131,669 for a total payment of $895,689. An annual escalator of 2.3171736 percent has been added to the amounts due in 2010 and thereafter. In the event that the annual escalator of 2.3171736 percent is changed pursuant to Item 3 of this Agreement, the amounts payable will be modified accordingly.

- **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):*

Impact payments are made under state law (RCW 35.21.420) which authorizes cities owning and operating public utilities having electric generation facilities located in counties other than that in which such cities are located to provide for county services which support utility facilities and personnel. Impact payment agreements between the City and the County have existed for many years, the most recent of which is the previous 10-year impact payment agreement that expires on December 31, 2008. (See Attachment B to this fiscal note.)

- *Please check one of the following:*

____ **This legislation does not have any financial implications.** *(Stop here and delete the remainder of this document prior to saving and printing.)*

_x_ **This legislatio n has financial implications.** *(Please complete all relevant sections that follow.)*

Appropriations: *This table should reflect appropriations that are a direct result of this legislation. In the event that the project/programs associated with this ordinance had, or will have, appropriations in other legislation, please provide details in the Notes section below.*

Fund Name and Number	Department	Budget Control Level*	2008 Appropriation	2009 Anticipated Appropriation
TOTAL				

**See budget book to obtain the appropriate Budget Control Level for your department.*

Notes: Funding for the Whatcom County Impact Agreement payments described above is included in City Light's 2008 and 2009 Adopted Budgets.

Anticipated Revenue/Reimbursement: Resulting From This Legislation: *This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.*

Fund Name and Number	Department	Revenue Source	2008 Revenue	2009 Revenue
TOTAL				

Notes:

Total Regular Positions Created, Modified, Or Abrogated Through This Legislation, Including FTE Impact*: This table should only reflect the actual number of positions affected by this legislation. In the event that positions have been, or will be, created as a result of other legislation, please provide details in the Notes section below the table.*

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2008 Positions	2008 FTE	2009 Positions*	2009 FTE*
TOTAL							

** 2009 positions and FTE are total 2009 position changes resulting from this legislation, not incremental changes. Therefore, under 2009, please be sure to include any continuing positions from 2008.*

Notes:

- **Do positions sunset in the future?** *(If yes, identify sunset date):*

Spending/Cash Flow*: This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding*

spending that will occur in future years should be provided in the Notes section below the table.

Fund Name & #	Department	Budget Control Level*	2008 Expenditures	2009 Anticipated Expenditures
Light Fund (41000)	Seattle City Light	Taxes BCL (SCL 820)	$875,404	$895,689
TOTAL				

** See budget book to obtain the appropriate Budget Control Level for your department.*

Notes: The 2008 payment shown above is per the previous 10-year impact payment agreement between the City and the County (see Attachment B to this fiscal note). The 2009 payment shown above is per the agreement authorized by this legislation.

- **What is the financial cost of not implementing the legislation?** *(Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented.)*

Note: The City of Seattle and Whatcom County have previously entered into impact payment agreements pursuant to RCW 35.21.420 (enacted in 1965).

What are the possible alternatives to the legislation that could achieve the same or similar objectives? *(Include any potential alternatives to the proposed legislation, such as reducing fee-supported activities, identifying outside funding sources for fee-supported*

- *activities, etc.)*

Note: The City of Seattle and Whatcom County have previously entered into impact payment agreements pursuant to RCW 35.21.420 (enacted in 1965).

- **Is the legislation subject to public hearing requirements:** *(If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future.)*

No

- **Other Issues** (*including long-term implications of the legislation*):

Please list attachments to the fiscal note below:
Attachment A: Whatcom County Agreement ORD Exhibit A
Attachment B: 1999 – 2008 Whatcom County Agreement

FORM OF
IMPACT PAYMENT AGREEMENT

This Impact Payment Agreement (the "Agreement") is entered into between THE CITY OF SEATTLE, a municipal corporation of the State of Washington, acting by and through its City Light Department (the "City") and the COUNTY OF WHATCOM, a municipal corporation of the State of Washington (the "County").

W I T N E S S E T H:

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 provide for the peace, health, safety and welfare of such county as concerns the utility facilities and the personnel employed in connection therewith, and to enter into contracts with such counties therefor; and

WHEREAS, a portion of the City Light Department ("Seattle City Light") hydroelectric generating facilities is located in Whatcom County; and

WHEREAS, pursuant to RCW 35.21.420 the City and the County previously entered into a 10-year agreement that expired on December 31, 2008 (the "Previous Agreement"); and

WHEREAS, the City and the County have negotiated terms and conditions for a new agreement, including a one-time payment, to adequately compensate the County for services consistent with RCW 35.21.420.

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, 2009 through December 31, 2023, 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**. For the term of this Agreement and any extension thereof, the City and County agree to use the compensation methodology established in the Previous Agreement, which utilized the rate of taxation imposed under state law on the output of generation facilities of Public Utility Districts.

3. **Annual Escalator**. All annual impact compensation payments shall be subject to an escalator of 2.3171736% that shall be applicable on an annual basis starting in 2010 for the term of this Agreement and any subsequent extensions. Notwithstanding

the foregoing, if the Puget Sound Consumer Price Index, All Urban Consumers, as measured by the last Index for each calendar year, rises or falls one full point or more above or below 2.3171736%, the parties agree to enter into discussions regarding modifying the annual escalator. If these discussions result in the parties agreeing to a new annual escalator, that new annual escalator will be used to calculate the amount of future payments.

4. **Retroactive Payment Adjustments**. The City and County agree that the retroactive payments paid by the City under the Previous Agreement are full compensation for the retroactive application of the impact compensation methodology to past contracts entered into by the parties under RCW 35.21.420 and that such retroactive payments will not be continued under this Agreement.

5. **Payment Schedule**. The City shall pay, and the County shall accept, the sums of money listed in the following schedule as the full amount of compensation pursuant to this Agreement. The amount due in 2009 represents the 2008 base impact payment of $764,020 plus a one-time payment of $131,669 for a total payment of $895,689. An annual escalator of 2.3171736% has been added to the amounts due in 2010 and thereafter. In the event that the annual escalator of 2.3171736% is changed pursuant to Item 3 of this Agreement, the amounts payable will be modified accordingly.

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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 complete execution of this Agreement and shall be the amount accruing from January 1, 2009 through the quarter in which the Agreement is fully executed.

6. **Deputy Station**. The County will station and pay all costs related to at least one (1) deputy sheriff with current First Responder Training (which will be offered by Seattle City Light) and one (1) fully equipped, late-model sheriff's law enforcement vehicle. The deputy sheriff's primary function shall be providing 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 will patrol during a normal 40-hour workweek and be subject to emergency call out during non-patrol hours. When the deputy sheriff is away on leave of absence and not present at the Skagit Project, the Whatcom County Sheriff's Office will provide a replacement during the period of absence. If an event requiring a law enforcement response occurs at a time when the resident deputy is off-duty or otherwise unavailable, Dispatch will notify the on-duty Sheriff's Office supervisor who will make an assessment regarding the need for a timely response. If deemed necessary to public safety, the Whatcom County Sheriff's Office will:

1. Contact the resident deputy sheriff and direct him/her to respond; OR
2. Deploy On-Duty Sheriff's Office resources; OR
3. Contact and call out the closest Off-Duty Sheriff's Office deputy sheriff

If the deputy sheriff assigned to the City's Skagit Project does not possess current First Responder Training, the County will ensure that the deputy sheriff enrolls and successfully completes the First Responder Training as offered by Seattle City Light. Seattle City Light agrees to pay for the resident deputy sheriff's First Responder Training.

The deputy sheriff's work schedule, including office and patrol hours, shall be established by the 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 unless an emergency arises that precludes the ability to provide such notice, in which case notice will be provided as soon as possible. Approved work schedules and changes shall be submitted to the Skagit Project Manager, Seattle City Light. The City shall have the option to establish office space at 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.

The Whatcom County Sheriff's Office will be the primary provider of law enforcement services at the Skagit Project. Any other law enforcement work that the City may seek, including additional security services, shall, to the extent practicable, be coordinated in advance with the Sheriff. However, the final determination of the necessity of additional law enforcement or security work at the Skagit Project shall rest with the City.

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, Suite 3200, Seattle, WA 98124.

10. **Dispute Resolution**. In the event that the City and the County have a dispute over any provision of this Agreement, the aggrieved party shall give written notice to the other party 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 and attempt to resolve the dispute to the mutual satisfaction of both parties.

If, within fifteen (15) working days of their first meeting, 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 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, during its term or any extension thereof, 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. **Miscellaneous**. 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. The provisions of this Agreement shall be construed as a whole according to their common meaning and consistent with the other provisions herein contained in order to achieve the objectives and purposes of this Agreement. Each party and its counsel has reviewed and revised this Agreement. Each party agrees that the usual rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

CITY OF SEATTLE
City Light Department

By_____
Jorge Carrasco, Superintendent

WHATCOM COUNTY

By_____
Dewey Desler, Deputy Administrator

Approved as to Form:

_____
Civil Deputy Prosecuting Attorney

STATE OF WASHINGTON)
) ss.
County of King)

On this ___ day of _____, 200___, before me personally appeared Jorge Carrasco, to me known to be the Superintendent of the City Light Department of the CITY OF SEATTLE, and who executed the above instrument and 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 _____, 200___, before me personally appeared Dewey Desler, to me known to be the Deputy Administrator of WHATCOM COUNTY, and who executed the above instrument and 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:_____

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

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

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

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

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

President of the City Council

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

Mayor

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

City Clerk

(Seal)

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."

W I T N E S S E T H:

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

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:

Year	Impact Payment	Retro Difference	Total Annual Payment
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	764,020	111,384	875,404
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

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

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.

CITY OF SEATTLE

By_____
Paul Schell, Mayor

Attest:

_____
Finance Director

WHATCOM COUNTY

By_____
Pete Kremen, County Executive

Approved as to Form:

_____
Civil Deputy Prosecuting Attorney

STATE OF WASHINGTON)
) ss.
County of King)

On this 2nd day of November, 1999, 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.

RITA ALLMAN
COMMISSION EXPIRES
NOTARY
PUBLIC
02-11-02
STATE OF WASHINGTON

_____
NOTARY PUBLIC in and for the State of Washington residing at 600 4th Ave. Seattle
My appointment expires: 2/11/2002

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:_____

STATE OF WASHINGTON – KING COUNTY

--ss.

233611 No. TITLE ONLY

CITY OF SEATTLE,CLERKS OFFICE

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

CT:122895-122898

was published on

01/20/09

The amount of the fee charged for the foregoing publication is the sum of $ 56.60, which amount has been paid in full.

M. DAVID
COMMISSION EXPIRES
NOTARY
PUBLIC
NOV. 21, 2011
STATE OF WASHINGTON

Subscribed and sworn to before me on

01/20/09

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on January 5, 2009, and published here by title only, will be mailed, at no cost, on request for two months after this publication. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 122898

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

ORDINANCE NO. 122897

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

ORDINANCE NO. 122896

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

ORDINANCE NO. 122895

AN ORDINANCE relating to the City Light Department; authorizing a 15- year agreement with Whatcom County providing for payments for general and emergency law enforcement and other governmental services provided by Whatcom County to the City's Skagit Hydroelectric Project generation facilities and the residents of Newhalem and Diablo.

Publication ordered by JUDITH PIPPIN, City Clerk

Date of publication in the Seattle Daily Journal of Commerce, January 20, 2009.

1/20(233611)