

Ordinance No. 121962

Council Bill No. 115344

AN ORDINANCE relating to the City Light Department; authorizing execution of the Tailwater Encroachment Losses Compensation Delivery Agreement, the 2005 Memorandum of Agreement, and the Boundary Transformer Agreement, which together will provide for cost-effective transmission service for the City of Seattle in the Boundary Project area and enhanced electric grid reliability.

CF No. _____

Date Introduced: <u>AUG - 8 2005</u>		
Date 1st Referred: <u>AUG - 8 2005</u>	To: (committee)	<u>Energy & Environmental Policy Committee</u>
Date Re - Referred:	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage: <u>10-10-05</u>	Full Council Vote: <u>9-0</u>	
Date Presented to Mayor: <u>10-10-05</u>	Date Approved:	
Date Returned to City Clerk: <u>OCT 20 2005</u>	Date Published: <u>3/10/06</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: Jean Jordan
Councilmember

Returned Unsigned by Mayor

(EUG)

Committee Action:

8/19/05 DO PASS AS AMENDED - JG, DD

9-6-05 Held to Sept. 19, 2005

9-19-05 Held to Sept 26, 2005

9-26-05 Held to October 10, 2005

10-10-05 Passed 9-0

This file is complete and ready for presentation to Full Council. Committee: _____

FILED
CITY OF SEATTLE
CITY CLERK
05 OCT 20 PM 3:49
(Initial/Date)

Law Department

Law Dept. Review

OMP Review

City Clerk Review

Electronic Copy Loaded

Indexed

1 Boundary Project to the District via shared use of a future Boundary transformer and
2 interconnected facilities, including the City's 115-kV Boundary Tap Line; NOW,
3 THEREFORE,

4 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

5 Section 1. The Superintendent of the City Light Department ("City"), or his designee, is
6 hereby authorized to enter into three agreements, entitled: (1) Tailwater Encroachment Losses
7 Compensation Delivery Agreement, (2) 2005 Memorandum of Agreement, and (3) Boundary
8 Transformer Agreement, all substantially in the form of the agreements attached to this ordinance
9 as Exhibits A, B, and C, respectively. The Tailwater Encroachment Losses Compensation
10 Delivery Agreement (Exhibit A) provides for computation and delivery of the encroachment
11 compensation owed to the Public Utility District No. 1 of Pend Oreille County, Washington
12 ("District") by the City pursuant to Article 48 of the Federal Energy Regulatory Commission
13 ("FERC") license for the Boundary Project. The 2005 Memorandum of Agreement (Exhibit B)
14 provides for an interpretive clarification of Article 49 of the Boundary FERC license as requested
15 by the District; renewal of the District's obligation to schedule a minimum of 60 percent of its
16 Article 49 Power during all hours of the day; and several other provisions related to the cost-
17 sharing and cooperative operation of the future Boundary transformer. The Boundary
18 Transformer Agreement (Exhibit C) provides for cooperative planning, acquisition, installation,
19 and operation of a transformer and breaker at Boundary Substation and shared use of the
20 interconnected transmission path, which will provide for cost-effective transmission of Article 49
21 Power and encroachment compensation, as well as enhanced electric grid reliability for the
22 Bonneville Power Administration ("Bonneville"), the City, and the District in the Boundary area.
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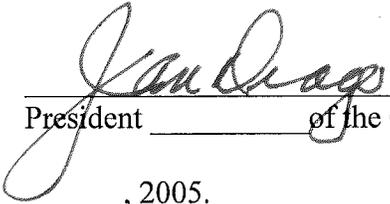


1 Section 2. Council approval shall be required for any agreement to revise the data
2 collection or computation procedures, pursuant to Section 12 of the Tailwater Encroachment
3 Losses Compensation delivery Agreement, which would likely result in more than a ten percent
4 revision to thee amount of compensation to be paid to the District.

5
6 Section 3. Any acts taken in furtherance of this ordinance, but prior to its effective date,
7 are hereby ratified and confirmed.

8 Section 4. This ordinance shall take effect and be in force thirty (30) days from and after
9 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days
10 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

11
12 Passed by the City Council the 10th day of October, 2005, and signed by me in open
13 session in authentication of its passage this 10th day of October, 2005.

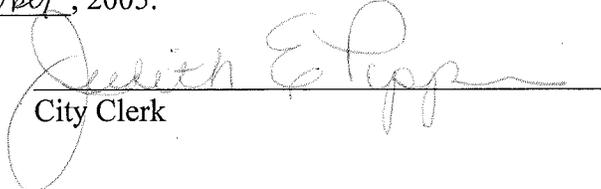
14
15 
16 President _____ of the City Council

17 Approved by me this ____ day of _____, 2005.

18 **Returned Unsigned**
19 **by Mayor**

20 _____
Gregory J. Nickels, Mayor

21 Filed by me this 26th day of October, 2005.

22 
23 City Clerk

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25 (Seal)



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- Exhibit A: Tailwater Encroachment Losses Compensation Delivery Agreement
- Exhibit B: 2005 Memorandum of Agreement
- Exhibit C: Boundary Transformer Agreement





**Legislative Department
Office of City Clerk
Memorandum**

Date: October 20, 2005
To: Councilmembers
From: Judith E. Pippin, City Clerk 
Subject: Mayor's Return of Council Bill No. 115344, **Unsigned**
(Tailwater and Boundary Agreements related to the Boundary Project area)

On October 20, 2005 Mayor Nickels returned Council Bill No. 115344, relating to the Tailwater and Boundary agreements, to this office without his signature of approval, together with his letter of explanation. I have attached a copy of his letter.

The absence of the Mayor's signature indicates neither his approval nor disapproval of the Council Bill, as addressed in Seattle Municipal Code 1.04.020 and City Charter Article IV, Section 12.

However, a Bill returned by the Mayor unsigned is considered "approved" for purposes of the Bill becoming an Ordinance, and therefore law, within the City of Seattle.

The effective date of this Ordinance is November 19, 2005, 30 days from the date it was returned by the Mayor.

No further action on the part of Council is required.



Gregory J. Nickels
Mayor of Seattle

October 20, 2005

The Honorable Jan Drago, President
Seattle City Council
City Hall, 2nd Floor

Dear Councilmember Drago:

Today, I am returning Council Bill No. 115344, authorizing execution of the Tailwater Encroachment Losses Compensation Delivery Agreement, to City Council without my signature. I am doing so because a provision was added to the proposed ordinance after submission of this legislation to City Council. The amendment requires City Light to return to Council for approval of any and all revisions to the data collection or computation procedures that would result in more than a 10% change in the compensation paid to Public Utility District No. 1 of Pend Oreille County.

I appreciate and respect the Council's need for information to perform appropriate oversight of City Light, however, this new requirement may introduce unnecessary additional process and delay in future implementation of the agreement. When adding to the monitoring and reporting requirements of City Light we need to ensure it is at the appropriate level of detail which truly adds to the accountability of the agency.

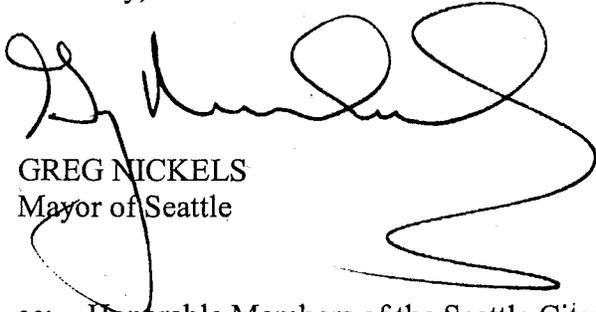
The 2002 Vantage Consulting report recommended that City Council improve its governance performance by the use of "board best practices", including "reviewing and guiding, in an integrated fashion, [City Light's] strategy, major plans of action, risk policy, annual budgets, financial policies and business plans". Legislating custom requirements in the procedures of individual operating agreements goes beyond what Vantage contemplated and is an unnecessary level of detail for Council oversight, only adding to the administrative burden of City Light.

I do believe it would be useful for the Council to receive regular reports on the status of all our operating agreements in order to keep informed about any changed circumstances or implementation issues. Therefore, after discussing this issue with Councilmember Godden, Chair of the Energy and Environmental Policy Committee, I have directed City Light to work with your staff to develop a regular reporting format and procedures to accomplish that goal.

-over-

In the future, this will provide City Council with the information you need without City Light having to track different requirements for Council involvement in the many operating agreements it administers.

Sincerely,

A handwritten signature in black ink, appearing to read 'Greg Nickels', with a large, stylized flourish extending from the end of the signature.

GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council



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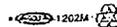
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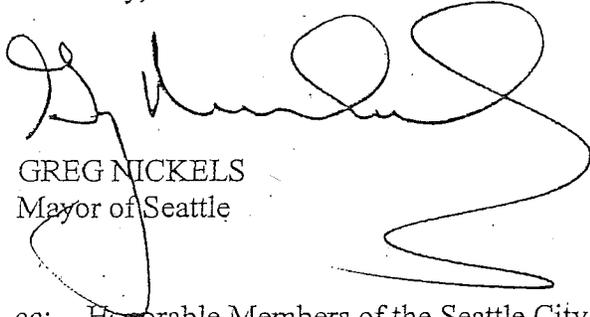
Seattle City Hall, 7th Floor, 600 Fourth Avenue, P.O. Box 94749, Seattle, WA 98124-4749
Tel (206) 684-4000 • TDD (206) 615-0476 • Fax (206) 684-5360 • www.seattle.gov/mayor

An equal employment opportunity, affirmative action employer. Accommodations for people with disabilities provided upon request.



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GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council



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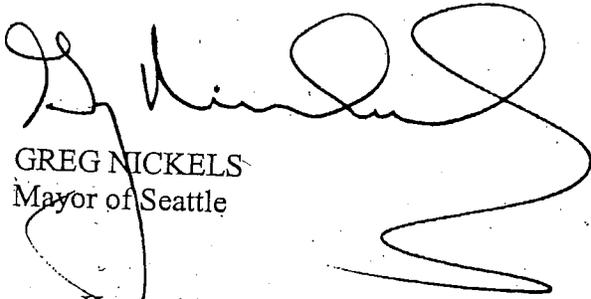
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Sincerely,



A handwritten signature in black ink, appearing to read 'Greg Nickels', written in a cursive style. The signature is positioned above the printed name and title.

GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

TAILWATER ENCROACHMENT
LOSSES COMPENSATION DELIVERY AGREEMENT

This Tailwater Encroachment Losses Compensation Delivery Agreement (“Encroachment Delivery Agreement”) is made as of this ____ day of _____, 2005, by and between the City of Seattle, a municipal corporation under the laws of the State of Washington, acting by and through its City Light Department (“City”), and the Public Utility District No. 1 of Pend Oreille County, Washington (“District”), a municipal corporation under the laws of the State of Washington. The City and the District are each sometimes referred to individually in this Encroachment Delivery Agreement as “Party”; the City and the District are sometimes referred to together in this Encroachment Delivery Agreement as “Parties.”

WITNESSETH,

WHEREAS, the District owns and operates a hydroelectric project, known as the Box Canyon Project, located on the Pend Oreille River in Pend Oreille County, Washington; and

WHEREAS, the City owns and operates a hydroelectric project, known as the Boundary Project, located on the Pend Oreille River downstream of the Box Canyon Project in Pend Oreille County, Washington; and

WHEREAS, operation of the Boundary Project can result in losses to Box Canyon Project capacity, power, and energy production, when the Boundary Project reservoir encroaches into the Box Canyon Project tailwater; and

WHEREAS, Article 48 of the Federal Energy Regulatory Commission (“FERC”) license for the Boundary Project requires that the City compensate the District for the encroachment of the Boundary Project’s reservoir into the Box Canyon Project tailwater; and

WHEREAS, on December 20, 1965, the City and the District entered into an agreement (the “1965 Agreement”) relating to encroachment compensation and providing for the formation of a Board of Engineers to develop an appropriate encroachment losses calculation methodology; and

WHEREAS, the 1970 Report of the Board of Engineers entitled, “Boundary Project F.P.C. License Article 48 Backwater Encroachment on Box Canyon Power Plant,” established the methodology the Parties have been using to determine on an hourly basis the loss of capacity, power, and energy production resulting from the Boundary Project reservoir’s encroachment into the Box Canyon Project tailwater; and

WHEREAS, the Parties now believe that with advances in data collection and computational procedures they can mutually benefit from a simplification of the encroachment calculation methodology; and



WHEREAS, the City owns a 115-kV transmission line approximately 8.9 miles long that extends from the Boundary Substation of Bonneville Power Administration (“BPA”) to the BPA’s Metaline Falls Tap near the town of Metaline Falls in Pend Oreille County (“Boundary Tap Line”); and

WHEREAS, on February 16, 1996, the Parties entered into the Boundary Transmission Tap Line Agreement that provides, among other things, for the Parties to share equally the capacity of the reinforced Boundary Tap Line; and

WHEREAS, in 1996 the City and the District amended the 1965 Agreement to require that the City deliver tailwater encroachment losses compensation to the District at the 230-kV terminals of a Washington Water Power transformer at which the Boundary Tap Line terminated in the Boundary Substation; and

WHEREAS, Washington Water Power’s transformer has been removed from Boundary Substation, and BPA, the City, and the District have negotiated the Boundary Transformer Agreement providing for, among other things, the installation and operation of a replacement transformer (“Boundary Transformer”) at the Boundary Substation; and

WHEREAS, the City’s obligation to deliver encroachment compensation to the District is currently netted after-the-fact against the City’s energy purchases from the District pursuant to the Power Purchase Contract executed between the Parties in 1956; and

WHEREAS, the Power Purchase Contract with the District expires after July 31, 2005, and thereafter the City intends to deliver encroachment compensation directly to the District; and

WHEREAS, the Parties do not expect the Boundary Transformer to be installed prior to 2009 and have agreed that the City’s obligation to deliver encroachment compensation until the earlier of such time as the Boundary Transformer is operating or October 31, 2009 should be satisfied by the City’s payment of money to the District;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

Section 1 – Definitions

- 1.1 “BPA” shall mean the Bonneville Power Administration or its successor agency.
- 1.2 “Boundary Transformer” shall mean the future 230/115 kV, 100/133/167 MVA (OA/FA/FA) non-LTC transformer with a 13.8 kV, 2-4 MVA tertiary winding to be located in the Boundary Substation, which will be interconnected to the north terminus of the Boundary Tap Line, pursuant to the Boundary Transformer Agreement.



- 1.3 “Heavy Load Hours” shall mean the time period starting at 0600 prevailing local time and ending at 2200 prevailing local time each day, Monday through Sunday.
- 1.4 “Light Load Hours” shall mean all hours of the day that are not Heavy Load Hours.
- 1.5 “Operating Information” shall mean the reservoir elevation, generation output, station service consumption, and other data necessary to calculate TEL.
- 1.6 “Tailwater Encroachment Losses” or “TEL” shall mean the difference between the theoretical output of the Box Canyon Project in the absence of the Boundary Project and the actual output of the Box Canyon Project during operation of the Boundary Project as calculated according to the methodology established in Exhibit 1. Secondary effects of tailwater encroachment, including but not limited to changes in storage capability of the Box Canyon reservoir, shall be excluded from TEL.
- 1.7 “USGS” shall mean the United States Geological Survey, or its successor agency, responsible for federal stream gauging on the Pend Oreille River.

Section 2 – Term

This Encroachment Delivery Agreement shall be in effect upon its execution by both Parties until the earlier of: (a) the date on which the operating license for Boundary Project issued to the City by the FERC expires (including annual licenses under the Federal Power Act), without renewal or extension; or (b) the license to operate Boundary Project is issued, transferred or assigned to an entity other than the City.

Section 3 – Service to be Provided

The City shall compensate the District for TEL, as defined in Section 1.6, by providing the District with energy or other compensation as provided below in Sections 7 or 9. The Parties agree that by compensating the District in accordance with this Encroachment Delivery Agreement, the City satisfies its obligations under Article 48 of the FERC license for the Boundary Project or under a comparable article of a successor FERC license held by the City for the Boundary Project.

Section 4 – Operating Information and Maintenance of Data

- 4.1 Unless the USGS makes Operating Information directly available to the City, the District shall provide the City with the Operating Information for the Box Canyon Project necessary to compute the TEL. Data provided by the District shall include, but not be limited to, the tailwater and forebay elevations, generation



output and energy consumed by station service. Data provided by the City shall include, but not be limited to, the USGS river elevation, stream flow, and computed TEL data.

- 4.2 The City shall develop, collect, and maintain the data necessary to compute TEL. The City shall maintain for no less than six (6) years from each date of recording such data or the date of receiving such data, whichever is later, a record of:
- (a) the generation output, station service, and reservoir elevation readings provided by the District;
 - (b) the reservoir elevations and stream flow measurements provided by the USGS;
 - (c) the computed TEL;
 - (d) the amount of hourly transmission loss compensation BPA charged the City, if any, resulting from TEL compensation deliveries the City makes to the District via the Boundary Transformer; and
 - (e) the hourly schedules of TEL less transmission losses that are delivered to the District by the City.
- 4.3 During periods when the data necessary to calculate TEL are unavailable or unreliable, the City may estimate such information; provided that the City shall first request such missing data from the District, and the District shall provide such data, if available, within 10 days of a request by the City. The City shall clearly mark estimated data as such.
- 4.4 Either Party shall, upon reasonable notice, make available to the other Party its recorded Operating Information for review and auditing purposes. Unless otherwise mutually agreed, each Party shall make available and deliver Operating Information to the other Party in electronic format, computer-readable format. Additional information reasonably requested by either Party shall be provided as mutually agreed.

Section 5 – Computing Tailwater Encroachment Losses

- 5.1 The Parties shall calculate TEL, as defined in Section 1.6 of this agreement, by simulating the theoretical output of the Box Canyon Project in the absence of encroachment from the Boundary Project and comparing that theoretical output to the actual output of Box Canyon Project during operation and encroachment from the Boundary Project. As much as possible, the simulation process shall use measured physical parameters.



5.2 Effective August 1, 2005, the Parties shall no longer use the methodology and procedures established by the December 1970 Report of the Board of Engineers and shall instead use and apply the methodology described in the Principles and Procedures for Calculating TEL, attached hereto as Attachment 1 and incorporated into this Encroachment Delivery Agreement by this reference, for calculating compensation due the District under the City's Boundary Project FERC license for all loss of capacity, power, and energy production resulting from the Boundary Project reservoir's encroachment into the Box Canyon Project tailwater.

Section 6 – Errors and Changes

6.1 A Party that discovers an error in the calculation of the TEL shall promptly notify the other Party so that corrections can be made in an expeditious manner. The City shall correct errors and make any necessary recalculations, as follows:

- (a) where the date of the beginning of the error is known, the City shall recalculate TEL back to the date of the error or back 12 months, whichever period is shorter;
- (b) where the date of the beginning of the error is unknown, the City shall recalculate TEL back for a period of 12 months; or
- (c) as the Parties may otherwise agree.

6.2 The Parties shall schedule delivery of compensation for corrected TEL as provided in Section 7, below, or as the Parties may otherwise agree.

Section 7 – Scheduling

7.1 Upon the energization date of the Boundary Transformer or October 1, 2009, whichever is earlier, the City shall deliver compensation to the District for TEL in the manner and in accordance with the scheduling criteria established by this section.

7.2 By or before 09:00 hours prevailing local time on the day following each day the District has experienced TEL, the City will provide the District with the calculation of TEL compensation for that day and a corresponding hourly schedule for the delivery of TEL compensation to be delivered on the seventh day following the day the District has experienced TEL.

7.3 Unless otherwise agreed and subject to any adjustments made under this section, the City shall schedule delivery of TEL compensation to the District on a daily basis and shall make delivery of TEL compensation on the seventh day following each day the District has experienced TEL. The City will schedule delivery of



TEL compensation in whole megawatt-hours (MWh) on the appropriate prescheduling day as established by customary business practices.

7.4 The City shall deliver TEL compensation to the District at the points of delivery, described below, as follows:

- (a) when Boundary Project is generating sufficient capacity, at the high side of the Boundary Transformer;
- (b) when Boundary Project is not generating (i.e., it is off-line), at other points of interconnection between BPA and the District to which the City can redirect transmission capacity in an economical manner under its transmission service agreement(s) with BPA;
- (c) when Boundary Project is not generating sufficient capacity to satisfy the TEL schedule, including adjustments, at the high side of the Boundary Transformer and/or at other points of interconnection between BPA and the District to which the City can redirect transmission capacity in an economical manner under its transmission service agreement(s) with BPA, as reasonably proposed by the City; or
- (d) at any other delivery point as the Parties may otherwise agree.

7.5 To accommodate Daylight Savings Time changes, the Parties will adjust scheduling of delivery of TEL compensation as follows:

Each April, on the 23-hour day that Daylight Savings Time begins, the City will withhold from delivering that portion of TEL compensation otherwise scheduled for delivery during the hour ending 0200, as reflected in the TEL calculation and schedule for the 24-hour day seven days earlier, and will, instead, schedule delivery of TEL compensation for the missing hour seven days later when compensation for the hour ending 0200 is missing from the TEL calculation and schedule for the 23-hour day.

Each October, on the 25-hour day when Daylight Savings Time ends, the Parties shall schedule over a 25-hour day by filling the extra hour ending 0200 with zero (0) megawatts because no energy was scheduled for that extra hour in the daily TEL schedule that was produced seven days earlier. Then, the energy of the extra hour ending 0200 that appears on the daily TEL schedule as a result of the extra hour ending 0200 on the day that Daylight Savings Time ends shall be added to the energy schedule seven days later and scheduled over the 24-hour day.

7.6 The Parties may adjust delivery schedules for:

- (a) transmission losses compensation as provided in Section 8;
- (b) correction of errors as provided in Section 6;



- (c) adjustments for Daylight Savings Time as described above; or
- (d) other factors, as the Parties may otherwise agree.

7.7 The Parties agree to revise the provisions of this section as needed to be consistent with customary business practices of the time, such revision to be documented in writing signed or otherwise acknowledged by both Parties.

Section 8 – Transmission Losses Compensation

The District shall compensate the City for any transmission losses compensation the City may owe BPA, if any, resulting from TEL compensation deliveries the City makes to the District via the Boundary Transformer. Unless the Parties otherwise agree, the City shall deduct from the TEL compensation calculations and delivery schedules any hourly transmission loss compensation it may owe BPA, pursuant to the City's transmission service agreement with BPA, resulting from TEL compensation deliveries the City makes to the District via the Boundary Transformer.

Section 9 – Financial Settlement Option

9.1 The Parties agree that during the period beginning August 1, 2005, and until the earlier of the date upon which the Boundary Transformer is energized and fully operational or October 31, 2009, the City's obligation to compensate the District for TEL shall be satisfied by the City's payment of monthly financial settlements. The calculation of monthly financial settlements shall be based on the hourly TEL compensation as it would have been delivered pursuant to Section 7 and the Dow Jones Firm Mid-C Daily Price Index for Light Load Hours and/or Heavy Load Hours, as the case may be. During this period, the settlement process and payment terms shall be as follows:

9.1.1 On or before the 10th of September 2005, and on or before the 10th calendar day of each succeeding month thereafter, the City shall calculate the TEL in accordance with this Encroachment Delivery Agreement and submit for the District's approval a monthly summary of the hourly TEL as these would have otherwise been scheduled pursuant to Section 7 multiplied by the appropriate hourly index price.

9.1.2 Upon approval of the summary provided in Section 9.1.1, the District shall invoice the City for the total computed value of TEL for the month via facsimile notice sent to the billing contact listed below in Section 10.

9.1.3 The City shall pay each monthly invoice within 10 days of receipt, except that when the due date falls on a Saturday, Sunday, or City holiday, the due date shall be the next business day. Invoices not paid in full on or



before the close of business on the due date shall be subject to an interest charge, applied each day to the unpaid balance, calculated on the basis of the Prime Rate for Large Banks as reported in the Wall Street Journal, plus three (3) percent. The applicable interest rate shall be the rate reported on the first day of the month in which payment is received.

- 9.2 After the Boundary Transformer commences full-time operation or October 31, 2009, whichever is earlier, the City may, subject to the mutual agreement of the District, satisfy its obligation to compensate the District for TEL, or any portion thereof, by the City's payment of financial settlements. The Parties shall confirm in writing signed by both Parties the agreed price and payment terms for financial settlements reached under this subsection.

Section 10 – Notices

Any notice required under this Encroachment Delivery Agreement shall be made as indicated below. Either Party may change its contact information set forth below by giving the other Party written notice of such changes in accordance with the provisions of this section.

- 10.1 Notices of an operating nature shall be made orally or in writing to the other Party's primary and secondary points of contact as follows:

Primary Operations Contact:

PUD No. 1 of Pend Oreille County
130 N. Washington Ave.
P.O. Box 190
Newport, WA 99156

Attention: Dispatch Center
Phone: (509) 447-3045
Fax: (509) 447-9330

Seattle City Light
700 Fifth Ave. Suite 3300
P.O. Box 34023
Seattle, WA 98124-4023

Attention: Real-time Power Marketing
Phone: (206) 615-0966
Fax: (206) 615-0969

Secondary Operations Contact:

PUD No. 1 of Pend Oreille County
130 N. Washington Ave.
P.O. Box 190
Newport, WA 99156

Attention: Box Canyon Operator
Phone: (509) 442-3232
Fax: (509) 447-6790

Seattle City Light
Boundary Powerhouse
P.O. Box 219
10382 Boundary Road
Metaline Falls, WA 99153

Attention: Hydro Operator
Phone: (509) 446-3073 or 3083 (unlisted)
Fax: (509) 446-2928



- 10.2 Any general notice or other communication, other than notices of an operating nature, shall be given in writing and shall be deemed to have been received if delivered in person, by fax, or sent by acknowledged delivery as follows:

PUD No. 1 of Pend Oreille County
130 N. Washington Ave.
P.O. Box 190
Newport, WA 99156

Seattle City Light
700 Fifth Ave. Suite 3300
P.O. Box 34023
Seattle, WA 98124-4023

Attention: Director, Hydro Operations
and Power Supply
Phone: (509) 447-3137
Fax: (509) 447-5824

Attention: Power Supply Officer
Phone: (206) 386-0049
Fax: (206) 684-3158

- 10.3 Any billing or payment notice, shall be given in writing and shall be deemed to have been received if delivered in person, by fax, or sent by acknowledged delivery as follows:

PUD No. 1 of Pend Oreille County
130 N. Washington Ave.
P.O. Box 190
Newport, WA 99156

Seattle City Light
700 Fifth Ave. Suite 3300
P.O. Box 34023
Seattle, WA 98124-4023

Attention: Treasurer/Chief Accountant
Phone: (509) 447-9326
Fax: (509) 447-6370

Attention: Manager, Wholesale Contracts
Phone: (206) 386-4533
Fax: (206) 386-4555

Section 11 – Relation to the 1965 Agreement

Except as specifically agreed with respect to the computation methodology that is described in Section 5, in the event that there is any conflict between the terms of this Encroachment Delivery Agreement and the terms of the 1965 Agreement, the 1965 Agreement shall govern.

Section 12 – Revisions and Amendment

The Parties may mutually agree to revise the data collection or computation procedures described herein, including Attachment 1, which agreement shall be documented through a writing signed by both Parties.



Section 13 - Incorporation of Attachment

The Attachment 1 is incorporated into this Encroachment Delivery Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Encroachment Delivery Agreement.

THE CITY OF SEATTLE,
CITY LIGHT DEPARTMENT

PUBLIC UTILITY DISTRICT NO. 1
OF PEND OREILLE COUNTY,
WASHINGTON

Jorge Carrasco
Superintendent

Robert Geddes
General Manager

Attachment 1: Principles and Procedures for Calculating Tailwater Encroachment Losses (TEL)



PRINCIPLES AND PROCEDURES FOR
CALCULATING TAILWATER ENCROACHMENT LOSSES (TEL)

The Parties agree that tailwater encroachment losses (TEL) for Box Canyon Project shall be calculated based on the principle that encroachment losses are equivalent to the theoretical generation output without encroachment minus actual generation output after encroachment. Thus, TEL shall be calculated from the following equation:

$$TEL = G_n - G_m$$

$$G_n = G_{n1} + G_{n2} + G_{n3} + G_{n4}$$

$$SS_0 = SS / (G_{m1} + G_{m2} + G_{m3} + G_{m4})$$

$$G_m = G_{m1} + SS_0 * G_{m1} + G_{m2} + SS_0 * G_{m2} + G_{m3} + SS_0 * G_{m3} + G_{m4} + SS_0 * G_{m4}$$

$$GH_n = FB_m - TW_n$$

$$GH_m = FB_m - TW_m$$

Where TEL = tailwater encroachment losses

G_n = sum of generation from all units without encroachment

G_m = sum of generation from all units with encroachment

G_{ni} (where $i = 1, 2, 3$ or 4) = individual unit generation without encroachment

G_{mi} (where $i = 1, 2, 3$ or 4) = individual unit generation with encroachment (measured)

SS = total energy used for station service (measured)

SS_0 = normalized energy used for station service

GH_n = plant gross head without encroachment

GH_m = plant gross head with encroachment

FB_m = forebay elevation (measured)

TW_n = tailwater elevation without encroachment

TW_m = tailwater elevation with encroachment (measured)

Following are step-by-step instructions for calculating hourly TEL:

1. For each hour of the day, determine each of the four Box Canyon units power output (G_{m1} , G_{m2} , G_{m3} , and G_{m4}) from watt-hour readings exactly on the hour of interest.
2. For each hour of the day, determine the total energy used for station service (SS) on the hour of interest.
3. Determine the average Box Canyon intake forebay elevation (FB_m) for each hour, by averaging the four 15-minute interval readings from the District's forebay gauge:



exactly on the hour of interest, 15 minutes after the hour, 30 minutes after the hour, and 45 minutes after the hour.

4. Determine the average Box Canyon tailwater elevation (TW_m) immediately downstream of the powerhouse for each hour, by averaging the four 15-minute interval readings from the USGS gauge no. 12396500 Pend Oreille River Below Box Canyon near Ione, Washington (use 02_00065 gauge height readings).
5. Determine the average hourly discharge in CFS from Box Canyon Project for each hour, by averaging the four 15-minute interval readings from the USGS gauge no. 12396500 Pend Oreille River Below Box Canyon near Ione, Washington (use 01_00060 discharge readings). The USGS discharge data may be adjusted and/or averaged to smooth transient variability through an algorithm provided by USGS, or as otherwise mutually agreed by the Parties.
6. Compute the unencroached tailwater elevation (TW_n) corresponding to the hourly discharge as obtained from step (5) using USGS Rating Table for Pend Oreille River below Box Canyon Dam Near Ione, Washington (use USGS Rating Table No. 8, October 1, 1966).
7. Compute plant gross heads with (GH_m) and without (GH_n) encroachment.
8. Based on Box Canyon turbine-generator's power-discharge-head relationship as established by the December 1970 Report of the Board of Engineers, determine individual unit turbine discharge ($Q_1, Q_2, Q_3,$ and Q_4) from individual unit power output ($G_{m1}, G_{m2}, G_{m3},$ and G_{m4}) that has been adjusted for station service energy and plant gross head with encroachment (GH_m).
9. Using the same power-discharge-head relationship, determine individual unit power output without encroachment ($G_{n1}, G_{n2}, G_{n3},$ and G_{n4}) from unit turbine discharge ($Q_1, Q_2, Q_3,$ and Q_4) as derived from step (8) and plant gross head without encroachment (GH_n).
10. TEL is calculated to the nearest kWh. Since TEL is scheduled in whole MWh, the amount of TEL to be scheduled for each hour shall be determined by rounding down to the nearest integer. Fractions of a MWh of TEL that are not scheduled due to such rounding shall be carried over to subsequent hours and accumulated until the sum of the total accumulated unscheduled TEL is at least one MWh, at which time the integer amount so carried over shall be added to the scheduled TEL of the hour and any fraction then remaining shall be carried over to subsequent hours to be accumulated with later MWh fractions, as before.



2005 MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF SEATTLE, CITY LIGHT DEPARTMENT
AND
PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY

THIS 2005 MEMORANDUM OF AGREEMENT ("2005 MOA") constitutes an agreement by and between the City of Seattle, Washington, a municipal corporation under the laws of the State of Washington, acting by and through its City Light Department ("City"), and Public Utility District No. 1 of Pend Oreille County, Washington, a municipal corporation under the laws of the State of Washington ("District"). The City and the District are each sometimes referred to individually in this Agreement as "Party"; the City and the District are sometimes referred to together in this Agreement as "Parties."

WITNESSETH,

WHEREAS, Article 49 of the City's Federal Energy Regulatory Commission ("FERC") license for the Boundary Project provides for the City to assign up to 48 megawatts (MW) from the Boundary Project to the District ("Article 49 Power"); and

WHEREAS, on April 29, 1992, the Parties entered into the Settlement Agreement ("Settlement Agreement") establishing the terms and conditions for the assignment of firm power by the City to the District pursuant to Article 49 of the Boundary Project license; and

WHEREAS, on July 5, 2000, the Parties entered into the Memorandum of Agreement under which the Parties agreed, among other things, that the City would seek a continuation of Article 49 in the new Boundary Project license, including the removal of the constraint on the sale of Article 49 Power outside Pend Oreille County, and the District would support and assist the City's relicensing of the Boundary Project; and

WHEREAS, on March 26, 2004, the District provided notice to the City, pursuant to the September 5, 1969 Agreement between the Parties, that the District intends to recapture, effective August 1, 2005, the remaining 12 MW of Box Canyon Project power and to simultaneously take its full 48 MW of Article 49 Power; and

WHEREAS, the District wants to clarify the interpretation of Article 49 with respect to the District's sale of surplus energy after August 1, 2005, and until FERC issues a new Boundary Project license; and

WHEREAS, the City owns a 115-kv transmission line approximately 8.9 miles long that extends from the Boundary Substation of Bonneville Power Administration ("BPA") to



the BPA's Metaline Falls Tap near the town of Metaline Falls in Pend Oreille County ("Boundary Tap Line"); and

WHEREAS, on February 16, 1996, the Parties entered into the Boundary Transmission Tap Line Agreement that provides, among other things, for the Parties to share equally the capacity of the reinforced Boundary Tap Line; and

WHEREAS, the Parties want to make the most economical and beneficial use of their respective and shared electric generating and transmission resources in Pend Oreille County; and

WHEREAS, BPA, the City, and the District have negotiated the Boundary Transformer Agreement, providing for installation and operation of a transformer and breaker in the Boundary Substation to allow the cost-effective delivery of Article 49 Power and tailwater encroachment compensation from the Boundary Project to the District via the Boundary Tap Line; and

WHEREAS, the Boundary Transformer Agreement requires that the City and the District provide a transformer and breaker for the Boundary Substation, and the City and the District agree that the District should pay the acquisition costs for this equipment in recognition of the greater benefits that the District will receive from transmission savings; and

WHEREAS, on February 14, 1999, the Parties entered into the Energy Delivery and Exchange Agreement, and this agreement, requiring the District to schedule a minimum of 60 percent of its maximum Article 49 Power entitlement in all hours, expires on July 31, 2005; and

WHEREAS, the City wants the District to continue scheduling a minimum of 60 percent of its maximum Article 49 Power entitlement, effective August 1, 2005, to enable the City to reduce Boundary Project demand on the regional transmission grid;

NOW THEREFORE, in consideration of the foregoing facts, the Parties agree as follows:

1. Beginning August 1, 2005, and until FERC issues the new Boundary Project license, the District may purchase, subject to the terms of the Settlement Agreement, up to 48 MW of Article 49 Power to meet the District's load requirements within its service territory. Should the District have Box Canyon and/or other power surplus to its load, the District may sell such surplus outside the District's service territory without affecting the District's Article 49 Power entitlement.
2. The District shall pay all acquisition costs of the transformer and breaker to be installed at Boundary Substation pursuant to the Boundary Transformer Agreement. The District shall also assume sole responsibility for the future maintenance and capital replacements of the transformer and breaker, insofar as BPA does not assume this responsibility, except that the City shall be responsible for any protective



equipment required to operate the tertiary winding of the Boundary transformer in order to supply station service.

3. The District shall keep the City informed of its plans for maintenance of the Boundary transformer and breaker, and it shall promptly inform the City of any event of an operating nature that affects operation of the "Transmission Path" described in the Boundary Transformer Agreement by contacting the following City personnel:

Seattle City Light
700 Fifth Ave. Suite 3300
P.O. Box 34023
Seattle, WA 98124-4023

Seattle City Light
Boundary Powerhouse
P.O. Box 219
10382 Boundary Road
Metaline Falls, WA 99153

Attention: Real-time Power Marketing
Phone: (206) 615-0966
Fax: (206) 615-0969

Attention: Hydro Operator
Phone: (509) 446-3073 or 3083 (unlisted)
Fax: (509) 446-2928

4. In consideration of the City's payment of \$135,000 to the District upon execution of this 2005 MOA, the District shall grant the City and the City shall hold a one-third (1/3) capacity interest in the use of the transformer and breaker, effective on the day that the transformer is energized and so long as the Boundary Tap Line is interconnected to the transformer.
5. Effective August 1, 2005, the District shall schedule, subject to the terms of the Assignment Agreement, a minimum of sixty (60) percent of its maximum Article 49 Power entitlement in all hours.
6. During hours when the Boundary Project is not on-line or when the Boundary transformer and/or breaker are not in operation, the City may schedule Article 49 Power and Tailwater Encroachment Loss deliveries to the District in the most economical manner possible, including via non-firm transmission.
7. If the District wishes to sell the Boundary transformer and/or breaker, it will first provide the City an opportunity to purchase the equipment by providing written notification to the City's representative designated in Section 10 of the Boundary Transformer Agreement. If the City elects to purchase the Boundary transformer and/or breaker from the District, it shall so notify the District within 90 days of receiving written notice from the District.
8. This 2005 MOA may be amended only with the express written consent of both Parties.
9. This 2005 MOA shall become effective and binding upon the City and the District on the date of the last signature for and on behalf of the Parties and shall be in effect so long as any of the facilities installed under the Boundary Transformer Agreement are



in existence and operable, unless this 2005 MOA is terminated by written agreement of both Parties. All liabilities incurred under this 2005 MOA shall be preserved until satisfied.

IN WITNESS WHEREOF the Parties hereto have executed this 2005 MOA.

THE CITY OF SEATTLE,
CITY LIGHT DEPARTMENT

PUBLIC UTILITY DISTRICT NO. 1
OF PEND OREILLE COUNTY

By: _____
Jorge Carrasco
Superintendent

By: _____
Bob Geddes
General Manager

Date: _____

Date: _____



BOUNDARY TRANSFORMER AGREEMENT
executed by the
UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
acting by and through the
BONNEVILLE POWER ADMINISTRATION
and
Public Utility District No. 1 of Pend Oreille County
and
The City of Seattle, City Light Department

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This AGREEMENT (Agreement), executed _____, 2005, by the UNITED STATES OF AMERICA (Government), Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (Bonneville); and the Public Utility District No. 1 of Pend Oreille County (Pend Oreille) and the City of Seattle, City Light Department (Seattle); (referred to collectively as "Parties" and Pend Oreille and Seattle may be jointly referred to as "the Customers").



RECITALS

WHEREAS Bonneville, Pend Oreille and Seattle have agreed to participate in a joint project to reinforce the interconnected transmission system for increased reliability and system robustness;

WHEREAS the Parties agree that the arrangement provided in this agreement benefits the interconnected systems of the Parties;

WHEREAS the Parties agree to the various responsibilities and obligations set forth below;

WHEREAS this project will result in a new transmission path with capacity allocated among the Parties according to the terms of this Agreement;

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements herein contained, the Parties agree as follows:

1. TERM OF AGREEMENT

This Agreement shall be effective at 0000 hours on the date of execution (Effective Date), and shall terminate at the time the Boundary Equipment is permanently removed from Bonneville's Boundary Substation; provided however, in no case shall this Agreement terminate prior to the date the Point-to-Point Service Agreement No. 02TX-10875 (PTP Agreement) between Bonneville and Pend Oreille terminates at 0000 on January 1, 2012. Neither the PTP Agreement nor the Boundary Project Transmission Agreement (Contract No. DE-MS79-90BP92488) shall terminate early, unless Bonneville and Pend Oreille agree to a financial settlement of the transmission charges for the remaining term under such agreements. In the event that the Agreement is terminated, all liabilities incurred hereunder are hereby preserved until satisfied.

2. DEFINITIONS

"Boundary Transformer" means the Pend Oreille-owned 230/115 kV, 100/133/167 MVA (OA/FA/FA) non-LTC, SCADA alarm equipped transformer with a 13.8 kV, 2-4 MVA tertiary winding installed at Bonneville's Boundary Substation in accordance with this Agreement.

"Boundary Equipment" means the Boundary Transformer, 115 kV circuit breaker and all associated equipment including, but not limited to, wiring, relaying and oil containment, installed in Bonneville's Boundary Substation in accordance with this Agreement.

"Transmission Path" means the path created from Bonneville's Boundary 230 kV bus through the Boundary Transformer, across Seattle's Boundary-Metaline Falls Tap 115 kV line and Bonneville's 115 kV line between Metaline Falls Tap and Box Canyon Tap, ending at Box Canyon Tap.



3. DESIGN, ENGINEERING AND INSTALLATION

- a. Bonneville shall, at its expense, provide for all labor and overhead charges associated with the planning, design, engineering, permitting, project management and installation of the Boundary Equipment.
- b. Bonneville shall coordinate review of the project requirements diagram with the Customers prior to finalizing the plan of service. The project requirements diagram shall be provided to the Customers no later than March 31, 2006. The Customers shall provide comments, if any, in writing to Bonneville no later than June 30, 2006. Bonneville shall finalize the project requirements diagram no later than July 31, 2006.
- c. No metering point for Pend Oreille will be established as a result of the installation of the Boundary Equipment in accordance with this Agreement.
- d. Bonneville shall develop specifications for the Boundary Transformer and the associated 115 kV power circuit breaker and coordinate review with the Customers. The specifications shall be provided to the Customers for review no later than September 30, 2006. The Customers shall provide comments, if any, in writing to Bonneville no later than December 30, 2006. Bonneville shall finalize the specifications no later than January 31, 2007.
- e. Bonneville and the Customers shall coordinate the schedule for the procurement, construction and installation of the Boundary Equipment. Such coordination is to be completed no later than October 31, 2007.
- f. The energization date of the Boundary Equipment shall be no later than October 31, 2009.

4. SUPPLY, PROCUREMENT AND OWNERSHIP

- a. The Customers, at their cost, shall arrange to provide to Bonneville the Boundary Transformer, a 115 kV SF-6 gas power circuit breaker, and all associated equipment, including, but not limited to, wiring, relaying and oil containment in accordance with the specifications determined in 3(d).
- b. At Customers' request Bonneville shall, to the extent allowed by law, procure any or all of the Boundary Equipment on their behalf and at their cost. Such request shall be in writing and delivered to Bonneville no later than June 30, 2007.
- c. Pend Oreille will own the Boundary Equipment. The change of ownership between Bonneville and Pend Oreille shall be between the 230 kV bushing of Pend Oreille's Boundary Transformer and the Boundary 230 kV bus in Bonneville's Boundary substation.



5. OPERATION AND MAINTENANCE

- a. Routine Maintenance. Bonneville shall operate and maintain the Boundary Equipment in the same manner in which Bonneville operates and maintains similar facilities of the Government. Operation and labor and materials for normal maintenance on the Boundary Equipment, such as gaskets, seals, etc., shall be provided by Bonneville at Bonneville's expense.
- b. Outage Coordination. Bonneville shall consult with Pend Oreille prior to any planned outage for maintenance of the Boundary Equipment to determine:
 - (1) a mutually acceptable period of time required by Pend Oreille to prepare for the outage; and
 - (2) a mutually acceptable period in which to accomplish the required maintenance; and
 - (3) such agreement shall not be unreasonably withheld.
- c. Maintenance Records. Bonneville shall provide Pend Oreille with copies of maintenance records for work performed on the Boundary Equipment within thirty (30) days after such maintenance is performed. Transformer gas-in-oil test results will be provided to Pend Oreille within thirty (30) days of receipt of the test results by Bonneville.
- d. Box Canyon Phase Shifter. Upon energization of the Boundary Equipment, Pend Oreille's Box Canyon Phase Shifter will be operated with total actual power flows between plus or minus 10 MW to the Box Canyon Tap, unless Pend Oreille is notified by the Bonneville dispatchers to change the tap position to alleviate temporary transmission system loading problems. Under no circumstances will the Phase Shifter be temporarily loaded above the OA/FA/FA rating of 100/133/167 MVA.
- e. Box Canyon Switches. Bonneville and Pend Oreille shall enter into a separate signed operating agreement to allow Pend Oreille's dispatch control center to remotely control the Bonneville-owned Box Canyon Tap switches, B1011 and B1012.



- f. Load Limits. Bonneville will operate the Boundary Transformer and the Boundary – Metaline Falls Tap 115 kV line consistent with the applicable Bonneville standards:
- (1) Boundary Transformer Loading: Bonneville will operate the Boundary Transformer in accordance with Bonneville’s Operating Bulletin 15, Operation of Transformers and Shunt Reactors, August 25, 2003, version or its successor.
 - (2) Boundary-Metaline Falls Tap 115 kV Line Loading: Bonneville will monitor loading on the Boundary-Metaline Falls Tap 115 kV line in accordance with the then current National Electric Safety Code (NESC) standards, using the Bonneville Loading Guide and the ambient temperature at Boundary Substation to determine the line rating. The Boundary-Metaline Falls Tap 115 kV line was constructed with 795 ACSR (Drake) conductor sagged for up to 75°C conductor operating temperature with two (2) foot per second wind speed.
 - (3) Line Upgrade: If the Boundary-Metaline Falls Tap 115 kV line is upgraded, new operating limits for the Boundary Transformer will be coordinated among the Parties.
- g. Path Operation. Bonneville shall be the Transmission Path operator. The Transmission Path will be operated normally closed except for planned and unplanned outages unless otherwise agreed to by the Parties.
- h. Other. The connection where Pend Oreille’s facilities interconnect with Bonneville’s facilities at Box Canyon Tap shall be operated normally closed except for planned and unplanned outages for the duration of this Agreement.

6. REPLACEMENT AND UPGRADE OF BOUNDARY EQUIPMENT

- a. Routine or Planned Replacement. For routine or planned replacement of any part of the Boundary Equipment that Bonneville determines is necessary for operation and maintenance of such equipment in the same manner in which Bonneville operates and maintains similar facilities of Bonneville, Pend Oreille shall reimburse Bonneville for the cost of non-labor capital expenditures under separate written agreement. Prior to committing to any capital expenditures for such replacement, Bonneville shall coordinate with Pend Oreille. Such capital expenditures to be reimbursed to Bonneville for replacement of any of the Boundary Equipment, including transformer and breaker accessories such as bushings, pumps, compressors, gauges, fans, cabinet heaters, etc., shall be approved in advance by Pend Oreille and such approval shall not be unreasonably withheld.



- b. Non-Routine Upgrade or Modification. In the event that changes to the substation or transmission facilities owned by the Parties in the area of the Boundary Equipment require modifying, upgrading or replacing any of the Boundary Equipment, the Parties shall agree among themselves in writing that such changes to the Boundary Equipment are necessary. Pend Oreille will be responsible for non-labor capital expenditures of such modification, upgrade or replacement. Bonneville will be responsible for labor expenditures of such modification, upgrade or replacement.
- c. Catastrophic Failure. In the event of a catastrophic failure of the Boundary Equipment, Bonneville shall provide an initial emergency response. Bonneville will use best efforts to be in an initial emergency response mode, with crews being notified and mobilized, within two (2) hours. After such initial emergency response, Bonneville shall coordinate with Pend Oreille regarding: (i) Bonneville's responsibility to provide labor for repair and/or replacement of the failed equipment at Bonneville's expense; and, (ii) Pend Oreille's responsibility to provide equipment or repair of equipment at Pend Oreille's expense.

Following such catastrophic failure Pend Oreille shall take immediate action to replace or repair the damaged Boundary Equipment at its expense.

In the event that a spare transformer is needed in the interim, Bonneville shall provide such spare transformer to the extent one is available. All of the cost associated with transportation of the spare transformer to and from Bonneville's Boundary Substation, including labor to prepare the transformer for shipment and for re-siting such transformer upon return to storage, shall be paid by Pend Oreille. The labor costs associated with installation and maintenance of the spare transformer at Boundary Substation will be borne by Bonneville. There shall be no lease charge for the use of the spare transformer in the Boundary substation.

- d. Removal. If requested by Pend Oreille, Bonneville shall, upon two (2) years' written notice, and at Pend Oreille's expense, remove and return to Pend Oreille at the Boundary Substation, where such Boundary Equipment is located, the salvageable Boundary Equipment facilities that are owned by Pend Oreille. After such removal, Bonneville may, at Pend Oreille's expense, return the Boundary Substation facilities to the configuration: (i) existing before such Boundary Equipment was installed; or, (ii) as mutually agreed between Pend Oreille and Bonneville.



7. TRANSMISSION PATH CAPACITY ALLOCATION

As consideration for the actions undertaken in accordance with this Agreement, and the benefits that the addition of the Boundary Equipment provides to the interconnected transmission system, each Party shall have rights to one-third of the operating transfer capability of the Transmission Path.

8. LIABILITY

- a. While Bonneville, Pend Oreille and Seattle are each parties to the Agreement Limiting Liability Among Western Interconnected Systems, such agreement shall continue in full force and effect as between the Parties and shall be controlling with respect to liability matters notwithstanding any other provision of this section.
- b. To the extent allowed by the Federal Tort Claims Act, Bonneville agrees to defend, indemnify and hold harmless each of Seattle and Pend Oreille, their affiliated companies, boards of directors, officers, employees, agents and representatives, against and from any and all loss, claims, actions or suits, for or on account of injury, bodily or otherwise to, or death of persons, or for damage to or destruction of property belonging to Seattle or Pend Oreille or others, resulting from Bonneville's negligent acts or omissions or intentional misconduct in connection with the performance of this Agreement, excepting that any liability attaching to Bonneville shall be reduced by any proportion that such injury or harm is caused by negligence or intentional misconduct of either Seattle or Pend Oreille, their affiliated companies, board of directors, officers, employees, agents or representatives.
- c. Each of Seattle and Pend Oreille agree to defend, indemnify and hold harmless Bonneville and the other Party, their employees, agents and representatives, against and from any and all loss, claims, actions or suits, for or on account of injury, bodily or otherwise to, or death of persons, or for damage to, or destruction of property belonging to Bonneville, or others, resulting from either Seattle's or Pend Oreille's negligent acts or omissions or intentional misconduct in connection with the performance of this Agreement, excepting that any liability attaching to Seattle or Pend Oreille shall be reduced by any proportion that such injury or harm is caused by negligence or intentional misconduct of Bonneville or the other Party, their employees, agents or representatives.



- d. No Party shall be liable to any other Party for any injury or death to any person, or for any loss or damage to any property, caused by or arising out of an electric disturbance on the First Party's electric system, whether or not such electric disturbance resulted from the First Party's negligent, grossly negligent or wrongful act or omission. For the purposes of this section 8(d):
- (1) the term "electric disturbance" means any sudden, unexpected, changed or abnormal electric condition occurring in or on an electric system;
 - (2) the term "Party" means, in addition to such Party itself, its affiliated companies, its board of directors, officers and employees;
 - (3) the term "damage" means all damage, including consequential damage;
 - (4) the term "person" means any person, including those not connected with any Party to this Agreement.
- e. The Parties acknowledge and agree that no Party is the agent or principal for any other Party, nor are they partners or joint venturers; and the Parties each agree that they will not represent to any other Party that they act in the capacity of agent or principal for any other Party.
- f. In no event shall any Party be liable to any other Party for any special, punitive, exemplary, consequential, incidental or indirect losses or damages for any failure of performance howsoever caused, whether or not arising from such Party's sole, joint or concurrent negligence.

9. DISPUTE RESOLUTION

- (a) Pending resolution of a disputed matter, the Parties shall continue performance of their respective obligations pursuant to this Agreement.
- (b) In the event of a dispute arising out of this Agreement, all Parties shall negotiate in good faith to reach an acceptable and timely resolution of the dispute. Should the Parties be unable to resolve the dispute to their mutual satisfaction within twenty (20) working days after such negotiation begins, or at the conclusion of any other mutually acceptable time period, the Parties shall attempt in good faith to resolve the dispute through non-binding mediation.
- (c) No Party shall be obligated to engage in mediation for longer than five (5) business days. Each Party shall be responsible for its own expenses and an equal share of the expenses of the mediator.



10. **REPRESENTATION**

Each Party represents to each other Party that the individual signing on its behalf is authorized to execute this Agreement for and on behalf of such Party. Each Party represents to the other Parties that this Agreement is legal and binding on such Party in accordance with its terms.

11. **CHOICE OF LAW**

This Agreement shall be interpreted, construed and implemented under Federal law.

12. **ASSIGNMENT**

All rights, benefits and obligations under this Agreement shall be binding upon the respective successors and assigns of the Parties to this Agreement. This Agreement shall not be transferred or assigned by any Party to any other person or entity without the written consent of the other Parties. The assigning Party shall notify the non-assigning Parties of such assignment. Any consent required of the other Parties shall not be unreasonably withheld or delayed.

13. **APPLICABILITY**

This Agreement constitutes the entire understanding among the Parties with respect to the subject matter hereof, supersedes any and all previous understandings among the Parties with respect to the subject matter hereof, and binds and inures to the benefit of the Parties and their successors and assigns.

14. **SEVERABILITY**

If one or more provisions of this Agreement shall be found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, it shall be given effect to the extent permitted by applicable law, and such invalidity, illegality or unenforceability shall not affect the validity of the other provisions of this Agreement.

15. **NOTICES**

Any notice required under this Agreement shall be made as indicated below. Any party to this Agreement may change its contact information set forth below by giving the other Parties written notice of such changes in accordance with the provisions of this section.

- (a) **Operating Notice:** Any notice of an operating nature between Pend Oreille and Bonneville shall be made orally or in writing to the primary and/or secondary points of contact as follows:



Primary Point of Contact:

Bonneville Power Administration
Attn: Chief Substation Operator III
2400 East Hawthorne Rd.
Mead, WA 99021
Phone: (509) 465-1039
Fax: (509) 465-1070

Secondary Point of Contact:

Bonneville Power Administration
Attn: Spokane Regional Manager
2410 East Hawthorne Rd.
Mead, WA 99021
Phone: (509) 358-7375
Fax: (509) 358-7460

PUD No. 1 of Pend Oreille County
N. 130 Washington Ave.
PO Box 190
Newport WA 99156
Attention: Dispatch Center
Phone: (509) 447-3045
Fax: (509) 447-9330

PUD No. 1 of Pend Oreille County
N. 130 Washington Ave.
PO Box 190
Newport, WA 99156
Attention: Box Canyon Operator
Phone: (509) 442-3232
Fax: (509) 447-6790

(b) Administrative Notice: Any notice or other communication related to this Agreement, other than notices of an operating nature, shall be given in writing and shall be deemed to have been received if delivered in person, by fax, or sent by acknowledged delivery.

If to the Customers:

PUD No. 1 of Pend Oreille County
N. 130 Washington Ave.
P.O. Box 190
Newport, WA 99156
Attn: Director, Hydro Operations and Power
Supply; and Director of Construction
and Engineering
Phone: (509) 447-3137
Fax: (509) 447-5824

If to Bonneville:

Bonneville Power Administration
Mail Stop TM/OPP-2
8100 NE Parkway Drive - Suite 50
Vancouver, WA 98662.
Attn: Transmission Account Executive
for Pend Oreille - TM/OPP-2
Phone: (360) 619-6015
Fax: (360) 619-6940

And

The City of Seattle, City Light Department
700 Fifth Ave - Suite 3300
P.O. Box 34023
Seattle, WA 98124-4023
Attn: Power Supply Officer
Phone: (206) 386-0049
Fax: (206) 684-3158



16. SIGNATURES

The signatories represent that they are authorized to enter into this Agreement on behalf of the Party for whom they sign. This Agreement may be executed in counterparts.

PUBLIC UTILITY DISTRICT
NO. 1 OF PEND OREILLE COUNTY

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By: _____

By: _____

Name: _____
(Print/Type)

Name: _____
(Print/Type)

Title: _____

Title: Transmission Account Executive

Date: _____

Date: _____

THE CITY OF SEATTLE, CITY LIGHT
DEPARTMENT

By: _____

Name: _____
(Print/Type)

Title: _____

Date: _____

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FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
City Light	Cindy Wright/386-4533	Thomas Dunlap/386-9120

Legislation Title: AN ORDINANCE relating to the City Light Department; authorizing execution of the Tailwater Encroachment Losses Compensation Delivery Agreement, the 2005 Memorandum of Agreement, and the Boundary Transformer Agreement, which together will provide for cost-effective transmission service for the City of Seattle in the Boundary Project area and enhanced electric grid reliability.

- **Summary of the Legislation:** The proposed legislation will provide for the Superintendent of the City Light Department (“City”) to enter into three agreements, entitled: (1) Tailwater Encroachment Losses Compensation Delivery Agreement, (2) 2005 Memorandum of Agreement, and (3) Boundary Transformer Agreement. The Tailwater Encroachment Losses Compensation Delivery Agreement provides for computation and delivery of the encroachment compensation owed to the Public Utility District No. 1 of Pend Oreille County (the “District”) by the City pursuant to Article 48 of the City’s Federal Energy Regulatory Commission (“FERC”) license for the Boundary Project.

The 2005 Memorandum of Agreement provides for an interpretive clarification of Article 49 of the Boundary FERC license as requested by the District; renewal of the District’s obligation to schedule a minimum of 60 percent of its Article 49 Power during all hours of the day; and several other provisions related to the cost-sharing and cooperative operation of the future Boundary transformer.

The Boundary Transformer Agreement provides for cooperative planning, acquisition, installation, and operation of a transformer and breaker at Boundary Substation and shared use of the interconnected transmission path, which will provide for cost-effective transmission of encroachment compensation and Article 49 Power, as well as enhanced electric grid reliability for the Bonneville Power Administration (“Bonneville”), the City, and the District in the Boundary area.

- **Background:** The District owns and operates a hydroelectric project, known as the Box Canyon Project, located on the Pend Oreille River upstream of the City’s Boundary Project. The operation of the Boundary Project can result in losses to Box Canyon Project capacity, power, and energy production, when the Boundary Project reservoir encroaches into the Box Canyon Project tailwater. Article 48 of the City’s Boundary license requires that the City compensate the District for such encroachment.

Article 49 of the City’s Boundary license requires that the City assign up to 48 megawatts (MW) from the Boundary Project to the District (“Article 49 Power”) through the term of



the initial Boundary license term. On July 5, 2000, the City and the District entered into the Memorandum of Agreement under which the Parties agreed, among other things, that the City would seek a continuation of Article 49 in the new Boundary Project license, including the removal of the constraint on the sale of Article 49 Power outside Pend Oreille County, and the District would support and assist the City's relicensing of the Boundary Project.

In 2003, the District requested that the City clarify the interpretation of Article 49 with respect to the District's sale of surplus energy after August 1, 2005, and until FERC issues a new Boundary Project license. City Light has decided to provide this clarification in consideration of the District's agreement to certain other terms that will guarantee that the City can control its future transmission costs for Boundary Project power and encroachment compensation.

Bonneville, the City, and the District have negotiated the Boundary Transformer Agreement, which provides for installation and operation of a transformer and breaker in the Boundary Substation to allow for the cost-effective delivery of Article 49 Power and tailwater encroachment compensation from the Boundary Project to the District via the City's Boundary Tap Line and Bonneville's Box Canyon Tap Line.

The Boundary Transformer Agreement requires that the City and the District provide a transformer and breaker for the Boundary Substation, and the City and the District agree that the District should pay the acquisition costs for this equipment in recognition of the greater benefits that the District will receive from transmission savings resulting from the District's use of the future Boundary transmission path.

On February 14, 1999, the parties entered into the Energy Delivery and Exchange Agreement, and this agreement, requiring the District to schedule a minimum of 60 percent of its maximum Article 49 Power entitlement in all hours, expires on July 31, 2005. The City wants the District to continue scheduling a minimum of 60 percent of its maximum Article 49 Power entitlement, effective August 1, 2005, to enable the City to reduce Boundary Project demand on the regional transmission grid. The District has agreed to this and other considerations in the 2005 Memorandum of Agreement in exchange for the City's written clarification of Article 49.

- *Please check one of the following:*

This legislation has financial implications.

Notes: City Light's share of the transformer/breaker costs (a \$135,000 capacity payment in 2005, plus \$6,800 [estimated] for CIP-related labor and travel costs during 2005) required pursuant to the Boundary Transformer Agreement and 2005 Memorandum of Agreement are already included in City Light's 2005 CIP. A restriction on spending funds for this Boundary transformer project within the City Light Generation CIP Budget Control Level appropriation was lifted pursuant to Ordinance No. 122764, passed in March 2005. Subsequent negotiations between the City, District, and Bonneville have resulted in a substantial reduction in the funding requirements that were approved via Ordinance 122764, but have delayed installation of the transformer by several years while negotiations were in progress. The parties are currently expecting the transformer to become energized in the third quarter of 2009. Between 2006 and 2009, City Light staff will be involved in reviewing Bonneville's project plan and design specifications and coordinating with the District and Bonneville on the project schedule. During construction in 2009, City Light staff will also be involved in on-site inspections to ensure proper installation and interconnection to the City's Boundary Tap Line.

Under the agreement reached with the District, between August 2005 and the date of energization of the transformer in 2009, City Light will financially settle its encroachment compensation obligation to the District by paying the District the market-equivalent value of the encroachment compensation energy. These monthly settlements will be funded from the adopted Purchased Power budget and will save City Light the (unbudgeted) transmission expense it would otherwise incur by wheeling energy from the Seattle system to the District via Bonneville. After 2009, City Light will have no further responsibility for material or operation and maintenance costs related to the Boundary transformer, nor will the City be required to pay for the use of the transmission path provided by the transformer installation. Together the three Boundary agreements are expected to save City Light a substantial amount in its future transmission costs at Boundary.

- **What is the financial cost of not implementing the legislation?** Should the City Council choose not to authorize execution of these agreements, City Light will be required to arrange other means to compute and deliver encroachment compensation and wheel Boundary Project output in excess of 1023 MW. Overall, a decision not to pass would be expected to cost the Utility about \$4.2 million (NPV 2005 – 2036; 2005 dollars; 3% discount rate). In contrast, the execution of these three agreements by City Light is expected to yield a positive NPV of about \$4.4 million (NPV 2005 – 2036; 2005 dollars; 3% discount rate).
- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**
 1. **Negotiate and sign an alternative encroachment delivery agreement.** City Light has an ongoing, long-term obligation to compensate the District for Boundary Project's encroachment on the Box Canyon Dam. If City Light does not execute the Tailwater Encroachment Compensation Delivery Agreement, it will need to negotiate an alternative arrangement for computation and delivery of encroachment compensation. The alternative agreement may be similar to the proposed Exhibit A, but may not include



all of the same provisions favorable to City Light. For example, the District may not agree to a simplified method for calculating the encroachment compensation, which is expected to provide administrative savings to City Light by eliminating the need for maintenance of a FORTRAN program and collection and storage of several complex data variables required by the 1970 methodology.

2. Don't sign the Boundary Transformer Agreement and make other transmission arrangements for encroachment. Due to significant benefits that would be created as a result of the Boundary Transformer development (transmission cost savings and enhanced system reliability), the District and Bonneville will likely proceed with the installation even if the City declines to participate. If City Light does not execute the Boundary Transformer Agreement, then City Light will have no right to use the Boundary transformer or the transmission path to the District's system that is created by installation of this transformer. City Light would most likely need to use Bonneville's transmission grid to wheel encroachment compensation to the District at a cost of about \$181,000 per year (including losses). City Light would also miss out on opportunities to make incremental power sales to the PUD via the transmission path created by the Boundary transformer installation. Using the Boundary transformer transmission path, new power sales opportunities with the District are thought to be likely where a transmission cost component can be avoided. Power Management staff has estimated the value of such new power sales to the District at about \$570,000 over the term of a new Boundary license (NPV 2005 – 2036; 2005 dollars; 3% discount rate).
 3. Don't sign the 2005 Memorandum of Agreement and make other arrangement to wheel Boundary power in excess of 1023 MW. Without the 2005 Memorandum of Agreement, City Light will need to buy additional transmission capacity when Boundary project output exceeds 1023 MW, which is the limit of City Light's transmission demand at Boundary Substation under its current Point-to-Point Service Agreement with Bonneville. Power Management staff has estimated the cost of this incremental (non-firm) transmission at about \$23,000 per year. Also, without providing the District the Article 49 interpretation clarification that it requested, City Light may incur some legal costs, since the District could be expected to refer the issue to the FERC for resolution. The City's legal costs associated with a case at FERC regarding this issue have been estimated at \$20,000 annually through 2011 (the earliest date that we could expect the next license for Boundary Project to be issued).
- Is the legislation subject to public hearing requirements: No, but the legislation will be discussed in public session of the Energy and Environmental Policy Committee.
 - Other Issues: None



City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

August 2, 2005

Honorable Jan Drago
President
Seattle City Council
City Hall, 2nd Floor

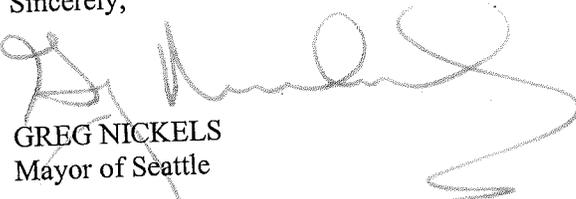
Dear Council President Drago:

The attached proposed Council Bill authorizes the Superintendent of the City Light Department to execute three agreements related to the Boundary Project. Together, these agreements will provide for cost-effective transmission service for the City in the Boundary area and enhanced electric grid reliability.

The first agreement, Tailwater Encroachment Losses Compensation Delivery Agreement, provides for computation and payment for the encroachment owed to the Public Utility District No. 1 of Pend Oreille County (the "District") by the City pursuant to Boundary license Article 48. The second agreement, 2005 Memorandum of Agreement (between Seattle City Light and the P.O. Pub), provides for an interpretive clarification of Article 49 of the Boundary FERC license as requested by the District, in return for several considerations that will help City Light control its future transmission costs at Boundary. The third agreement, Boundary Transformer Agreement, with the District and Bonneville Power Administration provides for cooperative development and operation of a transformer and breaker at Boundary Substation and shared use of the future transmission path, which will provide a cost-effective transmission alternative for both City Light and the District, as well as enhanced electric grid reliability for all of the interconnected parties in the Boundary area.

These agreements will provide substantial savings for transmission costs for City Light beginning in August. Thank you for your consideration of this legislation. Should you have questions, please contact Cindy Wright at 386-4533.

Sincerely,



GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council



ORDINANCE

1
2
3 AN ORDINANCE relating to the City Light Department; authorizing execution of the Tailwater
4 Encroachment Losses Compensation Delivery Agreement, the 2005 Memorandum of
5 Agreement, and the Boundary Transformer Agreement, which together will provide for
6 cost-effective transmission service for the City of Seattle in the Boundary Project area and
7 enhanced electric grid reliability.

8
9 WHEREAS, Article 48 of the Federal Energy Regulatory Commission ("FERC") license for the
10 Boundary Project requires that the City Light Department ("City") compensate Public
11 Utility District No. 1 of Pend Oreille County, Washington ("District") for the
12 encroachment of the Boundary Project's reservoir into the Box Canyon Project's
13 tailwater; and

14
15 WHEREAS, the City and the District have negotiated the Tailwater Encroachment Losses
16 Compensation Delivery Agreement to provide for computation and delivery of
17 encroachment compensation to the District; and

18
19 WHEREAS, Article 49 of the City's FERC license provides that the City assign up to 48
20 megawatts (MW) from the Boundary Project to the District ("Article 49 Power") and the
21 District wants to clarify the interpretation of Article 49 with respect to the District's sale
22 of surplus energy after July 31, 2005, and until FERC issues a new Boundary Project
23 license; and

24
25 WHEREAS, on February 14, 1999, the City and the District entered into the Energy Delivery and
26 Exchange Agreement, and this agreement, requiring the District to schedule a minimum
27 of 60 percent of its maximum Article 49 Power entitlement in all hours, expires on July
28 31, 2005; and

WHEREAS, the City wants the District to continue scheduling a minimum of 60 percent of its
maximum Article 49 Power entitlement in all hours, effective August 1, 2005, to enable
the City to reduce Boundary Project demand on the regional transmission grid; and

WHEREAS, the City and the District have negotiated the 2005 Memorandum of Agreement to
provide, among other considerations, clarification of the interpretation of Article 49 and
extension of the District's minimum scheduling requirement for Article 49 Power; and

WHEREAS, the Bonneville Power Administration ("Bonneville"), the City, and the District have
negotiated the Boundary Transformer Agreement, providing for installation and operation
of a transformer and breaker in the Boundary Substation to allow for the cost-effective
delivery of Article 49 Power and tailwater encroachment compensation from the

1 Boundary Project to the District via shared use of a future Boundary transformer and
2 interconnected facilities, including the City's 115-kV Boundary Tap Line; NOW,
3 THEREFORE,

3 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

4 Section 1. The Superintendent of the City Light Department ("City"), or his designee, is
5 hereby authorized to enter into three agreements, entitled: (1) Tailwater Encroachment Losses
6 Compensation Delivery Agreement, (2) 2005 Memorandum of Agreement, and (3) Boundary
7 Transformer Agreement, all substantially in the form of the agreements attached to this ordinance
8 as Exhibits A, B, and C, respectively. The Tailwater Encroachment Losses Compensation
9 Delivery Agreement (Exhibit A) provides for computation and delivery of the encroachment
10 compensation owed to the Public Utility District No. 1 of Pend Oreille County, Washington
11 ("District") by the City pursuant to Article 48 of the Federal Energy Regulatory Commission
12 ("FERC") license for the Boundary Project. The 2005 Memorandum of Agreement (Exhibit B)
13 provides for an interpretive clarification of Article 49 of the Boundary FERC license as requested
14 by the District; renewal of the District's obligation to schedule a minimum of 60 percent of its
15 Article 49 Power during all hours of the day; and several other provisions related to the cost-
16 sharing and cooperative operation of the future Boundary transformer. The Boundary
17 Transformer Agreement (Exhibit C) provides for cooperative planning, acquisition, installation,
18 and operation of a transformer and breaker at Boundary Substation and shared use of the
19 interconnected transmission path, which will provide for cost-effective transmission of Article 49
20 Power and encroachment compensation, as well as enhanced electric grid reliability for the
21 Bonneville Power Administration ("Bonneville"), the City, and the District in the Boundary area.
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Section 2. Any acts taken in furtherance of this ordinance, but prior to its effective date, are 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 ____ day of _____, 2005, and signed by me in open session in authentication of its passage this ____ day of _____, 2005.

President _____ of the City Council

Approved by me this ____ day of _____, 2005.

Gregory J. Nickels, Mayor

Filed by me this ____ day of _____, 2005.

City Clerk

(Seal)

- Exhibit A: Tailwater Encroachment Losses Compensation Delivery Agreement
- Exhibit B: 2005 Memorandum of Agreement
- Exhibit C: Boundary Transformer Agreement



STATE OF WASHINGTON - KING COUNTY

--SS.

No. TITLE ONLY

191177
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.

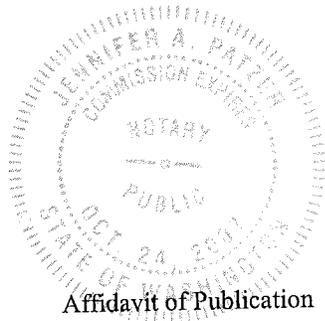
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:121962-121964

was published on

10/25/05

The amount of the fee charged for the foregoing publication is the sum of \$ 59.63, which amount has been paid in full.



[Handwritten signature]

Subscribed and sworn to before me on

10/25/05

[Handwritten signature]

Notary public for the State of Washington,
residing in Seattle

Affidavit of Publication

State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on October 10, 2005, 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. 121964

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

ORDINANCE NO. 121963

AN ORDINANCE relating to South Lake Union Park; authorizing the execution of an Agreement between the Seattle Department of Parks and Recreation and the Seattle Parks Foundation concerning their roles in fundraising, design, development, construction, operation and maintenance of South Lake Union Park; authorizing acceptance of donations from the Seattle Parks Foundation; establishing the South Lake Union Park Trust Fund, and authorizing the Superintendent of Parks and Recreation to expend money in that Fund.

ORDINANCE NO. 121962

AN ORDINANCE relating to the City Light Department; authorizing execution of the Tailwater Encroachment Losses Compensation Delivery Agreement, the 2005 Memorandum of Agreement, and the Boundary Transformer Agreement, which together will provide for cost-effective transmission service for the City of Seattle in the Boundary Project area and enhanced electric grid reliability.

Publication ordered by JUDITH PIPPIN,
City Clerk

Date of publication in the Seattle Daily
Journal of Commerce, October 26, 2005.

10/26(191177)