

2010 AGREEMENT BETWEEN
THE CITY OF SEATTLE
AND
PEND OREILLE COUNTY

This 2010 Agreement ("**Agreement**"), dated this 24 day of August 2010, is entered into by and between The City of Seattle, by and through its City Light Department ("**City Light**") and Pend Oreille County ("**County**"). City Light and the County may individually be referred to as a "**Party**" in this Agreement or collectively as "**Parties**".

WHEREAS, the City operates a hydroelectric generating facility (hereinafter the "**Boundary Project**") in Pend Oreille County and the Boundary Project was constructed after March 1, 1955; and

WHEREAS, the Revised Code of Washington ("**RCW**") 35.21.425 requires any city that constructs a hydroelectric generating project after March 17, 1955 in a county other than the county in which such city is located, to enter into an agreement with such county that provides for loss of revenue and other financial burdens in providing for the public peace, health, safety, welfare, and added road maintenance in such county, in addition to road construction or relocation as well as any loss of revenues and/or increases to the financial burden of any school district affected by the construction because of an increase in the number of pupils by reason of the construction or the operation of said generating facilities; and

WHEREAS, on November 22, 1999, pursuant to such statutory authority, City Light and the County entered into a contract that provided for payments to the County using a compensation methodology based on the generation portion of the state law tax on generation facilities of public utility districts (the "**1999 Contract**"); and

WHEREAS, the 1999 Contract expired by its own terms on December 31, 2008, and the Parties began negotiations on a new agreement that same year; and

WHEREAS, senior executives from both Parties made multiple trips from Seattle to Pend Oreille County and from Pend Oreille County to Seattle to meet and negotiate the new agreement; and

WHEREAS, in December 2009, the County intervened in City Light's Boundary Project Relicensing matter pending at the Federal Energy Regulatory Commission ("**FERC**"), FERC Docket No. 2144-038 (the "**Boundary Project Relicensing**") and filed comments opposing the relicensing based on the inability to reach agreement with City Light pursuant to RCW 35.21.420, 425, 426, and 427; and

WHEREAS, in June 2010, the County submitted negative comments in response to FERC's scoping notice in the related Sullivan Creek Power Project license surrender, FERC Docket Nos. DI07-1-000 and P-2225 (the "**Sullivan Creek Surrender**"); and

WHEREAS, during the extended negotiating period the County lobbied the Washington state legislature for changes to RCW 35.21.420 and 425; and

WHEREAS, in early 2010, in light of the extended negotiating period, City Light agreed to make an interim payment to the County providing for payments to the County for the calendar year 2009 based on the 2008 payment under the 1999 Contract combined with an escalator (the "**Interim Payment Agreement**"); and

WHEREAS, City Light has made all payments required under the 1999 Agreement and the Interim Payment Agreement; and

WHEREAS, the County has reached agreement with the Selkirk, Cusick and Newport School Districts, and the Towns of Metaline Falls, Metaline and Lone on the amounts of money each entity shall receive from the County on behalf of City Light, howsoever warranted or entitled; and

WHEREAS, the County and City Light have reached monetary agreements for payments made by City Light to the County for the years 2010 through 2019, including payments made by the County on behalf of City Light to the Towns of Metaline, Metaline Falls and Lone, and the Selkirk, Cusick and Newport School Districts, as more fully set forth in Attachment A, and wish to memorialize such agreement in this document;

NOW, Therefore, City Light and the County agree as follows:

Article I. Payments Pursuant to RCW 35.21.420, .425, .426 and .427

1. This agreement shall be effective as of the date first mentioned above, and shall set forth the payments to be made from City Light to the County for the years 2010- 2019 pursuant to RCW 35.21.420, 425, 426 and 427 (hereinafter the "**Statutory Payment(s)**").

2. The Parties agree that the Statutory Payments contemplated by this contract shall be made based on the compensation methodology used in the 1999 Contract and more specifically as follows:

- i. For the 2010 year, City Light shall pay the County two equal payments of \$697,616.50, the first of which shall be made within 10 business days of the approval of an ordinance authorizing this Agreement, and the second shall be made on December 10; and
- ii. For years 2011 – 2019, City Light shall make the payments specified for each year in Attachment A in four equal installments on the following dates for each year: January 10, April 10, July 10, and October 10

3. The County and City Light agree that the Statutory Payments made to the County include funds the County has agreed to distribute on behalf of City Light to the towns of Metaline, Metaline Falls, and Lone (the "**Towns**"), and to the Selkirk, Cusick and Newport School Districts (the "**School Districts**") (and collectively, the "**Local Governments**"), and which represent the agreement reached between the County and the Local Governments on any payments, howsoever warranted or entitled, to be made

by City Light to the Local Governments, all as detailed in Article III below. The Statutory Payments shall be made solely to the County as consideration for any and all moneys and payments, however warranted or entitled, to be made by City Light to the County, and the Local Governments. The Statutory Payments are the complete consideration for any and all claims the County and/or the Local Governments have or could have asserted for the time period through December 31, 2019 pursuant to RCW 35.21.420, 425, 426 or 427.

4. Any portion of the Statutory Payments made on behalf of or for the School Districts are not for the support of basic education and are not to be used for that purpose. These funds are intended to provide compensation to the districts as authorized and allowed under RCW 35.21.420, 425, 426 and 427.

5. The County shall condition the payments made to the Local Governments under Article III below on the Local Governments' agreement to not request any other payments from City Light under RCW 35.21.420, 425, 426 and 427, and the Local Governments' agreement to refrain from participating in certain proceedings as set forth in Paragraph 11 below. In the event the Local Governments fail to adhere to this condition, City Light shall have the right to withhold the applicable Local Government(s)' allocation as set forth in Article III and Attachment A from its payments to the County until such matters are resolved consistent with this Agreement. The County agrees to cooperate and provide good faith assistance to City Light in the prompt resolution of any such disputes with the Local Government(s).

6. One year prior to the delivery of the last quarterly payment to the County authorized by paragraph 2, this contract shall be subject to renegotiation pursuant to the requirements of RCW 35.21.420, 425, 426 and 427.

Article II. Settlement of Certain FERC Relicensing Matters

7. The Parties agree that for and in consideration of \$2,975,000.00 to be paid to the County by City Light (the "**Settlement Payment**"), all matters between City Light and the County (including matters involving the Local Governments) concerning the relicensing of the Boundary Project and the surrender of the license for the Sullivan Creek Project are hereby resolved pursuant to this Agreement. The County waives any right to object to FERC issuing a new license to City Light for the Boundary Project Relicensing and issuing a surrender order for the Sullivan Creek Surrender based on the terms and conditions set forth in the Offer of Settlement, filed jointly by City Light, Public Utility District No. 1 of Pend Oreille County ("**Pend Oreille PUD**") and a number of other parties in March 2010 (the "**Offer of Settlement**"), and shall fully support City Light's Boundary Project Relicensing matter and Pend Oreille PUD's Sullivan Creek Surrender matter consistent with the Offer of Settlement. The County and the Local Governments' support shall be continuous up to and until FERC issues a new license to City Light for the Boundary Project and an order of surrender to Pend Oreille PUD for the Sullivan Creek Project and the County shall continue to support the terms of any license issued by FERC to City Light for the Boundary Project through the term of such license. The County's support shall include, but is not limited to, the matters set forth in the following paragraphs.

8. Pursuant to the resolution of all matters pending between City Light and the County, the County shall submit a letter to FERC requesting to withdraw its prior

comments in City Light's Boundary Project Relicensing matter, FERC Docket No. 2144-038, and shall submit a motion to FERC requesting that it be permitted to withdraw its intervention in the proceeding. As part of its withdrawal, the County shall affirmatively state its support of FERC's issuance of a license on terms and conditions consistent with the Offer of Settlement.

9. The County shall submit a letter to FERC withdrawing its prior scoping comments in the Sullivan Creek Surrender proceeding, FERC Docket No. P-2225 and affirmatively state its support of FERC's issuing a surrender order on terms and conditions consistent with the Offer of Settlement.

10. The County will file materials addressing items 8 and 9 above within fifteen (15) business days of the execution of this Agreement by both Parties. The County will not submit anything further in the Boundary Project Relicensing or Sullivan Creek Surrender FERC dockets, or ancillary proceedings (such as Ecology's proceedings on the 401 applications and USFS's proceedings on the application for a special use authorization), except with the prior written approval of City Light and Pend Oreille PUD.

11. The County shall further condition the payments made to the Local Governments outlined under Article III below on the Local Governments' agreement to not submit anything further in the Boundary Project Relicensing or Sullivan Creek Surrender FERC dockets, or ancillary proceedings (such as Ecology's proceedings on the 401 applications and USFS's proceedings on the application for a special use authorization), except with the prior written approval of City Light and Pend Oreille PUD. In the event the Local Governments fail to adhere to this condition, City Light shall have the right to withhold the applicable Local Government(s) allocation as set forth in Article III and Attachment A from its payments to the County until such matters are resolved consistent with this Agreement. The County agrees to cooperate and provide good faith assistance to City Light in the prompt resolution of any such disputes with the Local Government(s).

12. The County waives and releases all claims it has or could have asserted in the two FERC dockets addressed in paragraphs 8 and 9, including any ancillary proceedings. Unless otherwise agreed, the waiver and release of the right to contest a new FERC license for the Boundary Project based on the terms and conditions set forth in City Light's Offer of Settlement and the County's support for the new FERC license shall continue through December 31, 2019.

13. The Settlement Payment shall be made based on the schedule set forth in Attachment A, with each yearly amount payable in four equal installments on January 10, April 10, July 10 and October 10 of years 2011 – 2019.

Article III. Payments to the Local Governments

14. Pursuant to its agreement with the Local Governments and the terms of Articles I & II, the County agrees to allocate portions of the Statutory Payments and the Settlement Payments as follows

The County agrees to make total annual payments on behalf of City Light to the towns of Metaline, Metaline Falls, and Lone as

follows: 2010 annual payments totaling \$34,000 to each town. The total amount of subsequent annual payments for years 2011 through 2019 shall increase by \$500 each year.

- ii. The County Agrees to make total annual payments on behalf of City Light to the Selkirk School District based on the following agreed upon schedule:

2010	\$120,000.
2011	\$100,000
2012	\$100,000
2013	\$950,000
2014	\$950,000
2015	\$950,000
2016-2019	\$0
- iii. The County agrees to make annual payments on behalf of City Light to the Cusick School District totaling \$26,143 each year from 2010 through 2019. This amount will not be adjusted annually
- iv. The County agrees to make annual payments on behalf of City Light to the Newport School District totaling \$32,401 each year from 2010 through 2019. This amount will not be adjusted annually.

The County understands and agrees that the Statutory Payments and the Settlement Payments made by City Light to the County are conditioned on the County's represented agreement between the County and the Local Governments concerning the Local Governments' rights to and consideration for such payments and obligations as more fully described in Articles I & II.

Article IV. General

15. The County acknowledges that City Light must seek and receive ordinance authority for this Agreement from the Seattle City Council. Upon receipt of the County's executed Agreement, City Light shall use good faith, commercially reasonable efforts to expedite the approval of the authorizing ordinance by the Seattle City Council.

16. This Agreement shall be governed by the laws of the state of Washington without reference to its choice of law principles to the contrary.

17. This Agreement may be amended or modified only by a writing signed by both Parties.

18. Any failure or delay in the exercise of any right or remedy available to a Party hereunder shall not be construed as a waiver or relinquishment of such right or remedy.

19. Neither City Light nor the County shall be deemed to be the author of this Agreement. This Agreement shall be construed and interpreted as if drafted jointly by the Parties.

20. This Agreement constitutes, on and as of the date hereof, the entire agreement of the Parties with respect to the subject matter hereof and thereof and

supersedes any and all prior and contemporaneous agreements and understandings, written or oral, of the Parties regarding the subject matter hereof.

THE CITY OF SEATTLE,
by and through its City Light Department

By _____
Title _____

**BOARD OF COMMISSIONERS
PEND OREILLE COUNTY**

By _____
Title Chair, Board of County Commissioners

By Jan O'Hankey
Title County Commissioner, Vice Chair

By Sandra E. Merrill
Title County Commissioner, member

Attachment A to the 2010 Agreement

PAYMENTS

Year	Statutory Payment	Settlement Amount	Total	Quarterly
2010	\$1,395,233	\$0	\$1,395,233	N/A
2011	\$1,438,485	\$125,000	\$1,563,485	\$390,871.25
2012	\$1,483,078	\$125,000	\$1,608,078	\$402,019.50
2013	\$1,529,054	\$875,000	\$2,404,504	\$601,013.50
2014	\$1,576,454	\$875,000	\$2,451,454	\$612,863.50
2015	\$1,625,324	\$875,000	\$2,500,324	\$625,081.00
2016	\$1,675,709	\$24,291	\$1,700,000	\$425,000.00
2017	\$1,727,656	\$23,344	\$1,751,000	\$437,750.00
2018	\$1,781,214	\$23,786	\$1,805,000	\$451,250.00
2019	\$1,836,431	\$28,579	\$1,865,010	\$466,252.50

TOTAL PAYMENTS, INCLUDING LOCAL GOVERNMENTS

Year	Total Payment	Towns of Metaline, Metaline Falls and lone/X3	Selkirk School District	Cusick School District	Newport School District	Pend Oreille County
2010	\$1,395,233	\$34,000/\$102,000	\$120,000	\$26,143	\$32,401	\$1,114,689
2011	\$1,563,485	\$34,500/\$103,500	\$100,000	\$26,143	\$32,401	\$1,301,441
2012	\$1,608,076	\$35,000/\$105,000	\$100,000	\$26,143	\$32,401	\$1,344,534
2013	\$2,404,054	\$35,500/\$106,500	\$950,000	\$26,143	\$32,401	\$1,289,010
2014	\$2,451,454	\$36,000/\$108,000	\$950,000	\$26,143	\$32,401	\$1,335,001
2015	\$2,500,324	\$36,500/\$109,500	\$950,000	\$26,143	\$32,401	\$1,382,280
2016	\$1,700,000	\$37,000/\$111,000	\$0	\$26,143	\$32,401	\$1,530,456
2017	\$1,751,000	\$37,500/\$112,500	\$0	\$26,143	\$32,401	\$1,579,956
2018	\$1,805,000	\$38,000/\$114,000	\$0	\$26,143	\$32,401	\$1,632,456
2019	\$1,865,010	\$38,500/\$115,500	\$0	\$26,143	\$32,401	\$1,690,966