

ATTACHMENT 1

**Boundary Hydroelectric Project
(FERC No. 2144)**

**Interlocal Agreement for Mill Pond
Decommissioning Between
Seattle City Light
and
Public Utility District No. 1 of PUD Oreille County**

March 2010

INTERLOCAL AGREEMENT FOR MILL POND DECOMMISSIONING BETWEEN
SEATTLE CITY LIGHT
AND
PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY

This Agreement is made and entered into this 8th day of March, 2010, by and between Seattle City Light (“SCL”) and Public Utility District No. 1 of Pend Oreille County (the “PUD”) (SCL and the PUD are, collectively, the “Parties”).

RECITALS,

WHEREAS, the PUD and SCL may enter into contracts with one another pursuant to chapter 39.34 RCW to carry out their respective municipal purposes; and

WHEREAS, the PUD, SCL, and several other parties entered into the Sullivan Creek Hydroelectric Project Settlement Agreement in March 2010 (the “Sullivan Creek SA”) and the Boundary Hydroelectric Project Relicensing Settlement Agreement in March 2010 (the “Boundary SA”) for the purpose of, among other things, resolving issues related to the PUD’s surrender of the Federal Energy Regulatory Commission (“FERC”) license for the Sullivan Creek Hydroelectric Project, FERC No. 2225 (the “Sullivan Creek License”) and related to SCL’s application to FERC for a new license for the Boundary Hydroelectric Project, FERC No. 2144 (the “New Boundary License”); and

WHEREAS, the Boundary SA and the Sullivan Creek SA require SCL and the PUD to undertake the removal of the Mill Pond Dam and the restoration, monitoring and maintenance of the area with an allocation of roles and responsibilities as between the PUD and SCL; and

WHEREAS, the PUD desires the completion of the tasks included in the Mill Pond Decommissioning Plan (attached as Appendix E to the Sullivan Creek SA), which provides for removal of Mill Pond Dam and initial restoration of the Mill Pond area, provided that the Mill Pond Decommissioning Plan has been approved by FERC in connection with the PUD’s application to FERC for surrender of the Sullivan Creek License; and

WHEREAS, SCL, in connection with the Boundary SA, wishes to implement the portions of the Mill Pond Decommissioning Plan other than those involving historic and cultural resources for the purposes of satisfying its obligations under the Boundary SA and the Sullivan Creek SA;

WHEREAS, the PUD wishes to implement the portions of the Mill Pond Decommissioning Plan involving assessment and mitigation of the impacts of dam removal and restoration on historic and cultural resources, and further wishes to facilitate and allow SCL to perform all other work required by the Mill Pond Decommissioning Plan;

WHEREAS, SCL, in connection with the New Boundary License, further wishes to monitor and maintain the restored Mill Pond area upon completion of the Mill Pond Decommissioning Plan for the protection, mitigation, and enhancement of resources;

WHEREAS, SCL and the PUD wish to enter into this Interlocal Agreement under CH.39.34 RCW for the purpose of establishing and clarifying their relative roles and responsibilities for dam removal, restoration, monitoring and maintenance at Mill Pond;

NOW, THEREFORE, SCL AND THE PUD AGREE AS FOLLOWS:

1. Purpose

The purpose of this Agreement is to establish the respective obligations of SCL and the PUD in their joint undertaking to remove Mill Pond Dam and restore adjacent land pursuant to the Boundary SA and the Sullivan Creek SA.

2. Relationship

No separate legal or administrative entity is created by this Agreement. Each Party will have no authority to execute contracts or to make commitments on behalf of the other Party, and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between the PUD and SCL. SCL will serve as the administrator of this Interlocal Agreement. Each Party will acquire, hold and dispose of its respective real and personal property used in the cooperative undertaking.

3. Scope of Work

- a. The PUD will perform and/or hire one or more subcontractors to perform the portions of the Mill Pond Decommissioning Plan, as approved by FERC and other agencies having authority, relating to assessment and mitigation of impacts to cultural and historic resources at the Sullivan Creek Project (the “Historic and Cultural Resources Work”).
- b. SCL will perform and/or hire one or more subcontractors to perform all the work under the Mill Pond Decommissioning Plan, as approved by FERC and other agencies having authority, associated with removal, restoration, maintenance and monitoring pursuant to the Mill Pond Decommissioning Plan, the Boundary SA and the Sullivan Creek SA (the “Removal and Restoration Work”), except for the Historic and Cultural Resources Work .
- c. Each Party will require that its subcontractors provide any warranties for their work in a form that is assignable to the other Party.

4. Financing and Budget

- a. SCL will finance and budget for the Removal and Restoration Work.
- b. The PUD will finance and budget for the Historic and Cultural Resources Work.

5. Right of Entry

To the extent of its authority, the PUD grants permission to SCL, including its employees, contractors, subcontractors and agents, to enter the Sullivan Creek Project to perform the Removal and Restoration Work, including, without limitation, work associated with design and permitting.

6. Design

- a. Promptly upon FERC’s issuance of the New Boundary License and an order conditionally approving surrender of the Sullivan Creek License (“License Surrender Order”), neither of which contains a Material Modification to the Boundary SA or the Sullivan Creek SA, SCL will initiate detailed design work for the Removal and Restoration Work and the PUD will initiate any detailed design work for the Historic and Cultural Resources Work. The Parties at their election may initiate design work at an earlier date.
- b. All design work will be consistent with the Mill Pond Decommissioning Plan as approved by FERC and by other agencies having approval authority.
- c. SCL’s Removal and Restoration design work will integrate the PUD’s Historic and Cultural Resources Work.

7. Coordination and Necessary Approvals

- a. SCL and the PUD will coordinate closely in the design and permitting of all work under the Mill Pond Decommissioning Plan.
- b. SCL will be responsible for obtaining all permits for the Removal and Restoration Work. The PUD will upon request promptly review and execute any necessary permit submittals for which it will be the applicant.
- c. SCL and the PUD will coordinate the schedule for design and construction work so that the PUD’s Historic and Cultural Resources Work and SCL’s Removal and Restoration Work meet the requirements of the Boundary SA and the Sullivan Creek SA, and occur in a timely and cost effective manner.

8. Completion of Work

The Parties will complete their respective scopes of work under the Mill Pond Decommissioning Plan, as approved by FERC and other agencies having authority, on the schedule set forth in the Mill Pond Decommissioning Plan. Each Party will provide written notification to the other Party and to persons authorized to receive notice pursuant to Section 11.11 of the Boundary SA and pursuant to Section 11.11 of the Sullivan Creek SA within five (5) working days of any occurrence, which, in that Party’s opinion, may justify an extension of time for the completion of the Agreement. Each Party will acknowledge receipt of any such notice within three (3) working days of its receipt. The Parties understand and agree that the Historic and Cultural Resources Work and the Removal and Restoration Work will not be complete until such work has been acknowledged, accepted or approved by the appropriate agencies and the issuance of a notice or order by FERC that the work has been completed as required by the relevant condition of the License Surrender Order. The Parties recognize that upon the issuance of such FERC notice or order, the obligations relating to monitoring and maintenance will be governed by Article 9(F) of SCL’s new license for the Boundary Project.

9. Responsibility for Pre-Existing Site Conditions

The PUD will have no liability under this Agreement for costs associated with addressing any hazardous materials found to be present in the Mill Pond area except to the extent that the PUD's construction and operation of the Sullivan Creek Project is responsible for the presence of such materials. The PUD will have no liability under this Agreement for costs associated with any other pre-existing site conditions. SCL shall not release, or allow the release of, any hazardous substances on or near SCL's Removal and Restoration Work. The purpose of this provision is to define obligations as between SCL and PUD.

10. Force Majeure

Neither Party shall be in breach of its obligations or liable to the other Party for breach of this Agreement as a result of a failure to perform if said performance is made impracticable due to an event of *Force Majeure*. The term "*Force Majeure*" means any cause reasonably beyond the Party's control, whether unforeseen, foreseen, foreseeable, or unforeseeable, including but not limited to: acts of God, fire, war, insurrection, civil disturbance, explosion; adverse weather conditions that could not be reasonably anticipated causing unusual delay in transportation and/or field work activities; restraint by court order or order of public authority; inability to obtain—after exercise of reasonable diligence, timely submittal of all applicable applications, and exhaustion of available administrative and judicial remedies—any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority; or labor disputes or strikes which are reasonably beyond the control of the Party seeking excuse from performance. *Force Majeure* does not include lack of resources.

11. Suspension and Termination

If either Party fails to comply with the provisions of this Agreement, the other Party may pursue such remedies as are legally available, including but not limited to, the suspension or termination of this Agreement in the manner specified herein:

- a. **Suspension.** If either Party fails to comply with the provisions of this Agreement, or whenever either Party is unable to substantiate full compliance with provisions of this Agreement, the other Party may suspend the Agreement pending corrective actions or investigation, effective not less than seven (7) days following written notification to the other Party. The suspension will remain in full force and effect until the other Party has taken corrective action to the satisfaction of the complaining Party and is able to substantiate its full compliance with the terms and conditions of this Agreement.
- b. **Termination for Cause.** If either Party fails to comply with the provisions of this Agreement and either of the following conditions exist:
 - (1) The lack of compliance is of such scope and nature that continuation of the Agreement is substantially detrimental to the interests of the other Party; or
 - (2) A Party has failed within the time specified by the other Party to satisfactorily substantiate its compliance with the terms and conditions of this Agreement; then,

The Party alleging non-compliance may terminate this Agreement, and thereupon shall notify the other Party of termination and other persons authorized to receive notice pursuant to Section 11.11 of the Boundary SA and pursuant to Section 11.11 of the Sullivan Creek SA, the reasons therefore, and the effective date, provided such effective date shall not be prior to notification of the other Party. The Party alleging non-compliance shall send a copy of such notice to persons authorized to receive notice pursuant to Section 11.11 of the Boundary SA and pursuant to Section 11.11 of the Sullivan Creek SA.

- c. **Termination on Other Grounds.** This Agreement may also be terminated in whole or in part:
- (1) By either Party in the event that FERC has issued an order, which order has become final and unappealable, that constitutes a Material Modification that results in termination of the Boundary SA and/or the Sullivan Creek SA.
 - (2) By either Party in the event that Ecology has issued a 401 Certification, which Certification has become final and unappealable, that constitutes a Material Modification of the Boundary SA and/or the Sullivan Creek SA.
- d. **Step-in Rights.** In the event all or any portion of either Party's work is suspended or abandoned, after issuance of notice and an opportunity to cure, the other Party may complete the first Party's scope of work to the extent necessary to complete performance of the Mill Pond Decommissioning Plan. Suspension or abandonment shall not release a Party's obligations under this Agreement.
- e. **Existing Rights Not Affect by Termination.** In the event of termination of this Agreement by either party, such termination shall not affect any rights that have accrued prior to the effective date of the termination. Such prior rights shall survive such termination.

12. Changes, Amendments, Modifications

The Parties may, from time to time, propose changes or modifications in the manner in which their obligations under this Agreement will be performed. The Parties shall notify the persons authorized to receive notice pursuant to Section 11.11 of the Boundary SA and pursuant to Section 11.11 of the Sullivan Creek SA of any changes. Such changes, once agreed to by both Parties, shall be incorporated in written amendments to this Agreement that shall be signed by both Parties. SCL and the PUD may not, however, modify the Mill Pond Decommissioning Plan except as provided in the Boundary SA and the Sullivan Creek SA.

13. Personnel; Subcontractors

Each Party will, or will require its subcontractors to, secure and maintain in full force and effect during the term of this Agreement all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.

14. Assignability

Neither Party may assign any interest in this Agreement, and neither Party may transfer any interest in this Agreement (whether by assignment or novation), without prior written consent of the other Party; provided, however, that either Party may assign portions of its respective Work to its subcontractor(s).

15. Reports and Information

The Parties contemplate that each Party will provide periodic reports as set forth in the Mill Pond Decommissioning Plan.

16. Confidentiality

Each Party agrees that it will not permit the duplication or disclosure of any information designated in advance by the other Party as “Confidential and Proprietary” to any person (other than its own employee, agent, or representative who must have such information for the performance of that Party’s obligations hereunder) unless such duplication, use or disclosure is specifically authorized in writing by the other Party, is made pursuant to the Washington Public Records Act (Chapter 42.56 RCW), or is otherwise required by law. “Confidential and Proprietary” information does not include ideas, concepts, know-how or techniques related to information that, at the time of disclosure, is in the public domain unless the entry of that information into the public domain is a result of any breach of this Agreement. Likewise, “Confidential and Proprietary” information does not include information that is independently developed, already possessed without obligation of confidentiality, or rightfully obtained from a third party without an obligation of confidentiality.

17. Compliance with Laws

Each Party will, and will require its subcontractors to, comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of The City of Seattle and of the PUD; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof.

18. Indemnification

- a. SCL agrees to defend, indemnify, and hold harmless the PUD and subcontractors from and against any and all claims, demands, and causes of actions of any kind or character whatsoever, arising as a result of SCL employee or third party claims of alleged personal injuries (including various compensation claims such as Worker’s Compensation claims under Title 49 RCW), death, or damage to their persons or property, to the extent caused by acts, errors (including design defects and negligence), or omissions of SCL and/or its agents, subcontractors, employees, or representatives, including any claims made by employees of SCL; provided that no duty to defend, indemnify, and hold harmless shall arise by reason of the sole fault of the PUD.
- b. The PUD agrees to defend, indemnify, and hold harmless SCL and subcontractors from and against any and all claims, demands, and causes of actions of any kind or character whatsoever, arising as a result of PUD employee or third party claims of alleged personal injuries (including various compensation claims such as Worker’s Compensation claims under Title 49 RCW), death, or damage to their persons or property, to the extent caused by acts, errors (including design defects and negligence), or omissions of the PUD and/or its agents, subcontractors, employees, or

representatives, including any claims made by employees of the PUD; provided that no duty to defend, indemnify, and hold harmless shall arise by reason of the sole fault of SCL.

- c. In the event of concurrent negligence by both the PUD and SCL, each agrees to defend, indemnify, and hold harmless the other, to the extent of the negligence of the indemnitor-Party.
- d. The duty to defend, indemnify and hold harmless under this provision extends to, without limitation, claims asserted by third parties in actions to enforce obligations arising from orders of FERC and from the Boundary and Sullivan Creek SAs. Each Party’s right to indemnification shall include reasonable payments made to settle claims or pay judgments and reasonable attorneys’ fees incurred by the indemnified party.
- e. To the extent of their respective liability under this Section 18 providing for indemnification, these Parties hereby waive their respective immunity under industrial insurance, Title 51 RCW. These Parties acknowledge and agree that this waiver has been mutually negotiated by the Parties pursuant to RCW 4.24.115.

19. Dispute Resolution, Mediation, and Arbitration

- a. **Disputes.** Any dispute or misunderstanding that may arise under this Agreement concerning either Party’s performance shall first be resolved through negotiations, if possible, between the PUD’s project manager and SCL’s project manager, or if necessary shall be referred to SCL’s Power Supply and Environmental Affairs Officer and the PUD’s General Manager. If such officials do not agree upon a resolution of the dispute or misunderstanding within a reasonable period of time, the Parties may pursue other legal means to resolve such disputes.
- b. **Choice of Law.** This Agreement will be interpreted and enforced according to the laws of the State of Washington.
- c. **Attorneys’ fees.** Should litigation occur between the two Parties relating to the provisions of this Agreement, the prevailing Party is entitled to recover reasonable litigation expenses, collection expenses, witness fees, court costs, reasonable attorneys’ fees, and other related costs and expenses.

20. Insurance

- a. Each Party recognizes that the other Party is a public entity. Each Party’s respective self-insurance or insurance program may fund its obligations under Paragraph 18 (“Indemnification”). There is no requirement for the respective parties to issue certification of self-insurance or certification of insurance to the other.
- b. Before either Party’s contractor commences work pursuant to this Agreement, each Party’s contractor will file with the other Party certification of insurance verifying that the Contractor's insurance meets the following specified minimum coverages and limits of liability requirements:

- (1) Commercial General Liability (“GCL”) insurance with a single limit of not less than \$1,000,000 each occurrence bodily injury and property damage combined single limit (“CSL”).

- (2) Commercial Automobile Liability (“Auto Liability”) insurance, including coverage for owned, hired, and non-owned automobiles, with a limit of liability of not less than \$1,000,000 CSL, or the multiple limits equivalent thereto .
- (3) Workers Compensation and Stop Gap/Employer’s Liability Insurance with coverages and limits of liability in accordance with applicable laws relating thereto.
- c. Both Parties shall be included as an additional insured under each contractor’s CGL and Auto Liability insurance for primary and non-contributory limits of liability. A copy of the actual CGL additional insured provision shall be attached to the certification issued and delivered to the following:

SCL: Seattle City Light, c/o DEA RMD, P.O. Box 94669, Seattle, WA 98124-4669

PUD: Pend Oreille PUD Attn: Eileen Dugger, Contracts Administrator, P.O. Box 190, Newport, WA 99156

21. General

- a. **Term.** This agreement will be effective on the first date upon which it has been fully executed by both parties and will remain in effect until the PUD has surrendered its license to FERC based upon a final and unappealable FERC order determining all prerequisites to surrender have been satisfied, unless it is terminated earlier pursuant to Section 11 above.
- b. **No waiver.** One or more waivers by either Party of any provision, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other Party.
- c. **Counterpart originals.** This Agreement may be executed in counterparts, each of which shall be an original and all of which, taken together, shall constitute one and the same original instrument.
- d. **Severability.** In the event any provisions of this Agreement are held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the Parties.

22. Listing Under the Interlocal Cooperation Act

This agreement is entered into pursuant to the Interlocal Cooperation Act, Ch.39.34 RCW. The PUD and SCL shall list this agreement by subject on their respective internet websites and in a form which is retrievable by the public from such website as provided in RCW 39.34.040.

23. Cooperation and Facilitation

The Parties agree to cooperate with each other to facilitate the completion of the Historic and Cultural Resources Work and the Removal and Restoration Work as contemplated by the Boundary SA and the Sullivan Creek SA. These Parties agree to take such other and further action as may be necessary and appropriate and as may be required by Federal and State Agencies with authority over such work.

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the Parties have executed this Agreement by having their representatives affix their signatures below.

Public Utility District No. 1 of Pend Oreille County Seattle City Light

By _____
General Manager

By Jorge Carrasco
Jorge Carrasco, Superintendent

ATTEST:

Name _____

ATTEST:
Elizabeth Thomas
Name Elizabeth Thomas

23. Cooperation and Facilitation

The Parties agree to cooperate with each other to facilitate the completion of the Historic and Cultural Resources Work and the Removal and Restoration Work as contemplated by the Boundary SA and the Sullivan Creek SA. These Parties agree to take such other and further action as may be necessary and appropriate and as may be required by Federal and State Agencies with authority over such work.

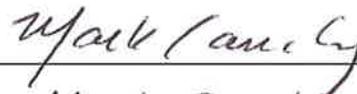
IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the Parties have executed this Agreement by having their representatives affix their signatures below.

Public Utility District No. 1 of Pend Oreille County Seattle City Light

By 
General Manager

By _____
Jorge Carrasco, Superintendent

ATTEST:


Name Mark Cauchy

ATTEST:

Name _____