

**ATTACHMENT 2**

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

**Memorandum of Agreement  
Between City of Seattle, City Light Department and  
Public Utility District No. 1 of Pend Oreille County**

**March 2010**

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

THIS MEMORANDUM OF AGREEMENT (MOA or Agreement) 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 (SCL) and Public Utility District No. 1 of Pend Oreille County, Washington, a municipal corporation under the laws of the State of Washington (PUD). SCL and the PUD are each sometimes referred to together in this MOA as “Parties.”

RECITALS

WHEREAS:

1. SCL, PUD, various resource agencies and other entities have entered into a Settlement Agreement as of March 2010, regarding the issuance of a new license by the Federal Energy Regulatory Commission (FERC) to SCL for the Boundary Hydroelectric Project, FERC No. 2144 (Boundary Settlement Agreement).
2. PUD, SCL, various resource agencies and other entities have also entered into a Settlement Agreement as of March 2010, regarding the surrender of the PUD’s FERC license for the Sullivan Creek Project, FERC No. 2225, and the issuance of a Special Use Authorization (SUA) by the USDA Forest Service to the PUD for the use and occupancy of National Forest System lands by certain of the Sullivan Creek facilities (Sullivan Creek Settlement Agreement).
3. Sullivan Creek enters the Pend Oreille River about ten miles upstream of Boundary Dam on the eastern edge of the Boundary Project Reservoir.
4. PUD’s Sullivan Creek Project includes Sullivan Lake Dam and Reservoir and Mill Pond Dam and Reservoir.
5. The Boundary Settlement Agreement and Sullivan Creek Settlement Agreement require (a) SCL to perform work, pursuant to an Interlocal Agreement, at and in the vicinity of Mill Pond Dam, including removal of Mill Pond Dam, sediment management, channel restoration and monitoring activities at the restored stream channel, and (b) SCL to participate financially, pursuant to a Memorandum of Agreement, in facilities for the release of cold water to Outlet Creek and Sullivan Creek. The Mill Pond Dam removal and cold water release measures link the relicensing of SCL’s

Boundary Project to the PUD's surrender of the Sullivan Creek Project license so as to provide significant resource benefits.

6. The Parties to the Settlement Agreements believe that removal of Mill Pond Dam, as set forth in the Boundary Settlement Agreement, Sullivan Creek Settlement Agreement, and Mill Pond Decommissioning Plan will remove a fish passage barrier in the vicinity of the Boundary Project, providing potential access to 16 miles of spawning, rearing, overwintering and foraging habitat. Bull trout are listed as threatened under the Endangered Species Act (ESA) and providing access to additional habitat is a high priority for the resource agencies.
7. Sullivan Lake is a natural lake, which is increased in size by the presence of the Sullivan Lake Dam. Currently, the Sullivan Creek Project stores and releases about 31,000 acre-feet of water annually, in accordance with the Pacific Northwest Coordination Agreement and the FERC license. Sullivan Lake pool is maintained to the extent possible at a constant elevation of 2,588.6 feet above mean sea level during the months of May through September. Beginning in October, the reservoir is drawn down to provide storage for spring runoff.
8. The resource agencies that are parties to the Boundary Settlement Agreement and the Sullivan Creek Settlement Agreement believe that provision of a cold water release from Sullivan Lake, as proposed in such Agreements, will cool water temperatures and improve native salmonid habitat conditions in Outlet Creek and in Sullivan Creek (below the confluence with Outlet Creek), and provide cooler water input to the Pend Oreille River.
9. Pursuant to the Boundary Settlement Agreement and the Sullivan Creek Settlement Agreement, PUD and SCL have agreed to jointly undertake the necessary design, permitting, construction, monitoring, operation and maintenance of the facility to make the cold water release from Sullivan Lake.
10. The Boundary Settlement Agreement and the Sullivan Creek Settlement Agreement provide that SCL will be responsible for making payments to PUD for SCL's share of the above costs, which will be accomplished under a bi-lateral agreement between SCL and PUD, and that PUD will be solely responsible to undertake the design, permitting, construction, monitoring, operation, and maintenance of the cold water release facility.
11. The Boundary Settlement Agreement and the Sullivan Creek Settlement Agreement further provide that construction of the cold water release facility shall be completed within 36 months following issuance of the FERC order conditionally accepting surrender of the Sullivan Creek Project license ("License Surrender Order").

## TERMS OF AGREEMENT

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

1. SCL and the PUD shall jointly undertake the funding, permitting, design, construction, monitoring, operation, and maintenance of the cold water release facility, as provided in the Boundary Settlement Agreement and the Sullivan Creek Settlement Agreement. The cold water release facility shall consist of a gravity water supply 48 inches in diameter, with fish screens at the inlet, and using an existing low-level outlet from Sullivan Dam, as described in the Cold Water Release Facility Plan attached as Appendix F to the Sullivan Creek Settlement Agreement.
2. SCL agrees to provide funding of its share of the total costs of the design, permitting, construction, monitoring, operation, and maintenance of the cold water release facility. SCL's share of the total costs shall be fifty percent (50%) of the actual costs of design, permitting and construction, and fifty percent (50%) of the estimated costs of monitoring, operation and maintenance (O&M) over the term of the SUA. SCL's share of actual design costs and estimated monitoring and O&M costs shall be paid after final design is approved by the FERC and/or other agencies with approval authority. SCL's share of actual permitting and construction costs shall be paid after construction is completed in accordance with applicable conditions of the License Surrender Order and/or the SUA.
3. PUD agrees to provide funding of its share of the total costs of the design, permitting, construction, monitoring, operation, and maintenance of the cold water release facility. PUD's share of the total costs shall be fifty percent (50%) of the actual costs of design, permitting and construction, and the remainder of the costs of monitoring, operation and maintenance (O&M) over the term of the SUA. The PUD shall implement the design, construction, permitting, monitoring, operation and maintenance of the cold water release facility in accordance with the Cold Water Release Facility Plan set forth in Appendix F to the Sullivan Creek Settlement Agreement, as approved and conditioned by FERC, and subject to applicable conditions of the SUA. The PUD shall monitor, operate and maintain the cold water release facility in accordance with the Sullivan Creek Settlement Agreement, and any applicable conditions in the SUA to be issued by USFS and the certification to be issued by the Department of Ecology under Section 401 of the Clean Water Act.
4. The PUD shall complete construction of the cold water release facility within 36 months following issuance of the License Surrender Order as provided in Section 7.14.2.2 of the Sullivan Creek Settlement Agreement.
5. The PUD shall invoice SCL for its share of design, monitoring and O&M costs within 60 days of approval by all agencies with authority over the final design of the cold water release facility. SCL's share of design costs shall be 50% of the actual

costs incurred by the PUD through the date of such approval. SCL shall have the right to audit the accounts and records of the PUD related to such invoice within 60 days of receipt thereof. SCL shall pay the invoice within 30 days following completion of any audit. SCL's share of monitoring and O&M costs shall be fifty percent (50%) of the estimate of projected costs as agreed to by SCL and PUD to monitor, operate and maintain the facility for the term of the SUA in accordance with applicable plans approved by all agencies with authority.

6. The PUD shall invoice SCL for its share of permitting and construction costs for the cold water release facilities within 60 days of completion of construction in accordance with applicable conditions of the License Surrender Order and/or SUA. SCL's share of permitting and construction costs shall be fifty percent (50%) of the actual costs incurred by the PUD through the date of completion of such construction in accordance with applicable plans approved by all agencies with authority. SCL shall have the right to audit the accounts and records of the PUD related to such invoice within 60 days of receipt thereof. SCL shall pay the invoice within 30 days following completion of any audit.

7. Upon payment of its share of the costs of the cold water release facility in accordance with this MOA, SCL shall have no further obligations with respect to the design, permitting, construction, monitoring, O&M or any other action related to the cold water release facility.

8. SCL and PUD agree to cooperate to accomplish the installation, operation and maintenance of the cold water release facility.

9. This Agreement may be terminated in whole or in part:

(A) By either Party in the event that the FERC has issued an order, which order has become final and unappealable, that constitutes a Material Modification of the Boundary Settlement Agreement and/or the Sullivan Creek Settlement Agreement.

(B) By either Party in the event that the Department of Ecology has issued a Clean Water Act Section 401 certification, which certification has become final and unappealable, that constitutes a Material Modification of the Boundary Settlement Agreement and/or the Sullivan Creek Settlement Agreement.

10. Washington law shall apply to the Parties and this Agreement.

11. In the event that an action is undertaken by a Party against the other Party, to enforce this Agreement, the prevailing Party shall be entitled to all of its costs, including reasonable attorneys' fees, incurred in such action.

IN WITNESS WHEREOF the Parties hereto have executed this MOA.

THE CITY OF SEATTLE,  
CITY LIGHT DEPARTMENT

PUBLIC UTILITY DISTRICT NO. 1  
OF PEND OREILLE COUNTY

By: *Dee Cannon*

By: \_\_\_\_\_

Its: *Superintendent*

Its: \_\_\_\_\_

Date: *3/18/10*

Date: \_\_\_\_\_

IN WITNESS WHEREOF the Parties hereto have executed this MOA.

THE CITY OF SEATTLE,  
CITY LIGHT DEPARTMENT

PUBLIC UTILITY DISTRICT NO. 1  
OF PEND OREILLE COUNTY

By: \_\_\_\_\_

By: 

Its: \_\_\_\_\_

Its: General Manager

Date: \_\_\_\_\_

Date: 3/18/10