

CITY OF SEATTLE
ORDINANCE 126886
COUNCIL BILL 120636

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

WHEREAS, RCW 35.21.420 authorizes cities owning and operating public utilities having facilities for the generation of electricity located in the counties other than that in which such cities are located to provide for the peace, health, safety and welfare of such county as concerns the utility facilities and the personnel employed in connection therewith, and to enter into contracts with such counties therefor; and

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

WHEREAS, the City and the County previously entered into a 15-year agreement, pursuant to RCW 35.21.420, that expires on December 31, 2023; and

WHEREAS, the City and the County have negotiated terms and conditions for a new agreement;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

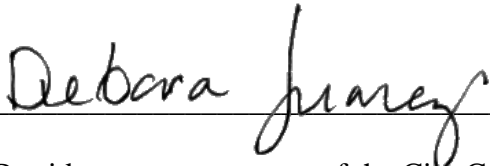
Section 1. The CEO and General Manager for the City Light Department is authorized for and on behalf of The City of Seattle to execute and deliver a 15-year agreement with Whatcom County, substantially in the form of the Impact Payment Agreement attached to this ordinance as Attachment A (the “Agreement”) with such changes as the CEO and General Manager may deem appropriate and are consistent with this ordinance. The Agreement is for the

1 support of general and emergency law enforcement and other governmental services provided by
2 Whatcom County to the city's Skagit Hydroelectric Project facilities and the residents of
3 Newhalem and Diablo, all as authorized by RCW 35.21.420. The Agreement is subject to
4 termination by either party upon one-year written notice.

5 Section 2. Any act consistent with the authority of this ordinance taken after its passage
6 and prior to its effective date is ratified and confirmed.

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


4 Passed by the City Council the 15th day of August, 2023,
5 and signed by me in open session in authentication of its passage this 15th day of
6 August, 2023.

7 
8 President _____ of the City Council

9 Approved/ returned unsigned / vetoed this 17th day of August, 2023.

10 
11 Bruce A. Harrell, Mayor

12 Filed by me this 17th day of August, 2023.

13 
14 _____
15 Scheereen Dedman, City Clerk

16 (Seal)

17 Attachments:
18 Attachment A – Impact Payment Agreement
19

ATTACHMENT A

IMPACT PAYMENT AGREEMENT

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

WITNESSETH

WHEREAS, RCW 35.21.420 authorizes cities owning and operating public utilities having facilities for the generation of electricity located in the counties other than that in which such cities are located to provide for the peace, health, safety and welfare of such county as concerns the utility facilities and the personnel employed in connection therewith, and to enter into contracts with such counties therefor; and

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

WHEREAS, pursuant to RCW 35.21.420 the City and the County previously entered into a 15-year agreement that expires on December 31, 2023 (the "Previous Agreement"); and

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

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

1. Term. The term of this Agreement shall be from January 1, 2024, through December 31, 2038, unless terminated or extended as specified herein. The term shall be as stated regardless of the date of signature. This Agreement may be extended by mutual agreement of the parties under the same terms, or mutually acceptable terms, for two 3- year extensions.

2. Compensation. For the term of this Agreement and any extension thereof, the City agrees to pay the County annual payment amounts as set forth in this Agreement to compensate the County for financial burdens attributable to the City's ownership and operation of a hydroelectric facility located in the County.

3. Annual Escalator. All annual impact compensation payments shall be subject to an escalator based upon the U.S Bureau of Labor Statistics Seattle-Tacoma-Bellevue, WA 12-month percent change in the Consumer Price Index for all urban consumers for the immediately preceding 12-month period ("CPI-U") that shall be applicable on an annual basis starting in

2025 for the term of this Agreement and any subsequent extensions. However, in no event shall the annual impact compensation payment increase from year to year by less than 2% or more than 5%.

4. **Payment Schedule.** For the year 2024, the City shall pay, and the County shall accept the sum of money in the amount of \$1,419,497, which represents the 2023 base payment of \$1,234,345 increased by approximately 15%. Each annual payment shall be paid in four equal quarterly installments, payable on January 1, April 1, July 1 and October 1 of each year, or, if these dates fall on a Saturday, Sunday or holiday, on the first business day following these dates. Payment representing the amount of the annual escalator for the first quarter of each year shall be paid with the second quarter payment.

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

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

If the deputy sheriff assigned to the Service Area does not possess current First Responder Training, the County will ensure that the deputy sheriff enrolls and successfully completes the First Responder Training at the County's expense.

The County will provide emergency response services to be prepared to respond to terrorism, other potential threats, and natural disasters. These services will include threat assessment and familiarity in the event of a terrorist related incident impacting the critical infrastructure in and around the Skagit River Hydroelectric Project ("the Project"). As part of its training program, the County will conduct tactical exercises and training in and around the Project, including tactical response exercises from Bellingham to Newhalem utilizing CBP Blackhawk (when available). The County will coordinate with federal partners, and if permitted, participate with them in emergency response training exercises. The County will provide

emergency management planning and conduct exercises to be prepared to respond to other potential threats and/or natural disasters in the Service Area. The County's emergency response services will include helicopter response and rescue to the Service Area when warranted.

The County will provide traffic patrol services on Highway 20 during summer months as necessary to ensure safe travel through the area and additional traffic emphasis resources in response to traffic safety related issues.

The deputy sheriff's work schedule, including office and patrol hours, shall be established by the County Sheriff's Office in cooperation with the City. The City must be notified in writing and at least five working days in advance of schedule changes unless an emergency arises that precludes the ability to provide such notice, in which case notice will be provided as soon as possible. Approved work schedules and changes shall be submitted to the Skagit Project Manager, Seattle City Light. The City shall have the option to establish office space at the Project or elsewhere in the Service Area for use by the deputy sheriff.

The City will continue to furnish support for radio communications, including rack space. Upon request and subject to approval from the City's engineering department, the City will provide access to the Babcock Mountain tower. The County agrees to install new communication equipment, to enhance radio infrastructure to provide interoperability and reliable communications in the Service Area.

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

6. Housing for Deputy. The City will provide suitable housing at the Newhalem site to the County for the deputy sheriff to the same standard as is currently provided and as specified in the Residential Lease Agreement between the City and the County. The County will be responsible for the payment of reasonable rent and normal utility costs associated with the residence.

7. Services Provided. The County agrees to provide to Newhalem and Diablo residents all services normally provided to all other County residents in rural areas through the term of this agreement. The compensation established in Item 4 above shall cover all such services provided by the County during the term of this Agreement.

8. Administration of Agreement. Any concerns or complaints that arise related to the provision of service as outlined in Items 5, 6 and 7 shall be directed to the Whatcom County Executive Office, 311 Grand Ave, Bellingham, WA 98225. The City's interests shall be represented by the General Manager's Office, Seattle City Light, 700 Fifth Ave, Suite 3200,

Seattle, WA 98124.

9. Dispute Resolution. In the event that the City and the County have a dispute over any provision of this Agreement, the aggrieved party shall give written notice to the other party of the nature of the dispute within ten (10) working days of the occurrence giving rise to the dispute. Both parties agree to designate a representative who will meet within a reasonable period and attempt to resolve the dispute to the mutual satisfaction of both parties.

If, within fifteen (15) working days of their first meeting, the appointed representatives fail to resolve any dispute in accordance with the above provisions, the parties shall submit the dispute to arbitration. In such an event, within thirty (30) days after submitting the matter to arbitration, one representative of each party shall meet with the other to select a single arbitrator from an arbitrators list from the American Arbitration Association qualified to serve as arbitrator. If these representatives fail to select an arbitrator within thirty (30) calendar days after the notice of submittal, then the arbitrator shall be selected by the American Arbitration Association. All arbitrators shall be persons knowledgeable, skilled and experienced in the fields pertaining to the dispute, and no person shall be eligible for selection as an arbitrator who is an officer, director, or employee of any party who is otherwise interested in the matter to be arbitrated. All arbitrators shall adhere to the "Code of Ethics for Arbitrators in Commercial Disputes" by the American Arbitration Association and the American Bar Association. Except as otherwise agreed by the parties, the arbitration shall be governed by the commercial arbitration rules of the American Arbitration Association (or the rules of practice of a similar, disinterested organization if the American Arbitration Association should cease to exist), provided that to the extent such rules conflict with the applicable laws then in force which are specifically applicable to arbitration proceedings, such laws shall govern.

Unless extended by agreement of the parties or by the arbitrator for good cause shown, discovery shall be completed and the hearing shall commence within sixty (60) days after the parties proposals to resolve the dispute have been provided. Within 120 calendar days after the parties positions have been submitted to the arbitrator, unless said arbitrator requests and is granted an extension of time by the parties, said arbitrator will submit a decision to the parties in writing and the parties hereby agree to be bound by that decision. After the decision of the arbitrator, each party shall immediately take whatever action is required to comply with the arbitrator's decision. Any and all fees and expenses of the arbitrator and/or the American Arbitration Association shall be borne equally by both parties. The decision of the arbitrator shall be final and specifically enforceable, provided that any party may petition a court of competent jurisdiction for confirmation and enforcement of a decision, and for vacation of a decision solely for error of law. In the event that the parties are unable, through no fault of their own, to obtain a valid enforceable arbitration decision, either party shall be entitled to seek legal and equitable remedies in a court of competent jurisdiction.

10. Termination. Each party shall have the right to terminate this Agreement, during its term or any extension thereof, by giving one-year prior written notice to the other party. In

the event of termination, the City shall be liable for payments in accordance with the terms of this Agreement for services rendered prior to the effective date of termination.

11. Severability. It is understood and agreed by the parties hereto that if any part of this Agreement is determined to be illegal, the validity of the remaining portions shall not be affected, and the rights and obligations of the parties shall be construed as if the Agreement did not contain the particular illegal part.

12. Miscellaneous. This Agreement contains all of the terms and conditions agreed upon by the parties hereto. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning and consistent with the other provisions herein contained in order to achieve the objectives and purposes of this Agreement. Each party and its counsel has reviewed and revised this Agreement.

13. Amendment: This Agreement may be amended or modified only by a writing signed by both Parties.

14. Governing Law. This Agreement shall be governed by the laws of the state of Washington.

15. Legislative Approval. 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 Seattle City Council.

CITY OF SEATTLE
City Light Department

By _____
General Manager/CEO

WHATCOM COUNTY
By _____
County Executive

Approved as to Form:

Civil Deputy Prosecuting Attorney