

**Attachment 1 to FIRST AMENDMENT TO BOUNDARY HYDROELECTRIC PROJECT
RELICENSING SETTLEMENT AGREEMENT
FERC PROJECT NO. 2144**

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

**Interlocal Agreement for Creation of the Second Species Fund and
Provision of Regional Fishery Benefits among
Seattle City Light
and**

**Washington Department of Fish and Wildlife, Public Utility District No. 1 of Pend Oreille County,
and the Kalispel Tribe**

[] 2026

ATTACHMENT 1 – INTERLOCAL AGREEMENT FOR SSF AND REGIONAL FISHERY BENEFITS

INTERLOCAL AGREEMENT FOR THE CREATION OF SECOND SPECIES FUND AND
PROVISION OF REGIONAL FISHERY BENEFITS AMONG
SEATTLE CITY LIGHT

AND

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE, PUBLIC UTILITY DISTRICT NO. 1 OF
PEND OREILLE COUNTY, AND THE KALISPEL TRIBE

This Agreement is made and entered into this [REDACTED] day of [REDACTED], 2026, by and between Seattle City Light (“SCL”), Washington Department of Fish and Wildlife (“WDFW”), Public Utility District No. 1 of Pend Oreille County (“PUD”), and the Kalispel Tribe (“Tribe”) (collectively, the “Parties”).

RECITALS,

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

WHEREAS, the Parties, and several other parties, entered into the Boundary Hydroelectric Project Relicensing Settlement Agreement in March 2010 (the “2010 Settlement Agreement”) for the purpose of, among other things, resolving environmental and natural resource issues related to SCL’s application to FERC for a new license for the Boundary Hydroelectric Project, FERC No. 2144, which was granted by Order Issuing New License, 142 FERC ¶ 62,231 (Mar. 20, 2013) (“2013 License Order” or “License”); and

WHEREAS, the 2010 Settlement Agreement and the 2013 License Order require SCL to undertake certain actions described in Proposed License Article 9 (C) to address Reduction of Project Related Entrainment Mortality; and

WHEREAS, the Parties agree that new information and data developed since the implementation of the 2010 Settlement Agreement and 2013 License Order indicates that certain measures described in Proposed License Article 9 (C) are not warranted at this time; and

WHEREAS, the Parties desire to amend the 2010 Settlement Agreement through a First Amendment to the Settlement Agreement (“First Amendment”); and

WHEREAS, the Parties desire to amend the 2013 License Order through an Application for Amendment of License (“License Amendment”); and

WHEREAS, the Parties desire to amend the obligations described in the 2010 Settlement Agreement’s Proposed License Article 9 (C) and to increase funds for activities that the Parties agree will have a greater positive impact on the conservation and propagation of native salmonids within the Boundary Project Area and within the surrounding Regional watershed; and

WHEREAS, the Parties desire to create a new funding vehicle to finance the production of a Second Species of native salmonid solely for Regional benefit; and

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WHEREAS, the Parties desire to reach an agreement on the operation of the Native Salmonid Conservation Facility for the production of a Second Species of native salmonid solely for Regional benefit; and

WHEREAS, the Parties wish to enter into this Interlocal Agreement under Ch.39.34 RCW for the purpose of establishing and clarifying their relative roles and responsibilities with respect to the funding of the production of a Second Species of native salmonid and the operation of the Native Salmonid Conservation Facility to produce a Second Species of native salmonid solely for Regional benefit;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Purpose

The purpose of this Agreement is to establish (i) the Second Species Fund (“SSF”) and (ii) the Parties’ respective roles and responsibilities with respect to the design, construction, and operation of the Native Salmonid Conservation Facility (the “Hatchery”).

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 any other Party, and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between any of the Parties. 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. Definitions

For purposes of this Interlocal Agreement:

“Hatchery” means the Native Salmonid Conservation Facility described in the Fish and Aquatics Management Plan 5.6.1.

“Region” and “Regional” are defined as the lower Pend Oreille watershed outside of the Boundary License Project Area.

“Second Species” means a species of native salmonid (*e.g.*, Bull Trout, YY Brook Trout, Mountain Whitefish) other than westslope cutthroat trout.

Other terms shall have the definitions assigned to them in the 2010 Settlement Agreement and the First Amendment to the 2010 Settlement Agreement.

4. Creation of the Second Species Fund

- a. SCL will use \$4,000,000 of the remaining funds from the Reduction of Project Related Entrainment Mortality program, which are estimated to be \$16,100,000, to create the SSF. The purpose of the SSF is to fund the production of the Second Species solely to meet Regional needs. The balance of the remaining funds from the Reduction of Project Related Entrainment Mortality program, estimated to be \$12,100,000, will be used to supplement funding for the

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operation and maintenance of the Hatchery as a Regional facility for the production of westslope cutthroat trout for use in Pend Oreille River tributaries between Albeni Falls Dam and Boundary Dam.

- b. SCL as the account holder of the SSF will provide an accounting of the SSF to the Fish and Aquatics Work Group (“FAWG”). All expenditures from the SSF will be approved by providing an invoice to the FAWG for approval. Agencies who perform field work for purposes of supporting the production of westslope cutthroat trout and the Second Species for use in Pend Oreille River tributaries between Albeni Falls Dam and Boundary Dam will provide an invoice to the FAWG for approval and reimbursement from funds from the SSF.
 - c. SCL will make an initial deposit to the SSF in the amount of \$500,000 upon FERC approval of the First Amendment and License Amendment, followed by yearly deposits of \$250,000 into the SSF until SCL’s contributions to the SSF reach \$4,000,000. SCL will fund the SSF early if an account shortfall is projected due to increased fish production or outplanting activity.
 - d. The creation of the SSF will not change SCL’s existing obligations to monitor, evaluate, and report on the performance of the hatchery program required in the License and 2010 Settlement Agreement.
5. Construction, Operation and Management of the Hatchery

The Parties agree as follows:

- a. SCL has designed and constructed the Hatchery to be capable of simultaneously propagating two species and multiple year classes of fish. The first species will always be westslope cutthroat trout. The Second Species will be Bull Trout, unless determined by the FAWG to be another species, *e.g.*, YY Brook Trout, Mountain Whitefish. The Second Species will always be the same species for both SCL and the Region, such that there are never more than two species under production at any time.
- b. The Hatchery will have two lines of production of westslope cutthroat trout: one line for SCL needs under the License at the direction of the FAWG; and one line for the needs of the Region at the direction of WDFW.
- c. Production of westslope cutthroat trout for Regional needs will commence when the First Amendment has been fully executed by all the Parties to that agreement.
- d. If it is determined through ongoing discussions with the FAWG that it is necessary to construct a Second Species Building to house production of a Second Species, SCL will advance all phases of design of the building starting with the existing 30% design and will construct the Second Species Building in consultation with the FAWG.
- e. If it is determined through ongoing discussions with the FAWG that the Second Species Building is not necessary and production of the Second Species for the License and the Region can occur within the existing Hatchery footprint, taking into consideration adequate biosecurity and other technical considerations, then the cost of the Second Species Building (up to \$2,000,000) will be added to the SSF.

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- i. Any retrofits to the existing facility footprint that are needed to accommodate production of Second Species will be paid from the SSF.
 - ii. Second Species production of fish, as required by the License, will be as directed by the FAWG. Second Species production for the Region will be as directed by WDFW in consultation with U.S. Fish and Wildlife Service (“USFWS”) and the Tribe. If production of the Second Species for the Region requires the finalization of construction of the Second Species Building, production of the Second Species will begin 5 years after completion of the First Amendment and FERC approval of the License Amendment.
- f. SCL will operate and maintain at its expense the Hatchery for the term of the License. The operation and maintenance costs for Second Species production for the Region will be funded by the SSF and/or alternative funding sources from the Region, except if the Second Species Building is being operated solely for Regional benefit. If the Second Species Building is being operated solely for Regional benefit, operation and maintenance costs to be paid by the SSF will include all costs associated with operating and maintaining the Second Species Building except for the labor costs of Hatchery staff.
- g. If and when SCL is required to produce Bull Trout or another species at the Second Species Building for the Boundary Reservoir and tributaries that flow into it, the operation and maintenance costs for the Second Species Building will be shared equally between SCL and the SSF.
- h. SCL shall pay for all planning, logistics, field effort, and monitoring costs for the disposition of fish, including Bull Trout, that are propagated pursuant to SCL’s License obligations. All planning, logistics, field effort, and monitoring for the disposition of any fish that are propagated by SCL at the direction of WDFW for Regional benefit will be funded from the SSF and/or other funding sources.
- i. Nothing in this Agreement modifies or creates any new obligation for the PUD under its separate Trout Habitat Restoration Program, established in Appendix A to FERC’s December 17, 2021 Order Amending License for the Box Canyon Project, 177 FERC ¶ 61,183 (incorporating at ¶55 the Department of Interior’s Revised 4(e) Condition 6) (FERC No. 2042).

6. Force Majeure

No Party shall be in breach of its obligations or liable to another 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

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control of the Party seeking excuse from performance. *Force Majeure* does not include lack of resources.

7. Suspension and Termination

If any Party fails to comply with the provisions of this Agreement, the other Parties may pursue such remedies as are legally available, including but not limited to, dispute resolution pursuant to Section 12 of this Agreement as well as the suspension or termination of this Agreement in the manner specified herein:

- a. **Suspension.** If any Party fails to comply with the provisions of this Agreement, or whenever a Party is unable to substantiate full compliance with provisions of this Agreement, the other Parties may suspend the Agreement pending corrective actions or investigation, effective not less than seven (7) days following written notification to the other Party, including an explanation of why the Parties believe non-compliance has occurred. 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 any 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 Parties; or
 - (2) The non-compliant Party has failed within the time specified by any 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 Parties of termination and other persons authorized to receive notice pursuant to Section 11.11 of the 2010 Settlement Agreement, the reasons therefore, and the effective date, provided such effective date shall not be prior to notification of the non-compliant 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 2010 Settlement Agreement.

- c. **Termination on Other Grounds.** This Agreement may also be terminated in whole or in part:
 - (1) By any 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 2010 Settlement Agreement or the First Amendment.
 - (2) By any 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 2010 Settlement Agreement or the First Amendment.
- d. **Existing Rights Not Affected by Termination.** In the event of termination of this Agreement by any 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.

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8. 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 2010 Settlement Agreement of any changes. Such changes, once agreed to by all Parties, shall be incorporated in written amendments to this Agreement that shall be signed by all Parties.

9. 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.

10. Assignability

No Party may assign any interest in this Agreement, and no Party may transfer any interest in this Agreement (whether by assignment or novation), without prior written consent of the other Parties.

11. 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.

12. Dispute Resolution

Any disputes arising under this agreement shall be governed by and proceed according to Section 9 of the 2010 Settlement Agreement.

13. General Provisions

Term. This agreement will be effective on the first date upon which it has been fully executed by all Parties and will remain in effect until the termination of the 2010 Settlement Agreement.

The provisions of the 2010 Settlement Agreement relating to waiver, counterpart originals, severability and notice shall apply to this Agreement.

14. Listing Under the Interlocal Cooperation Act

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

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15. Cooperation and Facilitation

The Parties agree to cooperate with each other to facilitate the completion of the Hatchery and, if necessary, the Second Species Building. The 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**

By _____
General Manager

ATTEST:

Name _____

Seattle City Light

By _____
General Manager and Chief Executive Officer

ATTEST:

Name _____

Kalispel Tribe

By _____

ATTEST:

Name _____

Washington Department of Fish and Wildlife

By _____

ATTEST:

Name _____