RESOLUTION NO. 2015-16

Pend Oreille County Washington

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PEND OREILLE COUNTY, WASHINGTON EXECUTING AN INTER-LOCAL AGREEMENT WITH SEATTLE CITY LIGHT PROVIDING FOR THE COORDINATION OF LOCAL PLANNING AND PERMITTING FOR ACTIVITIES POTENTIALLY AFFECTING SEATTLE CITY LIGHT'S BOUNDARY HYDROELECTRIC PROJECT.

WHEREAS, Pend Oreille County has adopted a Comprehensive Plan in accordance with the provisions of the Washington State Growth Management Act; and

WHEREAS, Pend Oreille County has adopted Development Regulations to implement the County Comprehensive Plan; and

WHEREAS, the County has updated its Shoreline Master Plan and Environmentally Sensitive Areas Regulations in accordance with the provisions of the Comprehensive Plan and the Laws of Washington State; and

WHEREAS, the County Department of Community Development is responsible for the review of land use and development applications in the unincorporated areas of the County including those associated with Shorelines of the State; and

WHEREAS, the County Department of Community Development typically processes land use and development applications in the incorporated towns of Metaline and Metaline Falls in accordance with the provisions of Inter-Local Agreements executed between the County and those towns; and

WHEREAS, Seattle City Light, a department of the City of Seattle, owns and operates the Boundary Hydroelectric Project (FERC Project No. 2144) on the Pend Oreille River in Pend Oreille County; and

WHEREAS, the Federal Energy Regulatory Commission issued a new license to Seattle City Light for the Boundary Hydroelectric Project in 2013, and under the terms of the new license, Seattle City Light is required to coordinate with local permitting agencies regarding permitting for new development on non-federal lands along the Project's shoreline and to coordinate on the development and distribution of materials designed to make the public aware of allowed and prohibited uses on properties within a FERC project boundary; and

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WHEREAS, Pend Oreille County and Seattle City Light mutually desire to work together in a cooperative manner so that Seattle City Light may satisfy the terms and conditions of its Federal Energy Regulatory Commission license for the Boundary Hydroelectric Project; and

WHEREAS, Pend Oreille County and Seattle City Light also share a mutual interest in ensuring that development activities on or near the Pend Oreille River are in compliance with all applicable local, state, and federal regulations; and

WHEREAS, the Inter-local Cooperation Act, RCW 39.34 authorizes the County to enter into an inter-local agreement with Seattle City Light for the coordination of local planning and permitting services;

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF PEND OREILLE COUNTY WASHINGTON DO HEREBY RESOLVE AS FOLLOWS:

Section 1. Inter-local Agreement Approved. Upon approval by both parties, the Pend Oreille County Board of County Commissioners and Seattle City Light (SCL) hereby agree to coordinate local planning and permitting services as specified in this Agreement.

Section 2. Coordinated Local Planning and Permitting Services. Pend Oreille County and SCL hereby agree to coordinate the following local planning and permitting services:

2.1 The County shall provide SCL with a Notice of Application and an opportunity to review and comment on all Class 2, Class 3, and Class 4 permits located in or near the Boundary Hydroelectric Project Area boundary as defined in Exhibit A to this Agreement in accordance with the provisions of the Pend Oreille County Development Regulations.

2.2 The County shall provide SCL with an opportunity to review and comment in a timely manner on the following Class 1 Permits located in or near the Boundary Hydroelectric Project Area:

a. Building Permits;
b. Shoreline Exemptions;
c. Preliminary Short Plat Approval;
d. SEPA Actions;
e. Special Use Permits;
g. Exempt Segregations; and
h. Flood Plain Development Permits.

2.3 SCL shall respond to the Notices of Application and opportunities to review and comment within the timeframes specified by the County, provided that:

a. SCL may request additional time to respond, including but not limited to additional time that may be required to meet Federal Energy Regulatory Commission review and

comment periods; and

b. SCL may provide written comments on applications and may recommend approval, denial, and/or mitigating measures;

c. SCL's failure to respond in a timely manner shall not delay the processing of applications by the County nor constitute a breach of this Agreement.

2.4 The County may invite SCL to participate in pre-application meetings and/or meetings with Applicants or with County staff during the application review and approval process.

2.5 SCL may present information directly to the Planning Commission or Board of County Commissioners at public hearings for applications and shall be notified of any appeals of decisions on applications in or near the Boundary Hydroelectric Project Area.

Section 3. Administration. The intent of this Agreement is to promote the coordinated delivery of local planning and permitting services and is not intended to limit ongoing or additional coordination and communication between the parties.

3.1 For purposes of administering this Agreement, both parties will identify a lead person to ensure that the spirit and intent of this Agreement are being met. The parties will identify the lead persons in writing and will provide written notification of any changes in administrative responsibilities.

3.2 The designated lead persons shall establish such administrative procedures and protocols as may be necessary to implement this Agreement.

3.3 It is recognized by the parties that the County is responsible for processing land use and development applications, including Shoreline Substantial Development Permits, and for making decisions in accordance with the provisions of local ordinances and the Laws of Washington State. It is the intent of the County to give full consideration to comments provided by SCL with a particular emphasis on proposed actions that may potentially adversely affect the Boundary Hydroelectric Project's operations or resources, or that might otherwise affect SCL's compliance with the terms and conditions of the FERC license for the Boundary Hydroelectric Project.

3.4 It is recognized by the parties that SCL is required to develop and implement a public awareness program that communicates allowed and prohibited uses, and FERC notice and approval requirements. The County agrees to coordinate with SCL on the development of a public awareness program and to aid in the distribution of public awareness materials to applicants for County Shoreline permits.

3.5 In the event that a disagreement may arise between the parties regarding the administration or interpretation of this Agreement, the parties agree to work in good faith to reach a mutually acceptable resolution in a timely manner. If necessary, the parties may retain, by

mutual agreement, a third party to facilitate and/or mediate a resolution.

3.6 In an effort to promote effective communication and meaningful cooperation between the parties, if requested by the County, SCL will arrange for an annual meeting of the parties which may include a boat tour of the Boundary Hydroelectric Project Area. The purpose of this meeting and tour will be to review previous project accomplishments, discuss upcoming project activities, review the physical condition of the Project Area and recent development activities, address issues of common concern, identify emergent issues, and identify opportunities for improved communication and cooperation in the future.

Section 4. Cost Recovery. The Parties do not anticipate incurring significant costs to implement the terms of this Agreement. Any minor costs associated with implementation will be borne by each party. While not covered by this Agreement, if SCL applies to the County for issuance of any type of permit, SCL agrees to reimburse Pend Oreille County as provided for in the County's code. This shall include all fees and charges associated with the issuance of County permits and approvals, including required environmental reviews, and coordinating with state and federal agencies with jurisdiction.

Section 5. Severability. Should any section, paragraph, sentence, clause or phrase of this Resolution, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Resolution be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Resolution or its application to other persons or circumstances.

Section 6. Effective Date. This Resolution shall be published in the official newspaper of the County, and the Agreement shall take effect and be in full force five (5) days after the date of publication and upon approval and signature by an authorized representative of SCL.

This Agreement shall remain in full force and effect unless terminated by official action of either party, provided that a written sixty day Notice of Intent to terminate the Agreement is served to the Board of County Commissioners or the management of SCL as appropriate.

ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS AT A REGULAR MEETING THEREOF ON THE 1st DAY OF June, 2015.

Chair, Stephen Kiss

Vice Chair, Mike Manus

Commissioner, Karen Skoog

ATTEST/AUTHENTICATED:

Elizabeth Braun, Clerk of the Board

APPROVED AS TO FORM:

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Dolly Hunt, Pend Oreille County Prosecuting Attorney

SEATTLE CITY LIGHT, a Department of the City of Seattle

Jorge Carrasco, General Manager and Chief Executive Officer