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**SKAGIT RIVER HYDROELECTRIC PROJECT**

**No. 553**

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**SETTLEMENT AGREEMENT**

CONCERNING

**CULTURAL RESOURCES  
(ARCHAEOLOGICAL AND HISTORIC RESOURCES)**

BETWEEN

THE CITY OF SEATTLE

AND THE

U.S. DEPARTMENT OF THE INTERIOR,  
NATIONAL PARK SERVICE; AND  
UPPER SKAGIT TRIBE, SAUK-SUIATTLE TRIBE,  
AND SWINOMISH INDIAN TRIBAL COMMUNITY

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APRIL 1991



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**UNITED STATES OF AMERICA**  
**FEDERAL ENERGY REGULATORY COMMISSION**

**SETTLEMENT AGREEMENT**  
**INCORPORATING**  
**CULTURAL RESOURCES**  
**MITIGATION AND MANAGEMENT PLAN**

**1.0 PARTIES**

This Cultural Resources Settlement Agreement (Agreement), incorporating the Cultural Resources Mitigation and Management Plan (Cultural Plan) which includes the Archaeological Resources Mitigation and Management Plan (Archaeology Plan)(see Appendix A), and the Historic Resources Mitigation and Management Plan (Historic Plan) and Memorandum of Agreement with the Washington State Historic Preservation Officer (SHPO)(see Appendix B), is entered into this 24th day of April, 1991 by and between the City of Seattle, City Light Department (City) and the U.S. Department of the Interior, National Park Service; and the Upper Skagit Tribe, the Sauk-Suiattle Tribe, and the Swinomish Indian Tribal Community (the Tribes) (collectively referred to as the "Intervenors"). Together the City and the Intervenors are referred to as the "Parties." (A Traditional Cultural Properties Mitigation Plan, which is covered by a separate settlement agreement between the City and the Tribes, will also be bound into the Cultural Plan.) The Traditional Cultural Properties Mitigation Plan and its settlement agreement are expressly excluded from the provisions below.) The Skagit River Hydroelectric Project is referred to as the "Project." "Cultural resources" refers to objects (artifacts and documents) which are illustrative of cultural history; properties (including sites, districts, buildings and structures) which possess integrity of location and setting, materials and design, technique and feeling; and traditional cultural properties and values which contribute to the folk aspects of the cultures of the State of Washington, including locations associated with myths and legends or current religious use.

## 2.0 GENERAL PROVISIONS

This Agreement establishes the City's obligations relating to the cultural resources affected by the Project, as currently constructed. It also establishes the Intervenor's obligations to support this Agreement and to submit it to the Federal Energy Regulatory Commission (FERC) as their recommendations relating to said cultural resources under any applicable provisions of the Federal Power Act (including without limitation Sections 10(a), 10(j), and 4(e) thereof) and the National Historic Preservation Act.

This Agreement resolves all issues related to the effects on cultural resources of the Project, as currently constructed, for the period October 28, 1977 through the duration of this Agreement. This includes resolution of the effects on cultural resources of the absence of flows in the Gorge bypass reach. It shall be submitted to the FERC for incorporation into the new license for the Project and shall be enforceable as an article thereof. The Parties agree that incorporation and enforcement as a license condition is a material provision of this Agreement.

The Parties stipulate that this Agreement constitutes adequate cultural resources protection and mitigation for cultural resources impacts caused by the Project, as currently constructed, for the period October 28, 1977 through the duration of this Agreement. The Parties further stipulate that this Agreement and the Memoranda of Agreement with the Washington SHPO satisfy the City's responsibilities to take into account the effect of the relicensing on cultural resources (historic and archaeological resources and properties) under Section 106 of the National Historic Preservation Act.

For the period October 28, 1977, through the duration of this Agreement, the Intervenor and their successors and assigns hereby release, waive, and discharge the City, its successors, and assigns from any and all claims, demands, actions and causes of action of any kind (claims) arising during that period from the effects of the Project as currently constructed on cultural resources, so long as the City performs its obligations under this Agreement. This release does not waive claims that may arise from the negligent or intentional misconduct of the City in the operation of the Project.

Nothing in this Agreement precludes the City or the Intervenor from complying with their obligations under the National Environmental Policy Act (NEPA), the National Historic Preservation Act, the Endangered Species Act, the Federal Power Act, the Wild and Scenic Rivers Act, the Fish and Wildlife Coordination Act, or any other laws applicable to the Project. This Agreement shall not affect the rights of any Party except as expressly covered in this Agreement.

All previous communications between the Parties, either verbal or written, with reference to the subject matter of this Agreement are superseded by the terms and provisions of this Agreement, and, once executed, this Agreement and its companion documents constitute the entire agreement between the Parties.

This Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.



Each Party to this Agreement represents and acknowledges that it has the full legal authority to execute this Agreement and shall be fully bound by its terms.

#### 2.2.1.1 Compliance and Submittal

By entering into this Agreement, the City agrees to comply with all of the terms of this Agreement, including the payment of monies and the funding of activities specified herein. The City further agrees to submit this Agreement, including the Cultural Plan, to the FERC as its proposed measures relating to the cultural resources affected by the Project, as currently constructed, as required by applicable provisions of federal and state law, including without limitation the Federal Power Act.

#### 2.2.1.2 Additional Staffing

The City shall assign adequate professional environmental staff to implement this Agreement. This shall include establishment of two new environmental staff positions with expertise in fisheries, wildlife, recreation, visual quality, cultural resources, and erosion control. One staff position shall be dedicated primarily to implementation of the Anadromous Fish Flow Plan and the Anadromous And Resident Fish Non-Flow Plan. The second staff position shall be dedicated primarily to implementation of the wildlife, recreation/aesthetics, erosion control, and cultural resource agreements.

### 2.2.2.1 Support for Project Relicense

The Intervenor agree to support the expeditious issuance of a new license to the City for the Project, as currently constructed, which is consistent with the provisions of this Agreement and which includes the Agreement as an article. This support shall include reasonable effort to expedite the NEPA process. The Parties shall file comments on any draft EA or EIS developed by the FERC in the relicensing proceedings for this Project and shall support the measures defined by this Agreement as the preferred action. The Parties shall exchange drafts of their respective comments prior to submittal to the FERC and consult with each other to ensure that the comments are consistent with this Agreement.

### 2.2.2.2 Cultural Resources Recommendations

The Intervenor shall submit this Agreement to the FERC as their recommendations related to the cultural resources affected by the Skagit Project under any applicable provision of the Federal Power Act (including without limitation Sections 10(a), 10(j), and 4(e) thereof) and the National Historic Preservation Act.

### 2.2.2.3 Gorge Bypass Reach

The Intervenor agree that this Agreement obviates any need for flow releases in the Gorge bypass reach for cultural resources purposes. The Intervenor shall support all efforts by the City to either retain its existing water quality certificate issued by the State of Washington, Department of Ecology (WDOE) on October 27, 1977, or, in the alternative, to obtain a new water quality certificate consistent with the terms and conditions of this Agreement, including the absence of flows in the Gorge bypass reach. In the event efforts are made to reclassify the Gorge bypass reach from a Class AA water to another Class water under WDOE regulations, the Intervenor shall not oppose this action, and shall, at a minimum, provide written comments not opposing this action to the WDOE. Should the City be required to release flows in the Gorge bypass reach at any time before the issuance of a new FERC license and for any reason, this Agreement shall be voidable at the option of the City. Should the City be required to release flows in the Gorge bypass reach at any time after the issuance of a new FERC license and for any reason, this Agreement shall give rise to an immediate right of the City to petition the FERC to reconsider or reopen applicable license provisions to reconsider all cultural resources provisions in light of such requirement. Under such circumstances, the City's efforts to initiate a proceeding before the FERC to reconsider or reopen shall not be opposed by the Intervenor; the Parties may, however, differ in their respective positions in such a proceeding.

### 2.2.3.1 Cooperation Among Parties

The Parties shall cooperate in conducting and participating in studies and other actions provided for in this Agreement and shall provide assistance in obtaining any approvals or permits which may be required for implementation of this Agreement.

### 2.2.3.2 Support of Agreement

The Parties agree to join in the filing of an Offer of Settlement with the FERC based upon this Agreement and to request that the FERC issue appropriate orders approving this Agreement. All Parties shall refrain from seeking judicial review of the FERC's approval of this Agreement. It is expressly agreed by the Parties that this Agreement shall be submitted to the FERC as a unit and that any material modification of its terms, approval of less than the entire Agreement, or addition of material terms by the FERC shall make the Agreement voidable at the option of any Party.

This Agreement shall take effect upon the effective date of a license issued by the FERC consistent with this Agreement. If the FERC issues a new license inconsistent with this Agreement and if a Party appeals, the Agreement shall not go into effect. The Parties retain the right to appeal the issuance of a license in whole or in part if unacceptable provisions are added, including stay of any provision.

This Agreement, together with any subsequent modifications, shall remain in effect for the term of the new FERC license period for the Project, which includes the term(s) of any annual license(s) which may be issued after the foregoing new license has expired. This includes ongoing operations and maintenance expenses which shall continue to be funded for the duration of this Agreement.

It is understood and agreed by the Parties that similar settlement agreements are being executed between the City and these Intervenor(s) as well as other Intervenor(s) (not party to this Cultural Resources Agreement) in the Project relicensing proceedings concerning other resources affected by continuing Project operations. These other settlement agreements and mitigation and enhancement plans include:

**Fisheries**—Fisheries Settlement Agreement incorporating the Anadromous Fish Flow Plan and the Anadromous and Resident Fish Non-Flow Plan

**Wildlife**—Settlement Agreement Concerning Wildlife, incorporating the Wildlife Habitat Protection and Management Plan

**Recreation and Aesthetics**—Settlement Agreement on Recreation and Aesthetics  
(including the Recreation Plan and Visual Quality Mitigation Plan)

**Erosion**—Settlement Agreement Concerning Erosion Control, incorporating the Erosion Control Plan

**Traditional Cultural Resources**—Settlement Agreements Concerning Traditional Cultural Properties.

The City shall host an annual meeting of the Intervenors to facilitate coordination of implementation of the various settlement agreements. The Intervenors agree to cooperate in across forum coordination as necessary and appropriate to further effective program implementation.

All dollar amounts listed in this Agreement are defined as 1990 dollars and shall be adjusted annually for inflation or deflation by using the revised Consumer Price Index (CPI-U) for All Urban Consumers as published by the United States Department of Labor for the Seattle Metropolitan area. The indices used shall be those published for the last half of 1990 and, for subsequent years, the last half of the calendar year preceding that in which a payment or expenditure is to be made. Indexing of items in this Agreement shall continue until the year of actual payment, unless otherwise provided in this Agreement. The percentage of change from the earlier index to the later index shall be multiplied by the amount specified in this Agreement and the result added to or subtracted from that amount to arrive at the total payment or expenditure. Should the CPI-U index not be available, the Parties agree to negotiate another statistical basis for determining annual changes in the City's monetary commitments.

Payments and obligations by the City for this Agreement shall be made and met, unless otherwise noted in the plan, on a license-year basis. License years are based on the date of the FERC order issuing a new license for the Project; however, unless specifically provided otherwise in this Agreement, the City's monetary obligations do not become payable until the license becomes effective (see Section 2.3.1). The City shall make Project-specific monies due in license year one available at the time they are needed as soon as possible after the license becomes effective. In subsequent license years, the City shall make payments to the Intervenors for the implementation of specific Cultural Plan projects at the time that they are needed. Monies required to be paid to or on behalf of the Intervenors for non-project specific purposes shall be paid on the last day of each license year. If the license is issued and accepted during a season which is critical for implementation, it may be impossible to implement a particular program element that year. Therefore, the Parties agree that implementation of such elements may not occur until the license year following its stated schedule in the plan. Agreed upon rescheduling of projects solely as a result of seasonal considerations shall not be considered a license compliance violation.

## **2.6 FORCE MAJEURE**

The City shall not be liable or responsible for failure to perform or for delay in performance due to any cause or event or circumstance of Force Majeure. For purposes of this Agreement, Force Majeure is any cause or event beyond the City's reasonable control. This may include, but is not limited to, fire, flood, mechanical failure or accidents that could not reasonably have been avoided by the City, strike or other labor disruption, act of God, act of any governmental authority or of the Parties, embargo, fuel or energy unavailability (ancillary to, but not including, basic power generation), wrecks or unavoidable delays in transportation, and inability to obtain necessary labor, materials or manufacturing facilities from generally recognized sources in the applicable industry, or communications systems breakdowns, or for any other reason beyond the City's control. The City shall make all reasonable efforts to resume performance promptly once the Force Majeure is eliminated.

For purposes of implementing this Agreement, the Parties agree that the following individuals shall be designated by each to be primary contact persons. The initial contact person for the City is:

Superintendent  
Seattle City Light  
1015 Third Avenue

Seattle, WA 98104-1198

and the initial contact persons for each of the Intervenors are:

National Park Service:

Regional Director  
Pacific Northwest Region  
National Park Service  
83 South King Street, Suite 202  
Seattle, WA 98104

and

Chief, Cultural Resources Division  
National Park Service,  
Pacific Northwest Regional Office  
83 South King Street, Suite 202  
Seattle, WA 98104  
(206) 553-0791

Upper Skagit Tribe:

Tribal Chairperson  
Upper Skagit Tribe  
2284 Community Plaza  
Sedro Woolley, WA 98284  
(206) 856-5501

and

Doreen Maloney,  
Natural Resources Manager  
Upper Skagit Tribe  
2284 Community Plaza  
Sedro Woolley, WA 98284

Sauk-Suiattle Tribe:

Tribal Chairperson  
Sauk-Suiattle Tribe  
5318 Chief Brown Lane  
Darrington, WA 98241  
(206) 436-0131

and

Lawrence Joseph,  
Natural Resources Manager  
Sauk-Suiattle Tribe  
5318 Chief Brown Lane  
Darrington, WA 98241

Swinomish Indian Tribal Community:

Tribal Chairperson  
Swinomish Indian Tribal Community and  
P.O. Box 817  
LaConner, WA 98504  
(206) 466-4067

Lorraine Loomis,  
Natural Resources Manager  
Swinomish Indian Tribal Community  
P.O.Box 817  
LaConner, WA 98504

Notification of changes in the contact persons must be made in writing and delivered to all other contact persons.

All written notices to be given pursuant to this Agreement shall be mailed by first class mail or overnight express service, postage prepaid, to each Party at the addresses listed above or such subsequent address as a Party shall identify by written notice to all Parties. Notices shall be deemed to be given five (5) working days after the date of mailing.

Notwithstanding any other provision of this Agreement, any Party may at any time invoke or rely upon any reopener clause(s) in the license for the Project in order to request the imposition by the FERC of different or modified measures for cultural resources. Any provision of this Agreement that might be read to limit or preclude a Party from raising any relevant material issue of fact or law in reopening or to otherwise conflict with reopening (e.g., Sections 2.1, 2.1.1, 2.1.2, 2.1.3, 2.1.4, and 2.2.2.2) shall be inoperative to the extent of any such limitation, preclusion or conflict.

Before invoking any reopener clause under Section 2.8.1, a Party shall request all other Parties to commence negotiations for a period of up to 90 days to modify the terms and conditions of this Agreement in whole or in part. Any such modification shall be subject to FERC approval, except that the Parties may agree to implement on an interim basis, pending FERC approval, any measure not requiring prior FERC approval.

In any action under this Section 2.8, the petitioning Party shall have the burden of proof.

The Parties shall continue to implement this Agreement pending final resolution of any modification sought from the FERC, or until the relief sought becomes effective by operation of law, or unless otherwise agreed. At the time of petitioning the FERC under Section 2.8.1, nothing shall prevent any Party from requesting the imposition of different or modified measures or from bringing any cause of action in any appropriate forum, or from taking other actions relating to any issue or matter addressed by this Agreement.

This Agreement applies to the Project excluding High Ross or any modified High Ross construction. In the event the City decides to consider raising Ross dam, separate provision will be made for additional mitigation. The Parties shall initiate discussions regarding cultural resources mitigation according to the following procedures.

The City shall notify the Intervenors of its decision to consider raising Ross dam at least 30 months before construction would commence.

At the same time, the City shall commence consultation on necessary cultural resources studies and mitigation measures with the Parties and the Washington SHPO.

At least 180 days before construction would commence, the City shall either agree with the Intervenors on modifications to this Agreement, or remaining disputes over cultural resources measures may proceed to dispute resolution as described in Section 4.0 at the option of any Party.

Mitigation for the archaeological effects of raising Ross Dam shall be at least comparable to the mitigation provided-for here for the effects of the current project and shall, at a minimum, replace the resources lost by resources of like kind, quality and quantity or by mutually agreed arrangements in lieu of such replacement.

Nothing in this Agreement shall preclude any Party from challenging the construction and operation of High Ross or modified High Ross, including disputed mitigation, in any proceeding. The mitigation procedures set out in this Section are not exclusive and need not be commenced or exhausted prior to such challenges.

### **3.0 EXPENDITURES**

The City shall make available an estimated total of \$1,817,000, to be paid either in lump sum amounts, or annual or periodic payments as indicated within Section 3.0 for the purpose of funding the measures and programs in the Cultural Plan. Of these monies \$352,000 shall be provided for historic resources, and an estimated (for reasons set forth in Section 3.2) \$1,465,000 for archaeological resources.

The City shall make available an estimated \$1,465,000 from the \$1,817,000 for the purpose of funding the archaeological measures and programs in the Cultural Plan. The monies for the archaeological measures are estimated amounts: The eligible resources which require mitigation, the choice of measures and methods to be used, and the monetary amounts available and necessary for archaeological resources mitigation and management shall be determined and negotiated by the Parties and the Washington SHPO upon the completion (in approximately two years) of the field testing and evaluation of identified archaeological sites. The monetary estimates are based on the best evaluation by archaeology professionals of the likely results of the remaining field studies and the probable mitigation and management needs. Based on the actual results of the remaining field evaluations and the determinations of and negotiations between the Parties, the monies necessary to mitigate adverse impacts may be somewhat higher or lower than these estimates. Thus, these amounts are neither minimum nor maximum expenditure levels but rather are best estimates of the monies needed to accomplish the mitigation of the final list of eligible archaeological resources.

The City shall make available, through its current Memorandum of Agreement with the NPS entitled "Survey of Cultural Resources in the Ross Lake Drawdown Zone and Skagit Hydroelectric Project Area" ("Survey MOA"), funding for the remaining field testing and evaluation of those archaeological sites which have the potential for being found eligible for listing on the National Register of Historic Places. The City and the NPS, in consultation with the Tribes, shall develop amendments to the Survey MOA before each remaining field season in which the City shall set forth the study plan and budget for that field season. The NPS has reported that two additional field seasons (1991 and 1992) will be required to complete the field testing and evaluation of the identified sites and that approximately \$200,000 of the \$1,465,000 will be needed to complete the work. These are lump sum payments which are not subject to Section 3.4.



The City shall make available \$25,000 of the \$1,465,000 for the purpose of publishing and distributing to the scientific community the results of the intensive survey and testing phases, and the results of any site excavations that are carried out as part of the Archaeological Plan (see Sections 3.2.2 and 3.2.3). The City shall spend these monies in consultation with the Intervenor as provided in the Archaeological Plan. This is a lump sum payment which is not subject to Section 3.4.

Upon completion of field testing and evaluation, the City shall submit a Registration Form to the Washington SHPO for Determinations of Eligibility (and also, for those sites found eligible for listing on the National Register of Historic Places, Determinations of Effect). The City shall, in consultation with the Intervenor, engage the services of a professional archaeologist to prepare an Archaeological Plan for the eligible and affected sites. The Archaeological Plan shall address the information and effects identified in the survey, testing, and evaluation phase (see Section 3.2.1.), and shall establish a process for the identification and reconciliation of potential conflicts between archaeological, recreation, erosion control and wildlife needs and activities. Because the full extent of the archaeological resources and impacts to be addressed will not be known until approximately 1993 (*see* Section 3.2.1), it is estimated that the preparation of the Archaeological Plan will require \$40,000 of the \$1,465,000. This is a lump sum payment which is not subject to Section 3.4. When completed the Archaeological Plan will be bound into the Cultural Plan (see Section 1.0).

The City shall make available an estimated (for reasons set forth in Section 3.2) \$1,200,000 of the \$1,465,000 for the term of the license for the purpose of funding the measures and programs in the Archaeological Plan. The City shall make approximately \$800,000 of the \$1,200,000 available for excavation; approximately \$300,000 of the \$1,200,000 available for monitoring, reconnaissance surveying every 6 years, and evaluations of any new sites which may be discovered during monitoring and reconnaissance; and approximately \$100,000 of the \$1,200,000 available for site protection measures such as erosion protection. The City shall spend these monies as provided in the Archaeological Plan and in consultation with the NPS and the other Intervenor as also provided in the Archaeological Plan.

The estimate of funding necessary for implementation of the Archaeological Plan was prepared by the NPS and is based upon the following assumptions: overhead was calculated based on NPS performing the work; approximately 20 sites will be found eligible; most mitigation will be achieved through data recovery (excavation) but with monitoring and protection for some sites throughout the license period; an average excavation of sites will entail thirty 1-meter x 1-meter test units per site; averaging 1 meter in depth; and three to six years will be required to accomplish the work.

The City shall make available \$352,000 of the estimated \$1,817,000 (see Section 3.1) for the purpose of documenting, protecting, mitigating, and interpreting historic building and engineering resources in the Project Area. The Historic Plan, prepared by the City in consultation with the NPS and the Washington SHPO, establishes procedures and measures for the protection and mitigation of historic buildings and engineering facilities, provides guidance and direction for the spending of monies, and integrates the preservation and use of historic properties with the mission and programs of the City (see Appendix B).

The City has previously made available \$70,000 and shall further make available \$16,000 (for a total of \$86,000) from the \$352,000 (see Section 3.3) for the purpose of inventorying, evaluating, and documenting the historic resources of the Project Area. These are lump sum payments which are not subject to Section 3.4.

In 1989-90 the City provided funding for the NPS to prepare a comprehensive architectural documentation of the historic buildings and engineering facilities of the Project. As a cultural resources enhancement measure, the City

requested that this documentation be prepared to Level I standards, which is a higher standard than is required or normally completed. The City provided \$70,000 (of the \$86,000) to the NPS in support of the portion of the documentation that exceeded normal requirements. The documentation was completed in 1990.

The City has completed, in consultation with the NPS and the Washington SHPO, a National Register nomination form for the historic properties and has received a Determination of Eligibility from the Washington SHPO. The City shall make available from the \$86,000 a total of \$16,000 (\$2,000 in 1999, \$10,000 in 2009, and \$4,000 in 2019) for the purpose of periodically updating the National Register nomination to inventory and evaluate properties which are not currently old enough to merit consideration for eligibility, as provided in Section 2.4 of the Historic Plan.

The City shall make available \$122,000 of the \$352,000 (see Section 3.3) for the purpose of further evaluating and protecting historic properties. Of this \$122,000, the City shall make available \$30,000 to prepare an historic structures report for Gorge Inn and Cambridge House; \$30,000 to prepare an historic landscape report for Ladder Creek Falls Gardens; and \$6,000 to prepare a landscape assessment for the town of Newhalem. The City shall also make available \$40,000 for the preparation of the Skagit Maintenance Guidelines and \$6,000 to implement a computerized maintenance record-keeping system. These are lump sum payments which are not subject to Section 3.4.

The City shall make payments for a projected total amount of \$10,000 to provide continuing education and training in historic preservation procedures and techniques. The City shall allocate \$2,500 of the \$10,000 to begin this educational seminar series, with an emphasis on familiarizing the City Light Department's Skagit Area personnel with the Historic Plan and historic preservation procedures and techniques. This is a lump sum payment which is not subject to Section 3.4. The City shall make biennial payments for an average total of \$500 per biennium beginning with license year 1 and in odd-numbered (3, 5, 7, etc.) license years thereafter for the term of the license (for a projected total amount of \$7,500) in support of the series. These biennial payments are subject to Section 3.4. The National Park Service shall assist in planning the workshops and in scheduling speakers, and shall spend an average of \$500 in even-numbered (2, 4, 6, etc.) license years for the term of the license. These expenditures are subject to the availability of funds appropriated by Congress for that purpose. These biennial payments by the National Park Service are subject to Section 3.4. The City shall spend these monies as provided in Section 3 and Table 5-2 in the Historic Plan and in consultation with the NPS and the Washington SHPO.

The City shall make available \$144,000 of the \$352,000 (see Section 3.3) for interpretive and educational measures. From the \$144,000, the City shall spend \$4,500 in license year 1, and shall make annual payments of \$1,500 thereafter for the term of the license (for a projected total amount of \$48,000) to develop and print a Newhalem Walking Tour brochure, as provided in Section 4.1 of the Historic Plan. These annual payments are subject to Section 3.4.

The City shall make available \$10,000 of the \$144,000 to assess and re-evaluate the Project's interpretive displays. Based on this assessment, the City shall allocate \$45,000 from the \$144,000 for the redesign and refurbishment of the Newhalem Visitor Center; \$10,000 for the Diablo Powerhouse exhibit; \$10,000 for the Ross Powerhouse exhibit; and \$5,000 for an exhibit at the Incline Lift Waiting Station. Monies for these exhibits may be redistributed among the exhibits based upon the priorities listed in Section 4.2 of the Historic Plan, the results of the assessment, and in consultation with the NPS and the Washington SHPO. These are lump sum payments which are not subject to Section 3.4. To the extent possible the City shall complete the assessment and refurbishment of the exhibits within five years of the effective date of the new license, as provided in Section 4.2 of the Historic Plan.

As provided in Section 4.3 of the Historic Plan, the City shall make available \$12,000 of the \$144,000 to design and develop one or more new interpretive brochures which will incorporate some of the Historic American Building Survey/Historic American Engineering Record (HABS/HAER) and other historical documentation. The City may offer the brochure(s) for retail sale, the proceeds of which may be used at the City's discretion. This is a lump sum payment which is not subject to Section 3.4.

In 1991 the City shall make available \$4,000 of the \$144,000 to transfer historic photographic images from cellulose nitrate negatives to safety film and to produce two sets of contact prints, as provided in Section 4.4 of the Historic Plan. This is a lump sum payment which is not subject to Section 3.4.

In the event the City receives subsequent annual licenses, the annual payments of the City which are identified in Section 3.3.3 in this Agreement shall be continued through any subsequent annual license periods at the same amounts set forth in this Agreement, and the biennial payments of the City and the National Park Service which are identified in Section 3.3.2 in this Agreement shall also be continued through any subsequent annual license periods at the same amounts and time intervals set forth in this Agreement, resulting in an increase in the total expenditures for the particular category.

The City and the Tribes have concluded a separate Settlement Agreement which addresses Traditional Cultural Properties. That settlement agreement includes the Traditional Cultural Properties Mitigation Plan and provides that the City shall make available \$3,950,000 for Traditional Cultural Properties. This is noted here for informational purposes only.

## **4.0 DISPUTE RESOLUTION**

Any dispute between the Parties solely concerning asserted non-compliance with the terms of this Agreement shall be referred for consideration to a committee to be composed of one representative each of the City and the Pacific Northwest Regional Office of the NPS. One representative of the Tribes shall be included for any disputes regarding archaeological terms of this Agreement, and one representative of the Washington SHPO shall be included where the dispute is relevant to the terms of the Memoranda of Agreement with the Washington SHPO. This committee shall convene as soon as practicable following the issuance of a written request by any Party. All decisions of the committee relating to asserted non-compliance shall be unanimous. In the event that the committee cannot resolve the dispute within thirty (30) days after its first meeting on a dispute, it shall give notice of its failure to resolve the dispute to all Parties.

The Parties may, at their option, prior to elevating an issue to the FERC, convene an in-person or telephone conference of policy-level administrators should committee-level dispute resolution fail. Any Party through its designated contact in Section 2.7 may invoke optional policy review by contacting the other Parties' designated contacts and arranging a suitable conference. Decisions by unanimous consent shall bind all Parties. In the event that the policy representatives cannot resolve the dispute within 15 days, the matter may be taken to the next level.

Following failure of resolution by the committee established in Section 4.1.1 or the optional policy review established in Section 4.1.2, any Party may request the FERC to refer the dispute to (1) the Advisory Council on Historic Preservation (Council) for a non-binding mediation of the dispute pursuant to the Council's regulations implementing Section 106 of the National Historic Preservation Act; (2) the Chief Administrative Law Judge of the FERC; or (3) the Division of Project Compliance and Administration within the Office of Hydropower Licensing,

or its successor, in the order listed above (unless otherwise agreed by the Parties or directed by FERC), for review and resolution pursuant to the FERC's Rules of Practice and Procedure.

## **4.2 NON-COMPLIANCE**

Notwithstanding any other provision of this Agreement, any Party may seek relief arising solely from non-compliance with this Agreement by any Party.

## **5.0 ISSUES OF GENERAL CONCERN**

The City shall fill Ross Lake as early and as full as possible after April 15 each year, subject to adequate runoff, anadromous fisheries protection flows (specified in the Skagit River Anadromous Fish Flow Plan), flood protection, minimized spill, and firm power generation needs. Subject to the above constraints and hydrologic conditions permitting, the City shall achieve full pool by July 31 each year.

The City shall hold the reservoir as close to full pool as possible through Labor Day weekend, subject to adequate runoff, anadromous fisheries protection flows, flood protection, minimized spill, and firm power generation needs.

In any overdraft year (e.g., in those years in which Ross Lake is drafted below the energy content curve), the City shall bring the Ross Lake level up to the variable energy content curve (VECC) no later than March 31, subject to adequate runoff, anadromous fisheries protection flows, flood protection, minimized spill, and firm power generation needs.

The City and the National Park Service are parties to a Memorandum of Agreement for Survey of Cultural Resources in the Ross Lake Drawdown Zone and Skagit Hydroelectric Project Area (Survey MOA). This Survey MOA and its subsequent amendments, when such amendments are done in consultation with the Tribes, shall govern the remaining field testing and evaluation of those archaeological sites which have the potential for being found eligible for listing on the National Register of Historic Places.

### **5.3 MEMORANDA OF AGREEMENT WITH THE WASHINGTON SHPO**

Pursuant to 36 C.F.R., Part 800 of the regulations of the Advisory Council on Historic Preservation, the City has entered into a Memorandum of Agreement with the Washington SHPO (with the National Park Service as a concurring party) to satisfy the City's responsibility for historic properties under Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, and to implement the Historic Plan under the National Historic Preservation Act.

The City shall conclude a similar MOA with the Washington SHPO to implement the Archaeological Plan when such a plan has been completed. The NPS shall be a concurring party to that MOA. At the time of drafting of the MOA, the City, NPS, and the Washington SHPO shall confer with the Tribes about the procedurally appropriate level of participation for the Tribes in the MOA.

When the Archaeological Plan is complete in draft form (estimated to be 1992 or 1993), the City shall provide copies of the draft Archaeological Plan to the Intervenor and to the Washington SHPO for review and acceptance. Disagreements or questions about the draft Archaeological Plan shall be resolved as provided in Section 4.0 of this Agreement.

The City shall consult at least once a year with the Intervenor and the Washington SHPO on the implementation of this Agreement. Every two years for the first 10 years of the license and every five years thereafter for the term of the license, the City shall prepare a report on its implementation of this Agreement and a reporting of any problems encountered and responsive actions taken, and shall provide this report to the Intervenor and the Washington SHPO for review and comment for at least 30 days before submittal to the FERC.

The City shall develop the Archaeological Plan and its implementing MOA, and future updates to the existing MOA with the National Park Service, in cooperation with the Tribes to be consistent with tribal rights and to address the

concerns of the Tribes. The Tribes shall also be consulted and included in the development of archaeological study plans and in mitigation planning and implementation.

The City and the Tribes have concluded a separate Settlement Agreement which addresses Traditional Cultural Properties. The Traditional Cultural Properties Mitigation Plan shall be bound together with the Historic Plan and the Archaeological Plan to form the Skagit Project Cultural Resources Mitigation and Management Plan.

## **6.0 SIGNATURES**

IN WITNESS WHEREOF, the City has caused this Settlement Agreement to be executed by its Superintendent of Light pursuant to Ordinance No. 106741 and the Intervenors have executed same pursuant to applicable legal authority.

Respectfully submitted.

Dated: April \_\_\_\_\_, 1991

**THE CITY OF SEATTLE**

By: \_\_\_\_\_  
Randall W. Hardy  
Superintendent of City Light

Address for Notice:

Seattle City Light  
1015 Third Avenue  
Seattle, WA 98104

Dated: April \_\_\_\_\_, 1991

**U.S. DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE**

By: \_\_\_\_\_  
John Earnst  
Superintendent

Address for Notice:

North Cascades Park Service Complex  
Pacific Northwest Region, National Park Service  
U.S. Department of the Interior  
North Cascades National Park Service Complex  
2105 Highway 20  
Sedro Woolley, WA 98284



Dated: April \_\_\_\_\_, 1991

**UPPER SKAGIT TRIBE**

By: \_\_\_\_\_  
Floyd Williams  
Tribal Chairperson

Address for Notice:

Upper Skagit Tribe  
2284 Community Plaza  
Sedro Woolley, WA 98284

Dated: April \_\_\_\_\_, 1991

**SAUK-SUIATTLE TRIBE**

By: \_\_\_\_\_  
Lawrence Joseph  
Tribal Chairperson

Address for Notice:

Sauk-Suiattle Tribe  
5318 Chief Brown Lane  
Darrington, WA 98241

Dated: April \_\_\_\_\_, 1991

**SWINOMISH INDIAN TRIBAL COMMUNITY**

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

Robert Joe  
Tribal Chairperson

Address for Notice:

Swinomish Indian Tribal Community  
P.O. Box 817  
LaConner, WA 98257

Steve Fransen  
Skagit System Cooperative  
P.O. Box 338  
LaConner, WA 98257

## **APPENDIX A**

### **Archaeological Resources Mitigation and Management Plan**



This appendix provides a short summary of archaeological work completed to date, and a schedule and rationale for the completion of the Archaeological Resources Mitigation and Management Plan (Archaeological Plan).

### **Surveys Completed**

In 1988 the City concluded a memorandum of agreement (MOA) with the National Park Service (NPS) by which the City provided funding for the NPS to conduct an intensive survey and evaluation of archaeological sites in the drawdown zone of Ross Lake (elevation 1475 to 1602.5 feet above mean sea level). Beginning in the Spring of 1988, and continuing through the present, the NPS has conducted an intensive survey down to 1490 feet, and a reconnaissance-level survey in the zone above high pool, between elevation 1602.5 and approximately 1725 to 1800 feet. These surveys were completed in 1990. Their results were initially described in interim reports which have previously been provided to the FERC, and are comprehensively presented and evaluated in the final *Report of Intensive and Reconnaissance-level Archeological Surveys in the Upper Skagit River Basin, Washington* which is included in the City's submittal to the FERC. Also completed in 1990 was a reconnaissance-level survey of the margins of Diablo and Gorge lakes, the results of which are presented and evaluated in the report "Diablo and Gorge Dam Reservoirs, Whatcom County: Cultural Resource Reconnaissance" which is also included in the City's submittal.

Field testing and evaluation is now being conducted at the sites which were identified in the intensive survey. Once this testing and evaluation is completed, nomination forms can be completed and Determinations of Eligibility can be made, after which the Archaeological Plan will be prepared.

### **Limitations on Completion of Field Testing and Evaluation of Sites**

The NPS archaeologist estimates that two field seasons beyond the 1991 season will be required to complete the field testing and evaluation of identified sites in the drawdown zone to elevation 1490 feet. The field testing and evaluation therefore cannot be completed until 1993 at the earliest.

Completion of the field work could possibly require several years beyond 1993. This is because the maximum drawdown (or, the minimum pool height that is reached) is dependent on a number of factors, many of which are either partly or completely outside of the control of the City. These factors include the depth of the accumulated snowpack, air temperatures, occurrence of rain-on-snow events, power demand for heating and other needs, and the occurrence of drought conditions.

The record since 1953 (displayed in *Report of Intensive and Reconnaissance-level Archeological Surveys in the Upper Skagit River Basin, Washington*) indicates that the lake level reached a minimum elevation of approximately 1490 feet in eight years during that 38-year period of record, and was drawn down to the minimum level of 1475 feet once during that same period. Elevation 1490 feet was reached in both 1988 and 1989 but not in 1990. In 1991, the drawdown is not expected to reach below 1512 feet. It is therefore possible that the drawdown may not reach a sufficiently low level to allow the completion of the field testing and evaluation work to elevation 1490 feet by 1993, or for some time to come.

### **Schedule for Completion of the Archaeological Plan**

The City has consulted with the NPS; Upper Skagit Tribe, Sauk-Suiattle Tribe, and Swinomish Indian Tribal Community (tribes); and Washington State Historic Preservation Officer (SHPO) regarding the field-testing schedule, uncertainties regarding the drawdown schedule, and the need to complete the Archaeological Plan before too many years pass. The City proposes to begin development of the Archaeological Plan no later than July 1993. If the field testing and evaluation work is not complete by that time, the Archaeological Plan will provide for the completion of the work when conditions become suitable. The Archaeological Plan will also provide a process to address any additional sites that are subsequently determined to be eligible and adversely affected.

The development of the Archaeological Plan by the City, in consultation with the NPS, tribes, and Washington SHPO, is projected to take nine months, and the review and approval of the plan by these parties is expected to take

an additional six months. It is therefore projected that an Archaeological Plan which is begun in June 1993 can be submitted to the FERC by September 1994.

**APPENDIX B**

**Historic Resources  
Mitigation and Management Plan**

*and*

**Memorandum of Agreement  
Among the City of Seattle,  
Washington State Historic Preservation Officer,  
and the National Park Service**