
SKAGIT RIVER HYDROELECTRIC PROJECT

FERC No. 553

SETTLEMENT AGREEMENT

CONCERNING

TRADITIONAL CULTURAL PROPERTIES

BETWEEN

**THE CITY OF SEATTLE
CITY LIGHT DEPARTMENT**

AND

THE UPPER SKAGIT TRIBE

APRIL 1991

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UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

**SETTLEMENT AGREEMENT
CONCERNING
TRADITIONAL CULTURAL PROPERTIES
(UPPER SKAGIT TRIBE)**

1.0 PARTIES

This Traditional Cultural Properties Settlement Agreement (Agreement) is entered into this 24th day of April, 1991, by and between The City of Seattle, City Light Department (the City) and the Upper Skagit Tribe (the Tribe or Intervenor), a federally recognized tribal government reorganized pursuant to Section 16 of the Indian Reorganization Act of 1934. Together the City and the Intervenor are referred to as the "Parties". The Skagit River Hydroelectric Project is referred to as the "Project".

2.0 GENERAL PROVISIONS

2.1 PURPOSE AND INTENT

2.1.1 Resolution of Issues

This Settlement Agreement establishes a mechanism for the completion of studies needed to inventory certain traditional cultural properties (TCPs) in the Project area and to analyze the potential impacts of continued Project operation on those TCPs. This Settlement Agreement also establishes mechanisms for ensuring that the Tribe's interests in TCPs and other cultural properties (e.g. archaeological resources) are included in further studies and mitigation development, and further provides for the City to fund the Tribe's cultural activities located away from the Project area in specified amounts in lieu of TCP site mitigation.

This Settlement Agreement also establishes the Tribe's obligations in support of this Settlement Agreement, which include agreement that City funding will be spent on cultural activities and cooperation with the City in the scoping and implementation of studies funded by the City under this Agreement.

The Parties intend that full performance of this Agreement shall resolve all mitigation issues, including any of the Tribe's objections to license issuance for the Project, as currently constructed, for the period October 28, 1977 through the duration of this Agreement, which are related to TCPs and shall fulfill the City's mitigation obligations for existing and potential impacts, whether or not anticipated, on TCPs during the term of the new license for the Project, subject to the right of the Tribe to reopen the proceedings pursuant to Section 2.8, and subject to the provisions of Section 2.9. By executing this Agreement, the Tribe agrees that the financial obligations set forth in the TCPs Mitigation Plan, Section 3 of this Agreement, constitutes the City's entire monetary obligation for mitigation for the Project as currently constructed regarding TCPs for the duration of the new license period, subject to the right of the Tribe to reopen the proceedings pursuant to Section 2.8. To the extent that the Tribe receives a possessory interest in real property or other assets transferred directly from the City or through the procedures established pursuant to the Memorandum of Agreement, Appendix A, the parties agree that the value of those interests and other assets to the Tribe may be entered into the administrative record for the third Project licensing proceeding solely as evidence of previous mitigation of ongoing TCP impacts of the current Project. Nothing herein shall prevent the Tribe from seeking additional mitigation under the third license.

This Agreement 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.

2.1.2 Stipulation of Adequacy

The Parties stipulate that this Agreement constitutes adequate mitigation and enhancement for impacts on Traditional Cultural Properties by the Project, as currently constructed, for the period October 28, 1977 through the duration of this Agreement.

2.1.3 Release and Waiver of Claims

For the period October 28, 1977, through the duration of this Agreement, the Intervenor, and its successors and assigns, hereby releases, waives and discharges 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 TCPs, so long as the City performs its obligations under this Agreement. This release does not waive claims that may arise from negligent or intentional misconduct of the City in the operation of the Project.

2.1.4 Compliance with Laws and Effect on Rights

Nothing in this Agreement precludes the City or the Intervenor from complying with their obligations under the National Environmental Policy Act (NEPA), the Federal Power Act, the National Historic Preservation Act, or any other laws applicable to the Project. This Agreement shall not affect the rights of either Party except as expressly covered in this Agreement. Nothing in this Agreement or in the plans, memoranda, procedures or other actions taken to further the purposes of this Agreement shall reduce or otherwise impair access to and exercise of implied or explicit Indian rights, including religious practices, hunting, fishing and gathering rights; nor shall anything in this Agreement be construed as limiting, waiving or otherwise impairing whatever money damages claims the Tribes may have arising out of the construction and operation of the current Project outside the term of this Agreement.

2.1.5 Integrated 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 constitutes the entire agreement between the Parties.

2.1.6 Assignment

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

2.1.7 Authority

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 OBLIGATIONS OF THE PARTIES

2.2.1 The City's Obligations

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 to the FERC as its proposed measures relating to TCPs affected by the Project, as currently constructed, as required by applicable provisions of federal and state law, including without limitation the Federal Power Act and the National Historic Preservation Act.

2.2.1.2 Additional Staffing

The City will assign adequate professional environmental staff to implement this TCP 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 settlement agreement on fisheries. The second staff position shall be dedicated primarily to implementation of the wildlife, recreation and aesthetics, and erosion control agreements, and this TCP Agreement and other cultural resource agreements.

2.2.2 The Intervenor's Obligations

2.2.2.1 Support for Project Relicense

The Intervenor agrees 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 includes this Agreement as an article. This support shall include reasonable efforts to expedite the NEPA process. The Parties shall file comments on any draft EA or EIS developed by the FERC in the relicensing 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 Traditional Cultural Properties Recommendations

The Intervenor shall submit this Agreement to the FERC as its recommendations related to the TCPs affected by the 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 agrees that this Agreement obviates any need for flow releases in the Gorge bypass reach for TCP 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 April 8, 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 traditional 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 The Parties' Obligations

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. It is understood by the Parties that substantively identical settlement agreements are being executed by the City and each of the two other Skagit System Cooperative Tribes. For purposes of efficient implementation of the TCP Mitigation Plan (Section 3), it is expected by the Parties that certain of the identical elements in the three plans will be implemented jointly, particularly the TCP study (Section 3.3). Therefore, all three Tribes shall coordinate their efforts amongst themselves and with the City as necessary and appropriate. In each instance where this Agreement requires coordination or notice between the City and the Tribe, the other two Tribes shall be included to the extent appropriate (Sections 2.2.2, 2.4, 2.7, and 2.10)

2.2.3.2 Support of Agreement

The Parties agree to join in the filing of an Offer of Settlement with the FERC based on 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 either Party, provided that, should the FERC impose, in this Agreement, additional financial obligations on the City for the benefit of Indian communities, tribes, bands or nations other than the Swinomish Indian Tribal Community, the Upper Skagit Tribe, or the Sauk-Suiattle Tribe, such obligations shall not make this Agreement voidable at the option of either Party.

2.2.3.3 Confidentiality

The Parties agree that they will, to the greatest extent allowed by law, request from FERC and other distributees of this Agreement and reports produced as a result of this Agreement, the highest possible degree of confidentiality of the reports produced pursuant to this Agreement.

2.3 EFFECTIVE DATE AND DURATION

2.3.1 Execution and Effective Date

This Agreement shall take effect upon the effective date of a license issued by the FERC consistent with this Agreement, provided that Sections 2.5.2, 3.1 and 3.2 obligate the City to specific commitments prior to the effective date; these early obligations take effect upon the submittal to the FERC by the Parties of an Offer of Settlement pursuant to Section 2.2.3.2. 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 a stay of any provision.

2.3.2 Duration

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.

2.4 COORDINATED IMPLEMENTATION

2.4.1 Across Forum Coordination

It is understood and agreed by the Parties that similar settlement agreements are being executed between the City, the Intervenor as well as other intervenors (not party to this Traditional Cultural Properties 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 Recreation Plan and Visual Quality Mitigation Plan)

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

Cultural Resources—Settlement Agreement Concerning Cultural Resources (Archaeological and Historic Resources), incorporating the Cultural Resources Mitigation and Management Plan, which includes the historic and archaeological resources mitigation and management plans.

2.4.2 Annual Meeting

The City shall host an annual meeting of the intervenors interested in any of these issues to facilitate coordination of implementation of the various settlement agreements. The Intervenor agrees to cooperate in across forum coordination as necessary and appropriate to further effective program implementation.

2.5 MONETARY FIGURES

2.5.1 Adjustments For Inflation/Deflation

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 for 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 comparable statistical basis for determining annual changes in the City's monetary commitments.

2.5.2 Time Basis For Payments and Obligations

The City shall make the money required by Section 3.1 available on April 1 of each year of the license (until the total amount provided has been distributed), except for the first payment which shall be made as soon as practicable after the effective date of this Agreement (Section 2.3.1). The City shall make the monies required by Section 3.2 available as soon as practicable after the Offer of Settlement is submitted and after the first anniversary date of that submittal (Section 2.2.3.2). The City shall make the monies for studies required by Section 3.3 available as soon as practicable after the effective date of this Agreement in response to a specific project schedule. Monies not otherwise provided for in these sections that are to be paid to or on behalf of the Tribe for non-project specific purposes shall be paid on the last day of each license year.

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 its 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.

2.7 DESIGNATED CONTACTS

2.7.1 Contact Person

For purposes of implementing this Agreement, the Parties agree that one individual will be designated by each to be the primary contact person. The initial contact person for the City is:

Superintendent
Seattle City Light
1015 Third Avenue
Seattle, WA. 98104
(206) 684-3200

and the initial contact person for the Intervenor is :

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

Notification of changes in the contact persons must be made in writing, and given to the Tribal parties and to the two other TCP settlement agreements at the same time.

2.7.2 Notices

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

2.8 REOPENER AND MODIFICATION

2.8.1 Use of Reopener Clause in License

Notwithstanding any other provision of the Agreement, any party may at any time invoke or rely on 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 TCP mitigation. 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 2.2.3.2) shall be inoperative to the extent of any such limitation, preclusion or conflict.

2.8.2 Modification

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.

2.8.3 Burden of Proof

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

2.8.4 Effect of Reopener Proceedings

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 either 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.

2.9 PROJECT MODIFICATIONS (HIGH ROSS)

2.9.1 Project Modifications

This Agreement applies to the Project excluding High Ross or any modified High Ross construction. It does not address mitigation for the effects of raising Ross dam. 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 TCP mitigation according to the following procedures.

2.9.2 Notice

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

2.9.3 Consultation

At the same time, the City shall commence consultation on necessary TCP studies and possible mitigation measures.

2.9.4 Resolution

At least 180 days prior to construction, the City shall either agree with the Tribe on modifications to this Agreement, or remaining disputes over TCP measures may proceed to dispute resolution as described in Section 2.10 at the option of either Party.

2.9.5 Mitigation Criteria

Mitigation for the TCP 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.

2.9.6 Preservation of Rights

Nothing in this Agreement shall preclude either Party from challenging the construction 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.

2.10 DISPUTE RESOLUTION

2.10.1 Technical Level Review

Any dispute between the Parties concerning compliance with this Agreement shall first be referred to technical representatives of the contact persons identified in Section 2.7. Should the other two, similar TCP agreements give rise to the same dispute at the same time, the designated technical representatives of all involved parties shall be included in this process. The technical representatives will meet as soon as possible after written notification of a dispute by a Party. Decisions of the technical representatives must be unanimous. In the event that the technical representatives cannot resolve the dispute within ninety (90) days after first meeting on said dispute, the City will give notice of such failure to the Tribe.

2.10.2 Optional Policy Level Review

The Parties may, at their option, prior to elevating an issue to the FERC under Section 2.10.3, convene an in-person or telephone conference of the policy-level representatives, identified in Section 2.7, after notice of the failure of the technical level representatives. Any Party through its designated contact (persons identified in Section 2.7 or their designated representative) may invoke the optional policy level review by contacting the other party's designated contact and arranging a suitable conference. Decisions by unanimous consent shall bind the Parties. In the event that the policy representatives cannot either resolve the dispute or agree to arbitration or mediation within fifteen (15) days, the matter may be taken to the next level.

2.10.3 FERC Review

In the event that disputes are not resolved at the first two levels of dispute resolution, either Party may refer the matter to the FERC for resolution pursuant to the FERC's Rules of Practice and Procedure.

2.10.4 Non-compliance

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

2.11 ROSS LAKE OPERATIONS

2.11.1 Refill After April 15

The City will 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 will achieve full pool by July 31 each year.

2.11.2 Full Pool Through Labor Day

The City will hold the reservoir as close to full pool as possible through Labor Day weekend, 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.

2.11.3 Overdraft Years

In any overdraft year, the City will 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 (specified in the Skagit River Anadromous Fish Flow Plan), flood protection, minimized spill, and firm power generation needs.

2.11.4 Conflict

In the event of conflict between the provisions of this Section 2.11 and provisions of the Settlement Agreement on Fisheries, the provisions of the Settlement Agreement on Fisheries will control.

3.0 TRADITIONAL CULTURAL PROPERTIES MITIGATION PLAN

3.1 CULTURAL ACTIVITIES SUPPORT

The City shall make annual payments to the Tribe for the support of the Tribe’s cultural activities after the effective date of this agreement (Section 2.3.1) in the amount of \$154,167 per year, at the times indicated in Table 1. The payment due in the first year of the license shall be made as soon as practicable after the effective date of this Agreement. All subsequent payments shall be made on April 1 of each year. If license issuance is delayed past April 1, 1993, payments to the Tribe will begin in the first year of the license, with all accrued payments due in the first year. For example, if the license is issued in December, 1994, \$308,334 (two license year's payments) shall be paid on the effective date of the license.

Table 1. Schedule of Payments by City to the Tribe for Cultural Activities

| Date of Payment | Amount |
|--|--------------------|
| April 1, 1993 or effective date of Agreement, whichever is later | \$154,167 |
| April 1, 1994 or effective date of Agreement, whichever is later | \$154,167 |
| April 1, 1995 or effective date of Agreement, whichever is later | \$154,167 |
| April 1, 1996 or effective date of Agreement, whichever is later | \$154,167 |
| April 1, 1997 or effective date of Agreement, whichever is later | \$154,167 |
| April 1, 1998 or effective date of Agreement, whichever is later | \$154,167 |
| April 1, 1999 or effective date of Agreement, whichever is later | \$154,167 |
| Total | \$1,079,169 |

3.2 EARLY ACQUISITION OF TRADITIONAL CULTURAL PROPERTIES PROGRAM

The City shall enter into an agreement with the Tribe for the early acquisition of traditional cultural properties identified by the Tribe. The agreement shall provide for acquisition of these properties prior to the acceptance of the new license by the City. These properties shall be held by the City until the date of the acceptance of the new license by the City, whereupon the properties shall be transferred by the City at the Tribe’s option either to the Tribe or to the United States in trust for the Tribe for cultural purposes and cultural activities. The agreement for implementing this early acquisition program is attached as Appendix A.

The maximum amount available for the early acquisition of lands pursuant to this section is \$154,167. Of this amount, \$80,000 shall be made available in 1991, and \$74,167 shall be made available in 1992. The City will place the 1991 moneys in a separate interest bearing account, with interest to be added to principal, as provided by City Charter Article VII, Section 15, and implemented by City Ordinance 115554 and such other ordinances as may be promulgated to implement this Agreement as soon as practicable after the Parties submit an agreed upon offer of settlement to the FERC pursuant to Section 2.2.3.2. These moneys will be available for use in the early acquisition of TCPs or in lieu lands at that time. The City will deposit the 1992 moneys in a separate interest bearing account as provided by City Charter Article VII, Section 15, and implemented by City Ordinance 115554 and such other ordinances as may be promulgated to implement this Agreement, as soon as practicable after the first anniversary date of the submittal of an agreed upon offer of settlement to the FERC pursuant to Section 2.2.3.2. These moneys will be available for use in the early acquisition of TCPs or in lieu lands at that time. Any of the specified amounts not spent in the early acquisition program by the date of the acceptance of the new license by the City will be paid to the Tribe at the time of the payment for license year 1 under Section 3.1. The indexing provisions of Section 2.5.1 shall not apply to payments under this section after they have been placed in the separate interest bearing accounts or expended on TCP acquisitions under this section.

Two substantively identical settlement agreements are being executed between the City and each of the two other Skagit System Cooperative Tribes with equal amounts of funding. The three Tribes may agree to combine funds amongst the three agreements for the purchase of traditional cultural properties in other proportions than as currently provided in the three settlement agreements, provided that such agreements between the Tribes shall not affect the City's obligations.

3.3 TRADITIONAL CULTURAL PROPERTIES INVENTORY

The City will fund completion by the Tribe of an inventory of TCPs in the Project area including completion of analyses under the National Historic Preservation Act (NHPA) as required by law and requested by the FERC. Such an inventory study is required to complete the City's obligations under the NHPA as implemented by the FERC in the course of Project relicensing. The goal of the study is to complete the work commenced during the relicensing proceedings to identify all TCPs in the Project area and the impact of continuing Project operations on them.

3.3.1 Scope of Work

The City and the Tribe will negotiate the scope of work for the inventory study by an agreement subject to the terms of this settlement agreement. The study shall include, at a minimum, a complete inventory of the TCPs in the Project area; a complete analysis under the National Historic Preservation Act as required by law and requested by the FERC; and potential mitigation measures in and near the Project area, including an analysis of their cost, if any. The Tribe will as part of the agreement with the City comply with applicable city, state and federal law, including, but not limited to, minority and women owned business participation requirements and performance evaluation. As a government to government relationship, this contract will be a memorandum of agreement (MOA). The MOA will provide that the study work is conducted under the Tribes' direct supervision and control, including hiring of subconsultants and staff by the Tribes as prime consultant, with the 1981 Inventory of Native American Religious Use, Practices, Localities and Resources, Mt. Baker-Snoqualmie National Forest as a model. The parties will consult with the NPS in the development of the scope of work. The MOA will provide for the hiring of necessary

subconsultants and staff at the tribal level, and payment of informants. The City will commit sufficient staff time in its Environmental Affairs Division to ensure that the scope of work and contracting paperwork are prepared in a timely manner.

3.3.2 Funding

The City will provide funding for the inventory study through the MOA with the Tribes, or the Tribes' designee, as the prime contractor. The City's obligation under this section is limited to one-third of \$250,000. Substantively identical settlement agreements are being executed by the City with each of the two other Skagit System Cooperative Tribes. In order to efficiently implement this section, the Parties will utilize their best faith efforts to conduct this study jointly with the similar studies required by the other two settlement agreements. The parties will attempt to obtain contributing funding from the other benefitting agencies, primarily the National Park Service (NPS) and the United States Forest Service (USFS).

3.3.3 Confidentiality of Work Product

The MOA shall specify the work product(s) to result from the completed studies, and shall specify the uses to which the products may be put, and shall include a confidentiality protocol acceptable to the Tribes.

3.3.4 Schedule

The MOA may be executed after the effective date of this mitigation plan. The City's obligation to encumber funds for the MOA will be in compliance with the Settlement Agreement Section 2.5.

3.4 NON-MONETARY MITIGATION

The City will undertake other TCP related mitigative activities described in this section. The City may not be required to conduct any measures which require the expenditure of moneys not expressly provided for in other sections of this plan.

3.4.1 Archaeological Studies and Mitigation Plans

Within its powers to do so, the City shall ensure that the NPS includes the Tribe in Project related archaeological studies and mitigation planning.

3.4.2 Recreation Plan

The City shall include the Tribe as a party in discussions over interpretive facility/program development provided for in the Project's recreation plan (Settlement Agreement on Recreation and Aesthetics, Section 3.5.3.1). The Tribe will, at its option, be included on the advisory committee for the North Cascades Environmental Learning Center to be created pursuant to the Project's recreation plan (Settlement Agreement on Recreation and Aesthetics, Appendix C, Article III, Section 6).

3.4.3 Implementation of Other Proposed Mitigation Measures

The City will implement actions proposed at the conclusion of the inventory conducted under Section 3.2 of this plan, as determined in further negotiations to be commenced upon completion of those studies.

4.0 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

UPPER SKAGIT TRIBE

By: _____

Floyd Williams
Tribal Chairperson

Address for Notice:

Upper Skagit Tribe
2284 Community Plaza
Sedro Woolley, WA 98284

MEMORANDUM OF AGREEMENT

**FOR THE EARLY ACQUISITION OF
TRADITIONAL CULTURAL PROPERTIES**

**APPENDIX A TO
SETTLEMENT AGREEMENT
CONCERNING
TRADITIONAL CULTURAL PROPERTIES**

BETWEEN

THE CITY OF SEATTLE

AND THE

UPPER SKAGIT TRIBE

APRIL 1991

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MEMORANDUM OF AGREEMENT FOR THE EARLY ACQUISITION OF TRADITIONAL CULTURAL PROPERTIES

BETWEEN

**THE CITY OF SEATTLE
CITY LIGHT DEPARTMENT**

AND

THE UPPER SKAGIT TRIBE

1.0 INTRODUCTION

This Agreement is made for the purposes of (1) allowing for the early acquisition of property(s) identified as useful for traditional cultural purposes prior to acceptance of the new license by the City from the Federal Energy Regulatory Commission, (2) allowing the City to purchase the properties in the interim period prior to the acceptance of the license, (3) allowing for the City to hold the properties for the Tribe in the interim period, and for the transfer of the lands to the Tribe (or to the United States in trust for the Tribe) upon the acceptance of the license by the City, and (4) allowing the Tribe to participate in the acquisition process at its option.

2.0 RECITALS

WHEREAS, The City of Seattle, through its City Light Department hereinafter "the City" owns and operates the Skagit River Hydroelectric Project, FERC No. 553, hereinafter the "Project," pursuant to annual licenses issued by the Federal Energy Regulatory Commission, hereinafter referred to as "the FERC;" and

WHEREAS, the City has applied to the FERC for a new license to continue to operate the Project; and

WHEREAS, the Upper Skagit Tribe is an intervenor in the relicensing proceeding for the Project now pending before the FERC; and

WHEREAS, on September 19, 1990, the City and the Upper Skagit Tribe entered into a Preliminary Agreement including provision for traditional cultural properties, hereinafter "Preliminary Agreement;" and

WHEREAS, on April 24, 1991, the City and the Upper Skagit Tribe entered into a Traditional Cultural Properties Settlement Agreement, hereinafter "Settlement Agreement;" and

WHEREAS, the parties recognize the need to take immediate steps to acquire lands which have been identified as useful for traditional cultural purposes; and

WHEREAS, the Tribe has cooperated with and assisted the City in the licensing process through the agreements noted above; and

WHEREAS, the City has agreed to make available the maximum amounts identified in Section 3.2 the Settlement Agreement to purchase and hold title to the lands until the City accepts the new license, whereupon the City has agreed to transfer the lands to the Tribe (or to the United States in trust for the Tribe) in consideration for its cooperation and services in facilitating the licensing process.

IT IS HEREBY AGREED AS FOLLOWS;

3.0 AGREEMENT

3.1 TERM OF AGREEMENT

3.1.1 Effective Date

Notwithstanding Section 2.3.1 of the Settlement Agreement, this agreement takes effect upon the submittal to the FERC of an agreed upon Offer of Settlement pursuant to Section 2.2.3.2 of the Settlement Agreement.

3.1.2 Duration

This agreement shall remain in effect until the acceptance of a new license by the City and the conveyance of title to all lands pursuant to Section 3.3.3 of this agreement.

3.1.3 Relationship to Settlement Agreement

This agreement has been executed pursuant to the Settlement Agreement, and is to be read in conjunction with that document. In the event of the conflict between the provisions of the Settlement Agreement and this agreement, the provisions of this agreement shall prevail.

3.2 OBLIGATIONS OF PARTIES

3.2.1 Indexing of Monetary Payments

All moneys paid by the City pursuant to this agreement are subject to adjustment for inflation/deflation as provided in Sections 2.5 and 3.2 of the Settlement Agreement.

3.2.2 Funding of Acquisition of Traditional Cultural Properties

The maximum amount of the city's obligation under this agreement is \$154,167, in 1990 dollars.

3.2.2.1 1991 Funding

The City shall provide up to \$80,000.00 in 1991 to purchase all or part of the lands identified in this Agreement. These funds shall be deposited in a separate interest bearing account as provided by Section 3.2 of the Settlement Agreement.

3.2.2.2 1992 Funding

The City shall provide up to \$74,167.00 in 1992 to purchase all or part of the lands identified in this Agreement. These funds shall be deposited in a separate interest bearing account as provided by Section 3.2 of the Settlement Agreement.

3.3 PROCEDURES

3.3.1 Unexpended Funds Carried Over

If the funds available in 1991 are not completely used in that year, the City shall make the unused portion available in 1992 in addition to the amount of \$74,167.00 available in 1992. Payment of these funds will be in compliance with Section 2.5 of the Traditional Cultural Properties Settlement Agreement. Funds shall be indexed pursuant to Sections 2.5 and 3.2 of the Settlement Agreement.

3.3.2 Tribal Contribution to Purchase

If during the term of this agreement, the specified amounts are insufficient to acquire the parcels identified in this agreement, the City and the Tribe may mutually agree on alternative parcels for purchase, or, in the alternative, the Tribe may contribute sufficient funds to complete the purchase, provided that the City shall nonetheless take title to the property(s) so acquired until it is reconveyed pursuant to Section 3.3.3.

3.3.3 Conveyance of Title to Property

The City will hold title to the properties purchased pursuant to this agreement until a new license is accepted by the City, whereupon any lands thus acquired by the City shall be transferred by the City at the Tribe's option either to the Tribe or to the United States in trust for the Tribe for cultural purposes and cultural activities.

3.3.4 Distribution of Unspent Funds

If the entire \$154,167.00 is not expended on the purchase of lands prior to the date of acceptance of the license by the City, the unexpended portion of that amount shall be added to the payment from the City to the Tribe pursuant to the Settlement Agreement (Section 3.1). The unexpended funds distributed under this provision shall be indexed pursuant to Sections 2.5 and 3.2 of the Settlement Agreement.

4.0 EARLY TRADITIONAL CULTURAL PROPERTY ACQUISITION PROGRAM

4.1 NEGOTIATION AND ACQUISITION

4.1.1 Tribal Acquisition of Rights

The Tribe may, prior to the effective date of this agreement, negotiate with the owners of the parcels identified in this Agreement and obtain options to purchase the lands, execute purchase and sale agreements, or purchase fee title to lands. After the effective date of this agreement and prior to the effective date of the Settlement Agreement, these options, purchase and sale agreements, or fee titles may be assigned or conveyed to the City, in exchange for the cost of obtaining them, which monies shall be paid from the account established under Section 3.2 of the Settlement Agreement, subject to the provisions of Section 4.1.3. The City shall purchase the lands pursuant to the terms negotiated by the Tribe, using the funds available under this Agreement, pursuant to the provisions of Section 4.1.2, and subject to the provisions of Section 4.1.3. The lands will be held by the City until the effective date of the Settlement Agreement, at which time the City will begin the process of reconveying the lands pursuant to Section 3.3.3.

4.1.2 City Negotiation and Acquisition of Lands.

After the effective date of this agreement and prior to the date of acceptance of the new license by the City, the Tribe may request the City to purchase or otherwise acquire rights to purchase the lands identified in this Agreement. In the event the Tribe designates the City to acquire the lands, the City shall use its best efforts to acquire the lands at the most favorable price using the amounts available under this Agreement.

As soon as practicable after the date of acceptance of the new license by the City, any lands thus acquired by the City shall be transferred by the City at the Tribe's option either to the Tribe or to the United States in trust for the Tribe for cultural purposes and cultural activities. Any other rights such as options to purchase such lands shall be assigned to the Tribe. Each purchase shall be made pursuant to City ordinance.

Should the specifically identified lands not be available for purchase for any reason (e.g., owner refuses to sell) or the price exceeds the funds available, the City shall consult with the Tribe and mutually agree upon a substitute parcel for acquisition under this Agreement, or, in the alternative, the Tribe may contribute sufficient funds to complete the purchase, provided that the City shall nonetheless take title to the property(s) so acquired until it is reconveyed pursuant to Section 3.3.3.

4.1.3 City's Exercise of Discretion

In acquiring and managing the lands prior to the conveyance of the lands pursuant to Section 4.1.2, the City shall exercise the judgment and care under the circumstances which reasonable persons would exercise in the management of their own affairs. Such exercise of judgment shall include but not be limited to performing environmental site assessments of the properties and obtaining title reports.

The City retains the right to refuse to acquire title or any interest in properties that would present an unacceptable risk of liability to the City (e.g., the City may be liable for hazardous wastes as owner of the property).

The City may refuse to acquire the properties if there are unacceptable conditions such as inability of current owner to convey good title, deed restrictions, or other unacceptable conditions that would affect good title or limit the full enjoyment and use of the property by the Tribe.

The City may refuse to acquire the properties if the cost of such property exceeds fair market value, in which event the City shall confer with the Tribe and mutually agree on a substitute property, or, in the alternative, the Tribe may contribute sufficient funds to complete the purchase.

4.2 INTERIM USE OF PROPERTY

The Tribe may use property acquired by this agreement for cultural purposes prior to its transfer to the Tribe, pursuant to the following provisions.

4.2.1 Lease Agreement

The City and the Tribe shall enter into a lease for the use of the property by the Tribe. The consideration for the lease shall be the Tribe's continued compliance with the provisions of the Settlement Agreement; termination of the Settlement Agreement due to non-compliance by the Tribe shall, at the City's option, be cause for immediate termination of the lease.

4.2.2 Indemnification

The Tribe shall hold the City harmless for any claims, damages or liability which may arise from the Tribe's use the property. Adequacy of the indemnification shall be determined by the City. Any insurance for the property on behalf of the Tribe shall name the City as an additional insured.

5.0 PARCELS TO BE PURCHASED

The following properties are identified as the traditional cultural properties to be acquired pursuant to this agreement. This list is not exclusive of properties which may be purchased pursuant to this Agreement. Properties may be added to this list for application of the provisions of this Agreement upon concurrence of the Parties.

5.1 PUGET POWER PROPERTY

Tract 3 of Skagit County Short Plat No. 37-89 within the southwest quarter of the northwest quarter of the northwest quarter of Section 9, Township 35 North, Range 5 East, Willamette Meridian.

5.2 BRENDLE PROPERTY

A portion of Lots 2 and 3 of Section 6, Township 35 North, Range 4 East, Willamette Meridian, listed as parcel 063504-0-004-0005 by the Skagit County Treasurer.

6.0 TERMINATION OF AGREEMENT

The City may terminate this Agreement in the event the Tribe takes any action prior to the relicensing of this Project, in material and substantial breach of this Agreement or of the other agreements entered into by the Tribe to implement the Preliminary Agreement or in direct opposition to the City's application for and implementation of a new (second) license for the Project, provided that the invocation of dispute resolution procedures by the Tribe shall not constitute such an action. The City may at its option terminate this agreement in the event that the Settlement Agreement is voided prior to the acceptance of the license by the City.

In the event the City terminates this Agreement, the ownership of any and all properties held by the City pursuant to this Agreement shall remain with the City to be disposed of by the City, the City's obligation to provide or carryover funds for acquisition of the properties shall also terminate, and the City shall retain any funds deposited into the account established in Section 3.2 of the Settlement Agreement.

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

UPPER SKAGIT TRIBE

By: _____

Floyd Williams
Tribal Chairperson

Address for Notice:

Upper Skagit Tribe
2284 Community Plaza
Sedro Woolley, WA 98284

IN WITNESS WHEREOF, the City has caused this Memorandum of 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.