

ATTACHMENT A

TRIBE-TACOMA DAMAGES SETTLEMENT

**TACOMA / SKOKOMISH TRIBE
SETTLEMENT AGREEMENT**

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TABLE OF CONTENTS

Recitals.....	1
ARTICLE I Definitions.....	2
ARTICLE II Settlement Purpose.....	4
ARTICLE III Release of Claims	4
ARTICLE IV Compensation to the Tribe.....	5
ARTICLE V Consent Decree	12
ARTICLE VI Tribe Support for Amended Project License and Water Right Applications	13
ARTICLE VII Additional Covenants by Parties.....	13
ARTICLE VIII Representations and Warranties of Tacoma	14
ARTICLE IX Representations and Warranties of the Tribe.....	15
ARTICLE X Effective Date	16
ARTICLE XI Termination.....	17
ARTICLE XII Limited Waiver of Immunity; Disputes.....	18
ARTICLE XIII Miscellaneous	20

This **SETTLEMENT AGREEMENT** is dated as of January 12, 2009 (this “Agreement”), and is by and among the Skokomish Tribe, a federally recognized Indian tribe (the “Tribe”), and the City of Tacoma (“Tacoma”). The Tribe and Tacoma are each referred to individually herein as a “Party” and collectively as the “Parties.”

RECITALS

1. The Tribe is a federally recognized Indian tribe that exercises Governmental Authority as described by federal law.
2. Tacoma is the Federal Energy Regulatory Commission (“FERC”) licensee for the Cushman Hydroelectric Project, FERC Project No. 460 (“Project”), located on the North Fork of the Skokomish River in Mason County, Washington. FERC issued a subsequent license for the operation and maintenance of the Project by order dated July 30, 1998. The License Order was modified by the March 31, 1999, Rehearing Order; the June 21, 2004, Order on Remand; and the February 25, 2005, Order on Rehearing.
3. In 1999, the Tribe and its members brought suit in District Court against the United States and Tacoma, alleging harms caused by the Project. *Skokomish Indian Tribe v. United States of America and Tacoma Public Utilities*, No. 99-5606 (W.D. Wash.) (“Damages Lawsuit”). The Tribe asserted claims for damages caused by the Project in excess of \$5.8 billion. In 2000, the District Court dismissed the United States as a defendant, granted summary judgment in favor of Tacoma, and dismissed the Tribe’s lawsuit. *See Skokomish Indian Tribe v. United States*, 161 F. Supp. 2d 1178 (W.D. Wash. 2001).
4. The Tribe appealed the District Court’s dismissal of the Damages Lawsuit in Ninth Circuit Case Nos. 01-35028 and 01-35845. A three judge panel of the Ninth Circuit affirmed. *Skokomish Indian Tribe v. United States*, 332 F.3d 551 (9th Cir. 2003). The Ninth Circuit subsequently issued an *en banc* decision affirming the dismissal of the Tribe’s claims against Tacoma and ruling that the Tribe’s claims against the United States should be transferred to the Court of Federal Claims. *Skokomish Indian Tribe v. United States*, 401 F.3d 979 (9th Cir. 2005). The U.S. Supreme Court denied the Tribe’s petition for a Writ of Certiorari.
5. In February 2006, the Tribe and its members filed a Motion for Relief from the Judgment under Fed. R. Civ. P. 60(b), or to alter or amend the Judgment under Fed. R. Civ. P. 59(e), in order to allow the case to proceed on federal common law claims against Tacoma including, if necessary, granting leave to amend the complaint. In April 2006, the District Court denied the Tribe’s motion. In May 2006, the District Court ordered that the claims against the United States be transferred to the Court of Federal Claims. In May 2006, the Tribe appealed to the Ninth Circuit the District Court’s April 2006 ruling relating to the claims against Tacoma (Case No. 06-35403).
6. In 1996, the United States, on behalf of the Tribe and affected allottees, filed a lawsuit against Tacoma alleging that Tacoma illegally condemned interests in, and trespassed on, via its Project transmission lines, five allotments held in trust or restricted fee status by the United States within the reservation. *United States v. City of Tacoma*, No. 96-5499 (W.D. Wash.) (“Trespass Lawsuit”). The District Court ruled that Tacoma’s condemnation of the Allotment

Parcels was invalid. Tacoma appealed in Ninth Circuit Case No. 00-35070. In 2003, the Ninth Circuit affirmed. *United States v. City of Tacoma*, 332 F.3d 574 (9th Cir. 2003). The Tribe subsequently asserted that it was entitled to damages from Tacoma for trespass on the five Allotment Parcels.

7. Since January 2007, Tacoma and the Tribe have engaged in settlement negotiations as part of the Ninth Circuit's mediation program in Ninth Circuit Case No. 06-35403.

8. The Tribe and Tacoma desire to enter into this Agreement in order to settle the Damages Lawsuit and the Trespass Lawsuit, and to release all Claims, as defined in Section 1.6 of this Agreement, arising from the construction, maintenance, operation, and/or existence of the Project.

9. As an outgrowth of these settlement negotiations, Tacoma and the Tribe engaged the U.S. Forest Service ("USFS"), Bureau of Indian Affairs ("BIA"), U.S. Fish and Wildlife Service ("USFWS"), National Marine Fisheries Service ("NMFS"), Washington Department of Fish and Wildlife ("WDFW"), and Washington Department of Ecology ("WDOE") in discussions, seeking agreement on protection, mitigation and enhancement measures to resolve issues presented by the remand of the license by the D.C. Circuit, including, but not limited to, issues pertaining to the mandatory terms and conditions submitted under sections 4(e) and 18 of the Federal Power Act ("FPA"), and to WDOE's issuance of the 401 Certification. On January 12, 2009, Tacoma, the Tribe, the USFS, USFWS, BIA, NMFS, WDFW, and WDOE executed a comprehensive settlement agreement addressing the relicensing of the Project.

In reliance upon the representations, warranties, covenants and agreements of each of the Parties as set forth herein, the Parties agree that:

ARTICLE I DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified in this Article I unless the context clearly requires otherwise:

- 1.1. "Agreement" has the meaning set forth in the introductory paragraph hereof.
- 1.2. "Allotment Parcels" means the following five parcels of land that were the subject of the claims in *United States v. City of Tacoma*, No. 96-5499 (W.D. Wash. Nov. 20, 1998): Allotment 9-B (Jennie Pulsifer); Allotment 31-B (Joseph Pulsifer); Allotment 40 (Old He He); Allotment 42 (Wilson Waterman); and Allotment 11-A (Charles Frank).
- 1.3. "Amended License Settlement Agreement" means the agreement titled the "Settlement Agreement for the Cushman Project" executed on January 12, 2009, and made and entered into pursuant to FERC Rule 602, 18 C.F.R. § 385.602, by and among Tacoma, NMFS, USFS, USFWS, BIA, WDFW, WDOE, and the Tribe.
- 1.4. "Amended Project License" means any amended license issued by FERC pursuant to section 15 of the FPA for the Project based upon the filing of the Amended License Settlement Agreement.

- 1.5. “Applicable Law” means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of the United States, any tribal government, any foreign country or any domestic or foreign state, county, city or other political subdivision or of any Governmental Authority, provided however that nothing in this Agreement is intended to extend any state, county, city or other non-federal or non-Tribal law to the Skokomish Indian Reservation or to existing or future Tribal Lands.
- 1.6. “Claims” means any and all rights, demands, actions, causes of action, suits, judgments, liabilities, obligations, losses, damages, penalties, compensation, costs, attorneys’ fees or any other expenses whatsoever, of whatever kind or nature, in law, equity or otherwise, without any limitation as to amount pertaining to the construction, maintenance, operation and/or existence of the Project, except (a) any claims that arise after the execution of this Agreement that are unrelated to the Damages Lawsuit or the Trespass Lawsuit and (b) any claims that the Tribe has or may assert against the United States. In addition, nothing in this Agreement shall be construed to limit any rights of any kind that the Tribe may have in proceedings that commence upon, in anticipation of, or subsequent to, expiration of the Amended Project License.
- 1.7. “Cushman No. 2 Annual Power Costs” means the sum of (1) debt service for Project capital expenditures and (2) Project operations and maintenance costs as reported in the Tacoma Power Income Statement (FERC Account Nos. 535-545, and 408), using Generally Accepted Accounting Principles, multiplied by the percentage that equals the power generation capacity at Cushman No. 2 powerhouse (81 MW) divided by the total Project generation capacity (131 MW). For the purposes of this Agreement, the existing debt of the Project is assumed to be \$28,393,822 as of December 31, 2007. This debt will be amortized over 20 years at a 5% annual interest rate. Any new capital invested in the Project (excluding the North Fork Powerhouse and including any Amended Project License requirements) will be amortized over 20 years at Tacoma’s long-term bond interest rate (closest to twenty years) at the time Tacoma made the capital investment.
- 1.8. “District Court” means the United States District Court for the Western District of Washington.
- 1.9. “Effective Date” means the date that is sixty (60) days after the date upon which FERC issues an Amended Project License, subject to Section 10.2 and Section 10.5 of this Agreement.
- 1.10. “Federal Power Act” has the meaning set forth in the recitals hereof.
- 1.11. “FERC” means the Federal Energy Regulatory Commission or any successor agency.
- 1.12. “Final Order” means an order of any regulatory body having jurisdiction over a matter and for which there is no further opportunity or right for administrative or judicial review of such order.
- 1.13. “Generally Accepted Accounting Principles” means the conventions, rules, and procedures that (1) comprise the standards of accounting practice for governmental

entities and (2) serve as the norm for the fair presentation of financial statements for governmental entities.

- 1.14. “Governmental Authority” means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States, any foreign country or any domestic or foreign state, federally-recognized Indian Tribe, county, city or other political subdivision or any Native American tribal council or similar governing entity.
- 1.15. “Knowledge”, when used in conjunction with Tacoma, means the actual knowledge of Tacoma Department of Public Utilities’ officers obtained after due and diligent inquiry.
- 1.16. “Parties” or “Party” have the meanings set forth in the introductory paragraph hereto.
- 1.17. “Person” means any natural person, corporation, general partnership, limited partnership, proprietorship, limited liability company, other business organization, trust, union association, or Governmental Authority.
- 1.18. “Project” or “Project No. 460” is defined by FERC License No. 460 as the Cushman Hydroelectric Project.
- 1.19. “Settlement License Articles” means the Proposed License Articles set forth in Appendix 1 of the Amended License Settlement Agreement that the Amended License Settlement Agreement Parties will request that FERC include, without material modification, in the Amended Project License.
- 1.20. “Tacoma” means the City of Tacoma, Washington, including its Department of Public Utilities also known as Tacoma Public Utilities.
- 1.21. “Tribal Council” means the Governmental Authority of the Tribe.
- 1.22. “Tribal Lands” means all lands owned or leased by the Tribe and all lands held in trust for the Tribe by the United States.
- 1.23. “Tribe” means the Skokomish Indian Tribe.

ARTICLE II SETTLEMENT PURPOSE

- 2.1. Agreement Purpose. The purpose of this Agreement is, upon the Effective Date of this Agreement and except as specified herein, to fully, finally and irrevocably settle the Claims by the Tribe against Tacoma.

ARTICLE III RELEASE OF CLAIMS

- 3.1. Release of Claims. Except for those obligations and rights created by and arising out of this Agreement, in consideration of the compensation stated in Article IV, as of the Effective Date, the Tribe hereby releases and discharges Tacoma and its elected and

appointed officials, officers, directors, employees, agents and attorneys from the Claims, as defined in Section 1.6, including but not limited to Claims asserted within the Damages Lawsuit and the Trespass Lawsuit.

- 3.2. Claims By and Against the United States. The Tribe agrees to hold harmless Tacoma and its elected and appointed officials, officers, directors, employees, agents and attorneys from Claims by the United States against Tacoma involving or relating to the Damages Lawsuit or the Trespass Lawsuit or any iteration thereof; however, this hold harmless clause shall not be construed to apply or extend to any exercise of regulatory authority by the United States or any agency or department thereof. The Tribe agrees that Tacoma shall bear no legal responsibility as a result of the treaty/contract-based claims brought by the Tribe against the United States in the Court of Federal Claims. This paragraph shall not be construed to impose any duty or obligation on the Tribe to indemnify or defend Tacoma.

ARTICLE IV COMPENSATION TO THE TRIBE

- 4.1. Settlement of Damages Lawsuit. In consideration of the Tribe's release of all Claims arising from the Damages Lawsuit, Tacoma will provide the following compensation to the Tribe:
- 4.1.1 Compensation for Damages. Within one hundred and twenty (120) days of the Effective Date, Tacoma agrees to pay the Tribe six million dollars (\$6,000,000) in cash as partial compensation for the Tribe's damages, including aggradation-related damages. Unless otherwise agreed, the payment shall be made by electronic fund transfer using mutually agreed upon procedures.
- 4.1.2 Additional Compensation for Damages and Mitigation of Flooding Impacts. Within one hundred and twenty (120) days of the Effective Date, Tacoma agrees to pay the Tribe five million dollars (\$5,000,000) in cash. Unless otherwise agreed, the payment shall be made by electronic fund transfer using mutually agreed upon procedures. This payment shall be used by the Tribe for projects or actions related to the mitigation of flooding impacts on the Skokomish Indian Reservation, the Tribe, or its members.
- 4.1.3 Property Transfer. Subject to Sections 4.1.8 and 4.1.9, within sixty (60) days of the Effective Date, Tacoma will transfer to the Tribe by general warranty deed the properties described in Exhibit A (and graphically depicted in Exhibit B), except that transfer of properties that require environmental review (including, if necessary, the State Environmental Policy Act, Chapter 43.21C RCW) or regulatory approvals may occur outside the sixty-day time period. Properties that require environmental review or regulatory approval will be transferred upon completion of such environmental review and after obtaining such regulatory approval. Upon execution of the Agreement, Tacoma shall promptly commence such environmental review, begin seeking any necessary regulatory approval, and pursue such final approvals with due diligence. The properties described in

Exhibit A will be transferred to the Tribe as partial compensation for the Tribe's damages, including aggradation-related damages.

4.1.3.1 Clearing Title on Allotment Parcels 9-B and 31-B. Within sixty (60) days of the Effective Date, Tacoma will convey to the Tribe by quitclaim deed its interest in the properties described in Exhibit C (and graphically depicted in Exhibit D), and shall, at the Tribe's request, provide reasonable assistance in clearing title to such properties in the name of the United States.

4.1.3.2 Continuing Obligations Related To Property Transfers.

(a) Prior to transfer of the Saltwater Park parcel (Exhibits A-3 and B-3), Tacoma shall construct a third boat ramp (in addition to the two existing boat ramps) on such parcel.

(b) The Tribe shall allow public access to the existing boat ramp and associated parking area and the existing trailer dump station at the Camp Cushman parcel (Exhibits A-2 and B-2) from Memorial Day weekend through Labor Day weekend. The Tribe shall allow year-round public access to the boat ramps and to the associated parking area and restrooms at Saltwater Park. Such public access shall be for the term of the Amended Project License and shall be subject to reasonable conditions and regulations as determined by the Tribe.

(c) Throughout the Amended Project License term, Tacoma shall (1) remove debris from and maintain the three boat ramps (including repairing ramp structures) at Saltwater Park and (2) maintain, service, and provide water and sewer (but not electricity) for the existing restrooms at Saltwater Park. Throughout the Amended Project License term, Tacoma shall maintain the boat ramp (including repairing ramp structures down to elevation 730) at the Camp Cushman parcel and, on an annual basis (before the start of the recreation season), remove debris from the boat ramp.

(d) Throughout the Amended Project License term, Tacoma shall assume full responsibility for maintenance and servicing of the trailer dump station at the Camp Cushman parcel and shall maintain such dump station in compliance with Applicable Law, specifically including applicable public health and water quality laws and regulations.

4.1.4 Property Information

4.1.4.1 Examination of Title. Within sixty (60) days after execution of this Agreement, Tacoma shall order preliminary title reports for the properties described in Exhibit A. Upon receipt, Tacoma shall provide the Tribe with up-to-date preliminary title reports or court proceeding certificates

for all the properties described in Exhibit A. Within sixty (60) days after execution of this Agreement, Tacoma shall also provide the following materials:

- (a) copies of any existing and proposed easements, covenants, restrictions, agreements or other documents that, to Tacoma's Knowledge, affect title to any of the properties described in Exhibit A and that are not disclosed in the title reports;
- (b) all surveys, plats, or plans relating to the properties described in Exhibit A;
- (c) all leases, licenses, or concessions for the properties described in Exhibit A or any portion thereof;
- (d) all warranties and guarantees affecting any of the properties described in Exhibit A or any portion thereof;
- (e) notice of any existing or threatened litigation affecting or relating to any of the properties described in Exhibit A and copies of any pleadings with respect to that litigation;
- (f) all governmental permits and approvals obtained or held by Tacoma with relation to any of the properties described in Exhibit A; and
- (g) all environmental assessment reports with respect to any of the properties described in Exhibit A; any governmental correspondence, orders, requests for information or action and other legal documents that relate to the presence of hazardous materials or substances on, in, or under any of the properties described in Exhibit A or any portion thereof; and any other information material to the environmental condition of the properties described in Exhibit A.

4.1.4.2 Inspection of Property. Subsequent to the execution of this Agreement, the Tribe shall have the right to enter and inspect the condition of the properties described in Exhibit A, upon reasonable notice to Tacoma.

4.1.4.3 Termination of Licenses. Upon or prior to the transfer of each of the properties described in Exhibit A, Tacoma agrees that it shall provide notice of termination of any leases, licenses, or concessions applicable to the properties described in Exhibit A, unless directed otherwise by the Tribe.

4.1.4.4 Right to Reject Acceptance. The Tribe reserves the right, upon review of the due diligence materials and inspection of the properties described in Exhibit A, to reject acceptance of the deed of any property to be transferred. The Tribe's acceptance of the deed of any property to be transferred is not a condition precedent to the other contractual obligations of the Parties within this Agreement; provided, however, that upon such rejection by the Tribe of the deed of any property to be transferred in accordance with this Agreement, Tacoma shall have no further obligation under this Section 4.1.4 in respect to such property.

- 4.1.5 Saltwater Park Property Division. Prior to the transfer of Saltwater Park (Exhibits A-3 and B-3), Tacoma shall obtain, at its expense, any necessary survey, boundary line adjustment, and/or short subdivision approval from Mason County. Tacoma shall provide a copy of any necessary application for boundary line adjustment or short subdivision approval to the Tribe and allow the Tribe no less than ten (10) days to provide comments on the application to Tacoma, prior to filing with Mason County. If other boundary line adjustments or subdivision approvals are necessary to facilitate the transfer of other properties identified in Exhibit A, or portions thereof, Tacoma shall bear responsibility for obtaining such approvals at its expense.
- 4.1.6 Tacoma's Representations, Covenants, and Warranties Related to Property
- 4.1.6.1 Beginning upon execution of this Agreement and until the earlier of (i) the date that Tacoma conveys the properties described in Exhibit A to the Tribe or (ii) the date that the Tribe provides notice of rejection or acceptance of any property described on Exhibit A, Tacoma shall maintain such properties in good repair in accordance with Tacoma's current practices and shall not cause or allow waste or damage to the properties or any portions thereof, or transfer any interest or right in any of the properties to any third party.
- 4.1.6.2 Tacoma has full power and authority to convey fee simple title to each of the properties described in Exhibit A to the Tribe.
- 4.1.6.3 To the Knowledge of Tacoma, there is no litigation pending against Tacoma that arises out of the ownership of, or relates in any way to, the properties described in Exhibit A.
- 4.1.6.4 All property conveyance documents executed by Tacoma and delivered to the Tribe pursuant to this Agreement will be: (1) duly authorized, executed, and delivered by authorized representatives of Tacoma; (2) legal, valid, and binding obligations of Tacoma; and (3) sufficient to convey fee simple title to the Tribe.
- 4.1.6.5 Tacoma has received no notice of any failure of Tacoma to comply with any applicable governmental requirements with respect to the use or occupation of the properties described in Exhibit A, including, but not limited to, environmental, health, zoning, subdivision, or other land use requirements that have not been corrected to the satisfaction of the appropriate Governmental Authority, and Tacoma has received no notice, and has no knowledge of, any violations or investigation related to any such governmental requirement.

4.1.6.6 Tacoma has received no notice of any default or breach by Tacoma under any covenants, conditions, restrictions, rights of way or easements that may affect Tacoma in respect to the properties described in Exhibit A or may affect the properties described in Exhibit A (or any portion thereof) and no such default or breach now exists.

4.1.6.7 To the Knowledge of Tacoma, there are no leases, licenses, or concessions affecting any part of the properties described in Exhibit A other than those delivered to the Tribe pursuant to Section 4.1.4, and there are no written or oral promises, understandings, or agreements between Tacoma and any lessee, licensee, or concessionaire that have not been disclosed by Tacoma as part of the materials provided by Tacoma.

4.1.6.8 To the Knowledge of Tacoma, there is no release, presence, or existence of any hazardous material on, in, from, or onto the properties described in Exhibit A or any portions thereof, and Tacoma has not received any notice of any violation of any state, federal, or local environmental laws associated with any of the properties described in Exhibit A.

4.1.6.9 All of the representations, covenants, and warranties contained in this Section 4.1.6 are true as of the date of execution of this Agreement and shall survive until the date of termination of this Agreement; provided, however, that all such representations, covenants, and warranties terminate on the date of termination of this Agreement and no claims based upon such representations, covenants, and warranties can be brought after that date.

[4.1.7 Omitted]

4.1.8 Regulatory Approval Relating to Properties. In the event that Tacoma does not obtain necessary regulatory approvals, including any necessary approval for transfer of any properties identified in Exhibit A upon completion of State Environmental Policy Act review, Tacoma shall identify, in consultation with the Tribe, comparable properties that shall be conveyed to the Tribe in lieu of such properties.

4.1.9 FERC Review Relating to Properties. In the event that FERC includes any portion of the properties identified in Exhibit A within the project boundary and restricts Tacoma from conveying such property, or portion thereof, to the Tribe, Tacoma and the Tribe shall jointly challenge the articles of the Amended Project License relating to the properties and, if necessary, seek federal legislation authorizing the land transfer.

4.1.10 Annual Payment. Upon the Effective Date and for forty (40) years or until this Agreement terminates, whichever is earlier, Tacoma will provide an annual payment to the Tribe, as described below, as partial compensation for the Tribe's

damages, including aggradation-related damages. This payment will be calculated as follows:

4.1.10.1 Annual Payment Calculation. Subject to paragraph 4.1.10.2, the annual payment shall be equal to 7.25% of the Net Value of the electric production from Cushman No. 2 powerhouse. “Net Value” of the electric production from Cushman No. 2 powerhouse shall mean the product of Cushman No. 2 powerhouse’s actual annual net power generation (gross generation less station service) as reported to FERC in EIA 906 (or subsequent report) times a three year (current billing year and the previous two years) median of the weighted Dow Jones Mid-Columbia Firm Electricity Price Index minus Cushman No. 2 Annual Power Costs.

The Dow Jones Mid-Columbia Firm Electricity Index will be weighted by averaging the Firm On-peak index at 66.7% and the Firm Off-peak index at 33.3%, except for Sundays and NERC holidays. For Sunday and NERC holidays, the Dow Jones 24-hour firm index will be used. In the event Dow Jones Energy Service changes the format of the Dow Jones Mid-Columbia Electricity Price Index or the Index is no longer available, another mutually agreeable price index will be used.

4.1.10.2 Minimum and Maximum Annual Payment Levels. During years one (1) to twenty (20) after the Effective Date, (a) in the event that 7.25% of the Net Value of the electric production from Cushman No. 2 powerhouse is less than \$300,000, the annual payments shall be \$300,000, and (b) in the event that 7.25% of the Net Value of the electric production from Cushman No. 2 powerhouse is greater than \$500,000, the annual payments shall be \$500,000. Starting in year twenty (20) after the Effective Date, (a) in the event that 7.25% of the Net Value of the electric production from Cushman No. 2 powerhouse is less than \$625,000, the annual payments shall be \$625,000, and (b) in the event that 7.25% of the Net Value of the electric production from Cushman No. 2 powerhouse is greater than \$900,000, the annual payments shall be \$900,000. The maximum payments levels shall be adjusted annually by the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, All Urban Consumers, for Seattle-Tacoma-Bremerton (CPI-U). If a Force Majeure occurs that requires unanticipated suspension of Cushman Powerhouse No. 1 or 2 operation for longer than thirty days, Tacoma’s annual payment obligation shall not be subject to the minimum payment requirements of this Section 4.1.10.2 during the year in which the unanticipated suspension of operations occurred; however, this Force Majeure clause expressly does not apply to usual seasonal suspensions of Project or powerhouse operation.

4.1.10.3 Schedule for Annual Payments. The annual payment for a preceding year shall be made by April 1 of the following year. For example,

Tacoma shall provide the annual payment for 2010 operations by April 1, 2011. In the event that information necessary for the annual payment is not available in time to make the April 1 payment, Tacoma shall make its payment based upon a good faith estimate of the payment. Tacoma shall reconcile any over- or under- payment at the time of the next scheduled annual payment. Unless otherwise agreed, the annual payment shall be made by electronic fund transfer using mutually agreed upon procedures.

- 4.1.10.4 Final Payment upon Termination. The final annual payment shall be based upon a pro rata calculation of the formula provided in paragraph 4.1.10.1 and subject to the maximum payment level (but not subject to the minimum payment level) provided within paragraph 4.1.10.2.
- 4.1.10.5 Information To Be Made Available To The Tribe. On the date of each annual payment to the Tribe, Tacoma shall provide to the Tribe a written report, with supporting relevant documentation regarding power generation and Cushman No. 2 Annual Power Costs for the preceding year that describes how the amount of the annual payment was determined.

In addition, through the term of this Agreement, Tacoma agrees to make the following information available to the Tribe for inspection, upon the Tribe's request, for the purpose of facilitating the annual revenue sharing payment:

- (a) All agreements, data, and records relating to the financing of the Project.
- (b) All operating and financial records and reports relating to the Project.
- (c) All audits of the Project's accounting or financial records or practices.
- (d) All contracts relating to the operation of the Project.

- 4.1.10.6 FERC Subsequent Amendments. In the event that, after the Effective Date, FERC subsequently amends the final Amended Project License to include significant additional obligations above and beyond those contained within the Settlement License Articles that will result in additional financial commitments by Tacoma of greater than \$20 million, and such amendment becomes a Final Order, Tacoma's obligation to make the annual payments specified within Section 4.1.10 (Annual Payment) shall terminate.

4.2 Settlement of Trespass Lawsuit

- 4.2.1 United States Approval of Trespass Settlement. The Tribe shall seek to obtain the following approvals from the United States (acting as trustee for the Tribe and affected allottees) (the "Trespass Settlement Approvals"): (a) a release of claims against Tacoma for trespass of the Project transmission line on, across, and over

the Allotment Parcels; and (b) a grant of access authorizing Tacoma's continued use of the Allotment Parcels for the Project transmission line (in its current configuration, size, location, etc.) during the term of the Amended Project License and subsequent annual licenses. The Tribe shall not affirmatively inhibit or restrict Tacoma's continued use of the Allotment Parcels for the Project transmission line (in its current configuration, size, location, etc.) pending Tacoma receiving the executed Trespass Settlement Approvals.

4.2.2 Compensation. Within sixty (60) days of the Effective Date, or within sixty (60) days of the date that Tacoma receives the executed Trespass Settlement Approvals, whichever is later, Tacoma agrees to pay to the Tribe \$1.6 million in consideration of the United States' and Tribe's release of all claims of trespass arising from the Trespass Lawsuit and the construction, operation, maintenance and/or existence of Project transmission lines on Allotment Parcels.

4.2.3 Allocation and Disbursement. Following payment in accordance with Section 4.2.2, Tacoma shall have no responsibility for any administration, allocation, distribution, or use of the \$1.6 million payment.

4.3 Sole and Exclusive Means of Compensation. The Tribe acknowledges that Tacoma would not enter into this Agreement if this Agreement did not provide and incorporate the sole and exclusive means by which Tacoma shall provide compensation to the Tribe or its members for Claims. For the duration of the Amended Project License and any subsequent annual license, the Tribe shall not, under any circumstance, seek in any forum any additional consideration or compensation, other than the annual charge payment of \$20,000 per year pursuant to License Article 201, in connection with the Project and Tacoma's activities related thereto other than that consideration and compensation to the Tribe which is expressly provided for in this Agreement. Nothing in this Section or Agreement shall prevent the Tribe from petitioning FERC for a reasonable increase to annual charges to account for Tacoma's use of reservation lands to access transmission lines crossing Nalley Ranch (Exhibits A-1 and B-1). Such petition to FERC by the Tribe shall not be a breach of this Agreement.

ARTICLE V CONSENT DECREE

5.1 Consent Decree. Within ten (10) days of the Effective Date, the Tribe and Tacoma shall file a joint motion with the Ninth Circuit Court of Appeals, requesting that the Ninth Circuit remand the appeal to the District Court for further proceedings. Upon remand to the District Court, the Tribe and Tacoma will jointly request that the District Court: (1) enter this Agreement as a consent decree; (2) dismiss the Tribe's Claims which have been brought in the Damages Lawsuit with prejudice; and (3) retain jurisdiction to oversee compliance with the terms of the consent decree.

ARTICLE VI
TRIBE SUPPORT FOR AMENDED PROJECT LICENSE AND WATER RIGHT
APPLICATIONS

- 6.1 Amended Project License. Within thirty (30) days of execution of the Agreement, the Tribe agrees to deliver a letter to FERC, executed by the Tribal Council, notifying FERC of the Tribe's full support for: (1) FERC's incorporation, without modification, of the Settlement License Articles as enforceable articles of the Amended Project License; and (2) the term of the license being extended to June 30, 2048. The Tribe will cooperate fully with Tacoma to obtain an Amended Project License which is consistent with the Amended License Settlement Agreement. The Tribe agrees that, so long as this Agreement remains in effect, it will refrain from taking any position publicly or privately that indicates Tacoma's relicensing application should be denied or that the Settlement License Articles are deficient.
- 6.2 Washington Department of Ecology Approval. From and after the Effective Date, the Tribe covenants to withdraw any pending objections to Tacoma's application for water rights (Washington Department of Ecology Water Right Application Numbers S-227419 and S-227420) and to not object to additional water right applications necessary to store or divert water for the Project's existing hydroelectric generation, the North Fork Powerhouse (FERC Settlement Agreement, Appendix 8) or to implement the Settlement License Articles. Within sixty (60) days of the Effective Date, the Tribe agrees to deliver a letter to WDOE, executed by the Tribal Council, notifying WDOE of the Tribe's withdrawal of any objections relating to Tacoma's application for water rights (Washington Department of Ecology Water Right Application Numbers S-227419 and S-227420) and that the Tribe does not object to additional water right applications necessary to store or divert water for the Project's existing hydroelectric generation, the North Fork Powerhouse (FERC Settlement Agreement, Appendix 8) and Amended Project License fish supplementation facilities. Nothing in this Agreement shall have, or be construed to have, any effect on the existence, extent, or quantity of the Tribe's federally reserved water rights. Tacoma expressly acknowledges and agrees that this Agreement has no past, present, or future impact or effect of any kind on the Tribe's federally reserved water rights.

ARTICLE VII
ADDITIONAL COVENANTS BY PARTIES

- 7.1 License Obligations Omitted by FERC. To the extent that FERC declines, or otherwise refuses, to include any of the obligations of the Settlement License Articles 403, 407, 412, 413, 414, 415, 416, 417, 418, 421, and 432 in the Amended Project License and in the event that the Amended Project License does not contain a substantially similar or comparable obligation, or performance of the obligation is not inconsistent with an Amended Project License obligation, Tacoma agrees that it shall perform such omitted obligation as an enforceable term and obligation of this Agreement.
- 7.2 Additional License Obligations by FERC. In the event that FERC issues an Amended Project License that includes significant additional obligations above and beyond those

contained within the Settlement License Articles that will result in additional financial commitments by Tacoma of greater than \$20 million, Tacoma and the Tribe agree to challenge imposition of the additional obligations within the Amended Project License by seeking judicial review of those portions of the FERC Amended Project License order. Nothing in this paragraph prohibits or restricts a party's right to seek judicial review of other portions of the FERC Amended Project License order.

- 7.3 Support for Congressional Legislation. As a material inducement to the Tribe to enter into this Agreement, upon execution of this Agreement, Tacoma agrees to actively support, and actively work with the Tribe to obtain Congressional approval for, federal legislation developed and proposed by the Tribe and Tacoma relating to funding for Skokomish River restoration activities. This covenant does not require Tacoma to expend any set amount of funding for such activities or to commit to any amount of funding that would impose an unreasonable financial burden on Project operations.
- 7.4 Return of Skokomish Tribe Cultural Resources. Subject to compliance with federal and state laws governing the possession and transfer of such items, within ninety (90) days of the Effective Date, Tacoma shall transfer to the Tribe all artifacts, records, and reports from the Project area that are culturally associated with the Skokomish Indian Tribe and currently in the possession or control of Tacoma. Tacoma makes no representation or warranties regarding such items. The Tribe agrees to accept such items as is. Following the Effective Date of this Agreement, Tacoma shall work with the Tribe to locate, develop, and obtain funding for a curation facility for such artifacts that is suitable to the Tribe.
- 7.5 Employment Opportunities. The parties acknowledge that new employment opportunities will be created through Tacoma's implementation of the Settlement License Articles. Tacoma and the Tribe will work together to encourage qualified tribal members to apply for these new employment positions. Tacoma will take reasonable steps to employ, and encourage its contractors to employ, qualified tribal members for such positions.

ARTICLE VIII REPRESENTATIONS AND WARRANTIES OF TACOMA

As a material inducement to the Tribe to enter into this Agreement, Tacoma hereby represents and warrants to the Tribe as follows:

- 8.1 Authority. Tacoma has full power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby. The execution and delivery by Tacoma of this Agreement, and the performance by Tacoma of its obligations hereunder have been duly and validly authorized by the City Council of Tacoma, and no other corporate action on the part of Tacoma is necessary. This Agreement has been duly and validly executed and delivered by Tacoma and, constitutes legal, valid and binding obligations of Tacoma, enforceable against Tacoma in accordance with the terms.

- 8.2 Legal Proceedings. There are no proceedings, suits, actions or arbitrations pending or, to the knowledge of Tacoma, threatening against, relating to or affecting Tacoma with respect to the ownership, operation or maintenance of the Project which could reasonably be expected to result in the issuance of an order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement.

**ARTICLE IX
REPRESENTATIONS AND WARRANTIES OF THE TRIBE**

As a material inducement to Tacoma to enter into this Agreement, the Tribe hereby represents and warrants to Tacoma as follows:

- 9.1 Tribal Existence. The Tribe is a federally recognized Indian tribe that possesses Governmental Authority as described by federal law.
- 9.2 Authority and Indemnity. The Tribe has full power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby. The execution and delivery by the Tribe of this Agreement, and the performance by the Tribe of its obligations hereunder, have been duly and validly authorized by the Tribal Council and no other tribal action on the part of the Tribe is necessary. This Agreement has been duly and validly executed and delivered by the Tribe. Tribal Council approval and authorization of this Agreement shall be conclusively evidenced by a written resolution of the Skokomish Tribal Council that is certified by the Chairperson of the Skokomish Tribal Council. This Agreement constitutes legal, valid and binding obligations of the Tribe, enforceable against the Tribe in accordance with its terms. The Tribe and Tacoma acknowledge that outside legal counsel for the Tribe has provided Tacoma with a legal opinion that this Agreement constitutes legal, valid and binding obligations of the Tribe, enforceable against the Tribe in accordance with its terms and Tacoma has relied upon that legal opinion.
- 9.3 No Necessity and Waiver of Federal Approval
- 9.3.1 The Tribe and Tacoma acknowledge that outside legal counsel for the Tribe has provided Tacoma with a legal opinion stating that this Agreement can be executed and will be fully effective as to the Tribe notwithstanding and in absence of express federal approval for its execution other than the approval required by Section 4.2 and Tacoma has relied upon that legal opinion.
- 9.3.2 The Tribe hereby waives any and all rights it might have possessed to assert that federal approval of this Agreement is prerequisite to its legal effectiveness and enforceability.
- 9.4 No Conflicts. The execution and delivery by the Tribe of this Agreement, the performance by the Tribe of its obligations under this Agreement, the consummation of the transactions contemplated hereby and Tacoma's exercise of the rights granted Tacoma under this Agreement will not:

- 9.4.1 conflict with or result in a violation or breach of the terms, conditions or provisions of the constitution or bylaws of the Tribe; or
- 9.4.2 conflict with or result in a violation or breach of any term or provision of any law or order applicable to the Tribe, including laws or regulations promulgated by the Tribe, or any other tribal environmental, land use planning, zoning or other similar regulation or ordinance.
- 9.5 Allotment Parcels. To the best of the Tribe's knowledge, which is based solely on title status reports provided by the BIA, the Allotment Parcels subject to this Agreement are not the subject of any other: (1) right of way; (2) easement; (3) lease; (4) contract for sale; (5) contract encumbrance; or (6) any other written or oral agreement that is inconsistent with the rights granted Tacoma under this Agreement and rights previously conveyed to Tacoma.
- 9.6 Legal Proceedings
- 9.6.1 To the best of Tribe's knowledge, which is based solely on title status reports provided by the BIA, there are no actions or proceedings pending or threatened relating to or affecting the Tribe or any of the Allotment Parcels subject to this Agreement which could reasonably be expected to result in the issuance of an order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement; and
- 9.6.2 To the best of the Tribe's knowledge, which is based solely on title status reports provided by the BIA, the Allotment Parcels subject to this Agreement are not subject to any existing or threatened adverse claims that are inconsistent with the rights granted Tacoma under this Agreement and previous conveyances.
- 9.7 Purposes of the Reservation. The execution and delivery by the Tribe of this Agreement, performance by the Tribe of its obligations under this Agreement, and the consummation of the transactions contemplated hereby will not interfere or be inconsistent with the purposes for which the Skokomish Indian Reservation was created.
- 9.8 Access to Transmission Lines on Tribal Lands. Tacoma shall seek to acquire access easements to transmission lines located on Nalley Ranch (Exhibits A-1 and B-1). The Tribe shall not oppose any Tacoma effort to acquire such access easements. The Tribe shall not affirmatively inhibit or restrict access to transmission lines located on the property described in Exhibits A-1 and B-1 for the purposes of Tacoma's inspection and maintenance of such lines.

ARTICLE X EFFECTIVE DATE

- 10.1 Effective Date. This Agreement and the contractual obligations of the Parties shall be effective upon the Effective Date. Until the Effective Date, there shall be no liability or obligation on the part of any Party (or any of their respective elected and appointed

officials, officers, directors, employees, agents and attorneys), except as expressly provided in Section 10.5.1.

- 10.2 Effect of Request for Rehearing. If any party to the FERC proceeding files a request for rehearing pursuant to 18 C.F.R. § 385.713 within thirty (30) days of the issuance of the Amended Project License, the Effective Date shall be temporarily stayed and the Effective Date shall be sixty (60) days after the date that FERC issues its order on such request for rehearing.
- 10.3 Effect of Further Appeals or Proceedings Following Rehearing. The Effective Date shall not be stayed, delayed, or affected in any way by any appeal of the order on rehearing by any Party or non-Party. The Effective Date shall not be stayed, delayed, or affected in any way by any judicial or administrative proceedings that occur subsequent to the order on rehearing, except as provided in Section 10.5.
- 10.4 Effect of Any Failure of FERC to Issue an Amended Project License to Tacoma. The Agreement shall have no effect in the event that FERC declines or fails to issue to Tacoma an Amended Project License and such determination becomes a Final Order.
- 10.5 Effect of Application for Surrender or Notice of Intent to Decommission Prior to Effective Date.

10.5.1 If, prior to the Effective Date, Tacoma files an Application for Surrender pursuant to 18 C.F.R. § 6.1 with FERC or files an irrevocable notification with FERC that it declines to accept the Amended Project License and will decommission the Project and cease generation, the Effective Date shall be stayed except for Tacoma's annual payment obligation to the Tribe under Section 4.1.10, which shall become fully effective upon such filing.

10.5.2 If, following Tacoma's timely filing of an Application for Surrender or an irrevocable notification of intent to decommission pursuant to Section 10.5.1 above: (a) Tacoma withdraws the Application for Surrender or notification described in Section 10.5.1 above, or (b) FERC denies or rejects the Application for Surrender or notification described in Section 10.5.1 above, the Effective Date and all obligations under this Agreement shall commence.

10.5.3 If, following Tacoma's timely filing of an Application for Surrender or an irrevocable notification of intent to decommission pursuant to Section 10.5.1 above, Tacoma ceases all generation and permanently decommissions the Project, the Effective Date shall not commence, Tacoma's annual payments to the Tribe under Section 4.1.10 shall cease, and this Agreement shall be null and void.

ARTICLE XI TERMINATION

- 11.1 Mutual Consent. This Agreement may be terminated at any time by mutual written consent of Tacoma and the Tribe.

- 11.2 Water Rights. This Agreement may be terminated by Tacoma, in its sole discretion, if, subsequent to the Effective Date of this Agreement, WDOE issues a Final Order denying any Tacoma application for water rights necessary to store or divert water for hydroelectric generation and such Final Order directly or indirectly requires Tacoma to permanently cease hydroelectric generation at Cushman No. 2 powerhouse.
- 11.3 Surrender and Decommissioning. This Agreement may be terminated by Tacoma, in its sole discretion, if, subsequent to the Effective Date of this Agreement, Tacoma obtains from FERC a Final Order for Surrender and Decommissioning of the Project.
- 11.4 Force Majeure. This Agreement may be terminated by Tacoma, in its sole discretion, if, subsequent to the Effective Date of this Agreement, a Force Majeure permanently prevents the continued operation of, and requires decommissioning of, either Cushman No. 1 or No. 2 powerhouse.
- 11.5 Parties' Actions upon Termination. Upon termination, this Agreement shall become null and void, and there shall be no liability or obligation on the part of any Party (or any of their respective elected and appointed officials, officers, directors, employees, agents and attorneys). Specifically, Tacoma shall be under no obligation to continue the annual revenue sharing payment specified within Article IV.

ARTICLE XII LIMITED WAIVER OF IMMUNITY; DISPUTES

- 12.1 Limited Waiver of Immunity
- 12.1.1. Acknowledgements. The Tribe acknowledges and agrees that in entering into this Agreement they may incur obligations to Tacoma, and Tacoma's successors and assigns, and may become liable to these parties for specific performance of the Tribe's obligations under this Agreement. The Tribe further acknowledges that Tacoma would not enter into this Agreement with the Tribe if the Tribe could defeat enforcement against them of the rights granted to Tacoma by claiming sovereign immunity from any action brought against the Tribe by Tacoma arising from this Agreement.
- 12.1.2 Limited Waiver of Immunity. Nothing in this Agreement shall be deemed to be a waiver of the Tribe's sovereign immunity except as expressly provided in this Section. The Tribe hereby expressly waives any claim or assertion of sovereign immunity from suit (including enforcement of any decision in any arbitration) by Tacoma and Tacoma's successors and assigns under this Agreement in actions: (a) to interpret or enforce any provision of or rights granted in this Agreement, or (b) to seek the remedy of specific performance of the Tribe's obligations contained in this Agreement.
- 12.2 Limitation on Waiver of Immunity. This Agreement shall be governed by, and construed, interpreted and enforced in accordance with, the substantive law of the State

of Washington (without reference to any principles of conflicts of laws), except to the extent such Washington laws may be preempted by the laws of the United States of America.

12.3 Dispute Resolution between the Tribe and Tacoma

12.3.1 Mandatory Mediation. As a condition precedent to commencing any proceeding, suit, action or arbitration by the Tribe or Tacoma against the other relating to this Agreement, the subject matter hereof, any activities undertaken pursuant to this Agreement or with respect to the operation, maintenance or management of the Project, other than those obligations created by the Amended License Settlement Agreement or Amended Project License, the complaining Party shall first submit the claim or controversy to mandatory mediation for a period of ninety (90) days following appointment of a mediator. The Tribe and Tacoma agree to cooperate and operate in good faith to appoint the mediator and to attempt to resolve all matters in dispute with the assistance of the mediator. The Party requesting the appointment of a mediator shall cover the costs of the mediator unless there is an agreement among the disputing Parties to share costs. If the Tribe and Tacoma are unable to agree unanimously upon the appointment of the mediator, then they shall jointly seek appointment of a magistrate judge by the District Court to serve as a mediator.

12.3.2 Jurisdiction and Venue. The Tribe and Tacoma agree that any disputes concerning, relating to or arising out of this Agreement present a federal question and are subject to the District Court's continuing jurisdiction pursuant to the consent decree adopting this Agreement. With respect to any such disputes, each Party agrees to irrevocably submit to the exclusive jurisdiction of the District Court located in Tacoma, Washington. Each Party irrevocably waives any objection which it may have at any time to the laying of venue of any proceedings brought in the District Court located in Tacoma, Washington, waives any claim that such proceeding has been brought in an inconvenient forum, and further waives the right to object, with respect to such proceeding, that such court should not exercise its jurisdiction or should defer to some other judicial or administrative tribunal other than FERC. In the event such District Court determines that the subject matter of the proceeding does not fall within the statutory jurisdiction of federal district courts or for any reason declines to exercise jurisdiction over the proceeding, then the dispute shall be resolved by judicial proceeding in a court of the State of Washington which has jurisdiction and venue. Both the Tribe and Tacoma irrevocably waive any right it might otherwise have to seek to have any proceeding relating to or arising out of this Agreement determined in any tribal court and agree that assumption of jurisdiction by any federal or state court shall not be delayed or curtailed by any doctrine requiring exhaustion of tribal court remedies. Tacoma's entry into the Agreement shall not be deemed to give rise to a consensual relationship that would establish the Tribe's jurisdiction over Tacoma's activities.

12.3.3 Arbitration if No Federal District Court or Washington State Court Jurisdiction. In the event both the District Court and the courts of the State of Washington determine that the subject matter of the proceeding relating to any disputes concerning, relating to or arising out of this Agreement does not fall within their statutory jurisdiction or for any reason both decline to exercise jurisdiction over the dispute, then the Tribe and Tacoma shall submit the dispute to arbitration in Tacoma, Washington, under the Commercial Arbitration Rules of the American Arbitration Association in effect on the date such arbitration is commenced, including the optional rules for provisional remedies of such Association; provided, however, that any provision of this Article XIII shall have control over any conflicting rules of the American Arbitration Association. The Tribe and Tacoma agree that any such dispute shall be submitted to three arbitrators selected by the American Arbitration Association from its panel of arbitrators. The arbitrators shall not have authority to award damages prohibited by this Agreement. The Tribe and Tacoma further agree that they will faithfully observe this Agreement and the rules, they will abide by and perform in accordance with the decision rendered by the arbitrators, and that an order of a court having jurisdiction may be entered upon the arbitration decision; provided, however, the arbitration decision may be challenged and modified in whole or in part or denied enforcement in whole or in part, but only on the basis that the arbitration decision exceeded the scope of the arbitrators' authority under this Agreement or the Federal Arbitration Act. Nothing in this Section 12.3 is intended to, or shall be construed to, broaden the limited waiver of sovereign immunity that is expressly provided in Section 12.1 above.

ARTICLE XIII MISCELLANEOUS

- 13.1 Further Assurances. Subject to the terms and conditions of this Agreement, Tacoma and the Tribe shall each use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper and advisable under Applicable Law to consummate and make effective this Agreement, including efforts to obtain all required consents and approvals. From time to time after the date hereof, whether prior to or after the execution, and without further consideration, Tacoma and the Tribe shall, each at its own expense, execute and deliver such documents, and provide such information, to the other as such party may reasonably request in order to accomplish, consummate and perform their respective obligations under this Agreement.
- 13.2 Agreement Rights Attached to the Land. It is understood and agreed that this Agreement shall be binding upon the successors and assigns of Tacoma as an owner and licensee of the Project and attach to the land and shall be binding upon the successors in interest of the Tribe. It is understood and agreed that the rights, duties and obligations set forth in this Agreement shall run with the ownership and license of the Project. In the event that the Project is sold, transferred or conveyed by Tacoma, or acquired by process of eminent domain by persons other than Tacoma, then the obligations of Tacoma to the Tribe shall cease and terminate as to such facilities and become an obligation of the successor in interest of Tacoma as to the respective facilities herein described.

13.3 Successors and Assigns

This Agreement shall apply to, and be binding on, and inure to the benefit of the Parties and their successors and assigns, unless otherwise specified in this Agreement.

13.3.1 Succession. In the event of succession by either Party, whether by statute, executive order or operation of law or contract, or any other means, the successor shall become a Party to and be bound by the terms of this Agreement, to the extent permitted by law.

13.3.2 Continuation of Certain Obligations. In the event of succession by the Tribe, the Tribe shall continue to be bound by this Agreement. In the event of succession by Tacoma, upon completion of a succession or assignment, Tacoma shall no longer be a Party to this Agreement, and shall not be bound by the Agreement so long as its successor is bound. Tacoma shall not take any action adverse to this Agreement.

13.3.3 Notice. The assigning party shall provide notice to the other Party at least thirty (30) days prior to the proposed effective date of such transfer or assignment.

13.4 Notices

13.4.1 Means of Notification. Unless this Agreement specifically requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by acknowledged delivery, or sent by registered or certified mail, postage prepaid to the person specified below:

To the Tribe:

Skokomish Indian Tribe
Attn: Tribal Council Chairperson
80 North Tribal Center Road
Skokomish Nation, WA 98584

with cc: to

Skokomish Tribal Attorney
80 North Tribal Center Road
Skokomish Nation, WA 98584

To Tacoma:

Patrick McCarty
Tacoma Power
3628 S. 35th Street
Tacoma, WA 98409

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

13.4.2 Effective Time. Notice given pursuant to this Section 13.4 shall be effective upon physical receipt by the receiving party.

13.5 No Consequential, Incidental or Punitive Damages. Consistent with the Recitals to this Agreement, the Tribe and Tacoma desire to minimize to the extent possible the potential for future disagreements between them with respect to the Project from matters arising under this Agreement. The Tribe and Tacoma also recognize the magnitude of the potential consequential, incidental or punitive damages that might arise from this Agreement and desire to eliminate the risks each might face were such categories of damages not excluded. For these reasons, the Tribe and Tacoma agree that the remedies available to them under this Agreement shall be limited as provided below:

13.5.1 The Tribe and Tacoma agree that for any claim arising from a theory based on contract law, in no event shall either the Tribe or Tacoma be liable to each other hereunder for any consequential, punitive, exemplary, incidental or indirect losses or damages under or in respect of this Agreement.

13.5.2 The Tribe and Tacoma agree that for any claim arising from a theory based on tort law, in no event shall either the Tribe or Tacoma be liable to each other hereunder for any consequential, punitive, exemplary, incidental or indirect losses or damages under or in respect of this Agreement.

13.6 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any Party hereto under this Agreement will not be materially and adversely affected thereby: (a) such provision will be fully severable; (b) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part thereof; (c) the remaining provisions of this Agreement shall remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom; and (d) in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

13.7 Waivers. Except as otherwise provided herein, no provision of this Agreement may be waived except in writing. No failure by any Party to exercise, and no delay in exercising, short of the statutory period, any right, power or remedy under this Agreement shall operate as a waiver thereof. Any waiver at any time by a Party of its right with respect to a default under this Agreement, or with respect to any other matter arising in connection therewith, shall not be deemed a waiver with respect to any subsequent default or matter.

13.8 No Third-Party Beneficiaries. None of the promises, rights or obligations contained in this Agreement shall inure to the benefit of any Person or entity not a Party to this

Agreement; and no action may be commenced or prosecuted against any Party by any third party claiming to be a third-party beneficiary of this Agreement or the transactions contemplated hereby.

- 13.9 No Reliance. Each Party acknowledges that in entering into this Agreement, it has not relied on any statement, representation or promise of the other Party or any other Person or entity, except as expressly stated in this Agreement.
- 13.10 Assumption of Risk. In entering into this Agreement, each of the Parties assumes the risk of any mistake of fact or law, and if either or both of the Parties should subsequently discover that any understanding of the facts or the law was incorrect, none of the Parties shall be entitled to, nor shall attempt to, set aside this Agreement or any portion thereof.
- 13.11 Waiver of Defenses. Upon the Effective Date, Tacoma and the Tribe release each other from any and all claims relating to the formation and negotiation of this Agreement, including reformation, rescission, mistake of fact, or mistake of law. Tacoma and the Tribe further agree that they waive and will not raise in any court, administrative body or other tribunal any claim in avoidance of or defense to the enforcement of this Agreement other than the express conditions set forth in this Agreement.
- 13.12 Force Majeure. Neither Party shall be liable to the other for, or be considered to be in breach of, or in default under this Agreement to the extent any failure or delay is caused by or results from any cause or condition which is beyond such Party's reasonable control, to the extent which such Party is unable to prevent or overcome such failure or delay by exercise of reasonable diligence (any such cause or condition, a "Force Majeure"), including but not limited to: failure or threat of failure of facilities or equipment; fire, lightning, flood, earthquake, volcanic activity, wind, drought, storm and other natural disasters or acts of the elements; court order and act, or failure to act, of civil, military or Governmental Authority; change in governmental law or regulation; strike, lockout and other labor dispute; epidemic, riot, insurrection, sabotage, war and other civil disturbance or disobedience; labor or material shortage; and electric disturbance originating in, transmitted through, or otherwise affecting the Project.
- 13.13 Independent Counsel. The Parties acknowledge that they have been represented by independent counsel in connection with this Agreement, they fully understand the terms of this Agreement, and they voluntarily agree to those terms for the purposes of making a full compromise and settlement of the subject matter of this Agreement.
- 13.14 Headings. The headings used for the sections herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement.
- 13.15 Interpretations. In this Agreement, unless a clear contrary intention appears: (a) the singular number includes the plural number and vice versa; (b) reference to any person includes such person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity; (c) reference to any gender includes

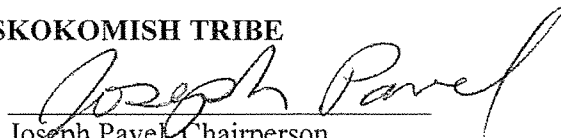
each other gender; (d) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (e) reference to any Article, Section, Schedule or Exhibit means such Article, Section, Schedule or Exhibit to this Agreement, and references in any Article, Section, Schedule, Exhibit or definition to any clause means such clause of such Article, Section, Schedule, Exhibit or definition; (f) "hereunder", "hereof", "hereto", "herein" and words of similar import are references to this Agreement as a whole and not to any particular section or other provision hereof unless specifically stated; (g) relative to the determination of any period of time "from" means "from and including", "to" means "to but excluding" and "through" means "through and including"; (h) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (i) reference to any law (including statutes and ordinances) means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder.

13.16 Entire Agreement. This Agreement (and its exhibits) between Tacoma and the Tribe constitutes the complete and entire expression of agreement between the Parties and supersedes all prior and contemporaneous offers, promises, representations, negotiations, discussions, and communications, whether written or oral, which may have been made in connection with the subject matter of this Agreement. Any such representations or claims are hereby disclaimed. This Agreement may be signed in counterparts.

IN WITNESS WHEREOF, having read and intending to be bound by the provisions of this Agreement, the Parties have executed this Agreement as of the date first above written.

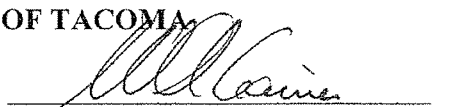
THE SKOKOMISH TRIBE

By:



Joseph Pavel, Chairperson
Skokomish Tribal Council

CITY OF TACOMA

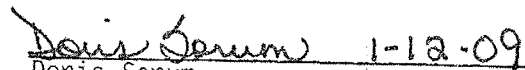
By:


William Gaines
Director/CEO Tacoma Public Utilities

By:


William Baarsma
Mayor

Attest:

 1-12-09
Doris Sorum
City Clerk

By:

Robert K. Biles

Robert Biles
Finance Director

Approved as to Form and Legality

By:

William Fosbre

William Fosbre
Chief Assistant City Attorney

EXHIBIT A-1

PARCEL 1:

INDIAN LOTS 1 AND 2, BEING THAT PORTION OF THE SOUTHWEST QUARTER LYING WESTERLY OF THE SKOKOMISH RIVER IN SECTION 6, TOWNSHIP 21 NORTH, RANGE 3 WEST, W.M., IN MASON COUNTY, WASHINGTON.

PARCEL 2:

INDIAN LOT 1, BEING THAT PORTION OF THE NORTHWEST QUARTER LYING NORTHWESTERLY OF THE SKOKOMISH RIVER IN SECTION 7, TOWNSHIP 21 NORTH, RANGE 3 WEST, W.M., IN MASON COUNTY, WASHINGTON.

PARCEL 3:

THOSE PORTIONS OF SECTION 1, TOWNSHIP 21 NORTH, RANGE 4 WEST, W.M., IN MASON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

THE SOUTHEAST QUARTER, EXCEPT THE EAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER; THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER; THE SOUTH ONE-HALF OF THE SOUTH ONE-HALF OF THE SOUTHWEST QUARTER; GOVERNMENT LOT 3 AND ALL TIDELANDS OF THE SECOND-CLASS FORMERLY OWNED BY THE STATE OF WASHINGTON SITUATE IN FRONT OF, ADJACENT TO OR ABUTTING UPON SAID GOVERNMENT LOT 3, WITH A FRONTAGE OF 12.50 LINEAL CHAINS, MORE OR LESS, MEASURED ALONG THE GOVERNMENT MEANDER LINE; GOVERNMENT LOT 4 AND ALL TIDELANDS OF THE SECOND-CLASS, FORMERLY OWNED BY THE STATE OF WASHINGTON, SITUATE IN FRONT OF, ADJACENT TO OR ABUTTING UPON SAID GOVERNMENT LOT 4, WITH A FRONTAGE OF 25.74 LINEAL CHAINS, MORE OR LESS, MEASURED ALONG THE GOVERNMENT MEANDER LINE.

PARCEL 4:

THOSE PORTIONS OF SECTION 12, TOWNSHIP 21 NORTH, RANGE 4 WEST, W.M., IN MASON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

INDIAN LOT 1, BEING THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER LYING NORTHERLY OF THE SKOKOMISH RIVER.

TRACT 1 OF INDIAN LOT 2 (BEING THE WEST ONE-HALF OF THE WEST ONE-HALF OF SAID LOT 2) TRACT 2 OF INDIAN LOT 2 (BEING THE EAST ONE-HALF OF THE WEST ONE-HALF OF SAID LOT 2) TRACT 3 OF INDIAN LOT 2 (BEING THE WEST ONE-HALF OF THE EAST ONE-HALF OF SAID LOT 2) INDIAN LOT 2 BEING THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER LYING NORTHERLY OF THE SKOKOMISH RIVER.

THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER; THE EAST ONE-HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER; THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER; BEING ALSO KNOWN AS AND DESCRIBED AS INDIAN LOTS 6, 7, AND 9.

EXHIBIT A-1

(CONTINUED)

ALL THAT PORTION OF A TRACT OF LAND IN GOVERNMENT LOT 5, KNOWN AS INDIAN LOT 11, WHICH LIES WEST OF A LINE DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 5; THENCE SOUTH 1.18 CHAINS; THENCE SOUTH 33° WEST 5.08 CHAINS; THENCE SOUTH 45° EAST 0.50 CHAINS; MORE OR LESS, TO THE MEANDER LINE OF THE SKOKOMISH RIVER.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED TRACT TOWIT:

A TRACT OF LAND SITUATE PARTLY IN INDIAN LOT 11 (BEING A PORTION OF GOVERNMENT LOT 5) AND PARTLY IN INDIAN LOT 9 (BEING THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER) PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF SAID INDIAN LOT 11, WITH THE WESTERLY LINE OF THE SKOKOMISH RIVER; RUNNING THENCE WEST, ALONG THE SOUTH LINE OF SAID INDIAN LOT 11, 390 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF SAID INDIAN LOT 11; THENCE NORTH, ALONG THE WEST LINES OF SAID INDIAN LOT 11 AND SAID INDIAN LOT 9, 1320 FEET, MORE OR LESS, TO THE NORTHWEST CORNER OF SAID INDIAN LOT 9; THENCE EAST, ALONG THE NORTH LINE OF SAID INDIAN LOT 9, 393.1 FEET; THENCE SOUTH, PARALLEL WITH THE WEST LINE OF SAID INDIAN LOT 9, 660 FEET, MORE OR LESS, TO THE SOUTH LINE OF INDIAN LOT 9; THENCE EAST, ALONG THE SOUTH LINE OF SAID INDIAN LOT 9, A DISTANCE OF 166.9 FEET; THENCE SOUTH PARALLEL WITH THE WEST LINE OF SAID INDIAN LOT 11, 231.87 FEET; THENCE SOUTH 33°, WEST A DISTANCE OF 151.67 FEET; THENCE SOUTH 45° EAST A DISTANCE OF 33 FEET, MORE OR LESS, TO THE WEST LINE OF SAID SKOKOMISH RIVER; THENCE SOUTH 21°45' WEST, ALONG THE WEST LINE OF SAID SKOKOMISH RIVER, A DISTANCE OF 298.9 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL 5:

INDIAN LOTS 1 AND 2, BEING A PORTION OF THE NORTHEAST QUARTER IN SECTION 2, TOWNSHIP 21 NORTH, RANGE 4 WEST, W.M., IN MASON COUNTY, WASHINGTON.

EXCEPTING THEREFROM ANY PORTION THEREOF THAT INCLUDES TIDELANDS.

PARCEL 6:

INDIAN LOT 21, BEING THAT PORTION OF THE SOUTHEAST QUARTER, LYING SOUTHWESTERLY OF HOOD CANAL IN SECTION 35, TOWNSHIP 22 NORTH, RANGE 4 WEST, W.M., IN MASON COUNTY, WASHINGTON.

EXCEPTING THEREFROM ANY PORTION THEREOF THAT INCLUDES TIDELANDS.

SUBJECT TO EASEMENTS, RESERVATIONS, RESTRICTIONS AND AGREEMENTS OF RECORD IN MASON COUNTY, WASHINGTON.

SAID PARCELS 1 THRU 6 BEING THOSE CERTAIN TRACTS CONVEYED TO THE CITY OF TACOMA, A MUNICIPAL CORPORATION BY STATUTORY WARRANTY DEEDS RECORDED JULY 2,

EXHIBIT A-1
(CONTINUED)

1992 UNDER AUDITOR FILE NOS. 547222 AND 547223, ALL RECORDS OF MASON COUNTY, WASHINGTON.

RESERVING AN EASEMENT FOR THE OPERATION AND MAINTENANCE OF POWER TRANSMISSION LINES AND APPURTENENT STRUCTURES, OVER, UNDER AND ACROSS THOSE PORTIONS OF SKOKOMISH INDIAN RESERVATION LOTS 1 AND 2 OF SECTION 2, TOWNSHIP 21 NORTH, RANGE 4 WEST, W.M. AND SKOKOMISH INDIAN RESERVATION LOT 21 OF SECTION 35, TOWNSHIP 22 NORTH, RANGE 4 WEST, W.M., PER APPROVED PLAT OF SAID RESERVATION IN THE SURVEYOR GENERAL'S OFFICE, OLYMPIA, WASHINGTON TERRITORY, DATED MAY 19, 1885, ALL IN MASON COUNTY, WASHINGTON LYING WITHIN A 100 FOOT WIDE STRIP OF LAND, 50 FEET OF EVEN WIDTH EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: COMMENCING AT THE MONUMENTED SOUTHEAST CORNER OF SAID RESERVATION LOT 1 OF SAID SECTION 2 AS SHOWN ON THAT CERTAIN SURVEY FOR TACOMA PUBLIC UTILITIES RECORDED IN VOL. 32 OF SURVEYS PAGES 50 THRU 58 UNDER AUDITOR'S FILE NO. 1869865, RECORDS OF MASON COUNTY, WASHINGTON; THENCE NORTH 01°05'04" EAST 828.21 FEET ALONG THE MONUMENTED EAST LINE OF SAID LOT 1 TO AN ALUMINUM PIPE MONUMENT AS SHOWN ON SAID SURVEY AND THE TRUE POINT OF BEGINNING OF THIS DESCRIBED CENTERLINE; THENCE NORTH 49°02'41" WEST 1451.11 FEET, MORE OR LESS, TO THE MONUMENTED WEST LINE OF SAID RESERVATION LOT 21 OF SAID SECTION 35 AND THE TERMINUS OF THIS DESCRIBED CENTERLINE; THE EASTERLY END OF SAID STRIP BEING THE EAST LINE OF SAID RESERVATION LOT 1 OF SAID SECTION 2 AND THE WESTERLY END OF SAID STRIP BEING THE WEST LINE OF SAID RESERVATION LOT 21 OF SAID SECTION 35. TOGETHER WITH THE RIGHT TO MANAGE VEGETATION WITHIN SAID 100 FOOT WIDE STRIP THAT INTERFERES WITH THE USE AND ENJOYMENT OF THE EASEMENT.

ALSO RESERVING AN EASEMENT FOR THE OPERATION AND MAINTENANCE OF POWER TRANSMISSION LINES AND APPURTENENT STRUCTURES, OVER, UNDER AND ACROSS THOSE PORTIONS OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER AND GOVERNMENT LOTS 1, 3 AND 4, ALL OF SECTION 1, TOWNSHIP 21 NORTH, RANGE 4 WEST, W.M. AND SKOKOMISH INDIAN RESERVATION LOT 1 OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 3 WEST, W.M., PER APPROVED PLAT OF SAID RESERVATION IN THE SURVEYOR GENERAL'S OFFICE, OLYMPIA, WASHINGTON TERRITORY, DATED MAY 19, 1885, TOGETHER WITH 2ND CLASS TIDELANDS SITUATE IN FRONT OF, ADJACENT TO OR ABUTTING THEREON, ALL IN MASON COUNTY, WASHINGTON LYING WITHIN A 100 FOOT WIDE STRIP OF LAND, 50 FEET OF EVEN WIDTH EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: COMMENCING AT THE MONUMENTED NORTHWEST CORNER OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 1 AS SHOWN ON THAT CERTAIN SURVEY FOR TACOMA PUBLIC UTILITIES RECORDED IN VOL. 32 OF SURVEYS PAGES 50 THRU 58 UNDER AUDITOR'S FILE NO. 1869865, RECORDS OF MASON COUNTY, WASHINGTON; THENCE SOUTH 00°20'34" WEST 257.38 FEET ALONG THE MONUMENTED WEST LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER TO AN ALUMINUM PIPE MONUMENT AS SHOWN ON SAID SURVEY AND THE TRUE POINT OF BEGINNING OF THIS DESCRIBED CENTERLINE; THENCE SOUTH 49°03'15" EAST 903.22 FEET TO AN IRON PIPE MONUMENT AS SHOWN ON SAID SURVEY; THENCE SOUTH 79°12'14" EAST 2559.88 FEET TO A POINT HEREINAFTER CALLED POINT "A"; THENCE CONTINUING SOUTH 79°12'14" EAST 774.14 FEET TO AN ALUMINUM PIPE MONUMENT ON THE LINE BETWEEN SAID SECTIONS 1 AND 6 AS SHOWN ON SAID SURVEY; THENCE CONTINUING SOUTH 79°12'14" EAST 346.78 FEET TO A POINT

EXHIBIT A-1

(CONTINUED)

HEREINAFTER CALLED POINT "B"; THENCE CONTINUING SOUTH 79°12'14" EAST 500 FEET, MORE OR LESS, TO THE EAST LINE OF SAID GOVERNMENT LOT 1 OF SAID SECTION 6 AND THE TERMINUS OF THIS DESCRIBED CENTERLINE; THE WESTERLY END OF SAID STRIP BEING THE WEST LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 1 AND THE EASTERLY END OF SAID STRIP BEING THE EAST LINE OF SAID GOVERNMENT LOT 1 OF SAID SECTION 6. TOGETHER WITH THE RIGHT TO MANAGE VEGETATION WITHIN SAID 100 FOOT WIDE STRIP THAT INTERFERES WITH THE USE AND ENJOYMENT OF THE EASEMENT.

ALSO RESERVING AN EASEMENT FOR THE CONSTRUCTION AND MAINTENANCE OF A TRANSMISSION TOWER ACCESS PAD OVER AND ACROSS THAT PORTION OF GOVERNMENT LOT 4 OF SECTION 1, TOWNSHIP 21 NORTH, RANGE 4 WEST, W.M., WITHIN THE SKOKOMISH INDIAN RESERVATION PER APPROVED PLAT OF SAID RESERVATION IN THE SURVEYOR GENERAL'S OFFICE, OLYMPIA, WASHINGTON TERRITORY, DATED MAY 19, 1885, IN MASON COUNTY, WASHINGTON, LYING WITHIN A 150 FOOT WIDE STRIP OF LAND, 75 FEET OF EVEN WIDTH EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: COMMENCING AT THE AFOREMENTIONED POINT "A"; THENCE SOUTH 10°47'56" WEST 62.50 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIBED CENTERLINE; THENCE NORTH 10°47'56" EAST 160.00 FEET TO THE TERMINUS OF THIS DESCRIBED CENTERLINE.

ALSO RESERVING AN EASEMENT FOR THE CONSTRUCTION AND MAINTENANCE OF A TRANSMISSION TOWER ACCESS PAD OVER AND ACROSS THAT PORTION OF SKOKOMISH INDIAN RESERVATION LOT 1 OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 3 WEST, W.M., PER APPROVED PLAT OF SAID RESERVATION IN THE SURVEYOR GENERAL'S OFFICE, OLYMPIA, WASHINGTON TERRITORY, DATED MAY 19, 1885, IN MASON COUNTY, WASHINGTON LYING WITHIN A 150 FOOT WIDE STRIP OF LAND, 75 FEET OF EVEN WIDTH EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: COMMENCING AT THE AFOREMENTIONED POINT "B"; THENCE SOUTH 10°47'56" WEST 62.50 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIBED CENTERLINE; THENCE NORTH 10°47'56" EAST 160.00 FEET TO THE TERMINUS OF THIS DESCRIBED CENTERLINE.

ALSO RESERVING AN EASEMENT FOR INGRESS AND EGRESS PURPOSES OVER AND ACROSS THOSE PORTIONS OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, ALL OF SECTION 1, TOWNSHIP 21 NORTH, RANGE 4 WEST, W.M., IN MASON COUNTY, WASHINGTON LYING WITHIN A 15 FOOT WIDE STRIP OF LAND, 7.5 FEET OF EVEN WIDTH EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: COMMENCING AT THE MONUMENTED SOUTHWEST CORNER OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1 AS SHOWN ON THAT CERTAIN SURVEY FOR TACOMA PUBLIC UTILITIES RECORDED IN VOL. 32 OF SURVEYS PAGES 50 THRU 58 UNDER AUDITOR'S FILE NO. 1869865, RECORDS OF MASON COUNTY, WASHINGTON; THENCE NORTH 89°04'32" WEST 2.34 FEET ALONG THE MONUMENTED SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1 TO THE CENTER OF AN EXISTING ROAD AND THE TRUE POINT OF BEGINNING OF THIS DESCRIBED CENTERLINE; THENCE ALONG THE CENTER OF SAID ROAD THE FOLLOWING TEN (10) COURSES: NORTH 00°24'52" EAST 237.90 FEET, NORTH 01°35'07" WEST 144.15 FEET, NORTH 00°07'28" WEST 215.36 FEET, NORTH 02°05'44" WEST 219.64 FEET, NORTH 02°28'32" EAST 117.03 FEET, NORTH 00°54'55" WEST 61.11 FEET, NORTH 02°32'30" EAST

EXHIBIT A-1
(CONTINUED)

127.02 FEET, NORTH 00°31'22" EAST 195.62 FEET, NORTH 03°03'21" EAST 145.58 FEET AND NORTH 01°31'25" EAST 364.89 FEET TO A POINT HEREINAFTER CALLED POINT "C"; THENCE CONTINUING ALONG THE EXISTING CENTER OF SAID ROAD THE FOLLOWING TWO (2) COURSES: NORTH 01°31'25" EAST 496.35 FEET AND NORTH 60°10'49" W 114.83 FEET TO A POINT WHICH BEARS SOUTH 16°13'47" WEST 289.05 FEET FROM THE MONUMENTED NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 1 AS SHOWN ON SAID SURVEY AND THE TERMINUS OF THIS DESCRIBED CENTERLINE.

ALSO RESERVING AN EASEMENT FOR INGRESS AND EGRESS PURPOSES OVER AND ACROSS THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 21 NORTH, RANGE 4 WEST, W.M., IN MASON COUNTY, WASHINGTON LYING WITHIN A 10 FOOT WIDE STRIP OF LAND, 5 FEET OF EVEN WIDTH EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: BEGINNING AT THE AFOREMENTIONED POINT "C"; THENCE NORTH 88°22'21" EAST 564.80 FEET TO THE TERMINUS OF THIS DESCRIBED CENTERLINE.

SAID EASEMENTS ARE BASED ON THE WASHINGTON COORDINATE SYSTEM SOUTH ZONE GRID (NAD 83 (1991)) HAVING A COMBINED SCALE FACTOR OF 1.000003915.

EXHIBIT A-2 (REVISED)

THOSE PORTIONS OF GOVERNMENT LOT 1 AND THE NORTHEAST QUARTER, ALL OF SECTION 19, THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER, THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, THE NORTHEAST QUARTER, THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER, THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER, THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER AND THE SOUTHWEST QUARTER, ALL OF SECTION 20, THE NORTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER, ALL OF SECTION 29, ALL IN TOWNSHIP 23 NORTH, RANGE 4 WEST, W.M., IN MASON COUNTY, WASHINGTON, ALL LYING ABOVE THE 742 FOOT CONTOUR LINE (CITY OF TACOMA CUSHMAN PROJECT DATUM). FOR REFERENCE PURPOSES OF THIS DESCRIPTION U.S.G.S. BENCHMARK "J-32 (1929)" IN THE TOP OF CUSHMAN DAM NO. 1 EQUALS ELEVATION 741.50 FEET.

EXCEPTING THEREFROM S.R. 119 (LAKE CUSHMAN ROAD) RIGHT-OF-WAY AS CONVEYED TO THE STATE OF WASHINGTON BY QUIT CLAIM DEED DATED JANUARY 25, 1994 AND RECORDED FEBRUARY 8, 1994 UNDER AUDITOR'S FILE NO. 581811, RECORDS OF MASON COUNTY, WASHINGTON.

ALSO EXCEPTING THEREFROM THAT PORTION WITHIN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 29 LYING WESTERLY OF SAID S.R. 119 RIGHT-OF-WAY AND SOUTHERLY OF THE NORTHERLY LINE OF THE LAKE CUSHMAN COMPANY COMMUNITY PARK TRACT KNOWN AS PARCEL NO. 49 OF EXHIBIT A OF THAT CERTAIN AMMENDMENT TO LEASE BETWEEN LAKE CUSHMAN COMPANY AND THE CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION DATED DECEMBER 4, 1990 AND RECORDED DECEMBER 28, 1990 UNDER AUDITOR'S FILE NO. 520415, RECORDS OF MASON COUNTY, WASHINGTON, SAID NORTHERLY LINE DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF SAID S.R. 119 (LAKE CUSHMAN ROAD) HAVING WASHINGTON STATE SOUTH ZONE GRID COORDINATES OF $X = 1,328,629.76$ AND $Y = 787,242.34$ (NAD 27); THENCE SOUTHWESTERLY PERPENDICULAR TO SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF S.R. 119 TO THE AFOREMENTIONED 742 FOOT CONTOUR LINE (CITY OF TACOMA CUSHMAN PROJECT DATUM) AND THE TERMINUS OF THIS DESCRIBED LINE. THIS DESCRIPTION IS BASED ON THE WASHINGTON COORDINATE SYSTEM SOUTH ZONE GRID (NAD 27) PER SURVEY BY R. RUSKIN FISHER FOR THE PLAT OF LAKE CUSHMAN NO. 1 RECORDED IN VOLUME 6 OF PLATS PAGES 60 THRU 63, RECORDS OF MASON COUNTY, WASHINGTON.

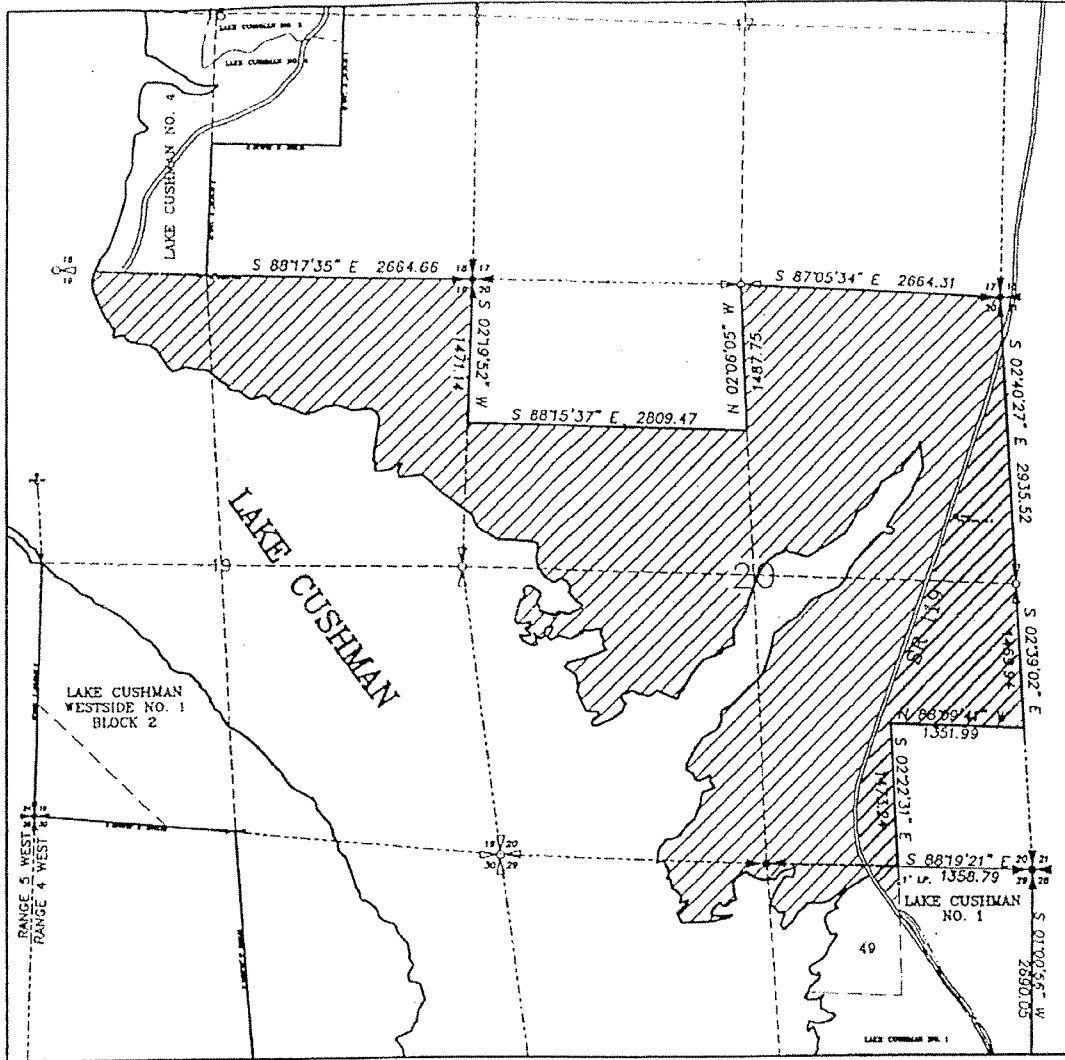
ALSO EXCEPTING THEREFROM ANY PORTIONS THEREOF WITHIN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 29, IF ANY, WHICH SAID LAKE CUSHMAN COMPANY HAS GRANTED A LEASEHOLD ESTATE INTEREST, WHETHER RECORDED WITH THE MASON COUNTY AUDITOR OR NOT, KNOWN AS PARCEL NO. 50 OF EXHIBIT A OF SAID AMMENDMENT TO LEASE BETWEEN LAKE CUSHMAN COMPANY AND THE CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION RECORDED UNDER AUDITOR'S FILE NO. 520415, RECORDS OF MASON COUNTY, WASHINGTON.

ALSO EXCEPTING THEREFROM THAT PORTION WITHIN GOVERNMENT LOT 1 AND THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER, ALL OF SAID SECTION 19 LYING WITHIN THE PLAT OF LAKE CUSHMAN NO. 4 AS RECORDED IN VOLUME 6 OF PLATS, PAGES 159 THRU 163, RECORDS OF MASON COUNTY, WASHINGTON, IF ANY.

SUBJECT TO EASEMENTS, RESERVATIONS, RESTRICTIONS AND AGREEMENTS OF RECORD IN
MASON COUNTY, WASHINGTON.

City of Tacoma - Department of Public Utilities

Portions of Sections 19, 20 and 29,
all in Township 23 North, Range 4 West, W.M.,
in Mason County, Washington.



NOT TO SCALE

This illustration is not to scale. It is provided as a customer convenience to assist in identifying significant characteristics of the installation. No liability is assumed by reason of reliance hereon.

EXHIBIT B-2

EXHIBIT A-3

THOSE PORTIONS OF SKOKOMISH INDIAN RESERVATION TRACTS 1 AND 2 OF GOVERNMENT LOT 2 OF SECTION 26, TOWNSHIP 22 NORTH, RANGE 4 WEST, W.M. PER APPROVED SUPPLEMENTAL DIAGRAM OF SAID RESERVATION IN THE SURVEYOR GENERAL'S OFFICE, OLYMPIA, WASHINGTON, DATED AUGUST 14, 1906, ALL IN MASON COUNTY, WASHINGTON DESCRIBED AS FOLLOWS: COMMENCING AT THE MONUMENTED WEST QUARTER CORNER OF SAID SECTION 26 AS SHOWN ON THAT CERTAIN SURVEY FOR TACOMA PUBLIC UTILITIES RECORDED IN VOL. 27 OF SURVEYS PAGES 196 THRU 202 UNDER AUDITOR'S FILE NO. 1759237, RECORDS OF MASON COUNTY, WASHINGTON; THENCE NORTH 01°55'47" EAST 460.30 FEET ALONG THE MONUMENTED WEST LINE OF SAID GOVERNMENT LOT 2 TO AN IRON PIPE MONUMENT AS SHOWN ON SAID SURVEY; THENCE SOUTH 87°46'14" EAST 1058.52 FEET TO AN IRON PIPE MONUMENT AS SHOWN ON SAID SURVEY; THENCE SOUTH 87°55'24" EAST 308.39 FEET TO AN ALUMINUM PIPE MONUMENT ON THE EASTERLY RIGHT-OF-WAY LINE OF S.R. 101 AS SHOWN ON SAID SURVEY; THENCE NORTH 02°09'25" EAST 668.58 FEET ALONG SAID EASTERLY RIGHT-OF-WAY LINE TO THE TRUE POINT OF BEGINNING OF THIS DESCRIBED TRACT; THENCE SOUTH 02°09'25" WEST 497.56 FEET; THENCE SOUTH 87°55'24" EAST 142.87 FEET; THENCE NORTH 17°44'06" EAST 81.98 FEET; THENCE SOUTH 72°15'54" EAST 100 FEET, MORE OR LESS, TO THE ORDINARY HIGH TIDE LINE OF HOOD CANAL BEING THE EASTERLY LINE OF SAID GOVERNMENT LOT 2; THENCE NORTHERLY ALONG SAID LINE OF ORDINARY HIGH TIDE TO A POINT WHICH BEARS SOUTH 86°15'13" EAST FROM THE TRUE POINT OF BEGINNING; THENCE NORTH 86°15'13" WEST 190 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING.

RESERVING AN EASEMENT FOR INGRESS, EGRESS, PARKING AND BOAT LAUNCH PURPOSES OVER AND ACROSS THE ABOVE DESCRIBED TRACT.

SUBJECT TO EASEMENTS, RESERVATIONS, RESTRICTIONS AND AGREEMENTS OF RECORD IN MASON COUNTY, WASHINGTON.

THIS DESCRIPTION IS BASED ON THE WASHINGTON COORDINATE SYSTEM SOUTH ZONE GRID [NAD 83 (1991)] HAVING A COMBINED SCALE FACTOR OF 1.00000025.

EXHIBIT C-1

PARCEL 1

THAT PORTION OF TRACT 1-B OF GOVERNMENT LOT 3, SECTION 26, TOWNSHIP 22 NORTH, RANGE 4 WEST, W.M., IN MASON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 5 CHAINS SOUTH BY GOVERNMENT MEASURE AND 16 CHAINS EAST OF THE QUARTER SECTION CORNER BETWEEN SECTIONS 26 AND 27 OF SAID TOWNSHIP AND RANGE; THENCE EAST 346 FEET, MORE OR LESS, TO THE WEST LINE OF THE OLYMPIC HIGHWAY AS NOW LOCATED; THENCE ALONG SAID WEST LINE, SOUTH 12°09' EAST 337 FEET, MORE OR LESS, TO THE SOUTH LINE OF SAID TRACT 1-B; THENCE WEST 414 FEET; THENCE NORTH 5 CHAINS BY GOVERNMENT MEASURE TO THE POINT OF BEGINNING. EXCEPTING THEREFROM THAT PORTION LYING EASTERLY OF THE WESTERLY RIGHT-OF-WAY LINE OF S.R. 101 AS CONVEYED TO THE STATE OF WASHINGTON BY RIGHT-OF-WAY DEED DATED JULY 16, 1929 AND RECORDED AUGUST 9, 1929 UNDER AUDITOR'S FILE NO. 60309, RECORDS OF MASON COUNTY, WASHINGTON.

PARCEL 2

THAT PORTION OF SECTION 35, TOWNSHIP 22 NORTH, RANGE 4 WEST, W.M., IN MASON COUNTY, WASHINGTON, STYLED TRACT 1 OF ORIGINAL ALLOTMENT NO. 31-B DESCRIBED AS FOLLOWS: BEGINNING ON THE NORTH LINE OF SAID SECTION 35 AT A POINT 15 CHAINS DISTANT EAST OF THE NORTHWEST CORNER OF SAID SECTION; THENCE EAST 634 FEET TO THE MEANDER CORNER OF THE SHORE OF HOOD CANAL BETWEEN FRACTIONAL SECTIONS 26 AND 35 OF SAID TOWNSHIP AND RANGE; THENCE SOUTH 17° WEST 496.5 FEET TO THE MEANDER CORNER SET FOR THE FORMER NORTHEAST CORNER OF THE SKOKOMISH INDIAN RESERVATION; THENCE WEST ALONG THE SOUTH LINE OF SAID TRACT 462 FEET, MORE OR LESS, TO A POINT 12.60 CHAINS EAST OF A CERTAIN POST MARKING A CORNER ON THE ORIGINAL SURVEY OF THE SKOKOMISH INDIAN RESERVATION; THENCE NORTH 7.20 CHAINS BY GOVERNMENT MEASURE TO THE POINT OF BEGINNING. EXCEPTING THEREFROM THAT PORTION LYING WITHIN THE RIGHT-OF-WAY LINE OF S.R. 101 AS CONVEYED TO THE STATE OF WASHINGTON BY RIGHT-OF-WAY DEED DATED JULY 16, 1929 AND RECORDED AUGUST 9, 1929 UNDER AUDITOR'S FILE NO. 60309, RECORDS OF MASON COUNTY, WASHINGTON.

SAID PARCELS 1 AND 2 BEING THOSE PORTIONS OF PARCELS "XLI" AND "XLII" ACQUIRED BY THE CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION BY JUDGMENT NO. 2 OF MASON COUNTY SUPERIOR COURT CAUSE NO. 1651 DATED OCTOBER 8, 1921, RECORDS OF MASON COUNTY, WASHINGTON NOT INCLUDED WITHIN THE RIGHT-OF-WAY FOR S.R. 101.

ALL TOGETHER WITH AND SUBJECT TO EASEMENTS, RESERVATIONS, RESTRICTIONS AND AGREEMENTS OF RECORD, IN MASON COUNTY, WASHINGTON.

