

RESOLUTION NO. 574

BE IT RESOLVED by the Board of Mason County Commissioners that MASON COUNTY enter into the proposed attached Agreement with TACOMA CITY LIGHT, DEPARTMENT OF PUBLIC UTILITIES, as the same has been proposed through negotiation between the CITY and the COUNTY, a copy of which is attached to this Resolution.

This Agreement, dated the 12th day of January, 1976, will superceed and take the place of the Agreement entered into between the two on May 21, 1951.

ADOPTED this 12th day of January, 1976.

BOARD OF COUNTY COMMISSIONERS  
OF MASON COUNTY, WASHINGTON.

*William Smith*  
Chairman

*William Hunter*

*John Parickman*

ATTEST:

*Ruth E. Boyesen*  
Auditor & Clerk of the Board.

cc: Cmmrs.  
✓ Auditor  
Prosecutor  
Engineer  
City of Tacoma

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A G R E E M E N T

THIS AGREEMENT, made and entered into this 12th day of January, 1975, by and between CITY OF TACOMA, a municipal corporation, for and on behalf of its Department of Public Utilities, Light Division, hereinafter referred to as "City", and MASON COUNTY, a political subdivision of the State of Washington, hereinafter referred to as "County",

WITNESSETH:

WHEREAS, the City owns and operates a hydroelectric project in Mason County, Washington, commonly known as the Cushman Project, in accordance with a license issued to the City by the Federal Power Commission, said Project located on the Skokomish River, in Mason County, Washington, and

WHEREAS, the City and the County recognize and find that by reason of the construction of said hydroelectric project and the acquisition of project land by the City within the County, a loss of revenue and an extra financial burden has been placed on the County in providing for the public peace, health, safety, welfare and added road maintenance in said County requiring the financial support of the City within the contemplation of R.C.W. 35. 21.420, and

WHEREAS, pursuant to said law, on the 10th day of May, 1951, the City and the County entered into an agreement to provide for said purposes and liabilities, said agreement being thereafter amended on May 18th 1953 only as to termination notice, and the City has paid monies to the County under such

1 agreement, to the date of this agreement, and

2           WHEREAS, changes in the economy and in the Project  
3 have occurred, which changes leave provisions in the 1951  
4 agreement subject to speculation and resultant disagreement  
5 between the parties, and

6           WHEREAS, the City and the County, wishing to resolve  
7 these areas of disagreement, have made further studies to  
8 better determine the amounts that hereafter should be paid to  
9 the County by the City within the meaning of the statute, and

10           WHEREAS, the City and the County have found and  
11 agreed upon said revised amounts, and it is in the best interest  
12 of the public to supersede the 1951 agreement and to restate in  
13 this agreement the rights and obligations of the parties within  
14 the contemplation of said statute; Now, therefore,

15           The parties hereto, for and in consideration of the  
16 mutual covenants and agreements herein contained, HEREBY AGREE  
17 as follows:

18           1. The City shall pay to the County the sum of  
19 Forty Thousand Dollars (\$40,000.00) per year for the period  
20 1975 to 1980, and Forty-five Thousand Dollars (\$45,000.00) per  
21 year for the period 1980 to 1985, and such annual sums there-  
22 after as adjusted pursuant to Paragraph 2 following, so long as  
23 the City engages in the ownership and operation of the Project.  
24 Said payments shall be payable monthly in an amount equal to  
25 one-twelfth (1/12) of the annual payment, and said payments to  
26 commence upon the effective date of this agreement.

27           2. This agreement shall be subject to renegotiation  
28 in 1985 and every ten (10) years thereafter so long as this

1 agreement shall remain in effect. It is understood and agreed  
2 that the primary negotiation factor shall be the increase or  
3 decrease in the consumer price index applicable to the Shelton,  
4 Washington, area as the same relates to the consumer price  
5 index as determined for the previous negotiation. The  
6 financial obligation of the City under this agreement shall  
7 not, however, be increased or decreased more than ten per cent  
8 (10%) as a result of any one renegotiation proceeding.

9           3. It is the further understanding and agreement of  
10 the parties that if at any time while this agreement is in  
11 effect, the City shall be required by legislative action of the  
12 State of Washington to pay any taxes, licenses, or other fee  
13 payments, as owner or operator of the Cushman Project, which  
14 payments are not now required, then the obligations and  
15 payments under this agreement shall automatically be reduced by  
16 an amount equal to the taxes, licenses, or other fees or  
17 payments, which shall be paid to or distributed to the County.

18           4. Notwithstanding any other provisions hereof, this  
19 agreement shall remain in full force and effect only so long as  
20 the City shall own and actually operate the Cushman Project, as  
21 a licensee of the Federal Power Commission, including any  
22 renewals, modifications, or revisions thereto. The terms and  
23 conditions hereof, however, shall be binding upon any person,  
24 company, or public agency to which the City may assign its said  
25 license.

26           5. In the event of earthquake, flood, fire, war, or  
27 act of God, governmental or judicial authority, or other major  
28 breakdown beyond the control of the City, resulting in a

1 condition of such serious damage to the Cushman Project that  
2 the ability of the project to produce power is materially  
3 reduced, the annual payments provided for herein shall be  
4 reduced in the ratio that the reduced capacity of the project  
5 bears to the average annual production of the project for the  
6 year in question; PROVIDED, HOWEVER, that the annual payments  
7 as set forth in Paragraph 1 shall resume in full upon the  
8 completion of repairs or the resumption of material capacity.  
9 In the event the City shall claim a reduction in payments by  
10 reason of this paragraph, it shall notify the County within  
11 fifteen (15) days of the occurrence, and shall use due  
12 diligence to repair the damages within a reasonable time.

13           6. All renegotiations provided in this agreement  
14 shall be conducted in accordance with the procedures provided  
15 by R.C.W. 35.21.420, or as the same may be amended.

16           7. It is understood and agreed that this new  
17 agreement is made in satisfaction of all real or potential  
18 retroactive R.C.W. 35.21.420 liabilities of one party against  
19 the other, and each party expressly waives as against the  
20 other party to this agreement, any past claims arising out of  
21 the aforementioned statutory liabilities or arising out of  
22 the 1951 agreement.

23           8. This agreement shall take effect as of the 1st  
24 day of January, 1975. On and upon such effective date and the  
25 making of the payments provided herein the agreement executed  
26 between the parties on the 10th day of May, 1951, and all  
27 obligations thereunder shall cease and terminate and shall be  
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1 superseded by this agreement.

2 IN WITNESS THEREOF, the parties hereto have executed  
3 this agreement the day and year first above written.

4 CITY OF TACOMA

5 By John Johnson  
Mayor

6 COUNTERSIGNED:

7 B. Nittelstaedt  
Director of Finance

8 Attest:

9 [Signature]  
10 City Clerk

11 Approved:

12 [Signature]  
Director of Utilities

13 Approved as to form & legality:

14 Paul J. Holan  
15 Deputy City Attorney

16 BOARD OF COUNTY COMMISSIONERS  
Mason County, Washington

17 Martin Smith  
18 Chairman

19 William O. Hunter  
Member

20 John Barckman  
21 Member

22 Attest:

23 Ruth E. Boyer  
Clerk of the Board

24 Approved as to form and legality:

25 Byron E. McClanahan  
26 Mason County Prosecuting Attorney