

MOTION NO. **9115**

A MOTION authorizing King County to enter into the "Moss Lake Contribution Agreement" between the City of Seattle, City Light Department and King County.

WHEREAS, the city of Seattle, City Light Department, and the King County parks division have voluntarily consented to enter into the "Moss Lake Contribution Agreement", and

WHEREAS, this agreement provides for a \$220,000 contribution for the development of a Moss Lake master plan and the development, operation and maintenance of initial access and interpretive facilities, more fully described in Section 1 of the "Moss Lake Contribution Agreement" and known as "Phase 1 Developments", and

WHEREAS, this development will contribute to the preservation of Moss Lake and surrounding wetlands in their natural state, while providing interpretive and educational facilities for nature study and wildlife observation, and

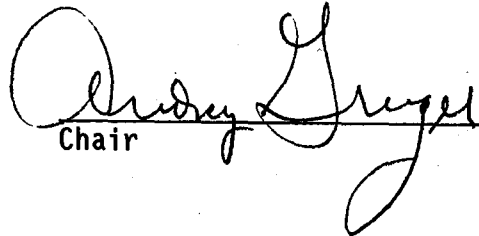
WHEREAS, these funds have been appropriated in Ordinance No. 10642 adopting the 1993 annual budget;

NOW, THEREFORE BE IT MOVED by the Council of King County:


A. The county executive is directed to enter into the "Moss Lake Contribution Agreement".

PASSED this 7th day of September 1993

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Chair

ATTEST:


Clerk of the Council

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MOSS LAKE CONTRIBUTION AGREEMENT

between

THE CITY OF SEATTLE, CITY LIGHT DEPARTMENT

AND

KING COUNTY, WASHINGTON, PARKS DIVISION

THIS MOSS LAKE CONTRIBUTION AGREEMENT (the "Agreement") is made and entered into by and between The City of Seattle, City Light Department ("City") or "City Light") and the King County, Washington, Parks Division ("County").

WITNESSETH:

WHEREAS, the development of a masterplan and the development, operation and maintenance of initial access and interpretive facilities, and more fully described in Section 1 hereof (the masterplan and facilities are referred to collectively as the "Phase I Developments"), for the County's planned Moss Lake recreation area, will contribute to the preservation of Moss Lake and surrounding wetlands in their natural state, while providing interpretive and educational facilities for nature study and wildlife observation; and

WHEREAS, the license issued by the United States Federal Energy Regulatory Commission ("FERC") to the City for its Tolt River South Fork Project requires the City to construct, maintain and operate, or arrange for the construction, maintenance and operation of, recreation facilities in the area of the licensed project; and

WHEREAS, in fulfillment of the Tolt River South Fork Project FERC license requirements, the City agrees to contribute a maximum of \$220,000 in 1991 dollars to the County for the Phase I Developments; and

WHEREAS, it is mutually advantageous to the parties herein that the work required for the development, operation and maintenance of the Phase I Developments be accomplished; and

WHEREAS, it also is mutually advantageous to the parties herein that the work required for the development, operation and

maintenance of the Phase I Developments shall be performed by and under the supervision of the County.

NOW, THEREFORE, in consideration of the above premises, the parties hereto agree as follows:

1. The Phase I Developments. The Phase I Developments consist of (i) development of a masterplan containing the following elements: a physical and biological site analysis, a program analysis with masterplan goals and programs for achieving these goals, an initial recreation facility development analysis and a public involvement process (the "Masterplan") and (ii) development, operation and maintenance of site access (including parking facilities) and interpretive facilities (e.g., trails, viewing platforms) (the "Facilities") that maximize education capabilities of the Moss Lake site and minimize impact on the existing ecosystem. The Phase I Developments shall not be materially modified except in accordance with Section 4 hereof.

The County agrees to begin the Phase I Developments no later than January 1, 1994 and to complete construction no later than July 31, 1997; provided, that such schedule may be modified with the written approval of the city in accordance with Section 4 hereof.

2. City Responsibilities. In order to complete the Phase I Developments as contemplated herein, the City shall:

A. Deliver to the County a maximum of Two Hundred Twenty Thousand Dollars (\$220,000) in 1991 dollars, to be used for the Phase I Developments (One Hundred Twenty Thousand Dollars (\$120,000) in 1991 dollars for the Masterplan and One Hundred Thousand Dollars (\$100,000) in 1991 dollars for the Facilities), each delivery of funds to be made within 60 days after a written request from the County; provided, that each such request shall be made no more than 90 days prior to the beginning of work on the Masterplan or the Facilities, as appropriate, and provided further, that all such funds shall be delivered after January 1, 1993.

B. File with FERC the specific plans for the Phase I Developments delivered to City Light by the County in accordance with Section 3.E hereof;

C. Communicate to the County any comments of FERC on said specific development plans;

D. File with FERC the "as built" drawings of the Phase I Developments delivered to City Light by the County in accordance with Section 3.F. hereof.

3. County Responsibilities. In order to complete the Phase I Developments as contemplated herein, the County shall:

A. In accordance with the schedule set forth in Section 1 hereof, develop the Masterplan and develop, operate, and maintain until July 20, 2019, the Facilities identified in Section 1 hereof as part of the Phase I Developments, subject to the provisions of Section 4 hereof, whether or not the cost of the Phase I Developments exceeds the City's contribution;

B. Use the funds delivered to the County by the City only for the Phase I Developments, subject to the provisions of Section 4 hereof;

C. Report in writing to City Light semiannually in each year until construction of the Phase I Developments is completed, on the progress of Phase I Developments;

D. Provide to City Light semiannually in each year until construction of the Phase I Developments is completed, a written accounting of expenditures for Phase I Developments;

E. Provide to City Light, at least 120 days prior to the start of ground disturbing activities for the Facilities, but not later than December 31, 1996, whichever comes first, specific Facilities site plans, including a detailed description of the Facilities (with maps and drawings of same), a description of the site's environmental resources and the potential impact of the Facilities on those resources, and written comments on the Facilities from the U.S. Fish and Wildlife Service, the State of Washington Department of Wildlife, and the State of Washington Historic Preservation Officer; provided, that if such comments are not received within 30 days of the County's written request to such agencies, a copy of the applicable letter of request shall be included in lieu of the comments; and

F. Provide to City Light, no later than 60 days after completion of construction of the Facilities, but not later than September 30, 1997, whichever comes first, "as built" drawings showing the type and location of completed Facilities, the boundary and any nearby features.

4. Modification of Phase I Developments. The parties hereto understand and agree that neither the Phase I Developments nor the time frame for their construction, as set forth herein, shall be materially modified or canceled without the written approval of the City, which approval is contingent upon the written approval of FERC. If circumstances require material modification or cancellation, the County (i) will meet with City Light to mutually agree on another recreation improvement project (the "Substitute Project") and (ii) will cooperate with the City

to submit a joint request to FERC for approval of the Substitute Project.

In the event of selection by the parties and approval by FERC of a Substitute Project, all references herein to "Phase I Developments," "Masterplan" or "Facilities" shall mean "Substitute Project". In particular, the parties agree that selection of a Substitute Project shall not increase the City's monetary contribution beyond the maximum amount stated in Section 2 hereof.

The parties further understand and agree that FERC may require modifications to the specific plans for Phase I Developments identified in Section 3.E. hereof. The County agrees to use its best efforts to implement such modifications.

5. Rights and Remedies. In the event of a violation of any provision hereof, the City or the County may initiate a proceeding in equity for specific performance, it being agreed that there is not adequate remedy at law for such violation.

Rights under this Agreement are cumulative; the failure to exercise on any occasion any right shall not operate to forfeit such right on another occasion. The use of one remedy shall not be taken to exclude or waive the right to use another.

6. Indemnification.

A. The County shall defend, indemnify and hold the City harmless from any and all losses, claims, actions, damages, and expenses including attorneys' fees and expenses, arising out of or resulting from the County's negligent acts or omissions in the performance of its obligations under this Agreement. Notwithstanding any other provision of this section, the County shall defend, indemnify and hold the City harmless from any and all actions brought by FERC or its successor against the County, the City or both, which actions result from the County's failure to fulfill its obligations under this Agreement.

B. The County's obligation to defend, indemnify and hold the City harmless shall not extend to injuries, sickness, death or damages caused by or resulting from the sole negligence of the City.

C. The County's obligation to defend, indemnify and hold the City harmless for injuries, sickness, death or damages caused by or resulting from the concurrent negligence of the City and the County shall apply only to the extent of the County's negligence.

7. Notices and Deliverable Materials. All notices and other material to be delivered hereunder shall be in writing and shall be delivered or mailed to the following addresses:

If to City: Director, Environment, Health and Safety
Seattle City Light
1015 Third Avenue
Seattle, WA 98104

If to the County: Manager
King County Parks Division
2040 84th S.E.
Mercer Island, WA 98040

or such other addresses as either party may, from time to time, designate in writing.

8. Term of Agreement; Termination. This Agreement shall be in full force and effect from the date of execution by both parties hereto until July 20, 2019; provided, that the City's right to indemnification under Section 6 shall survive the termination of this Agreement.

If at any time prior to the later of January 1, 1993 or the City's receipt of the County's written request for funds for the Facilities (as described in Section 2.A), the City, in its sole discretion, determines not to construct its Tolt River South Fork Project, the City shall notify the County in writing. Upon posting of such notice, this Agreement and all remaining obligations hereunder shall terminate. Any funds delivered by the City to the County prior to posting such notice shall be retained by the County.

9. Contractual Relationship. This Agreement does not constitute the City as the agent or legal representative of the County for any purpose whatsoever. The City is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the County or to bind the County in any manner or thing whatsoever, except as expressly provided herein.

This Agreement does not constitute the County as the agent or legal representative of the City for any purpose whatsoever. The County is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever, except as expressly provided herein.

10. Amendments. No modification or amendment of the provisions hereof shall be effective unless in writing and signed by the Superintendent of City Light and by an authorized

representative of the County. The parties hereto expressly reserve the right to modify this Agreement, from time to time, by mutual agreement.

11. Binding Effect. The provisions, covenants and conditions in this Agreement apply to bind the parties, their legal heirs, representatives, successors, and assigns.

12. Applicable Law and Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington and the venue of any action brought hereunder shall be in the Superior Court for King County.

13. Representations. The parties each represent and warrant that they have full power and actual authority to enter into this Agreement and to carry out all actions required of them by this Agreement. All persons executing this Agreement in representative capacities hereby represent and warrant that they have full power and authority to bind their respective governmental entities.

14. Invalidity of Particular Provisions. A judicial determination that any term, provision, condition, or other portion of this Agreement, or its application, is inoperative, invalid, or unenforceable shall not affect the remaining terms, provisions, conditions, or other portions of this Agreement, nor shall such a determination affect the application of such term, provision, condition, or portion to persons or in circumstances other than those directly involved in the determination in which it is held to be inoperative, invalid, or unenforceable, and as to such other persons or in such other circumstances it shall continue in full force and effect.

15. No Waiver. No waiver of full performance by either party shall be construed, or operate, as a waiver of any subsequent default or breach of any of the terms, covenants or conditions of this Agreement. The payment specified in Section 2 hereof by the City to the County shall not be deemed a waiver of any right or the acceptance of defective performance.

16. Entire Agreement. This Agreement constitutes all of the covenants, promises, agreements, and conditions, either oral or written, between the parties. The terms and conditions of this Agreement supersede terms, obligations and conditions of any existing or prior agreement between the parties regarding the subject matter of this Agreement.

17. Strict Compliance Required. The parties agree that strict compliance with the terms of this Agreement, including the schedule for completion of the Phase I Developments, is essential. Deviation from any of the terms contained in this

Agreement must be formally authorized in writing by the Superintendent of City Light in accordance with Section 4 hereof.

18. Captions. The titles of sections are for convenience only and do not define or limit the contents.

19. Execution of Counterparts. This Agreement may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute but one instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement by having their representatives affix their signatures below.

THE CITY OF SEATTLE
CITY LIGHT DEPARTMENT

KING COUNTY, WASHINGTON
PARKS DIVISION

By: _____
ROBERTA PALM BRADLEY
Superintendent

By: _____
TIM HILL
King County Executive

Date: _____

Date: _____

MOSS 02/05/93