

RESOURCE ENHANCEMENT AGREEMENT

by

and between

PUYALLUP TRIBE OF INDIANS

and

PUGET SOUND ENERGY, INC.

March 27, 1997

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RESOURCE ENHANCEMENT AGREEMENT

This Resource Enhancement Agreement ("REA") is made by and between the PUYALLUP TRIBE OF INDIANS (the "Tribe") and PUGET SOUND ENERGY, INC., a Washington corporation ("Puget"). The Tribe and Puget are sometimes collectively referred to hereinafter as the "Parties." This REA is made with reference to the following facts:

RECITALS

A. Over a period of several years, the Tribe has asserted various claims against Puget relating to Puget's Electron Hydroelectric Project (the "Project"). These claims have been broadly stated by the Tribe, with reference to various federal, state and local laws (including, but not limited to, claims allegedly arising under the Treaty of Medicine Creek). The Parties desire to settle these claims.

B. The Parties have, since March of 1996, been actively engaged in negotiations regarding the Project and certain fishery enhancements in and about the upper reaches of the Puyallup River. On November 25, 1996, the Parties directed their legal counsel to execute an Agreement in Principle (as amended, the "AIP") encompassing a framework of principles that appropriately balanced the benefits of fishery enhancements and the benefits of hydroelectric generation.

C. This REA now effects settlement of the aforementioned claims and incorporates the principles set forth in the AIP. To this end, this REA represents a historic achievement of which both the Tribe and Puget are proud.

AGREEMENT

In consideration for mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to use best efforts to cooperatively implement this REA to accomplish the goals and objectives referenced above.

1. Definitions

In addition to the definitions set forth in the Recitals, the following capitalized terms shall have the following meanings for purposes of the REA:

1.1 "Annual O & M Contribution" is a collective reference to each Annual O & M Contribution identified below in subparagraphs 3.4, 4.4, 5.1.2.1 and (if required) 5.2.2.

1.2 "Banked Instream Flow" means the net accumulated instream flow determined in accordance with subparagraph 2.2 below, and available for use by the Tribe in accordance with subparagraph 2.3 below.

1.3 "Construction Access" means reasonable and sufficient access for purposes of transporting personnel and materials to the proposed site of the Fish Ladder.

1.4 "Construction Contract Documents" means the construction contract documents attached to and by this reference incorporated in this REA as Exhibit A.

1.5 "Downstream T & H" means downstream fish passage trap and haul and associated facilities more particularly described in the preliminary design therefor, attached to and incorporated in this REA as Exhibit B.

1.6 "Effective Date" means the date following the Parties' execution of this REA, upon which the Tribe notifies Puget in writing of the occurrence of any one of the following: (i) approval of the Resolution by the Bureau of Indian Affairs pursuant to Article VI, Section 2, of the Constitution and Bylaws of the Puyallup Tribe of the State of Washington; (ii) approval of the REA by the Secretary of the Interior and the Bureau of Indian Affairs pursuant to 25 U.S.C. § 81; or (iii) receipt by the Tribe of written notification from the Secretary of the Interior and the Bureau of Indian Affairs that approval is not required under subsections (i) and (ii) of this subparagraph 1.6.

1.7 "Fish Ladder" means the fish ladder and associated facilities more particularly described in the preliminary design therefor, attached to and incorporated by this reference in this REA as Exhibit C.

1.8 "Fishery Enhancements" is a collective reference to any one or more of the measures contemplated by this REA to enhance the fishery resources in and about the upper reaches of the Puyallup River. The term includes, without limitation, the Downstream T & H, the Fish Ladder, the Upstream T & H, the Minimum Instream Flow, the Flow Monitoring Plan, the Banked Instream Flow, the Rearing Ponds and the Annual O & M Contribution.

1.9 "Flow Monitoring Plan" means the flow monitoring plan more particularly described in the plan attached to and incorporated by this reference in this REA as Exhibit D.

1.10 "Force Majeure" means events or causes that are not reasonably within the control or contemplation of the Party whose ability to perform under this REA is delayed by the events or causes, including, without limitation and by way of example only: landslides, lightning, forest fires, storms, floods, freezing, drought, earthquakes, civil disturbances, strikes, or other disturbances associated with labor relations, acts of the

public enemy, wars, public riots, breakage, explosion, accident to machinery or equipment (reasonably related to the delayed performance), government restraint (other than matters within the purview of subparagraph 9.5 below) or other causes outside of the reasonable control or contemplation of a Party. For purposes of this definition, action or inaction by the Tribe shall not be deemed or construed to be a "governmental restraint."

1.11 "Funding Date" means June 1 of each year during the Term.

1.12 "Joint Technical Committee" or "JTC" shall mean a committee of not less than four individuals nor more than six, comprised of two individuals with technical qualifications or practical experience related to either fisheries biology or hydrology (one appointed by the Tribe and one appointed by Puget), and either two or four additional individuals with an equal number appointed by the Tribe and by Puget). The JTC may invite such other persons to meetings of the JTC as the JTC deems appropriate to provide information and assistance to the JTC. The JTC shall meet not less than monthly during the first six (6) months of the Term and not less than quarterly thereafter based upon a schedule and in accordance with such proceeding as the JTC may establish. The first meeting of the JTC shall take place within ten (10) days of the Effective Date.

1.13 "Minimum Instream Flow" shall mean, during the Term, an in-channel surface flow below the Electron dam of 80 cfs for the four-month period from July 15 through November 15, and of 60 cfs from November 16 through July 14.

1.14 "O & M Fund" means one or more accounts or subaccounts to be established by the Tribe in accordance with subparagraphs 3.5 and 5.1.2.3 below, from which the Tribe may draw funds to develop and implement fishery enhancement and related programs on the Puyallup River that implement the goals and objectives of this REA.

1.15 "Permits and Approvals" shall mean any and all determinations, certificates, reviews, authorizations, licenses, permits or other form of approvals made or issued by any one or more federal, state, local or other governmental entity. For purposes of this definition, the Tribe shall not be deemed or construed to be a "governmental entity."

1.16 "Ramp Rate" and "Ramp Rate Plan" means the ramp rate provided for by subparagraph 6 below and the provisions of the Flow Monitoring Plan that pertain to the ramp rate.

1.17 "Rearing Ponds" means rearing ponds and associated facilities for salmonids (e.g., Chinook (*Oncorhynchus tshawytscha*), Coho (*Oncorhynchus kisutch*) or Steelhead (*Oncorhynchus Mykiss*)) as more particularly described in the preliminary design therefor, attached to and by this reference incorporated in this REA as Exhibit E.

1.18 "Resolution" means a resolution of the Tribal Council, in the form attached hereto as Exhibit F.

1.19 "Retire the Project" means such actions as Puget shall deem necessary for purposes of permanently discontinuing the generation of electricity at the Project and, for such purposes, the removal of the Electron Dam from the channel of the Puyallup River.

1.20 "Schedule" means the schedule for implementation of Fishery Enhancements, as determined in accordance with paragraph 10 below. Subject to modification in accordance with subparagraph 10.2 below, the Schedule is attached to and by this reference incorporated in this REA as Exhibit G.

1.21 "Term" shall commence as of the Effective Date and shall end December 31, 2026, unless the Term is ended (except for the survival of certain matters as provided for by subparagraph 17.3) prior to that time in accordance with subparagraph 18.7 below.

1.22 "Upgrade the Project" means construction or major modification that increases the Project's head, generating capacity, or otherwise significantly modifies the Project's pre-1935 design and operation.

1.23 "Upstream T & H" means the upstream fish passage trap and haul facilities more particularly described in the preliminary design therefor, attached to and by this reference incorporated in this REA as Exhibit H.

2. Minimum Instream Flow Below Electron Dam

2.1 **Flow.** The Parties shall, during the Term, cooperate in the implementation of the Minimum Instream Flow in accordance with the Flow Monitoring Plan.

2.2 Banked Instream Flow.

2.2.1 During the Term, the Tribe may, for purposes of acquiring Banked Instream Flow for use in accordance with subparagraph 2.3 below, release portions of the Minimum Instream Flow to Puget as flow available for generation. In order for such a release of Minimum Instream Flow by the Tribe to qualify as Banked Instream Flow, the following criteria must be satisfied to the Parties' mutual satisfaction: (i) flows may only be banked, and such banked flows must be used, during each annual four-month period beginning on July 15 and ending on November 15; and (ii) the volume of water banked shall only be that amount of the Minimum Instream Flow released by the Tribe that actually increases the flow available to Puget for generation (i.e., "available for generation" means water in the flume, such that an actual increase in the flow "available

for generation" must correspond to an actual quantity of additional water diverted to the flume that is then available for generation).

2.2.2 The Tribe shall make a good faith effort to provide Puget with an annual schedule, on or before June 15, indicating its desired dates for flow banking for the subsequent four-month period. It is understood, however, that unplanned matters may require that the proposed schedule be modified. Accordingly, the Parties shall also exercise their best reasonable efforts to accommodate requested flow variations to address exigent circumstances within the general parameters of the REA. However, the Parties recognize that to achieve a desired instream flow for fishery enhancement purposes and to avoid inefficiencies in production, the Parties shall cooperate to develop 60-day forecasts of anticipated flows and flow banking requests. In no event shall Puget have any obligation to accommodate a flow banking request made on advance notice of less than 72 hours.

2.3. **Use of Banked Instream Flow.** During the Term, the Tribe may use Banked Instream Flow for fishery enhancement purposes as follows:

2.3.1 The Tribe shall provide Puget with advance notice of not less than 72 hours of its request to increase the Minimum Instream Flow with Banked Instream Flow.

2.3.2 Banked Instream Flow shall thereafter be provided by Puget, as available, subject to the following limitations: (i) Banked Instream Flow must be used in the same calendar year that the Tribe receives credit for its release of such a portion of the Minimum Instream Flow, pursuant to subparagraph 2.2.1 above, and must be used in that year during the four-month period beginning July 15 and ending November 15; and (ii) use of Banked Instream Flow, at any given time during such four-month period, shall not reduce the availability of water for generation below 50 cfs.

3. **Rearing Ponds**

3.1 **Design.** The Parties shall jointly plan the siting and design of the Rearing Ponds, and to this end, Puget shall provide the Tribe with its written comments on the preliminary design for the Rearing Ponds within ten (10) days of the Effective Date. The Rearing Ponds shall initially be designed for Chinook (*Oncorhynchus tshawytscha*) and Coho (*Oncorhynchus kisutch*) (and may subsequently be used for other salmonids (e.g., Steelhead (*Oncorhynchus Mykiss*))). The Tribe shall thereafter use its best reasonable efforts to complete the design in accordance with the Schedule.

3.2 **Construction and Operation of Rearing Ponds.** The Tribe shall use its best reasonable efforts to construct the Rearing Ponds and commence operation of the Rearing Ponds in accordance with the Schedule.

3.3 **Capital Contributions.** Puget shall pay the Tribe \$50,000 towards the cost of design and construction of the Rearing Ponds within thirty (30) days of the Effective Date. Puget shall thereafter make the following subsequent payments towards the cost of design and construction of the Rearing Ponds to the Tribe:

3.3.1 \$50,000 on or before May 1, 1997.

3.3.2 \$50,000 on or before July 1, 1997.

3.3.3 \$50,000 on or before September 1, 1997.

Puget may, at its option, prepay all or any portion of the capital contributions referred to in subparagraphs 3.3.1 through 3.3.3.

3.4 **Operation and Maintenance Contributions.** Within thirty (30) days of the date that the first Rearing Pond goes into operation, Puget shall pay the Tribe an Annual O & M Contribution of \$100,000 for operation and maintenance of the Rearing Ponds, thereby facilitating fishery enhancements and related activities implementing the goals and objectives of the REA. Puget shall thereafter make an Annual O & M Contribution to the Tribe of \$100,000 in support of such activities through the year 2005, and unless Puget shall Retire the Project, Puget shall continue to make such \$100,000 payments each year thereafter as an Annual O & M Contribution during the Term. Each such Annual O & M Contribution, except for the first contribution, shall be made on the Funding Date; provided, however, Puget may at its option, prepay all or any portion of this Annual O & M Contribution.

3.5 **O/M Fund.** If during any one year the Tribe shall not utilize the full Annual O & M Contribution, then the Tribe shall place the unused funds in the O/M Fund, where such funds shall be held and available to be drawn upon by the Tribe during subsequent years. The Tribe shall use the O/M Fund to develop and implement fishery enhancements and related programs on the Puyallup River that further the goals and objectives of the REA.

3.6 **Stock Selection.** The Tribe has to date, and during the Term shall continue to consult with Puget and keep Puget informed as to the Tribe's plans for determining and selecting salmonid stocks (e.g., Chinook, Coho and Steelhead) for the Rearing Ponds. The selection of stocks shall be in accordance with sound fishery biology principles and shall be consistent with the fish passage facilities to be provided in accordance with the REA.

4. Downstream Passage

4.1 **Design.** The Parties shall jointly plan and design the Downstream T & H Facilities, and to this end, within 10 days of the Effective Date the Tribe shall provide Puget with its written comments on the preliminary design for Downstream T & H Facilities. Puget shall thereafter exercise its best reasonable efforts to complete the design in accordance with the Schedule.

4.2 **Construction and Operation of Downstream T & H.** Puget shall use its best reasonable efforts to construct and commence operation of the Downstream T & H Facilities in accordance with the Schedule.

4.3 **Obligation to Maintain and Operate.** Puget shall operate and maintain the Downstream T & H Facilities during the Term, unless Puget Retires the Project pursuant to subparagraph 17.3 below.

4.4 **Operation and Maintenance Contributions.** Within thirty (30) days of the date that the Downstream T & H Facilities are completed and first put into operation, Puget shall pay the Tribe an Annual O & M Contribution of Twenty-five Thousand (\$25,000) Dollars to be used by the Tribe for fishery-related activities incident to downstream passage. Unless Puget Retires the Project pursuant to subparagraph 17.3, Puget shall continue to make an Annual O & M Contribution to the Tribe in the amount of Twenty-five Thousand (\$25,000) Dollars in each subsequent year during the Term to support such activities. Each such subsequent contributions shall be paid on the Funding Date; provided, however, Puget may, at its option, prepay all or any portion of this Annual O & M Contribution.

5. Upstream Passage

5.1 **Upstream Passage Alternatives.** The Parties agree that the Fish Ladder, to be established in the vicinity of the Electron Dam, is the preferred method of providing for upstream passage. If the Tribe decides to provide for upstream passage by means of the Upstream T & H, then the Upstream T & H will be provided in accordance with subparagraph 5.2 below.

5.1.1 **Fish Ladder Alternative.** The following procedures shall apply to the determination by the Tribe of which alternative (i.e., the Fish Ladder or Upstream T & H) will be implemented to provide upstream passage:

5.1.1.1 **Study of Fish Ladder Site Access Costs.** The Tribe may undertake the following studies that, if pursued, shall be completed within 30 days of the Effective Date: (a) costs of constructing and maintaining existing access roads or other roads across Champion International, Inc. ("Champion") lands to levels sufficient for

equipment necessary to construct the Fish Ladder in the year 2001; (b) annual costs of constructing and maintaining existing roads or other roads across Champion lands to levels sufficient for equipment necessary to perform operation and maintenance activities and; (c) review of what, if any, permit or other regulatory requirements may be associated with the provision of such access.

5.1.1.2 Upstream Passage Alternative Selection. Within sixty (60) days of the Effective Date, the Tribe shall notify Puget in writing whether or not the Tribe has selected the Fish Ladder upstream passage alternative. If the Tribe does not so notify Puget, then the Upstream T & H alternative shall be implemented in accordance with subparagraph 5.2 below.

5.1.1.3 Fish Ladder Budget, Design, Access and Bidding. Should the Tribe notify Puget that it has selected the Fish Ladder as its preferred alternative in accordance with subparagraph 5.1.1.2, Puget will use its best reasonable efforts to install the Fish Ladder in accordance with the Schedule, and subject to subparagraphs A through F below. As used herein, the terms "Fish Ladder Budget" or "FLB" are a reference to a principal amount of \$750,000, subject to increase in accordance with subparagraph A below.

A. Site Design & Analysis. Puget shall commence, in cooperation with the Tribe and in accordance with the Schedule, such additional design work and site analysis as is necessary to prepare a specific proposal suitable for solicitation of bids. The proposal shall ask each bidder to include a plan for providing Construction Access to the proposed site of the Fish Ladder. Puget's budget for design work and site analysis is \$50,000. Puget shall bear any additional cost for such design work and analysis up to \$60,000. If the cost of completion of such design work and analysis shall exceed \$60,000, then the Tribe and Puget shall bear such excess in equal proportions. The portion of such excess to be borne by the Tribe shall, at the Tribe's option, either be paid directly by the Tribe to Puget promptly, upon receipt of an invoice from Puget therefor, or the Tribe may direct Puget to offset its share of any such excess against future Annual O & M Contributions (and if so offset, with adjustments commensurate to those required for future Annual O & M Contributions pursuant to subparagraph 3.4). Any balance that remains in the \$50,000 budget following the completion of design work and site analysis shall be added to the FLB set out in subparagraph 5.1.1.3.

B. Construction Access. The Tribe shall be responsible for providing and maintaining Construction Access to the proposed site of the Fish Ladder in accordance with the Schedule. The Parties anticipate efficiencies associated with the utilization of a single contractor to construct the Fish ladder and to develop Construction Access, and therefore the Tribe shall provide Puget with sufficient detailed information as

to Construction Access at a time and in a form suitable for solicitation of bids. The Tribe shall bear the cost of Construction Access directly, but may offset some or all of the cost of Construction Access by arrangements acceptable to Puget involving one or more of the following measures: (i) the Tribe may offset the costs of Construction Access against future payments due the Tribe from Puget, in accordance with a payment schedule acceptable to the Parties; or (ii) the Tribe may utilize another means of funding the costs of Construction Access that is acceptable to the Parties.

C. Solicitation of Bids. At such time as the Parties shall determine that it is appropriate to solicit bids, in view of the anticipated date of operation (June 1, 2001), Puget shall solicit bids in cooperation with the Tribe. The scope of work shall include, without limitation, a requirement to be reflected in General Condition "GC-5" of the Construction Contract Documents that the Contractor shall be responsible for obtaining all Permits and Approvals necessary to construct the Fish Ladder in accordance with the Schedule.

D. Contract Award. If a bidder, determined by Puget and the Tribe to be a qualified bidder, submits a bid to construct the Fish Ladder for a cost not to exceed the FLB, Puget shall award a contract to such qualified bidder. Puget shall act (or shall designate its representative to act) as an "Owner" under the Construction Contract Documents; provided however, (i) the Tribe shall fully cooperate with and assist Puget as to matters for which the Tribe has responsibility under this REA (e.g., Construction Access), as to matters affecting the Schedule, and as to matters for which Puget makes a reasonable request for direction or communication from the Tribe; and (ii) neither Party shall have any responsibility, liability or accountability to the other Party for the acts or omissions of the "Contractor" or its "Support" as those terms are defined in the Construction Contract Documents. The Tribe shall, for purposes of the Construction Contract Documents, be identified as an "Additional Insured" for purposes of the indemnities to be provided by the Contractor in General Condition "GC-19" of the Construction Contract Documents.

E. Bid Exceeding FLB. If a bidder, determined by Puget and the Tribe to be a qualified bidder, submits a bid to construct the Fish Ladder for a cost in excess of the FLB, Puget shall so inform the Tribe. Upon receipt of such notice, the Tribe shall have the option to bear the excess cost (i.e., the amount of the bid in excess of the FLB) by arrangements, acceptable to Puget, which acceptance shall not be unreasonably withheld, involving any one or more of the following measures: (i) the Tribe may bear costs in excess of the FLB directly; (ii) the Tribe may offset costs in excess of the FLB against future payments due the Tribe from Puget, in accordance with a payment schedule acceptable to the Parties; or (iii) the Tribe may utilize another means of funding the excess cost above the FLB that is acceptable to Puget. If, through any one or more of these measures, the excess cost of constructing the Fish Ladder (i.e., the cost

in excess of the FLB) is agreed by the Parties to be borne by the Tribe or by another entity on the Tribe's behalf, then Puget shall award a contract to the qualified bidder.

F. Rejection of Bids. If the qualified bidder submits a bid to construct the Fish Ladder for a cost in excess of the FLB and the Tribe is unwilling to either bear or otherwise provide a means of funding the excess of constructing the Fish Ladder (i.e., the cost in excess of the FLB) that is acceptable to Puget in accordance with subparagraph 5.1.1.3(E), then Puget shall reject all bids, and Puget shall install the Upstream T & H in accordance with subparagraph 5.2.

5.1.2 Fish Ladder O & M Costs. If the upstream passage is provided by a Fish Ladder in accordance with the procedures set forth in subparagraph 5.1.1, then the following terms and conditions shall apply as to an Annual O & M Contribution by Puget to the Tribe associated with the Fish Ladder:

5.1.2.1. Fish Ladder Annual O & M Contribution. Puget shall pay the Tribe \$50,000 per year as an Annual O & M Contribution towards the cost of operation and maintenance of the Fish Ladder. The first such \$50,000 Annual O & M Contribution shall be made to the Tribe on the date the Fish Ladder commences operation. Each year thereafter during the Term, Puget shall make such \$50,000 Annual O & M Contribution on the Funding Date, unless Puget shall Retire the Project pursuant to subparagraph 17.3. Puget may, at its option, prepay all or a portion of this Annual O & M Contribution.

5.1.2.2. Sharing Excess Fish Ladder Operation and Maintenance Costs. The Tribe shall apply the \$50,000 Annual O & M Contribution toward the annual costs to operate and maintain the Fish Ladder, including costs of maintaining roads providing access to the Fish Ladder site. To the extent the Tribe includes road operation and maintenance costs in this account, such costs shall be limited to costs associated with normal wear and tear (i.e., not costs associated with matters such as severe erosion or washout occurring in a given year). If costs to operate and maintain the Fish Ladder exceed \$50,000 in any year, the Tribe and Puget shall share on an equal basis such excess costs up to \$60,000 (i.e., in any year, Puget's total operation and maintenance obligation is capped at \$55,000). The Tribe shall bear any operation and maintenance costs in excess of \$60,000 in any year. In any year in which the Tribe and Puget share excess operation and maintenance costs, representatives of the Parties shall confer to assess future actions that either of the Parties could take to reduce risks that the Parties would be obligated to pay excess operation and maintenance costs in future years.

5.1.2.3 Fish Ladder O & M Fund. If in any year, the annual costs to operate and maintain the Fish Ladder are less than the \$50,000 Annual O & M Contribution, the Tribe shall deposit the balance of any unexpended funds in the O & M

Fund account or subaccount for Fish Ladder operations and maintenance. In any year where operation and maintenance costs exceed \$50,000, the available funds in the O & M Fund account or subaccount for Fish Ladder operations and maintenance shall first be applied to such costs until the balance in the O & M Fund account or subaccount for Fish Ladder operations and maintenance is exhausted. In any year in which the \$50,000 Annual O & M Contribution and any available balance in the O & M Fund account or subaccount for Fish Ladder operations and maintenance are not sufficient to pay the operation and maintenance costs of the Fish Ladder, the Parties shall equally share such excess as provided in subparagraph 5.1.2.2.

5.1.2.4 Performance of O & M Activities. The Parties further anticipate that the Tribe may elect to retain Puget on an annual or multi-year basis and on such terms as the Parties shall agree, to perform O & M on all or part of the Fish Ladder on the Tribe's behalf. If, however, the Tribe elects to directly undertake such activities, or chooses to retain a third party to undertake such activities, then such activities shall be undertaken in accordance with such further reasonable terms and conditions as are agreeable to the Parties, consistent with this REA. Such terms shall include, but are not limited to, such matters as the time, manner and method of access and operations; the prevention of damage or injury to persons, property or the environment; and matters (such as indemnities and insurance), ensuring that the person or entity performing such activities shall be legally and financially responsible for its conduct.

5.2 Installation and Operation of Upstream T & H Facilities.

5.2.1 If the Fish Ladder is not selected to provide upstream passage in accordance with subparagraph 5.1.1 (or if the Tribe elects not to restore the Fish Ladder in accordance with subparagraph 16.1.3.2), then upon written notice from the Tribe to Puget requesting that Puget proceed with the Upstream T & H alternative, Puget shall install the Upstream T & H facilities at its expense, and shall cause the Upstream T & H facilities to be operational as soon thereafter as is reasonably possible. It is anticipated that, apart from possible delays associated with Permits and Approvals, it will take approximately twelve (12) months from and after the date Upstream T & H facilities are selected to place such Upstream T & H facilities into operation.

5.2.2 Upstream T & H Operation and Maintenance. Puget shall, at its expense, operate and maintain the Upstream T & H facilities during the Term, unless Puget shall Retire the Project pursuant to subparagraph 17.3. Within thirty (30) days of the date that the Upstream T & H facilities are put into operation, Puget shall pay the Tribe a \$25,000 Annual O & M Contribution for fishery enhancement activities to be carried out by the Tribe related to upstream passage. Each year thereafter during the Term, Puget shall make such \$25,000 Annual O & M Contribution to the Tribe on the

Funding Date, unless Puget shall Retire the Project pursuant to subparagraph 17.3. Puget may, at its option, prepay all or any portion of such \$25,000 Annual O & M Contribution.

6. Ramp Rate.

Within sixty (60) days of the Effective Date and thereafter during the Term, the Project shall, for purposes of providing the Minimum Instream Flow, operate within a ramp rate of two to four inches per hour, and in accordance with procedures for ramping to be developed in accordance with the Flow Monitoring Plan.

7. Sediment Management Measures.

Within sixty (60) days of the Effective Date and thereafter during the Term, Puget shall limit the discharge of sediment from the sediment basin to those times when there is at least a 500 cfs instream flow in the Project reach.

8. Land Transfer.

8.1 Consistent with Puget's need to maintain adequate operating right for the Project, Puget shall convey title to approximately 25 acres of land to the Tribe. The land to be conveyed shall be located by the Parties within the Puget lands lying within the Puyallup River Watershed. Title shall be conveyed by quitclaim deed. The property shall be conveyed in all respects "as is," without warranty or representation of any kind.

8.2 Within 60 days of the Effective Date, Puget shall provide the Tribe with a list of one or more parcels of land, meeting the criteria of subparagraph 8.1, from which the Tribe may select the parcel (or parcels) to be conveyed. After receiving the list from Puget, the Tribe shall have the opportunity to make its own investigation as to matters of title, or any other matter of interest or concern to the Tribe with respect to such land. At such time as the Tribe shall indicate in writing that it has completed any and all such investigations, and is prepared to accept title to such land, Puget shall promptly convey the designated parcel or parcels to the Tribe, subject to compliance of applicable subdivision requirements (if any).

8.3 Should the Tribe request conveyance in a form other than by quitclaim deed, Puget shall cooperate with the Tribe to effect such conveyance in the desired form; provided, however, in so doing Puget shall be under no obligation to assume, by warranty, representation or any other form of promise, covenant or commitment, any obligation above or beyond that associated with a conveyance by quitclaim deed, or above or beyond that associated with a conveyance that in all respects is "as is," without warranty or representation of any kind.

9. Permits and Approvals.

9.1 **Good Faith Efforts to Obtain Permits.** The Parties shall cooperate in their respective efforts to obtain Permits and Approvals to implement the Fishery Enhancements and shall at their own expense make available such technical and legal resources as may be necessary to accomplish these tasks in a cost effective and timely manner. In this regard, and with the cooperation of the other Party:

9.2 Puget shall use its best reasonable efforts to obtain Permits and Approvals for the Downstream T & H and if the Fish Ladder is not selected, for Alternative Upstream T & H.

9.3 The Tribe shall use its best reasonable efforts to obtain Permits and Approvals for the Construction Access and the Rearing Ponds.

9.4 **Timeliness of Obtaining Permits.** If any one or more of the Permits and Approvals to be obtained to implement the Fishery Enhancements is not obtained within the time frame anticipated by the Schedule, the Parties shall amend the Schedule to take account of such delay. If the Parties cannot agree upon an amendment to the Schedule, the matter shall be submitted to the JTC for consideration in accordance with subparagraph 14.2.

9.5 **Materially Altered Terms and Conditions, Minimum Flow and Financial Obligations Ceiling.** If the terms and conditions of any one or more of the Permits and Approvals obtained by a Party to implement the Fishery Enhancements shall contain terms and conditions that materially affect a Party's obligation under this REA, then:

9.5.1 The Party asserting that such terms and conditions materially affect its obligation under this REA shall so notify the other Party, and shall propose to the other Party a course of action to rectify the Party's concern.

9.5.2 The Party receiving the notice sent in accordance with subparagraph 9.5.1 shall either: (i) notify the other Party that the proposed course of action to rectify the other Party's concern is acceptable, and if requested by the other Party, execute an amendment to the REA to reflect the Parties' agreement as to such course of action; or (ii) notify the other Party that the proposed course of action to rectify the other Party's concern is not acceptable, in which event, the Parties shall within ten (10) days convene a meeting of the JTC and commence negotiation in good faith in an effort to arrive at a mutually agreeable course of action. Should the Parties be unable to agree upon a course of action within fifteen (15) days of the date such negotiations are initiated, either Party may submit the matter to further resolution in accordance with paragraph 15.

9.5.3 For purposes of this subparagraph 9.5, any one or more of the following matters shall be deemed to be a matter that "materially affects" a Party's obligation under this REA: (i) any matter that alters the jurisdictional determination of the FERC, which such determination is attached and by this reference is incorporated as Exhibit I; (ii) any matter that alters the Minimum Instream Flow, the Flow Monitoring Plan, or the Ramp Rate; (iii) any matter resulting in an increase of 10% or more in the cost to construct the Rearing Ponds (the Rearing Pond Budget is \$200,000), an increase of 5% or more in the cost to construct the Downstream T & H (the Downstream T & H Budget is \$500,000), an increase of 10% or more in the cost to construct the Fish Ladder (as determined by reference to the FLB), or an increase of 5% or more in cost to construct the Upstream T & H (the Upstream T & H Budget is \$500,000); (iv) any matter resulting in an increase in O & M costs associated with operation of any one or more of the Fishery Enhancements by 5% or more, or (v) any matter resulting in the delay of a Milestone Event of 90 days or more. If any matter referred to the JTC pursuant to subparagraph 9.5.2 should subsequently be referred to dispute resolution in accordance with paragraph 15, in no event shall a Party be bound to the other Party in any manner that is in conflict with the thresholds of materiality set forth in this subparagraph 9.5.3.

10. Schedule.

10.1 The Parties shall perform their respective obligations with respect to implementation of the Fishery Enhancements in accordance with the Schedule. The Schedule incorporates completion dates for the following Milestone Events:

Rearing Ponds (operational) June 30, 1998

Downstream T & H (operational) June 30, 1998

Fish Ladder (operational) June 1, 2001

10.2 The Schedule shall be subject to reasonable amendment by either Party, upon written notice to the other, provided that such amendment shall not affect the completion date of any one or more Milestone Events. If a Party seeks to amend the Schedule, and such amendment does affect the completion date of any one or more Milestone Events, then such amendment shall be subject to the agreement of the other Party. If the Parties are unable to agree upon any such amendment, then the matter shall be submitted to the JTC for consideration in accordance with subparagraph 1.42.

10.3 Without limiting the generality of the foregoing, the Parties recognize the necessity and desirability of coordinating the planning and construction of the Rearing Ponds with the design and construction of the Downstream Passage Facilities. Within thirty (30) days of the Effective Date, the JTC shall convene a meeting for the primary purpose of determining optimum processes, procedures and timing for construction of the

Rearing Ponds, and concomitant coordination of the design and construction of the Downstream T & H.

11. Project Decision.

11.1 Puget shall provide written notice to the Tribe, no later than the year 2018, of Puget's decision to either: (i) promptly initiate actions necessary to Upgrade the Project by 2026; or (ii) Retire the Project by 2026. Subsequent to such notice and subject to its acquisition of any necessary regulatory approvals, Puget shall either complete an upgrade of the Project or Retire the Project. However, if Puget elects to Upgrade the Project and, notwithstanding its timely and best reasonable efforts to secure all necessary regulatory approvals so as to complete such upgrade on or before 2026, Puget shall cooperate with the Tribe to pursue immediate implementation of any additional fishery enhancements as are then proposed for the upgraded Project as may then be practical to implement.

11.2 If Puget notifies the Tribe that it intends to Upgrade the Project, Puget will not pursue a proposed upgrade that diminishes the minimum instream flows below the Electron dam to levels below that set forth in subparagraph 1.3, without the Tribe's prior consent.

11.3 If Puget notifies the Tribe that it intends to Upgrade the Project, and agrees to pursue a proposal with a minimum daily instream flow of at least 100 cfs below the Electron dam (100 cfs each day of each month of every year), the Tribe will not oppose such a flow (but fully reserves the right to oppose any minimum daily instream flow below the Electron dam of less than 100 cfs).

12. Release of Claims.

12.1 **Tribe's Release of Past Claims.** As to and for the benefit of Puget (and each and all of Puget's directors, officers, employees and representatives), the Tribe does hereby, for itself and any person, entity, agent, successor or assign claiming through or under the Tribe, fully and completely release and discharge any and all rights, matters and interests giving rise, directly or indirectly, to any kind or nature of claim, loss, harm, cost, damage, expense or liability caused by, associated with or otherwise in anyway attributable to Puget's ownership, use, operation and maintenance of the Project (collectively, the "Tribe Claims," which include, but are not limited to, any and all Tribe Claims heretofore alleged or asserted by the Tribe against Puget or the Project). The Tribe's release is a full and complete release as to all such Tribe Claims arising prior to the Effective Date. The Tribe is hereby deemed to have consented to and ratified Puget's ownership, use, operation and maintenance of the Project prior to the Effective Date.

12.2 **Puget's Release of Past Claims.** As to and for the benefit of the Tribe (and each and all of the Tribe's directors, officers, employees and representatives), Puget does hereby, for itself and any person, entity, affiliate, subsidiary, successor or assign claiming through or under Puget, fully and completely release and discharge the Tribe from any kind or nature of claim, loss, harm, cost, damage, expense or liability caused by, associated with or otherwise in anyway attributable to the acts or omissions of the Tribe affecting Puget's ownership, use, operation and maintenance of the Project arising prior to the Effective Date (collectively "Puget Claims"). Puget's release of Puget Claims is full and complete as to all such Puget Claims arising prior to the Effective Date.

12.3 **Future Claims.** So long as a Party is in compliance with its obligations under this REA, this REA shall be deemed to fully satisfy a Party's obligations or responsibilities to the other Party, up to and through 2026, as to any rights, matters, or interests that heretofore gave rise to any one or more of the Tribe Claims or the Puget Claims released pursuant to this paragraph 12. As to other rights, matters and interests, the Parties reserve the same. This release of future claims includes, without limitation, any assertion by the Tribe of regulatory authority over the Project.

13. **White River Proceeding.**

13.1 **White River Proceeding.** Puget has applied to the Federal Energy Regulatory Commission ("FERC") for a license for its White River Hydroelectric Project, FERC Project No. 2494 (the "FERC Licensing Proceeding"). The Tribe is a party to that proceeding and has asserted, among other things, a position in support of a minimum instream flow for the White River that exceeds the minimum instream flow desired by Puget. As to the FERC Licensing Proceeding, and as to the Tribe's water quality concerns with respect to the White River:

13.1.1 **Withdrawal.** The Tribe shall, within thirty (30) days of the Effective Date, withdraw from the FERC Licensing Proceeding. Such withdrawal shall be complete and unconditional. Thereafter, Puget shall not, directly or indirectly, assert or imply in the FERC Licensing Proceeding that the Tribe's withdrawal is an assertion by the Tribe of any position as to the minimum instream flow for the White River. Thereafter, the Tribe shall not, directly or indirectly, assert or imply in the FERC Licensing Proceeding any position as to minimum instream flows for the White River. Puget shall not, in the FERC Licensing Proceeding, move to strike from the record any evidence submitted to the record by the Tribe; however, Puget shall be free to controvert such evidence with any evidence it may offer in such proceeding, and Puget shall be free to contest any position asserted by others that may, in whole or in part, be based upon evidence submitted by the Tribe.

13.2 **Water Quality.** As to point source and non-point source discharges in and below the bypass reach of the White River below the point of withdrawal for the White River Hydroelectric Project, it is the intent of the Tribe to address its concerns relating to applicable water quality standards ("WQS") through the pursuit of individual discharge control strategies or other effluent control measures for each such discharge. If, however, available individual discharge control strategies or effluent control measures do not satisfy applicable WQS, the Tribe may pursue an increase in instream flow to meet applicable WQS. Where such increase in instream flow would reduce the availability of water for generating electricity at the White River Hydroelectric Project, the Tribe will support reasonable efforts by Puget to obtain compensation from others for providing additional instream flow. Nothing in this subparagraph affects the ability of the Tribe to assert federal reserve water rights to instream flows in any future adjudication of water rights, or other water rights proceeding.

14. **The JTC.**

14.1 The Parties agree to cooperate in good faith to implement the letter and spirit of this REA. The JTC is intended to facilitate such cooperative efforts.

14.2 The JTC shall meet whenever requested by a Party. If a Party desires to convene such a meeting, it may do so by advance written notice to the other of at least five (5) days, which such notice shall also identify the matter or matters to be submitted to the JTC for consideration. The JTC will be used as the primary means of consultation and coordination between the Parties in connection with the implementation of the REA. Further, no matter shall be subject to dispute resolution, pursuant to paragraph 15 below, unless such matter shall have first been submitted to the JTC for consideration in accordance with this paragraph 14.

14.3 If a meeting of the JTC is called in accordance with subparagraph 14.2, then the JTC shall promptly meet and confer in good faith, and endeavor to render a decision as to the matter or matters under consideration. If, within thirty (30) days from and after the date a matter is submitted to the JTC for consideration, the JTC has failed to render a decision as to such matter, or if the JTC has rendered a decision that, for any reason, is not to a Party's satisfaction, then either Party may submit the matter (or the JTC's decision, as the case may be) to dispute resolution in accordance with paragraph 15.

14.4 The JTC shall decide matters submitted to it for consideration by consensus. Unless the matter is submitted to dispute resolution as provided in subparagraph 14.3, a matter shall remain pending before the JTC, and the JTC shall meet and confer in good faith as to any such matters until a decision is reached as to such matter.

15. Formal Dispute Resolution.

Any dispute or claim arising between the Parties from, or relating to, this REA or its performance or nonperformance, including either Party's alleged failure to comply with any provision of this REA ("Dispute"), shall be settled by the procedures of this paragraph 15, and not by court action except as provided in this paragraph. Neither Party may invoke dispute resolution pursuant to this paragraph 15 until the requirements of subparagraphs 14.3 and 14.4 have been satisfied.

15.1 Statement of Positions. In the event of a Dispute, a Party shall first promptly provide the other Party with a general written statement of its claim(s) and position(s). This statement need not be complete and will not limit the claims of a Party in any further procedure. The statement shall indicate that it is the first statement of a formal dispute resolution process under this REA. If the Parties cannot resolve the dispute within 14 days of receipt of these written statements, a claimant may proceed as set forth in subparagraphs 15.2 and 15.3 below.

15.2 Mediation Procedure. If the Parties cannot resolve a Dispute pursuant to subparagraph 15.1, the Parties shall, within 21 days of such failure, commence mediation by notice of selection of a third party, neutral mediator and proposed time(s) and date(s) for the mediation. If the other Party does not propose an alternative mediator within 15 days of such notice, then the mediation shall occur before the first person proposed. If the other Party does propose an alternative mediator, then the two proposed mediators shall promptly and jointly select a third, neutral party to act as the sole mediator. If the two proposed mediators cannot agree between themselves on a proposed mediator, then the mediator shall be selected, and the mediation conducted, under the then-existing Commercial Mediation Rules of the American Arbitration Association ("AAA"). The mediation shall take place in Tacoma, Washington, and mediator's fees shall be equally shared by the Parties. If the mediation resolves the Dispute, the resolution shall be memorialized in writing. If the Parties cannot resolve the Dispute through mediation, either Party may terminate mediation. Upon termination of mediation, either Party may submit the Dispute to binding arbitration under subparagraph 15.3.

15.3 Binding Arbitration. If the parties do not resolve a Dispute pursuant to subparagraphs 15.1 and 15.2 above, the Dispute shall be resolved by binding arbitration in Tacoma, Washington, as follows:

15.3.1 AAA Rules Apply. The arbitration shall be under the then existing Commercial Arbitration Rules of the AAA or a like successor organization.

15.3.2 Arbitrators. The Parties shall attempt to agree on a single arbitrator. If they cannot so agree, each Party shall name one arbitrator, and the two arbitrators shall jointly name a third neutral arbitrator, and a decision of any two of the three arbitrators

shall bind the Parties in all matters hereunder. If two arbitrators cannot agree on a third neutral arbitrator, then the AAA shall appoint the third neutral arbitrator. Before the appointment of a third arbitrator, the parties may communicate ex parte with the party-named arbitrators. After the appointment of the third arbitrator, and before any hearings or conferences with the arbitrators, each arbitrator shall take an oath of impartiality, and the Parties may communicate directly with any of the arbitrators only by using the same procedures as would be proper for the parties or their representatives to communicate with a federal district court judge relating to litigation pending in a federal district court. The arbitrator(s) fees shall be jointly shared by the Parties.

15.3.3 Discovery. The Parties shall be permitted to obtain discovery from each other of documents and other tangible evidence at a time reasonably prior to the arbitration hearing. No depositions shall be allowed.

15.3.4 Governing Rules and Awards. The Parties agree that this REA is a transaction involving commerce as that term is used in the Federal Arbitration Act (FAA), Title 9 United States Code. To the extent applicable, the FAA shall govern any judicial proceedings, resolve any issue of arbitration, and procedurally govern arbitration under or related to this REA. The arbitrator(s) shall resolve any Dispute in accordance with this REA, including the applicable law designated by the Parties in subparagraph 15.3.6. The Parties agree that the arbitrator(s) shall have authority, without resort to any court, to award any remedy, order or relief, including without limitation awards, orders granting preliminary and permanent affirmative, mandatory, prohibitory, or specific performance relief relating to any obligation under this REA, compensatory damages (but expressly excluding punitive or exemplary damages), and sanctions for abuse or frustration of the arbitration process to the same that a federal court with personal and subject matter jurisdiction could award, order or issue or any other specific performance of any obligation. The Parties agree that the obligation to arbitrate under this REA and any award, order or judgment of the arbitrator(s) under this REA shall be final and may be specifically enforced in the United States District Court for the Western District of Washington, at Tacoma, if it shall have jurisdiction, and if not, then in the Superior Court of the State of Washington for Pierce County. Each Party shall bear its own attorney, expert and other fees and costs associated with the arbitration, except that the prevailing party in any action brought to enforce this arbitration clause shall be entitled to recovery of its reasonable attorney's fees from the other Party.

15.3.5 Limited Waiver of Sovereign Immunity. The Tribe voluntarily enters a limited waiver of its sovereign immunity, and that of its officers and employees acting for the Tribe in their official capacities, and consents to binding and mandatory arbitration, the enforcement of the obligation to arbitrate, and the enforcement of any award, order or judgment of the arbitrator(s) in any arbitration authorized by this paragraph 15. The Tribe voluntarily enters a limited waiver of its sovereign immunity

and consents to suit solely by Puget, or successors and assigns approved pursuant to subparagraph 18.1 below, to judicially enforce this REA in accordance with this paragraph 15 in a suit brought in the United States District Court for the Western District of Washington, at Tacoma or, if jurisdiction is not available in the United States District Court, in the Superior Court of the State of Washington for Pierce County. The Tribe agrees that it will not raise sovereign immunity as a defense in any judicial action brought by Puget to enforce this REA in accordance with this paragraph 15.

15.3.6 Governing Law. The Fishery Enhancement measures contemplated by this REA will be implemented in the upper reaches of the Puyallup River, outside the boundaries of the present Puyallup Reservation. The Parties agree that it is appropriate to designate Washington law to govern this REA. Accordingly, the Parties agree that this REA, and all questions concerning the performance of this REA shall be interpreted, construed and enforced in all respects in accordance with applicable laws of the State of Washington, without reference to rules relating to choice of law.

15.3.7 No Jurisdiction in Tribal Court. This REA and actions taken pursuant to this REA shall not be interpreted under any circumstances as consent by Puget to jurisdiction in a court of the Tribe over any claims or disputes arising under this REA. The Tribe expressly waives any right it may have to require Puget to exhaust its remedies in a court of the Tribe before bringing an enforcement action pursuant to subparagraph 15.3.4 of this REA. The Tribe agrees that it will not prosecute, maintain, or institute any action, suit, administrative action or proceeding of any kind or nature against Puget in a Court of the Tribe for any matter within the scope of claims released in subparagraph 12.1 and subparagraph 12.3 of this REA.

16. Allocation of Risk.

16.1 Risk of Loss of Fishery Enhancements. This subparagraph is not intended to convey, confer or determine title to any property (real or personal), or allocate as between the Parties any risk or loss as to such property, except as expressly provided below with respect to the following Fishery Enhancements:

16.1.1 Rearing Ponds. As between the Parties, the Tribe shall have title to the Rearing Ponds and shall bear the risk of loss thereof.

16.1.2 Downstream T & H; Upstream T & H. As between the Parties, Puget shall have title to the Downstream T & H and the Upstream T & H, and shall bear the risk of loss thereof.

16.1.3 Fish Ladder. As between the Parties, Puget shall have title to the Fish Ladder, and during the Term, the risk of loss shall be borne as follows:

16.1.3.1 The Parties shall, at such time as the Fish Ladder shall be complete and available for normal and reliable operation and thereafter during the Term, use their best reasonable efforts to maintain, in full force and effect, policies of property damage insurance providing insurance against loss of, damage to or destruction of the Fish Ladder. Such insurance shall be so maintained, if and as available, in an amount equivalent to the full replacement value of the Fish Ladder, with such carrier and on such terms and conditions as the Parties shall determine to be appropriate. As to any such insurance the Parties shall determine to maintain, the premiums therefor shall be shared equally by the Parties.

16.1.3.2 In the event the Fish Ladder is lost, damaged or destroyed (in whole or in part) during the Term, the Parties shall look first to the proceeds of insurance (if any) to restore the same. If, however, the proceeds of such insurance are either not available or insufficient to restore the same, Puget shall bear the risk of loss up to an amount (as to any single occurrence and as a cumulative total for multiple occurrences) of up to, but not in excess of, Fifty Thousand Dollars (\$50,000). If and at such time, during the Term, the Fish Ladder is lost, damaged or destroyed and Puget shall have, at such time, incurred restoration costs (in connection with such event, and/or as a cumulative total for past occurrences) of Fifty Thousand Dollars (\$50,000), then the Tribe may elect, in consultation with Puget:

(A) to restore the Fish Ladder at its expense, and thereafter during the Term, the Tribe shall bear the risk of loss of the Fish Ladder and shall keep the Fish Ladder in a normal and reliable operating condition for the remainder of the Term. Should the Tribe elect this option, upon such election, Puget shall pay the Tribe Four Hundred Thousand Dollars (\$400,000) as a one-time contribution toward Fish Ladder restoration costs, which such one-time contribution shall be held in an interest-bearing account by the Tribe for the purpose of application toward Fish Ladder restoration costs, and such funds shall be expended for no other purposes whatsoever. If, at the end of the Term, any portion of such one-time contribution, together with interest thereon, shall not have been so applied by the Tribe, such portion, together with interest earned thereon, shall be refunded to Puget.

(B) not to restore the Fish Ladder, in which event, Puget shall thereafter construct the Upstream T & H and, during the Term, shall thereafter bear the risk of loss thereof and keep the Upstream T & H in normal and reliable operating condition.

16.2 Third Party Liability. Each Party shall indemnify and hold harmless the other Party from any and all claims, damages, costs, expenses or liabilities (including, but not limited to, attorneys' fees) incurred by the other Party as a direct result of the indemnifying Party's negligent acts or negligent omissions in the performance of its

obligations arising under this REA. Without limiting the generality of the foregoing, each Party shall, during the Term, maintain a policy or policies of commercial general liability insurance (and, if not otherwise covered by such insurance, automobile liability insurance) providing insurance initially in an amount not less than \$5,000,000, and unless a Party shall maintain an approved self-insurance program as to risks of at least \$1,000,000, a Party shall, at the request of the other Party, name such other Party as an Additional Insured on such policy or policies of liability insurance. Within five (5) years of the Effective Date, and thereafter within five (5) year intervals throughout the Term, the Parties shall evaluate the appropriateness of the \$5,000,000 minimum limit, the appropriate amount of any deductible, and such other matters of concern to the Parties. A Party shall, upon request of the other Party, provide to the other Party written evidence (e.g., certificates of insurance) demonstrating that all required policies of insurance (in such amounts and with such coverages and endorsements as herein required) are in full force and effect and have been issued by carriers with an AM Best rating of A X, or better.

17. Default and Termination.

17.1 If a Party shall fail to make any payment to the other Party within the time period required therefor by this REA, the Party entitled to receive such payment shall give the other Party notice of such monetary default. The Party to whom such notice is directed shall have thirty (30) days from the receipt thereof to make such payment and thereby cure such default; provided, however, nothing herein is intended, nor shall it be construed, to require a Party to make any payment to the other Party that is not otherwise due and payable pursuant to the terms and conditions of this REA.

17.2 As to matters other than monetary defaults for which a specific cure period is provided pursuant to subparagraph 17.1 above, if a Party believes the other Party to be in default of its obligations under this REA, the Party alleging such default shall so notify the other and shall offer the other a reasonable opportunity to cure any default. However, the Parties acknowledge that each Party has obligations arising under this REA that, if not performed in accordance with the terms and conditions hereof, may result in immediate and material damage to the other Party.

17.3 If, during the Term, Puget shall determine that it desires to Retire the Project, Puget shall so notify the Tribe. Upon completion of such activities as Puget shall undertake to Retire the Project (including, but not necessarily limited to, the removal of the Electron dam from the channel of the Puyallup River), Puget shall so notify the Tribe, and the effect of such notice shall be to terminate the Term of this REA, and except as otherwise provided in subparagraph 18.7 below, neither Party shall thereafter have any further obligations to the other Party arising under this REA.

18. Miscellaneous.

18.1 **Assignment, Successor.** A Party shall not assign all or any part of this REA or any of its rights hereunder without the prior written consent of the other Party.

18.2 **Force Majeure.** Neither Party shall be deemed to have defaulted in the performance of its obligations under the REA if and to the extent such performance is wholly or partially prevented or delayed by Force Majeure. Unless the Force Majeure prevents the performance of obligations under this REA, the Force Majeure event may not operate to excuse, but only to delay, the performance of obligations under this REA. In the event of such delay, the affected obligations hereunder shall be suspended for the duration of the Force Majeure event, the time for performance of such obligations shall be extended for as long as is reasonable in light of the Force Majeure, and the Schedule shall be amended to account for such delay (including, if necessary, amendment of completion dates for Milestone Events). The Party affected by the Force Majeure shall use good faith efforts to attempt, in a commercially reasonable manner, to rectify the conditions brought about by the Force Majeure and to avoid or minimize delay. Upon learning of the existence of or potential for an event that qualifies as Force Majeure, the affected Party shall promptly notify the other party of such situation, describing in reasonable detail the nature of the event or event in question.

18.3 **Accounting and Record Keeping by Tribe and Puget.** The Tribe shall establish and maintain an accounting system for Annual O & M Contributions and the O & M Fund in accordance with generally accepted, customary, standard, and sound accounting principles and practices. Puget shall have the right to request an audit and examination of the accounting, bookkeeping, and related records kept by the Tribe in accordance with the requirements of this subparagraph 18.3. The Tribe shall provide Puget or its agents with reasonable and customary access for inspection of such records within thirty (30) days of such request.

18.4 **Governing Law.** As of the Effective Date, the Tribe certifies that: (i) it is authorized under its Constitution and Bylaws and under the laws of the United States to enter into this REA; (ii) any and all consultation with or approval by the Secretary of Interior or appropriate officials in the Bureau of Indian Affairs that is required by policy or law has been concluded or obtained; and (iii) it has duly enacted the Resolution, attached to this REA as Exhibit F.

18.5 **Adjustment.** Annual O & M Contributions are subject to adjustment, on each Funding Date, by increasing the amount of the Annual O & M Contribution for the preceding year by three percent (3%).

18.6 **Notices.** Any notice, request, approval, consent, instruction, direction or other communication under this REA given by either Party to the other Party shall be in writing and shall be delivered in person or mailed, properly addressed and sent first-class mail or commercial delivery services, postage prepaid. Either Party may from time to time change the person authorized to receive such notice or such person's address by giving the other Party notice of such change in accordance with the provisions of this subparagraph 18.6.

18.6.1 If to the Tribe:

Russel Ladley
Fishery Biologist
Fishery Department
Puyallup Tribe of Indians
6824 Pioneer Way
Puyallup, WA 98371

With concurrent copies to:

John Bell
Martha Fox
Tribal Attorney
Puyallup Tribe of Indians
2002 East 28th Street
Tacoma, WA 98404

Richard A. Du Bey
Michael P. O'Connell
Stoel Rives LLP
600 University Street, Suite 3600
Seattle, WA 98101-3197

18.6.2 If to Puget:

Puget Sound Energy, Inc.
One Bellevue Center Bldg.
411 - 108th Avenue N.E., 14th Floor
Bellevue, WA 98004-5515
Attn: Ed Schild, Director Energy Production & Storage
Attn: Cary L. Feldman, Manager Hydrolicensing &
Biology
Attn: Janet Gaines, Manager Power Production

and to:

Puget Sound Energy, Inc.
P.O. Box 97034
Bellevue, WA 98009-9734
Attn: Ed Schild, Director Energy Production & Storage
Attn: Cary L. Feldman, Manager Hydrolicensing &
Biology
Attn: Janet Gaines, Manager Power Production

With concurrent copies to:

Markham A. Quehrn
Perkins Coie
One Bellevue Center
Suite 1800
411 - 108th Avenue
Bellevue, WA 98004-5584

18.7 **Survival.** Paragraphs and subparagraphs 11.3, 12.1, 12.2 (and as to matters arising prior to completion or termination of the REA, 12.3), 13.1.1, 13.2, and 16.2, and all other provisions of this REA which may reasonably be interpreted or construed as surviving the completion or termination of this REA shall survive the completion or termination of this REA. As to those provisions of the REA that shall survive the completion or termination of the REA, the provisions of paragraph 15 "Formal Dispute Resolution" as to such provisions. The survival of subparagraph 16.2 is not intended nor shall it be deemed to extend, preserve or in any way affect the rights of any third party (including, but not limited to the applicability of any statute of limitation) as against any Party.

18.8 **Integration.** This REA constitutes the complete, entire, final, unambiguous, and integrated agreement of the Parties concerning the subject matter hereof and supersedes the AIP and all other communications, representations, proposals, understandings, or agreements, either oral or written, among the Parties with respect to such subject matter. This REA may not be modified or amended, in whole or in part, except by a writing signed by each of the Parties.

18.9 **Nonwaiver.** The failure or delay of a Party to insist upon strict performance of any of the provisions of this REA, to exercise any rights or remedies provided in this REA or by law, or to notify the other Party in the event of breach of this REA shall not release or relieve the other Party from any of its obligations under this

REA. Waiver by any Party of any default by the other shall not be deemed a waiver by such Party of any other default.

18.10 Severability; Interpretation. The invalidity or unenforceability of any provision of this REA shall not affect the other provisions hereof, and this REA shall be construed in all respects as if such invalid or unenforceable provisions were omitted. The headings of paragraphs and subparagraphs of this REA are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such paragraphs or subparagraphs. The REA shall be construed as a whole, and all provisions and parts of the REA are intended to be correlative and complementary.

18.11 No Partnership. This REA shall not be interpreted or construed to create an association, joint venture or partnership between Puget and the Tribe or to impose any partnership obligations or liability upon either Party. Each Party shall take such action (including, but not limited to, the execution, acknowledgment and delivery of documents) as may reasonably be requested by the other Party for the implementation or continuing performance of this REA.

18.12 No Third-Party Beneficiaries. This REA shall not be interpreted or construed to create any rights, benefits or interests in any person or entity other than the Parties.

18.13 Terms and Conditions Negotiated. The provisions of this REA have been negotiated by the Parties in good faith, and with the representation of legal counsel, and consequently in construing this REA, neither Party is entitled to any presumption against the other based upon the drafting of this REA.

18.14 Negotiation Costs. Within ten (10) days of the Effective Date of this REA, Puget shall make a single lump sum payment to Stoel Rives for the benefit of the Tribe in the amount of \$75,000.

18.15 Additional Recitals

18.15.1 This REA is in writing, and duplicates of it have been delivered to the Tribe and Puget.

18.15.2 The Parties, their residences and occupations are as follows:

Tribe:	Puyallup Tribe of Indians 2002 E. 28th Street Tacoma, Washington 98404 A federally recognized tribal government
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Puget: Puget Sound Energy, Inc.
P.O. Box 97034
Bellevue, Washington 98009
A Washington corporation

18.15.3 The Tribe's authority to enter and approve this REA is set forth in Article VI, Section 1(f) of the Constitution and Bylaws of the Puyallup Tribe and Tribal Council Resolution No. 190397. The Tribe's reason to approve this REA is to settle claims relating to Puget's Electron Hydroelectric Project and to provide measures contemplated by this REA to enhance fishery resources in and about the upper reaches of the Puyallup River.

18.15.4 The Term of this REA is defined in subparagraph 1.20.

18.15.5 This REA is made and executed in separate counterparts by the Parties at the time and places set forth in the execution blocks of the REA.

IN WITNESS WHEREOF, the parties hereto have caused this REA to be duly executed as of this 27th day of March, 1997.

Tribe:

Puyallup Tribe of Indians

Puget:

Puget Sound Energy, Inc.

By: Billy Stund
Title: Chairman
Dated: 3/27/97
Time: 2:20
Place: Tacoma WA

By: Richard R. Sonsteli
Title: Chairman & Chief Executive Officer
Dated: Mar 27, 1997
Time: 2:20 PM
Place: Tacoma Washington