

IMPLEMENTING AGREEMENT
for the
TACOMA WATER
HABITAT CONSERVATION PLAN
for the
GREEN RIVER, WASHINGTON
MUNICIPAL WATER SUPPLY

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1.0 PARTIES

The parties to this Implementing Agreement are the Department of Public Utilities Water Division (d.b.a. Tacoma Water) of the City of Tacoma, a municipal corporation within the State of Washington ("City"), the United States Fish and Wildlife Service ("FWS"), and the National Marine Fisheries Service ("NMFS"). In this agreement, FWS and NMFS are collectively referred to as the "Services."

2.0 RECITALS AND PURPOSES

2.1 Recitals.

The parties have entered into this agreement in consideration of the following facts:

(a) The Green River and those portions of its watershed that are owned by the City (hereinafter "Green River watershed") have been determined to provide, or potentially provide, habitat for a variety of species of fish and wildlife that pursuant to the Endangered Species Act, are listed as endangered or threatened, or are candidates for such listing, or are otherwise considered species of concern. These species are identified in Section 2.7 of the HCP.

(b) The City has developed a series of measures, described in the HCP, to minimize and mitigate to the maximum extent practicable the effects of take of covered species incidental to the City's covered activities.

2.2 Purposes.

The purposes of this agreement are:

- (a) To ensure implementation of each of the terms of the HCP;
- (b) To describe remedies and recourse should any party fail to perform its obligations as set forth in this agreement; and
- (c) To provide assurances to the City that as long as the terms of the HCP, the permit, and this agreement are performed, no additional mitigation will be required of the City with respect to covered species except as provided for in this agreement or required by law.

3.0 DEFINITIONS

The following terms as used in this agreement will have the meanings set forth below:

3.1 Terms defined in Endangered Species Act.

Terms used in this agreement that are specifically defined in the Endangered Species Act ("ESA") or in regulations adopted by the Services under the ESA shall have the same meaning as in the ESA and those implementing regulations, unless this agreement expressly provides otherwise.

3.2 "Changed circumstances" means changes in circumstances affecting a Covered Species or the geographic area covered by the HCP that can reasonably be anticipated by the City and that can reasonably be planned for in the HCP (e.g. the listing of a new species, or a fire or other natural catastrophic event in areas prone to such event.) Changed circumstances and the planned responses to those circumstances are described in Section 3.3.3 of the HCP. Changed circumstances are not Unforeseen Circumstances.

3.3 "Covered activities" means the activities described in Section 2.5 of the HCP, provided that such activities are otherwise lawful. The permit will not cover activities that may adversely affect any site, building, structure, or object that is included in, or eligible for inclusion in, the National Register of Historic Places until completion of any consultation that may be required under Section 106 of the NHPA with regard to that activity.

3.4 "Covered lands" means the lands, waters, and facilities within which the permit authorizes incidental take of covered species, as described in Section 2.4 of the HCP.

3.5 "Covered species" means the species identified in Section 2.7 of the HCP, each of which the HCP addresses in a manner sufficient to meet all of the criteria for issuing an incidental take permit under ESA § 10(a)(1)(B).

3.6 "Force Majeure" means events that are beyond the reasonable control of, and that did not occur through the fault or negligence of, the City of Tacoma or any entity controlled by the City, including its contractors and subcontractors to the extent they are carrying out authorized activities, and including but not limited to acts of God, sudden actions of the elements, including fire, or actions of federal or state agencies or courts or other local jurisdictions.

3.7 "HCP" means the habitat conservation plan prepared by the City for the Green River, Washington municipal water supply for the City of Tacoma.

3.8 "Listed species" means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under the ESA.

3.9 "Permit" means the incidental take permit issued by the Services to the City pursuant to Section 10(a)(1)(B) of the ESA for take of covered species incidental to covered activities in the Green River watershed as such Permit may be amended from time to time.

3.10 "The City" means the City of Tacoma Department of Public Utilities Water Division (d.b.a. Tacoma Water) a municipal corporation within the State of Washington.

3.11 "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any listed species. Harm means an act that actually kills or injures a member of a covered species, including an act that causes significant habitat modification or degradation where it actually kills or injures a member of a listed species by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

3.12 "Unforeseen circumstances" means changes in circumstances affecting a species or geographic area covered by the HCP that could not reasonably have been anticipated by plan developers and the Services at the time of the HCP's negotiation and development, and that result in a substantial and adverse change in the status of a species covered by the HCP.

3.13 "Unlisted species" means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is not listed as endangered or threatened under the ESA.

4.0 OBLIGATIONS OF THE PARTIES

4.1 Obligations of the City.

The City will fully and faithfully perform all obligations assigned to it under this agreement, the Permit, and the HCP.

4.2 Obligations of the Services.

Upon execution of this agreement by all parties, and satisfaction of all other applicable legal requirements, the Services will issue the City a Permit under Section 10(a)(1)(B) of the ESA, authorizing incidental take by the City of each listed covered species resulting from covered activities on covered lands.

4.2.1 Permit coverage.

The Permit will identify all covered species. The Permit will take effect for listed covered species at the time the Permit is issued. Subject to compliance with all

other terms of this agreement, the Permit will take effect for an unlisted covered species upon the listing of such species.

4.2.2 "No surprises" assurances.

Provided that the City has complied with its obligations under the HCP, this agreement, and the Permit, the Services can require the City to provide mitigation beyond that provided for in the HCP only under unforeseen circumstances, and only in accordance with the "no surprises" regulations at 50 C.F.R. §§ 17.22(b)(5), 17.32(b)(5), 222.22(g).

4.2.3 Water Supply Protection.

Nothing in this agreement shall be construed to give the Services the authority to impose or seek to impose measures additional to those specified in the HCP or this agreement that would degrade drinking water quality, trigger a need for additional water treatment, or cause a reduction in yield for water supply.

4.3 Interim obligations upon a finding of unforeseen circumstances.

If the Services make a finding of unforeseen circumstances, during the period necessary to determine the nature and location of additional or modified mitigation, the City will use reasonable efforts to avoid contributing to appreciably reducing the likelihood of the survival and recovery of the affected species across its range or Evolutionary Significant Unit, Distinct Population Segment, or formally designated Recovery Unit.

5.0 INCORPORATION OF HCP

The HCP and each of its provisions are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction between the terms of this agreement and the HCP, the terms of this agreement will control. In all other cases, the terms of this agreement and the terms of the HCP will be interpreted to be supplementary to each other.

6.0 TERM

6.1 Initial Term.

This agreement and the HCP will become effective on the date that the Services issue the Permit. This agreement, the HCP, and the Permit will remain in effect for a period of 50 years from issuance of the original Permit, except as provided below.

6.2 Permit suspension or revocation.

The Services may suspend or revoke the Permit for cause in accordance with the laws and regulations in force at the time of such suspension or revocation. (See 5 U.S.C. § 558, 50 C.F.R. §§ 13.27 - 13.29, 222.27; 15 C.F.R. Part 904.) Such

suspension or revocation may apply to the entire Permit, or only to specified covered species, covered lands, or covered activities. In the event of suspension or revocation, the City's obligations under this agreement and the HCP will continue until the Services determine that all take of covered species that occurred under the Permit has been fully mitigated in accordance with the HCP.

6.3 Relinquishment of the Permit.

6.3.1 Generally

The City may elect to relinquish the Permit in whole or in part, as to specified covered activities or as to certain species, or both, whether associated with municipal water withdrawal and mitigation or associated with management of the municipal watershed above the point of withdrawal, all in accordance with the regulations of the Services in force on the date of such relinquishment. These regulations are currently codified at 50 C.F.R. §222.306(d). At the time of relinquishment the City will have no post-relinquishment requirement to continue mitigation measures developed specifically for a relinquished activity, unless the Services determine that: a) continuation of a specific mitigation measure is necessary to offset impacts associated with another activity for which the City is retaining Permit coverage, b) continuation is necessary to fully mitigate the impacts that occurred as a result of the relinquished activity during the time it was covered by the Permit, or c) continuation is necessary to avoid substantially reducing the likelihood that one or more covered species will persist in Water Resource Inventory Area 9. The City will have no requirement for post-relinquishment mitigation if it elects to relinquish the Permit for all activities associated with management of the watershed. If the City elects to relinquish Permit coverage for a portion of the covered watershed management activities or a portion of the covered species in the watershed, the need for post-relinquishment mitigation will be determined by the Services in accordance with paragraph 6.3.2. If any post-relinquishment mitigation measures are required, the City's obligations for such measures will continue until the Services notify the City that the post-relinquishment mitigation is completed or no longer required. Unless the parties agree otherwise, the Services may not require more mitigation than would have been provided if the City had carried out the full term of the HCP.

6.3.2 Procedure for relinquishment.

If the City elects to relinquish the Permit before expiration of the full term of the HCP, the City will provide notice to the Services at least 120 days prior to the planned relinquishment. Such notice will include a status report detailing the nature and amount of take of all covered species, the mitigation provided for those species prior to relinquishment, and the status of the City's compliance with all other terms of the HCP. Within 120 days after receiving a notice and status report meeting the requirements of this paragraph, the Services will give notice to the City stating whether any post-relinquishment mitigation is required and, if so, the amount and terms of such mitigation, and the basis for the Services' conclusions. If the Services determine that no post-relinquishment mitigation is required, all obligations assumed by the parties under this agreement will terminate upon the Services' issuance of such notice. If the City

disagrees with the Services' determination, the parties may choose to use the dispute resolution procedures described in paragraph 14 of this agreement. The City will continue to carry out its obligations under the HCP until any such dispute is resolved. If the parties are unable to agree, the Services will have the final authority to determine whether the City is required to provide post-relinquishment mitigation; provided however, such authority must be exercised consistent with the provisions of this agreement, and such decision is subject to judicial review.

6.4 Treatment of unlisted species.

For purposes of paragraph 6.2 and 6.3, unlisted covered species will be treated as though they were listed species in determining the amount of take and the mitigation required.

6.5 Extension of the Permit.

Upon agreement of the parties and compliance with all applicable laws, the Permit may be extended beyond its initial term under regulations of the Services in force on the date of such extension. If the City desires to extend the Permit, it will so notify the Services at least 180 days before the then-current term is scheduled to expire. Extension of the Permit constitutes extension of the HCP and this agreement for the same amount of time, subject to any modifications that the Services may require at the time of extension.

7.0 FUNDING

The City will provide such funds as may be necessary to fulfill its obligations under the HCP subject to the availability of appropriated funds. The source or sources of funding shall be within the sole discretion of the City. The City will promptly notify the Services of any material change in the City's financial ability to fulfill its obligations, and will cooperate with the Services to minimize the adverse effects of any such change on achievement of the conservation goals of the HCP. Failure by the City to provide adequate funding to implement the HCP may be grounds for suspension of the Permit. All parties at all times will support efficient and effective use of funds to accomplish the purposes of the HCP.

8.0 MONITORING AND REPORTING

8.1 Planned periodic reports.

As described in the HCP, the City will submit periodic reports describing its activities and results of the monitoring program provided for in the HCP.

8.2 Other reports.

The City will provide, within 30 days of being requested by the Services, any additional information in its possession or control related to implementation of the HCP that is requested by the Services for the purpose of assessing whether the terms and

conditions of the Permit and the HCP, including the HCP's adaptive management plan, are being fully implemented.

8.3 Certification of reports.

All reports will include the following certification from a responsible City official who supervised or directed preparation of the report:

I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

8.4 Monitoring by Services.

The Services may conduct inspections and monitoring in connection with the Permit in accordance with their regulations. (See 50 C.F.R. §§ 13.47, 220.47.)

9.0 CHANGED CIRCUMSTANCES

9.1 The City-initiated response to changed circumstances.

The City will give notice to the Services within seven days after learning that any of the changed circumstances listed in Section 3.2.3 of the HCP has occurred. As soon as practicable thereafter, the City will modify its activities in the manner described in Section 3.2.3 of the HCP, to the extent necessary to mitigate the effects of the changed circumstances on covered species, and will report to the Services on its actions. The City will make such modifications without awaiting notice from the Services.

9.2 Services-initiated response to changed circumstances.

If the Services determine that changed circumstances have occurred and that the City has not responded in accordance with Section 3.2.3 of the HCP, the Services will so notify the City and will direct the City to make the required changes. The City will make the required changes and report to the Services on its actions. Such changes are provided for in the HCP, and hence do not constitute unforeseen circumstances or require amendment of the Permit or HCP.

9.3 Listing of species that are not covered species.

In the event that a non-covered species that may be affected by covered activities becomes listed under the ESA, the City will implement the "no-take/no-jeopardy" measures identified by the Services until the Permit is amended to include such species, or until the Services notify the City that such measures are no longer needed to avoid jeopardy to, take of, or adverse modification of the critical habitat of, the non-covered species.

10.0 ADAPTIVE MANAGEMENT

10.1 City-initiated adaptive management.

The City will implement the adaptive management provisions in Section 6 of the HCP, when changes in management practices are necessary to achieve the HCP's biological objectives, or to respond to monitoring results or new scientific information. The City will make such changes without awaiting notice from the Services and will report to the Services on any actions taken pursuant to this paragraph.

10.2 Services-initiated adaptive management.

If the Services determine that one or more of the adaptive management provisions in the HCP have been triggered and that the City has not changed its management practices in accordance with Section 6 of the HCP, the Services will so notify the City and will direct the City to make the required changes. Within 30 days after receiving such notice, the City will make the required changes and report to the Services on its actions. Such changes are provided for in the HCP, and hence do not constitute unforeseen circumstances or require amendment of the Permit or HCP, except as provided in this paragraph.

10.3 Reductions in mitigation.

The City will not implement adaptive management changes that may result in less mitigation than provided for covered species under the original terms of the HCP, unless the Services first provide written approval. The City may propose any such adaptive management changes by notice to the Services, specifying the adaptive management modifications proposed, the basis for them, including supporting data, and the anticipated effects on covered species, and other environmental impacts. Within 120 days of receiving such a notice, the Services will either approve the proposed adaptive management changes, approve them as modified by the Services, or notify the City that the proposed changes constitute Permit amendments that must be reviewed under paragraph 13.2 of this agreement.

10.4 No increase in take.

This paragraph does not authorize any modifications that would result in an increase in the amount and nature of take, or increase the impacts of take, of covered species beyond that analyzed under the original HCP and any amendments thereto. Any such modification must be reviewed as a Permit amendment under paragraph 13.2 of this agreement.

11.0 FORCE MAJEURE

11.1 Force majeure procedures.

In the event that the City is wholly or partially prevented from performing obligations under this agreement because of a force majeure event, the City will be

excused from whatever performance is affected by such force majeure event to the extent so affected, and such failure to perform will not be considered a material breach, provided that nothing in this paragraph will be deemed to authorize the City to violate the ESA or to render the goals of the HCP unobtainable, and provided further that:

(a) The suspension of performance is of no greater scope and no longer duration than is reasonably required by force majeure;

(b) The City notifies the Services orally within a reasonable time (normally not to exceed 72 hours) after becoming aware of any event that the City contends constitutes force majeure, and in writing within seven (7) calendar days after the event. Such notice will: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. This notice shall not be required where the Services have actual notice of delays or events of force majeure;

(c) The City uses its best efforts to avoid and mitigate the effects of any delay upon its ability to perform. A force majeure event may require use of the adaptive management provisions of this agreement and the HCP in remedying the effects of the force majeure event to the extent the same are within the control of the City;

(d) When the City is able to resume performance of its obligations, it provides the Services written notice to that effect.

11.2 Termination through force majeure.

Any party may terminate the Permit if a force majeure event renders the goals of the HCP unobtainable. Post-termination mitigation otherwise required under part 6.0 of this Agreement may, where reasonable, still be required in the event of early termination resulting from force majeure, to the extent that such mitigation remains feasible on covered lands and to the extent the force majeure event is not caused by federal or state agencies or courts or other local jurisdictions.

12.0 LAND TRANSACTIONS

12.1 Acquisition of land by the City.

Nothing in this agreement, the HCP, or the Permit limits the City's right to acquire additional lands. Any land acquisition by the City in the Green River watershed shall be reviewed under paragraph 13.1.

12.2 Disposal of land by The City.

The City's transfer of ownership or control of covered land will require prior approval by the Services and an amendment of the Permit in accordance with

paragraph 13.2 of this agreement, except that transfers of covered lands may be processed as minor modifications in accordance with paragraph 13.1 of this agreement if:

(a) The land will be transferred to an agency of the federal government and, prior to transfer, the Services have determined that transfer will not compromise the effectiveness of the HCP based on adequate commitments by that agency regarding management of such land;

(b) The land will be transferred to a non-federal entity that has entered into an agreement acceptable to the Services (e.g., an easement held by the state fish and wildlife agency with the Services as third-party beneficiaries) to ensure that the lands will be managed in such a manner and for such duration so as not to compromise the effectiveness of the HCP;

(c) The land will be transferred to a non-federal entity that, prior to completion of the land transaction, has agreed to be bound by the HCP as it applies to the transferred land and has obtained an incidental take permit following normal permit procedures covering all species then covered by the City's Permit; or

(d) The Services determine that the amount of land to be transferred does not exceed 160 acres and will not have a material impact on the ability of the City to comply with the requirements of the HCP and the terms and conditions of the Permit.

13.0 MODIFICATIONS AND AMENDMENTS

13.1 Minor modifications.

(a) Any party may propose minor modifications to the HCP or this agreement by providing notice to all other parties. Such notice shall include a statement of the reason for the proposed modification and an analysis of its environmental effects, including its effects on operations under the HCP and on covered species. The parties will use best efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications will become effective upon all other parties' written approval. If, for any reason, a receiving party objects to a proposed modification, it must be processed as an amendment of the Permit in accordance with subparagraph 13.2 of this paragraph. The Services will not propose or approve minor modifications to the HCP or this agreement if the Services determine that such modifications would result in operations under the HCP that are significantly different from those analyzed in connection with the original HCP, adverse effects on the environment that are new or significantly different from those analyzed in connection with the original HCP, or additional take not analyzed in connection with the original HCP.

(b) Minor modifications to the HCP and IA processed pursuant to this subparagraph may include but are not limited to the following:

- (1) corrections of typographic, grammatical, and similar editing errors that do not change the intended meaning;
- (2) correction of any maps or exhibits to correct errors in mapping or to reflect previously approved changes in the Permit or HCP; and
- (3) minor changes to survey, monitoring or reporting protocols.
- (4) any land acquisition by the City of 640 acres or less in the Green River watershed.

(c) Any other modifications to the HCP or this agreement will be processed as amendments of the Permit in accordance with subparagraph 13.2 of this paragraph.

13.2 Amendment of the Permit.

The Permit may be amended in accordance with all applicable legal requirements, including but not limited to the ESA, the National Environmental Policy Act, and the Services' permit regulations. The party proposing the amendment shall provide a statement of the reasons for the amendment and an analysis of its environmental effects, including its effects on operations under the HCP and on covered species.

14.0 REMEDIES, ENFORCEMENT, AND DISPUTE RESOLUTION

14.1 In general.

Except as set forth below, each party shall have all remedies otherwise available to enforce the terms of this agreement, the Permit, and the HCP.

14.2 No monetary damages.

No party shall be liable for monetary damages to any other party or other person for any breach of this agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this agreement or any other cause of action arising from this agreement.

14.3 Injunctive and temporary relief.

The parties acknowledge that the covered species are unique and that their loss as species would result in irreparable damage to the environment, and that therefore injunctive and temporary relief may be appropriate to ensure compliance with the terms of this agreement.

14.4 Enforcement authority of the United States.

Nothing contained in this agreement is intended to limit the authority of the United States government to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA or other applicable law.

14.5 Dispute resolution.

The parties recognize that disputes concerning implementation of, compliance with, or termination of this agreement, the HCP, and the Permit may arise from time to time. The parties agree to work together in good faith to resolve such disputes, using the informal dispute resolution procedures set forth in this paragraph, or such other procedures upon which the parties may later agree. However, if at any time any party determines that circumstances so warrant, it may seek any available remedy in any forum without waiting to complete informal dispute resolution.

14.5.1 Informal dispute resolution process.

Unless the parties agree upon another dispute resolution process, or unless an aggrieved party has initiated administrative proceedings or suit in federal court, the parties may use the following process to attempt to resolve disputes:

(a) The aggrieved party will notify the other parties of the provision that may have been violated, the basis for contending that a violation has occurred, and the remedies it proposes to correct the alleged violation.

(b) The party alleged to be in violation will have 30 days, or such other time as may be agreed, to respond. During this time it may seek clarification of the information provided in the initial notice. The aggrieved party will use its best efforts to provide any information then available to it that may be responsive to such inquiries.

(c) Within 30 days after such response was provided or was due, representatives of the parties having authority to resolve the dispute will meet and negotiate in good faith toward a solution satisfactory to all parties, or will establish a specific process and timetable to seek such a solution.

(d) if any issues cannot be resolved through such negotiations, the parties will consider non-binding mediation and other alternative dispute resolution processes and, if a dispute resolution process is agreed upon, will make good faith efforts to resolve all remaining issues through that process.

15.0 MISCELLANEOUS PROVISIONS

15.1 No partnership.

Neither this agreement nor the HCP shall make or be deemed to make any party to this agreement the agent for or the partner of any other party.

15.2 Notices.

Any notice permitted or required by this agreement shall be in writing, delivered personally to the persons listed below, or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any party may from time to time specify to the other parties in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail. Notices shall be transmitted so that they are received within the specified deadlines.

Assistant Regional Director
United States Fish and Wildlife Service
911 N.E. 11th Ave.
Portland, Oregon 97232-4181
Telephone: 503-231-6159
Telefax: 503-231-2019

Regional Administrator
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, Washington 98115-0070
Telephone 206-526-6150
Telefax 206-526-6426

Superintendent
Tacoma Water
3628 South 35th St.
P.O. Box 11007
Tacoma, Washington 98411-0007
Telephone: 253-502-8208
Telefax 253-502-8694

15.3 Entire agreement.

This agreement, together with the HCP and the Permit, constitutes the entire agreement among the parties. This agreement supersedes any and all other agreements, either oral or in writing, among the parties with respect to the subject matter and contains all of the covenants and agreements among them with respect to said matters, and each party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other party or anyone acting on behalf of any other party that is not embodied in this agreement.

15.4 Elected officials not to benefit.

No member of or delegate to Congress shall be entitled to any share or part of this agreement, or to any benefit that may arise from it.

15.5 Availability of funds.

Implementation of this agreement and the HCP by the Services is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this agreement will be construed by the parties to require the obligation, appropriation, or expenditure of any money from the U. S. Treasury. The parties acknowledge that the Services will not be required under this agreement to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

15.6 Duplicate originals.

This agreement may be executed in any number of duplicate originals. A complete original of this agreement shall be maintained in the official records of each of the parties hereto.

15.7 No third-party beneficiaries.

Without limiting the applicability of rights granted to the public pursuant to the ESA or other federal law, this agreement shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary or otherwise, nor shall it authorize anyone not a party to this agreement to maintain a legal action for injunction, personal injuries or damages pursuant to the provisions of this agreement. The duties, obligations, and responsibilities of the parties to this agreement with respect to third parties shall remain as imposed under existing law.

15.8 Relationship to the ESA and other authorities.

The terms of this agreement shall be governed by and construed in accordance with the ESA and applicable federal law. In particular, nothing in this agreement is intended to limit the authority of the Services to seek penalties or otherwise fulfill their responsibilities under the ESA. Moreover, nothing in this agreement is intended to limit or diminish the legal obligations and responsibilities of the Services as agencies of the federal government. Nothing in this agreement will limit the right or obligation of any federal agency to engage in consultation required under Section 7 of the ESA or other federal law; however, it is intended that the rights and obligations of the City under the HCP and this agreement will be considered in any consultation affecting the City's activities covered by the HCP, Permit and this agreement.

15.9 References to regulations.

Any reference in this agreement, the HCP, or the Permit to any regulation or rule of the Services shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

15.10 Applicable laws.

All activities undertaken pursuant to this agreement, the HCP, or the Permit must be in compliance with all applicable state and federal laws and regulations.

15.11 Successors and assigns.

This agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the parties and their respective successors and assigns. Assignment or other transfer of the Permit shall be governed by the Services' regulations.

15.12 Contents Not Binding in Other Litigation

The contents of the HCP, Permit and this agreement shall not constitute statements against interest or admissions and shall not be binding in litigation except among the parties to this agreement in matters related to enforcement of the HCP, Permit and this agreement. The City reserves the right to assert in any proceeding that one or more activities comprehended by the HCP, Permit and this agreement do not require a Permit.

IN WITNESS WHEREOF, the parties have executed this Implementing Agreement to be in effect as of the date that the Services issue the Permit.

BY 
Regional Director
United States Fish and Wildlife Service
Portland, Oregon

Date 7/9/01

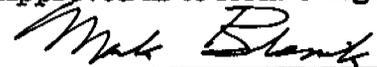
BY 
Regional Administrator
National Marine Fisheries Service
Seattle, Washington

Date 7/9/01

BY 
Mark Crisson, Director
City of Tacoma Department of Public Utilities
City of Tacoma, Washington

Date 6-26-01

Approved as to form & legality:



Asst. City Attorney