SETTLEMENT AGREEMENT BETWEEN THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 10, AND THE CITY OF TACOMA

Whereas, on March 3, 2003, a consent decree was entered by the United States District Court in the case of United States v. Atlantic Richfield Co., et al., Civil No. C03-5117 (W.D. Wash.) (Consent Decree), setting out, among other things, certain obligations of the City of Tacoma (City) to perform specified response actions addressing releases and threatened releases of hazardous substances in the Thea Foss and Wheeler-Osgood Waterways of Commencement Bay Superfund Site pursuant to Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9606 (Response Actions).

Whereas, Lori Cohen, Associate Director, Office of Environmental Cleanup, U.S. Environmental Protection Agency (EPA) Region 10, sent a letter dated February 8, 2007, to William Pugh, Public Works Department, City of Tacoma. Among other things, the letter alleged that the City had violated certain deadlines for the Response Actions and demanded the payment of a penalty for the alleged violations.

Whereas, William Pugh from the City sent a letter dated March 8, 2007, to Lori Cohen**,** EPA Region 10. Among other things, the letter disputed the amount of the penalty.

Whereas, EPA Region 10 has the authority to settle this matter pursuant to Paragraph 72 of the Consent Decree.

Whereas, EPA Region 10 and the City believe that a settlement is in the interest of the parties and is in the public interest.

Whereas, on December 30, 1997, a consent decree was entered by the United States District Court in the case of United States, et al. v. City of Tacoma and the Tacoma Public Utility, Civil No. C97-5336 (W.D. Wash.) (NRD Consent Decree), in which the City agreed to perform a number of natural resource habitat restoration projects to address natural resource damages caused by releases of hazardous substances in the Commencement Bay and Puyallup River estuary. The City has specific obligations, subject to fixed expenditure limits, to perform stewardship, maintenance and monitoring of restored natural resource habitat areas that expire five years after project construction. For two of the projects, the City has no remaining stewardship, maintenance and monitoring obligations under the NRD Consent Decree. For the remaining projects, the stewardship, maintenance and monitoring obligations are identifiable and can be distinguished from obligations imposed under other authorities.

Whereas, the Commencement Bay Natural Resource Trustees have developed additional habitat restoration projects in the Commencement Bay area that require long-term stewardship, maintenance and monitoring and for which no party (including the City) has any ongoing stewardship obligations.

Whereas, as described herein, the City is willing to perform an environmental project related to the restored natural resource habitat areas to settle this matter.

Whereas, the National Oceanic and Atmospheric Administration (NOAA) supports and agrees to oversee the City's proposed project.

TERMS AND CONDITIONS OF THE SETTLEMENT

EPA Region 10 and the City agree to resolve the penalty claim for the alleged violations as follows:

1. **Parties**. This Settlement Agreement shall apply and be binding upon EPA and the City, and their officers, directors, employees, successors and assigns.

2. **Waiver**. The City hereby waives its rights to any judicial or administrative proceedings on any issues of law or fact related to the violations described in EPA's February 8, 2007, letter.

3. **Penalty**. No more than thirty (30) days after the date of execution of this Settlement Agreement by EPA, the City shall pay a penalty in the amount of $89,500 in accordance with the procedures set forth in Paragraph 78 of the Consent Decree. However, the payment shall be sent to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

The City shall send copies of this check to the following two places:

Kelly Cole
Assistant Regional Counsel
Office of Regional Counsel
EPA Region 10
1200 Sixth Avenue, Suite 900
Mail Stop ORC-158
Seattle, WA 98101.

EPA Finance Center
MS-NWD
Cincinnati, OH 45268

4. **Environmental Project.** The City shall undertake an Environmental Project which will consist of stewardship, maintenance and monitoring activities related to certain natural resource habitat restoration projects that were developed by the City as part of the NRD Consent Decree, by other parties under separate settlement agreements or by the Commencement Bay Natural Resource Trustees using funds obtained in

settlement agreements with other parties. The specific activities associated with the Environmental Project will consist solely of activities distinct from and in addition to any obligations the City may have under the NRD Consent Decree, applicable permits or other legal authority and will be described in more detail in the Environmental Project Statement of Work, required under Paragraph 7, below.

5. **Escrow Account**. No more than thirty (30) days after the date of execution of this Settlement Agreement by EPA, the City shall submit a check for $268,500 to the Escrow Account that is described in the Escrow Agreement at Attachment 1 to this Settlement Agreement.

The City shall send a copy of this check to:

Kelly Cole
Assistant Regional Counsel
Office of Regional Counsel
EPA Region 10
1200 Sixth Avenue, Suite 900
Mail Stop ORC-158
Seattle, WA 98101.

6. **Oversight Costs Payment**. No more than thirty (30) days after the date of execution of this Settlement Agreement by NOAA, the City shall submit a check for $30,000 to NOAA. Payment shall be made per instructions provided by NOAA upon execution of this Settlement Agreement. The funds so provided together with any interest accrued on the balance in the Escrow Account shall be used by NOAA for project oversight costs.

7. **Environmental Project Statement of Work**. Based on the Scope of Work at Attachment 2 to this Agreement, the City and NOAA shall develop, subject to NOAA's approval, an annual statement of work (Annual SOW) for the City that will describe the stewardship, maintenance and monitoring work the City shall perform at the habitat sites each year. Consistent with the Scope of Work, the Annual SOW will set forth the environmental objectives to be achieved at these sites and will also enumerate and discuss the types of project expenses that may be considered Reimbursable Expenses, as that term is defined in Paragraph 11, below.

8. **Annual Report**. In accordance with the schedule set forth in the Annual SOW, the City shall submit an Annual Report to NOAA and EPA documenting the work it performed that year and the environmental benefits resulting from such work. In its Annual Report, the City shall identify its project expenses for that year, including identification of those expenses the City considers to be Reimbursable Expenses, as that term is defined in Paragraph 11, below. The City shall also provide Acceptable Documentation of its Reimbursable Expenses as defined in Paragraph 12 below.

9. **Completion Report**. The City shall also submit a Completion Report to NOAA and EPA containing a detailed description of the final Environmental Project as implemented; a description of any problems encountered and the solutions thereto; itemized costs; certification that the Environmental Project has been fully implemented pursuant to the provisions of this Settlement Agreement; and a description of the environmental benefits resulting from implementation of the Environmental Project.

10. **Reimbursement Procedures**. If NOAA determines that the City's restoration work that year has been satisfactory and in accordance with the Annual SOW, and that environmental objectives have been achieved, the City shall be reimbursed for all Reimbursable Expenses, as that term is defined in Paragraph 11, below. Reimbursement to the City shall be made from the Escrow Account and in accordance with the Escrow Agreement at Attachment 1 to this Settlement Agreement.

11. **Reimbursable Expenses**. In itemizing its project costs in the Annual Report, the City shall also identify and provide Acceptable Documentation, pursuant to Paragraph 12 below, for all Reimbursable Expenses. Reimbursable Expenses include all project expenses that are necessary to perform the work described in the Annual SOW and that are not otherwise ineligible under Paragraph 13 below. For example, Reimbursable Expenses might include the costs of labor, rental equipment, and plantings. Where the Annual Report includes costs that are not eligible for reimbursement, those costs must be clearly identified as such.

12. **Acceptable Documentation**. Acceptable Documentation means invoices, purchase orders, or other documents that specifically identify and itemize the individual costs of the goods purchased and/or services performed for which reimbursement is requested, together with proof that the costs were actually paid by the City. Canceled drafts do not constitute Acceptable Documentation, except as proof of payment.

13. **Project Expenses Ineligible for Reimbursement**. NOAA and/or EPA may determine that certain project expenses incurred by the City are not eligible for reimbursement. For example, if any of the City's project expenses relate to work performed at habitat sites where the City or any other party to the NRD Consent Decree may have existing NRDA stewardship obligations, these expenses will not be considered Reimbursable Expenses. In addition, any expenses related to work performed by the City that are customary ownership costs will not be considered Reimbursable Expenses. In addition, any expenses related to work performed by the City that it is required to perform under applicable law or pursuant to contract, agreement or otherwise, will not be considered Reimbursable Expenses. General overhead or indirect costs of the City will not be considered Reimbursable Expenses; however, the cost to the City of City staff labor to perform the work, including partially loaded labor rates (which will include an average factor for taxes, benefits, etc. but excludes non-productive time), will be considered Reimbursable Expenses; provided, however, that the costs for project management, reporting, and documentation activities (Tasks 1 and 2 of the Scope of Work, Attachment 2) will not exceed 11% of the $268,500 total project expenditure.

Each Annual Report will document the relative percentage of Task 1 and 2 expenditures on an annual and project-to-date basis.

14. **Right to Inspect**. NOAA and/or EPA, their contractors or other authorized representatives, may inspect the habitat restoration sites during reasonable business hours to confirm completion of the Environmental Project in conformity with this Settlement Agreement, the Annual SOWs, the Completion Report, and the Annual Reports, or for any other reason.

15. **Payment Provisions**. In the event that payments required by Paragraphs 3 and 5 are not made in the time required: (1) this Settlement Agreement becomes null and void, and (2) the City shall submit a check to EPA for $358,000, plus interest, in accordance with the procedures set forth in Paragraph 3, above, and not later than thirty (30) days after EPA's demand for such payment. Interest on the $358,000 shall have begun to accrue on March 11, 2007, at the interest rate described in Section 107(a) of CERCLA.

16. **No Tax Deduction Allowed**. The cash payment required by this Settlement Agreement shall not be deductible for purposes of Federal income taxes. In addition, the City shall not capitalize into inventory or basis or deduct any costs or expenditures incurred in performing the Environmental Project for purposes of Federal income taxes.

17. **Failure to Comply**. Failure to comply with any of the terms or provisions in this Settlement Agreement shall be deemed a violation of the Settlement Agreement, and the City shall become liable for Stipulated Penalties pursuant to Paragraph 19, below.

18. **Dispute Resolution Procedure**. This section shall be the exclusive mechanism to resolve disputes arising under this Settlement Agreement. Any dispute that arises shall in the first instance be the subject of informal negotiations between the City and EPA Region 10/NOAA. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other party a written Notice of Dispute. In the event that the parties cannot resolve a dispute by informal negotiations, then the position advanced by EPA Region 10/NOAA shall be considered binding unless, within twenty (20) days after the conclusion of the informal negotiation period, the City invokes formal dispute resolution by serving EPA Region 10/NOAA with a written Statement of Position on the matter in dispute. Within twenty (20) days after receipt of the City's Statement of Position, EPA Region 10/NOAA may serve on the City its Statement of Position. Within seven (7) days after receipt of the EPA/NOAA Statement of Position, the City may submit a Reply. The EPA Region 10 Director of the Environmental Cleanup Office will issue a final decision resolving the dispute. The decision shall be final and binding upon the City.

19. **Stipulated Penalties**. In the event that the City fails to comply with the terms or provisions of this Settlement Agreement, the City shall be liable for Stipulated Penalties. The following Stipulated Penalties shall accrue per violation per day for any noncompliance:

Penalty Per Violation Per Day	**Period of Noncompliance**
$1,000	1st through 14th day
$5,000	15th through 30th day
$8,000	31st day and beyond

All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. All penalties accruing under this Section shall be due and payable to the United States within thirty (30) days of the City's receipt from EPA of a demand for payment of penalties, unless the City invokes Dispute Resolution procedures under Section 18 above. EPA Region 10 may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

All payments of stipulated penalties made under this Section shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be deposited in the Thea Foss and Wheeler Osgood Waterways Problem Areas Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance the response action at or in connection with the Thea Foss and Wheeler Osgood Waterways Problem Areas. Payment of stipulated penalties shall be sent to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

The City shall send copies of the check to the following two places:

Kelly Cole
Assistant Regional Counsel
Office of Regional Counsel
EPA Region 10
1200 Sixth Avenue, Suite 900
Mail Stop ORC-158
Seattle, WA 98101.

EPA Finance Center
MS-NWD
Cincinnati, OH 45268

20. **Public Statements**. Any public statement, written, in print, or on film, on a website, or in or on any other form of media, made by any City official, employee,

contractor or any other representative of the City making reference to the Environmental Project shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency for violations of CERCLA." This language shall appear at least as prominently as the mention of the Environmental Project.

21. **Certification**. The City hereby certifies that, as of the date of the Settlement Agreement, it is not required to perform or develop the Environmental Project by any federal, state or local law or regulation; nor is the City required to perform or develop the Environmental Project by any other agreement, grant or as injunctive relief in this or any other case. The City shall not seek credit for the Environmental Project in any other enforcement action. The City further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for this Environmental Project.

22. **Authority to Settle**. Each undersigned representative of the parties to this Settlement Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind that party to it.

Daniel D. Opalski, Director
Office of Environmental Cleanup
U.S. Environmental Protection Agency,
Region 10

Date: 8/13/2008

Eric Anderson
City Manager
City of Tacoma

Date: 8-1-8

Approved as to Form:

Assistant City Attorney

Craig O'Connor
Special Counsel for Natural Resources
Office of the General Counsel
National Oceanic and Atmospheric Administration

Date: _____

contractor or any other representative of the City making reference to the Environmental Project shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency for violations of CERCLA." This language shall appear at least as prominently as the mention of the Environmental Project.

21. **Certification**. The City hereby certifies that, as of the date of the Settlement Agreement, it is not required to perform or develop the Environmental Project by any federal, state or local law or regulation; nor is the City required to perform or develop the Environmental Project by any other agreement, grant or as injunctive relief in this or any other case. The City shall not seek credit for the Environmental Project in any other enforcement action. The City further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for this Environmental Project.

22. **Authority to Settle**. Each undersigned representative of the parties to this Settlement Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind that party to it.

_____
Daniel D. Opalski, Director
Office of Environmental Cleanup
U.S. Environmental Protection Agency,
Region 10

Date: _____

_____
Eric Anderson
City Manager
City of Tacoma

Date: _____

Approved as to Form:

_____
Assistant City Attorney

_____
Craig O'Connor
Special Counsel for Natural Resources
Office of the General Counsel
National Oceanic and Atmospheric Administration

Date: 8/5/08

ATTACHMENT 1 TO SETTLEMENT AGREEMENT

Escrow Agreement

ESCROW AGREEMENT

This ESCROW AGREEMENT (the "Agreement"), dated as of _____ __, 2008, is made by and among the City of Tacoma, Washington (the "City"), the EPA Environmental Protection Agency, Region X ("EPA"), the National Oceanic and Atmospheric Administration ("NOAA"), and the Bank of New York Mellon Trust Company, N.A., a national banking association, in its capacity as escrow agent hereunder (the "Escrow Agent").

RECITALS

WHEREAS, on March 3, 2003, a consent decree was entered by the United States District Court in the case of United States v. Atlantic Richfield Co., et al., Civil No. C03-5117 (W.D. Wash.) (the "Consent Decree"), setting out, among other things, certain obligations of the City to perform specified response actions (hereinafter "Response Actions") addressing releases and threatened releases of hazardous substances in the Thea Foss and Wheeler-Osgood Waterways of Commencement Bay Superfund Site (the "Site") pursuant to Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9606;

WHEREAS, in 2007 EPA alleged that the City had violated certain terms of the Consent Decree and demanded that the City pay specified penalties for the alleged violations, and in response the City disputed the amount of the penalties sought by EPA;

WHEREAS, in order to settle the dispute over the alleged violations of the Consent Decree and the corresponding penalties, the City, EPA, and NOAA entered into that certain Settlement Agreement Between the U.S. Environmental Protection Agency, Region 10, and the City of Tacoma (the "Settlement Agreement"), dated _____ __, 2008, attached as Exhibit A hereto;

WHEREAS, the Settlement Agreement requires that the City, upon the terms and conditions set forth in the Settlement Agreement, pay an amount equal to $268,500 (the "Escrow Amount") to the Escrow Agent, such Escrow Amount to be held in escrow and disbursed pursuant to the terms and subject to the conditions set forth in the Settlement Agreement and this Agreement; and

WHEREAS, the Escrow Agent has agreed to act as the escrow agent hereunder, in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements contained herein and for other good and valuable consideration, the value, receipt and sufficiency of which are hereby acknowledged, the City, EPA, NOAA, and the Escrow Agent hereby agree as follows, intending to be legally bound:

1. Appointment of the Escrow Agent; Establishment of the Escrow Account. The City hereby constitutes and appoints the Escrow Agent as, and the Escrow Agent hereby agrees to assume and perform the duties of, escrow agent under and pursuant to this Agreement. Pursuant to Section 5 of the Settlement Agreement, the City will, within thirty (30) days after the date of execution of the Settlement Agreement, deposit, or cause to be deposited, the Escrow Amount with the Escrow Agent. The Escrow Amount shall be held by the Escrow Agent **in escrow** in a separate account (the "Escrow Account") in strict accordance with the terms of this Agreement. Any and all earnings on the Escrow Account shall be held by the Escrow Agent in a designated sub-account (the "Interest Sub-Account") and managed in strict accordance with the terms of this Agreement. This Agreement shall remain in effect, and the Escrow Agent shall maintain the Escrow Account in accordance herewith, until either (a) the Escrow Agent receives written notification from the EPA that the City has fully performed its obligations under the Settlement Agreement or (b) all the funds comprising the Escrow Account and Interest Sub-Account have been disbursed in accordance with the terms of this Agreement such that the Escrow Account and Interest Sub-Account have reached a zero balance. In the event this Agreement terminates pursuant to clause (a) immediately above, the date of the Escrow Agent's receipt of such written notification from EPA shall be deemed the "Escrow Release Date."

2. Investment of the Escrow Account.

(a) The amounts in the Escrow Account and Interest Sub-Account shall be invested and reinvested by the Escrow Agent in accordance with investment instructions that the City may communicate in writing to the Escrow Agent from time to time, subject, however, to the provisions of this Section 2.

(b) The City may direct the Escrow Agent to invest amounts in the Escrow Account and Interest Sub-Account in, and the Escrow Agent shall invest amounts in the Escrow Account and Interest Sub-Account in, only the following investments (together, "Permitted Investments"):

(i) direct obligations of, or obligations the timely payment of, principal of and interest on which are guaranteed fully and unconditionally by, the United States of America (or by any agency or instrumentality thereof to the extent such obligations are backed by the full faith and credit of the United States of America);

(ii) direct obligations of any State of the United States of America or of any municipality or other political subdivision thereof maturing within ninety (90) days from the date of acquisition thereof, which obligations have a minimum credit rating of A-1 from Standard & Poor's or Prime-1 from Moody's;

(iii) certificates of deposit and time deposits maturing within ninety (90) days from the date of acquisition thereof, and/or money market deposit accounts, trust accounts, trust funds, interest-bearing money market accounts, time deposits, demand deposits, overnight bank deposits, interest-bearing deposits and banker's acceptances, in each case issued, offered, or guaranteed by the Escrow Agent,

any of its affiliates, or any other commercial bank having a combined capital and surplus of not less than $500,000,000; and

(iv) commercial paper maturing within ninety (90) days from the date of acquisition thereof and having, at such date of acquisition, a minimum short-term credit rating of A-1 from Standard & Poor's or Prime-1 from Moody's.

(c) Subject to the terms of this Agreement, any and all earnings or proceeds received on any amounts invested hereunder shall be deposited into the Interest Sub-Account (and shall be subsequently reinvested within the Interest Sub-Account in accordance with the terms hereof).

(d) The Escrow Agent shall have the right to liquidate any investments held in the Escrow Account or Interest Sub-Account in order to provide funds necessary to make required payments under this Agreement. Absent prior written instructions from the City regarding which particular investments the Escrow Agent shall liquidate for the purposes of making such payments, the Escrow Agent may determine in its sole discretion which investments to liquidate and shall incur no liability to any party whatsoever in connection with any such determination. Notwithstanding any other provision of this Agreement, the Escrow Agent is authorized to hold cash in the Escrow Account and Interest Sub-Account awaiting investment or disbursement uninvested for a reasonable period of time and without liability for the payment of interest thereon.

(e) The Escrow Agent shall have no liability for any loss sustained (i) as a result of any investment in Permitted Investments made pursuant to the written instructions of the City or made otherwise in accordance with the terms of this Agreement, (ii) as a result of any liquidation of any investment prior to its maturity, or (iii) for the failure of the City to give the Escrow Agent instructions to invest or reinvest the amounts in the Escrow Account or Interest Sub-Account (or for the failure of the Escrow Agent to invest or reinvest all or any portion of the amounts in the Escrow Account on Interest Sub-Account as a result thereof). The Escrow Agent may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Agreement. The Escrow Agent may conclusively rely upon such written direction from the City as to both the suitability and legality of the directed investments. The City acknowledges that regulations of the Comptroller of the Currency grant the City the right to receive brokerage confirmations of the security transactions as they occur, at no additional cost. To the extent permitted by law, the City specifically waives compliance with 12 C.F.R. 12 and hereby notifies the Escrow Agent that no brokerage confirmations need be sent relating to the security transactions as they occur.

(f) The Escrow Agent shall furnish to both the City and EPA a monthly statement of transaction regarding transactions in the Escrow Account or Interest Sub-Account.

3. Disbursement of Amounts in the Escrow Account and Interest Sub-Account.

(a) The following procedures will govern the method by which the City may make claims against and receive reimbursement from amounts in the Escrow Account:

(i) Pursuant to the terms of the Settlement Agreement, the City will be undertaking an environmental project (as defined in the Settlement Agreement, the "Environmental Project") consisting of stewardship, maintenance, and monitoring activities related to certain natural resource habitat restoration projects that were developed by the City as part of the Natural Resource Damage (NRD) Consent Decree, by other parties under separate settlement agreements or by the Commencement Bay Natural Resource Trustees using funds obtained in settlement agreements with other parties. The specific activities associated with the Environmental Project will consist solely of activities distinct from and in addition to any obligations the City may have under the NRD Consent Decree, applicable permits or other legal authority and will be described in more detail in the Environmental Project Statement of Work required by the Settlement Agreement. Further, in accordance with the terms of the Settlement Agreement, the City will submit to NOAA and EPA each year an annual report (as defined more fully in the Settlement Agreement, the "Annual Report") that, among other things, will document costs incurred by the City in implementing the Environmental Project in the previous calendar year for which the City is seeking reimbursement from the Escrow Account.

(ii) Pursuant to the Settlement Agreement, NOAA and EPA will review the annual requests for reimbursement submitted by the City as part of each Annual Report and determine whether and to what extent each such request shall be granted. NOAA and/or EPA will notify the City in writing of the results of each such determination, including a statement of the dollar amount for which the City is entitled to reimbursement from the Escrow Account. Such notification shall be referred to hereinafter as a "Payment Authorization."

(iii) Not more than once per calendar year, the City may submit to the Escrow Agent a copy of the most recent Payment Authorization and a written request that the Escrow Agent make payment from the Escrow Account in an amount equal to the amount specified in such Payment Authorization. (The submission by the City to the Escrow Agent of such Payment Authorization and request for funds shall be referred to hereinafter as a "Disbursement Request.") The City shall copy NOAA and EPA on all Disbursement Requests submitted by the City to the Escrow Agent.

(iv) Within three (3) business days of the date of its receipt of a Disbursement Request, the Escrow Agent shall pay to or at the direction of the City the amount specified in such Disbursement Request or, if less, the full balance then remaining in the Escrow Account.

(b) If, on the Escrow Release Date, no Disbursement Request is

pending and unpaid, the Escrow Agent will, within three (3) business days after the Escrow Release Date, deliver to or at the direction of EPA all remaining amounts in the Escrow Account.

(c) If, on the Escrow Release Date, any Disbursement Request remains unpaid, the Escrow Agent will retain in the Escrow Account a portion of the remaining Escrow Account equal to the applicable amounts specified in any unpaid Disbursement Request, and will, within three (3) business days after the Escrow Release Date and payment of the final Disbursement Request, deliver to or at the direction of EPA the remaining amounts in the Escrow Account that exceed the amount so retained.

(d) The following procedures will govern the method by which NOAA may make claims against and receive reimbursement from amounts in the Interest Sub-Account:

(i) Pursuant to the terms of the Settlement Agreement, NOAA will be overseeing implementation of the Environmental Project undertaken by the City. The Settlement Agreement further provides that NOAA shall be entitled to access amounts in the Interest Sub-Account to pay the costs associated with its oversight activities.

(ii) Not more than once per calendar year, NOAA may submit to the Escrow Agent a written statement of its then-outstanding Environmental Project oversight costs along with a written request that the Escrow Agent make payment from the Interest Sub-Account in such amount. (The submission by NOAA to the Escrow Agent of such statement and request for funds shall be referred to hereinafter as an "Oversight Cost Payment Request.") NOAA shall copy EPA and the City on all Oversight Cost Payment Requests submitted by NOAA to the Escrow Agent.

(iii) Within three (3) business days of the date of its receipt of an Oversight Cost Payment Request, the Escrow Agent shall pay to or at the direction of NOAA the amount specified in such Oversight Cost Payment Request or, if less, the full balance then remaining in the Interest Sub-Account.

(iv) Within three (3) business days after the Escrow Release Date, the Escrow Agent will deliver to or at the direction of NOAA all remaining amounts in the Interest Sub-Account.

(e) In the event of a disagreement between the parties hereto as to the disposition of funds in the Escrow Account or Interest Sub-Account, the Escrow Agent will have the right, in addition to any other rights available to the Escrow Agent at law or in equity, to tender into the registry or custody of any court having jurisdiction all money and property comprising the Escrow Account or Interest Sub-Account and/or to take such other legal action as may be appropriate or necessary in the opinion of the Escrow Agent. Upon such tender, the parties hereto agree that the Escrow Agent will be discharged from all further duties under this Agreement; provided, however, that the filing of any such legal proceedings will not deprive the Escrow Agent of its compensation hereunder

earned prior to such filing.

4. Concerning the Escrow Agent.

The Escrow Agent undertakes to perform only such duties as are expressly set forth herein, and no additional duties or obligations will be implied hereunder. In performing its duties under this Agreement, or upon the claimed failure to perform any of its duties hereunder, the Escrow Agent will not be liable to anyone for any damages, losses or expenses which may be incurred as a result of the Escrow Agent so acting or failing to so act; provided, however, the Escrow Agent will not be relieved from liability for damages arising out of its gross negligence, bad faith or willful misconduct under this Agreement. The Escrow Agent will in no event incur any liability with respect to (i) any action taken or omitted to be taken in good faith upon advice of legal counsel given with respect to any question relating to the duties and responsibilities of the Escrow Agent hereunder or (ii) any action taken or omitted to be taken in reliance upon any document, certificate, opinion, resolution, statement, notice, report, request, consent, approval, order or other instrument delivered to the Escrow Agent and believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent will not be bound in any way by, or be deemed to have any knowledge of the terms of, any other agreement or contract between or among the City, EPA, and/or NOAA, whether or not the Escrow Agent has knowledge of any such agreement or contract.

The Escrow Agent will have no obligation to risk or expend its own funds, or to take any legal action in connection with this Agreement or towards its enforcement, or to appear in, prosecute, or defend any action or legal proceeding which would or might involve it in any cost, expense, loss, or liability unless security and indemnity, as provided in this Section 4, will be furnished.

The City agrees to indemnify the Escrow Agent and its officers, directors, employees, and agents and save the Escrow Agent and its officers, directors, employees, and agents harmless from and against any and all Claims (as hereinafter defined) and Losses (as hereinafter defined) which may be incurred by the Escrow Agent or any of its officers, directors, employees, or agents as a result of or in connection with the Escrow Agent's capacity as such under this Agreement (other than Claims and Losses arising as a result of gross negligence, bad faith or willful misconduct by the Escrow Agent or any of its officers, directors, employees, or agents). For purposes hereof, the term "Claims" will mean all claims, lawsuits, causes of action, or other legal actions and proceedings of whatever nature brought against the Escrow Agent or any such officer, director, employee, or agent, even if groundless, false, or fraudulent, so long as the claim, lawsuit, cause of action, or other legal action or proceeding is alleged or determined, directly or indirectly, to arise out of, result from, relate to or be based upon, in whole or in part: (i) the acts or omissions of the City, EPA, or NOAA (ii) the appointment of the Escrow Agent as escrow agent under this Agreement, or (iii) the performance by the Escrow Agent of its powers and duties under this Agreement; and the term "Losses" will mean losses, costs, damages, expenses, judgments, and liabilities of whatever nature (including but not limited to reasonable attorneys', accountants', and other professionals' fees and

expenses, litigation and court costs and expenses and amounts paid in settlement), directly or indirectly resulting from, arising out of, or relating to one or more Claims. Upon the written request of the Escrow Agent or any such officer, director, employee or agent (each referred to hereinafter as an "Indemnified Party"), the City agrees to assume the investigation and defense of any Claim, including the employment of counsel acceptable to the applicable Indemnified Party and the payment of all expenses related thereto and, notwithstanding any such assumption, the Indemnified Party will have the right, and the City agrees to pay the cost and expense thereof, to employ separate counsel with respect to any such Claim and participate in the investigation and defense thereof in the event that such Indemnified Party will have been advised by counsel that there may be a potential conflict of interest, or one or more legal defenses available to such Indemnified Party which are different from or additional to those available to the City. The City hereby agrees that the indemnifications and protections afforded the Escrow Agent in this section will survive the termination of this Agreement and the earlier removal or resignation of the Escrow Agent.

The City hereby agrees that the Escrow Agent will be paid fees for its ordinary services hereunder determined in accordance with and payable as specified in the Escrow Fee Schedule set forth in Exhibit B attached hereto and made a part hereof. In addition, the City hereby agrees that the Escrow Agent will be paid its reasonable expenses incurred in connection with this Agreement, including but not limited to the actual cost of reasonable legal services in the event the Escrow Agent deems it necessary to retain counsel. Such fees and reasonable expenses will be paid to the Escrow Agent within thirty (30) days following receipt by the City of a written statement setting forth such reasonable expenses.

(e) The Escrow Agent shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, entitlement order, approval or other paper or document. The Escrow Agent may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees appointed with due care, and shall not be responsible for any willful misconduct or negligence on the part of any agent, attorney, custodian or nominee so appointed. Anything in this Agreement to the contrary notwithstanding, in no event shall the Escrow Agent be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action. The Escrow Agent shall not be liable to the parties hereto or deemed in breach or default hereunder if and to the extent its performance hereunder is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the Escrow Agent and could not have been avoided by exercising due care. Force majeure shall include acts of God, terrorism, war, riots, strikes, fire, floods, earthquakes, epidemics or other similar occurrences.

(f) The Escrow Agent agrees to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that, the Escrow Agent

shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the City, NOAA or EPA elects to give the Escrow Agent e-mail or facsimile instructions (or instructions by a similar electronic method) and the Escrow Agent in its discretion elects to act upon such instructions, the Escrow Agent's understanding of such instructions shall be deemed controlling. The Escrow Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Agent's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The City, NOAA and EPA agree to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Escrow Agent, including without limitation the risk of the Escrow Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

5. Tax Matters.

(a) The Escrow Agent will report to the IRS and the City, as of each calendar year-end, all income earned from the investment of any amount held in the Escrow Account or Interest Sub-Account, as and to the extent required under the provisions of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), the final or temporary regulations promulgated under the Code (as in effect from time to time, the "Treasury Regulations"), and applicable state and local revenue laws.

The City will prepare and file any and all income or other tax returns applicable to the Escrow Account and Interest Sub-Account with the IRS and all required state and local departments of revenue in all years income is earned as and to the extent required under the provisions of the Code, the Treasury Regulations, and applicable state and local revenue laws.

Any taxes payable on income earned from the investment of any sums held in the Escrow Account or Interest Sub-Account will be paid by the City whether or not the income was distributed by the Escrow Agent during any particular year.

The Escrow Agent will have no responsibility for the preparation and/or filing of any tax or information return with respect to any transaction, whether or not related to the Escrow Agreement or a related agreement that occurs outside the Escrow Account or the Interest Sub-Account.

6. Resignation or Removal of the Escrow Agent.

(a) The Escrow Agent may resign at any time from its obligations under this Agreement by providing written notice to the parties hereto. Such resignation will be effective on the date set forth in such written notice which will be no earlier than thirty (30) days after such written notice has been delivered. In the event no successor escrow agent has been appointed on or prior to the date such resignation is to become effective, the Escrow Agent will be entitled to tender into the custody of a court of

competent jurisdiction all assets then held by it hereunder and will thereupon be relieved of all further duties and obligations under this Agreement. The Escrow Agent will have no responsibility for the appointment of a successor escrow agent hereunder.

(b) If the City has failed to appoint a successor escrow agent within thirty (30) days following receipt of notice of resignation, the Escrow Agent may appoint a successor or petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment will be binding upon all of the parties hereto. Any successor escrow agent appointed hereunder shall execute an instrument in writing indicating its agreement to be bound by the terms and conditions of this Agreement and shall deliver a copy of such instrument to the other parties hereto.

7. Termination. This Agreement will terminate upon disbursement of all amounts in the Escrow Account and Interest Sub-Account in accordance with the terms of this Agreement. Nothing in this section will relieve any party hereto from liability for breach of this Agreement prior to such termination.

8. Counterparts. This Agreement may be executed in one or more counterparts for the convenience of the parties, all of which together will constitute one and the same instrument.

9. Descriptive Headings. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

10. Notices. Any notice, request, instruction or other document to be given hereunder will be in writing and delivered personally or sent by overnight courier, registered or certified mail, postage prepaid, or by facsimile, according to the instructions set forth below. Such notices will be deemed given: (a) at the time delivered by hand, if personally delivered; (b) at the time received, if sent by overnight courier, registered or certified mail; or (c) at the time when receipt is confirmed by the receiving facsimile machine, if sent by facsimile. Such notices, demands and other communications will be sent to the City, NOAA, EPA, and the Escrow Agent at the addresses indicated below (or to such other address or facsimile numbers for a party as will be specified by notice):

(i)	<u>if to the City</u>:	Desiree Pooley Senior Environmental Specialist City of Tacoma Environmental Services 2201 Portland Avenue Tacoma, WA 98421
(ii)	<u>if to NOAA</u>:	Jennifer Steger National Oceanic and Atmospheric Administration 7600 Sand Point Way N.E. Seattle, WA 98115-0070

(iii)	if to EPA:	Kelly Cole Assistant Regional Counsel Office of Regional Counsel EPA Region 10 1200 Sixth Avenue, Suite 900 Mail Stop ORC-158 Seattle, WA 98101
(iv)	if to the Escrow Agent:	The Bank of New York Mellon Trust Company, N.A. Attn: Kathleen Graves Assistant Vice President Two Union Square 601 Union Street, Suite 520 Seattle, WA 98101

11. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersede any prior and contemporaneous understandings, agreements or representations by or among the parties, written or oral, that may have related in any way to the subject matter hereof or thereof.

12. Amendment, Modification or Waiver. This Agreement may be amended or modified and any term of this Agreement may be waived only by a written agreement executed and delivered by all parties to this Agreement. No other course of dealing between the parties to this Agreement or any delay or failure in exercising any rights hereunder will be deemed effective unless evidenced by a written modification or waiver signed by all parties to this Agreement.

13. Successors and Assigns. No party hereto may assign or delegate any of such party's rights or obligations under or in connection with this Agreement without the written consent of the other parties hereto; provided that any banking association or corporation into which the Escrow Agent may be merged, converted, or with which the Escrow Agent may be consolidated, or any corporation resulting from any merger, conversion, or consolidation to which the Escrow Agent will be a party, or any banking association or corporation to which all or substantially all of the corporate trust business of the Escrow Agent will be transferred, will succeed to all the Escrow Agent's rights, obligations, and immunities hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto. This Agreement will be binding upon and enforceable against the parties hereto and their respective successors and permitted assigns and will be enforceable by and will inure to the benefit of the parties hereto and their respective successors and permitted assigns.

14. No Third Party Beneficiaries. The terms and provisions of this Agreement will not confer third-party beneficiary rights or remedies upon any person other than the parties hereto and their respective successors and permitted assigns.

15. Investment Income. All investment income earned under this Agreement will be allocated for taxation purposes to the City as provided herein and shall be reported by the City to the IRS and any other applicable taxing authorities.

16. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE DOMESTIC LAWS OF THE STATE OF WASHINGTON WITHOUT GIVING EFFECT TO ANY CHOICE OR CONFLICT OF LAW PROVISION OR RULE (WHETHER OF THE STATE OF WASHINGTON OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF WASHINGTON.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Escrow Agreement as of the date first set forth above.

City of Tacoma, Washington

Eric Anderson
City Manager

Approved as to Form:

Assistant City Attorney

National Oceanic and Atmospheric Administration

Craig O'Connor
Special Counsel for Natural Resources
Office of the General Counsel

United States Environmental Protection Agency

Daniel D. Opalski, Director
Office of Environmental Cleanup
U.S. Environmental Protection Agency, Region 10

The Bank of New York Mellon Trust Company, N.A., as Escrow Agent

Kathleen Graves
Assistant Vice President

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The Bank of New York Mellon Trust Company, N.A., as Escrow Agent

Kathleen Graves
Assistant Vice President

Exhibit A to Escrow Agreement

Settlement Agreement

Exhibit B to Escrow Agreement

Escrow Fee Schedule

Annual Escrow Administration Fee: $2,000.00

This fee does not include extraordinary services (such as services provided or action taken in respect to controversy or litigation arising under this Agreement), which will be priced according to time and scope of duties. The fee will be deemed earned in full upon receipt by the Escrow Agent, and no portion will be refundable for any reason, including, without limitation, termination of the Escrow Agreement.

ATTACHMENT 2 TO SETTLEMENT AGREEMENT

Scope of Work

Commencement Bay Natural Resource Trustee
Long Term Site Stewardship Project
Scope of Work
July 2008

Background/Purpose and Need:

The Commencement Bay Natural Resource Trustees (Trustees) have established restoration projects throughout the Puyallup River watershed. After several years of maintenance and monitoring there are no longer regulatory or legal requirements to provide additional maintenance, monitoring or adaptive management at these restoration sites. Still, there is a need to perform site inspections, maintenance, qualitative (observational) monitoring and adaptive management (e.g., vegetation management) at many of the sites. The development of these sites has been the investment of much time and resources and has provided significant benefit to the environment in the Puyallup River watershed. It is necessary to continue to provide active site stewardship to ensure continuation of success. The City of Tacoma will fulfill the role of Steward.

Stewardship Project Goals & Objectives:

Goal:

- Ensure the health of the restoration projects in the Puyallup River Watershed so they continue to provide function and value.

Objectives:

- Provide accurate site monitoring;
- Provide maintenance and adaptive management on the sites as directed by the Trustees and in accordance with this SOW;
- Provide documentation of all activities carried out on the sites;
- Create, encourage, and facilitate local community awareness and stewardship of restoration in Commencement Bay/Puyallup River watershed; and
- Provide valuable site recommendations that further the stewardship goal.

Period of Performance:

- The agreement and scope of work will remain in effect as per the agreement until the funding in the escrow account established for this project has been depleted, at which time the escrow account and Steward responsibilities under this Agreement will be terminated.
- Site specific tasks will be reviewed and approved annually by Trustees.

General Task Guidelines:
Tasks included in this Scope of Work include: Administration, reporting and documentation, site monitoring, site maintenance, and adaptive management. See descriptive sections below for more information.

The following nine sites are included within this scope of work (Please note that the numbering does not imply priority and this list is subject to change through City/Trustee discussions):

1. Yowkwala
2. Skookum Wulge
3. Squally Beach
4. Mowitch
5. Jordan / Lower Hylebos Marsh
6. Middle Waterway, City & Simpson
7. Olympic View, City & WDNR
8. Tahoma Salt Marsh
9. Swan Creek

Task 1. Stewardship Project Management

A. Agency/Partner Coordination: The Steward (City of Tacoma) will coordinate and manage all aspects of the project under this Scope of Work. Activities will include ongoing communication with the Trustee Restoration Case Manager (RCM) and any subcontractors, crew or volunteers.

B. Trustee Meeting Attendance: The City will be required to attend Trustee Meetings and Restoration Technical Subcommittee meetings to address comments or questions regarding deliverables or discuss activities being planned for the sites.

C. Insurance: The City of Tacoma is, and has been since approximately 1977, an individually self-insured municipality under Washington law (RCW 48.62.031). The City maintains a dedicated self-insurance fund and stands ready to satisfy any claims for which it is legally liable. The City will require liability insurance for work crews, volunteers, and subcontractors for on-site activities.

Task 2. Reporting and Documentation

A. Monthly Progress Update – Monthly progress updates will be required during the life of this agreement. The progress update will be prepared such that the activities for each restoration project are identified separately. Monthly updates will be submitted via email (followed by hard copy) to the RCM. The update will describe:

- General site observations (if any) for each site in narrative

form;

- Work completed in the previous month;
- Work planned for the subsequent month;
- Deliverables submitted the previous month;
- Deliverables planned for the subsequent month; and
- Problem areas with proposed solutions (if any).

Deliverable: Monthly progress updates as described above.

Schedule: Updates to be submitted via email on the last Tuesday of every month beginning the first full month following establishment of approved work plans for all sites.

B. Quarterly Reports: Quarterly reports will be required during the life of this agreement. The report will be submitted to the RCM for approval before payment. The accounting report portion will include a summary of work performed and the cost to the City to perform the work including partially loaded labor rates (which will include an average factor for taxes, benefits, etc. but excludes non-productive time) and invoices for materials used, etc. Enough information must be included for the Trustees to validate the cost of the work performed.

The quarterly report will describe:

- Accounting with appropriate documentation (invoices);
- General site observations for each site in narrative form;
- Quarterly monitoring data collected (including narrative description and data spreadsheet);
- Summary of monthly reports (see above for description).

Deliverable: Quarterly report and accounting as described above.

Schedule: The quarterly report for each quarter will be delivered on or before the last Tuesday of the following quarter (March, June, September, and December). For example, the report for the last quarter of 2008 will be delivered on or before the last Tuesday of March 2009. The reporting frequency may be modified with the approval of all of the parties.

C. Digital Documentation: The City will maintain a digital record of information related to each site under stewardship. The digital documentation will be provided to the trustees on an annual basis accompanying the fourth quarterly report. Digital documentation will also be made available on a publicly accessible web server (City website).

- The digital site documentation will include:
    - The complete site record
    - Copies of quarterly reports related to each site

- A digital image library containing at minimum photo points

Deliverable: Dedicated webpage with public access and quarterly updates.

Schedule: A webpage will be established within 60 days of the executed agreement. Once established, the webpage will be updated quarterly within 14 days after approval of each quarterly report.

Task 3. Site Monitoring:

A. Site specific work plans and overall Health and Safety Plan (HSP):
Site specific work plans will be developed to identify site features and objectives as well as monitoring and maintenance requirements at the site. A project specific health and safety plan, with site specific appendices as needed, shall be developed by the City to discuss potential hazards anticipated at the sites, and to detail control measures to maintain individual health and safety. Required elements of the HSP are detailed in WAC 296-62-300.

Deliverable: Draft site specific work plans (assuming them to be 1-2 pages each) and HSP for RCM review followed by final product.

Schedule: Draft site specific work plans and HSP due 90 days after agreement execution. Final site specific work plans and final HSP due 30 days after receipt of draft comments from RCM.

B. Site Monitoring
The City will provide monitoring for each site. Each site will be walked a minimum of once every two months. Conditions on the site will be observed and recorded in a systematic manner and recorded in an agreed upon format. Monitoring visits may be completed by volunteers; however, City staff will complete a site visit at least once every six months – preferably during the winter and mid-summer visits to ensure consistent photo-documentation. All stewards/crews/volunteers on-site will be briefed and equipped to implement the HSP. Also the stewards/volunteers/crews will be supplied with specific site plans that will provide contact information, guidance, and resources to contact site owners, and will do so to report any illegal or dangerous activity or conditions at the site.

- At minimum the following site characteristics will be noted during the bi-monthly monitoring visits and entered into spreadsheet format:
  - **Human impacts** – including, but not limited to garbage, vagrancy, vandalism.

- **Erosion** – outside the scope of minor events associated with anticipated natural processes.
- **Weeds** – as defined by Appendix A. Both the presence and extent of weeds is important to document.
- **Fencing** – the condition of structures intended to remain on site in perpetuity.
- **Plantings** – the characteristics of recent plantings and any maintenance required to improved survival and growth.
- **Flora** – observations of specific vegetation patterns of interest to future stewards. In particular, the viability of recent plantings and those species that appear to be particularly successful or unsuccessful.
- **Fauna** – observations of animals or evidence of their presence that might be of interest.
- **Photo-documentation** - Biannually, during winter and mid-summer, a steward will take photographs at established photopoints as specified in site specific work plans (to be developed). Images will be digital (minimum of 2000 x 3000 pixels) notated and published as described in Task 2C.

Deliverable: Quarterly reports will include monitoring data. Any immediate concerns or threats to the environment (i.e. dumping, damage to site infrastructure) will be reported immediately to the property owner and RCM.

Schedule: See Task 2. Reporting and Documentation schedule.

Task 4. Site Maintenance:

A. Site Maintenance Coordination

The City will coordinate and manage all site maintenance activities. The City will allocate their personnel time, and a budget of labor between the stewardship sites in an efficient manner. Securing materials needed to perform maintenance activities will also be completed by the City. During site work, stewards and their volunteers will leave the site in orderly condition, store all materials above extreme high water, consult with the site owner before removing markers or flagging, and minimize and moderate traffic on the site to preserve soils and vegetation. QA/QC of site maintenance activities will consist of periodic site visits to ensure completeness and consistency with given direction on an as needed basis. These visits will coincide with monitoring events if possible.

In the event that the project site ceases to provide habitat function per design due to act of god or unforeseen circumstances, the site would then need to be evaluated by the RCM for further direction. The resulting actions would not be considered maintenance under this program.

B. Garbage Removal

Garbage will be removed once every three months or as needed. Garbage that cannot be removed easily by the volunteer or work crew can be stockpiled and removed at the next programmed site work day. If garbage removal is needed on a larger scale (i.e. homeless encampment) the City may need to use other means to dispose of garbage safely and efficiently.

C. Crew/Volunteer Maintenance

Maintenance is defined as those actions required to maintain current restored habitat function. Maintenance activities are limited to those that can be accomplished using hand tools and volunteer labor or hired work crew and could include tasks such as: removal of invasive species, removal of garbage, replanting dead or diseased plants, weeding, mulching, watering, or performing protective measures to ensure plant survivability (i.e. goose exclusion). Noxious weed populations will be controlled using integrated pest management strategies. Non-chemical methods will be preferred. All pesticides will be approved by property owners and Trustees prior to use and applied by a licensed applicator.

D. Irrigation System Maintenance

Where irrigation systems currently exist on the listed restoration sites, the City is capable of performing both anticipated and unanticipated maintenance activities. The Trustees will be consulted as to specific direction with regard to this work.

Deliverable: Quarterly reports and monthly updates will include descriptions of maintenance activities.

Schedule: See Task 2 for reporting schedules.

Task 5. Adaptive Management

A. Plantings: In addition to monitoring and basic maintenance a modest budget will manage ongoing cultivation of diverse and high-functioning native vegetation including programming and oversight of volunteer and hired labor for this task. Manipulation of vegetation will be carefully chosen and approved by the restoration technical committee to maximize long-term ecological benefits. Adaptive management actions are not required on all sites on all years, but may be concentrated in a cyclic manner to achieve desired effects based on the needs of sites.

B. Other Activities as directed by Trustees

Deliverable: Quarterly reports and monthly updates will include descriptions

of adaptive management activities.

Schedule: See Task 2 for reporting schedules.

Appendix A to Scope of Work
Draft Weed List*

Scientific Name	**Common Name**
Hedera sp.	Ivy
Rubus discolor	Himalayan Blackberry
Cytisus scoparius	Scott's Broom
Buddleia davidii	Butterfly Bush
Senecio jacobaea	Tansy Ragwort
Lythrum salicaria	Purple Loosestrife
Lepidium sp.	Pepperweed
Linaria sp.	Toadflax
Melilotus alba	White sweet clover
Centaura sp.	Knapweed
Polygonum sp.	Knotweed
Phalaris arundinacea	Reed Canary grass
Geranium robertianum	Herb Robert
Cirsium arvense	Canada thistle

* This list is not exhaustive. It is meant to represent the most likely invasive species to be encountered on site. This list is subject to change in accordance with state weed lists and site specific evaluations.