

**AGREEMENT FOR THE
SECOND SUPPLY
PROJECT**

**BETWEEN
THE CITY OF TACOMA,
DEPARTMENT OF PUBLIC UTILITIES, WATER DIVISION,**

**THE CITY OF KENT,
COVINGTON WATER DISTRICT,**

AND

LAKEHAVEN UTILITY DISTRICT

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This Agreement for the Second Supply Project (Project Agreement) between the City of Tacoma, Department of Public Utilities, Water Division (Tacoma); the City of Kent (Kent); Covington Water District (CWD), and Lakehaven Utility District (Lakehaven), is made and entered into effective this _____ day of _____, 2002 (Effective Date); and

WHEREAS, in order to satisfy long term water needs in Tacoma's service area, and in south King County, Tacoma's 1980 Water Supply Plan envisioned the application for a permit for the right to divert water from the Green River (Second Diversion Water Right); and

WHEREAS, Tacoma's 1980 Water Supply Plan proposed that approximately 15 million gallons per day (mgd) of the Second Diversion Water Right would be made available to water purveyors in south King County; and

WHEREAS, since that time Tacoma has worked with various south King County water purveyors to procure the Second Diversion Water Right, and Tacoma has obtained rights of way, regulatory permits and taken other actions in order to facilitate the delivery and use of the Second Diversion Water Right by Tacoma and its Project partners; and

WHEREAS, in 1985 Tacoma entered into a contract with the Regional Water Association of South King County, and certain members thereof, in order to participate in the funding, development and use of the Second Supply Project to facilitate the delivery and use of water to be diverted from the Green River under the Second Diversion Water Right, among other matters; and

WHEREAS, the Second Supply Project evolved to include additional water storage at the Howard Hanson Dam; and

WHEREAS, a programmatic Environmental Impact Statement for the Second Green River Diversion & Transmission Project was prepared in 1980, a project specific Environmental Impact Statement was prepared in 1987 and updated in 1994, all in accordance with the Washington State Environmental Policy Act, RCW 43.21C; and

WHEREAS, the delivery and use of water from the Second Diversion Water Right and the construction of the facilities, as set forth in this Project Agreement, are consistent with state and local planning requirements, including the plans and programs of the Participants; and

WHEREAS, gravity fed surface water sources, such as the Second Diversion Water Right, provide a desirable and complimentary source of water supply to augment groundwater sources, and will maximize the benefits to residents of the State; and

WHEREAS, development of the Project as set forth in this Project Agreement will provide increased flows in the Green River to benefit the migration and spawning of anadromous fish as specified in the agreement between Tacoma and the Muckleshoot

Indian Tribe, as well as offering additional recreational opportunities to residents of the region; and

WHEREAS, the health of the chinook salmon in the Green River compares favorably to runs in other Puget Sound rivers, the environmental benefits associated with the Project will maintain and improve the health of the Green River salmon runs by providing downstream fish passage at the Howard Hanson Dam, fish screening and fish handling facilities at Tacoma's diversion dam and numerous environmental enhancement activities along the Green River, thereby providing a major contribution to recovery of salmon listed as threatened under the Endangered Species Act; and

WHEREAS, Tacoma has developed a Habitat Conservation Plan for its Green River operations that has been approved by the National Marine Fisheries Service and the U. S. Fish and Wildlife Service, resulting in the issuance of an Incidental Take Permit to Tacoma pursuant to the Endangered Species Act, and

WHEREAS, the increasing urbanization of south King County, growth in the region, compliance with Growth Management Act objectives and listings of salmon stocks pursuant to the Endangered Species Act have caused a critical need to utilize existing water supply sources in the most efficient and effective manner, which is made possible by the Second Supply Project; and

WHEREAS, developing a Green River water source using the Second Diversion Water Right in the manner envisioned by this Project Agreement offers to all the Participants a source of water with the benefits of joint development, tax exempt financing and economies of scale; and

WHEREAS, the lack of a source of water supply has become critical to certain south King County water purveyors, who have been forced to impose new hook-up moratoria, making the expeditious completion of the Project as set forth in this Project Agreement imperative; and

WHEREAS, in February, 1998, Tacoma, CWD, Kent and Lakehaven executed a Conceptual Agreement, which set forth the principles to be used in the development of this Project Agreement; and

WHEREAS, each of the parties to this Project Agreement recognizes and is committed to meeting their joint responsibilities to fulfilling the needs of both fish and people for water, and each of the parties believes that the timely completion and operation of the Second Supply Project are critical to meeting such joint responsibilities; and

WHEREAS, each of the parties to this Project Agreement has the statutory authority to execute and implement this Project Agreement under the applicable provisions of Washington law; and

WHEREAS, it is the intention of the Participants that his Project Agreement replace a certain Second Supply Project Agreement that was executed by some but not all of the parties needed for that Second Supply Project Agreement to become effective.

NOW, THEREFORE, the Participants agree as follows.

1. DEFINITIONS

- 1.1 When used with initial capitalization in this Project Agreement, the following terms shall have the meanings set forth below.
 - 1.1.1 “Additional Water” means water from any source, other than the First Diversion and Second Diversion Water, that is proposed by any Participant for introduction into the Project, and such introduction is approved by the Project Committee, pursuant to sections 8 and 21.
 - 1.1.2 “Annual Operating Plan” means the plan for the operation of the Project during any Operating Year that is prepared in accordance with section 20.
 - 1.1.3 “Capital Expenditures” means expenditures of funds subsequent to Initial Project Construction, which are in excess of five hundred dollars (\$500.00), or such other amount as may be established by the Project Committee pursuant to section 8, are made to enhance the value or extend the life of the Project, and are contained in the Capital Expenditures element of any Project Annual Budget. This definition is to be used after Initial Project Construction for the purpose of categorizing costs for preparing the Project Annual Budget. This definition has no application to the treatment of costs incurred during Initial Project Construction, or to costs incurred pursuant to agreements entered into prior to the Project being placed in operation, and does not in any way limit or require the Participants to utilize a similar definition in accounting for the costs of the Project on such Participant’s books of account.
 - 1.1.4 “Delivery Meter” means each of the meters which is located at or in the vicinity of the Points of Delivery of each of the Participants, and which measures the amount of Project Water delivered to each Participant from the Project. The approximate locations of the Delivery Meters are set forth on Exhibit A.
 - 1.1.5 “Due Date” means the date by which payment of any invoice issued pursuant to section 25 is due to Tacoma or to an established escrow agent, which date shall be the close of business on the thirtieth (30th) day after an invoice is issued pursuant to this Project Agreement, provided, however, that if such thirtieth day falls on a Saturday, Sunday or legal holiday observed by Tacoma, the Due Date shall be extended until the close of business of the next regular business day of Tacoma.

- 1.1.6 “Excess Project Capacity” means any capacity of the Project that is available during any Operating Year, or any portion thereof, as a result of one or more Participants not making full use of their Project Capacity Share.
- 1.1.7 “Financing Plan” means a plan for the funding of Project Costs which includes the issuance (or multiple issuances) of Project Bonds as approved by the Project Committee pursuant to section 8, and shall generally be in the form of Exhibit H.
- 1.1.8 “First Diversion Water” means water obtained under Tacoma’s First Diversion Water Right Claim.
- 1.1.9 “Fixed O&M Costs” means the costs incurred by Tacoma to operate and maintain the Project in accordance with this Project Agreement, which are neither Capital Expenditures nor Variable O&M Costs, and that do not vary based on the quantity of Project Water delivered to the Participants. Exhibit B sets forth examples of costs that comprise Fixed O&M Costs.
- 1.1.10 “Flow Control Valve” means the valve located in the vicinity of the Point(s) of Delivery for each Participant that controls the volume of Project Water that is delivered to each Participant, as set forth on Exhibit E. Flow Control Valves are not part of the Project.
- 1.1.11 “Headworks” means those Tacoma water system facilities located along a certain one-half mile section of the Green River near Palmer, Washington, that generally include the river diversion structures and the water control building/employee residence area.
- 1.1.12 “Howard Hanson Dam Additional Storage Project” means, under Phase I, the construction of certain environmental enhancement features and raising the summer storage pool to elevation 1,167 which will make available additional storage for water for municipal water supply purposes, and under Phase II, the construction of additional environmental enhancement features and raising the summer storage pool to elevation 1,177, which will make available additional water for fishery and municipal water supply purposes.
- 1.1.13 “Initial Project Construction” means the design, construction and placing in commercial operation those Project elements set forth in the Initial Project Construction Budget and the Initial Project Construction Schedule, attached hereto as Exhibits C and D.
- 1.1.14 “Initial Project Construction Budget” means the budget for Initial Project Construction, as set forth in Exhibit C.

- 1.1.15 “Initial Project Construction Schedule” means the schedule for Initial Project Construction, as set forth in Exhibit D.
- 1.1.16 “Interest Rate” means for each day that it is applied a rate equal to one-three hundred and sixty-fifth (1/365) of the prime interest rate for preferred customers established from time to time by the Bank of America, or such other bank as may be designated by the Project Committee pursuant to section 8. When used to calculate the late payment charge pursuant to section 25, three (3) percentage points shall be added to such prime interest rate for each thirty (30) days that the payment of any invoice remains past due.
- 1.1.17 “Master Meter” means the meter located at or near the Headworks that measures the flow of Project Water into the Second Supply Pipeline through the Headworks. The approximate location of the Master Meter is set forth on Exhibit A.
- 1.1.18 “Operating Life” means the period of time during which the Project is operational and capable of fulfilling its delivery function in a reasonably efficient and economical manner. Section 7 sets forth the expectations of the Participants regarding the Operating Life.
- 1.1.19 “Operating Year” means any consecutive twelve (12) month period commencing on each July 1st, and ending on the following June 30th.
- 1.1.20 “Participants” means the parties to this Project Agreement set forth in section 3.
- 1.1.21 “Participant Share” means that fraction of the Project and Project Costs that, as provided in this Project Agreement, each Participant is entitled to use and each Participant is obligated to pay. Each Participant’s Share is as follows: Tacoma- 15/36; Kent- 7/36 ; CWD- 7/36 ; and Lakehaven- 7/36.
- 1.1.22 “Point of Delivery” means the point where facilities have been constructed that permit a Participant or Participants to divert and take delivery of Project Water from the Project, and which serve to interconnect the Project and the water supply system of such Participant or Participants. An example of the line of demarcation between the Project and the Point of Delivery facilities is set forth on Exhibit E.
- 1.1.23 “Project” shall have the meaning ascribed to such term in section 4.
- 1.1.24 “Project Annual Budget” means the budget for all of the costs of the Project for each Operating Year, including without limitation the costs of operation, maintenance, insurance, renewal, replacement, additions and

improvements to the Project, that are approved by the Project Committee pursuant to section 8.

- 1.1.25 “Project Bonds” means those bonds issued by Tacoma’s separate system pursuant to section 11 for the purpose of providing funds for the payment of certain Project Costs.
- 1.1.26 “Project Capacity Share” means the right of each Participant to use its Participant Share of the Project available under varying operating conditions to move Second Diversion Water from the Headworks to their respective Point(s) of Delivery, and for such other uses as set forth in this Project Agreement. Examples of the ability of the Project to do so under specific operating conditions is set forth on Exhibit N.
- 1.1.27 ”Project Committee” means the committee constituted pursuant to section 8 of this Project Agreement.
- 1.1.28 “Project Costs” means costs, including but not limited to Fixed O&M Costs, Variable O&M Costs, Initial Project Construction Costs and Capital Expenditures, which Tacoma incurs to permit, design, construct, operate, maintain, insure, decommission, improve, renew, add to or replace Project pursuant to the terms of this Agreement, and the costs incurred by Tacoma or any other Participant which qualify as Reimbursable Costs pursuant to section 13.
- 1.1.29 “Project Cost Estimate” means the estimate of the costs of Initial Project Construction, as set forth in Exhibit G.
- 1.1.30 “Project Map” means the map of the Project set forth on Exhibit I.
- 1.1.31 “Project Operator “ means the Participant that is designated pursuant to this Project Agreement to operate and maintain the Project, which Participant shall be Tacoma.
- 1.1.32 “Project Quality Assurance Procedures” means the quality assurance procedures that will be followed during Initial Project Construction, as set forth on Exhibit J.
- 1.1.33 “Project Specifications” means the specifications that will govern Initial Project Construction, as set forth in Exhibit K.
- 1.1.34 “Project Water” means any and all water, including without limitation First Diversion Water, Second Diversion Water and Additional Water, that is introduced into and that uses some portion of the Project, regardless of its source.

- 1.1.35 “Prudent Utility Practice” means at a particular time any of the practices, methods or acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision is made (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the water utility industry in the Puget Sound region), would be expected to accomplish the desired result at the lowest reasonable cost consistent with Project longevity, reliability, safety and expedition.
- 1.1.36 “Reasonable Costs” means the costs that are consistent with, and not in excess of, the level of costs that a water utility operating water facilities in the Puget Sound region and acting consistent with Prudent Utility Practice and in a manner expected to produce the lowest total project cost would incur to design, construct and operate such facilities, taking into account any circumstances particular to the facility or facilities.
- 1.1.37 “Reimbursable Costs” mean costs incurred by a Participant, other than costs incurred pursuant to this Project Agreement, to plan, design and construct facilities that are subsequently incorporated into the Project, and which are reviewed and approved pursuant to section 13, and may include to the extent incurred the costs of project specific environmental documents, rights of way, real property acquisition, engineering and design, permitting and regulatory approvals, surveying, field investigations, inspections, material, labor expenses, financing costs, state and local taxes, project administration up to and including the project manager, special legal counsel, consulting services related to the project, and indirect costs of up to ten percent (10%) of the direct labor costs of the project, but shall not include the costs of programmatic environmental documents, project administration costs for personnel above project manager, costs of in-house legal counsel, accounting or purchasing personnel, or gross earnings taxes.
- 1.1.38 “Second Diversion Water” means water that is obtained under the provisions of the Second Diversion Water Right, attached hereto as Exhibit L.
- 1.1.39 “Storage” means the retention of water at the Howard Hanson Dam until withdrawn therefrom, all pursuant to this Project Agreement.
- 1.1.40 “Surcharge Rate” means a rate equal to four times the highest wholesale water rate for sales to retail water utilities that Tacoma then has in effect.
- 1.1.41 “Treatment Facilities” means facilities that are necessary, now and in the future, to ensure that the quality of Project Water is in compliance with all applicable federal and state drinking water regulations, laws and standards, including without limitation chlorination, fluoridation, corrosion control and filtration facilities.

1.1.42 “Uncontrollable Force” means any event or occurrence that is beyond the reasonable control of a Participant and which by the exercise of due diligence and reasonable foresight such Participant could not have reasonably been expected to avoid or remove, and includes but is not limited to flood, earthquake, storm, accident, fire, lightning and other natural catastrophes, epidemic, war, labor or material shortage, strike or labor dispute, or sabotage, and also includes restraint by an order of a court of competent jurisdiction or by regulatory authorities against any action taken or not taken by a Participant, after a good faith effort by such Participant to obtain: (a) relief from such order; or (b) any necessary authorizations or approvals from any governmental agency or regulatory authority. In no event shall the duty of a Participant to make any payment hereunder be excused by reason of an Uncontrollable Force.

1.1.43 “Variable O&M Costs” means the costs incurred by Tacoma to operate and maintain the Project in accordance with the Project Agreement, and which are neither Capital Expenditures nor Fixed O&M Costs, and which costs vary based on the quantity of Project Water delivered to a Participant during an Operating Year. Exhibit B sets forth examples of the type of costs that comprise Variable O&M Costs.

1.2 Other Terms Defined in the Project Agreement

1.2.1 The following terms are defined in the context of this Project Agreement:

1.2.1.1 “Effective Date” as defined in the Introductory section.

1.2.1.2 “Pre-Construction Activities” as defined in subsection 8.9.1.

2. EXHIBITS TO THE PROJECT AGREEMENT

2.1 The following exhibits, which are attached to this Project Agreement, are hereby made a part of and incorporated into this Project Agreement as if fully set forth herein:

Exhibit A-Approximate Location of Master Meter and Delivery Meters

Exhibit B-Fixed and Variable O&M Costs Examples

Exhibit C-Initial Project Construction Budget

Exhibit D-Initial Project Construction Schedule

Exhibit E-Typical Point of Delivery

Exhibit F-Project Annual Budget

Exhibit G-Project Cost Estimate

Exhibit H-Financing Plan for Initial Project Construction

Exhibit I-Project Map

Exhibit J-Project Quality Assurance Procedures

Exhibit K-Project Specifications

Exhibit L-Second Diversion Water Right Permit
Exhibit M-Environmental Enhancement Agreements and Estimated Costs
Exhibit N-Allocation of Project Capacity
Exhibit O-Allocation of Headworks Costs
Exhibit P-Prepayment of Project Costs
Exhibit Q-Special Provisions for CWD and Kent
Exhibit R-Special Provisions for Lakehaven
Exhibit S-Sample Calculation of Tacoma Treatment Payment and Credit
Exhibit T-Sample Calculation of Monthly Accounting of Water Deliveries
Exhibit U-Sample Calculation of Variable O&M Costs
Exhibit V-Howard Hanson Dam Project Cooperation Agreement
Exhibit W-Sample Allocation of Howard Hanson Phase II
Exhibit X-Sample Weekly Operations Report

- 2.2 If and to the extent that there is a conflict between the terms set forth in any of the foregoing Exhibits and those set forth in the body of this Project Agreement, the terms set forth in the body of this Project Agreement shall prevail for purposes of construing this Project Agreement.
- 2.3 Exhibit AA, an Agreement of Tacoma, CWD and Lakehaven for Mutual Aid, is attached hereto for informative purposes only, and shall not be interpreted as being part of this Project Agreement.

3. PARTICIPANTS.

The Participants in this Project Agreement are: (1) The City of Tacoma, Department of Public Utilities, Water Division (2) the City of Kent; (3) the Covington Water District; and (4) the Lakehaven Utility District.

4. THE PROJECT

- 4.1 The Participants have entered into this Project Agreement to permit, design, finance, construct, operate, and maintain the Project and to receive deliveries of Project Water. For purposes of this Project Agreement, the Project consists of the following:
- 4.1.1 The water from the exercise of the Second Diversion Water Right (up to 100 cfs) as set forth on Exhibit L;
- 4.1.2 The Second Supply Pipeline commencing at the Headworks and continuing to Tacoma's Pipeline No. 4 near the Portland Avenue Reservoir (approximately thirty-four miles with a nominal capacity of seventy-two mgd);
- 4.1.3 A portion of the improvements at the Headworks diversion dam and intake

(associated with the Second Diversion Water Right), as set forth in Exhibit C;

- 4.1.4 A portion of the Project fisheries and environmental enhancements, as set forth on Exhibit M;
 - 4.1.5 The right to store water as a result of the Howard Hanson Dam Additional Storage Project (up to 20,000 acre-feet per year of municipal water supply storage available for withdrawal during each Operating Year in Phase I and options to participate in Phase II);
 - 4.1.6 The expansion of existing or the construction of additional Treatment Facilities.
- 4.2 The Project has been designed to permit all Participants to receive at their point(s) of Delivery their respective Participant Share of Second Diversion Water simultaneously. The Participants understand and acknowledge that the capability of Project facilities at any point in time is dependent upon the use being made of the Project by the Participants, and external factors as well. Exhibit N demonstrates the amount of Project capability available to the Participants under various circumstances, and demonstrates that the Project is capable of delivering to all Participants at their Point(s) of Delivery their respective Participant Share of Second Diversion Water at the same time.
- 4.3 Tacoma shall own the Project, and all facilities related thereto.

5. RIGHTS AND OBLIGATIONS OF THE PARTICIPANTS

- 5.1 Pursuant to the terms of this Project Agreement, each Participant shall have the following contractual rights and obligations:
- 5.1.1 The contractual right to use an undivided share of the Project equal to its Project Capacity Share, and the contractual right to use available Excess Project Capacity.
 - 5.1.2 The contractual right to schedule for delivery and receive at its Point(s) of Delivery its Participant Share of Second Diversion Water, and the contractual obligation to take delivery of the Second Diversion Water so delivered. The ability of the Project to do so under various operating scenarios is illustrated on Exhibit N.
 - 5.1.3 The contractual right to schedule for delivery and receive at its Point(s) of Delivery Additional Water, and the contractual obligation to take delivery of the Additional Water so delivered.
 - 5.1.4 The contractual right to its Participant Share of Storage.

- 5.1.5 The contractual obligation to pay its Participant Share of Project Costs, initially as a capital contribution in exchange for, and to qualify each Participant to enjoy, the rights and interests described in this section, and upon operation as a share of operating and maintenance costs of a Project providing water that is furnished by each of the Participants to its customers.

6. RIGHTS AND OBLIGATIONS OF TACOMA AS PROJECT OPERATOR

- 6.1 Tacoma shall be the Project Operator and shall be responsible for the day to day operation of the Project, including without limitation, coordination of Storage with the Army Corps of Engineers, delivery of Project Water to the Participants at their Points of Delivery, performance of maintenance, renewals, replacements, improvements and additions to the Project, reading and testing of the Master Meter and all Delivery Meters, obtaining and maintaining required permits, approvals and regulatory authorizations needed to operate the Project, all as set forth in this Project Agreement. As Project Operator, Tacoma shall, consistent with the terms of this Project Agreement and the approved Project Budget then in effect, operate and maintain the Project in a manner that is consistent with Prudent Utility Practice.
- 6.2 As Project Operator, consistent with Prudent Utility Practice and this Project Agreement, Tacoma shall:
 - 6.2.1 Deliver to each Participant at its Point(s) of Delivery Project Water as scheduled by each Participant pursuant to this Project Agreement.
 - 6.2.2 Ensure that all Project Water delivered to Participants at their Point(s) of Delivery is in compliance with all applicable state and federal drinking water laws, regulations and standards.
 - 6.2.3 Ensure that Project Water is delivered to Participants at their Point(s) of Delivery, and that such deliveries are made at the pressures specified in Exhibit A measured at the locations set forth therein.

- 6.3 Tacoma shall report to the other Participants its activities as Project Operator, as such reports are required pursuant to this Project Agreement. Notwithstanding Tacoma's duty to report to the other Participants, Tacoma may without consulting the other Participants take such actions as it determines to be appropriate under the circumstances as Tacoma understands them to fulfill its duties under this Project Agreement as Project Operator, consistent with Prudent Utility Practice.
- 6.4 In the event that circumstances require Tacoma to take actions not contemplated by the Project Annual Budget then in effect, Tacoma shall make a reasonable effort to consult with the other Participants if circumstances permit. However, Tacoma may take such actions as it judges to be appropriate under the circumstances as Tacoma understands them without prior consultation with the other Participants. If Tacoma takes such actions without prior consultation with the other Participants, it shall promptly notify the other Participants of the action taken and consult with them as soon as practicable.

7. TERM OF THE PROJECT AGREEMENT

- 7.1 This Project Agreement shall take effect when executed by all of the Participants, and shall remain in full force and effect during the Operating Life of the Project, including any and all renewals, replacements and additions thereto. Except for those sections and subsections that expressly survive the termination of this Project Agreement, this Project Agreement shall terminate for all Participants on the date that the Participants determine, pursuant to section 8, that the Operating Life of the Project has ended.
- 7.2 It is the expectation of the Participants that the Project will have an Operating Life of not less than one hundred (100) years. This is only the expectation of the Participants, and does not impose any duty, obligation, liability or responsibility on Tacoma regarding the Project other than as set forth in other sections of this Project Agreement.
- 7.3 Tacoma is the holder of the Second Diversion Water Right Permit. The rights of the other Participants to a share of the water available under the Second Diversion Water Right arise under the terms of this Project Agreement. Upon the termination of this Project Agreement pursuant to this section 7, each Participant shall have the right to participate in any subsequent project that is constructed, in whole or in part, to make available to one or more of the Participants Second Diversion Water, and shall include the right to obtain and use a share of Second Diversion Water and Storage then available on a basis and in amounts comparable to such Participant's right under this Project Agreement. The rights and obligations of the Participants set forth in this subsection 7.3 shall survive the termination of this Project Agreement, and shall be fully enforceable subsequent thereto.

7.4 All obligations incurred during the term of this Project Agreement shall survive the termination or expiration of this Project Agreement, and shall survive until satisfied.

8. PROJECT COMMITTEE

8.1 There shall be a Project Committee composed of one (1) representative of each Participant. Within thirty (30) days of the execution of this Project Agreement, each Participant shall designate its representative and any alternates in writing delivered to all Participants. Within sixty (60) days of the execution of this Project Agreement, Tacoma shall by written notice to all Participants convene the initial meeting of the Project Committee. Each Participant may change its representative and/or its alternate representative at any time by providing written notification to all other Participants.

8.2 The representatives of the Participants shall have the following votes at the Project Committee meetings:

- Tacoma- Fifteen (15) votes
- CWD- Seven (7) vote
- Kent- Seven (7) vote
- Lakehaven- Seven (7) vote

8.3 For the Project Committee to take action, there must be present a quorum of not less than three (3) Participants, one of which must be the Project Operator. Tacoma shall be obligated to attend any Project Committee meeting convened pursuant to this Project Agreement. All decisions and actions of the Project Committee shall be taken by a vote of the Participants present. All matters decided by the Project Committee, other than those items specified in subsections 8.4 and 8.5, shall be by a simple majority of the votes cast by the Participants present.

8.4 The following matters shall require for approval the affirmative vote of twenty-nine thirty-sixths (29/36) of the Project Committee votes and three of the Participants: (i) any amendment or modification to the Project Specifications; (ii) approval of Treatment Facilities inconsistent with subsection 18.3; (iii) any amendment or modification to the Initial Project Construction Budget; (iv) any amendment or modification to the Initial Project Construction Schedule; (v) approval of any change order that exceeds one-half of the original contingency for the contract for which the change order is requested, or which exceeds the sum of \$500,000.00; (vi) approval of the Capital Expenditures contained in any Project Annual Budget; and (vii) approval or revision of any Financing Plan. In addition to the foregoing, in order for a representative to vote on any Financing Plan or revision thereto, the representative must present to the Project Committee a resolution (or ordinance, as appropriate) passed in the sixty (60) days prior to the

Project Committee vote by the governing body of the Participant on whose behalf the representative will vote, and indicating the nature of the vote to be cast by such representative.

- 8.5 Any determination of the Operating Life shall require the affirmative vote of all Participants. In order for a representative to vote on the determination of the Operating Life, the representative must present to the Project Committee a resolution (or ordinance, as appropriate) passed in the sixty (60) days prior to the Project Committee vote by the governing body of the Participant on whose behalf the representative will vote, and indicating the nature of the vote to be cast by such representative.
- 8.6 The Project Committee shall adopt such rules as it determines to be convenient and appropriate for the conduct of its business, including without limitation rules of procedure for meetings. Persons who are not designated representatives of any Participant but who are elected officials, directors, officers, employees, consultants or agents of a Participant may attend meetings of the Project Committee.
- 8.7 After the completion of Initial Project Construction, the Project Committee shall meet no less frequently than once each quarter. The Project Committee may meet more frequently should circumstances warrant. The dates for all regularly scheduled Project Committee meetings shall be established at the last Project committee meeting prior to the year in which such meetings shall take place.
- 8.8 Any Participant may convene a Project Committee meeting after the completion of Initial Project Construction by giving written notice to all other Participants no less than fourteen (14) days prior to the proposed date of the Project Committee meeting. The written notice shall indicate the time, location and agenda items to be discussed.
- 8.9 Activities Prior to Issuance of Project Bonds for Initial Project Construction
 - 8.9.1 Prior to the issuance of Project Bonds for Initial Project Construction, Tacoma shall engage in activities necessary to obtain regulatory consents, finalize agreements and otherwise take the actions preliminary to the commencement of Initial Project Construction (Pre-Construction Activities).
 - 8.9.2 Not less frequently than once each calendar year, Tacoma shall present to the Project Committee a proposed budget setting forth the anticipated Pre-Construction Activities that Tacoma will undertake in the next twelve (12) months, or any portion thereof, the expected costs of such activities, a brief explanation of the need for such activities and a schedule for the payment of the proposed budget by the Participants.

- 8.9.3 The Project Committee shall review each proposed budget for Pre-Construction Activities submitted pursuant to subsection 8.9.2, and shall vote on such budget as submitted by Tacoma or as revised by the Project Committee.
- 8.9.4 The Participants shall pay the costs in any budget for Pre-Construction Activities approved pursuant to this subsection 8.9 in proportion to their Participant Shares.
- 8.9.5 At any time when a Pre-Construction Activities budget is in effect, Tacoma may propose to the Project Committee a revision to such budget, which proposed revision shall be considered by the Project Committee. Any revision to a budget for Pre-Construction Activities shall take effect if and when approved by the Project Committee.
- 8.9.6 Prior to the issuance of Project Bonds for Initial Project Construction, the Project Committee shall meet no less frequently than once each quarter.

8.10 Activities During Initial Project Construction

- 8.10.1 The Project Committee shall meet no less frequently than once each month. Any Participant may convene a meeting of the Project Committee, other than a regularly scheduled meeting, by giving written notice to all Participants at least seven (7) days prior to the meeting date, and such notice shall indicate the Time, location and agenda items the Participant convening the meeting wishes to be discussed.
- 8.10.2 The Project Committee shall monitor the construction of the Project. To aid in this effort, Tacoma shall report at the Project Committee meetings information relevant to the construction of the Project, including without limitation construction activity since the last Project Committee meeting, construction activity expected to be accomplished by the next Project Committee meeting, the percentage of Initial Project Construction Budget expended, and any developments in the construction of the Project which should be brought to the attention of the Project Committee. Participants shall have access during normal business hours to all documents, plans, records and correspondence relating to the construction of the Project.
- 8.10.3 Tacoma shall seek the advice of the Project Committee on all substantial matters relating to Initial Project Construction, and the Project Committee shall advise Tacoma on such matters in a manner consistent with the terms and conditions of this Project Agreement, and with the objective of constructing the Project within the Initial Project Construction Budget and consistent with the Initial Project Construction Schedule. Tacoma shall give due consideration to the advice of the Project Committee on such

matters, and shall incorporate such advice to the extent that Tacoma determines that it is appropriate to do so.

8.10.4 The Project Committee will take such actions as are necessary to discharge its duties pursuant to subsection 8.10, including, among other matters, revising the Project Specifications or the Financing Plan for Initial Project Construction, attached hereto as Exhibit H.

8.11 Activities Subsequent to Initial Project Construction

8.11.1 Subsequent to the completion of Initial Project Construction, the Project Committee shall be responsible for the activities set forth below, and for such other activities as the Project Committee agrees to undertake. The Project Committee shall be responsible for, among other matters, the following:

- Approving new Points of Delivery
- Approving and revising the Project Annual Budget
- Approving Additional Water deliveries
- Approving and revising Financing Plans
- Approving imposition of the Surcharge Rate
- Determining actions needed to maintain water quality
- Determining amounts and types of insurance and self insurance arrangements
- Determining Project Operating Life
- Disposition of unexpended funds from Initial Project Construction Budget
- Establishing operating ranges for the Master and Delivery Meters
- Establishing ramp rates for changes to scheduled flows
- Establishing scheduling procedures
- Establishing metering testing standards
- Establishing procedures for scheduling run of river Second Diversion Water
- Establishing procedures for excess deliveries of run of river Second Diversion Water
- Receiving the annual operator's report
- Resolving hydraulic issues
- Revising the commencement date of any Operating Year
- Revising deadlines set forth in sections 20, 21 and 22
- Revising dates for storage periods under section 19.2
- Revising the dollar limit for Capital Expenditures
- Revising reporting requirements by Project Operator
- Review and approval of the Capital Element of the Annual Budget
- Review and approval of the Annual Operating Plan
- Selecting a substitute bank for computing Interest Rate
- Selecting a third party auditor pursuant to section 13

- 8.12 Decisions of the Project Committee taken pursuant to this section 8, and any impasse or inability of the Project Committee to reach a decision on any topic, shall not be subject to the dispute resolution process set forth in section 28. By unanimous agreement, the Participants may voluntarily elect to submit to mediation or arbitration any topic that is subject to disposition by the Project Committee.

9. INITIAL PROJECT CONSTRUCTION

- 9.1 Tacoma shall, in accordance with the terms and subject to the conditions of this Project Agreement, and consistent with the Project Specifications and Project Quality Assurance Procedures, design, construct, test and place in operation the Project. Tacoma shall undertake its duties and responsibilities for Initial Project Construction under this Project Agreement professionally and with all appropriate skill, care and diligence in accordance with generally accepted water industry standards in effect in the Puget Sound region at the time of performance of the work, and shall hire and manage all necessary and appropriate contractors in connection therewith. No Participant other than Tacoma shall engage in any communication with any contractors, subcontractor or sub-subcontractor performing Initial Project Construction without giving Tacoma prior notice of and an opportunity to participate in such communication. Initial Project Construction shall commence as soon as practicable after the execution of this Project Agreement.
- 9.2 Tacoma shall maintain and provide to all Participants upon request complete and up-to-date plans, drawings and specifications and other documentation relating to the design, engineering, construction and operation of the Project.
- 9.3 Tacoma shall maintain and provide to all Participants copies of design decision reports, control decision reports and similar documents prepared by Tacoma with respect to the Project whenever Tacoma circulates any such document for review and signature. Whenever requested by a Participant, Tacoma shall make available for inspection wherever such records are maintained, copies of correspondence and other notices or written communications between Tacoma and any contractors, subcontractors and other third Participants relating to Initial Project Construction.

10. INITIAL PROJECT CONSTRUCTION SCHEDULE

- 10.1 The Project shall be permitted, designed and constructed in accordance with the Initial Project Construction Schedule, as may be revised from time to time by the Project Committee.
- 10.2 The Initial Project Construction Schedule shall be composed of schedules for the following Project elements:
- Project Permitting and Regulatory Approval Element
 - Project Design Element
 - Initial Project Construction Element
 - Project Testing Element
- 10.3 The Initial Project Construction Schedule, including schedules for all Project elements, is set forth in Exhibit D.

11. PROJECT FINANCING

- 11.1 Prior to the issuance of Project Bonds for Initial Project Construction, any Pre-Construction Activities shall be budgeted and approved pursuant to the procedures set forth in subsection 8.9.
- 11.2 Financing Initial Project Construction
- 11.2.1 The estimated costs of Initial Project Construction are set forth in the Initial Project Construction Budget and the Project Cost Estimate, attached hereto as Exhibits C and G. The Participants acknowledge that the actual costs incurred for the Initial Project Construction may vary from the estimates set forth on Exhibits C and G.
- 11.2.2 Tacoma shall be responsible, in consultation with the other Participants, for providing to the Project Committee the proposed financing plan and implementing the financing plan as approved by the Project Committee. Project Bonds may be issued by Tacoma's separate system to fund all or part of the costs of Initial Project Construction and shall generally be in accordance with the Financing Plan for Initial Project Construction set forth in Exhibit H. However, the Participants acknowledge that the Financing Plan for Initial Project Construction represents the best estimate of the Participants based on information available when this Project Agreement was executed, and that circumstances in the future may require financing activities and Project Bond issuances which vary from those set forth in the Financing Plan for Initial Project Construction. If the funding provided by the Financing Plan for Initial Project Construction proves to be inadequate or untimely, Tacoma may propose a revised Financing Plan to the Project Committee to take into account such change in

circumstances, including without limitation, additional issuances of Project Bonds to fund the costs of Initial Project Construction.

11.2.3 The Headworks modifications will provide benefits to both the Project and Tacoma's existing Pipeline No. 1. The costs of these modifications have been allocated between the Project and the Pipeline No. 1 to reflect the benefits derived by each of those facilities. Only those Headworks modifications costs allocated to the Project are contained in the Initial Project Construction Budget, attached hereto as Exhibit C.

11.3 Financing After Initial Project Construction

11.3.1 After the completion of Initial Project Construction, from time to time the Participants will be required to fund the replacement, renewal, repair, improvement or make capital additions to the Project pursuant to this Project Agreement. If all or any portion of the funding for the costs of such replacements, renewals, repairs, improvements and capital additions is to be provided by the issuance of Project Bonds, Tacoma shall submit to the Project Committee a Financing Plan setting forth the purpose, amount, repayment schedule and timing of the proposed issuance (or issuances). Upon approval by the Project Committee pursuant to section 8, Tacoma may cause to be issued by such separate system in accordance with the approved Financing Plan Project Bonds for such purposes, the repayment of which shall be secured by the payments to be made by the Participants to this Project Agreement.

11.3.2 The costs of operating and maintaining the Project shall be established in accordance with section 24, and other applicable sections of this Project Agreement.

11.4 Provisions Applicable to All Project Financing

11.4.1 Tacoma may establish a separate system for accounting and bond issuance purposes for the Project. All Project Bonds shall be issued in accordance with a Financing Plan approved by the Project Committee pursuant to section 8, shall be for the purpose of financing Project Costs, and may be issued by Tacoma's separate system. If and to the extent permitted by the then current law, such Project Bonds shall be issued as non-recourse, tax-exempt municipal bonds, the repayment of which shall be secured by the payments to be made by the Participants pursuant to this Project Agreement.

- 11.4.2 The Participants shall be given the opportunity to review and comment upon any preliminary and final official statements prepared in conjunction with the issuance of all Project Bonds.
- 11.4.3 If Tacoma issues project bonds on behalf of any other participants, Tacoma shall take all commercially reasonable actions necessary to ensure that the proceeds from such issuances are available in a timely manner to fund the construction, replacement, renewal, repair, improvement of or capital additions to the Project, while seeking to minimize the interest rates of such Project Bonds. Tacoma is hereby authorized to purchase bond insurance and other credit enhancement devices, issue bonds in series, and take all such other actions as may be commercially reasonable to reduce the costs to the Participants of Project Bonds issued in accordance with this section 11.
- 11.4.4 The costs incurred by Tacoma from time to time to cause the issuance of Project Bonds, including without limitation the costs of Tacoma staff and associated overheads, shall be treated as Project Costs. Exhibit H sets forth an example of such costs.
- 11.4.5 Except to the extent Participants elect to make payments pursuant to subsection 11.4.6, each of the Participants hereby agrees to pay its Participant Share of any and all amounts necessary to repay Project Bonds, including without limitation the costs of issuing such Project Bonds in accordance with this section 11, and such payments shall be made in such amounts and at such times as required by the covenants of such Project Bonds. Except as otherwise provided in this section 11, and sections 13 and 32, the obligation of the Participants to make all such payments shall be apportioned among the Participants based upon their Participant Shares.
- 11.4.6 In lieu of paying its Participant Share of amounts necessary to repay Project Bonds, any Participant may elect to fund all or any part of its Participant Share of a Project Cost, which is to be funded by the issuance of Project Bonds, by the payment of cash obtained by issuing its own bonds, by obtaining loans from private or public sources, or any other lawful means. Any Participant electing to pay cash for its Participant Share of any such Project Cost shall inform all other Participants of such election in writing not less than ninety (90) days prior to the proposed date of issuance of the Project Bonds, as set forth in the approved Financing Plan for such Project Bonds. Upon receipt of such written notice from any Participant, the timing and amounts of the payments any Participant electing to pay cash shall be obligated to make shall be established by the Project Committee, and shall be included in the Project Annual Budget and in the Financing Plan containing the Project Cost to be so paid. The

Participant so electing shall make the payments in the amounts and at the times specified by the Project Committee in the relevant Financing Plan and Project Annual Budgets.

- 11.4.7 Nothing in this section 11 shall prohibit two or more Participants from entering into an agreement under which one Participant funds the Participant Share of a Project Cost of the other Participant, provided however, that such agreement shall not serve to relieve any Participant of its obligation to pay its Participant Share of a Project Cost under this Project Agreement.
- 11.4.8 If and to the extent there is funding available from sources other than Project Bonds and cash payments made pursuant to subsection 11.4.6, including without limitation grants, cost sharing, federal, state or local government funding, such funding shall be applied to the costs of constructing, operating or enhancing the Project, as determined by the Project Committee, such that all Participants share the financial benefits of such funding in proportion to their Participant's Share. Federal, state or local loans to an individual Participant to assist the Participant in providing for its Participant Share of Project Cost (e.g. public works trust fund loans) shall not be required to be shared under this subsection 11.4.8.
- 11.4.9 If and to the extent there are funds remaining in any bond fund established in conjunction with Project Bonds after the repayment in full of all outstanding Project Bonds, such funds shall be used in accordance with the applicable covenants and bond resolutions, or if no such direction is provided by the applicable covenants or bond resolutions, at the discretion of the Project Committee for the benefit of the Project.
- 11.4.10 Notwithstanding any other provision of this Project Agreement, the obligation of the Participants to make payments to pay any and all amounts necessary to repay Project Bonds issued by Tacoma's separate system, including without limitation the costs of issuing Project Bonds, shall survive the expiration or termination of this Project Agreement, and shall be fully enforceable subsequent thereto.
- 11.4.11 To the extent necessary for Tacoma to comply with applicable securities laws and regulations, including continuing disclosure requirements under SEC Regulation 15c2-12, the Participants for whom Tacoma issues bonds shall provide information to Tacoma for inclusion in official statements, continuing disclosure filings and similar documents to filings.

12. TREATMENT OF CERTAIN COST OVERRUNS

- 12.1 Modifications to the Headworks as set forth in the Project Specifications will benefit both the Project and Pipeline No. 1. In the event that the modifications to the Headworks either exceed or fall short of the amounts budgeted for such work in the Initial Project Construction Budget, then any such overrun or surplus shall be apportioned between the Project and Pipeline No. 1 using the allocator that was applied to the costs of the constructing the Headworks modifications, as set forth on Exhibit O. The portion of any such overrun or surplus allocated to Pipeline No. 1 shall not be treated as a Project Cost.
- 12.2 In the event that the cost of constructing a Point of Delivery either exceeds or falls short of the amounts budgeted for such work, the Participant that will receive Project Water through such Point of Delivery shall pay for any cost overrun, or receive a credit in the amount of any surplus attributable to the construction of the Point of Delivery. The cost of constructing Points of Delivery shall not be treated as a Project Cost.
- 12.3 Except as provided in subsections 12.1 and 12.2, in the event that the cost of constructing any portion of the Project exceeds or falls short of the amounts budgeted therefore in the Initial Project Construction Budget, then any such amount shall be treated as a Project Cost or as surplus funds of the Project.

13. TREATMENT OF REIMBURSABLE COSTS

- 13.1 Prior to the execution of this Project Agreement, Participants have incurred certain Reimbursable Costs. The amount of such Reimbursable Costs and the Participant by whom they were made are set forth on Exhibit P. Any such Reimbursable Costs which are designated as final on Exhibit P, shall entitle the Participant that made such Reimbursable Costs to a credit in an amount equal to the Reimbursable Costs as set forth on Exhibit P, which credit shall be applied against each such Participant's Share of the Project Costs attributable to Initial Project Construction.
- 13.2 Any Participant that incurs any costs which are not listed on Exhibit P, may seek a credit for such costs as Reimbursable Costs as follows:
- 13.2.1 The Participant seeking a credit shall submit to the Project Committee complete documentation detailing the facilities for which such costs were incurred, and demonstrating that the facilities constructed for such costs have been incorporated into the Project.
- 13.2.2 The Project Committee may approve as Reimbursable Costs the costs submitted by a Participant by unanimous, affirmative vote of the Project Committee.

- 13.2.3 In the event that the Project Committee does not approve as Reimbursable Costs the costs submitted pursuant to subsection 13.2, the Project Committee shall designate a neutral third party to review and audit the cost information submitted by the Participant requesting the credit. Such third party shall employ standard accounting and auditing procedures in reviewing the cost information submitted.
- 13.2.4 The Participant seeking the credit shall cooperate with the third party, and shall promptly provide any information reasonably requested by the third party.
- 13.2.5 The third party shall make a written finding setting forth the amount of the costs, or any portion thereof, which are Reasonable Costs, and which were incorporated in the Project.
- 13.2.6 Costs found to satisfy subsection 13.2.5 above by the third party shall be added to Exhibit P as Reimbursable Costs, and the Participant shall be entitled to a credit therefore. Costs disallowed by the third party shall not be included on Exhibit P, and no credit shall be granted therefore.
- 13.2.7 Any decision regarding the Reimbursable Costs made pursuant to this section 13 shall be final, and shall not be subject to dispute resolution pursuant to section 28 by any Participant.

14. RIGHTS UPON DELAY OR TERMINATION OF INITIAL PROJECT CONSTRUCTION

- 14.1 If Initial Project Construction is delayed such that it cannot be completed in accordance with the Initial Project Construction Schedule, some of the Participants have made provision for taking certain actions to secure a supply of water during any such delay. The actions that may be taken by such Participants, and the circumstances under which they may be taken, are set forth on Exhibits Q and R. As used in Exhibits Q and R, the term "Project Agreement" refers to the agreement between Tacoma and the other Participants under which facilities are designed and installed to provide water during the delay, and does not refer to this Project Agreement.
- 14.2 In the event that construction of the Project is terminated prior to the completion of Initial Project Construction, and the Participants having unanimously agreed in writing that there is no reasonable set of circumstances under which the Project can be expected to be completed, then in that event each Participant may take such actions as it may deem necessary to take delivery of its Participant Share of the Second Diversion Water as available during any calendar year. Prior to taking any such actions, each such Participant shall negotiate in good faith and reach agreement with Tacoma to establish a payment to compensate Tacoma for the

costs associated with the delivery and use of Second Diversion Water, including without limitation the costs of the fisheries and environmental enhancement agreements that were entered into to permit the Project to proceed, the costs of using Project rights of way and compensation for costs of the Project incurred by Tacoma. The rights and obligations of the Participants set forth in this subsection 14.2 shall survive the termination of this Project Agreement, and shall be fully enforceable subsequent thereto.

15. USE OF PROJECT FOR FIRST DIVERSION WATER

- 15.1 Tacoma shall have the right to use its Project Capacity Share to move First Diversion Water when Tacoma deems it appropriate to do so.
- 15.2 Tacoma shall have the right to use any Excess Project Capacity available to it under this Project Agreement to move First Diversion Water. In such event, the First Diversion Water shall have the same priority to Excess Project Capacity as Second Diversion Water.
- 15.3 First Diversion Water that is moved through the Project pursuant to this section 15 shall not be subject to the requirements of Section 21, but shall be subject to all other provisions of this Project Agreement.

16. USE OF PROJECT CAPACITY DURING CERTAIN EVENTS

- 16.1 Certain Participants have entered into an agreement pursuant to which they will provide aid and assistance upon the occurrence of specified events on their respective systems, which agreement is attached hereto as Exhibit AA. Nothing in the agreement between such Participants set forth in Exhibit AA shall entitle them to take any action or refrain from any action that would be inconsistent with the rights under this Project Agreement, or that would result in any other Participant being unable to fully exercise its rights hereunder.
- 16.2 Notwithstanding any other provision of this Project Agreement, the signatories to the agreement set forth on Exhibit AA retain the right to revise or modify the terms of their agreement set forth in Exhibit AA without the approval or consent of any Participant that is not a signatory thereto.
- 16.3 Should Tacoma receive from any Participant a request for deliveries of Project Water that exceeds the rights of such Participant under this Project Agreement, and such request is due to the occurrence of an Uncontrollable Force event on the requesting Participant's system that renders such Participant incapable of meeting the water supply needs of its retail customers, Tacoma shall promptly notify all other Participants of such request. Tacoma may, but shall not be obligated to, query the other Participants or convene a Project Committee meeting to determine if there are voluntary actions that could be taken by some or all of the Participants to alleviate the situation on the system of the Participant making such request.

Tacoma shall not take any action to comply with the request of any Participant subject to an Uncontrollable Force event without the consent of each and every Participant that will be affected by such action.

- 16.4 Notwithstanding anything to the contrary in this Project Agreement, should Tacoma lose the use, in part or in whole, of Tacoma's Pipelines Nos. 1, 2 or 4 due to an Uncontrollable Force event, and as a consequence thereof experience a water supply shortage on the Tacoma water system, then in that event Tacoma may use the Project to move First Diversion Water if so doing will alleviate such water supply shortage. In order to make such use of the Project, Tacoma may curtail or interrupt deliveries of Project Water to other Participants, so long as the reductions to the deliveries of Project Water to other Participants are: (i) made to all other Participants as nearly as practicable in proportion to the Participant Share of each Participant; (ii) do not exceed the reductions in deliveries of Project Water being experienced by Tacoma; and (iii) do not cause a water shortage on the water system of the other Participants that exceeds the water supply shortage being experienced by Tacoma.

17. DISCHARGE OF PROJECT WATER

- 17.1 From time to time as Project Operator, Tacoma may judge it necessary to discharge Project Water into the system of one or more Participants for purposes of maintaining water quality, performance of maintenance or for other purposes.
- 17.2 When Tacoma determines that it is necessary to discharge Project Water as described in subsection 17.1, and the Project Water so discharged will enter the system of any other Participant, Tacoma shall promptly notify the Participant or Participants into whose distribution systems the discharge will occur of the timing of such discharge, the volume of water involved, and the reason for such discharge. Tacoma shall not implement a proposed discharge unless and until it has received the permission therefore from the Participant or Participants into whose distribution systems the discharge will occur. Such Participant or Participants shall not unreasonably withhold permission for a discharge as proposed by Tacoma.
- 17.3 Project Water received by a Participant due to a discharge implemented by Tacoma pursuant to this section 17 in amounts equal to or less than the Project Water the Participant scheduled for delivery during the time period when the discharged Project water is received shall be considered as the delivery of Project Water for all purposes under this Project Agreement. If and to the extent the Project Water received by a Participant due to a discharge pursuant to subsection 17.1 exceeds the Project Water the Participant scheduled for delivery during the time period when the Discharged Project Water is received, such amount of Project Water in excess of the scheduled amounts shall not be considered as the delivery of Project Water for any purpose under this Project Agreement, and shall be deducted from the amounts of Project Water metered pursuant to section 22.

- 17.4 Project Water discharged by Tacoma pursuant to this section 17 which is not considered as the delivery of Project Water pursuant to subsection 17.3, shall be deducted from the amount of Project Water available to all Participants in proportion to their respective Participant Share.

18. WATER QUALITY

- 18.1 Project Water available to the Participants pursuant to this Project Agreement shall be in compliance with all applicable state and federal drinking water laws, regulations and standards.
- 18.2 The Participants agree that if applicable state or federal drinking water laws, regulations or standards require additional or different Treatment Facilities in order for Project Water to remain in compliance therewith, the Participants will take the steps necessary to add such Treatment Facilities to the Project. The costs of so doing shall be treated as Project Costs, and shall be apportioned to each of the Participants on the basis of their Participant Share.
- 18.3 The Project Committee shall make all necessary determinations regarding what Treatment Facilities should be added to the Project in order to comply with this section 18. For purposes of making all such determinations, any Treatment Facility shall be located at or near the Headworks, shall be capable of treating water in amounts equal to the maximum capacity of the Project as set forth in Exhibit N, and shall use the technology which is expected to have the lowest life cycle costs. Any decision by the Project Committee to take actions inconsistent with this subsection 18.3 must be approved in accordance with subsection 8.4.
- 18.4 Tacoma may elect to increase the capacity of the Treatment Facilities used for the chlorination of Project Water to enable such facilities to chlorinate First Diversion Water. To exercise this option, Tacoma must give written notice of its election to all Participants prior to the initiation of final Project design for Initial Project Construction. If Tacoma exercises this option to increase the capacity of such Treatment Facilities to chlorinate First Diversion Water, Tacoma shall be responsible for paying the incremental costs for such increased treatment capacity. The estimated incremental cost of adding such additional chlorination treatment capacity is set forth on Exhibit S.
- 18.5 Should Tacoma elect to increase the chlorination capacity of the Treatment Facilities to accommodate First Diversion Water, and it is subsequently required that First Diversion Water and Second Diversion Water must be given filtration treatment, then Tacoma shall pay to the Project, upon the commencement of construction of such filtration facility, a credit calculated pursuant to the formula set out on Exhibit S.

19. AVAILABILITY OF STORAGE

- 19.1 Storage of Second Diversion Water shall be provided by Phase I of the Howard Hanson Additional Storage Project.
- 19.2 When Phase I is completed, each Participant shall have the right to store Second Diversion Water in proportion to their Participant Share of Second Diversion Water between February 15 and June 30. In most years, the total amount of stored water will equal 20,000 acre-feet if all Participants commit the full amount of their allocation of Second Diversion Water to Storage. Second Diversion Water used by any Participant during the February 15 through June 30 period for purposes other than Storage will be accounted for as a use of that Participant's share of Storage, unless full Storage has been achieved prior to June 30 and Second Diversion Water is available as run of the river water.
- 19.3 If the Howard Hanson Additional Storage Project proceeds to Phase II, then in that event the Participants shall be afforded the opportunity to participate in such Phase II in proportion to their respective Participant Share. Should any Participant decline to participate, in whole or in part, in Phase II, each Participant participating in Phase II shall have a right of first refusal to any portion of Phase II in which any other Participant declines participation. The share of Phase II which is declined by a Participant shall be made available to the Participants participating in Phase II based on their Participant Share, assuming that the sum of the Participant Shares of those Participants that will participate in Phase II equals one hundred percent of the Project. A sample of the allocation set forth in this subsection 19.3 is attached hereto as Exhibit W.
- 19.4 The timing and amount of Storage available to the Participants under this Project Agreement will be governed by the Howard Hanson Project Cooperation Agreement, to be executed by Tacoma and the Army Corps of Engineers. Upon execution by Tacoma and the Army Corps of Engineers, such agreement will be attached to this Project Agreement as Exhibit V.

20. MANAGEMENT OF PROJECT WATER AND STORAGE USE

- 20.1 Each Participant shall be entitled to schedule, pursuant to this section 20, the use of its Project Capacity Share to deliver Project Water to its Point(s) of Delivery, notwithstanding the use of such Project capacity as Excess Project Capacity by any other Participant. Excess Project Capacity shall be first made available to Participants for the delivery of Second Diversion Water to Participants Point(s) of Delivery, and in the case of Tacoma for the delivery of First and Second Diversion Water, and then any Excess Project Capacity remaining thereafter shall be made available to Participants for the delivery of Additional Water. The foregoing rights and priorities shall apply to all aspects of section 20, including the review and revision of Participants' operating plans, review and approval of Annual Operating Plans, and the scheduling of Project Water within an Operating Year.

20.2 Participants' Operating Plans and Annual Operating Plan

- 20.2.1 On or before April 1st of each year during the term hereof, Tacoma shall provide to each Participant a written estimate of the expected availability of the Project for the next Operating Year, and the expected availability of Second Diversion Water. This will include, but will not be limited to, information regarding expected operating constraints and any additional information available to Tacoma that may be useful to Participants in planning their use of the Project in the next Operating Year.
- 20.2.2 Not later than thirty (30) days after receipt of the information from Tacoma pursuant to subsection 20.2.1, each Participant shall submit to Tacoma and to all other Participants a written draft operating plan for the next Operating Year. Each Participant's draft operating plan shall include, but not be limited to, the amount of Additional Water and Second Diversion Water that each such Participant expects to receive from the Project in each week during the next Operating Year, the amount of Second Diversion Water each Participant expects to place in Storage, and the timing and amount of expected withdrawals from Storage. If any Participant expects to make use of Excess Project Capacity during the next Operating Year, such Participant's draft operating plan shall identify the quantity, duration, timing and the specific facilities that are intended to be so used.
- 20.2.3 In making Excess Project Capacity available to the Participants as may be requested in their draft operating plans submitted pursuant to subsection 20.2.2, all requests for the use of Excess Project Capacity to move Second Diversion Water (and, in the case of Tacoma, to move First and Second Diversion Water) shall be satisfied first, and then any Excess Project Capacity remaining thereafter shall be made available to fulfill requests to move Additional Water.
- 20.2.4 Not later than thirty (30) days after receipt of the Participants operating plans, Tacoma shall prepare and submit to the Project Committee a draft Annual Operating Plan that incorporates the draft operating plans submitted to Tacoma pursuant to subsection 20.2.2. The Project Committee shall convene one or more meetings to consider the draft Annual Operating Plan prepared by Tacoma, and to approve the Annual Operating Plan as submitted or as may be revised by the Project Committee, for the next Operating Year. The Annual Operating Plan so approved shall include, at a minimum, the Participants' operating plans and any revisions thereto, allocation of Excess Project Capacity among the Participants, scheduled maintenance outages, their timing and duration, and any constraints on the availability of Second Diversion Water or Storage. If and to the extent that the Annual Operating Plan reflects a

constraint or diminution in the capability of the Project to deliver Project Water to the Participants, or in the amount or availability of Second Diversion Water or Storage, the Annual Operating Plan for the Operating Year in which such constraint or diminution occurs shall apportion to all Participants in proportion to their Participant Share the consequences of such constraint or diminution; *provided however*, that a constraint or diminution that affects facilities that serve some but not all of the Participants shall be borne only by those Participants served thereby.

20.2.5 If any operating plan submitted by a Participant includes the introduction by that Participant of Additional Water into the Project during the Operating Year, then as part of the consideration and approval process set forth in subsection 20.2.4, in addition to this section 20, all of the conditions set forth in section 21 shall apply thereto.

20.2.6 The Project Committee may elect to advance or delay the commencement of any Operating Year if it determines that it is necessary and appropriate to do so.

20.3 Scheduling Delivery of Project Water During an Operating Year

20.3.1 Prior to 10:00 A.M. on any Thursday during each Operating Year, any Participant may submit to Tacoma, in the manner and in the form established by the Project Committee, a schedule for Project Water deliveries for the following seven (7) days. Such schedule shall contain at a minimum a uniform rate of water deliveries for each day of the schedule, and shall take effect on the day following the Thursday the schedule is submitted. Schedules so submitted shall remain in effect until replaced by a subsequent schedule submitted in accordance with this subsection 20.3.1. As Project Operator, Tacoma shall, consistent with the priorities for the use of Project capacity as set forth in subsection 20.1, take all reasonable actions required to ensure that the amount of Project Water scheduled by each Participant is available to the scheduling Participant at its Point(s) of Delivery. Tacoma shall not be responsible for the operation of Flow Control Valves by which Participants withdraw water from the Project.

20.3.2 Tacoma may revise schedules submitted pursuant to subsection 20.3.1, if and to the extent any such schedule calls for deliveries that are in excess of the submitting Participant's rights under this Project Agreement, cannot be accommodated within Excess Project Capacity available, or is inconsistent with Project operating constraints. Tacoma shall notify any Participant whose schedule is revised pursuant to this subsection 20.3.2. In the event that a change in circumstances necessitates a change to a schedule then in effect, the submitting Participant may request a change to such schedule, and Tacoma shall take all reasonable actions that are

consistent with this Project Agreement to accommodate such schedule change.

- 20.3.3 If Tacoma receives a schedule pursuant to subsection 20.3.1 that exceeds the rights of the submitting Participant under this Project Agreement, Tacoma shall make reasonable efforts to accommodate such schedule by using any available Excess Project Capacity. To the extent that Tacoma receives more than one schedule that calls for deliveries in excess of the rights of the submitting Participants under this Project Agreement, Tacoma shall make reasonable efforts to accommodate such schedules by using Excess Project Capacity. If such schedules so submitted exceed the amount of Excess Project Capacity available, Tacoma shall, consistent with the priorities for the use of Project capacity set forth in subsection 20.1, prorate the available Excess Project Capacity to the schedules which require such Excess Project Capacity on the basis of the Participant Shares of the submitting Participants, and shall promptly notify each such Participant of the amount of the schedule that cannot be accommodated. Each Participant so notified shall have until 3:00 P.M. to notify Tacoma if, and the extent to which, it has been able to accommodate its schedule
- 20.4 The foregoing scheduling provisions are designed primarily to apply to the withdrawal and use of Second Diversion Water from Storage, and are not meant to apply to the scheduling of Second Diversion Water available as run of river water. The Project Committee shall formulate, and revise from time to time as appropriate, procedures under which Tacoma shall provide Participants with information regarding the availability of, and Participants shall schedule delivery of Second Diversion Water available as run of river water.
- 20.5 Each week during every Operating Year, Tacoma shall transmit to each of the Participants a report regarding the status of operations related to the Project. A sample weekly report is set forth in Exhibit X. The report will be transmitted to the Participants by means determined by the Project Committee. The Project Committee may from time to time revise the information to be included in the weekly report by Tacoma.
- 20.6 The Project Committee may modify the deadlines for the submission of information required by this section 20.

21. DELIVERY OF ADDITIONAL WATER

- 21.1 Subject to the requirements set forth in section 20 and this section 21, each Participant shall have the right to use its Project Capacity Share to move Project Water in accordance with this Project Agreement.
- 21.2 Any Participant wishing to use Project facilities to move Additional Water that was not included in the Annual Operating Plan then in effect shall make all reasonable efforts to notify all other Participants at the earliest practicable date of its intention to move such Additional Water. Such notification shall include, but shall not be limited to information regarding the quantity, source, duration, destination and water quality of any Additional Water proposed to be so moved.
- 21.3 A Participant wishing to move Additional Water shall submit to the Project Committee in writing the information required pursuant to subsection 21.2 not later than sixty (60) days prior to the date the Additional Water is proposed to be first introduced into the Project.
- 21.4 The Project Committee shall determine whether the proposed introduction of Additional Water is; (a) consistent with the proposing Participant's rights under this Project Agreement; (b) conforms with all applicable state and federal drinking water laws, regulations and standards; and (c) is compatible with the water quality of Project Water at the point of introduction into the Project. If the Project Committee makes a determination that such Additional Water does not meet all of the foregoing conditions, it shall disapprove the proposed introduction of the Additional Water.
- 21.5 The determination of the Project Committee set forth in subsection 21.4 shall be made within sixty (60) days of the date of receipt of the written notice required pursuant to subsection 21.3.
- 21.6 The testing and monitoring of the quality and quantity of any Additional Water introduced into the Project shall be the responsibility of Tacoma.
- 21.7 The Participant that proposes to introduce Additional Water into the Project shall pay the costs of acquiring and installing a separate meter that complies with Project meter standards, to measure the flow of Additional Water. Tacoma shall acquire, install and maintain such meter, and the meter shall be part of the Project.
- 21.8 The Participant which introduces Additional Water into the Project shall be responsible for paying any and all costs associated with the introduction of Additional Water as determined by the Project Committee, including without limitation, the costs of any testing and monitoring water quality, increased Variable O&M Costs attributable to such Additional Water, and the costs of additional metering.

22. METERING OF WATER DELIVERIES.

- 22.1 The Master Meter will be located at the Headworks to measure the flow of Project Water. Each Participant's Delivery Meter shall be located at the Point of Delivery for each such Participant. All Point of Delivery facilities will be designed and constructed as part of the Project, but the costs of designing and constructing such facilities will be billed separately to the Participant that will receive deliveries of Project Water at such Point (or Points) of Delivery, and will not be treated as Project Costs. Exhibit E sets forth the Point of Delivery facilities that are part of the Project and will be included in Project Costs, and those Point of Delivery facilities that will be billed to each Participant. Each Participant shall be responsible, at its own expense, for operating and maintaining those Point of Delivery facilities for which it is separately billed pursuant to this subsection 22.1. The approximate location of each Participant's Point (or Points) of Delivery and Delivery Meter, and of the Master Meter, are set forth on Exhibit A.
- 22.2 Unless alternative provision is made in the Project Annual Budget, the cost of installing the initial and any replacement Delivery Meter(s) for each Participant shall be borne of each such Participant. The cost of installing the Master Meter shall be a Project Cost. All such meters shall be considered a part of the Project.
- 22.3 As Project operator, Tacoma shall be responsible for the calibration and testing of the Master Meter and all Delivery Meters. No less frequently than once each year each meter, including the Master Meter, shall be tested for accuracy, and the results of such testing shall be made available to all Participants at no charge. The costs of the annual Delivery Meter tests, and the costs of the annual test of the Master Meter, shall be Project Costs. In addition to the annual meter test, any Participant may test any meter that measures Project Water at any reasonable time and at such Participant's expense. The results of any additional meter test shall be made available to all other Participants at no charge.
- 22.4 Any and all maintenance, repairs, and replacements to the Master Meter and to Delivery Meters shall be the sole responsibility of Tacoma as Project Operator, and the costs of any and all maintenance and repairs shall be Project Costs.
- 22.5 In the event there is a difference between the quantity of Project Water as measured at the Master Meter and the quantity of Project Water as measured by summing the readings on each of the Delivery Meters, such difference will be apportioned among the Participants based on the volumes as recorded on each of the Participants meters, unless the Project Committee determines that a different adjustment is appropriate under the circumstances. A sample calculation of such an adjustment is set forth on Exhibit T.
- 22.6 Pursuant to the procedures set forth in section 8, the Project Committee shall

establish the size and the flow range within which each Delivery Meter must operate. Should Tacoma determine that any Delivery Meter is operating outside the flow range so established, it shall notify in writing the Participant whose Project Water deliveries are measured by such Delivery Meter, and the size of the replacement meter needed to operate within the flow range. Tacoma shall provide the Participant an opportunity to discuss the problem with the existing Delivery Meter, and the need for the proposed replacement Delivery Meter. After providing such written notice, Tacoma may replace the faulty Delivery Meter and bill the Participant for the costs of procuring and installing such meter, and such Participant shall be obligated to pay such bill.

- 22.7 The Flow Control Valve for each Participant shall be owned by and shall be under the control of each Participant. Flow Control Valves shall not be a part of the Project. Each Participant shall be responsible for the operation and control of its own Flow Control Valve. Upon reasonable notice and subject to scheduling with the other Participant, each Participant shall have the right to enter the meter and/or valve vault or vaults of any other Participant for any reason related to the Project.
- 22.8 As Project Operator, Tacoma shall have access to the control signals from each meter station, and access to each vault in which a Delivery Meter is located. Each Participant shall have the right to receive the control signal for its Delivery Meter(s), and the control signal from any other meters operated in conjunction with the Project. The costs of equipment necessary to receive any such control signals shall be borne by the Participant receiving such signals.

23. DELIVERIES OF PROJECT WATER IN EXCESS OF SCHEDULES

- 23.1 As Project Operator, Tacoma shall monitor the delivery of Project Water to each Participant to ensure that the withdrawals and deliveries of Project Water comport with the schedules submitted by each Participant pursuant to section 20.
- 23.2 Should Tacoma determine that a Participant is receiving deliveries of Project Water at their Point(s) of Delivery in excess of their scheduled amounts, Tacoma shall notify such Participant of the excess deliveries, and the Participant shall promptly take the steps necessary to reduce its deliveries to amounts equal to its scheduled amounts, or to revise its schedules to reflect the level of deliveries it is receiving.
- 23.3 If the Participant receiving deliveries in excess of its scheduled amounts has not taken action to revise its schedules or to reduce its deliveries to a level equal to its scheduled amounts within twenty-four hours of receiving notice from Tacoma pursuant to subsection 23.2, Tacoma may take any action it deems necessary to reduce the deliveries to a level equal to the Participant's scheduled amounts.
- 23.4 For any Participant that has received deliveries of Project Water in excess of its

scheduled amount, Tacoma shall deduct from such Participant's balance of water remaining in Storage an amount equal to such excess delivery. If such excess deliveries exceed the water remaining in Storage for such Participant, Tacoma shall charge such Participant the Surcharge Rate for such excess deliveries that cannot be deducted from the Participant's Storage balance.

- 23.5 For any Participant that takes delivery of Project Water in excess of scheduled amounts, and does so in a manner that deprives any other Participant of their right to receive delivery of their Participant Share of Project Water without the agreement of such Participant, then if any Participant protests, or if Tacoma deems appropriate, Tacoma shall submit said matter to the Project Committee for its consideration on whether such excess deliveries be subject to the Surcharge Rate. If approved by the Project Committee, Tacoma shall charge such Participant the Surcharge Rate for such deliveries in excess of scheduled amounts.

24. PROJECT ANNUAL BUDGETS

- 24.1 At each quarterly meeting of the Project Committee after the completion of Initial Project Construction, Tacoma shall present to the Participants a comparison of actual expenditures to expenditures projected in the Project Annual Budget for the then current calendar year, with an explanation of any material variations between budget and actual amounts.

- 24.2 Not later than each July 1st, Tacoma shall prepare and submit to the Project Committee a proposed Project Annual Budget for the next calendar year, the work papers supporting each of the elements set forth in such proposed Project Annual Budget and a comparison of actual expenditures to the expenditures projected Project Annual Budget for the then current calendar year. Each such proposed Project Annual Budget shall contain, at a minimum, the following elements:

Amounts necessary to operate and maintain the Project;

For Variable O&M Costs, the cost per million gallons (MG);

Proposed Capital Expenditures including proposed Capital Expenditures for any renewals, replacements, additions or improvements to the Project;

Amounts necessary to replenish any Project contingency fund;

Amounts and timing of any payments due on outstanding Project Bonds;

Amounts and timing of any proposed Project Bond issuances; and

Payment schedules for all elements in the Project Annual Budget.

- 24.3 Each proposed Project Annual Budget shall be prepared generally in the form set

forth in Exhibit F. In preparing each proposed Project Annual Budget, Tacoma shall take into account any funds expected to remain, or liabilities left unfunded, which are expected to remain at the end of the then current calendar year.

- 24.4 The Project Committee shall have until October 15th to approve the Project Annual Budget as submitted by Tacoma, or to approve a Project Annual Budget as revised by the Project Committee. If the Project Committee has not approved a Project Annual Budget by the first day of any calendar year, then Tacoma may operate the Project and expend funds in accordance with the Project Annual Budget from the immediately prior calendar year, and the Participants shall be obligated to pay invoices issued by Tacoma in accordance with such Project Annual Budget unless and until the Project Committee approves a Project Annual Budget for the then current calendar year.
- 24.5 At any time during any calendar year, Tacoma may submit to the Project Committee a proposed revision to any Project Annual Budget then in effect if, in Tacoma's judgment, the Project Annual Budget then in effect will not be adequate to fund the operation of the Project. The proposed revision, as proposed by Tacoma or as revised by the Project Committee, shall take effect upon approval by the Project Committee.
- 24.6 The Project Committee may modify the deadlines for the submission of the proposed Project Annual Budget, and any action relating thereto, pursuant to this section 24.

25. PAYMENTS

- 25.1 Tacoma shall prepare and forward to each Participant invoices for the payment of costs as set forth in the Project Annual Budget then in effect. Each such invoice shall also set forth the operations and maintenance costs that vary with use based on the use of the Project by the Participant in the preceding month or months calculated using the rate for such use contained in the Project Annual Budget then in effect. Such invoices shall be prepared and forwarded to the Participants no more frequently than once each calendar month.
- 25.2 Any Participant may request from Tacoma, and Tacoma shall promptly provide to the requesting Participant, any documentation or other information that the requesting Participant may reasonably require to understand the nature of the costs contained in any invoice issued pursuant to this section 25.
- 25.3 Payment of any and all invoices forwarded to each Participant by Tacoma pursuant to this section 25 shall be due and payable by the Participant receiving such invoice on or before the Due Date, with payment to be made by wire transfer or such other means as agreed to by Tacoma and the Participant, subject to the following:

- 25.3.1 For any and all amounts set forth in any such invoice that are required to be paid to satisfy principal and interest obligations set forth in Project Bonds and related covenants, payment shall be made to the Project Bond escrow agent or fiscal agent specified in the Project Annual Budget for such Operating Year.
- 25.3.2 For any and all amounts set forth in such invoice, other than those amounts described in subsection 25.3.1, payment shall be made to the bank and account designated by Tacoma; *provided however*, in the event that a Participant desires to make a cash payment towards its Participant Share of Project Costs (e.g. a capital contribution in aid to construction for Project Costs), said payment shall be made to the Project escrow agent, which shall then, as a common paymaster and subject to the approval of Tacoma or Project Committee, as appropriate, direct said payment for Project Costs.
- 25.4 If full payment of any invoice is not received by Tacoma on or before the Due Date, such payment shall be considered past due, and the unpaid amount of such invoice shall accrue a late payment charge for each day that the invoice remains unpaid in an amount equal to the product of the unpaid amount of the invoice and the Interest Rate. Such charge shall continue to accumulate until the unpaid amount of the invoice and all late payment charges are paid in full to Tacoma. Further, if an invoice or any portion thereof remains unpaid for a period of thirty (30) days after the Due Date, Tacoma may elect to suspend deliveries of Project Water scheduled pursuant to section 20 by any Participant who has failed to make full payment until such Participant has paid all amounts due and owing, and any late payment charges due thereon.
- 25.5 If any Participant disputes all or any portion of an invoice issued by Tacoma pursuant to this section 25, the Participant shall pay such invoice in full, and shall indicate in writing to Tacoma the portions of the invoice that the Participant disputes and the reasons therefore. The Participants shall make a good faith effort to resolve such dispute. If such efforts are unsuccessful, either Participant to the dispute may seek resolution of the dispute pursuant to section 28.
- 25.6 If the resolution of any dispute over an invoice, whether by agreement of the Participants or by dispute resolution pursuant to section 28, results in the payment of money from Tacoma to the Participant disputing a bill, such payment shall include an interest payment for the period commencing with the date the disputed invoice was paid, and ending on the date the payment resolving the dispute is made to the Participant, calculated using the Interest Rate.
- 25.7 Each Participant hereby covenants and agrees that it shall establish, maintain and collect rates or charges for water and other services, facilities and commodities sold, furnished or supplied by it which shall be adequate to provide revenues

sufficient to enable the Participant to make the payments required to be made pursuant to the terms of this Project Agreement, and to pay all other charges and obligations payable from or constituting a charge or lien upon such revenues.

- 25.8 Each Participant shall make the payments required under this Project Agreement whether or not the Project is completed, operable or operating and notwithstanding the suspension, interruption, interference, reduction or curtailment in the operation of the Project for any reason whatsoever, in whole or in part. Such payments shall not be subject to any reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of any Participant to this Project Agreement, including without limitation the Project Operator, or of any entity under this or any other agreement or instrument.

26. TRUE-UP OF VARIABLE O&M COSTS

- 26.1 Not later than sixty (60) days after the first day of each calendar year, Tacoma shall, using the actual costs incurred in the prior calendar year, calculate the cost per MG of all costs which vary with the usage of Project Water.

- 26.2 If the cost or costs per MG as calculated pursuant to subsection 26.1 vary from the cost per MG set forth in the Project Annual Budget for the immediately prior calendar year for such Project uses, Tacoma shall calculate for each Participant either the additional payment required or the credit due based on the actual usage of Project Water by each Participant during the prior calendar year. If any additional payment is due from a Participant, Tacoma shall issue an invoice for such payment pursuant to section 25. If a credit is due to a Participant, Tacoma shall deduct the amount of such credit from the next payment or payments due from such Participant. No interest shall be paid on any adjustment calculated pursuant to this section 26.

- 26.3 A sample calculation pursuant to this section 26 is set forth on Exhibit U.

27. AUDITS AND ACCESS TO RECORDS

Upon reasonable prior notice to Tacoma, any Participant, or any consultant of any Participant, shall be given access during normal business hours to the books, records and accounts related to the Project and this Project Agreement in the possession of Tacoma at the location where such books, records and accounts are located. Tacoma shall not be obligated to collate, organize or analyze the information sought by the Participant or by the Participant's consultant. The Participant shall pay Tacoma its established rate for any documents reproduced for the Participant or its consultant.

28. DISPUTE RESOLUTION

- 28.1 Except as otherwise provided in this Project Agreement, any and all disputes arising under this Project Agreement shall be resolved by binding arbitration pursuant to this section 28.
- 28.2 The Participants shall make good faith efforts to resolve by informal discussion any dispute arising under or in connection with this Agreement. If at any time a Participant to a dispute determines that such informal discussions will not result in a resolution, such Participant may initiate binding arbitration of any dispute arising under or in connection with this Agreement. Any such arbitration shall be conducted pursuant to the rules for commercial arbitration of the American Arbitration Association or the rules of such other non-judicial dispute resolution service as agreed to by the Participants to the dispute. In any such arbitration proceeding, the Participants to such dispute shall have the rights of discovery available to parties in civil litigation under the Federal Rules of Civil Procedure.
- 28.3 The award of the arbitrators shall be final, and may be enforced in any court having jurisdiction. In making any such award, the arbitrators shall have the authority to grant such relief as they deem appropriate, including without limitation the award of damages and the granting of specific performance.
- 28.4 Pending the decision in any binding arbitration process pursuant to this section 28, the Participants to such process shall continue to fulfill their respective duties under this Project Agreement.

29. UNCONTROLLABLE FORCES

- 29.1 A Participant shall not be in breach of this Project Agreement as a result of such Participant's failure to perform its obligations under this Project Agreement when such failure is due to an Uncontrollable Force, to the extent that such Participant, despite the exercise of due diligence, is unable to remove such Uncontrollable Force. Nothing in this Project Agreement shall be construed to require any Participant to prevent or settle any strike or labor dispute in order to obtain relief under this section 29.
- 29.2 Any Participant subject to an Uncontrollable Force that may impair its performance under this Project Agreement shall notify all other Participants as soon as practicable. Any Participant subject to an Uncontrollable Force shall be excused from performance under this Project Agreement only for the duration of and to the extent of the Uncontrollable Force. Any Participant subject to an Uncontrollable Force shall take all reasonable actions to remove the Uncontrollable Force. Neither the occurrence of an Uncontrollable Force nor the provisions of this section 29 shall relieve any Participant of its obligation to pay money when due under the terms of this Project Agreement.

30. NOTICES

30.1 All notices, requests, demands, waivers, consents and other communications required hereunder shall be in writing, and shall be delivered by one or more of the following means: (i) in person, (ii) by overnight delivery service, (iii) by first class mail with postage prepaid, (iv) by facsimile providing confirmation of completed transmission, or (v) by such other means as may be approved by the Project Committee. Service of any such notice, request, demand, waiver, consent or other communication shall be deemed to have been duly given and to have become effective upon receipt.

30.2 Any and all notices, demands, waivers, consents and other communications shall be forwarded to each of the Participants at the following addresses:

To Tacoma: Water Superintendent
Tacoma Water
P. O. Box 11007
Tacoma, WA 98411

To CWD: General Manager
Covington Water District
18631 SE 300th Place
Kent, WA 98042

To Kent: Public Works Director
City of Kent
220 - 4th Ave. South
Kent, WA 98032-5895

To Lakehaven: General Manager
Lakehaven Utility District
P. O. Box 4249
Federal Way, WA 98063

30.3 Any Participant may change the address to which notices shall be given by giving notice of such change in accordance with subsection 30.1.

31. DEFAULT OF OBLIGATION

31.1 If any Participant fails to make any payment in full when due under this Project Agreement for a period of forty-five (45) days or more, Tacoma shall make written demand upon such Participant to make payment in full within ten (10) days of the date of such written demand. If the failure to pay is not cured within the ten (10) day time period, the Participant shall be deemed to be in default.

31.2 In addition to the remedies provided in section 25, if the Participant has been in default of payment for a period of sixty (60) days or more, and the payment in default includes any amounts necessary to make payment on any Project Bonds,

then the Project Committee shall offer for assignment to the non-defaulting Participants a pro rata share of the Participant Share of the defaulting Participant. The assignment of the defaulting Participant's Participant Share shall vest in the assignee all of the rights and obligations under this Project Agreement that the defaulting Participant could have exercised by virtue of such Participant Share, including without limitation, the right to use a pro rata share of the Second Diversion Water. If any non-defaulting Participant declines to accept all or any portion of the defaulting Participant's Participant Share under this Project Agreement, such Participant Share (or the remaining portion thereof) shall be re-offered to the remaining non-defaulting Participants until there is no unassigned Participant Shares of the defaulting Participant remaining, or no Participant wishes to accept any additional assignment. Any Participant accepting the assignment of all or any portion of the defaulting Participant's Participant Shares shall upon acceptance of such assignment cure a proportionate share of any existing default in payment, and shall be responsible for the payment of any and all obligations associated with the Participant Share so assigned under the Project Agreement. For purposes of this subsection 31.2, pro rata share shall mean for each non-defaulting Participant the ratio obtained by dividing its Participant share by the sum of the Participant Shares of the non-defaulting Participants.

31.3 If after following the process set forth in subsection 31.2 there remains unassigned

all or a portion of the Participant Share of the defaulting Participant, then Tacoma shall have its Participant Share increased in an amount equal to the defaulting Participant's Participant Share remaining after any reassignment pursuant to subsection 31.2.

31.4 The fact that other Participants have assumed the obligation to make payments which were due and owing from the defaulting Participant shall not relieve the defaulting Participant of its liability for such payments, and the Participants assuming such obligations, whether individually or as a member of a group, shall have a right of recovery from the defaulting Participant. Any Participant, as its interests may appear, whether jointly or severally, may commence such suits, actions or proceedings, at law or in equity, including suits for specific performance, as may be necessary or appropriate to enforce the obligations of this Project Agreement against any defaulting Participant. To the extent that a Participant in said litigation is successful, then said Participant is entitled to recover its reasonable attorney fees and costs against the defaulting Participant.

31.5 In the event that the Participant Share of a defaulting Participant is assigned to another Participant(s) pursuant to this section 31, the non-defaulting Participants shall enter into good faith negotiations to revise by mutual agreement the apportionment of votes pursuant to subsection 8.3 and the approval requirements pursuant subsection 8.4. Any such revision shall be done in a manner that recognizes the change in Participant Share as a result of such assignment, while

maintaining the initial intentions of the Participants as expressed therein. Absent a mutual agreement to such revision, notwithstanding any assignment pursuant to subsections 31.2 and 31.3, no Participant shall be entitled to cast the votes allocated to the defaulting Participant pursuant to subsection 8.3.

- 31.6 The actions taken pursuant to this section 31, including without limitation a determination of default, shall not be subject to dispute resolution pursuant to section 28.

32. REPRESENTATIONS AND WARRANTIES

- 32.1 The Participants hereby represent and warrant to one another the following:

32.1.1 Each Participant is duly authorized and validly existing under the laws of, and is authorized to exercise its powers, rights and privileges and is in good standing in, the State of Washington, and has full power and authority to carry on its business as presently conducted and execute this Project Agreement and perform the transactions on its part contemplated by this Project Agreement.

32.1.2 The execution, delivery and performance of this Project Agreement, and the consummation of the transactions contemplated hereby have been duly authorized by the appropriate board or council, and no other act or proceeding on the part of any Participant is necessary to authorize this Project Agreement, or the transactions contemplated hereby.

32.1.3 The execution, delivery and performance by each of the participants of this Project Agreement does not: (a) contravene any law; or (b) conflict with or result in a breach of or default under any material agreement or instrument to which any Participant is a party or by which it is bound.

32.1.4 There are no actions, suits, claims or proceedings pending or, to the best of each Participant's knowledge, threatened against any Participant that is likely to impair the consummation or the transactions contemplated hereby.

32.1.5 This Project Agreement, when executed and delivered, will constitute a valid and binding obligation of each Participant, and will be enforceable against each such Participant in accordance with its terms.

33. ASSIGNMENT AND OTHER ARRANGEMENTS

- 33.1 Except as otherwise provided in this Project Agreement, the rights and obligations of this Project Agreement may not be sold, assigned or otherwise transferred in whole or in part by a Participant to a party that is not a Participant without the

prior written consent of all other Participants, which consent shall not be unreasonably withheld.

- 33.2 Nothing in the Project Agreement shall prohibit a Participant from transferring to any other Participant for a period longer than an Operating Year any right or privilege of such Participant under this Project Agreement. Prior to consummating any such transfer, the Participant transferring the right or privilege shall provide to all other Participants the contract under which the transfer will occur, and permit the other Participants a reasonable period of time to comment on the proposed transfer. Any such agreement between two or more Participants shall not change the rights and duties of such Participants under this Project Agreement.

34. WAIVERS

Except as otherwise provided herein or as agreed to by the Participants, no provision of this Project Agreement may be waived except as documented or confirmed in writing. Any waiver at any time by a Participant of its rights with respect to a default under this Project Agreement or with any other matter arising in connection therewith, shall not be deemed a waiver with respect to any subsequent default or matter. Any Participant may waive any notice or agree to accept a shorter notice than specified in this Project Agreement. Such waiver of notice or acceptance of shorter notice by a Participant at any time regarding a notice shall not be considered a waiver with respect to any subsequent notice required by this Project Agreement.

35. DISPOSITION OF FUNDS UPON TERMINATION OF THE PROJECT

- 35.1 When the Project is terminated pursuant to section 7, the Participants shall use any proceeds that are obtained by selling all or any portion of the Project for salvage to satisfy any obligation then outstanding on any Project Bonds issued pursuant to section 11. If after satisfying all such obligations, the remaining proceeds shall be used to satisfy any other cost of the Project that remains unpaid.
- 35.2 Any proceeds from the salvage of the Project that remain after satisfying the obligations set forth in subsection 35.1 shall be divided among the Participants in accordance with their Participant Shares.

36. AMENDMENTS

Except as provided in subsection 19.4, no change, amendment or modification of any provision of this Project Agreement shall be valid unless set forth in a written amendment to this Project Agreement signed by all Participants.

37. ENTIRE AGREEMENT

This Project Agreement sets forth the entire agreement of the Participants, and supersedes any and all prior agreements with respect to the subject matter of this Project Agreement, including without limitation any rights and duties which may exist by and between the Participants pursuant to the Contract Between the Regional Water Association of South King County, Its Member Utilities and the City of Tacoma, Department of Public Utilities dated April 16, 1985, and any and all amendments thereto. The rights and obligations of the Participants hereunder shall be subject and shall be governed by this Project Agreement.

38. INTERPRETATION OF THE PROJECT AGREEMENT

All of the Participants participated in the drafting of this Project Agreement. In interpreting this Project Agreement, no inference shall be drawn against any Participant as the drafter of this Project Agreement. The headings used herein are for convenience of reference only, and shall not affect the meaning or interpretation of this Project Agreement.

39. GOVERNING LAW AND VENUE

This Project Agreement shall be governed by and construed in accordance with the laws of the State of Washington (regardless of the laws that might otherwise govern under applicable principles of conflicts of law of such state). Except in respect of a lawsuit or judicial action or proceeding commenced by a third party or a Participant in another jurisdiction, the Participants (i) agree that any lawsuit, judicial action or proceeding arising out of or relating to this Project Agreement must be heard in the Superior Court of the State of Washington, in and for the County of Snohomish or Thurston, or the United States District Court for the Western District of Washington, (ii) waive any objection to the laying of venue of any such suit, action or proceeding, (iii) irrevocably submit to the jurisdiction of any such court in any such lawsuit or judicial action or proceeding. And (iv) consent to service of process by mail in respect to any such lawsuit or judicial action or proceeding.

40. DUTY OF GOOD FAITH

The Participants agree that in taking actions or making determinations required or provided for under this Project Agreement, each and every Participant shall act in fairness and in good faith.

41. LIABILITY

With respect to actions approved by the Project Committee, any liability, loss, cost, damages or expense suffered by the Project shall be deemed a Project Cost and shall be shared by all Participants in accordance with their respective Participant Share. With respect to actions or omissions by Tacoma, if related to Tacoma’s duties in operating and managing the Project pursuant to this Project Agreement, then any liability, loss, cost, damages or expense suffered by the Project as a result of such actions or omissions shall be deemed a Project Cost, and shall be shared by each Participant in accordance with their respective Participant Share, excepting only those resulting from actions or omissions by Tacoma that are determined to be inconsistent with Prudent Utility Practice. This Section 41 shall not apply to nor alter specific cost allocations set forth in other sections of this Agreement.

42. COUNTERPARTS

This Project Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Participants have duly executed this Project Agreement on the date first above written.

City of Tacoma
Department of Public Utilities
Water Division

City of Kent

By: _____

By: _____

Title: _____

Title: _____

Approved as to form and legality:

Approved as to form and legality:

Covington Water District

By: _____

Title: _____

Approved as to form and legality:

Lakehaven Utility District

By: _____

Title: _____

Approved as to form and legality:
