

**INSTREAM FLOW AGREEMENT
for the
CEDAR RIVER**

Between

The City of Seattle

and

**The State of Washington, Acting Through Its Governor;
and the Department of Ecology;
and the Department of Fish and Wildlife**

and

**The United States Department of Interior,
Fish and Wildlife Service,**

and

**The United States Department of Commerce,
National Marine Fisheries Service**

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EXHIBIT A: Cedar River Hydrologic and Modeling Information

A. GENERAL TERMS AND CONDITIONS

1. The Parties

This Instream Flow Agreement (“IFA”) is entered into by and between the City of Seattle (“the City”); the State of Washington (“the State”), acting through its Governor; and the Washington Department of Ecology (“WDOE”); and the Washington Department of Fish and Wildlife (“WDFW”); the United States Fish and Wildlife Service (“USFWS”); and the National Marine Fisheries Service (“NMFS”). For purposes of this IFA, the term “Parties” refers collectively to the City, WDOE, WDFW, USFWS, and NMFS. The Army Corps of Engineers (“ACOE”) may become a signatory, and thus a Party, at a later date, upon negotiation of appropriate assurances to the City. The terms of this IFA shall be binding upon the respective successors or assigns of each Party.

2. Purpose and Scope

a. The City commits to a binding set of minimum instream flow requirements, to replace the current nonbinding flow targets, in order to ensure greater certainty in river flows, thereby contributing to the protection of aquatic resources above and below the Landsburg dam. In addition, as further specified herein, the City will supplement those flows by providing water to supplement minimum instream flows under specified conditions, operate City Facilities according to specified guidelines, make certain improvements to City Facilities and other facilities in the Cedar River system, and conduct certain related studies. The term “City Facilities” refers to the City's Overflow Dike at Morse Lake, Masonry Dam, Cedar Falls Hydroelectric Power Plant, and the Landsburg Diversion Dam and Water Supply Intake, plus all appurtenant pipelines and related structures, as these facilities presently exist or may hereafter be reconstructed. Although the City’s claim to divert and store water on the Cedar River pre-dates, and therefore is exempt from, any minimum instream flow requirements established by the State of Washington, the City shall manage and operate the City Facilities on the Cedar River to meet the minimum instream flow regime and related commitments as provided in this IFA. In meeting the instream flows and other commitments of this agreement, where the City is unable to fully exercise its storage or diversion rights, the City does not intend to abandon any portion of its claimed water rights. The WDOE is not by this Agreement construing or validating the nature or extent of, or the City’s authority to use water under, its Cedar River Water Rights Claim. Given the City’s commitments herein, WDOE agrees not to exercise its discretionary authority under RCW 90.03.110 concerning adjudication of the City’s claim while this agreement remains in effect.

b. The other Parties provide assurances to the City that its compliance with this agreement satisfies the various potential legal obligations referenced in section G.

c. To aid in communication among the Parties and to exercise authority granted by terms of this IFA, there is established a Cedar River Instream Flow

Oversight Commission (“Commission”), as set forth in Section F and as further referenced throughout this IFA.

d. All Parties recognize that the Cedar River provides streamflows which are essential to the needs of people as well as to the survival and recovery of fish. It is the intent of the Parties to protect instream flows for fish, navigation, and to minimize use of the Cedar River to serve future regional growth, while recognizing that conjunctive use of the Cedar may be important to achieving regional water supply efficiencies. All Parties recognize that there are innovative opportunities for use of the Cedar River which may benefit both fish and people. The City will continue to actively pursue other water sources, innovative projects (such as the Cedar Dead Storage Project described herein), and water reuse options to address future growth. WDOE is not, by signing this agreement, approving or permitting any intertie project, water transfer, and/or future permits.

3. Effective Date and Conditions Required

a. This IFA shall become effective on the first day after both of the following conditions have been met (“Effective Date”):

(1) All Parties sign the IFA; and

(2) The City and the USFWS and NMFS sign an Implementation Agreement (“IA”) for the City's Cedar River Watershed Habitat Conservation Plan (“HCP”).

b. The Commission shall be formed and begin operation not later than ninety (90) days after the Effective Date.

4. Term

The term of this IFA shall be 49 years beyond the end of HCP Year 1, as defined in subsection A.7, subject to extension by agreement of the Parties.

5. Amendment

This IFA may be amended by mutual agreement of all Parties. Any amendment shall be in writing and signed by all Parties. In the event that ACOE becomes a Party to this agreement, assurances by ACOE to the City shall be added to Part G, which shall not constitute an amendment of this agreement, nor require approval of the other Parties.

6. Limitations on Financial Commitments

a. All financial commitments in this IFA constitute overall cost amounts that will not be exceeded by the City except as otherwise provided in this IFA or in the Implementation Agreement.

b. All dollar amounts in this IFA are represented in 1996 dollars. These figures will be adjusted annually each full year after 1996 for inflation or deflation, based on the "Consumer Price Index for All Urban Consumers" published by the Bureau of Labor Statistics of the U.S. Department of Labor. If this index is discontinued or becomes unavailable, a comparable index will be designated by the Parties.

7. Convention Adopted for Schedule Commitments

The schedule commitments in this IFA are expressed in terms of HCP Years. "HCP Year 1" shall mean the period between the Effective Date and the end of the following full calendar year. "HCP Year 2" and all succeeding HCP Years shall coincide with the calendar years that follow the end of HCP Year 1.

8. Resolution of Disputes

a. The Parties recognize that disputes concerning implementation of or compliance with this IFA may arise from time to time. It is the intention of the Parties to work together in good faith to resolve any such disputes through the procedures set forth below. Although the Parties prefer the use of alternative dispute resolution, to the extent practicable, it is not a prerequisite to the initiation of judicial proceedings as provided for under A.11.

b. Any Party wishing to resolve a dispute under this IFA shall notify the other Parties by setting forth its position in writing, including a specific description of the situation it wishes to address, the reasons why it believes certain action or conditions constitute a violation of the IFA (if that is the contention), and the action it wishes the Parties to take. Any other Party may submit to all of the Parties a written response within 30 days.

c. Following this exchange of written statements, any Party through a policy-level administrator may invoke review of the dispute by contacting other Parties' policy-level administrators and arranging for a suitable telephone or in-person conference.

d. In the event that the policy-level administrators fail to resolve the dispute, any Party may request mediation, which shall take place only if agreed to by all of the Parties. The mediator shall be selected by the parties within 10 days of the request, and the process concluded within an additional 30 days, unless the Parties otherwise agree. Costs shall be shared equally by all Parties. Any agreements resulting from this process shall be reduced to writing, and may be enforced between the parties.

9. Force majeure

a. As used in this agreement, the term "force majeure" means events that are beyond the reasonable control of, and that did not occur through the fault or

negligence of, the City or any entity controlled by the City, including its contractors and subcontractors to the extent they are carrying out authorized activities, including but not limited to: acts of God; sudden actions of the elements, including fire; or actions of Congress, the Washington State Legislature, federal or state agencies or courts, or an action of a local jurisdiction other than the City that prevents the City from performing its obligations under the terms of this agreement.

b. Force majeure procedures. In the event that the City is wholly or partially prevented from performing obligations under this agreement because of a force majeure event, the City will be excused from whatever performance is affected by such force majeure event to the extent so affected, and such failure to perform will not be considered a material breach, provided that

(1) the City uses its best efforts to avoid and mitigate the effects of any delay upon its ability to perform;

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

(3) the City notifies the Parties orally within a reasonable time (normally not to exceed 48 hours) after becoming aware of any event that the City contends constitutes a force majeure, and in writing within seven (7) calendar days after the event. Such notice will: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. And

(4) when the City is able to resume performance of its obligations, it provides the Parties written notice to that effect.

10. Termination by the City

The City may voluntarily terminate this agreement, provided it gives all other Parties written notice of its intent to terminate, explaining its reasons therefor, at least two years in advance of termination, and provided further that no such notice may be given in advance of the end of HCP Year 4.

11. Remedies

Each Party shall have all remedies otherwise available in equity, including specific performance, to enforce the terms of this agreement. No Party shall be liable in damages to any other Party or other person for any breach of this agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this agreement, or any other cause of action arising from this agreement.

B. INSTREAM FLOWS BELOW LANDSBURG DIVERSION DAM

1. General

a. The instream flows described in this Section consist of two types of commitments by the City. The minimum instream flows or volumes, as described in sub-sections B.2., B.4., B.6., B.7., and B.8., represent *requirements* of the City and are referred to as “firm” flows or volumes, subject to the specific conditions and procedures set forth therein. Additional flows or volumes provided to supplement minimum flows, as described in sub-sections B.3. and B.5., represent *goals* of the City and are referred to as “non-firm” flows or volumes, subject to the specific conditions and procedures set forth therein. Failure to provide flows or volumes, according to the provisions set forth in this agreement, shall constitute a material breach of this agreement, thus terminating this agreement, unless: 1) the non-city parties agree that the City shall expend \$150,000 on a fish habitat acquisition, restoration, or enhancement project in the Lake Washington Basin to be determined by the Parties; or 2) all Parties agree to some additional amount of flow or volume, which the City will provide during the calendar year following a judicial determination of breach, that would benefit fish and would not impact the City’s ability to deliver firm water supply.

b. For both requirements and goals, the City’s commitments are to the *occurrence* of the specific flows under the conditions stated and not to a particular method of water management that causes those flows to occur. At times, the City will need to release water from storage in order to meet its requirements or goals downstream; at other times other flow management actions or natural hydrologic events may provide the necessary flows.

c. The goals for “non-firm” flows are derived from analysis and modeling of weather and hydrologic data over the 64.5 year period of record. The frequencies which are projected for achieving these goals are based on the assumption that similar hydrologic conditions will occur in the future. If similar hydrologic conditions, as referenced in Exhibit A, do occur, then the non-firm flows will be provided at the frequencies indicated. Past performance will not be used as the basis for deciding to provide non-firm flows in any given year. The decision to provide non-firm flows in each year will be based on the conditions described in subsections B.3., B.5., and B.7. In the annual reports to be provided pursuant to subparagraph D.3, the City will include an explanation of circumstances relating to decisions concerning provision of the non-firm flows provided in that year, as well as a cumulative analysis of progress toward meeting the expectations for non-firm flows which have been identified in this Agreement.

d. The historic hydrological data for the 64.5 year period of record are contained in the document attached as Exhibit A and labeled “Cedar River Hydrologic and Modeling Information.” The Parties understand that these data are for use in evaluating achievement of the projected frequencies. The Commission may designate a panel of not more than three outside experts, acceptable to all members, to advise it concerning the comparability of hydrologic conditions to those in Exhibit A.

e. Exhibit A also contains information on the simulation modeling that was used, along with other methods, to provide the Parties with an understanding of the instream flow regime afforded by this agreement. The information on modeling is included only as reference material, as provided in good faith by the City to the parties during negotiations of the Agreement in Principle. The parties considered additional information, including that in the HCP and EIS, in developing and evaluating the instream flow regime.

f. The goals for “non-firm” flows shall be incorporated into the City’s estimates and actions regarding the water supply capacity of the Cedar River system, which are part of the City’s water supply planning process. Neither the volume of water provided to meet the non-firm flow goals nor the frequency of the City’s achievement of those flows shall be decreased throughout the term of the IFA, whether or not the City contracts to supply water from the Cedar River to customers or service territories not currently supplied.

g. Except as otherwise provided in this IFA, future modifications, repairs, reconstruction, and/or changed operation of City Facilities or other facilities in the City’s water supply and hydroelectric power generation systems shall neither increase nor decrease the City’s obligations in this IFA, including the requirements and goals for instream flows set forth herein.

2. Minimum Instream Flows Below Landsburg Diversion Dam

a. The City shall provide the minimum instream flows as set forth in sub-section B.2.c. Unless otherwise specified, the flows listed in sub-section B.2.c and elsewhere in this Agreement represent flow rates measured as “provisional real-time” data at the existing USGS gage number 12117600, located below Landsburg Diversion Dam at river mile 20.4.

b. *Normal* minimum flows are defined as the minimum instream flow rates that the City will provide below Landsburg Diversion Dam except when all of the conditions and procedures specified in Section B.8. are met, in which case the City, in consultation with the Commission, may provide *critical* minimum flows.

c. Minimum Instream Flow Schedule.

<u>Water Week</u>	<u>Calendar Dates</u>	<u>Normal Minimum Flows (in cubic feet per second)</u>	<u>Critical Minimum Flows (in cubic feet per second)</u>
49	Sep 2-Sep 8	80	70
50	Sep 9-Sep 15	80	70
51	Sep 16-Sep 22	95	80
52	Sep 23-Sep 30	95	80
1	Oct 1-Oct 7	210	100
2	Oct 8-Oct 14	high:330--low:275	130
3	Oct 15-Oct 21	high:330--low:275	160

4	Oct 22-Oct 28	high:330--low:275	180
5	Oct 29-Nov 4	high:330--low:275	200
6	Nov 5-Nov 11	high:330--low:275	200
7	Nov 12-Nov 18	high:330--low:275	200
8	Nov 19-Nov 25	high:330--low:275	200
9	Nov 26-Dec 2	high:330--low:275	200
10	Dec 3-Dec 9	high:330--low:275	200
11	Dec 10-Dec 16	high:330--low:275	200
12	Dec 17-Dec 23	high:330--low:275	200
13	Dec 24-Dec 30	high:330--low:275	200
14	Dec 31-Jan 6	260	180
15	Jan 7-Jan 13	260	180
16	Jan 14-Jan 20	260	180
17	Jan 21-Jan 27	260	180
18	Jan 28-Feb 3	260	180
19	Feb 4-Feb 10	260	180
20	Feb 11-Feb 17	260	180
21	Feb 18-Feb 24	260	180
22	Feb 25-Mar 3	260	180
23	Mar 4-Mar 10	260	180
24	Mar 11-Mar 17	260	180
25	Mar 18-Mar 24	260	180
26	Mar 25-Mar 31	260	180
27	Apr 1-Apr 7	260	180
28	Apr-8-Apr 14	260	180
29	Apr-15-Apr 21	260	180
30	Apr 22-Apr 28	260	190
31	Apr 29-May 5	260	190
32	May 6-May 12	260	195
33	May 13-May 19	260	200
34	May 20-May 26	250	210
35	May 27-June 2	250	210
36	June 3-June 9	250	200
37	June 10-June 16	225	200
38	June 17-June 23	225	160
39	June 24-June 30	225	100
40	July 1-July 7	170	80
41	July 8-July 14	105	80
42	July 15-July 21	80	80
43	July 22-July 28	80	80
44	July 29-Aug 4	80	70
45	Aug 5-Aug 11	80	70
46	Aug 12-Aug 18	80	70
47	Aug 19-Aug 25	80	70
48	Aug 26-Sep 1	80	70

3. “Non-Firm” Flow Supplement in Late Winter and Early Spring for Sockeye Outmigration

a. Between February 11 and April 14, the City will, as a goal, expect to supplement the normal minimum instream flows listed in sub-section B.2.c. by 105 cfs at least 70% of the time throughout said period in any year in which normal flows are in effect throughout said period.

b. The Parties recognize that hydrologic conditions during this period are naturally volatile and that the City’s water management operations must consider flood control objectives, water quality, reservoir refill, and facility maintenance, in addition to fish migration needs. Not later than April 30 of each year, the City will provide a report to the Commission on average daily flows during the period between February 11 and April 14. The report will explain the considerations that prevailed in any case in which the 105 cfs non-firm supplement to normal minimum flow requirements was not provided at least 70% of the time throughout said period.

4. “Firm Block” of Water in Early Summer to Supplement Normal Minimum Flows for Steelhead Incubation

a. Between June 17 and August 4, in addition to the normal minimum flows listed in subsection B.2.c., the City shall provide such supplemental flow volumes as the Commission may direct, provided that the total volume of such supplemental flows shall not exceed 2500 acre feet of water, and that other procedures and conditions in this sub-section B.4. are met.

b. Decision-making process.

(1) Between June 7 and June 15, the City will convene by phone or in person a meeting of the Commission. The City will present information on water supply conditions and forecasts, water conservation measures taken or to be taken during the spring and summer, and such other information as may be useful in assessing the situation. The WDFW and/or other Parties will present information on the condition of steelhead redds, and such other information as may be useful in assessing the situation.

(2) Following discussion and consideration of the information exchanged, the Commission shall direct the use of the 2500 acre feet of water by presenting the City with a schedule specifying the timing, quantities and other relevant conditions, provided, however, that such supplemental flows must be staged over a minimum period of three weeks and must be within the normal operating capabilities of the City Facilities.

c. Nothing in this sub-section B.4. shall limit or condition the City’s ability to reduce flows to critical levels under the terms and conditions of sub-section B.8.

5. “Non-Firm Block” of Water in Early Summer to Supplement Normal Minimum Flows for Steelhead Incubation

a. Between June 17 and August 4, in addition to the normal minimum flows listed in sub-section B.2.c, and the “firm block” described in sub-section B.4., the City will, as a goal and under the conditions set forth in this sub-section B.5., expect to further supplement normal minimum flows by 3500 acre feet of “non-firm” water in 63% of all years. The Parties recognize that supplementation of minimum instream flows early in the dry season increases the overall risk of shortage in meeting both water supply needs and minimum flow requirements as actual conditions unfold throughout the summer and fall. Therefore, the parties agree to implement the following decision-making process for balancing those risks with the benefits available from such supplementation of flows.

b. Decision-making process.

(1) Between June 7 and June 15, the City will convene by phone or in person a meeting of the Commission. The City will present information on water supply conditions and forecasts (including reservoir fill levels), water conservation measures taken or to be taken during the spring and summer, and such other information as may be useful in assessing the situation. The WDFW and/or other Parties will present information on the condition of steelhead redds and such other information as may be useful in assessing the situation.

(2) The Commission will consider the information described in sub-section B.5.b.(1) and the risks inherent in supplementing flows early in the dry season, and will recommend to the City whether or not such supplement should be provided in the current year. If the recommendation is affirmative, the Commission concurrently will provide the following to the City:

(a) A schedule specifying the timing and quantities of additional flows, provided, however, that such additional flows must be staged in a manner so that not more than 2200 acre feet of the total 3500 acre feet is provided between July 8 and August 4; and

(b) A list of options in priority order by which the City may elect to recover volumes of water equal to the volumes released from storage, as well as specific triggering criteria for employing the options for such recovery.

(3) The recovery options required under sub-section B.5.b.(2)(b) may include modifications to the use of the low-normal flow curve, as described in sub-section B.7, or use of the Morse Lake pumping plant, or such other options as may be defined by the Commission.

(4) The City may accept or decline the recommendation of the Commission, provided that if it so declines such recommendation, the City must show a

reasonable basis for concluding that present or forecasted water supply conditions are less favorable than those that would be expected with 70% frequency or that the recovery options or their triggering criteria, described in sub-section B.5.b.(2)(b), would not be practicable.

c. If the City accepts and implements the recommendation of the Commission to supplement flows, and if water availability conditions subsequently worsen to the point that the triggering criteria described in sub-section B.5.b.(2)(b) are met, the City, at its discretion, may implement the identified options in order of priority so as to recover a volume of water up to the amount previously released from storage, and the Commission and its member agencies shall publicly support such action.

d. Nothing in this sub-section B.5. shall limit or condition the City's ability to reduce flows to critical levels under the terms and conditions of sub-section B.8. If the City offers to make the water available, as provided in this agreement, but for any reason the other Parties recommend that it not be provided in a given year, it shall be considered as if it had been provided, for purposes of monitoring achievement of the goal.

6. Higher Normal and Critical Minimum Flows in September for Sockeye and Chinook Spawning

In any year in which the temporary flashboards, as they presently exist in the City's Overflow Dike or may hereafter be reconstructed, are in place throughout the period of June 1 through September 30, the normal minimum flows listed in sub-section B.2.c. shall be increased by the amount of 38 cfs between September 15 and 22, and by the amount of 115 cfs between September 23 and 30, and the critical minimum flows shall be increased by the amount of 10 cfs through the period between September 1 and 15.

7. Two-Part Normal Minimum Flow Regime in the Fall for Sockeye and Chinook Spawning

a. Between October 8 and December 31, the City shall provide either high-normal minimum flows of 330 cfs or low-normal minimum flows of 275 cfs, except when flows are reduced to critical minimum flows under the terms of sub-section B.8. More specifically, the City, beginning on October 8, will meet the high-normal and low-normal flow regimes with the following long-term average frequencies assuming that the critical minimum flow regime will be in effect at a long-term average frequency of one of ten years:

(1) The City will follow the high-normal minimum flow regime in six of ten years, provided that it may switch down to low-normal in one of those years when actual or forecasted water availability conditions worsen significantly from those projected and understood at the time of the decision to provide high-normal minimum flows.

(2) The City may follow the low-normal minimum flows in three of ten years, provided that it will switch up to high-normal at such time after October 8 if the City determines that improving conditions allow, or when criteria for high-normal are met, whichever comes first.

b. Between October 1 and October 7, the City will convene by phone or in person a meeting of the Commission. The City will present information on water supply conditions and forecasts, water conservation measures taken during the spring and summer, and such other information as may be useful in assessing the situation. The WDFW and/or other Parties will present information on the sockeye salmon run size and timing and such other information as may be useful in assessing the situation. Following discussion and consideration of the information exchanged, the City will follow either the high-normal or low-normal flow regime, provided, however, that in order to implement the high-normal flow regime, the following minimum criteria must be met:

(1) The elevation of Morse Lake is, or is reasonably forecasted to be by October 8, greater than elevation 1541.5 feet; and

(2) The average inflow to Morse Lake for the antecedent 30-day period is greater than 31 cfs; and

(3) The average inflow for the antecedent 15 day period is greater than 32 cfs.

c. If the City elects to implement the low-normal flow regime, the City must show that during the peak water consumption season it has provided to its water customers, through paid or unpaid advertising or general news coverage, at least two water conservation messages that emphasize the importance of stream flows to fish habitat.

d. Solely for purposes of comparing long-term performance with intent, the following table shows expected frequencies on high- and low-normal curves, on average, throughout the period following October 8, assuming off-ramping (from high to low) and up-ramping (from low to high) decisions using modeled historical hydrologic information.

Long-Term Average Number of Years in Ten
During Which High-Normal and Low-Normal Minimum Flow Regimes Are in Effect
(Assuming Critical Flows in One of Ten Years)

Week Period	High Normal	Low Normal
Oct 8 - Oct 14	6.0	3.0
Oct 15 - Oct 21	6.0	3.0
Oct 22 - Oct 28	6.0	3.0
Oct 29 - Nov 4	5.0	4.0
Nov 5 - Nov 11	5.5	3.5

Nov 12 - Nov 18	6.5	2.5
Nov 19 - Nov 25	6.5	2.5
Nov 26 - Dec 2	7.0	2.0
Dec 3 - Dec 9	7.5	1.5
Dec 10 - Dec 16	7.5	1.5
Dec 17 - Dec 23	8.0	1.0
Dec 24 - Dec 31	8.0	1.0

e. Nothing in this sub-section B.7. shall limit or condition the City's ability to reduce flows to critical levels under the terms and conditions of sub-section B.8.

8. Reductions to Critical Minimum Flows

This sub-section describes the circumstances under which the Parties agree that the City may switch to the minimum flow levels indicated in the column headed "Critical Flows" in the table which appears in sub-section B.2.c., until such time as those criteria may be modified pursuant to section E.4.

a. The Parties agree that the City may reduce flows to the critical minimum flow regime whenever the following conditions are met:

(1) The surface elevation of water in Morse Lake reservoir is less than the elevations shown by date, or linearly interpolated between the dates shown, in the following table:

<u>Date</u>	<u>Water in Morse Lake Elevation (Feet)</u>
January 1	1539
February 1	1539
March 1	1540
April 1	1548
May 1	1552.5
June 1	1559
July 1	1555
August 1	1552
September 1	1550
October 1	1540
November 1	1540
December 1	1539

(2) The average inflow to Morse Lake for the antecedent eight-week (56 day) period is less than the flow shown by date, or linearly interpolated between the dates shown, in the following table:

<u>Water Week</u>	<u>Calendar Dates</u>	<u>Average Inflow to Morse Lake (in cubic feet per second)</u>
49	September 5	40
50	September 12	37
51	September 19	36
52	September 26	31
1	October 4	37
2	October 11	37
3	October 18	37
4	October 25	38
5	November 1	48
6	November 8	66
7	November 15	65
8	November 22	66
9	November 29	81
10	December 6	101
11	December 13	114
12	December 20	127
13	December 27	147
14	January 3	158
15	January 10	156
16	January 17	152
17	January 24	169
18	January 31	160
19	February 7	139
20	February 14	148
21	February 21	151
22	February 28	146
23	March 7	133
24	March 14	141
25	March 21	142
26	March 28	142
27	April 4	149
28	April 11	157
29	April 18	169
30	April 25	185
31	May 2	203
32	May 9	227
33	May 16	233
34	May 23	263
35	May 30	289
36	June 6	283
37	June 13	285
38	June 20	274
39	June 27	249

40	July 4	221
41	July 11	194
42	July 18	167
43	July 25	133
44	August 1	110
45	August 8	87
46	August 15	69
47	August 22	55
48	August 29	45

Flows shown are based on approximately the 10th percentile of the average weekly inflow measured at the USGS gage 12115000, Cedar River Near Cedar Falls, for the previous eight weeks.

(3) The City has implemented demand reduction measures, including public information programs, as described in its Water Shortage Contingency Plan adopted in 1993 by City Ordinance 116869 and has achieved water usage reductions that are significant for the season in which the shortage has occurred. The Commission shall have the opportunity to review and comment on any proposed revisions to the Water Shortage Contingency Plan in advance of any submission of such proposals for legislative action by the Seattle City Council, as well as the opportunity to comment formally during the decision-making process.

(4) The City has completed the following consultation process. Not less than five working days before it anticipates making a reduction to critical flows, the City will convene by phone or in person a meeting of the Commission. The City shall present information related to the switching criteria specified in this sub-section B.8.a., and discuss with the Commission any suggested options or alternatives to such reduction, such as alternative timing, intermediate flows and other options. This consultation process may be repeated at the request of any member, but at a minimum, the City shall reconvene the Commission approximately fourteen and thirty-five days after instituting reduced flows to evaluate the situation. If the City returns to normal flows before the end of the interval, the City need not reconvene the Commission, but shall simply notify it of the resumption of normal flows.

b. The criteria described in sub-sections B.8.a.(1) and (2) are hydrologic and reservoir conditions that indicate a degree of drought that triggers an “alert phase” in which the City will initiate consultations with the other Parties in order to assess overall supply and fishery conditions, demand management, and forecasts. Based on the hydrologic record, these alert phase conditions are anticipated to occur more frequently than one year in ten, but some will not result in switching to critical flows. The criteria described in sub-sections B.8.a.(3) and (4) are other procedures and requirements that must be met before the City may reduce flows from normal to critical. It is projected and intended that actual reductions would occur approximately one year in ten over the long term.

c. The Parties recognize that a stabilized flow regime may be more beneficial than a flow which cycles up and down between normal and critical. Therefore the Commission may agree to extend the period of reduced flow during periods when conditions described in sub-sections B.8.a.(1) and (2) are not being met, in order to protect a specific life stage.

C. OTHER OPERATING AND FACILITY IMPROVEMENTS

1. Instream Flows Above Landsburg Diversion Dam

a. Flows Between Masonry Dam and Cedar Falls Powerhouse.

After construction of a fish ladder at Landsburg Diversion Dam and subsequent upstream passage of selected species of anadromous fish, the City will provide a minimum flow of 30 cfs on a continuous basis to protect rearing habitat in the Cedar River “Canyon Reach,” measured by a new USGS stream gage to be installed near river mile 33.7 and funded by the City.

b. Flows Between Cedar Falls Powerhouse and Landsburg Dam.

No separate instream flow requirement shall be established for the reach between the Cedar Falls Powerhouse and the Landsburg Diversion Dam.

2. Downramping Below City Facilities

a. Downramping Below Masonry Dam.

Not later than the end of HCP Year 1, the City will propose new ramping rates, criteria and procedures for operation of equipment at Masonry Dam at flows below 80 cfs. The Commission will adopt, with or without modification, the City’s proposal, provided that the adopted ramping rates, criteria and procedures will be limited to operations which can be accomplished with existing equipment. Ramping rates that are part of the final ramping requirements will be calculated from provisional real time data measured at a new USGS stream gage to be installed near river mile 33.7. For compliance purposes, gage error, as determined by the USGS, shall be factored into the ramping rate calculation. Adopted ramping rates, criteria and procedures will become effective only after construction of a fish ladder at Landsburg Dam and upstream passage of anadromous fish.

b. Downramping Below Cedar Falls Powerhouse.

Not later than the end of HCP Year 1, the City will propose new ramping rates, criteria and procedures for reducing powerhouse discharge at flows below 300 cfs. Based on previous tests, ramping rates can be expected to be two inches or less per hour. The Commission will adopt, with or without modification, the City’s proposal, provided

that the adopted ramping rates, criteria and procedures will be limited to operations which can be accomplished with existing equipment. Ramping rates that are part of the final ramping requirements will be calculated from provisional real time data measured at the existing USGS stream gage located at river mile 33.2. For compliance purposes, gage error, as determined by the USGS, shall be factored into the ramping rate calculation. Adopted ramping rates, criteria and procedures will become effective only after construction of a fish ladder at Landsburg Dam and upstream passage of anadromous fish.

c. Downramping Below Landsburg Dam.

(1) General

(a) The downramping rates and procedures set forth in this sub-section C.2.c. will become effective not later than the end of HCP Year 2 and will apply to operations at Landsburg Diversion Dam when flows are less than 850 cfs.

(b) The measuring point for downramping rates at the Landsburg Diversion Dam will be the existing USGS gage number 12117600 located below the Dam at river mile 20.4. Not later than the end of HCP Year 2, the City will install equipment to monitor this gage on a “real time” basis. For compliance purposes, specific ramping rate values set forth in this sub-section C.2.c. will be calculated from provisional real time data and gage error, as determined by USGS, shall be factored into the ramping rate calculation.

(c) The downramping rates and prescriptions set forth in this sub-section C.2.c. will not apply when flows exceed 850 cfs.

(2) Downramping During Normal Operations

(a) Between February 1 and October 31, the maximum downramping flow rate will be one inch per hour.

(b) Between November 1 and January 31, the maximum downramping flow rate will be two inches per hour.

(c) The tainter gates will be down and closed during normal operations.

(3) Downramping During Startup Following Full System Shutdown

(a) Based on past experience, full system shutdown at flows less than 850 cfs can be expected to occur one to two times per year for scheduled and unscheduled maintenance, and at least once per year for forebay

cleaning. Shutdowns for construction may also occur depending on the nature of the construction project.

(b) To minimize risk of cavitation and mechanical damage of equipment at Landsburg Diversion Dam, initial downramping following full system shutdown will be at a maximum of 60 cfs per hour.

(c) Not later than the end of HCP Year 2 and as part of the City's current evaluation of forebay cleaning procedures with WDFW, the City will propose downramping rates and procedures for operation of the tainter gate. After consideration of the City's proposal, the Commission will adopt final ramping criteria, but such criteria must be capable of implementation with existing equipment (for example, the City must have the mechanical ability to ramp at the recommended rate).

3. Modifications at Cedar Falls Hydroelectric Project

a. Emergency Bypass Capability.

In early 1999, the City installed, tested and implemented operating procedures for new equipment to provide bypass flows around its hydroelectric turbines during most emergency plant shutdowns to protect against stranding of fish and dewatering of redds as a result of such events.

b. Tailrace Rack.

Upon construction of a fish ladder at Landsburg Diversion Dam and subsequent upstream passage of selected species of anadromous fish, the City will install a tailrace rack at the Cedar Falls Powerhouse to protect fish from injury or mortality.

4. Improvement of Long-Term Water Use Efficiency at the Hiram Chittenden Locks

a. The City will commit to local sponsorship, up to a maximum expenditure of \$1,250,000, for purposes of funding a feasibility study and implementation of long-term water efficiency improvements at the Hiram Chittenden Locks, provided that analyses show that the project will meet its intended purposes in a cost-effective manner. It is the City's understanding, based on information provided by the Army Corps of Engineers, that preliminary estimates for fresh water savings from these improvements would be about 30 cfs from June 1 through September 30, or more than 6000 acre feet each year that would then be available to improve fish survival at the Hiram Chittenden Locks.

b. In addition, the City will commit funding, up to a maximum expenditure of \$625,000, for smolt passage improvements at the Hiram Chittenden Locks in co-sponsorship with King County and the Muckleshoot Indian Tribe.

5. Supplemental Streamflows Resulting from Permanent “Dead Storage” Project

The City will analyze the feasibility of reliable options for utilizing water stored below the natural gravity outlet of Morse Lake. The scope of this study and the criteria and process for decision are described in Section E.3.

D. MEASUREMENT AND REPORTING

1. Locations of Measuring Points

a. The measuring point for flows and downramping rates immediately below the Landsburg Diversion Dam, as required in Section B and sub-section C.2.c., will be the existing USGS gage number 12117600, located at river mile 20.4.

b. The measuring point for downramping rates immediately below the Cedar Falls Powerhouse, as required in sub-section C.2.b, will be the existing USGS gage number 12116500, located at river mile 33.2.

c. The measuring point for flows and downramping rates immediately above the Cedar Falls Powerhouse, as required in sub-section C.1.a and C.2.b, will be a new USGS gage to be located near river mile 33.7.

d. The measuring point for determining reservoir elevation, as required in sub-sections B.7.b.(1) and (2) and B.8.c.(1), will be the existing staff gage on the Overflow Dike.

e. For purposes of this IFA, the measuring point for determining reservoir inflows, as required in sub-sections B.7.b.(2), B.7.b.(3), and B.8.c.(2), will be the existing USGS gage number 12115000, located at river mile 43.5, which serves as an index for total reservoir inflow

2. Gage Operation and Maintenance

The City will bear any expense not borne by the United States Geological Survey (“USGS”) and other cooperating agencies for flow and elevation measurements at the locations listed in Section D.1., including installation, real-time telemetry, relocation, rehabilitation, and maintenance of the measurement devices and related equipment. One or more of these devices may continue to be owned and operated by the USGS or other parties. If measurement instruments at one or more of the locations are not operational when the flow requirements set forth in this IFA become effective, the Commission, after consultation with the USGS, shall determine a reasonable temporary method of determining compliance with the requirements contained herein based upon available

data. After consultation with the City and USGS, the Commission will propose to USGS a reasonable schedule for installation of a permanent gage.

3. Reports

a. The City will provide to the Commission, on an annual basis, the record of measurements from the locations listed in subsection D.1. Average daily flows and reservoir elevations will be provided to indicate compliance with minimum instream flow requirements and goals. A table will be provided to show flows at the measuring points compared to the critical, low-normal, high-normal, and non-firm flow levels as identified in section B. For periods affected by downramping operations, flow data will be provided in one-hour increments to indicate compliance with downramping prescriptions. The reports will include an explanation of circumstances involved in decisions concerning instream flows, including an analysis of cumulative progress toward achieving the goals for such flows identified in section B of this agreement. The reports will also include tables of precipitation levels, reservoir in-flow, reservoir out-flow, and Chester Morse Lake levels and usage. The reporting year is based on January 1 through December 31. For the first year, the City will make best efforts to submit its annual report within 90 days of the end of the annual reporting period, and advise the Commission as to whether report preparation can be accelerated in succeeding years. The Parties may then agree to a shorter report preparation period. The frequency and detail of flow and reservoir elevation reports may be modified by the Commission.

b. As soon as reasonably feasible, but in any event not later than thirty days following discovery, the City will notify the Commission of any case, including emergency conditions, in which recorded flows are significantly below those specified in this IFA. Such non-conformance as may occur as a result of gage malfunction or retroactive USGS flow corrections to the record shall not constitute noncompliance by the City.

E. TECHNICAL STUDIES AND ADAPTIVE MANAGEMENT

1. General

a. The Parties agree that maintenance of the instream flow regime and other commitments contained in this IFA will benefit the fishery resources of the Cedar River by protecting, improving and increasing available habitat. The Parties recognize the importance of monitoring the condition of the habitat to assure that the purposes of this IFA are met. The Parties also acknowledge that available information on certain complex ecological and hydrologic processes is not complete. Therefore, the City, in cooperation with the other Parties, will sponsor and conduct certain studies, as specified in this Section E, and act on the results as indicated.

b. Except as otherwise provided, including the cost caps set in this Section, all major aspects of study planning, implementation, and coordination with other

related studies shall be subject to the approval of the Commission, which shall meet as frequently as study requirements dictate. The Commission shall have the opportunity to review and comment on drafts of any final study reports. The City shall make every effort to complete final study reports no later than one year after completion of the respective studies.

2. Analysis of Assumptions and Trends Related to Inflows Downstream of Landsburg

a. Background and Purpose.

Under this IFA, the measurement point for the City's instream flows below Landsburg is located at the existing USGS gage at river mile 20.4. Use of this location, rather than the USGS gage at Renton, is intended to align the City's accountability with its direct impact on the river and improve protection of fish habitat below Landsburg from fluctuations that occurred previously under certain conditions. Accretion flow estimates developed in jointly-overseen technical studies and further refined by the Parties were utilized in order to represent the local inflows between Landsburg and Renton. Since accretion flow patterns can have a significant effect on fish habitat and since future accretion flow patterns may vary somewhat from those calculated from historical data, the City will sponsor a long-term monitoring study to develop a better understanding of inflow patterns throughout the lower river.

b. Summary of Scope.

Specify the inflow assumptions to be evaluated. Establish and implement a long-term monitoring protocol. Establish analytical objectives. Identify any apparent long-term differences from the assumptions. Perform additional investigations and analyses, if needed, to identify causes.

c. Schedule and Cost Cap.

The study will begin not later than the end of HCP Year 3 and will continue for not less than ten years. Total costs for monitoring and analysis will not exceed \$400,000.

d. Use of Information.

If the conclusions of the long term monitoring study show that actual local inflow patterns (after allowance for gage error) are clearly more or less than the previously assumed patterns for causes that cannot be reasonably attributed to factors such as land development and water withdrawals downstream of Landsburg, the Commission may agree to a procedure for adjusting the agreed-upon minimum flow requirements upward or downward by limited amounts. The Commission shall act through a majority vote (at least 51%) of the members participating in the decision, but only if that majority includes the City.

3. Feasibility Analysis and Decision on Permanent Access to Dead Storage

a. Background and Purpose.

The Parties agree that potential benefits exist for augmentation of both streamflows and water supply through the development of permanent non-emergency access to water stored below the natural gravity outlet of Morse Lake. The City will sponsor the evaluation of the permanent Cedar Dead Storage Project, including necessary environmental, modeling, engineering, and financial studies.

b. Summary of Scope.

Engineering studies will address design options, siting, water quality, geology and hydrology, yield analysis, costs and economics, constructibility, reliability, and other factors. Environmental studies will address potential effects of the project on resident fish and wildlife populations and wetlands, and will evaluate alternative mitigation measures.

c. Schedule and Cost Estimate.

This feasibility study will commence not later than the end of HCP Year 1 and will require not more than five years to complete. Total costs for HCP Years 1 through 5 will not exceed \$700,000 for the engineering, water quality and economic studies and \$745,000 for the environmental studies.

d. Use of Information.

(1) Criteria and Process for Decision.

(a) Representatives of the Commission, as well as other agencies, public groups and individuals who are not parties to this IFA, will participate in all stages of this analysis and will receive materials generated in support of this effort. The Parties agree to work collaboratively to evaluate whether the environmental impacts can be reasonably and cost effectively mitigated. The City will seriously consider suggestions by the Commission, as well as all other participants, throughout the analysis. The Parties are not, through this IFA, making resource commitments to this analytic effort.

(b) Following the evaluation, the City will decide through its water supply planning processes whether and when to proceed with development of this source option, after comparing it with other source options in terms of its yield, reliability, cost, environmental impacts, timing, infrastructure and treatment requirements to deliver the water, likelihood and cost of securing necessary permits, and other factors. By agreement to this evaluation and process, WDOE is not validating in any way the City's claim or use of the dead storage water.

(2) Augmentation of Instream Flows.

If the City decides to proceed with the project, pursuant to the criteria and process for decision described in paragraph (1), above, the Parties agree to negotiate in good faith amendments to this IFA to apportion between instream flows and municipal water supply the additional water benefits made available by the project, including consideration of additional water that may be needed to improve survival of fish at the Hiram Chittenden Locks. Such amendments to the IFA shall not take effect unless and until the project is constructed and becomes operational. The Parties are not, through this IFA, addressing or resolving any questions relating to whether or not new permits or changes to water rights documentation will be required. By agreeing to negotiate any amendment regarding use of dead storage water for instream flows and water supply, WDOE is not in any way validating the City's claim or use of the water.

4. Development of Improved Switching Criteria

a. Background and Purpose.

The switching criteria established in sub-sections B.7.b. and B.8.a shall be considered interim. The City will sponsor and the other Parties will support a collaborative analysis of alternatives to these criteria. All Parties anticipate that revised switching criteria will be able to incorporate advancements in modeling and forecasting, and will be necessary to accommodate potentially significant changes to the operation of the water supply system arising from planned development of a new supply source and water treatment facilities. All Parties further anticipate that improved switching criteria can have a significant effect on the water manager's ability to manage the water resource efficiently and can benefit fish by ensuring that decisions are appropriate to conditions of concern. The purpose of this study is to develop new criteria that are more comprehensive, timely, and reliable representations of key conditions.

b. Summary of Scope.

The analyses will involve evaluation of various switching criteria, including measured streamflows and reservoir conditions, forecasted streamflows and reservoir conditions, refill success, system-wide (beyond only the Cedar River) conditions, biological conditions, and watershed conditions, such as soil moisture, snowpack, and groundwater. Adaptive management techniques will also be investigated. It will be the goal of the analyses to develop switching criteria that are measurable, independently verifiable, robust, and are representative of the system's ability to meet future diversion and instream flow needs.

c. Schedule and Cost Estimate.

It is the intent of the Parties to complete the study, and develop and implement revised criteria no later than the end of HCP Year 4. Total cost of the study will not exceed \$200,000.

d. Use of Information.

Revised switching criteria will replace the interim criteria presented in sub-sections B.7.b.(1), B.7.b.(2), B.7.b.(3), B.8.c.(1), and B.8.c.(2), provided, however, that implementation of the revised criteria will still result in the same predicted average frequencies for critical flow (one in ten years) and high normal flow (six of nine normal years on October 8, and approximately the weekly frequencies as shown in the table in sub-section B.7.d.) as the interim switching criteria. In the event that the Commission is unable to reach unanimous agreement on revised switching criteria following completion of this analysis, the matter shall be resolved following the procedure set forth in Section A.8. of this IFA. If the matter cannot be resolved through the informal dispute resolution process, the interim criteria shall be retained. Nothing precludes a result in which one or more of the existing criteria is retained.

5. Monitoring of Steelhead Redds

a. Background and Purpose.

Sections B.4 and B.5 of this IFA provide for “firm” and “non-firm blocks” of water to supplement minimum flows during the steelhead incubation period. In order to support decision making regarding the use of this water and to minimize dewatering of steelhead redds, the City will sponsor and the other Parties will support annual monitoring of redds for a period of time until protective flow guidelines and objectives can be established.

b. Summary of Scope.

The sponsored effort will locate, characterize and monitor steelhead redds from the time of their construction through fry emergence.

c. Schedule and Cost Cap.

The City will monitor steelhead redds for up to eight spawning seasons beginning in HCP Year 1. Total cost of the study will not exceed \$240,000.

d. Use of Information.

This monitoring study will support decision making on the “blocks” of water provided under Sections B.4 and B.5 of this IFA by providing real-time data on steelhead redds during the first eight years and guidance for flow decisions after that.

6. Supplemental Studies

a. Background and Purpose. Public comments received during the environmental review process on the draft HCP indicated considerable interest in the City sponsoring further study of a number of fisheries issues, particularly focussing on

obtaining enhanced information on chinook salmon, which were listed under the Endangered Species Act as “threatened” during the final year of preparation of this HCP. In addition to the monitoring and research commitments specified elsewhere in this IFA, the Landsburg Mitigation Agreement, and the Implementation Agreement, the City will make additional money available for biological and physical studies, as described below.

b. Summary of Scope. To enhance present understanding of the biology of aquatic resources in the Cedar River and the complex relationships between stream flow and fish habitat, the City will conduct studies addressing the following list of supplemental study topics:

- (1) The effects of stream flow on the migratory response of recently emerged chinook and sockeye fry and chinook fingerlings
- (2) The effects of size of juvenile chinook and timing of entry into Lake Washington on survival to smolt and/or adult
- (3) Distribution, abundance and habitat preferences of rearing juvenile chinook in the mainstem Cedar River, with emphasis on the interactions of these factors with stream flow
- (4) Behavioral response of adult chinook salmon to changes in stream flow and the operation of sockeye broodstock collection facilities
- (5) Modeling analysis of the potential impacts of stream flow at Landsburg on water temperature at the mouth of the river and in Lake Washington
- (6) Modeling analysis of the potential impacts of spring and early summer stream flows measured at Landsburg on water velocity vectors and water residence time in Lake Washington
- (7) Vulnerability of chinook salmon and sockeye salmon to redd scour
- (8) The potential effects of redd superimposition on the survival of sockeye and chinook eggs and alevins
- (9) Further investigations of the relationship between hydrologic features and the structure and function of instream and riparian habitat in altered stream channels.

The Commission will prioritize the study topics, and may add or delete topics with the consent of the City. As provided above, all major aspects of study planning, implementation, and coordination with other related studies shall be subject to the approval of the Commission, acting pursuant to the decision-making process identified in paragraph F.3. The Commission shall have the opportunity to review and comment on drafts of final study reports.

c. Schedule and Cost Cap. The City will spend up to a maximum of \$1,000,000 to conduct the supplemental studies. Funding for the studies will be available over a period of up to 9 years, which would be sufficient to encompass the complete life cycle of 4 brood years of chinook salmon. A schedule for disbursement of the supplemental study funds will be developed by the City in consultation with the Commission by the midpoint of HCP year 1, with the initial funding to occur after that date.

d. Use of Information. This study effort is expected to help generally advance the scientific basis for managing altered fluvial systems. The results of the studies can potentially be used by a variety of entities involved in the management of aquatic, riparian and upland habitat. Natural hydrology in the Cedar Basin is quite variable and stream flows in the Cedar River can often exceed the levels provided by the guaranteed flow regime. The results of the supplemental biological studies will provide an enhanced biological and physical information base that the Commission may use to advise the City in its management of stream flows at levels over and above those included in the guaranteed regime provided under Section B of this IFA. In the event that either WDFW or WDOE is concerned about the City's response to the information generated in these supplemental studies, it may request a meeting between the agency's director, the Governor (if requested by any party), and the Mayor of Seattle, which meeting shall take place as soon as it can be arranged. This remedy shall be available in addition to any rights the agencies may have pursuant to Part A.8, "Resolution of Disputes."

F. CEDAR RIVER INSTREAM FLOW OVERSIGHT COMMISSION

1. Commission and Its Membership

a. The Cedar River Instream Flow Oversight Commission ("the Commission") shall consist of one member representing each of the signatories to this IFA, except that the State shall be represented only by a member representing WDOE and a member representing WDFW. In addition to the signatories, the Muckleshoot Indian Tribe shall have one representative as a voting member of the Commission. King County may participate in Commission meetings in an advisory capacity, contingent on its written endorsement of the HCP.

b. Meetings of the Commission may be in person or by telephone or by such other method as may be acceptable to the members. The Commission, acting by consensus of its members, will adopt by-laws to govern administrative matters such as identification of and changes in members, notices, record-keeping, frequency of meetings, and mechanisms for convening the Commission. The City will chair the Commission and provide administrative support for its operation.

2. Function of the Commission

a. The Commission will serve as a forum for:

(1) Communication among the Parties of technical information on hydrologic conditions, facility and system operations (water supply, hydropower, and Ship Canal); fish biology and ecology; and such other subjects as may be beneficial in implementing this IFA.

(2) Coordination among the Parties on matters related to implementation of this IFA.

(3) Sharing of information and discussion concerning potential use of unallocated non-firm Cedar River water.

b. In addition, the Commission will provide a forum for the Parties' exercise of rights, responsibilities and decision-making authority, as further specified in this IFA. The Commission's authority is limited to that which is expressly granted by terms of this IFA. No action by the Commission shall abrogate WDOE's authority to manage the state's water resources, including regulation of diversion and use of the waters of the state.

3. Decision Making

The consultation and/or decision-making procedures to be used by the Commission in implementing this agreement are set forth in the various provisions which grant Commission authority. Unless otherwise specified in such provisions, the Commission will act in accordance with the following conditions and procedures:

a. The Commission may make decisions under authority granted by this IFA only in a meeting convened in a form specified in the Commission's by-laws and with at least three working days' notice to all members, and only when the City's member is present at such meeting and participates in the decision making, provided that the City may not impede Commission action by deliberately failing to attend or participate. The Commission, when addressing issues involving special expertise or authority, may give deference to the members whose agencies possess such expertise or authority. The Commission shall strive for consensus, but if consensus can not be achieved, any decision by the Commission shall require a majority (at least 51%) of the members present and voting, unless otherwise specified in this agreement for the particular decision at issue.

b. Notwithstanding sub-section F.3.a, no Commission decision may be made which would require additional expenditures beyond those contemplated by and provided for in this IFA or in the HCP and IA or conflict with water supply, flood control or hydropower operations otherwise consistent with other terms of this IFA.

G. ASSURANCES TO THE CITY BY THE OTHER PARTIES

1. Commitments by the State of Washington

a. Compliance with Existing State Law.

The State, acting through its Governor and its WDOE and WDFW, agrees that the flow regimes for the Cedar River and other terms of this IFA are in full compliance with all requirements of existing state law relating to instream flows.

b. Future Modification of Flows.

After this IFA is executed, the State, acting through its Governor and its WDOE and WDFW, agrees not to attempt, under existing laws, to modify the flows and other commitments described herein during the term of this IFA without the consent of the City. If promulgating an instream flow regime for the Cedar River under existing state law, the State, acting through its WDOE, agrees not to apply such flow regime and related requirements to the City's operations and facilities in any manner that is inconsistent with the terms of this IFA. Further, WDOE agrees not to exercise its discretionary authority under RCW 90.03.110 concerning adjudication of the City's claim while this agreement remains in effect.

c. Federal Energy Regulatory Commission ("FERC") Proceedings.

The State, acting through its Governor and its WDFW and WDOE, agrees not to initiate FERC licensing of the Cedar Falls Hydroelectric Project. If a FERC licensing process is initiated, the State, acting through its Governor and its WDFW and WDOE, agrees not to seek or require, under existing laws, additional mitigation features other than those included in this IFA or the HCP and its IA unless modifications to the City Facilities (with the exception of the Cedar Dead Storage Project) raise significant environmental concerns not minimized or mitigated by the terms of this IFA or the HCP and its IA.

d. Seniority of Water Rights.

The State, acting through its WDOE, agrees that nothing in this IFA constitutes a waiver of the City's position concerning the seniority, amount, or other attributes of its water rights and claims. The State is not by this Agreement construing or validating the nature or extent of, or Seattle's authority to use water under, its Water Right Claim No. 068624. Neither the State nor the City waives any argument or position it may take in the adjudication or confirmation of Seattle's right to use water under Claim No. 068624. The contents of this agreement shall not be construed as statements against interest or admissions, and are not binding in litigation except in matters related to enforcement by the Parties of the agreement.

e. Support for Use of Flashboards in Overflow Dike.

The State, acting through its WDOE and WDFW, agrees to the continued use of flashboards, as they now exist or may hereafter be reconstructed, in the Overflow Dike on Morse Lake.

f. Pumping Plant Permit.

The State, acting through its WDOE, shall process either an application for a new water right permit for the Morse Lake pumping plants, as they presently exist or may hereafter be reconstructed at substantially the same capacity, or an application to extend the term of the present permit issued on October 30, 1992. It is the parties' expectation that the City will request that the new or extended permit include the following provisions:

(1) That the duration of the permit shall be at least as long as the term of this IFA; and

(2) That the City be entitled to use the pumping plants to recover volumes of water released above minimum flows when authorized through the decision process described in Section B.5., provided that, in such case, the permit requirement to implement the Water Shortage Contingency Plan shall not apply; and

(3) That the permit be consistent with the instream flows provided in this Agreement.

g. Support for Permanent Cedar Dead Storage Project.

The State, acting through its WDOE and WDFW, agrees that the Cedar Dead Storage Project (Project) offers the potential to provide important benefits for fish habitat, and that the Project merits further study by the City. If appropriate environmental studies, as well as any required public review process, demonstrate that the Project can be constructed and operated in a manner that meets both applicable legal requirements and mitigation concerns of all Parties, WDOE and WDFW agree that they will support permitting for construction and operation of the Project.

2. Commitments by the Federal Parties

a. Compliance with the Endangered Species Act.

The USFWS and NMFS acknowledge that the flow regime set forth in this IFA, in combination with the other measures set forth in the City's HCP, sufficiently minimizes and mitigates for take of Covered Species to meet all requirements of the Endangered Species Act, and entitles the City to issuance of an incidental take permit for Covered Species under the procedures set forth in the IA.

b. Future Modification of Flows.

The USFWS and NMFS agree that, except as may be permitted under the IA or required by changes to existing law, they will not modify or seek to modify the flow requirements set forth in this IFA during the term of the IFA in order to protect Covered Species without the consent of the City.

c. Federal Energy Regulatory Commission Proceedings.

The USFWS and NMFS agree that they will not petition for, or otherwise seek to have initiated, a FERC licensing process for the Cedar Falls Hydroelectric Project. Further, they will not use such a licensing process to seek mitigation for Covered Species beyond that which is provided for under the HCP.

d. Support for Permanent Cedar Dead Storage Project.

The USFWS and NMFS agree that the Cedar Dead Storage Project (Project) offers the potential to provide important benefits for fish habitat, and that the Project merits further study by the City. If appropriate environmental studies demonstrate that the Project can be constructed and operated in a manner that meets applicable legal requirements, the Services agree that they will support permitting for construction and operation of the Project.

e. Support for Use of Flashboards in Overflow Dike.

The USFWS and NMFS agree that they will not seek to modify the continued use of flashboards, as they now exist or may hereafter be reconstructed (provided that such reconstruction does not result in greater impacts to Covered Species), in the Overflow Dike on Morse Lake, in order to protect Covered Species.

IN WITNESS WHEREOF, the City of Seattle has caused this Instream Flow Agreement to be executed by its Mayor pursuant to Resolution 29977, as amended by Resolution 30091, and other Parties have executed the same pursuant to applicable legal authorities.

THE CITY OF SEATTLE

By: _____
Paul Schell, Mayor

Date: _____

THE STATE OF WASHINGTON

By: _____
Gary Locke, Governor

Date: _____

By: _____
Jeff Koenings, Director
Department of Fish and Wildlife

Date: _____

By: _____
Tom Fitzsimmons, Director
Department of Ecology

Date: _____

**U.S. DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE**

By: _____
Tom Dwyer, Deputy Regional Director

Date: _____

**U.S. DEPARTMENT OF COMMERCE
NATIONAL MARINE FISHERIES SERVICE**

By: _____
William W. Stelle, Regional Administrator

Date: _____