

CITY OF TUMWATER/PORT OF OLYMPIA
INTERLOCAL AGREEMENT FOR
HABITAT CONSERVATION PLAN PREPARATION

THIS INTERLOCAL AGREEMENT is made and executed this 1 day of November 2016, by and between the CITY OF TUMWATER, a Washington municipal corporation, located and doing business at 555 Israel Road SW, Tumwater, and the PORT OF OLYMPIA, a Washington public port district, located and doing business at 606 Columbia Street NW, Olympia, Washington.

RECITALS

WHEREAS, on October 3, 2013, the U.S. Fish and Wildlife Service issued a final rule listing the Taylor's Checkerspot Butterfly as an endangered species and the Streaked Horned Lark as a threatened species under the Endangered Species Act ("ESA") of 1973, 16 U.S.C. §1531 *et seq* (78 Fed. Reg. 61452 (Oct. 3, 2013)); and

WHEREAS, on October 3, 2013, the U.S. Fish and Wildlife Service issued a final rule designating critical habitat for the Taylor's Checkerspot Butterfly and the Streaked Horned Lark pursuant to the ESA (78 Fed. Reg. 61506 (Oct. 3, 2013)); and

WHEREAS, on April 9, 2014 the U.S. Fish and Wildlife Service issued a final rule listing four subspecies of the Mazama pocket gopher as threatened under the ESA (79 Fed. Reg. 19760 (Apr. 9, 2014)); and

WHEREAS, on April 9, 2014, the U.S. Fish and Wildlife Service issued a final rule designating critical habitat for the Mazama pocket gopher pursuant to the ESA (79 Fed. Reg. 19712 (Apr. 9, 2014)); and

WHEREAS, the range of the three above-referenced listed species' includes Thurston County, and critical habitat designations for the Mazama pocket gopher and the Streaked Horned Lark include the Port's Olympia Regional Airport, which is located within the City of Tumwater; and

WHEREAS, under Section 7 of the ESA, programs or projects with a federal nexus are required to consult with the U.S Fish and Wildlife Service to determine effects on listed wildlife species and must comply with conservation measures to avoid prohibited "incidental take" of such species; and

WHEREAS, under Section 10 of the ESA, non-Federal entities risk civil and/or criminal enforcement if development activities cause prohibited "incidental take" of listed wildlife species without an appropriate permit; and

WHEREAS, in light of the above-referenced ESA listings and designation of critical habitat impacting properties within the Parties' respective jurisdictions and/or direct ownership, the Parties jointly acknowledge the need for a habitat conservation plan (HCP) to provide programmatic incidental take coverage under Section 10 of the ESA in order to allow future development on impacted properties; and

WHEREAS, a City HCP that includes the Port-owned properties within the City will more effectively protect listed species and also provide for a more certain and streamlined development review processes for impacted properties, including Port-owned properties and Port tenants; and

WHEREAS, RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other agencies on a basis of mutual advantage; and

WHEREAS, RCW 39.34.080 authorizes a public agency to contract with another public agency to perform any governmental service which each public agency is authorized to perform, provided that such contract shall be authorized by the governing body of each Party to the contract; and

WHEREAS, the City has been awarded a \$132,000 Cooperative Endangered Species Conservation Fund (Section 6) grant for development of an HCP; and

WHEREAS, the City has committed to a cash match of \$58,000.00 and to in-kind services for \$30,000.00 associated with this grant; and

WHEREAS, the Port desires to partner with the City to develop an HCP that provides incidental take coverage for Port and City properties; and

WHEREAS, the Port is a key partner with the City in the preparation of an HCP, as the Olympia Regional Airport contains critical habitat for the Olympia subspecies of Mazama pocket gopher and the Streaked Horned Lark; and

WHEREAS, it is beneficial to and consistent with the duties and obligations of the Parties to work cooperatively in order to protect listed species and habitat while allowing for continued economic growth and development within the City of Tumwater; and

WHEREAS, it is necessary for the Parties to enter into an agreement to set forth the terms, conditions, and requirements for cooperative preparation of an HCP under Section 10 of the ESA.

NOW, THEREFORE, in consideration for the terms, conditions, requirements, and mutual benefits contained herein, it is hereby agreed between the Parties as follows:

Section 1. Agreement.

- A. The City will maintain and fulfill the grant financial commitment for the HCP Phase 1 completion of \$58,000.00 in cash matching funds and \$30,000.00 of in-kind matching funds;
- B. The Port will be responsible for additional funding not to exceed \$58,000, resulting from Port participation in the HCP Phase 1 that result from an expanded scope and additional process associated with inclusion of Port properties;
- C. The City of Tumwater will seek reimbursement from the Washington Department of Fish and Wildlife ("WDFW") for activities covered under this ILA. The City of Tumwater will then bill the Port of Olympia for the Port's portion;
- D. The City is responsible for the HCP Phase 1 grant reporting and deliverables directly to WDFW and will therefore maintain primary responsibility for project completion for the HCP Phase 1;
- E. The Parties agree to apply for HCP Phase 2 grant funds jointly, with the Port working with U.S. Fish & Wildlife as lead to prepare the application. The Port and the City will

- jointly ensure all reporting requirements are met and deliverables submitted on time for HCP Phase 2;
- F. The Parties agree to split grant funding match obligations for HCP Phase 2 grant funds evenly in an amount not to exceed \$150,000 per party;
 - G. The Parties agree to cooperate in jointly developing and implementing mitigation measures identified as part of the HCP process, with specific allocation of mitigation costs and obligations to be determined by later agreement of the Parties prior to approval of the final HCP; and
 - H. It is expected upon approval of the HCP that incidental take permits under the ESA will be issued to both Parties.

Section 2. Duration. The terms and performance of this Agreement shall commence after the approval by the governing body of each Party and following the recording of this Agreement with the Thurston County Auditor or posting of this Agreement on each Party's website as provided in RCW 39.34.040. This Agreement shall terminate upon USFWS approval of the joint HCP and the granting of associated incidental take permits to each Party or December 31, 2020, whichever occurs sooner.

Section 3. Termination. This Agreement may be terminated in whole or in part, with or without cause prior to the date specified in Section 2 with thirty (30) calendar days' written notice to the non-terminating party.

Section 4. Administration. Each Party shall be responsible for administering the terms of this Agreement. No disparate legal entity is created because of entering into this Agreement. No joint organization is created. No common budget is to be established. No personal or real property is to be jointly acquired or held.

Section 5. Entire Agreement. The Parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein shall constitute material breach of contract and cause for termination. It is also agreed by the Parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

Section 6. Severability. If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is found to be invalid, unconstitutional, or otherwise unenforceable by a court of competent jurisdiction, such invalidity shall not affect other terms, conditions, or applications, which can be given effect without the invalid term, condition, or application; to this end, the terms and conditions of this Agreement are declared severable.

Section 7. Review of Agreement. The terms and conditions of this Agreement shall be reviewed periodically by each Party for appropriateness and currency.

Section 8. Amendments. Any addition, deletion, or change to the terms and conditions of this Agreement shall be in the form of a written amendment approved by each of the Parties.

Section 9. Governing Law. This contract shall be governed in all aspects by the laws and statutes of the State of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

Section 10. Indemnification. The Port shall defend, indemnify, and hold the City, its officers, employees, agents, and assigns harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising from or in connection with the preparation of an HCP, but only to the extent of the Port's negligence or comparative fault. The City shall defend, indemnify, and hold the Port, its officers, employees, agents, and assigns harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising from or in connection with the preparation of an HCP, but only to the extent of the City's negligence or comparative fault.

EXECUTION

IN WITNESS WHEREOF, each Party has caused to be signed by its duly authorized officer or representative as of the date set forth below its signature.

THE PORT OF OLYMPIA

THE CITY OF TUMWATER





E.B. Galligan, Executive Director

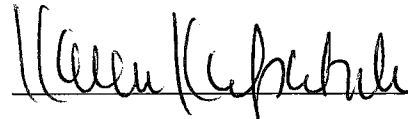
Pete Kmet, Mayor

Date: 11-7-16

Date: Nov 10, 2016

APPROVED AS TO FORM:





Heather Burgess, Port Legal Counsel

Karen Kirkpatrick, Tumwater City Attorney