

1 **Exhibit 18: Spending Agreement Template**

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3 **King County Mitigation Reserves Program**
4 **Mitigation Fee Spending Agreement**

5 **AN AGREEMENT REGARDING THE AUTHORIZATION TO SPEND MONEYS FROM THE MITIGATION**
6 **RESERVES PROGRAM ACCOUNT PURSUANT TO THE FINAL MITIGATION RESERVES PROGRAM BASIC**
7 **AGREEMENT AND PROVISIONS CONTAINED IN 33 CFR PARTS 325 AND 332 AS REVISED EFFECTIVE**
8 **JUNE 9, 2008 (FEDERAL MITIGATION RULE).**

9 **I. PURPOSE**

10 Under this agreement, the District Engineer of the US Army Corps of Engineers, Seattle District
11 (hereinafter the “district engineer”) and the Washington State Department of Ecology
12 (hereinafter “Ecology”) authorize King County to spend a portion of mitigation fees collected
13 through King County’s federally-certified Mitigation Reserves Program (hereinafter “MRP”), an
14 in-lieu fee mitigation program. The federal rule governing operations of mitigation banks and in-
15 lieu fee programs used to satisfy mitigation requirements associated with Department of the
16 Army permits (33 CFR Part 332) requires that, “Disbursements from the program account may
17 only be made upon receipt of written authorization from the district engineer, after the district
18 engineer has consulted with the IRT.” [332.8(i)(2)]. This agreement pertains solely to activities
19 conducted by the MRP pursuant to the Final Program Instrument signed into effect on
20 _____.

21 This spending agreement shall supplement the spending authority provisions contained in the
22 final program instrument (see Basic Agreement Article III.B and Appendix F).

23 The King County Mitigation Reserves Program has accepted mitigation fees in the amount of
24 \$_____ for the unavoidable impacts to aquatic resources as described below.
25 King County has identified a Mitigation Site at which these fees will be used to implement
26 mitigation as identified in Article III below.

27 Upon acceptance of these fees King County is agreeing to implement mitigation and assume all
28 associated obligations and liabilities according to terms of the Final Program Instrument for the
29 King County Mitigation Reserves Program certified on _____, 2011.

1 **II. IMPACT PROJECTS AND MITIGATION FEES COLLECTED**

2 Service Area: _____

Applicant Name	Permit Number	Total Mitigation Fees Collected	Mitigation Site where funds will be used
Insert rows as necessary			

3 Detailed descriptions of each impact are provided on attached sheets [describe attachments].

4

5 **III. ALLOCATION INTO MRP PROGRAM ACCOUNTS**

6 A. Total Mitigation Fees Collected for impacts above: \$ _____

7 Land Fee: \$ _____ (____% of total mitigation fees)

8 Program Administration Account: \$ _____ (____% of total mitigation fees)

9 Contingency Fee Account: \$ _____ (____% of total mitigation fees)

10 Long Term Management Fund: \$ _____ (____% of total mitigation fees)

11 Mitigation Project Account: \$ _____ (____% of total mitigation fees)

12 B. Total Mitigation Fees Collected in the Service Area: \$ _____

13 Land Fee: \$ _____ (____% of total mitigation fees)

14 Program Administration Account: \$ _____ (____% of total mitigation fees)

15 Contingency Fee Account: \$ _____ (____% of total mitigation fees)

16 Long Term Management Fund: \$ _____ (____% of total mitigation fees)

17 Mitigation Project Account: \$ _____ (____% of total mitigation fees)

1 **III. MITIGATION PROJECT DETAILS**

2 Name of mitigation site: _____

3 Service Area: _____

4 Parcel Number(s): _____

5 [Insert other details as relevant, including description of IRT review process]

6 The IRT has reviewed the proposed site, and has approved the site and mitigation concept.

7

8 **IV. AUTHORIZATION FOR EXPENDITURE OF FUNDS FROM THE**
9 **MITIGATION RESERVES PROGRAM ACCOUNT**

10 Upon execution of this agreement, King County is authorized to spend the following moneys
11 from the accounts listed below for the mitigation project described in Article III above:

12 Land Fee: (\$ _____)

13 Program Administration Account: (\$ _____)

14 Contingency Fee Account: (\$ _____)

15 Long Term Management Fund: (\$ _____)

16 Mitigation Project Accounts: (\$ _____)

17

18 **IV. ADDITIONAL PROVISIONS**

19 A. This Spending Agreement shall satisfy the federal rule requirement that,
20 “Disbursements from the program account may only be made upon receipt of written
21 authorization from the district engineer, after the district engineer has consulted with
22 the IRT.” [332.8(i)(2)].

23 B. Nothing in this agreement shall prevent King County from spending up to 75% of
24 funds allocated to Administrative Accounts as authorized in the Program Instrument
25 Appendix F, Section 4.0.

26 C. Expenditure of funds authorized by this agreement shall pertain only to those
27 accounts under the same service areas where impacts occurred.

- 1 D. Spending Authorization Provided: Only upon execution of this agreement is King
2 County authorized to spend moneys allocated to the Accounts within each service
3 area as noted above.
- 4 E. Limits: The authorization provided under this agreement shall not extend to
5 expenditures from any other MRP account for any other purpose.
- 6 F. Reporting requirements unaffected: This agreement shall not affect reporting
7 requirements outlined in the program instrument.
- 8 G. Duration: This agreement shall remain in effect until three (3) years from the later of
9 the two dates in the signature block below.
- 10 1. For spending by the Sponsor after the first 3 years, spending may be authorized
11 by the Corps and/or Ecology's issuance of a letter approving a subsequent
12 agreed-to spending plan for the remainder of the Establishment phase until all
13 credits are released and the site enters Long Term Monitoring and Maintenance.
- 14 H. Additional Spending Authority Requests. Whether or not three years have elapsed,
15 the Sponsor may request subsequent releases of funds. Such subsequent releases of
16 funds will require an additional approval by the District Engineer, using this template,
17 and will supplement this agreement.
- 18 I. Revocation: In the event of default as defined in the Basic Agreement Article IV.R.
19 and Appendix S, this spending agreement may be revoked.
- 20 J. Effect of Agreement: This Agreement does not in any manner affect statutory
21 authorities and responsibilities of the signatory Parties. This Agreement is not
22 intended, nor may it be relied upon, to create any rights in third parties enforceable in
23 litigation with the United States or the State of Washington. This Agreement does
24 not authorize, nor shall it be construed to permit, the establishment of any lien,
25 encumbrance, or other claim with respect to the Mitigation Reserves Program
26 property, with the sole exception of the right on the part of the Corps to require the
27 Sponsor to implement the provisions of this Agreement, including recording
28 conservation easements or similarly restrictive covenants, required as a condition of
29 the issuance of permits for discharges of dredged and fill material into waters of the
30 United States associated with construction and operation and maintenance of a
31 Mitigation Site.
- 32 K. Attorneys' Fees: If any action at law or equity, including any action for declaratory
33 relief, is brought to enforce or interpret the provisions of this Agreement, each party
34 to the litigation shall bear its own attorneys' fees and costs of litigation.

- 1 L. Availability of Funds: Implementation of this Agreement is subject to the
2 requirements of the Anti-Deficiency Act, 32 U.S.C. § 1341, and the availability of
3 appropriated funds. Nothing in this Agreement may be construed to require the
4 obligation, appropriation, or expenditure of any money from the United States
5 Treasury, in advance of an appropriation for that purpose.
- 6 M. Headings and Captions: Any paragraph heading or caption contained in this
7 Agreement shall be for convenience of reference only and shall not affect the
8 construction or interpretation of any provision of this Agreement.
- 9 N. Counterparts: This Agreement may be executed by the Parties in any combination, in
10 one or more counterparts, all of which together shall constitute one and the same
11 agreement.
- 12 O. Binding: This Agreement, pursuant to the program instrument, shall be immediately,
13 automatically, and irrevocably binding upon the Sponsor and its heirs, successors,
14 assigns and legal representatives upon execution by the Sponsor and the Corps.

1 IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the date herein
2 below last written.

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4 UNITED STATES ARMY CORPS OF ENGINEERS:

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7 _____ Date

8 Mitigation Manager/Co-chair of the IRT

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11

12 _____ Date

13 Anthony O. Wright Seattle District Engineer

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WASHINGTON STATE DEPARTMENT OF ECOLOGY:

_____ Date

Alternative Mitigation Lead/ Co-chair of the IRT
Shorelands and Environmental Assistance Program
P.O. Box 47600
300 Desmond Drive
Olympia, WA 98504-7600

SPONSOR:

_____ Date

Mitigation Reserves Program Director
King County Department of Natural Resources and Parks
Water and Land Resources Division
201 South Jackson Street, Suite 600
Seattle, WA 98104-3855