Appendix 5-1

Memorandum of Agreement with the Nisqually Indian Tribe
MEMORANDUM OF AGREEMENT
BETWEEN THE CITY OF OLYMPIA, WASHINGTON
AND THE NISQUALLY INDIAN TRIBE

THIS MEMORANDUM OF AGREEMENT ("Agreement") is entered by and
between the City of Olympia, a non-charter, optional municipal code city of the State of
Washington ("Olympia") and the Nisqually Indian Tribe, a federally recognized Indian
tribe ("Nisqually Tribe"). Olympia and the Nisqually Tribe are each a "Party" and are
collectively referred to as the "Parties."

WHEREAS, the Nisqually Indian Tribe is the successor descendent entity of the
Nisqually Nation signatory to the Treaty of Medicine Creek of 1854 (10 Stat. 1132), and
unto this day has retained and maintained its Tribal identity, its governing body, and its
sovereign powers; and

WHEREAS, the City of Olympia, Washington is a noncharter code city existing
under and by virtue of Washington state law, and possesses all the rights, privileges
and powers granted thereunder; and

WHEREAS, Olympia owns real property in Thurston County, Washington, in an
area known as McAllister Springs and is currently utilizing the Springs for a significant
portion of its water supply and is in the process of developing a wellfield to replace its
existing water supply at McAllister Springs; and

WHEREAS, Olympia will be changing the points of withdrawal of some
municipal purpose water rights from McAllister Springs and Abbot Springs to the new
McAllister Wellfield; and

WHEREAS, Olympia is seeking to develop the McAllister Wellfield as a more
protected source of water supply; and

WHEREAS, Olympia is required under the federal Safe Drinking Water Act to
either install costly ultraviolet light disinfection treatment at McAllister Springs by
October, 2012 or develop a replacement water source; and

WHEREAS, time is of the essence for Olympia to develop the McAllister
Wellfield since it will take an extensive period of time to design, obtain regulatory
approval, and construct an ultraviolet disinfection treatment system; and

WHEREAS, the City of Olympia has expressed its desire, through its City
Council, to work cooperatively with the Nisqually Indian Tribe on the shared issues of
water conservation and availability; and
WHEREAS, the Nisqually Indian Tribe, through its Tribal Council, has also expressed a similar desire to collaborate with the City of Olympia; and

NOW THEREFORE in consideration of the foregoing recitals, incorporated herein, and mutual covenants and promises contained herein, the Parties hereby agree as follows:

1. **Effective Date.** This Agreement shall take effect on the first date ("Effective Date") when all of the following events have occurred: (i) the Nisqually Tribe has duly executed the Agreement pursuant to the authorizing resolution of the Tribal Council, which resolution will be attached hereto as Exhibit A, and (ii) Olympia has duly executed the Agreement pursuant to the authorizing resolution of the City Council, which resolution will be attached hereto as Exhibit B.

2. **Defined Terms.**

   (a) "Wellfield Water Rights" means the water rights approved for change or transfer by the Washington State Department of Ecology ("Ecology") from McAllister Springs and Abbot Springs to the McAllister Wellfield. The final decision(s) of Ecology relating to the Wellfield Water Rights will be added to this Agreement as Exhibit G.

   (b) "Groundwater Wells" means all of the wells associated with the McAllister Wellfield that are authorized points of withdrawal under the Wellfield Water Rights and that may be authorized in the future.

   (c) "MGD" means million gallons per day.

   (d) "Mitigation Plan" means the McAllister Wellfield Mitigation Plan submitted in support of Olympia’s McAllister Springs and Abbot Springs water right change/transfer applications and approved by Ecology. Once approved, the final Mitigation Plan will be attached to this Agreement as Exhibit F.

   (e) "McAllister Springs Municipal Water Right" means water right certificate number 8030, authorizing withdrawal of up to 25 cubic feet per second ("cfs"), and water right certificate number S2-001105C, authorizing an additional withdrawal of up to 5.33 cfs.

   (f) "Abbot Springs Municipal Water Right" means water right permit number 10191, authorizing the development of a water source with a maximum withdrawal rate of 10 cfs.

   (g) "McAllister Wellfield" means a collection of wells that will be the
authorized points of withdrawal for the Wellfield Water Rights and which will be located approximately 0.8 miles southeast of McAllister Springs within Township 18 North, Range 1 East, Section 29.

(h) "Ecology" means the Washington State Department of Ecology, and any successor agency, department or unit of the State of Washington.

3. Water Transfer Application.

(a) Within 45 days of the Effective Date, Olympia shall submit to Ecology an update of the applications (the "Application") to change and transfer both the McAllister Springs Municipal Water Right and the Abbott Springs Municipal Water Right to the new McAllister Wellfield.

(b) The Application shall request transfer to the McAllister Wellfield of thirty and thirty-three hundredths (30.33) cfs (19.6 MGD) under the McAllister Springs Municipal Water Right and ten (10) cfs (6.46 MGD) under the Abbott Springs Municipal Water Right, which quantities are to be fully additive (as defined in Dept. of Ecology Policy No. 1040, dated March 9, 2006).

(c) The Parties intend to allocate quantities available under the Abbott Springs Municipal Water Right so that Olympia shall receive 53.1% and the Nisqually Tribe shall receive 46.9%, and the Application shall request this allocation. If Ecology in deciding the Application establishes an annual quantity limit on the Abbott Springs Municipal Water Right, this annual quantity will be divided between the Parties according to foregoing percentages. The Nisqually Tribe's share of the Abbott Springs Municipal Water Right as provided in this paragraph is referred to herein as the Nisqually Tribe's "Water Allocation."

(d) Each Party shall be responsible for identifying its proposed use(s) of water, for preparing and submitting all necessary information in support of same, and for all costs and expenses.

(e) The Parties agree to jointly develop a Mitigation Plan in support of the Application, and to submit the Mitigation Plan to Ecology no later than 75 days from the date of submittal of the Application.

(f) The Nisqually Tribe's responsibility for performing mitigation of the Application's potential impacts on the Nisqually River will be met primarily through the following three steps.

(i) "Stream Restoration Element" means restoration work on Ohop Creek and Muck Creek that will result in improved
base flows in the creeks and the Nisqually River. Description of the work shall be completed by the Nisqually Tribe and be ready for inclusion in the Mitigation Plan no later than ninety (90) days from the Effective Date. The Nisqually Tribe shall describe the base flow benefits, which shall be completed by the Nisqually Tribe and be ready for inclusion in the Mitigation Plan no later than ninety (90) days from the Effective Date.

(ii) "Tribal Wells Element" means discontinuation of certain groundwater wells that currently draw groundwater in hydraulic continuity with the Nisqually River and discontinuing ground water withdrawals in the vicinity of said wells. The Nisqually Tribe will map and identify the land area and aquifer(s) where ground water withdrawals will be discontinued (the "No Well Zone"), describe the scope and effect of a Nisqually Tribal Code provision to be adopted to implement the No Well Zone, model the flow benefits to the Nisqually River resulting from the well discontinuation action, and propose an implementation schedule (more fully described in paragraph 3(h) below). Said work shall be completed by the Nisqually Tribe and be ready for inclusion in the Mitigation Plan no later than ninety (90) days from the Effective Date. Within ninety (90) days from the Effective Date, the Nisqually Tribe will complete a draft of a No Well Zone regulation as an amendment to the Nisqually Tribal Code that will prohibit the drilling or use of ground water wells in the identified area and aquifer(s) ("Tribal Code Provision"), as well as a schedule for adoption. The Nisqually Tribe will adopt the Tribal Code Provision in accordance with the approved schedule and within 15 days after its adoption, the Tribal Code Provision will be submitted by the Nisqually Tribe to Ecology in support of the Application.

(iii) "Tacoma Element" means a written agreement between the Nisqually Tribe and Tacoma City Light. The Agreement between the Nisqually Tribe and Tacoma City Light shall be completed by the Nisqually Tribe and be ready for inclusion in the Mitigation Plan no later than ninety (90) days from the Effective Date. The provisions in the agreement between the Nisqually Tribe and Tacoma City Light that ensure mitigation of the Application’s potential impacts on the
Nisqually River shall automatically apply as needed and shall be subject to Ecology oversight.

The Parties intend for all of the above “Elements” and their components identified above to become a part of Exhibit F after Ecology approval. The Tribal Wells Element and the Tacoma Element are continuing mitigation obligations on the part of the Nisqually Tribe, or its permitted successors and assigns. Nothing in the Nisqually Tribe’s performance of the Tribal Wells Element, including enactment of the Tribal Code Provision, constitutes or shall be deemed to constitute a conveyance, encumbrance, or alienation of the Nisqually Tribe’s federal reserved water rights.

(g) The “implementation schedule” in paragraph 3(f)(iii) above means that the Nisqually Tribe will propose a timetable for discontinuing use of the Tribal Wells, which entails the Nisqually Tribe’s development and use of its Water Allocation at the McAllister Wellfield for drinking water supply.

(h) The Nisqually Tribe shall write a letter of support for the Application regarding the McAllister Springs Municipal Water Right and the Abbot Springs Municipal Water Right. This letter of support shall be submitted to Ecology along with the Mitigation Plan and express support for the Mitigation Plan and resulting mitigation requirements.

4. Water Rights Ownership. The Nisqually Tribe’s share of water contemplated by this Agreement (i.e., Water Allocation) shall come from the Abbot Springs Municipal Water Right. After completion of all actions contemplated in Section 5 of this Agreement, Olympia shall retain ownership over the complete McAllister Springs Municipal Water Right and fifty-three and one-tenth percent (53.1%) of the Abbot Springs Municipal Water Right.

5. Water Right Lease and Conveyances.

a) In the event that the Application is finally approved by Ecology, is beyond the time for filing any appeal, is not subject to any appeals, any and all appeals have been finally resolved and are beyond the time for filing any further appeal, and the Nisqually Tribe has completed all of the mitigation Elements set forth in paragraph 3(f), the Parties shall enter a lease, substantially in form attached hereto as Exhibit C, for the Nisqually Tribe’s Water Allocation (“Lease”). The Parties intend for the Lease to be entered and take effect in the event that US Approval has not yet been obtained; if US Approval has been obtained, then the Nisqually Tribe may elect to proceed or continue under the Lease or to request Deed conveyance as provided below. The Lease shall have an initial term of 99 years, subject to extension. The Lease shall contain a termination provision in the event that the Nisqually Tribe does not perform the continuing mitigation obligations (i.e., the Tribal Wells and Tacoma Elements), provided that Lease
termination shall take effect 180 days after written notice to the Nisqually Tribe.

b) In the event that the Application is finally approved by Ecology, is beyond the time for filing any appeal, is not subject to any appeals, any and all appeals have been finally resolved and are beyond the time for filing any further appeal, then Olympia, upon written request from the Nisqually Tribe, will convey title and ownership to the Water Allocation (i.e., 46.9% of the Abbot Springs Municipal Water Right) to the Nisqually Tribe in two stages and subject to further preconditions as follows.

i) In the event that the Nisqually Tribe has completed (as of the date of the Nisqually Tribe’s written request) the Stream Restoration Element of its mitigation obligations, and Ecology has confirmed satisfactory completion of the same consistent with requirements of the approval set forth in Exhibit F, Olympia will convey title and ownership of a portion of the Water Allocation equal to the proportional mitigation quantity achieved by the Stream Restoration Element as recognized by Ecology, up to a maximum of one and fifty-five hundredths (1.55) cfs (1 MGD). Conveyance shall be made by deed, which shall be substantially in the form attached hereto as Exhibit D ("Deed"). The Deed shall provide for a right of reversion of said Water Allocation to Olympia.

ii) In the events that this Agreement has been approved by the United States pursuant to Paragraph 24(b), the Nisqually Tribe is performing (as of the date of the Nisqually Tribe’s written request) the Tacoma Element and the Tribal Wells Element of its mitigation obligations, and Ecology has confirmed satisfactory completion of the same consistent with requirements of the approval set forth in Exhibit F, Olympia will convey title and ownership of the balance of the Water Allocation. Conveyance shall be made by the Deed substantially in the form attached hereto as Exhibit D. The Deed shall provide for a right of reversion of said Water Allocation to Olympia.

(c) In the event the Nisqually Tribe fails to continue to perform one or more of its continuing mitigation obligations as provided under paragraph 10 and Olympia receives an order or directive from Ecology, or its successor or a court of competent jurisdiction, that restricts Olympia’s ability to exercise its Wellfield Water Rights because of the failure of such mitigation, Olympia may seek to enforce its rights under this Agreement as follows. In such event, the Parties agree that the “public health, safety, or welfare” provision in Section 18(c) (i.e., dispute resolution process) of this Agreement applies to Olympia’s pursuit of the following remedies.

i) Restrictions on the pumping or use of the Wellfield Water Rights shall be applied to or enforced against the Nisqually Tribe’s wells at the McAllister Wellfield (i.e., to limit the Nisqually Tribe’s exercise of its Water Allocation), such that Olympia may continue to exercise fully its
Wellfield Water Rights without limitation or restriction by such Ecology order or directive.

ii) Olympia may seek to enforce the remedies in lease, deed, or easement including without limitation the right of reversion in one or both of the Deeds.

iii) Olympia may seek any other remedies available at law or in equity.

6. **New Water Application.** In the event that Ecology’s final decision approving the Application results a quantity less than ten (10) cfs (6.46 MGD) under the Abbot Springs Municipal Water Right, then both Parties agree to pursue, jointly, new water rights at the McAllister Wellfield in an amount equal to the reduction ("New Water Rights"). If Ecology’s final decision on an application for New Water Rights results an appropriation of less than 1 MGD to the Nisqually Tribe and the Nisqually Tribe has performed the Stream Restoration Element, upon request by the Nisqually Tribe Olympia will provide partial cost reimbursement of costs incurred in performing the Stream Restoration Element. The amount of the partial cost reimbursement request will not exceed five hundred thousand dollars ($500,000.00) per cfs of the quantitative mitigation value of the Stream Restoration Element recognized by Ecology, in its decision approving the Application (or of any reviewing tribunal in the event of an appeal). For illustration purposes only, if Ecology determines that the mitigation quantity of the Stream Restoration Element is 0.5 cfs, then the Nisqually Tribe’s request for partial cost reimbursement could not exceed $250,000.00. As an alternative to partial cost reimbursement, Olympia may at its option make up the Nisqually Tribe’s water shortfall by supplying up to 1 MGD from Olympia’s Wellfield Water Rights on terms and conditions to be negotiated in good faith.

7. **Wellfield Development.** City of Olympia and the Nisqually Tribe shall develop their respective shares of the McAllister Wellfield based on the quantities approved under the Application and any new water application submitted under paragraph 6 above. The Parties intend for the Nisqually Tribe to operate a waterworks at the McAllister Wellfield, either on its own or jointly with Olympia.

(a) Olympia and the Nisqually Tribe shall jointly develop a pre-design report that outlines the general design and location of facilities for the well field, further details of which may be agreed upon under a separate Memorandum of Agreement. The Parties agree to share the costs of the pre-design report on a pro-rata basis based on shares of water to be developed at the McAllister Wellfield.

(b) Based on the pre-design report, the parties will negotiate in good faith to determine how best to design, construct and operate the necessary facilities to exercise their respective shares of the Wellfield Water Rights. The good faith negotiations shall
take into account and make appropriate provision for the legal instrument under which the Nisqually Tribe holds its Water Allocation at that time (i.e., Deed or Lease). If the Parties agree to exercise their respective water rights jointly, the Parties shall negotiate and execute a separate joint facilities agreement providing for payment of costs on a pro-rata basis and for other necessary and appropriate terms. If the Parties decide to exercise their respective water rights separately, the Parties shall cover their respective costs for the exercise of said rights.

(c) In any event, the Parties shall consult on the design and location of facilities in order to minimize any interference that will negatively affect the exercise of the water rights of either Party.

8. McAllister Wellfield.

(a) Olympia will retain ownership of the McAllister Wellfield property, subject to the Easement in the event it is granted under paragraph 9.

(b) The Nisqually Tribe shall be solely responsible for securing any and all necessary land rights, access rights, easements, or other rights or approvals regarding property not owned by Olympia.

(c) The Parties will identify and install any required joint security measures for the protection of the McAllister well field with costs shared on a pro-rata basis based on the shares of water to be developed at the Wellfield. Each Party will be responsible for additional, separate security systems for their individual waterworks operations, if applicable.

(d) The Parties shall negotiate in good faith to agree to develop an emergency mutual aid agreement to include an emergency intertie at the well field.

(e) The Nisqually Tribe agrees to comply with Department of Health sanitary controls and Olympia’s Wellhead Protection Plan requirements on the well field property.

(f) The Parties agree to meter all water production from the well field and record source production data on a monthly basis or more often if required as a condition of the water right. The parties agree to share water production information upon request.

(g) The Parties agree to comply with all water right conditions as mandated by Department of Ecology or otherwise mandated by a court of law of competent jurisdiction.
9. **Grant of Easement.** Simultaneous with the Parties' execution of the Lease or with Olympia's issuance of the Deed under paragraph 5(b)(i), Olympia shall grant an exclusive, perpetual easement to the Nisqually Tribe for the sole purpose of construction and operation of water facilities and access to these facilities in order to exercise the Nisqually Tribe's Water Allocation in all manners conforming to public law ("Easement"). The Parties shall negotiate in good faith to determine the specific location and dimensions of the Easement area. The Easement area shall be a sufficient size only to exercise the Nisqually Tribe's Water Allocation, shall not exceed two (2) acres in size, and shall be located within the eastern portion of the Wellfield. Olympia will survey and record the Easement after negotiation with the Nisqually Tribe for its location and size, based upon the pre-design report. The Easement shall be substantially in the form attached hereto as Exhibit E. The Nisqually Tribe may transfer or convey the Easement to a governmental entity with the advance written consent of Olympia, which shall not be unreasonably withheld. Any transfer of the Easement by the Nisqually Tribe shall not affect the Nisqually Tribe's obligation to perform mitigation under this Agreement. As a condition to any transfer of the Easement, Olympia may require the transferee to execute a written acknowledgment that Nisqually Tribe's failure to perform mitigation obligations under this Agreement shall constitute a default under the Easement. In the event the Parties enter a joint facilities agreement and decide to exercise their respective Wellfield Water Rights together, then such joint facilities agreement shall provide for the termination or other appropriate disposition of the Easement.

10. **Nisqually Tribe Mitigation Obligation.** The Nisqually Tribe shall be responsible for all costs and all actions arising from or relating to implementation of or compliance with the Mitigation Plan as to the Nisqually River. The Parties acknowledge that portions of the Nisqually Tribe's responsibilities under the Mitigation Plan may be performed by agents of the Tribe. In accordance with Paragraph 3(f), the Nisqually Tribe shall execute an agreement, within ninety (90) days of the Effective Date, with Tacoma City Light for performance of mitigation in perpetuity as to the Nisqually River. The Nisqually Tribe's proposed mitigation for all impacts to the Nisqually River (i.e., the Stream Restoration and Tribal Wells Elements) will be submitted to Olympia for its review and approval prior to its inclusion in the final Mitigation Plan to be submitted to Ecology as outlined in paragraph 3(e). All actions necessary to implement the Mitigation Plan for the Nisqually River must be completed by the Nisqually Tribe consistent with the requirements and timeframes set forth in the Mitigation Plan. The Nisqually Tribe's obligation to implement the Mitigation Plan and to satisfy all applicable requirements is a continuous and ongoing obligation. Specifically, but without limitation, repealing, suspending or failing to enforce the Tribal Code Provision would constitute a failure of the Tribal Wells Element.

11. **Olympia Mitigation Obligation.** Olympia shall be responsible for all costs and actions arising from or relating to implementation of or compliance with the Mitigation
Plan approved by Ecology as to Woodland Creek, Long Lake, Pattison Lake, Hicks Lake, Lake St. Clair and the Deschutes River. The Parties acknowledge that a portion of Olympia's responsibilities for mitigating potential impacts of the Application may be done by the agents of the City of Olympia and by the City of Lacey through a separate agreement between Olympia and the City of Lacey for performance of mitigation in perpetuity as to Woodland Creek, Long Lake, Pattison Lake and Hicks Lake. The Lacey Agreement will be included in Exhibit F. All actions necessary to implement the Mitigation Plan for these water bodies are the responsibility of Olympia and must be completed consistent with the requirements and timeframes set forth in the Mitigation Plan approved by Ecology. Olympia's obligation to implement the Mitigation Plan and to satisfy all applicable requirements is a continuous and ongoing obligation.

12. Woodland Creek. Olympia and the Nisqually Tribe resolve that it is a shared, long-term goal to improve the health of Woodland Creek and to restore Woodland Creek as continuously-viable fish habitat. The Parties agree to work cooperatively to protect Woodland Creek, including, but not limited to, working with Thurston County on land use designations along the creek.

13. Mutual Indemnity. Each Party indemnifies and holds harmless the other Party, its elected officials, officers, agents, and employees from and against any and all third-party claims, suits, or causes of action (including but not limited to damages, judgments, settlements, attorneys' fees, and costs) arising out of or relating to the performance of its obligations under this Agreement.

14. McAllister Springs and Abbot Springs Property. Olympia shall retain ownership of the McAllister Springs and Abbott Springs properties. Olympia and Nisqually Tribe shall negotiate in good faith to reach agreement regarding long-term use of the McAllister and Abbot Springs properties once the Wellfield is developed and McAllister Springs is no longer used as a waterworks. The Parties intend to negotiate an agreement to provide conservation restrictions, running with the land and recorded in the Thurston County Assessor records, for the benefit of the Nisqually Indian Tribe so as to ensure the perpetual state of conservation necessary for spiritual and healing ceremonies, and shall substantially limit access and structures on the properties. Prior to entry of such agreement, or in the event the Parties cannot reach such agreement, Olympia agrees to provide Nisqually Tribe reasonable access to the McAllister Springs property for spiritual and healing ceremonies or other activities that do not threaten water quality.

15. Stewardship Coalition. Olympia and the Nisqually Tribe agree to form a Stewardship Coalition, which shall include, but not be limited to:

   (a) Water conservation commitments, joint aquifer protection, sharing of water use and quality data, monitoring of mitigation; and
(b) Funding for staffing and stewardship related projects.

The Stewardship Coalition is an open organization which contemplates other water purveyors joining the Coalition. Other agreements, which shall not supersede this Agreement, shall be made among the Coalition parties.

16. Notice. Unless otherwise specified, all notices hereunder shall be in writing and shall be effectively given when delivered personally, on the date of delivery or, if mailed, seven (7) days after deposit in the United States mail, first-class postage prepaid, certified or registered. For purposes of notice, the addresses of the Parties shall be:

To Nisqually Tribe:
Chairman
4820 She Nah Num Dr SE
Olympia WA 98513

To Olympia:
City Manager
900 Plum Street SE/P.O. Box 1967
Olympia WA 98507-1967

With a required copy to:
Office of the Tribal Attorney
4820 She Nah Num Dr SE
Olympia WA 98513

With a copy required to:
City Attorney
900 Plum Street SE/P.O. Box 1967
Olympia WA 98507-1967

17. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, except to the extent preempted by federal law. Venue for any claim, dispute or action arising out of or relating to this Agreement shall lie in the Superior Court for the State of Washington at Thurston County or in the United States District Court for the Western District of Washington at Tacoma. Each Party agrees that venue will lie in the forum in which a claim or action arising from or relating to this Agreement is commenced and will remain in that forum until its ultimate resolution. Each Party further waives its right to seek removal or remand from the forum in which a claim or action arising from or relating to this Agreement is commenced.

18. Dispute Resolution.

(a) Step One - Negotiation. In the event of a dispute concerning any matter pertaining to this Agreement, the Parties involved shall attempt to adjust their differences by informal negotiation. The Party perceiving a dispute or disagreement persisting after informal attempts at resolution shall notify the other Party in writing of the general nature of the issues. The letter shall be identified as a formal request for negotiation and shall propose a date for representatives of the Parties to meet. The other Parties shall respond in writing within ten (10) business days. The response shall
succinctly and directly set out that Party’s view of the issues or state that there is no
disagreement. The Parties shall accept the date to meet or shall propose an alternate
meeting date not more than ten (10) business days later than the date proposed by the
Party initiating dispute resolution. The representatives of the Parties shall meet in an
effort to resolve the dispute. If a resolution is reached the resolution shall be
memorialized in a memorandum signed by all Parties which shall become an
addendum to this Agreement. Each Party will bear the cost of its own attorneys,
consultants, and other Step One expenses. Negotiation under this provision shall not
exceed 90 days. If a resolution is not reached within 90 days, the Parties shall proceed
to mediation.

(b) Step Two - Mediation. If the dispute has not been resolved by
negotiation within ninety (90) days of the initial letter proposing negotiation, any Party
may demand mediation. The mediator shall be chosen by agreement. If the Parties are
unable to agree they shall request a list of five (5) mediators from an entity that
provides mediation services. If the Parties cannot agree to a name on the list, each Party
(commencing with the initiating Party) shall strike a name in turn until only one name
remains. The person whose name remains shall serve as mediator. In the event that the
remaining person is removed for cause by one of the Parties or refuses the assignment,
the Parties shall procure another list and proceed as in the first instance. Each Party
will bear the cost of its own attorneys, consultants, and other Step Two expenses. The
parties will share the cost of the mediator. A successful mediation shall result in a
memorandum agreement which shall become an addendum to this Agreement.
Mediation under this provision shall not exceed 90 days. If the mediation is not
successful within 90 days, the Parties may proceed to litigation.

(c) Step Three - Litigation. Unless otherwise agreed by the Parties in
writing, Step One and Step Two must be exhausted as a condition precedent to filing of
any action in Thurston County Superior Court or the Federal District Court for the
Western District of Washington in Tacoma. A Party may initiate an action without
exhausting Steps One or Two if the statute of limitations is about to expire and the
Parties cannot reach a tolling agreement, or if either Party determines the public health,
safety, or welfare is threatened.

19. Waiver of Sovereign Immunity. So that the Nisqually Tribe and Olympia will be
sure that each of them may enforce the terms and conditions of this Agreement, each of
the Parties hereby covenants and agrees that each of them may sue or be sued to enforce
or interpret the terms, covenants and conditions of this Agreement or to enforce the
obligations or rights of the Parties under this Agreement in accordance with the terms
and conditions set forth in this Section.

(a) Forum. Any dispute, claim, or action arising out of or relating to
this Agreement, or any breach hereof, shall be brought in the State of Washington,
Thurston County Superior Court or the Federal District Court for the Western District of Washington at Tacoma. For such purpose, each of the Parties hereby irrevocably submits to the jurisdiction of such court, and the Parties agree that there is no jurisdiction over this Agreement in any Tribal Court or Tribal administrative proceeding.

(b) Limited Waiver of Sovereign Immunity. The Nisqually Tribe hereby specifically, expressly, and irrevocably waives its sovereign immunity as to Olympia as to any dispute arising out of or relating to this Agreement. The Nisqually Tribe irrevocably waives any claim of sovereign immunity as to actions at law and in equity and enforcement proceedings brought by Olympia to interpret or enforce the Agreement. The Nisqually Tribe expressly limits the waiver of immunity to the narrow purpose of interpreting or enforcing this Agreement (including any easement, lease, or deed granted or executed pursuant to the Agreement) or resolving a dispute relating to the foregoing, and said waiver shall not extend or apply to any other subject matter whatsoever.

(c) The Nisqually Tribe further consents to service of process out of such aforementioned courts by the mailing of copies thereof by certified or registered mail, postage prepaid, to the Nisqually Tribe at the address set forth in Section 10 above.

(d) Nothing contained in this Agreement shall be construed as waiving sovereign immunity in any suit for payment of damages from lands or funds held in trust for the Nisqually Tribe by the United States. Nothing contained in this Agreement shall be construed as waiving sovereign immunity in any suit by any party other than the City of Olympia.

20. **Covenant Not to Sue.** Other than suits brought under Section 19 above, each of the Parties agree, promise and covenant not to sue, or bring any claims or actions against, the other Party regarding the validity, priority, or exercise of the Wellfield Water Rights, or alleging impairment of other water rights caused by exercise of the Wellfield Water Rights, and not to appear in any legal proceeding to challenge the validity, priority, or exercise of the Wellfield Water Rights.

21. **Mutual Support and Defense of Applications.** This Agreement provides for the Parties to prepare and submit applications and supporting documentation for Ecology water rights decisions. Specifically, Section 3 herein addresses the “Application” for transfer of water rights to the McAllister Wellfield, and Section 6 herein addresses a potential application for “New Water Rights” in the event of a shortfall in the quantity approved for transfer to the McAllister Wellfield. The Parties hereby agree to support, defend, and make all reasonable efforts to secure the approval of said applications by Ecology and to defend affirmative Ecology decisions from and against any appeal.
Parties agree to communicate, cooperate, and mutually support one another in such endeavor. Without limiting the generality of the foregoing, each Party shall bear lead responsibility for supporting and defending the elements of any application that it prepared. Each Party shall bear its own costs, and that of its consultants and attorneys, in support and defense of any application.

22. No Waiver. No waiver by any Party of any default in the performance of any other Party of any agreement contained herein shall be construed as a waiver of any subsequent default.

23. Time of the Essence. Time is of the essence in this Agreement.

24. Signature Authority. The Parties intend for all provisions of this Agreement to be fully effective and enforceable. Accordingly:

(a) Each signatory to this Agreement represents and warrants that he or she has full power and authority to execute and deliver this Agreement on behalf of the person or entity for whom he or she is signing, and that he or she will defend and hold harmless the other Parties and signatories from any claim that he or she was not fully authorized to execute this Agreement on behalf of the person or entity for whom he or she signed. Upon proper execution and delivery, this Agreement will have been duly entered into by the Parties, will constitute as against each Party a valid, legal, and binding obligation, and will be enforceable against each Party in accordance with the terms herein.

(b) The Parties intend for the United States, at the appropriate level of authority, to approve the Agreement and the Nisqually Tribe's entry into the Agreement so as to fully comply with federal law and regulation ("U.S. Approval"). Within 30 days after this Agreement's Effective Date, the Nisqually Tribe shall initiate a request for U.S. Approval and shall continue to pursue the approval with due diligence. Olympia is not required to carry out the water rights conveyance provided for in Section 5(b)(ii) until and unless the U.S. Approval is obtained. The Nisqually Tribe shall keep Olympia reasonably informed of the U.S. Approval status, process, and requirements, and shall invite Olympia to participate in relevant meetings and conferences. In the event that any amendments to this Agreement are required for U.S. Approval, the Parties shall promptly negotiate such amendments in good faith.

25. Entire Agreement, Binding Effect, and Relationship to Other Agreements. This Agreement contains the entire agreement among the Parties with respect to the subject matter hereof and shall not be modified or amended in any way, except in writing, signed by the Parties hereto, or their successors in interest. This Agreement shall be binding upon each Parties' successors and assigns except as expressly provided herein. All prior negotiations and draft written agreements are merged into and superseded by
this Agreement. The Parties contemplate and intend to enter other agreements necessary or useful to fulfill the intent of the Parties herein. Other such agreements may include, and shall not be limited to:

a. Mutual Aid  
b. Well field Operations Agreement  
c. Access/Security Agreement  
d. Data sharing  
e. Stewardship Coalition  
f. McAllister/Abbot Springs access agreement

Any such agreements entered by the Parties shall be separate and independent contracts that shall not supersede this Agreement in any respect whatsoever, unless the Parties expressly provide for amendment of any of the terms or conditions herein. The Parties’ lack of agreement on any of the foregoing matters shall have no effect whatsoever on this Agreement, or the Parties’ respective rights and obligations hereunder.

26. **No Third Party Beneficiaries.** The Parties expressly do not intend to create any right, obligation or liability, or promise any performance, to any third party. The Parties have not created, and do not intend to give rise to, any right for any third party to enforce this Agreement.

27. **Assignment.** A Party may not assign, convey, pledge or otherwise transfer this Agreement or any rights or obligations hereunder without the advance, written consent of the other Party, which consent may be granted or withheld in the latter Party’s sole discretion unless otherwise allowed by this Agreement.

28. **Severability; Survival After Termination.** Should any provision(s) of this Agreement be found to be invalid, illegal or unenforceable by any court of competent jurisdiction, such provision shall be stricken and the remainder of this Agreement shall nonetheless remain in full force and effect unless the stricken provision is an essential part of the consideration supporting this Agreement or if the absence of the stricken provision would materially alter the intent of the Parties.

29. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

28. **Exhibits.** The following exhibits are attached hereto and incorporated in this Agreement as if fully set forth herein.
Exhibit A - Nisqually Tribe Resolution (to be attached after enactment)
Exhibit B - City of Olympia Resolution (to be attached after enactment)
Exhibit C - Lease
Exhibit D - Deed
Exhibit E - Easement
Exhibit F - Mitigation Plan (to be attached after approval)
Exhibit G - Final Decisions Regarding Wellfield Water Rights (to be attached after approval)

30. Termination. Either Party may terminate this Agreement if the Parties are unable to submit a final Mitigation Plan to Ecology as required in Paragraph 3(e).

IN WITNESS WHEREOF, the authorized representative of each Party has duly executed this Agreement as of the date stated below.

THE CITY OF OLYMPIA

By:  
Name: Doug Mah
Title: Mayor
Date: 5-14-08

Approved as to form

By: Tom Morrill
Title: City Attorney

THE NISQUALLY TRIBE

By:  
Name: Cynthia Iyall
Title: Chairman
Date: 5-14-08

Approved as to form

By: Thor A. Hoyte
Title: Tribal Attorney
Acknowledgements

STATE OF WASHINGTON   

COUNTY OF THURSTON   

This instrument was acknowledged before me on the 11th day of May, 2008 by DOUG MAH, as the MAYOR of THE CITY OF OLYMPIA.

Dated: May 14, 2008

KARI-ANN PITHAROULIS
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
OCTOBER 29, 2008

STATE OF WASHINGTON   

COUNTY OF THURSTON   

This instrument was acknowledged before me on the 11th day of May, 2008, by CYNTHIA IYALL, as the CHAIRMAN of the NISQUALLY TRIBE.

Dated: May 14, 2008

KARI-ANN PITHAROULIS
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
OCTOBER 29, 2008
Appendix A

Exhibit A
Nisqually Tribe Resolution
EXHIBIT A

Nisqually Indian Tribe
4820 She-Nah-Num Drive S.E.
Olympia, Washington 98513
Phone: (360) 456-5221

NISQUALLY TRIBAL COUNCIL
RESOLUTION NO. 36-2008

AUTHORIZATION TO SIGN A MEMORANDUM OF AGREEMENT WITH THE CITY OF OLYMPIA FOR A PARTNERSHIP IN THE DEVELOPMENT AND OPERATION THE McALLISTER WELLFIELD.

WHEREAS, the Nisqually Indian Tribe is the successor descendant entity of the Nisqually Nation signatory to the Treaty of Medicine Creek of 1854 (10 Stat. 1132), and unto this day has retained and maintained its Tribal identity, its governing body, and its sovereign powers; AND

WHEREAS, the Nisqually Indian Tribe is a federally recognized American Indian Tribe organized under its governing Constitution and Bylaws approved by the U.S. Secretary of the Interior on September 9, 1946, and amended on October 28, 1994, pursuant to Section 16 of the Indian Reorganization Act, 25 U.S.C. 476; AND

WHEREAS, the Nisqually General Council is the duly constituted governing body of the Nisqually Tribe, and the Tribal Council the duly elected representative body of the General Council by the authority of the Tribe's Constitution and Bylaws, as amended; AND

WHEREAS, the Tribal Council has been entrusted to provide for the health, safety, education, and economic well-being of the Nisqually Tribe and its people; AND

WHEREAS, the Tribal Council recognizes this opportunity to work with the City of Olympia in the development and operation of the McAllister Wellfield; AND

WHEREAS, under the proposed Memorandum of Agreement for the McAllister Wellfield, the Tribal will receive water in the amount of three million gallons per day (3MGD), while assuming a responsibility to develop and implement a mitigation plan for the impacts to the Nisqually River.

THEREFORE, BE IT RESOLVED that the Tribal Council of the Nisqually Indian Tribe does hereby authorize the Tribal Chairperson to execute, with the City of Olympia, a Memorandum of Agreement for a Partnership in the Development and Operation of the McAllister Wellfield, said authorization contingent upon review by tribal legal council of the deed and lease documents for the McAllister Wellfield, as called out in the Memorandum of Agreement.

CERTIFICATION

I certify that the above Resolution was adopted at a regular/special meeting of the Nisqually Tribal Council held on the 29th day of February, 2008, on the Nisqually Indian Reservation, Washington, at which time a quorum was present and voting ☒ FOR, ☐ AGAINST, and ☐ ABSTAIN.

ATTERT

Cynthia Iyall, Chairperson
NISQULLY INDIAN TRIBE

Norma L. Wells, Secretary
NISQULLY INDIAN TRIBE
Exhibit B
City of Olympia Resolution
Appendix A

Exhibit B to Memorandum of Agreement
Page 1

RESOLUTION NO. M-1702


WHEREAS, the City of Olympia owns real property in Thurston County, Washington, in an area known as McAllister Springs and is currently utilizing the Springs for a significant portion of its water supply; and

WHEREAS, Olympia is required under the federal Safe Drinking Water Act to either install costly ultraviolet light disinfection treatment at McAllister Springs by October, 2012 or develop a replacement water source; and

WHEREAS, time is of the essence for Olympia to develop a replacement water source since it will take an extensive period of time to design, obtain regulatory approval, and construct an ultraviolet disinfection treatment system; and

WHEREAS, Olympia is in the process of developing a more protective replacement water source at the McAllister Wellfield; and

WHEREAS, production at the McAllister Wellfield is expected to be sufficient to allow for the development of Olympia's Abbot Springs water right and allow Olympia to move its existing water supply facilities from McAllister Springs to the McAllister Wellfield; and

WHEREAS, the City of Olympia has expressed its desire, through its City Council, to work cooperatively with the Nisqually Indian Tribe on the shared issues of water conservation and availability; and

WHEREAS, the Nisqually Indian Tribe, through its Tribal Council, has also expressed a similar desire to collaborate with the City of Olympia; and

WHEREAS, to ensure a more protected and sustainable source of water for both the City of Olympia and the Nisqually Indian Tribe, a proposed Memorandum of Agreement between the City of Olympia and the Nisqually Indian Tribe has been presented to the Olympia City Council for its review at its regularly scheduled meeting on May 13, 2008; and
WHEREAS, the proposed Memorandum of Agreement would establish a partnership in the development and operation of the McAllister Wellfield and the creation of a stewardship coalition to benefit the water sources in the region; and

WHEREAS, the City Council, at its May 13, 2008 regularly scheduled meeting, reviewed the proposed Memorandum of Agreement and its attachments; and

WHEREAS, the City Council has determined that the proposed Memorandum of Agreement with the Nisqually Indian Tribe will benefit the City of Olympia by ensuring for the City a more protected and sustainable source of water; and

WHEREAS, the proposed Memorandum of Agreement is consistent with the City of Olympia's goal of working cooperatively with all local jurisdictions to find regional solutions to the issues of water conservation and availability;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Olympia, Washington does hereby authorize the Mayor to execute, with the Nisqually Indian Tribe, the Memorandum of Agreement presented to the City Council on May 13, 2008 concerning the development and operation of the McAllister Wellfield and the creation of a stewardship coalition to benefit the water sources in the region.

PASSED BY THE OLYMPIA CITY COUNCIL this 13th day of May 2008.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

\murphy\documents\06-1147\1184.doc
Exhibit C
Lease Agreement
Lease Agreement

This Lease Agreement ("Lease") is made as of ____________, 200__, by and between the City of Olympia, a non-charter, optional municipal code city of the State of Washington ("Landlord"), and the Nisqually Indian Tribe, a federally recognized Indian tribe ("Tenant"). Landlord and Tenant are each sometimes referred to herein as a “Party” and collectively as the "Parties."

Recitals

A. Landlord and Tenant are parties to a Memorandum of Agreement dated ________________ (as it may hereafter be amended, the “MOA”), a copy of which is attached hereto as Exhibit A. Among other things, the MOA contemplates this lease by Landlord to Tenant of a 46.9% portion (estimated to be ___ cubic feet per second, or 3 million gallons per day) of Permit to Appropriate Public Waters of the State of Washington, No. 10191 (under Application No. 13460) from Abbot Springs, with priority date June 8, 1955, as approved for change and transfer to the "McAllister Wellfield" by the Washington State Department of Ecology, more particularly described on Exhibit B attached hereto and incorporated herein by this reference (the “Water Right”). Capitalized terms used but not defined in this Lease have the meanings given in the MOA.

B. Pursuant to the MOA, Landlord has also granted to Tenant an easement for access to and use of the land on which the source of the Water Right is located. This Lease is a lease of only the Water Right itself, and does not include any land, improvements, or any other real or personal property.

C. The Washington State Department of Ecology has approved the Application described in Section 3 of the MOA, which resulted in the transfer both the McAllister Springs Municipal Water Right and the Abbott Springs Municipal Water Right to the new McAllister Wellfield (the “Approval”).

Agreement

1. Water Right; Use: Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Water Right; provided, that if Landlord delivers to Tenant the Deed described in Section 5(h)(i) of the MOA, the portion of the Water Right conveyed by such Deed shall no longer be part of the Water Right subject to this Lease. Tenant acknowledges that Landlord has made no representations whatsoever as to the extent or validity of the Water Right or the physical availability of groundwater. Tenant shall use the Water Right in accordance with the Approval and applicable laws, ordinances, rules, regulations and requirements of governmental authorities.

2. Term: The term of this Lease ("Term") shall commence on the date of mutual execution of this Lease ("Commencement Date") and terminate on the date that is ninety-nine (99) years after the Commencement Date ("Expiration Date"), unless extended or earlier terminated pursuant to this Lease.
3. **RIGHT TO EXTEND.** Tenant is granted the right to extend the Term for consecutive periods of fifty (50) years each (each an "Extended Term"). Tenant's exercise of an extension option shall not be valid if an uncured Lease default by Tenant exists when Tenant delivers the renewal notice or when the Extended Term would otherwise begin. To exercise Tenant's option to extend the Term, Tenant shall give Landlord written notice of its election to extend at least twelve (12) months, but not more than fifteen (15) months, prior to expiration of the initial Term or the Extended Term then in effect. From and after the commencement of an Extended Term, all of the terms, covenants, and conditions of this Lease shall continue in full force and effect as written.

4. **TERMINATION UPON CONVEYANCE.** If Landlord conveys all of the Water Right to Tenant pursuant to the two Deeds described in Sections 5(b)(i) and 5(b)(ii) of the MOA, this Lease shall automatically terminate upon the delivery of the second of those Deeds.

5. **CONSIDERATION:** Landlord and Tenant acknowledge that the consideration for Landlord’s lease of the Water Right to Tenant shall be the performance by the Nisqually Indian Tribe of the mitigation measures required under Section 10 of the MOA (the “Mitigation Measures”). Any sums owed by Tenant to Landlord under this Lease shall be deemed “Additional Rent” and shall be payable when designated in this Lease or, if not so designated, then within forty-five (45) days of demand by Landlord. If Tenant fails to pay any Additional Rent due hereunder within thirty (30) days of the due date, a late charge equal to ten percent (10%) of the unpaid amount shall be assessed and be immediately due and payable. In addition, interest shall accrue at the rate of twelve percent (12%) per annum on any Additional Rent that is not paid when due.

6. **LIENS:** Tenant shall keep the Water Right free from any liens arising out of any work performed for, materials furnished to, or obligations incurred by Tenant and shall indemnify, defend, and hold Landlord harmless against the same.

7. **SUBLETTING OR ASSIGNMENT:** Tenant may sublet the whole or any part of the Water Right, or assign this Lease in whole or in part, or pledge or encumber this Lease, to a governmental entity with the prior written approval of Landlord, which shall not be unreasonably withheld. Tenant may not sublet the whole or any part of the Water Right, or assign this Lease in whole or in part, or pledge or encumber this Lease, to a nongovernmental entity. No transfer by Tenant of any rights or obligations under this Lease shall affect the Nisqually Indian Tribe’s continuing obligation to perform the Mitigation Measures under the MOA, and any transferee of any rights or obligations hereunder acknowledges that the Nisqually Indian Tribe’s failure to perform such Mitigation Measures shall constitute a default under this Lease. As a condition to any transfer of any rights or obligations hereunder, Landlord may require the transferee to execute a written acknowledgment of the foregoing.

8. **DEFAULT AND RE-ENTRY:** Time is of the essence of this Lease. Tenant hereby acknowledges that the Nisqually Indian Tribe’s performance of the Mitigation Measures at all times during the Term (as it may be extended) is of critical importance to Landlord. If Tenant shall violate or breach or fail to keep or perform any covenant, agreement, term or condition of this Lease, or if the Nisqually Indian Tribe shall fail to perform the Mitigation Measures under the MOA (even if the Nisqually Indian Tribe is no longer the Tenant under this Lease), such failure
Exhibit C to Memorandum of Agreement

shall constitute a default by Tenant under this Lease. In the event of a such a default or in the event of any dispute concerning any matter pertaining to this Lease, the following procedures and remedies shall apply:

(a) **Step One – Negotiation.** The Parties shall attempt to adjust their differences by informal negotiation as described in Section 18(a) ("Dispute Resolution") of the MOA. Section 18(a) of the MOA is hereby incorporated into this Lease as if fully set forth herein.

(b) **Step Two – Mediation.** If the dispute has not been resolved by negotiation within ninety (90) days of the initial letter proposing negotiation, any Party may demand mediation, which shall be conducted as described in Section 18(b) ("Dispute Resolution") of the MOA. Section 18(b) of the MOA is hereby incorporated into this Lease as if fully set forth herein.

(c) **Step Three – Litigation and Other Remedies.** Unless otherwise agreed by the Parties in writing, Step One and Step Two must be exhausted as a condition precedent to filing of any action in Thurston County Superior Court or the Federal District Court for the Western District of Washington in Tacoma or exercising any of the other remedies described in this Section 8(c). A Party may initiate an action and/or exercise the remedy described below at clause (2) without exhausting Steps One or Two if the statute of limitations is about to expire and the Parties cannot reach a tolling agreement, or if either Party determines the public health, safety, or welfare is threatened. In the event of a default by Tenant, Landlord may also exercise some or all of the following remedies (in addition to filing an action, as described above): (1) terminate this Lease and all rights of Tenant hereunder, which termination shall take effect 180 days after written notice to Tenant, and recover from Tenant any damages caused by Tenant’s breach; or (2) if the default is a failure by the Nisqually Indian Tribe to perform the Mitigation Measures under the MOA and Landlord receives an order or directive from the Washington State Department of Ecology, or its successor or a court of competent jurisdiction, that restricts Landlord’s ability to exercise its Wellfield Water Rights because of the failure of the Mitigation Measures, Landlord may require that such restrictions be applied to or enforced against Tenant’s wells through which it draws the Water Right (i.e., to limit Tenant’s exercise of its Water Right), such that Landlord may continue to exercise fully its Wellfield Water Rights without limitation or restriction by such order or directive. All rights, options and remedies of Landlord contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or by any other agreement to which Landlord and Tenant are parties, whether or not stated in this Lease.

9. **GOVERNING LAW AND VENUE.** This Lease shall be governed by and construed in accordance with the laws of the State of Washington, except to the extent preempted by federal law. Venue for any claim, dispute or action arising out of or relating to this Lease shall lie in the Superior Court for the State of Washington at Thurston County or in the United States District Court for the Western District of Washington at Tacoma. Each Party agrees that venue will lie in
the forum in which a claim or action arising from or relating to this Lease is commenced and will remain in that forum until its ultimate resolution. Each Party further waives its right to seek removal or remand from the forum in which a claim or action arising from or relating to this Lease is commenced. Tenant hereby acknowledges that the provisions of Section 19 ("Waiver of Sovereign Immunity") of the MOA shall apply to this Lease as if fully set forth herein.

10. **NO WAIVER OF COVENANTS:** Failure of Landlord to insist upon strict performance of any of the covenants and agreements of this Lease, or to exercise any option herein conferred in any one or more instance, shall not be construed to be a waiver or relinquishment of any such, or other covenants or agreements, but the same shall be and remain in full force and effect.

11. **BINDING ON HEIRS, SUCCESSORS AND ASSIGNS:** The covenants and agreements of this Lease shall be binding upon the heirs, executors, administrators, successors and assigns of both parties hereto, except as hereinabove provided.

12. **INTEGRATION; AMENDMENTS:** Landlord and Tenant agree that this Lease supersedes all prior and contemporaneous understandings and agreements with respect to the subject matter of this Lease (but does not supersede or otherwise affect the MOA or any agreement contemplated by the MOA) and the provisions of this Lease are intended by them as the final expression of their agreement. No provision of this Lease may be amended except by an agreement in writing signed by the parties hereto or their respective successors in interest, whether or not such amendment is supported by new consideration.

13. **NOTICE:** Unless otherwise specified, all notices hereunder shall be in writing and shall be effectively given when delivered personally, on the date of delivery or, if mailed, seven (7) days after deposit in the United States mail, first-class postage prepaid, certified or registered. For purposes of notice, the addresses of the Parties shall be:

- **To Nisqually Tribe:**
  
  Chairman
  4820 She Nah Num Dr SE
  Olympia WA 98513

- **To Olympia:**
  
  City Manager
  900 Plum Street SE/P.O. Box 1967
  Olympia WA 98507-1967

  **With a required copy to:**
  
  Office of the Tribal Attorney
  4820 She Nah Num Dr SE
  Olympia WA 98513

  **With a copy required to:**
  
  City Attorney
  900 Plum Street SE/P.O. Box 1967
  Olympia WA 98507-1967

14. **NO THIRD PARTY BENEFICIARIES.** The Parties expressly do not intend to create any right, obligation or liability, or promise any performance, to any third party. The Parties have not created, and do not intend to give rise to, any right for any third party to enforce this Lease.
Exhibit C to Memorandum of Agreement

Page 5

15. **COUNTERPARTS:** This Lease may be executed in one or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, this Lease has been executed the day and year first above set forth.

**LANDLORD:**

CITY OF OLYMPIA, a non-charter, optional municipal code city of the State of Washington

By: ____________________________
Name: __________________________
Its: ____________________________

**TENANT:**

NISQUALLY INDIAN TRIBE, a federally recognized Indian tribe

By: ____________________________
Name: __________________________
Its: ____________________________
Exhibit C to Memorandum of Agreement
Page 6

Acknowledgements

STATE OF WASHINGTON )
 COUNTY OF ___________ )

          : ss.

I certify that I know or have satisfactory evidence that _________________ is
the person who appeared before me, and said person acknowledged that s/he signed this
instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged
it as the __________________ of the City of Olympia, to be the free and voluntary act of
such party for the uses and purposes mentioned in the instrument.

       Dated this __ day of ____________________, 200_.

________________________________________
(Signature of Notary)

(seal or stamp)

[Print Name of Notary]

Notary Public in and for the State of
Washington, residing at _____________________.
My appointment expires: ________________.

STATE OF WASHINGTON )
 COUNTY OF ___________ )

          : ss.

I certify that I know or have satisfactory evidence that _________________ is
the person who appeared before me, and said person acknowledged that s/he signed this
instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged
it as the __________________ of the Nisqually Indian Tribe, to be the free and voluntary
act of such party for the uses and purposes mentioned in the instrument.

       Dated this __ day of ____________________, 200_.

________________________________________
(Signature of Notary)

(seal or stamp)

[Print Name of Notary]

Notary Public in and for the State of
Washington, residing at _____________________.
My appointment expires: ________________.
Exhibit C to Memorandum of Agreement
Page 7

EXHIBIT A

MOA
Appendix A

Exhibit C to Memorandum of Agreement
Page 8

EXHIBIT B

WATER RIGHTS CERTIFICATE
RETURN ADDRESS:
City of Olympia
City Clerk's Office
PO Box 1967
Olympia, WA 98507

<table>
<thead>
<tr>
<th>DOCUMENT TITLE(S) (or transactions contained therein):</th>
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<td>☐ Additional reference #s on page ___ of document(s)</td>
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<tr>
<th>GRANTOR(S) (Last name first, then first name and initials)</th>
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<th>GRANTEE(S) (Last name first, then first name and initials)</th>
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<td>NISQUALLY INDIAN TRIBE, a federally recognized Indian tribe</td>
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<td>☐ Additional names on page ___ of document</td>
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| LEGAL DESCRIPTION (abbreviated: i.e., lot, block, plat or section, township, range) |
| [To be inserted; description of Easement Area] |
| ☒ Additional legal is on Exhibit A of document |

| ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER |
| [To be inserted] |
| ☐ Assessor Tax # not yet assigned |
QUITCLAIM DEED

GRANTOR, City of Olympia, a non-charter, optional municipal code city of the State of Washington, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby conveys and quitclaims to GRANTEE, Nisqually Indian Tribe, a federally recognized Indian tribe, the following described water rights (the "Water Rights"), situate in Thurston County, Washington:

a portion equal to an instantaneous quantity of ___ cubic feet per second and an annual quantity of ___ acrefeet under Permit to Appropriate Public Waters of the State of Washington, No. 10191 (under Application No. 13460) from Abbot Springs, with priority date June 8, 1955, as approved for change and transfer by the Washington State Department of Ecology, more particularly described on Exhibit A attached hereto,

upon the express condition that the Nisqually Indian Tribe or its agents (even if it has subsequently conveyed the Water Rights to another party) perform the mitigation measures required under Section 10 of the Memorandum of Agreement (the “MOA”) attached hereto as Exhibit C (the “Mitigation Obligations”), and if the Nisqually Indian Tribe fails to perform the Mitigation Obligations, then GRANTOR shall have the right to enter and the power to terminate GRANTEE's interest in the Water Rights and in case of said re-entry or termination GRANTOR shall be revested with the Water Rights as though this conveyance had never been made. No failure or delay in exercising the right of entry or the power of termination shall be held or construed to be a waiver of such right for such or any other or subsequent breach. For avoidance of doubt, this Deed is intended to convey a fee on a condition subsequent with GRANTOR retaining a right of entry and power of termination.

If the Nisqually Indian Tribe fails to perform the Mitigation Obligations and GRANTOR elects to exercise its right of entry and power of termination, GRANTOR shall record a Notice of Entry and Termination in the form attached hereto as Exhibit B. Upon the recording of the Notice of Entry and Termination, fee simple ownership of the Water Rights shall revert to GRANTOR.

In addition, ownership of the Water Rights is subject to the condition that, if the Nisqually Indian Tribe fails to perform the Mitigation Obligations and GRANTOR receives an order or directive from the Washington State Department of Ecology, or its successor or a court of competent jurisdiction, that restricts GRANTOR'S ability to exercise its Wellfield Water Rights (as defined in the MOA) because of the failure of such Mitigation Obligations, GRANTOR may require that such restrictions be applied to or enforced against GRANTEE'S wells through which it draws the Water Rights (i.e., to limit GRANTEE'S exercise of its Water Rights), such that GRANTOR may continue to exercise fully its Wellfield Water Rights without limitation or restriction by such order or directive.
Exhibit D to Memorandum of Agreement

The covenants and conditions set forth in this Deed shall run with the Water Rights and shall be binding on successors and assigns of GRANTEE. Without limiting the foregoing, by taking title to the Water Rights any successor owner of the Water Rights acknowledges that no conveyance of the Water Rights shall affect the Nisqually Indian Tribe’s continuing obligation to perform the Mitigation Obligations under the MOA, and any transferee of the Water Rights acknowledges that, pursuant to the terms of this Deed, the Nisqually Indian Tribe’s failure to perform such Mitigation Obligations may affect such transferee’s title to or right to use the Water Rights.

DATED this _____ day of _____________, 20__.

GRANTOR:

CITY OF OLYMPIA, a non-charter, optional municipal code city of the State of Washington

By: ________________________________
Name: ______________________________
Its: ________________________________

GRANTEE:

NISQUALLY INDIAN TRIBE, a federally recognized Indian tribe

By: ________________________________
Name: ______________________________
Its: ________________________________
Exhibit D to Memorandum of Agreement
Page 4

STATE OF WASHINGTON )
       : ss.
COUNTY OF __________ )

I certify that I know or have satisfactory evidence that ________________________ is
the person who appeared before me, and said person acknowledged that s/he signed this
instrument, on oath stated that s/he was authorized to execute the instrument and
acknowledged it as the ________________________ of the City of Olympia, to be the free and
voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this ____ day of ______________________, 200__.

____________________________________
(Signature of Notary)
(seal or stamp)

____________________________________
(Print Name of Notary)

Notary Public in and for the State of
Washington, residing at ________________________.
My appointment expires: ________________________.

STATE OF WASHINGTON )
       : ss.
COUNTY OF __________ )

I certify that I know or have satisfactory evidence that ________________________ is
the person who appeared before me, and said person acknowledged that s/he signed this
instrument, on oath stated that s/he was authorized to execute the instrument and
acknowledged it as the ________________________ of the Nisqually Indian Tribe, to be the
free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this ____ day of ______________________, 200__.

____________________________________
(Signature of Notary)
(seal or stamp)

____________________________________
(Print Name of Notary)

Notary Public in and for the State of
Washington, residing at ________________________.
My appointment expires: ________________________.
EXHIBIT A TO QUITCLAIM DEED

Legal Description of Water Rights
EXHIBIT B TO QUITCLAIM DEED

Notice of Entry and Termination

After recording return to:
City of Olympia
City Clerk's Office
PO Box 1967
Olympia, WA 98507

NOTICE OF ENTRY AND TERMINATION

GRANTOR: City of Olympia, a non-charter, optional municipal code city of the State of Washington;

GRANTEE: City of Olympia, a non-charter, optional municipal code city of the State of Washington;

LEGAL DESCRIPTION: ______________________ (Additional Legal Description on Exhibit A)

ASSESSOR’S PROPERTY TAX PARCEL/ACCOUNT NUMBER: ________________

REFERENCE NO.: ______________________

City of Olympia, a non-charter, optional municipal code city of the State of Washington (“OLYMPIA”), hereby gives notice, with respect to the real property described on Exhibit A, that the Nisqually Indian Tribe, a federally recognized Indian tribe (the “NISQUALLY TRIBE”), has not performed the Mitigation Obligations described in that certain Quitclaim Deed recorded in Thurston County under recording number __________________ (the “Deed”).

This Notice of Entry and Termination constitutes Olympia’s exercise of its right of entry and power of termination contained in the Deed. As of the date of the recording of this notice, fee simple ownership of the real property described herein shall revert to Olympia and the Nisqually Tribe or the current owner of such real property shall have no right, title, or interest in such real property.

DATED this ____ day of ____________, 2____.

GRANTOR:
Exhibit D to Memorandum of Agreement

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CITY OF OLYMPIA, a non-charter, optional municipal code city of the State of Washington

By: ____________________________
Name: __________________________
Its: ____________________________
Appendix A

Exhibit D to Memorandum of Agreement

Page 8

STATE OF WASHINGTON

: ss.

COUNTY OF __________

I certify that I know or have satisfactory evidence that __________________________ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the ________________________ of the City of Olympia, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this ____ day of ________________________, 200____.

[Signature of Notary]
(seal or stamp)

[Print Name of Notary]

Notary Public in and for the State of Washington, residing at _________________.
My appointment expires: _________________.

\MURPHY\DOCUMENTS\WATER RIGHTS\ACQUISITION\06-114711165.DOC
Exhibit D to Memorandum of Agreement

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EXHIBIT A TO NOTICE OF REVERSION

Legal Description of Property
Exhibit D to Memorandum of Agreement
Page 10

EXHIBIT B TO QUITCLAIM DEED

Memorandum of Agreement
Exhibit E
Easement
EASEMENT AGREEMENT

Grantor: City of Olympia, a non-charter, optional municipal code city of the State of Washington

Grantee: Nisqually Indian Tribe, a federally recognized Indian tribe

Legal Description of Burdened Property:

Tax Parcel Nos.: A portion of Tax Parcel No. 21829230100

Reference No.: None
Appendix A

Exhibit E to Memorandum of Agreement
Page 2

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (the “Agreement”) is made this __________ day of __________, 20__, by and between the City of Olympia, a non-charter, optional municipal code city of the State of Washington (the “City”), and the Nisqually Indian Tribe, a federally recognized Indian tribe (the “Nisqually Tribe”;” the City and the Nisqually Tribe are each sometimes referred to herein as a “Party” and collectively as the “Parties”), based upon the following:

RECITALS

A. WHEREAS, the City is the owner of that certain real property situate in Thurston County, Washington and more particularly described in attached Exhibit A (the “Burdened Property”); and

B. WHEREAS, the City and the Nisqually Tribe are parties to a Memorandum of Agreement dated as of __________ (as it may hereafter be amended, the “MOA”), a copy of which is attached hereto as Exhibit B; and

C. WHEREAS, among other things, the MOA contemplates both a lease and one or more conveyances to the Nisqually Tribe of the Nisqually Tribe’s Water Allocation (as defined in the MOA); and

D. WHEREAS, in connection with its use of its Water Allocation, the Nisqually Tribe desires to construct or cause to be constructed or located on the Burdened Property production wells and related water system facilities to convey water to the Nisqually Tribe reservation (the “Pumping Facility”); and

E. WHEREAS, the City and the Nisqually Tribe want to provide for an easement for the construction, operation, and maintenance of the Pumping Facility.

AGREEMENT

NOW THEREFORE, in consideration of the recitals, grants and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant. The City grants to the Nisqually Tribe a perpetual, exclusive easement (“Easement”) for the sole purpose of the construction and operation of the Pumping Facility and access to the Pumping Facility in order to exercise the Nisqually Tribe’s Water Allocation, on, over, in and under that portion of the Burdened Property described in attached Exhibit C (the “Easement Area”). The Nisqually Tribe accepts the Easement on an as-is basis, and acknowledges that the City has made no representations whatsoever as to the condition of the Easement Area.

2. Use of Easement Area. The Nisqually Tribe, at its sole cost and expense, shall be responsible for the construction, operation, and maintenance of the Pumping Facility and
the Easement Area. Without limiting the foregoing, the Nisqually Tribe shall be solely responsible for establishing and paying for any utility services required in connection with the Pumping Facility. The Nisqually Tribe shall not permit waste, damage or injury to the Easement Area, shall comply with all applicable laws, statutes, orders, regulations, codes, rules and permit requirements, and shall be solely responsible for any restoration or reconstruction of the Pumping Facility if any damage occurs. The owner of the Burdened Property may post notices in accordance with applicable laws. The Nisqually Tribe shall secure all appropriate governmental approvals and permits for any construction on the Easement Area, and shall complete all work with due diligence and in a good and workmanlike manner.

3. **Liens.** The Nisqually Tribe shall keep the Easement Area and the Burdened Property free from any liens arising out of any work performed for, materials furnished to, or obligations incurred by the Nisqually Tribe and shall indemnify, defend, and hold the owner of the Burdened Property harmless against the same.

4. **Indemnification; Release.** Each Party ("Indemnitor") shall indemnify, defend and hold the other party harmless from and against any and all liability, damages, claims, costs or expenses, including attorneys' fees, arising from any negligent or intentional act or omission of Indemnitor or its officers, contractors, licensees, agents, servants, employees, guests, invitees or visitors in connection with this Agreement. With respect to all or any portion of the foregoing obligation that may be held to be within the purview of RCW 4.24.115, such obligation shall apply only to the maximum extent permitted by RCW 4.24.115. The foregoing indemnity is specifically and expressly intended to, constitute a waiver of Indemnitor's immunity under Washington's Industrial Insurance Act, RCW Title 51, if applicable, to the extent necessary to provide the other party with a full and complete indemnity from claims made by Indemnitor and its employees, to the extent provided herein. Except as otherwise provided in this Section 4, the Nisqually Tribe agrees to use and occupy the Easement Area and the Pumping Facility at its own risk and hereby releases the owner of the Burdened Property, its agents and employees from all claims for any damage or injury to the fullest extent permitted by law.

5. **Insurance.** The Nisqually Tribe shall at all times, at its sole cost and expense, keep in full force and effect, and shall cause its prime contractor and subcontractors to maintain in full force and effect, a policy of commercial general liability insurance insuring against any and all claims or liability arising out of the construction, use or maintenance of the Easement or the Pumping Facility, in an amount not less than One Million Dollars ($1,000,000) per occurrence and not less than Five Million Dollars ($5,000,000) in the aggregate, covering bodily injury to persons, including death, and damage to property, and including automobile liability coverage and contractual liability endorsement covering the indemnification covenant herein; and shall insure the hazards of the Easement and the insured party's operations thereon, including the acts of its independent contractors. The Burdened Property owner may increase the required liability insurance limits each year to reflect increased amounts of coverage then prevailing in the area for similar projects. In addition, the Nisqually Tribe shall at all times, at its sole cost and expense, keep in full force and effect
what is commonly referred to as "Special Cause of Loss" or "Special" coverage insurance on the Pumping Facility in an amount equal to one hundred percent (100%) of the replacement value thereof with a coinsurance waiver. All such insurance shall (a) be issued by an insurance company rated at least A X by Best's insurance; (b) in the case of liability insurance, name the owner of the Burdened Property and its employees and agents as an additional insureds; (c) provide that it shall not be cancelled without at least thirty (30) days' prior written notice by the insurer to the owner of the Burdened Property; (d) in the case of liability insurance, include contractual liability coverage, including without limitation, the indemnification, defense and hold harmless agreements required by this Agreement; and (e) state that the insurance is primary over any policies carried by the owner of the Burdened Property with any policy carried by the owner of the Burdened Property excess and noncontributory. Prior to commencing any activity on or about the Easement Area, the Nisqually Tribe shall provide a certificate of insurance (on an ACORD 27 form) evidencing that the foregoing policies are in full force and effect.

6. **Waiver of Subrogation.** Notwithstanding any other provision of this Agreement, the Nisqually Tribe hereby releases the owner of the Burdened Property, and waives its entire right of recovery for loss or damage to property located within or constituting a part or all of the Pumping Facility or the Easement Area to the extent that the loss or damage is covered by (a) the Nisqually Tribe's insurance, or (b) the insurance the Nisqually Tribe is required to carry under this Agreement, whichever is greater. This waiver applies whether or not the loss is due to the negligent acts or omissions of the owner of the Burdened Property or the Nisqually Tribe, or their respective officers, directors, employees, agents, contractors, or invitees. The Nisqually Tribe shall have its insurers endorse the applicable insurance policies to reflect the foregoing waiver of claims.

7. **Access.** The owner of the Burdened Property shall have the right to enter the Easement Area and the Pumping Facility at all reasonable times, and upon reasonable prior notice to the Nisqually Tribe, for the purpose of inspecting the Easement Area and the Pumping Facility.

8. **Mitigation; Default; Termination.** The Nisqually Tribe hereby acknowledges that its performance of the mitigation measures required under Section 10 of the MOA (the "Mitigation Measures") at all times during the term of this Agreement is of critical importance to the Burdened Property owner. If the Nisqually Tribe shall violate or breach or fail to keep or perform any covenant, agreement, term or condition of this Agreement, or if the Nisqually Tribe shall fail to perform the Mitigation Measures under the MOA (even if the Nisqually Tribe has transferred its rights or obligations under this Agreement), such failure shall constitute a default by the Nisqually Tribe under this Agreement. In the event of a such default or in the event of any dispute concerning any matter pertaining to this Agreement, the following procedures and remedies shall apply:

(a) **Step One – Negotiation.** The Parties shall attempt to adjust their differences by informal negotiation as described in Section 18(a) ("Dispute Resolution") of the
Appendix A

**Exhibit E to Memorandum of Agreement**

**Page 5**

MOA. **Section 18(a)** of the MOA is hereby incorporated into this Agreement as if fully set forth herein.

(b) **Step Two — Mediation.** If the dispute has not been resolved by negotiation within ninety (90) days of the initial letter proposing negotiation, any Party may demand mediation, which shall be conducted as described in **Section 18(b)** (“Dispute Resolution”) of the MOA. **Section 18(b)** of the MOA is hereby incorporated into this Agreement as if fully set forth herein.

(c) **Step Three — Litigation and Other Remedies.** Unless otherwise agreed by the Parties in writing, Step One and Step Two must be exhausted as a condition precedent to filing of any action in Thurston County Superior Court or the Federal District Court for the Western District of Washington in Tacoma or exercising any of the other remedies described in this **Section 8(c)**. A Party may initiate an action and/or exercise the remedy described below at clause (2) without exhausting Steps One or Two if the statute of limitations is about to expire and the Parties cannot reach a tolling agreement, or if either Party determines the public health, safety, or welfare is threatened. In the event of a default by the Nisqually Tribe, the Burdened Property owner may also exercise some or all of the following remedies (in addition to filing an action, as described above): (1) terminate this Agreement and all rights of the Nisqually Tribe hereunder, which termination shall take effect 180 days after written notice to the Nisqually Tribe, and recover from the Nisqually Tribe any damages caused by the Nisqually Tribe’s breach; or (2) if the default is a failure by the Nisqually Tribe to perform the Mitigation Measures under the MOA and the Burdened Property owner receives an order or directive from the Washington State Department of Ecology, or its successor or a court of competent jurisdiction, that restricts the Burdened Property owner’s ability to exercise its Wellfield Water Rights (as defined in the MOA) because of the failure of such Mitigation Measures, the Burdened Property owner may require that such restrictions be applied to or enforced against the Pumping Facility (i.e., to limit the holder of the Water Allocation’s exercise of its Water Allocation), such that the City may continue to exercise fully its Wellfield Water Rights without limitation or restriction by such order or directive. Following any termination of this Agreement, the Burdened Property owner may record a memorandum of such termination without the joinder of the Nisqually Tribe, or, at the request of the Burdened Property owner, the Nisqually Tribe shall execute a recordable memorandum of such termination within ten (10) days following a written request from the owner of the Burdened Property. All rights, options and remedies of the Burdened Property owner contained in this Agreement shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and the Burdened Property owner shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or by any other agreement to which the Burdened Property owner and the Nisqually Tribe are parties, whether or not stated in this Agreement.
9. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, except to the extent preempted by federal law. Venue for any claim, dispute or action arising out of or relating to this Agreement shall lie in the Superior Court for the State of Washington at Thurston County or in the United States District Court for the Western District of Washington at Tacoma. Each Party agrees that venue will lie in the forum in which a claim or action arising from or relating to this Agreement is commenced and will remain in that forum until its ultimate resolution. Each Party further waives its right to seek removal or remand from the forum in which a claim or action arising from or relating to this Agreement is commenced. The Nisqually Tribe hereby acknowledges that the provisions of Section 19 ("Waiver of Sovereign Immunity") of the MOA shall apply to this Agreement as if fully set forth herein.

10. **Termination.** Upon a termination of this Agreement, the Burdened Property owner may either require the Nisqually Tribe to decommission the Pumping Facility in accordance with industry standards and to remove any other property of the Nisqually Tribe located on the Easement Area, or to leave the Pumping Facility in place. If the Burdened Property owner requires the Nisqually Tribe to leave the Pumping Facility in place, the Burdened Property owner shall pay the Nisqually Tribe the fair market value of the Pumping Facility at such time.

11. **Runs With the Land; Assignment.** This Agreement constitutes a covenant running with the Burdened Property and shall be binding upon and inure to the benefit of the owner of the Burdened Property and its successors and assigns. The Easement is "in gross" with respect to the Nisqually Tribe, meaning that the Nisqually Tribe’s benefits and burdens under this Agreement are personal to the Nisqually Tribe and do not run to the successors and assigns of any property owned by the Nisqually Tribe. The Nisqually Tribe shall not transfer any rights or obligations under this Agreement (including without limitation the Easement), except that the Nisqually Tribe may transfer its rights and obligations under this Agreement to a governmental entity with the advance written consent of the Burdened Property owner, which shall not be unreasonably withheld. No transfer by the Nisqually Tribe of any rights or obligations under this Agreement shall affect the Nisqually Tribe’s continuing obligation to perform the Mitigation Measures under the MOA, and any transferee of any rights or obligations hereunder acknowledges that the Nisqually Tribe’s failure to perform such Mitigation Measures shall constitute a default under this Agreement. As a condition to any transfer of any rights or obligations hereunder, the Burdened Property owner may require the transferee to execute a written acknowledgment of the foregoing.

12. **Integration; Amendments.** The parties hereto agree that this Agreement supersedes all prior and contemporaneous understandings and agreements with respect to the subject matter of this Agreement (but does not supersede or otherwise affect the MOA or any agreement contemplated by the MOA) and the provisions of this Agreement are intended by them as the final expression of their agreement. No provision of this Agreement may be amended except by an agreement in writing signed by the parties hereto or their respective successors in interest, whether or not such amendment is supported by new consideration.
Exhibit E to Memorandum of Agreement

Page 7

13. **No Waiver of Covenants.** Failure of the Burdened Property owner to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instance, shall not be construed to be a waiver or relinquishment of any such, or other covenants or agreements, but the same shall be and remain in full force and effect.

14. **No Third Party Beneficiaries.** The Parties expressly do not intend to create any right, obligation or liability, or promise any performance, to any third party. The Parties have not created, and do not intend to give rise to, any right for any third party to enforce this Agreement.

DATED this ___ day of __________, 20__.  

**THE CITY:**

CITY OF OLYMPIA, a non-charter, optional municipal code city of the State of Washington

By: ______________________________
Name: ____________________________
Its: _____________________________

**THE NISQUALLY TRIBE:**

NISQUALLY INDIAN TRIBE, a federally recognized Indian tribe

By: ______________________________
Name: ____________________________
Its: ___________________________
Appendix A

Exhibit E to Memorandum of Agreement
Page 8

Acknowledgements

STATE OF WASHINGTON )
COUNTY OF ___________ )

I certify that I know or have satisfactory evidence that ______________ is
the person who appeared before me, and said person acknowledged that s/he signed this
instrument, on oath stated that s/he was authorized to execute the instrument and
acknowledged it as the ________________________ of the City of Olympia, to be the free and
voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this ___ day of ________________________, 200__.

Signature of Notary
(seal or stamp)

[Print Name of Notary]

Notary Public in and for the State of
Washington, residing at ______________.
My appointment expires: ______________.

STATE OF WASHINGTON )
COUNTY OF ___________ )

I certify that I know or have satisfactory evidence that ______________ is
the person who appeared before me, and said person acknowledged that s/he signed this
instrument, on oath stated that s/he was authorized to execute the instrument and
acknowledged it as the ________________________ of the Nisqually Indian Tribe, to be the
free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this ___ day of ________________________, 200__.

Signature of Notary
(seal or stamp)

[Print Name of Notary]

Notary Public in and for the State of
Washington, residing at ______________.
My appointment expires: ______________.
Exhibit E to Memorandum of Agreement
Page 9

EXHIBIT A

Legal Description of the Burdened Property
Exhibit E to Memorandum of Agreement

Page 10

EXHIBIT B

MOA

[Attached hereto]
Exhibit E to Memorandum of Agreement
Page 11

EXHIBIT C

Legal Description of the Easement
Exhibit F
Mitigation Plan
[see Appendix 5-2]
Exhibit G
Final Decisions Regarding Wellfield Water Rights
[to be attached]