

Interlocal Agreement between the City of Lacey and the City of Olympia for Operation and Maintenance of the Woodland Creek Groundwater Recharge Facility

THIS AGREEMENT is made and entered into this 21ST day of JULY, 2015, by and between, the City of Olympia, a Washington municipal corporation ("Olympia"), and the City of Lacey, a Washington municipal corporation ("Lacey"), collectively referred to herein as "the Parties."

WHEREAS The Parties are expanding Group A water purveyors in the State of Washington, and

WHEREAS The Parties have planned under the Growth Management Act to accommodate future population growth within a defined boundary known as the Urban Growth Area, and

WHEREAS The Parties entered into an Interlocal Agreement for Water Rights Mitigation dated October 10th, 2008 for the purpose of proposing shared water rights mitigation included in revised water rights mitigation plans titled *City of Olympia and Nisqually Indian Tribe McAllister Wellfield Mitigation Plan, December 2010* and *City of Lacey Comprehensive Water Rights Mitigation Plan, December 2010 update*; and submitted to the Department of Ecology in December 2010, and

WHEREAS between December 19, 2011 and April 10, 2012, the Department of Ecology (DOE) approved Lacey's applications for groundwater rights and issued water right permits G2-29165, 2226 acre-feet per year (afy); G2-29304, 1000 afy; G2-30249, 600 afy; G2-30248, 1066 afy; G2-30250, 1000 afy; and G2-30251, 1500 afy, and

WHEREAS on October 21, 2011 the DOE approved Olympia's applications to transfer McAllister Springs water rights certificates 8030, 25 cubic feet per second (cfs); S2- 01105, 5.33 cfs; and Abbott Springs water right permit 10191, 10 cfs to a new well field known as McAllister Wellfield, and

WHEREAS the DOE's approval of the above water right applications and changes thereby approved the cities' proposal for mitigating surface water impacts in the Woodland Creek basin with a reclaimed water groundwater recharge facility that is described in both city's water rights mitigation plans;

WHEREAS Lacey has constructed the Woodland Creek Groundwater Recharge Facility (WCGRF), jointly owned by the Parties as indicated in *Interlocal*

Agreement between the City of Lacey and the City of Olympia for Water Rights Mitigation, October 10, 2008, to mitigate predicted surface water impacts to the Woodland Creek Basin associated with the water rights listed above, and

WHEREAS the WCGRF must meet requirements provided in Reclaimed Water Permit Number ST 6206,

NOW, THEREFORE, it is hereby agreed between the Parties as follows:

- 1) The Parties will work together in a cooperative manner for the purpose of mitigating predicted impacts in the Woodland Creek basin resulting from exercising the water rights covered under Lacey's and Olympia's water rights identified above. The Parties will mitigate predicted impacts to Hicks Lake, Pattison Lake, Long Lake (collectively referred to as the "Tri-Lakes") and Woodland Creek by infiltrating Class A reclaimed water at the Woodland Creek Groundwater Recharge Facility (WCGRF).
- 2) The ownership of and responsibility for the WCGRF will be held jointly by the Parties according to the pro-rata shares in Attachment "B". Lacey will maintain exclusive ownership of the physical property on which the facility is located. Olympia may make visual inspections of the publicly-accessible portions of the facility at any time. Lacey will provide Olympia access to secured portions of the facility with two working days' notice, written or otherwise.
- 3) For the purpose of this agreement, "operation and maintenance" of the WCGRF shall include all operation, maintenance, repair, and service of the following, whether by contract or otherwise: subsurface infiltration galleries, flow control valves, electronic and motorized controls, SCADA instrumentation and programming, radio communication, monitoring wells, analytical equipment/services, transmission piping, permit compliance monitoring, facility performance reporting, engineering support/services, administrative services, electrical service, and any other appurtenances necessary for the successful operation of the facility as designed.
- 4) Lacey will operate and maintain the WCGRF for the mutual benefit of the parties in a manner consistent with all applicable permits and regulations.
 - a) The Parties will jointly pay for the perpetual operation and maintenance of the WCGRF. The Parties will pay a pro-rata share of costs based on predicted depletions as defined in Attachment "B". Olympia will reimburse Lacey based on annual invoices setting forth in detail actual costs incurred. Olympia will pay its pro-rata share of undisputed items within thirty (30) days of receipt of invoices from Lacey.

- i. Upon execution of this agreement Lacey shall prepare an initial invoice for expenses incurred during the calendar year 2014. Olympia agrees to pay its pro-rata share of operation and maintenance expenses incurred by Lacey beginning January 1st, 2014.
- b) Routine operation and maintenance staff hours and expenses are estimated in Attachment "A". Lacey will notify Olympia of the need for additional or non-routine operation, maintenance, or repair work by August 1st of the preceding year. Lacey will consult with Olympia prior to scheduling any alteration or repair work to the facility that may impact its performance or capacity to infiltrate; or any other unplanned work that requires a formal competitive bidding process or qualification based selection.
- c) Lacey will be the lead agency for all work, including operation, maintenance, engineering, construction, contracting, or evaluation of the WCGRF. Lacey will consult with Olympia regarding any work not considered to be routine operation and maintenance. Olympia will not initiate any work outlined above without the prior consent of Lacey.
- d) Lacey may take immediate steps to effect emergency repairs without prior notification to Olympia where the repairs could not have been foreseen and are necessary to return the facility to an operable state, prevent/mitigate a permit violation, or to protect life and/or property. Olympia will be notified of emergency repairs within one business day.
- e) The source of Class A reclaimed water for infiltration will be the Martin Way Reclaimed Water Plant owned by the LOTT Clean Water Alliance. The parties agree to use their respective shares of reclaimed water from the Martin Way Reclaimed Water Plant to mitigate their respective predicted impacts to the Tri-Lakes and Woodland Creek. Neither party will direct these shares of reclaimed water to other uses unless the combined mitigation quantity for both parties can be met.
- f) Lacey will operate the WCGRF to ensure that mitigation of surface water impacts in the Woodland Creek basin is sufficient to support development of the cities' respective water rights listed above. The amount of reclaimed water infiltrated and the amount of water rights used will be compared annually on a volumetric basis. Each Party's pro-rata share of the 5-year rolling annual average volume of reclaimed water infiltrated will be compared to each Party's respective water rights used to determine whether mitigation is

sufficient. By January 15 of each year, Lacey will report to Olympia the monthly totals, annual total, and 5-year rolling annual average infiltration volumes for the prior calendar year at the WCGRF; Olympia will report to Lacey the total volume of water produced from the McAllister Wellfield under the water rights listed above for the prior calendar year. Mitigation credit will be assigned to each Party as a pro-rata share of the total volume infiltrated, calculated on a 5-year rolling annual average, according to the percentages provided in Attachment "B".

- g) Olympia agrees to hold Lacey harmless for inabilities of the facility to meet target infiltration quantities due to the unavailability of Class A reclaimed water from LOTT's Martin Way Reclaimed Water Plant, high groundwater conditions, vandalism, natural disaster, or any other condition outside Lacey's immediate control. In the event LOTT is unable to supply Class A reclaimed water for an extended period of time it may be necessary to utilize potable water from Lacey's water system as a temporary measure to achieve mitigation goals. If potable water is used in place of reclaimed water it will be subject to billing at the Tier 1 rate in effect at that time. Lacey will provide notice to, and consult with Olympia prior to the use of potable water at the facility.
 - h) Lacey will provide Olympia with a copy of the operation and maintenance manual and any revisions or amendments to it, within 30 days of being finalized.
- 5) The WCGRF was designed and constructed with the mutual understanding that the actual annual infiltration capacity of the facility cannot be fully known or guaranteed until it has been in operation for a period of several years and a historical performance record can be established. As such, the Parties acknowledge that the WCGRF, as originally constructed, may not be capable of infiltrating the full mitigation quantity necessary for both Parties. Additionally, the WCGRF was designed to operate in compliance with permits and regulations in place at the time of construction. Future permit and/or regulatory changes may necessitate facility modifications to remain compliant. In the event that the facility is found to be incapable of satisfying both Parties full mitigation requirements, or is no longer compliant with applicable permits and regulations the Parties agree that future expansion or modification of the WCGRF or other supplemental mitigation actions will be conducted jointly by the Parties and the cost burden will be distributed according to the pro-rata shares in Attachment "B". When requested by either party, the Parties agree to enter into good faith negotiations to reach agreement on additional conditions of any facility expansion, supplemental mitigation action, or other unforeseen circumstances.

- 6) This agreement is effective upon execution, and shall remain in effect as long as any mitigation requirements covered in this agreement are applicable, unless terminated or modified by mutual agreement of the Parties.
- 7) Before either party requests termination of the agreement, the Parties agree to meet and confer in good faith to modify or amend this agreement.
 - a) The Parties agree to the following Dispute Resolution Process:
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 Party 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 both 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. Each Party will bear the cost of its own attorneys, consultants, and other Step Two expenses. The Parties to the mediation 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 legal action. 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.

8) General Conditions

- a) No separate legal entity is created by this agreement.
- b) No joint organization whatsoever is created.
- c) No common budget is to be established.
- d) This agreement shall be recorded with the Thurston County Auditor's Office or recorded on the cities' websites as provided by law.
- e) Each Party shall be responsible for its own finances and for its own personal or real property.
- f) All lawsuits whatsoever in regards to this agreement shall be brought in Thurston County Superior Court. The governing law shall be the laws of Washington State.
- g) The Contract Administrator for Olympia shall be the Director of Water Resources of the City of Olympia, Department of Public Works. The Contract Administrator for Lacey shall be Water Resources Manager of the City of Lacey, Department of Public Works.
- h) All notices with regard to this agreement shall be sent in addition to any other legal requirement to:

City of Olympia:

Department of Public Works
Attn: Director of Water Resources
Re: Mitigation Agreement with City of Lacey
P. O. Box 1967
Olympia WA, 98507

City of Lacey:

Water Resources Manager
City of Lacey, Department of Public Works
P.O. Box 3400
Lacey, WA 98509

City of Lacey:



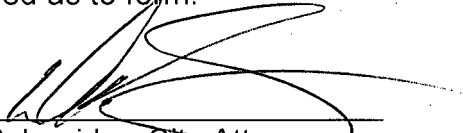
By: Scott Spence
Its: City Manager

City of Olympia:



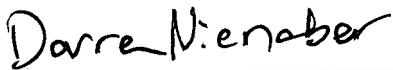
By: Steve Buxbaum
Its: Mayor

Approved as to form:



Dave Schneider, City Attorney

Approved as to form:



Darren Nienaber
Deputy City Attorney

Attachment 'A'
Woodland Creek Groundwater Recharge Facility
Operation and Maintenance Annual Staffing and Service Contract Estimate

Staff Hour Estimate		
Treatment Operator	168 hours	\$12,600
Control Technician	16 hours	\$1,300
Civil Engineer	24 hours	\$2,300
Water Quality Analyst	32 hours	\$3,000
Service Contracts/Materials		
Utilities		\$500
Lab/Analytical		\$5,000
Specialty Equipment Maintenance		\$3,000
Parts and Inventory		\$5,000
Total		\$32,700

¹ Dollar amounts reflect 2014 rates.

Attachment 'B'
Calculation of Mitigation Quantities for Woodland Creek/Tri-Lakes and Pro-Rata Share of Costs

PARTY	WATER BODY	MAXIMUM ANNUAL IMPACTS (CFS)	MITIGATION QUANTITY (CFS)	PRO RATA SHARE OF COSTS
City of Lacey ¹	Woodland Creek	0.22	1.245	78.3%
	Tri-Lakes/Wetlands	0.61		
	Total Combined	0.83		
City of Olympia ²	Woodland Creek	0.03	0.345	21.7%
	Tri-Lakes/Wetlands	0.20		
	Total Combined	0.23		

¹ Reflects City of Lacey water right applications G2-29304 (Evergreen Estates Well); G2-30249 (Betti Well); G2-29165 (Madrona Wellfield); G2-30248 (Hawks Prairie Well #2); G2-30250 (Meridian Campus); G2-30251 (Marvin Road)

² Reflects City of Olympia water right change applications 8030 and S2- 01105 (McAllister Springs) and 10191 (Abbott Springs)