

*When recorded return to:*  
City of Olympia  
PO Box 1967  
Olympia, WA 98507-1967

**INTERLOCAL AGREEMENT BETWEEN  
THE CITIES OF OLYMPIA, LACEY AND YELM  
FOR IMPLEMENTING DESCHUTES WATER RIGHTS  
MITIGATION STRATEGY – PHASE III**

---

**Whereas**, RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

**Whereas**, pursuant to RCW 39.34.080, each party is authorized to contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform: provided, that such contract shall be authorized by the governing body of each party to the contract and shall set forth its purposes, powers, rights, objectives and responsibilities of the contracting parties; and

**Whereas**, the Cities of Olympia and Lacey have received approval for water rights from the Department of Ecology and Yelm's application is approved, pending an appeal; and

**Whereas**, in order to secure approvals of those water rights, the Cities have cooperatively developed a mitigation strategy for the Deschutes River that has been accepted by the Washington Department of Ecology; and

**Whereas**, by Interlocal Agreement effective November 14, 2007, the Cities completed Phase I of a water rights acquisition strategy by identifying potential water rights for acquisition; and

**Whereas**, by amended Interlocal Agreement effective January 19, 2010, the Cities have nearly completed Phase II of a water rights acquisition strategy for mitigation purposes by jointly acquiring water rights and property in the Deschutes River basin and developing a habitat restoration assessment for that property; and

**Whereas**, the cities wish to close out the completion of Phase II and continue implementation of the Deschutes Mitigation Strategy in Phase III by including ongoing management of jointly purchased property; habitat enhancement, planning, design and construction work; and tasks associated with the retirement of acquired water rights for mitigation purposes; and

**Whereas**, Phase III work includes restoration of 200 acres of farmland jointly purchased by the cities in the Deschutes River watershed. Restoration projects will take place over several years and include: riparian planting along 1 mile of river frontage, stream channel and wetland restoration, and ongoing land management responsibilities; and

**Whereas**, Phase III also requires the cities to follow through on the process of retiring water rights acquired for mitigation in the Deschutes River watershed; and

**Whereas**, the cities will begin this Phase III implementation work by fencing the Deschutes River property, developing a 60% design for habitat enhancement work , including construction costs and schedule and hiring a project manager to coordinate and lead this effort; and

**Whereas**, future implementation work will be accomplished through a separate agreement after design work is completed and construction costs and schedule have been identified through the 60% design process; and

**Whereas**, the cities may be doing other restoration work on the Deschutes River Farm property not related to this Interlocal Agreement, but through a Memorandum of Understanding (MOU) with the Squaxin Island Tribe signed November 29, 2011. In this MOU the cities have agreed to form the Budd/Deschutes Watershed Environmental Stewardship Coalition and provide additional funding for habitat restoration activities; and

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the Cities of Lacey, Olympia and Yelm (Cities) agree as follows:

**Purpose/Objective**

The Cities have each developed mitigation plans to offset potential surface water impacts to the Deschutes River from groundwater withdrawals from the McAllister and Yelm sub-basins of the Nisqually River watershed and the Hawks Prairie area of WRIA 13. Within each of these plans, the cities submitted a joint mitigation plan for the Deschutes River Basin to the Washington Department of Ecology (WDOE). The WDOE has issued the Cities of Olympia (CS2-SWC8030, CS2-01105, CS2-SWP10191) and Lacey (ROEs G2-29165, G2-29304, G2-30250, G2-30251, G2-30248, G2-30249) water rights, and has issued the City of Yelm's water rights pending an appeal (ROE G2-29085).

This Agreement will allow the cities to continue with implementation of projects identified in their mitigation plans and meet the conditions of final water right approvals by WDOE.

**I. Scope of Agreement/Work**

This Agreement provides authority for the City Managers or Mayor of each Party to enter into the necessary agreements to accomplish all tasks necessary for completion of Phase II work, and the initiation of Phase III work. Specific Phase III work accomplished under this agreement will include: contracting for habitat enhancement design services (60% design), project management, land surveying, fence construction, and tasks associated with the retirement of acquired water rights for mitigation purposes.

The Cities agree to jointly engage the services of one or more consultants, organizations, or agencies to assist the Cities in services related to implementation of the Deschutes Mitigation strategy submitted to the WDOE.

The Cities will jointly enter into a professional services agreement with one or more consultants, organizations, or agencies agreed upon by the parties for fence construction, habitat enhancement design, project management, land surveying, and legal analysis and review services as needed.

The Cities will jointly direct the work of the consultant, organization, or agency through a consensus-based decision making process. Consultants will be chosen through the standard selection process for professional services as required by the laws of the State of Washington. The Cities will jointly develop and issue the Request for Qualifications (RFQ) for consulting work and will review the RFQs of submitting firms and will make a unified recommendation for selection of the firm. Once the consultants are selected, the Cities shall coordinate with the consultants to develop a Scopes of Work and Professional Services Agreements amenable to each Party.

This agreement also allows the cities to coordinate on decision-making related to contract management, consultant communication and dissemination of project information to appropriate staff within their own jurisdiction.

The cities may also jointly hire legal counsel on issues related to acquisition of water rights, property management and habitat enhancement for the purpose of mitigation and other related topics. Legal advice provided to the cities jointly shall be considered attorney client privileged not subject to disclosure.

Future implementation work, including construction of the identified mitigation projects, will be accomplished through a separate agreement after 60% design work is completed and the costs and schedule have been established.

## **II. Implementation Activity Cost Sharing**

The Cities will equally contribute to all implementation activities under this Agreement.

## **III. Consultant Cost Sharing**

- a. The Cities will equally divide costs for all services as described in Section 1. Total costs for such services under this agreement are not to exceed \$240,000.00.
- b. Further, this Phase III Agreement ratifies and confirms the expenditures of the Cities in excess of the amount budgeted in the previous Interlocal Agreement covering work under Phase II dated January 19, 2010. The cities will equally divide these costs for the completion of Phase II, which do not to exceed \$10,500.

## **IV. Method of Payment**

- a. Consultants will invoice each City separately on a monthly basis.
- b. Payment will be made separately by each City to the consultants upon receipt of an acceptable invoice, after completion of each task agreed upon in the professional services agreement.

## **V. Indemnification & Insurance**

Each City agrees to defend, indemnify and hold the other cities, their officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including reasonable attorney fees, arising out of or in connection with the indemnifying City's performance of this Agreement, including injuries and damages caused by the negligence of the indemnifying City's officers, officials and employees.

## **VI. No Separate Legal Entity Created**

This Agreement creates no separate legal entity.

## **VII. Duration of Agreement**

This Agreement shall be effective on the date of the last signature affixed hereto and shall terminate upon completion of the tasks necessary to accomplish the purpose of the agreement, unless sooner terminated by the Cities as provided herein.

## **VIII. 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 address their differences by informal negotiation. The Party perceiving a dispute or disagreement persisting after informal attempts at resolution shall notify the other Parties 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. 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 – Arbitration. 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.

**IX. Termination of Agreement**

This Agreement may be terminated upon mutual agreement of the Cities.

**X. Interpretation and Venue**

This Agreement shall be governed by the laws of the State of Washington as to interpretation and performance. The parties hereby agree that venue for enforcement of any provisions shall be the Superior Court of Thurston County.

**XI. Entire Agreement**

This Agreement sets forth all terms and conditions agreed upon by the Cities and supersedes any and all prior agreements oral or otherwise with respect to the specific subject matter addressed herein.

**XII. Recording**

Prior to its entry into force, this Agreement shall be filed with the Thurston County Auditor's Office or posted upon the Cities' websites as provided by RCW 39.34.040.

**XIII. Notice**

Any notice required under this Agreement shall be to the party at the address listed below and shall become effective three days following the date of deposit with the United States Postal Service.

**CITY OF OLYMPIA:**

Attn: Liz Hoenig, Senior Planner  
Re: Water Rights Mitigation/Deschutes Basin  
PO Box 1967  
Olympia, WA 98507-1967

**CITY OF LACEY:**

Attn: Peter Brooks, Water Resource Manager  
Re: Water Rights Mitigation/Deschutes Basin  
420 College St SE  
Lacey, WA 98503

**CITY OF YELM:**

Attn: Shelly Badger, City Administrator  
Re: Water Rights Mitigation/Deschutes Basin  
105 Yelm Ave. W

Yelm, WA 98597

This Agreement is hereby entered into between the Cities and shall take effect on the date of the last authorizing signature affixed hereto:

**CITY OF OLYMPIA**

\_\_\_\_\_  
Stephen H. Buxbaum, Mayor

Date: \_\_\_\_\_

Approved as to form:

  
\_\_\_\_\_  
Tom Morrill, City Attorney

**CITY OF LACEY**

\_\_\_\_\_  
Scott Spence, City Manager

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Ken Ahlf, City Attorney

**CITY OF YELM**

\_\_\_\_\_  
Ron Harding, Mayor

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
P. Stephen DiJulio, Attorney